



23 February 2017

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

The purpose of this letter is to bring you up-to-date on proposed changes to the membership of the Security and Stability Advisory Committee (SSAC) and to provide an explanation for the attached request for Board action. This change is the result of ongoing new member evaluations conducted by the SSAC Membership Committee and approved by the SSAC.

The SSAC Membership Committee considers new member candidates and makes its recommendations to the SSAC. The SSAC has agreed with the Membership Committee's recommendation to nominate Jay Daley and Cristian Hesselman as SSAC members.

Jay Daley is well known from his long history with NZRS Ltd and NominetUK. He has broad technical knowledge of all aspects of domain name registries and registry operations, especially ccTLDs. He has a Ph.D. in Computer Science.

For Christian Hesselman's work security has always been an important consideration. He brings experience in registry operations (.nl), working with "big data" especially DNS data (including privacy friendly use of data), and significant experience directing and managing technical teams.

The SSAC believes Jay and Cristian would be significant contributing members of the SSAC.

The SSAC Membership Committee respectfully requests that the Board appoint Jay Daley and Cristian Hesselman to the SSAC for a 3-year term beginning immediately upon approval of the board and ending on 31 December 2019. Attached are their CVs for your reference.

The SSAC welcomes comments from the Board concerning this request.

Patrik Fältström, SSAC Chair

JACQUES LATOUR

Contact Information Redacted

Information Technology & Security Executive

Executive Profile

Jacques Latour is currently the Chief Technology Officer at the Canadian Internet Registration Authority (CIRA). Jacques joined CIRA in March 2010 as Director of IT with the objective to transform the IT organization into a world class organization. Jacques brings with him more than 25 years of experience in the IT sector. At CIRA, Jacques manages a high-performing team of more than 35 people. With a budget in excess of \$6.5 million, Jacques oversees the operations, development and security of the .CA registry and the underlying global .CA DNS infrastructure that supports Canada's country code top level domain name.

His experience in managing budgets, performing financial planning and handling financial matters is broad and deep, in both the private and not-for-profit sectors. He also holds an Electronics Engineering Technologist diploma from Algonquin College in Ottawa, and is ITIL v3 Foundation certified.

As the CTO at the fastest growing country code top-level domain in the world, Jacques understands the national Canadian and global Internet environments, the fast pace cyber security landscape and associated treats, the Internet of Things phenomenon and the need to promote and adopt new technologies such as IPv6 and DNSSEC.

Jacques has a solid background in start-up, turnaround, transformation and optimization of IT infrastructure, and is widely recognized by employees and peers as an expert authority on technology matters.

- *Chief Information and Security Officer experience*
 - Responsible the operations and security of mission critical infrastructures.
- *VP Managed Services Technologies experience*
 - Responsible for developing and managing remote ICT Operation Center (NOC) infrastructures.
- *Chief Technology Officer experience*
 - Responsible for development of technology vision and roadmaps aligned with business drivers.
- *Chief Security Officer experience*
 - Responsible for managing the risks profile and security infrastructure

Leadership Traits and Strengths:

- | | |
|--------------------------------|--------------------------------|
| • <i>Visionary</i> | • <i>Proven Track Record</i> |
| • <i>Problem Solver</i> | • <i>Customer-Centered</i> |
| • <i>Results Oriented</i> | • <i>Change Agent</i> |
| • <i>Leadership by Example</i> | • <i>"Out of Box" Thinking</i> |

Tara Whalen

Contact Information Redacted

Profile

- 20 years' experience in computer security and privacy, including 10 years of Internet and technology policy work in both industry and government roles
- Experienced with standards work as W3C Privacy Interest Group co-chair and IETF participant
- Hold graduate degrees in computer science and law

Work Experience

Staff Privacy Analyst, Google Inc.

August 2014 to present, Mountain View, CA

Apply privacy expertise to reduce privacy risk in products and infrastructure. Resolve complex privacy decisions in multiple product areas. Coordinate with policy, engineering, legal, and communications teams on privacy matters. Develop and document policies, including guidance for engineering teams. Develop and deliver privacy training for employees.

Privacy and Security Standards Engineer, Apple Inc.

April 2013 to July 2014, Cupertino, CA

Provided privacy guidance across entire product line, helping teams to design privacy safeguards into new features and technologies. Designed, analyzed, and audited privacy aspects of features and systems. Coordinated with Legal and Government Affairs teams on privacy policy matters. Educated teams about privacy-related technology issues.

IT Research Analyst, Office of the Privacy Commissioner of Canada

December 2009 to March 2013, Ottawa, Ontario, Canada

Provided technical expertise to multiple branches of the office and researched the privacy implications of emerging technology. Acted as technical lead for multiple investigations (public and private sector); conducting technical analyses of products and services; wrote communications documents and guidance tools; delivered presentations at public events; interpreted technical implications of legislation; and informed policy efforts.

Post-Doctoral Research Associate, Carleton University

January 2009 to November 2009, Ottawa, Ontario, Canada

Investigated the human factors of security. Led projects on the usability of Secure Socket Layer certificates and novel authentication methods. Responsible for planning and conducting group research projects, including development of websites for experimentation, analysis, and writing research results.

Computer Network Researcher, Communications Research Centre Canada (CRC)

1999 to 2002, Ottawa, Ontario, Canada

In addition to core network research work, developed proposals for international telecommunications standards bodies and represented the organization at standards meetings; wrote research reports for national and international agencies, frequently used to develop policy; served as CRC's security principal for multilateral project on secure interoperable networks that involved eight NATO nations.

PROFILE

Global expert in domain names, specialist in trusted markets and services, big data pioneer, accomplished leader.

KEY COMPETENCIES

- Achieved ambitious organisational changes in the context of complex relationships and independently minded stakeholders.
- Continually exceeded financial targets both on revenue and cost control.
- Created strong teams with a self-sustaining culture of strong values, innovation and excellence that ensures the independent decision making of all staff is well aligned.
- Rebuilt, from the ground up, a wide range of business processes to maximise efficiency, repeatability and quality.
- Transformed out-dated technology strategies into leading edge services.
- Produced outstanding customer satisfaction scores in independent surveys.

EMPLOYMENT SUMMARY

NZRS Ltd	Chief Executive	2009 - current
Nominet UK	Director of IT	2002 - 2008
Brighton & Hove City Council	Head of ICT and e-Gov't	2000 - 2002
Brighton & Hove City Council	Network Manager	1996 - 2000
East Sussex County Council	Education Network Mgr	1991 - 1996
Contractor	Software developer	1989 - 1991
Ashdown Business Systems	Software developer	1988 - 1989
Morgan Grenfell Securities	Computer Assistant	1986 - 1987
RISG (global trade body)	Board Director	2010 - 2013
ENUM UK (UK trade body)	Board Director	2007 - 2008
Appleton School (UK)	Board of Trustees	2007 - 2008

EDUCATION AND PROFESSIONAL DEVELOPMENT

- Strategic Leadership Programme, Institute of Strategic Leadership, 2011
- Institute of Directors, Company Directors' Course, 2010
- Various company finance courses, 2004 - 2008
- PRINCE2 Practitioner, 2002
- ITIL Manager's Certificate, 2001
- Various lapsed technical certifications such as Novell CNE
- Attended University of Sussex 1987-88 studying Artificial Intelligence but left for family reasons before the completion of my degree.

EMPLOYMENT HISTORY

Chief Executive, NZRS Ltd (formerly New Zealand Domain Name Registry Ltd t/a .nz Registry Services)

NZRS (www.nzrs.net.nz) is a provider of critical Internet service, the primary of which is the authoritative register of .nz domain names and the global DNS network that makes .nz work. NZRS is a commercial subsidiary of a charity and operates .nz on behalf of the NZ Internet community.

ACCOUNTABILITIES:

- Fully responsible for proposing and executing company strategy.
- Primary service of .nz is a register of 660,000 domain name contracts purchased by 250,000 current customers.
- Wholesaler to 80+ directly contracted customers (registrars) who have 20,000+ resellers between them.
- Global system receiving hundreds of millions of requests per day and with a 100% uptime requirement (otherwise the NZ Internet stops working).
- 15 staff.
- Represent .nz globally in industry fora and promote our best practice and thought leadership.

KEY RESULTS:

- Maintained strong profits and growth despite transition to highly competitive environment. In 2015/16 this was \$3.9m profit vs target of \$3.4m from revenue of \$9.8m.
- Rescued relationships with shareholder and regulator and re-established common principles and core operating agreements.
- Consistently highly rated in customer satisfaction surveys (4.59 out of 5) and better than average (25%) or much better than average (44%).
- Delivered multiple new services for wholesale customers leading to increase in those customers from 63 in 2009 to 89 in 2016 with most of the new customers being large overseas registrars.
- Introduced a customer engagement strategy and marketing function, contributing to an increase in domain name sales from 350k in March 2009 to 660k in July 2016.
- One of the first in the global industry to create a technical research team with a focus on big data. This team is now regularly invited to present on their work at Internet research events around NZ and globally.
- Implemented a business diversification strategy and pipeline with three new services delivered and two more under active development including a major partnership with MBIE on a National Broadband Map.
- Achieved outstanding scores in a staff engagement survey conducted by IBM Kenexa. (92.3% score for "I have confidence in the leadership of this organisation" and "I would recommend this organisation as a great place to work").

Director of IT, Nominet UK

Nominet is the registry for .uk domain names operating at the heart of the UK Internet. In 2008 the company had over 8 million domain names under management delivering a £5.5m profit on a £18.2m turnover

ACCOUNTABILITIES:

- Key, strategic role, report to CEO and standing board invitee, managing 40 staff and £3m budget.
- Responsible for all IT strategy and delivery, product development and diversification.
- Jointly shared key customer engagement responsibilities with the CEO.
- Represent .uk globally.

Jay Daley

Contact Information Redacted

KEY RESULTS:

- Turned an inspired but underperforming technical department into a high performing, customer focused team with outstanding customer satisfaction scores.
- Designed and implemented a new suite of leading-edge e-commerce services enabling the replacement of paper based processes. This handled 1 million visitors per month and 100,000 transactions per month.
- Established a business development pipeline from identifying opportunities at an early stage through to the introduction of new services.
- Devised and implemented a strategy for directing emerging international technical standards and established Nominet as an internationally recognised centre of technical excellence.
- Developed world-class data security for a public database that received 1.5 million accesses per day.
- Established an award-winning joint partnership with a local university to develop the next generation of cyber-squatting detection technology.

Head of ICT & e-Gov't, Brighton & Hove City Council

Brighton and Hove City Council is a unitary authority in the south of England with 250,000 residents and an income of over £500m.

ACCOUNTABILITIES:

- Responsible for the delivery of all ICT services and strategic ICT vision to a forward thinking, ambitious and modern local government organisation.
- Managed a £7m budget with 100 staff. The service supported 3,500+ PCs, 7000+ telephones, and 300+ sites attached to a city-wide network.

KEY RESULTS:

- Built a flagship high-speed city network of dark fibre and broadband that included a unique partnership with local NHS providers, local universities and the local police force connected to the network.
- Introduced a solid service culture based on the formal discipline of IT service management and turned around the satisfaction rating from average to upper quartile within a year.
- Created and implemented one of the first e-government strategies for a local council aiming to provide an online one-stop shop for citizens.
- Set up an in-house Internet Service Provider to service 90 schools and 30,000 school children.

CURRICULUM VITAE

Cristian Hesselman

Contact Information Redacted



SUMMARY

Hands-on initiator and leader of research and innovation teams in the area of distributed Internet systems. Inspiring and facilitating leadership style that enables teams to get the best out of themselves. Impact-driven, iterative, and empirical way of working based on real-world challenges, opportunities, data, prototypes, and pilots. Developed and oversaw multi-disciplinary and multi-partner collaborations, making research results publicly available and valuable as much as possible. Demonstrated skills in conveying complex technical content to different audiences. Track record in initiating and successfully operationalizing new services and platforms in collaborative settings. Effective in working across hierarchical levels, disciplines, organizations, and industries. Provided guidance on long-term technical evolution of registry services, business acumen.

EXPERIENCE

Oct 2011 – present **Manager SIDN Labs (management team)**

SIDN, Arnhem, the Netherlands | www.sidn.nl | www.sidnlabs.nl

- Started and directed SIDN Labs, SIDN's R&D team
- Developed the team's research agenda, way of working, and positioning
- Guided team towards tangible results, such as prototypes, pilots, and publications
- Strongly focused on collaboration with Dutch R&D community and SIDN teams
- Developed long-term technical vision on TLD operator services
- Initiated and guided research on data analysis, leading to the ENTRADA platform
- Developed ENTRADA privacy framework and embedded it within SIDN
- Developed and guided various multi-partner R&D projects
- Responsible for a team of 5.5 FTE and an annual budget of 1.2 M€
- Developed SIDN's strategy to reinforce its role as industry expert
- Setup and maintained relations with universities and research labs
- Operationalized management of AbuseHUB within SIDN
- Chair of the TLD-OPS Standing Committee with the ccNSO (2014-present)
- Co-chair of the CENTR R&D Working Group (2013-2016)

Jun 2015 – present **Chair of the Board of Directors**

NLnet Labs, Amsterdam, the Netherlands | www.nlnetlabs.nl | www.opennetlabs.com

- Advised directors of NLnet Labs and Open Netlabs on strategic direction
- Led processes to appoint new directors, improve performance of the board, and enhance collaboration between board and directors
- Member of the appraisal committee

Apr 2012 – Dec 2014 **Member of the Board (treasurer)**

Abuse Information Exchange, Leidschendam, the Netherlands | www.abuseinformationexchange.nl

- Co-author of the organization’s business plan
 - Member of the founding board (Apr-Nov 2012)
 - Co-managed the development of the AbuseHUB system and its operation
 - Member of the board (Nov 2012-Dec 2014)
 - Oversaw the association's financials (treasurer)
 - Closely collaborated with large Dutch access providers and Dutch government
- Jan 2008 – **Senior Researcher and Project Manager**
 Oct 2011 *Telematica Instituut¹, Enschede, the Netherlands*
- Developed research and consultancy projects of up to 4.7M€
 - Successfully led large (European) multi-partner projects
 - Led multidisciplinary teams of 10-30 researchers and engineers
 - Disseminated results through papers, presentations, workshops
 - Developed services for interactive media, urban traffic management, remote care
 - Closely collaborated with industry, governmental agencies, and universities
- Jun 2005 – **Researcher**
 Dec 2007 *Telematica Instituut, Enschede, the Netherlands*
- Led a project for the Dutch Police on a flexible video surveillance system
 - Led parts of several Dutch and European research projects
 - Managed technical teams of 5-10 people
 - Successfully carried out research and consultancy projects
 - Worked on topics like sensor systems, adaptive multimodal user interfaces, and telco service platforms
 - Initiated and co-authored scientific papers and technical reports
 - Supervised M.Sc. students
- Jan 2000 – **Ph.D. Student**
 May 2005 *University of Twente, Enschede, the Netherlands*
- Oct 1998 – **Assistant Researcher**
 May 2005 *Telematica Instituut, Enschede, the Netherlands*
- Developed mechanisms to distribute live video streams to mobile Internet devices
 - Prototyped them and evaluated their performance through experiments
 - Initiated and authored scientific publications
 - Supervised M.Sc. students
 - Embedded work in (ongoing) research projects at Telematica Instituut
 - Work accumulated in a Ph.D. thesis
- Feb 1998 – **Software Design Engineer**
 Sep 1998 *Lucent Technologies, Wireless Networks Group, Nieuwegein, the Netherlands*
- Designed and specified the top-level architecture of a wireless T1/E1 system
 - Member of the advanced development team
- Oct 1996 – **Software Developer**
 Jan 1998 *Lucent Technologies, Switching and Access Systems Group, Hilversum, the Netherlands*
- Developed signaling software for Lucent’s 5ESS local exchange

¹ Telematica Instituut ceased to exist late 2013 and was known as “Novay” as of April 2009.

- Mar 1996 – **Intern**
 Jul 1996 *Compass Design Automation, San Jose, California*
 – Developed a C++ wrapper for software libraries written in MainSail

EDUCATION

- 2000-2005 Ph.D. in Computer Science, University of Twente. Thesis: *“Distribution of Multimedia Streams to Mobile Internet Users”*, May 2005,
http://doc.utwente.nl/50760/1/thesis_Hesselman.pdf.
- 1990-1996 M.Sc. in Computer Science, University of Twente. Thesis: *“Design of an Establishment Service and Protocol for Multimedia Multiparty Conferences”*, August 1996.
 Specialized in computer networks, completed additional classes on operating systems.

SKILLS

- Computer Languages – C, C++, Java, UNIX, DNS, TCP/IP
- English: full professional proficiency
 – German: professional working proficiency
 – Dutch: native proficiency
- Training – Financial management for non-financial managers
 – Leadership and coaching skills
 – Project management and leadership
 – Advisory skills
 – Customer-oriented thinking and doing
 – Business development skills
 – Presentation skills

SELECTED PUBLICATIONS (PDFS AT WWW.HESSELMAN.NET)

- C. Hesselman, G. Moura, R. de O. Schmidt, and C. Toet, *“Increasing DNS Resilience through a Control Plane for Top-level Domain Operators”*, submitted to the Network and Service Management Series of IEEE Communications Magazine (attached to this application, confidential)
- G. Moura, R. de O. Schmidt, J. Heidemann, W. de Vries, M. Müller, L. Wei, and C. Hesselman, *“Anycast vs. DDoS: Evaluating the November 2015 Root DNS Event”*, USC/ISI Technical Report ISI-TR-2016-709, May 2016, *accepted for publication at the Internet Measurement Conference 2016 (IMC 2016), Santa Monica, USA, Nov 2016*
- J. Jansen and C. Hesselman, *“Experiences with Privacy Management for DNS “Big Data” Applications”* (in Dutch), Privacy & Informatie Magazine, issue no. 4, August 2016, pp. 144-155
- M. Wullink, M. Müller, M. Davids, G. Moura, and C. Hesselman, *“ENTRADA: Enabling DNS Big Data Applications”*, APWG Symposium on Electronic Crime Research (eCRIME 2016), Toronto, Canada, June 2016
- G. Moura, M. Müller, M. Wullink, and C. Hesselman, *“nDEWS: a New Domains Early Warning System for TLDs”*, IEEE/IFIP International Workshop on Analytics for Network and Service Management (AnNet 2016), co-located with IEEE/IFIP Network Operations and Management Symposium 2016 (NOMS 2016), Istanbul, Turkey, April 2016

- M. Wullink, G. Moura, M. Müller, and **C. Hesselman**, “*ENTRADA: a High-Performance Network Traffic Data Streaming Warehouse*”, IEEE/IFIP Network Operations and Management Symposium 2016 (NOMS 2016), Istanbul, Turkey, April 2016
- **C. Hesselman**, J. Jansen, M. Wullink, K. Vink en M. Simon, “*A Privacy Framework for DNS Big Data Applications*” (in Dutch), Privacy & Informatie Magazine, issue no. 6, December 2014, pp. 249-260
- J. Nauta, L. van den Bosch, **C. Hesselman**, J. Brangert, M. de Jong, M. Roest, M. Groot, and M. Hettinga, “*Guiding People with Early Dementia Home with the TalkMeHome Service*”, 4th International Conference on eHealth, Telemedicine, and Social Medicine (eTELEMED 2012), Valencia, Spain, February 2012
- **C. Hesselman**, D. Abbadessa, W. van der Beek, D. Görgen, K. Shepherd, S. Smit, M. Gülbahar, I. Vaishnavi, J. Zoric, D. Lowet, R. de Groote, J. O’Connell, and O. Friedrich, “*Sharing Enriched Multimedia Experiences across Heterogeneous Network Infrastructures*”, IEEE Communications Magazine, Consumer Communications and Networking Series, June 2010
- R. Kernchen, P. Cesar, S. Meissner, M. Boussard, K. Moessner, **C. Hesselman**, and I. Vaishnavi, “*Intelligent Multimedia Presentation Delivery in Ubiquitous Multi-Device Scenarios*”, special issue of IEEE MultiMedia on Mobile and Ubiquitous Multimedia, April-June 2010
- M. Jevring, R. de Groote, and **C. Hesselman**, “*Dynamic Optimization of Bluetooth Networks for Indoor Localization*”, First International Workshop on Automated and Autonomous Sensor Networks (AASN’08), Cergy-Pontoise, France, October 2008
- **C. Hesselman**, H. Eertink, M. Wibbels, K. Sheikh, A. Tokmakoff, “*Controlled Disclosure of Context Information across Ubiquitous Computing Domains*”, IEEE International Conference on Sensor Networks, Ubiquitous, and Trustworthy Computing (SUTC2008), Taichung, Taiwan, June 2008
- **C. Hesselman**, H. Eertink, I. Widya, and E. Huizer, “*Measurements of SIP Signaling over 802.11b Links*”, Proceedings of the Third ACM International Workshop on Wireless Mobile Applications and Services on WLAN Hotspots (WMASH’05), Cologne, Germany, September 2005

SELECTED CONTRIBUTIONS TO MAGAZINES, CONFERENCE, AND WORKSHOPS

- | | |
|-------------------|---|
| Editor | <ul style="list-style-type: none"> – Guest editor of IEEE Communications Magazine, feature topic on Traffic Measurements for Cyber Security, July 2017 – Guest Editor of ACM Multimedia System Journal, Special Issue on Networked Television, Sep/Oct 2010 – Workshop proceedings editor, International Conference on MOBILE Wireless MiddleWARE, Operating Systems, and Applications (MOBILWARE), 2009 |
| Chair | <ul style="list-style-type: none"> – Co-chair of the R&D Working Group of the Council of European National Top-level Domain Registries (CENTR), 2013, 2014, and 2015 – Chair of the track “Systems and Enabling Technologies”, European Interactive TV Conference (EuroITV), 2009 and 2011 – Workshop Chair, International Conference on MOBILE Wireless MiddleWARE, Operating Systems, and Applications (MOBILWARE), 2009 |
| Program Committee | <ul style="list-style-type: none"> – Workshop on Ubiquitous Computing and Networks (UbiCoNet), 2010 and 2011 – International Workshop on IPTV Technologies and Multidisciplinary Applications (IWITMA), 2010 and 2011 |

ADDENDUM TO REGISTRY AGREEMENT

This Addendum to that certain Registry Agreement, dated as of _____2016, for the **.mobi** Top-Level Domain (the "Registry Agreement"), by and between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("ICANN"), and Afilias Technologies Limited, a corporation formed under the laws of Ireland ("Registry Operator"), is dated as of _____ 2016 and is by and among ICANN and Registry Operator ("Addendum"). ICANN and Registry Operator are hereinafter referred to collectively as the "Parties" and individually as a "Party." Capitalized terms used and not defined herein will have the respective meanings given thereto in the Registry Agreement.

WHEREAS, the Parties previously entered into a registry agreement, dated 10 July 2005;

WHEREAS, the Registry Agreement has certain provisions that are not applicable to a top level domain that is already in operation, such as the TLD;

WHEREAS, the purpose of this Addendum is to amend the Registry Agreement in order to modify the provisions that are not applicable to the TLD; and

WHEREAS, pursuant to Section 7.6 of the Registry Agreement, the parties may enter into bilateral amendments and modifications to the Registry Agreement negotiated solely between the Parties.

NOW, THEREFORE, in consideration of the above recitals acknowledged herein by reference, the Parties, intending to be legally bound hereby, do agree as follows:

1. No Approved Amendment pursuant to Section 7.6 or Section 7.7 of the Registry Agreement shall amend or modify the specific terms of the Registry Agreement that are modified or amended pursuant to Section 2 of this Addendum (such terms, "Addendum Terms"); provided that the foregoing shall not apply to any other terms of any provision of the Registry Agreement, including the remaining unmodified terms of any Sections of the Registry Agreement that include the Addendum Terms. If an Approved Amendment is approved in accordance with Section 7.6 or Section 7.7 that would amend or modify any terms of the Registry Agreement that are modified by the Addendum Terms, ICANN and the Registry Operator agree to (i) enter into good faith discussions regarding whether an amendment to such Addendum Terms is appropriate in light of such Approved Amendment and (ii) mutually agree (such agreement not to be unreasonably withheld, conditioned or delayed) on an appropriate amendment to this Addendum or the Registry Agreement.
2. The following Sections of the Registry Agreement are hereby modified by the Addendum Terms set forth in the column across from such Section.

Section	Addendum Terms
1.1	<p>The following term of Section 1.1 shall be of no force or effect:</p> <p>“, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone”</p>
1.3(a)(i)	<p>The following term of Section 1.3(a)(i) shall be of no force or effect:</p> <p>“and statements made in the registry TLD application,”</p>
1.3(a)(iii)	<p>The terms of Section 1.3(a)(iii) shall be of no force or effect.</p>
2.8	<p>The following terms of Section 2.8 shall be of no force or effect:</p> <ul style="list-style-type: none"> • “specify, and” • “launch of the TLD and initial registration-related and”
2.9	<p>The terms of Section 2.9(a) shall be modified to include the following at the end of the provision:</p> <p>“The Registry-Registrar Agreement referred to in this Section 2.9(a) is the last Registry-Registrar Agreement for the .TLD approved by ICANN pursuant to the registry agreement for the .TLD that immediately preceded this Agreement.”</p>
2.12	<p>The terms of Section 2.12 shall be of no force or effect.</p>
2.13	<p>The following term of Section 2.13 shall be of no force or effect:</p> <p>“In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument.”</p>
2.15	<p>The following term of the first sentence of Section 2.15 shall be of no force or effect:</p> <p>“new”</p>
4.3(b)	<p>The terms of Section 4.3(b) shall be of no force or effect.</p>
4.3(c)	<p>The terms of Section 4.3(c) shall be of no force or effect.</p>
4.5	<p>The following term of Section 4.5 shall be of no force or effect:</p>

Section	Addendum Terms
	<p>“In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument for the maintenance and operation of the TLD, regardless of the reason for termination or expiration of this Agreement.”</p>
<p>4.6</p>	<p>The reference to “Section 2.12” in Specification 4.6 shall be of no force or effect.</p>
<p>6.1(a)</p>	<p>The terms of Section 6.1(a) are hereby amended and restated in their entirety as follows:</p> <p>“(a) Registry Operator shall pay ICANN a registry-level fee equal to (i) the registry fixed fee of US\$6,250 per calendar quarter and (ii) the registry-level transaction fee (collectively, the “Registry-Level Fees”). The registry-level transaction fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a “Transaction”), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the registry-level transaction fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any consecutive four calendar quarter period in the aggregate (the “Transaction Threshold”) and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator’s obligation to pay the quarterly registry-level fixed fee will begin on the Effective Date.”</p>
<p>6.4</p>	<p>The terms of Section 6.4 shall be of no force or effect.</p>
<p>Specification 5, § 2</p>	<p>The terms of Section 2 of Specification 5 are hereby amended and restated in their entirety as follows:</p> <p>“2. Additional Second-Level Reservations.</p> <p>2.1 All two-character ASCII labels shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Such labels may not be activated in the DNS, and may not be released for registration to any</p>

Section	Addendum Terms
	<p>person or entity other than Registry Operator, provided that such two-character label strings may be released to the extent that Registry Operator reaches agreement with the related government and country-code manager of the string as specified in the ISO 3166-1 alpha-2 standard. The Registry Operator may also propose the release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes, subject to approval by ICANN. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such labels that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.</p> <p>2.2 All single character labels shall be reserved at the second level within the TLD. Registry Operator may allocate single-character second-level labels (such as a.mobi, 4.mobi) through ICANN-accredited registrars, based upon its implementation of a process using evaluation criteria.</p>
Specification 5, § 3.2	The terms of Section 3.2 of Specification 5 shall be of no force or effect.
Specification 5, § 5	The terms of Section 5 of Specification 5 shall be of no force or effect.
Specification 5, § 6	The terms of Section 6 of Specification 5 shall be of no force or effect.
Specification 6, § 6	The terms of Section 6 of Specification 6 shall be of no force or effect.

Section	Addendum Terms
Specification 7, § 1	<p>The terms of Section 1 of Specification 7 are hereby amended and restated in their entirety as follows:</p> <p style="padding-left: 40px;">“Rights Protection Mechanisms. Registry Operator may develop and implement rights protection mechanisms (“RPMs”) that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all RPMs required by this Specification 7 and any additional RPMs developed and implemented by Registry Operator in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD.”</p>
Specification 7, § 2(a)	<p>The following terms of Section 2(a) of Specification 7 shall be of no force or effect:</p> <ul style="list-style-type: none"> • “and the Registration Restriction Dispute Resolution Procedure (RRDRP)” • “and http://www.icann.org/en/resources/registries/rrdrp, respectively” • “or RRDRP”
Specification 8	<p>The terms of Specification 8 shall be of no force or effect</p>
Specification 9, § 1(b)	<p>The following term of Section 1(b) of Specification 9 shall be of no force or effect:</p> <p style="padding-left: 40px;">“and (b) may withhold from registration or allocate to Registry Operator up to one hundred (100) names pursuant to Section 3.2 of Specification 5”</p>

3. This Addendum shall constitute an integral part of the Registry Agreement. Notwithstanding Section 7.10 of the Registry Agreement, the Registry Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) and this Addendum constitute the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject. The Registry Agreement and this Addendum shall at all times be read together.

4. Except as specifically provided for in this Addendum, all of the terms of the Registry Agreement shall remain unchanged and in full force and effect, and, to the extent applicable, such terms shall apply to this Addendum as if it formed part of the Registry Agreement.
5. This Addendum may be executed and delivered (including by electronic transmission) in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
Akram Atallah
President , Global Domains Division
Date:

AFILIAS TECHNOLOGIES LIMITED

By: _____
[_____] _____
[_____] _____
Date:

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of _____ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and Afilias Technologies Limited, a corporation formed under the laws of Ireland (“Registry Operator”).

ARTICLE 1.

DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

1.1 Domain and Designation. The Top-Level Domain to which this Agreement applies is .mobi (the “TLD”). Upon the Effective Date and until the earlier of the expiration of the Term (as defined in Section 4.1) or the termination of this Agreement pursuant to Article 4, ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

1.2 Technical Feasibility of String. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

1.3 Representations and Warranties.

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and has obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding

obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and has obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1 Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the Specification 6 attached hereto ("Specification 6") and such other Registry Services set forth on Exhibit A (collectively, the "Approved Services"). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a material modification to an Approved Service (each, an "Additional Service"), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the "ICANN Bylaws") applicable to Consensus Policies (the "RSEP"). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

2.2 Compliance with Consensus Policies and Temporary Policies. Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth in Specification 1 attached hereto ("Specification 1").

2.3 Data Escrow. Registry Operator shall comply with the registry data escrow procedures set forth in Specification 2 attached hereto ("Specification 2").

2.4 Monthly Reporting. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format set forth in Specification 3 attached hereto ("Specification 3").

2.5 Publication of Registration Data. Registry Operator shall provide public access to registration data in accordance with Specification 4 attached hereto (“Specification 4”).

2.6 Reserved Names. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the requirements set forth in Specification 5 attached hereto (“Specification 5”). Registry Operator may at any time establish or modify policies concerning Registry Operator’s ability to reserve (i.e., withhold from registration or allocate to Registry Operator, but not register to third parties, delegate, use, activate in the DNS or otherwise make available) or block additional character strings within the TLD at its discretion. Except as specified in Specification 5, if Registry Operator is the registrant for any domain names in the registry TLD, such registrations must be through an ICANN accredited registrar, and will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-level transaction fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

2.7 Registry Interoperability and Continuity. Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6 attached hereto (“Specification 6”).

2.8 Protection of Legal Rights of Third Parties. Registry Operator must specify, and comply with, the processes and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth Specification 7 attached hereto (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

2.9 Registrars.

(a) All domain name registrations in the TLD must be registered through an ICANN accredited registrar; provided, that Registry Operator need not use a registrar if it registers names in its own name in order to withhold such names from delegation or use in accordance with Section 2.6. Subject to the requirements of Specification 11, Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory

agreement with all registrars authorized to register names in the TLD (the “Registry-Registrar Agreement”). Registry Operator may amend the Registry-Registrar Agreement from time to time; provided, however, that any material revisions thereto must be approved by ICANN before any such revisions become effective and binding on any registrar. Registry Operator will provide ICANN and all registrars authorized to register names in the TLD at least fifteen (15) calendar days written notice of any revisions to the Registry-Registrar Agreement before any such revisions become effective and binding on any registrar. During such period, ICANN will determine whether such proposed revisions are immaterial, potentially material or material in nature. If ICANN has not provided Registry Operator with notice of its determination within such fifteen (15) calendar-day period, ICANN shall be deemed to have determined that such proposed revisions are immaterial in nature. If ICANN determines, or is deemed to have determined under this Section 2.9(a), that such revisions are immaterial, then Registry Operator may adopt and implement such revisions. If ICANN determines such revisions are either material or potentially material, ICANN will thereafter follow its procedure regarding review and approval of changes to Registry-Registrar Agreements at <http://www.icann.org/en/resources/registries/rra-amendment-procedure>, and such revisions may not be adopted and implemented until approved by ICANN.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will treat such contract or related documents that are appropriately marked as confidential (as required by Section 7.15) as Confidential Information of Registry Operator in accordance with Section 7.15 (except that ICANN may disclose such contract and related documents to relevant competition authorities). ICANN reserves the right, but not the obligation, to refer any such contract, related documents, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, related documents, transaction or other arrangement might raise significant competition issues under applicable law. If feasible and appropriate under the circumstances, ICANN will give Registry Operator advance notice prior to making any such referral to a competition authority.

(c) For the purposes of this Agreement: (i) “Affiliate” means a person or entity that, directly or indirectly, through one or more intermediaries, or in combination with one or more other persons or entities, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2.10 Pricing for Registry Services.

(a) With respect to initial domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one (1) to ten (10) years at the discretion of the registrar, but no greater than ten (10) years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e., the price in place prior to any noticed increase) for periods of one (1) to ten (10) years at the discretion of the registrar, but no greater than ten (10) years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations ("Renewal Pricing"). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry

Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator’s obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

2.11 Contractual and Operational Compliance Audits.

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit during regular business hours and in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information reasonably necessary to demonstrate Registry Operator’s compliance with this Agreement. Upon no less than ten (10) calendar days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. ICANN will treat any information obtained in connection with such audits that is appropriately marked as confidential (as required by Section 7.15) as Confidential Information of Registry Operator in accordance with Section 7.15.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN’s expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator’s compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for

all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% in a given quarter to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of Registry Operator's knowledge of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

2.12 Continued Operations Instrument. Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in Specification 8 attached hereto ("Specification 8").

2.13 Emergency Transition. Registry Operator agrees that, in the event that any of the emergency thresholds for registry functions set forth in Section 6 of Specification 10 is reached, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at <<http://www.icann.org/en/resources/registries/transition-processes>>) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process, provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the

event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument.

2.14 Registry Code of Conduct. In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in Specification 9 attached hereto (“Specification 9”).

2.15 Cooperation with Economic Studies. If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data related to the operation of the TLD reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold (a) any internal analyses or evaluations prepared by Registry Operator with respect to such data and (b) any data to the extent that the delivery of such data would be in violation of applicable law. Any data delivered to ICANN or its designee pursuant to this Section 2.15 that is appropriately marked as confidential (as required by Section 7.15) shall be treated as Confidential Information of Registry Operator in accordance with Section 7.15, provided that, if ICANN aggregates and makes anonymous such data, ICANN or its designee may disclose such data to any third party. Following completion of an economic study for which Registry Operator has provided data, ICANN will destroy all data provided by Registry Operator that has not been aggregated and made anonymous.

2.16 Registry Performance Specifications. Registry Performance Specifications for operation of the TLD will be as set forth in Specification 10 attached hereto (“Specification 10”). Registry Operator shall comply with such Performance Specifications and, for a period of at least one (1) year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

2.17 Additional Public Interest Commitments. Registry Operator shall comply with the public interest commitments set forth in Specification 11 attached hereto (“Specification 11”).

2.18 Personal Data. Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the registry-registrar agreement for the TLD of the purposes for which data about any identified or identifiable natural person (“Personal Data”) submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

ARTICLE 3.

COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

3.1 Open and Transparent. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2 Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.3 TLD Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

3.4 Root-zone Information Publication. ICANN's publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

3.5 Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system (the "Authoritative Root Server System"), ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

ARTICLE 4.

TERM AND TERMINATION

4.1 Term. The term of this Agreement will be ten (10) years from the Effective Date (as such term may be extended pursuant to Section 4.2, the "Term").

4.2 Renewal.

(a) This Agreement will be renewed for successive periods of ten (10) years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court of competent jurisdiction has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) or a court of competent jurisdiction on at least three (3) separate occasions to have been in (A) fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or (B) breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then-current Term.

4.3 Termination by ICANN.

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court of competent jurisdiction has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD

into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court of competent jurisdiction has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction.

(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) calendar days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any material property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within sixty (60) calendar days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101, et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7 or Sections 2 and 3 of Specification 11, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer who is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of

competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement as specified in Section 7.5.

4.4 Termination by Registry Operator.

(a) Registry Operator may terminate this Agreement upon notice to ICANN if (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court of competent jurisdiction has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

4.5 Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that (i) ICANN will take into consideration any intellectual property rights of Registry Operator (as communicated to ICANN by Registry Operator) in determining whether to transition operation of the TLD to a successor registry operator and (ii) if Registry Operator demonstrates to ICANN's reasonable satisfaction that (A) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator or its Affiliates for their exclusive use, (B) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (C) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN from delegating the TLD pursuant

to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument for the maintenance and operation of the TLD, regardless of the reason for termination or expiration of this Agreement.

4.6 Effect of Termination. Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

ARTICLE 5.

DISPUTE RESOLUTION

5.1 Mediation. In the event of any dispute arising under or in connection with this Agreement, before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator must attempt to resolve the dispute through mediation in accordance with the following terms and conditions:

(a) A party shall submit a dispute to mediation by written notice to the other party. The mediation shall be conducted by a single mediator selected by the parties. If the parties cannot agree on a mediator within fifteen (15) calendar days of delivery of written notice pursuant to this Section 5.1, the parties will promptly select a mutually acceptable mediation provider entity, which entity shall, as soon as practicable following such entity's selection, designate a mediator, who is a licensed attorney with general knowledge of contract law, has no ongoing business relationship with either party and, to the extent necessary to mediate the particular dispute, general knowledge of the domain name system. Any mediator must confirm in writing that he or she is not, and will not become during the term of the mediation, an employee, partner, executive officer, director, or security holder of ICANN or Registry Operator. If such confirmation is not provided by the appointed mediator, then a replacement mediator shall be appointed pursuant to this Section 5.1(a).

(b) The mediator shall conduct the mediation in accordance with the rules and procedures that he or she determines following consultation with the parties. The parties shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute. The mediation shall be treated

as a settlement discussion and shall therefore be confidential and may not be used against either party in any later proceeding relating to the dispute, including any arbitration pursuant to Section 5.2. The mediator may not testify for either party in any later proceeding relating to the dispute.

(c) Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator. Each party shall treat information received from the other party pursuant to the mediation that is appropriately marked as confidential (as required by Section 7.15) as Confidential Information of such other party in accordance with Section 7.15.

(d) If the parties have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, either party or the mediator may terminate the mediation at any time and the dispute can then proceed to arbitration pursuant to Section 5.2 below. If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following the date of the notice delivered pursuant to Section 5.1(a), the mediation shall automatically terminate (unless extended by agreement of the parties) and the dispute can then proceed to arbitration pursuant to Section 5.2 below.

5.2 Arbitration. Disputes arising under or in connection with this Agreement that are not resolved pursuant to Section 5.1, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, (ii) the parties agree in writing to a greater number of arbitrators, or (iii) the dispute arises under Section 7.6 or 7.7. In the case of clauses (i), (ii) or (iii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). Each party shall treat information received from the other party pursuant to the arbitration that is appropriately marked as confidential (as required by Section 7.15) as

Confidential Information of such other party in accordance with Section 7.15. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator's aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2, except with respect to Registry Operator's indemnification obligations pursuant to Section 7.1 and Section 7.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

5.4 Specific Performance. Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator or court of competent jurisdiction specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

ARTICLE 6.

FEES

6.1 Registry-Level Fees.

(a) Registry Operator shall pay ICANN a registry-level fee equal to (i) the registry fixed fee of US\$6,250 per calendar quarter and (ii) the registry-level transaction fee (collectively, the "Registry-Level Fees"). The registry-level transaction fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the registry-level transaction fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any consecutive four calendar quarter period in the

aggregate (the “Transaction Threshold”) and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator’s obligation to pay the quarterly registry-level fixed fee will begin on the date on which the TLD is delegated in the DNS to Registry Operator. The first quarterly payment of the registry-level fixed fee will be prorated based on the number of calendar days between the delegation date and the end of the calendar quarter in which the delegation date falls.

(b) Subject to Section 6.1(a), Registry Operator shall pay the Registry-Level Fees on a quarterly basis to an account designated by ICANN within thirty (30) calendar days following the date of the invoice provided by ICANN.

6.2 Cost Recovery for RSTEP. Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel (“RSTEP”) pursuant to that process at <http://www.icann.org/en/registries/rsep/>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within fourteen (14) calendar days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

6.3 Variable Registry-Level Fee.

(a) If the ICANN accredited registrars (accounting, in the aggregate, for payment of two-thirds of all registrar-level fees (or such portion of ICANN accredited registrars necessary to approve variable accreditation fees under the then-current registrar accreditation agreement), do not approve, pursuant to the terms of their registrar accreditation agreements with ICANN, the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a variable registry-level fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year (the “Variable Registry-Level Fee”). The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars that are party to a registry-registrar agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3); provided, that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator’s ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably

determined by ICANN. If the ICANN accredited registrars (as a group) do approve, pursuant to the terms of their registrar accreditation agreements with ICANN, the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US\$0.25 per domain name registration (including renewals associated with transfers from one ICANN accredited registrar to another) per year.

6.4 Pass Through Fees. Registry Operator shall pay to ICANN (i) a one-time fee equal to US\$5,000 for access to and use of the Trademark Clearinghouse as described in Specification 7 (the “RPM Access Fee”) and (ii) US\$0.25 per Sunrise Registration and Claims Registration (as such terms are used in Trademark Clearinghouse RPMs incorporated herein pursuant to Specification 7) (the “RPM Registration Fee”). The RPM Access Fee will be invoiced as of the Effective Date of this Agreement, and Registry Operator shall pay such fee to an account specified by ICANN within thirty (30) calendar days following the date of the invoice. ICANN will invoice Registry Operator quarterly for the RPM Registration Fee, which shall be due in accordance with the invoicing and payment procedure specified in Section 6.1.

6.5 Adjustments to Fees. Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then-current fees set forth in Section 6.1 and Section 6.3 may be adjusted, at ICANN’s discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the “CPI”) for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.5 shall be effective as of the first day of the first calendar quarter following at least thirty (30) days after ICANN’s delivery to Registry Operator of such fee adjustment notice.

6.6 Additional Fee on Late Payments. For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

ARTICLE 7.

MISCELLANEOUS

7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court of competent jurisdiction or arbitrator.

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator's aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN's total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator's liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN's reasonable satisfaction, such other registry operators' culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence.

7.2 Indemnification Procedures. If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry

Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator's sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN's policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator's cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense.

7.3 Defined Terms. For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on "Security" shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

(b) For purposes of this Agreement, an effect on "Stability" shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments ("RFCs") sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

7.4 No Offset. All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

7.5 Change of Control; Assignment and Subcontracting. Except as set forth in this Section 7.5, neither party may assign any of its rights and obligations under this Agreement without the prior written approval of the other party, which approval will not

be unreasonably withheld. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any subcontracting arrangement that relates to any Critical Function (as identified in Section 6 of Specification 10) for the TLD (a “Material Subcontracting Arrangement”) shall be deemed an assignment.

(a) Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any assignment or Material Subcontracting Arrangement, and any agreement to assign or subcontract any portion of the operations of the TLD (whether or not a Material Subcontracting Arrangement) must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator.

(b) Within thirty (30) calendar days of either such notification pursuant to Section 7.5(a), ICANN may request additional information from Registry Operator establishing (i) compliance with this Agreement and (ii) that the party acquiring such control or entering into such assignment or Material Subcontracting Arrangement (in any case, the “Contracting Party”) and the ultimate parent entity of the Contracting Party meets the ICANN-adopted specification or policy on registry operator criteria then in effect (including with respect to financial resources and operational and technical capabilities), in which case Registry Operator must supply the requested information within fifteen (15) calendar days.

(c) Registry Operator agrees that ICANN’s consent to any assignment, change of control or Material Subcontracting Arrangement will also be subject to background checks on any proposed Contracting Party (and such Contracting Party’s Affiliates).

(d) If ICANN fails to expressly provide or withhold its consent to any assignment, direct or indirect change of control of Registry Operator or any Material Subcontracting Arrangement within thirty (30) calendar days of ICANN’s receipt of notice of such transaction (or, if ICANN has requested additional information from Registry Operator as set forth above, thirty (30) calendar days of the receipt of all requested written information regarding such transaction) from Registry Operator, ICANN shall be deemed to have consented to such transaction.

(e) In connection with any such assignment, change of control or Material Subcontracting Arrangement, Registry Operator shall comply with the Registry Transition Process.

(f) Notwithstanding the foregoing, (i) any consummated change of control shall not be voidable by ICANN; provided, however, that, if ICANN reasonably determines to withhold its consent to such transaction, ICANN may terminate this Agreement pursuant to Section 4.3(g), (ii) ICANN may assign this Agreement without the

consent of Registry Operator upon approval of the ICANN Board of Directors in conjunction with a reorganization, reconstitution or re-incorporation of ICANN upon such assignee's express assumption of the terms and conditions of this Agreement, (iii) Registry Operator may assign this Agreement without the consent of ICANN directly to a wholly-owned subsidiary of Registry Operator, or, if Registry Operator is a wholly-owned subsidiary, to its direct parent or to another wholly-owned subsidiary of its direct parent, upon such subsidiary's or parent's, as applicable, express assumption of the terms and conditions of this Agreement, and (iv) ICANN shall be deemed to have consented to any assignment, Material Subcontracting Arrangement or change of control transaction in which the Contracting Party is an existing operator of a generic top-level domain pursuant to a registry agreement between such Contracting Party and ICANN (provided that such Contracting Party is then in compliance with the terms and conditions of such registry agreement in all material respects), unless ICANN provides to Registry Operator a written objection to such transaction within ten (10) calendar days of ICANN's receipt of notice of such transaction pursuant to this Section 7.5. Notwithstanding Section 7.5(a), in the event an assignment is made pursuant to clauses (ii) or (iii) of this Section 7.5(f), the assigning party will provide the other party with prompt notice following any such assignment.

7.6 Amendments and Waivers.

(a) If the ICANN Board of Directors determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable Registry Operators (the "Applicable Registry Agreements") is desirable (each, a "Special Amendment"), ICANN may adopt a Special Amendment pursuant to the requirements of and process set forth in this Section 7.6; provided that a Special Amendment may not be a Restricted Amendment.

(b) Prior to submitting a Special Amendment for Registry Operator Approval, ICANN shall first consult in good faith with the Working Group regarding the form and substance of such Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the "Posting Period") and providing notice of such proposed amendment to the Applicable Registry Operators in accordance with Section 7.9. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(c) If, within one hundred eighty (180) calendar days following the expiration of the Posting Period (the "Approval Period"), the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment, but must address the subject matter of the Special Amendment posted for public comment, as modified to reflect and/or address input from the Working Group and public comments), ICANN shall provide notice of, and submit, such Special Amendment for approval or disapproval by the Applicable Registry Operators. If, during the sixty (60) calendar day period following the date ICANN provides such notice to the Applicable

Registry Operators, such Special Amendment receives Registry Operator Approval, such Special Amendment shall be deemed approved (an "Approved Amendment") by the Applicable Registry Operators, and shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Approved Amendment to Registry Operator (the "Amendment Effective Date"). In the event that a Special Amendment does not receive Registry Operator Approval, the Special Amendment shall be deemed not approved by the Applicable Registry Operators (a "Rejected Amendment"). A Rejected Amendment will have no effect on the terms and conditions of this Agreement, except as set forth below.

(d) If the ICANN Board of Directors reasonably determines that a Rejected Amendment falls within the subject matter categories set forth in Section 1.2 of Specification 1, the ICANN Board of Directors may adopt a resolution (the date such resolution is adopted is referred to herein as the "Resolution Adoption Date") requesting an Issue Report (as such term is defined in ICANN's Bylaws) by the Generic Names Supporting Organization (the "GNSO") regarding the substance of such Rejected Amendment. The policy development process undertaken by the GNSO pursuant to such requested Issue Report is referred to herein as a "PDP." If such PDP results in a Final Report supported by a GNSO Supermajority (as defined in ICANN's Bylaws) that either (i) recommends adoption of the Rejected Amendment as Consensus Policy or (ii) recommends against adoption of the Rejected Amendment as Consensus Policy, and, in the case of (i) above, the Board adopts such Consensus Policy, Registry Operator shall comply with its obligations pursuant to Section 2.2 of this Agreement. In either case, ICANN will abandon the Rejected Amendment and it will have no effect on the terms and conditions of this Agreement. Notwithstanding the foregoing provisions of this Section 7.6(d), the ICANN Board of Directors shall not be required to initiate a PDP with respect to a Rejected Amendment if, at any time in the twelve (12) month period preceding the submission of such Rejected Amendment for Registry Operator Approval pursuant to Section 7.6(c), the subject matter of such Rejected Amendment was the subject of a concluded or otherwise abandoned or terminated PDP that did not result in a GNSO Supermajority recommendation.

(e) If (a) a Rejected Amendment does not fall within the subject matter categories set forth in Section 1.2 of Specification 1, (b) the subject matter of a Rejected Amendment was, at any time in the twelve (12) month period preceding the submission of such Rejected Amendment for Registry Operator Approval pursuant to Section 7.6(c), the subject of a concluded or otherwise abandoned or terminated PDP that did not result in a GNSO Supermajority recommendation, or (c) a PDP does not result in a Final Report supported by a GNSO Supermajority that either (A) recommends adoption of the Rejected Amendment as Consensus Policy or (B) recommends against adoption of the Rejected Amendment as Consensus Policy (or such PDP has otherwise been abandoned or terminated for any reason), then, in any such case, such Rejected Amendment may still be adopted and become effective in the manner described below. In order for the Rejected Amendment to be adopted, the following requirements must be satisfied:

(i) the subject matter of the Rejected Amendment must be within the scope of ICANN's mission and consistent with a balanced application of its core values (as described in ICANN's Bylaws);

(ii) the Rejected Amendment must be justified by a Substantial and Compelling Reason in the Public Interest, must be likely to promote such interest, taking into account competing public and private interests that are likely to be affected by the Rejected Amendment, and must be narrowly tailored and no broader than reasonably necessary to address such Substantial and Compelling Reason in the Public Interest;

(iii) to the extent the Rejected Amendment prohibits or requires conduct or activities, imposes material costs on the Applicable Registry Operators, and/or materially reduces public access to domain name services, the Rejected Amendment must be the least restrictive means reasonably available to address the Substantial and Compelling Reason in the Public Interest;

(iv) the ICANN Board of Directors must submit the Rejected Amendment, along with a written explanation of the reasoning related to its determination that the Rejected Amendment meets the requirements set out in subclauses (i) through (iii) above, for public comment for a period of no less than thirty (30) calendar days; and

(v) following such public comment period, the ICANN Board of Directors must (a) engage in consultation (or direct ICANN management to engage in consultation) with the Working Group, subject matter experts, members of the GNSO, relevant advisory committees and other interested stakeholders with respect to such Rejected Amendment for a period of no less than sixty (60) calendar days; and (b) following such consultation, reapprove the Rejected Amendment (which may be in a form different than submitted for Registry Operator Approval, but must address the subject matter of the Rejected Amendment, as modified to reflect and/or address input from the Working Group and public comments) by the affirmative vote of at least two-thirds of the members of the ICANN Board of Directors eligible to vote on such matter, taking into account any ICANN policy affecting such eligibility, including ICANN's Conflict of Interest Policy (a "Board Amendment").

Such Board Amendment shall, subject to Section 7.6(f), be deemed an Approved Amendment, and shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Board Amendment to Registry Operator (which effective date shall be deemed the Amendment Effective Date hereunder). Notwithstanding the foregoing, a Board Amendment may not amend the registry fees charged by ICANN hereunder, or amend this Section 7.6.

(f) Notwithstanding the provisions of Section 7.6(e), a Board Amendment shall not be deemed an Approved Amendment if, during the thirty (30) calendar day period following the approval by the ICANN Board of Directors of the Board Amendment, the Working Group, on the behalf of the Applicable Registry Operators, submits to the ICANN Board of Directors an alternative to the Board Amendment (an “Alternative Amendment”) that meets the following requirements:

(i) sets forth the precise text proposed by the Working Group to amend this Agreement in lieu of the Board Amendment;

(ii) addresses the Substantial and Compelling Reason in the Public Interest identified by the ICANN Board of Directors as the justification for the Board Amendment; and

(iii) compared to the Board Amendment is: (a) more narrowly tailored to address such Substantial and Compelling Reason in the Public Interest, and (b) to the extent the Alternative Amendment prohibits or requires conduct or activities, imposes material costs on Affected Registry Operators, or materially reduces access to domain name services, is a less restrictive means to address the Substantial and Compelling Reason in the Public Interest.

Any proposed amendment that does not meet the requirements of subclauses (i) through (iii) in the immediately preceding sentence shall not be considered an Alternative Amendment hereunder and therefore shall not supersede or delay the effectiveness of the Board Amendment. If, following the submission of the Alternative Amendment to the ICANN Board of Directors, the Alternative Amendment receives Registry Operator Approval, the Alternative Amendment shall supersede the Board Amendment and shall be deemed an Approved Amendment hereunder (and shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Alternative Amendment to Registry Operator, which effective date shall be deemed the Amendment Effective Date hereunder), unless, within a period of sixty (60) calendar days following the date that the Working Group notifies the ICANN Board of Directors of Registry Operator Approval of such Alternative Amendment (during which time ICANN shall engage with the Working Group with respect to the Alternative Amendment), the ICANN Board of Directors by the affirmative vote of at least two-thirds of the members of the ICANN Board of Directors eligible to vote on such matter, taking into account any ICANN policy affecting such eligibility, including ICANN’s Conflict of Interest Policy, rejects the Alternative Amendment. If (A) the Alternative Amendment does not receive Registry Operator Approval within thirty (30) calendar days of submission of such Alternative Amendment to the Applicable Registry Operators (and the Working Group shall notify ICANN of the date of such submission), or (B) the ICANN Board of Directors rejects the Alternative Amendment by such two-thirds vote, the Board Amendment (and not the Alternative Amendment) shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice to Registry Operator (which

effective date shall be deemed the Amendment Effective Date hereunder). If the ICANN Board of Directors rejects an Alternative Amendment, the board shall publish a written rationale setting forth its analysis of the criteria set forth in Sections 7.6(f)(i) through 7.6(f)(iii). The ability of the ICANN Board of Directors to reject an Alternative Amendment hereunder does not relieve the Board of the obligation to ensure that any Board Amendment meets the criteria set forth in Section 7.6(e)(i) through 7.6(e)(v).

(g) In the event that Registry Operator believes an Approved Amendment does not meet the substantive requirements set out in this Section 7.6 or has been adopted in contravention of any of the procedural provisions of this Section 7.6, Registry Operator may challenge the adoption of such Special Amendment pursuant to the dispute resolution provisions set forth in Article 5, except that such arbitration shall be conducted by a three-person arbitration panel. Any such challenge must be brought within sixty (60) calendar days following the date ICANN provided notice to Registry Operator of the Approved Amendment, and ICANN may consolidate all challenges brought by registry operators (including Registry Operator) into a single proceeding. The Approved Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process.

(h) Registry Operator may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an "Exemption Request") during the thirty (30) calendar day period following the date ICANN provided notice to Registry Operator of such Approved Amendment. Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN's receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement; provided, that any conditions, alternatives or variations of the Approved Amendment required by ICANN shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN's determination, appeal ICANN's decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved Amendment will be

deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(j), agreed to by ICANN following mediation pursuant to Section 5.1 or through an arbitration decision pursuant to Section 5.2 shall exempt Registry Operator from any Approved Amendment, and no Exemption Request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(i) Except as set forth in this Section 7.6, Section 7.7 and as otherwise set forth in this Agreement and the Specifications hereto, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 or Section 7.7 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Sections 7.6 or 7.7 shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(j) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable, at the prevailing exchange rate published the prior day in the U.S. Edition of the Wall Street Journal for the date such calculation is made by ICANN) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For the avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) "Restricted Amendment" means the following: (A) an amendment of Specification 1, (B) except to the extent addressed in Section

2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (C) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (D) an amendment to the length of the Term.

(iv) “Substantial and Compelling Reason in the Public Interest” means a reason that is justified by an important, specific, and articulated public interest goal that is within ICANN's mission and consistent with a balanced application of ICANN's core values as defined in ICANN's Bylaws.

(v) “Working Group” means representatives of the Applicable Registry Operators and other members of the community that the Registry Stakeholders Group appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(i)).

(k) Notwithstanding anything in this Section 7.6 to the contrary, (i) if Registry Operator provides evidence to ICANN's reasonable satisfaction that the Approved Amendment would materially increase the cost of providing Registry Services, then ICANN will allow up to one-hundred eighty (180) calendar days for Approved Amendment to become effective with respect to Registry Operator, and (ii) no Approved Amendment adopted pursuant to Section 7.6 shall become effective with respect to Registry Operator if Registry Operator provides ICANN with an irrevocable notice of termination pursuant to Section 4.4(b).

7.7 Negotiation Process.

(a) If either the Chief Executive Officer of ICANN (“CEO”) or the Chairperson of the Registry Stakeholder Group (“Chair”) desires to discuss any revision(s) to this Agreement, the CEO or Chair, as applicable, shall provide written notice to the other person, which shall set forth in reasonable detail the proposed revisions to this Agreement (a “Negotiation Notice”). Notwithstanding the foregoing, neither the CEO nor the Chair may (i) propose revisions to this Agreement that modify any Consensus Policy then existing, (ii) propose revisions to this Agreement pursuant to this Section 7.7 on or before June 30, 2014, or (iii) propose revisions or submit a Negotiation Notice more than once during any twelve (12) month period beginning on July 1, 2014.

(b) Following receipt of the Negotiation Notice by either the CEO or the Chair, ICANN and the Working Group (as defined in Section 7.6) shall consult in good faith negotiations regarding the form and substance of the proposed revisions to this Agreement, which shall be in the form of a proposed amendment to this Agreement (the “Proposed Revisions”), for a period of at least ninety (90) calendar days (unless a resolution is earlier reached) and attempt to reach a mutually acceptable agreement relating to the Proposed Revisions (the “Discussion Period”).

(c) If, following the conclusion of the Discussion Period, an agreement is reached on the Proposed Revisions, ICANN shall post the mutually agreed Proposed

Revisions on its website for public comment for no less than thirty (30) calendar days (the "Posting Period") and provide notice of such revisions to all Applicable Registry Operators in accordance with Section 7.9. ICANN and the Working Group will consider the public comments submitted on the Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registry Operators). Following the conclusion of the Posting Period, the Proposed Revisions shall be submitted for Registry Operator Approval (as defined in Section 7.6) and approval by the ICANN Board of Directors. If such approvals are obtained, the Proposed Revisions shall be deemed an Approved Amendment (as defined in Section 7.6) by the Applicable Registry Operators and ICANN, and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator.

(d) If, following the conclusion of the Discussion Period, an agreement is not reached between ICANN and the Working Group on the Proposed Revisions, either the CEO or the Chair may provide the other person written notice (the "Mediation Notice") requiring each party to attempt to resolve the disagreements related to the Proposed Revisions through impartial, facilitative (non-evaluative) mediation in accordance with the terms and conditions set forth below. In the event that a Mediation Notice is provided, ICANN and the Working Group shall, within fifteen (15) calendar days thereof, simultaneously post the text of their desired version of the Proposed Revisions and a position paper with respect thereto on ICANN's website.

(i) The mediation shall be conducted by a single mediator selected by the parties. If the parties cannot agree on a mediator within fifteen (15) calendar days following receipt by the CEO or Chair, as applicable, of the Mediation Notice, the parties will promptly select a mutually acceptable mediation provider entity, which entity shall, as soon as practicable following such entity's selection, designate a mediator, who is a licensed attorney with general knowledge of contract law, who has no ongoing business relationship with either party and, to the extent necessary to mediate the particular dispute, general knowledge of the domain name system. Any mediator must confirm in writing that he or she is not, and will not become during the term of the mediation, an employee, partner, executive officer, director, or security holder of ICANN or an Applicable Registry Operator. If such confirmation is not provided by the appointed mediator, then a replacement mediator shall be appointed pursuant to this Section 7.7(d)(i).

(ii) The mediator shall conduct the mediation in accordance with the rules and procedures for facilitative mediation that he or she determines following consultation with the parties. The parties shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute.

(iii) Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator.

(iv) If an agreement is reached during the mediation, ICANN shall post the mutually agreed Proposed Revisions on its website for the Posting Period and provide notice to all Applicable Registry Operators in accordance with Section 7.9. ICANN and the Working Group will consider the public comments submitted on the agreed Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registry Operators). Following the conclusion of the Posting Period, the Proposed Revisions shall be submitted for Registry Operator Approval and approval by the ICANN Board of Directors. If such approvals are obtained, the Proposed Revisions shall be deemed an Approved Amendment (as defined in Section 7.6) by the Applicable Registry Operators and ICANN, and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator.

(v) If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following receipt by the CEO or Chair, as applicable, of the Mediation Notice, the mediation shall automatically terminate (unless extended by agreement of the parties). The mediator shall deliver to the parties a definition of the issues that could be considered in future arbitration, if invoked. Those issues are subject to the limitations set forth in Section 7.7(e)(ii) below.

(e) If, following mediation, ICANN and the Working Group have not reached an agreement on the Proposed Revisions, either the CEO or the Chair may provide the other person written notice (an "Arbitration Notice") requiring ICANN and the Applicable Registry Operators to resolve the dispute through binding arbitration in accordance with the arbitration provisions of Section 5.2, subject to the requirements and limitations of this Section 7.7(e).

(i) If an Arbitration Notice is sent, the mediator's definition of issues, along with the Proposed Revisions (be those from ICANN, the Working Group or both) shall be posted for public comment on ICANN's website for a period of no less than thirty (30) calendar days. ICANN and the Working Group will consider the public comments submitted on the Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registry Operators), and information regarding such comments and consideration shall be provided to a three (3) person arbitrator panel. Each party may modify its Proposed Revisions before and after the Posting Period. The arbitration proceeding may not commence prior to the closing of such public comment period, and ICANN may consolidate all challenges brought by registry operators (including Registry Operator) into a single proceeding. Except as set forth in this Section 7.7, the arbitration shall be conducted pursuant to Section 5.2.

(ii) No dispute regarding the Proposed Revisions may be submitted for arbitration to the extent the subject matter of the Proposed

Revisions (i) relates to Consensus Policy, (ii) falls within the subject matter categories set forth in Section 1.2 of Specification 1, or (iii) seeks to amend any of the following provisions or Specifications of this Agreement: Articles 1, 3 and 6; Sections 2.1, 2.2, 2.5, 2.7, 2.9, 2.10, 2.16, 2.17, 2.19, 4.1, 4.2, 7.3, 7.6, 7.7, 7.8, 7.10, 7.11, 7.12, 7.13, 7.14; Section 2.8 and Specification 7 (but only to the extent such Proposed Revisions seek to implement an RPM not contemplated by Sections 2.8 and Specification 7); Exhibit A; and Specifications 1, 4, 6, 10 and 11.

(iii) The mediator will brief the arbitrator panel regarding ICANN and the Working Group's respective proposals relating to the Proposed Revisions.

(iv) No amendment to this Agreement relating to the Proposed Revisions may be submitted for arbitration by either the Working Group or ICANN, unless, in the case of the Working Group, the proposed amendment has received Registry Operator Approval and, in the case of ICANN, the proposed amendment has been approved by the ICANN Board of Directors.

(v) In order for the arbitrator panel to approve either ICANN or the Working Group's proposed amendment relating to the Proposed Revisions, the arbitrator panel must conclude that such proposed amendment is consistent with a balanced application of ICANN's core values (as described in ICANN's Bylaws) and reasonable in light of the balancing of the costs and benefits to the business interests of the Applicable Registry Operators and ICANN (as applicable), and the public benefit sought to be achieved by the Proposed Revisions as set forth in such amendment. If the arbitrator panel concludes that either ICANN or the Working Group's proposed amendment relating to the Proposed Revisions meets the foregoing standard, such amendment shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator and deemed an Approved Amendment hereunder.

(f) With respect to an Approved Amendment relating to an amendment proposed by ICANN, Registry may apply in writing to ICANN for an exemption from such amendment pursuant to the provisions of Section 7.6.

(g) Notwithstanding anything in this Section 7.7 to the contrary, (a) if Registry Operator provides evidence to ICANN's reasonable satisfaction that the Approved Amendment would materially increase the cost of providing Registry Services, then ICANN will allow up to one-hundred eighty (180) calendar days for the Approved Amendment to become effective with respect to Registry Operator, and (b) no Approved Amendment adopted pursuant to Section 7.7 shall become effective with respect to Registry Operator if Registry Operator provides ICANN with an irrevocable notice of termination pursuant to Section 4.4(b).

7.8 No Third-Party Beneficiaries. This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

7.9 General Notices. Except for notices pursuant to Sections 7.6 and 7.7, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this Agreement. All notices under Sections 7.6 and 7.7 shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Other than notices under Sections 7.6 or 7.7, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within three (3) calendar days. Any notice required by Sections 7.6 or 7.7 will be deemed to have been given when electronically posted on ICANN's website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA
Telephone: +1-310-301-5800
Facsimile: +1-310-823-8649
Attention: President and CEO

With a Required Copy to: General Counsel
Email: (As specified from time to time.)

If to Registry Operator, addressed to:
Afilias Technologies Limited
[_____]_____
Telephone:
Facsimile:
Attention:

7.10 Entire Agreement. This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and

supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

7.11 English Language Controls. Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

7.12 Ownership Rights. Nothing contained in this Agreement shall be construed as (a) establishing or granting to Registry Operator any property ownership rights or interests of Registry Operator in the TLD or the letters, words, symbols or other characters making up the TLD string, or (b) affecting any existing intellectual property or ownership rights of Registry Operator.

7.13 Severability; Conflicts with Laws. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible. ICANN and the Working Group will mutually cooperate to develop an ICANN procedure for ICANN's review and consideration of alleged conflicts between applicable laws and non-WHOIS related provisions of this Agreement. Until such procedure is developed and implemented by ICANN, ICANN will review and consider alleged conflicts between applicable laws and non-WHOIS related provisions of this Agreement in a manner similar to ICANN's Procedure For Handling WHOIS Conflicts with Privacy Law.

7.14 Court Orders. ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement

7.15 Confidentiality

(a) Subject to Section 7.15(c), during the Term and for a period of three (3) years thereafter, each party shall, and shall cause its and its Affiliates' officers, directors, employees and agents to, keep confidential and not publish or otherwise disclose to any third party, directly or indirectly, any information that is, and the disclosing party has marked as, or has otherwise designated in writing to the receiving party as, "confidential trade secret," "confidential commercial information" or "confidential financial information" (collectively, "Confidential Information"), except to the extent such disclosure is permitted by the terms of this Agreement.

(b) The confidentiality obligations under Section 7.15(a) shall not apply to any Confidential Information that (i) is or hereafter becomes part of the public domain by public use, publication, general knowledge or the like through no fault of the receiving party in breach of this Agreement, (ii) can be demonstrated by documentation or other competent proof to have been in the receiving party's possession prior to disclosure by the disclosing party without any obligation of confidentiality with respect to such information, (iii) is subsequently received by the receiving party from a third party who is not bound by any obligation of confidentiality with respect to such information, (iv) has been published by a third party or otherwise enters the public domain through no fault of the receiving party, or (v) can be demonstrated by documentation or other competent evidence to have been independently developed by or for the receiving party without reference to the disclosing party's Confidential Information.

(c) Each party shall have the right to disclose Confidential Information to the extent that such disclosure is (i) made in response to a valid order of a court of competent jurisdiction or, if in the reasonable opinion of the receiving party's legal counsel, such disclosure is otherwise required by applicable law; provided, however, that the receiving party shall first have given notice to the disclosing party and given the disclosing party a reasonable opportunity to quash such order or to obtain a protective order or confidential treatment order requiring that the Confidential Information that is the subject of such order or other applicable law be held in confidence by such court or other third party recipient, unless the receiving party is not permitted to provide such notice under such order or applicable law, or (ii) made by the receiving party or any of its Affiliates to its or their attorneys, auditors, advisors, consultants, contractors or other third parties for use by such person or entity as may be necessary or useful in connection with the performance of the activities under this Agreement, provided that such third party is bound by confidentiality obligations at least as stringent as those set forth herein, either by written agreement or through professional responsibility standards.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
Akram Atallah
President, Global Domains Division

AFILIAS TECHNOLOGIES LIMITED

By: _____
[_____] _____
[_____] _____
Date:

EXHIBIT A

Approved Services

The RSEP specifies processes for consideration of proposed registry services. Registry Operator may provide any service that is required by the terms of this Agreement. In addition, the following services (if any) are specifically identified as having been approved by ICANN prior to the Effective Date of the Agreement, and Registry Operator may provide such services:

1. DNS Service – TLD Zone Contents

Notwithstanding anything else in this Agreement, permissible contents for the TLD's zone are:

- 1.1.** Apex SOA record
- 1.2.** Apex NS records and in-bailiwick glue for the TLD's DNS servers
- 1.3.** NS records and in-bailiwick glue for DNS servers of registered names in the TLD
- 1.4.** DS records for registered names in the TLD
- 1.5.** Records associated with signing the TLD zone (i.e., RRSIG, DNSKEY, NSEC, and NSEC3)

(Note: The above language effectively does not allow, among other things, the inclusion of DNS resource records that would enable a dotless domain name (e.g., apex A, AAAA, MX records) in the TLD zone.)

If Registry Operator wishes to place any DNS resource record type into its TLD DNS zone (other than those listed in Sections 1.1 through 1.5 above), it must describe in detail its proposal and submit a Registry Services Evaluation Process (RSEP) request. This will be evaluated per RSEP to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Registry Operator recognizes and acknowledges that a service based on the use of less-common DNS resource records in the TLD zone, even if approved, might not work as intended for all users due to lack of software support.

2. Anti-Abuse

Registry Operator may suspend, delete or otherwise make changes to domain names in compliance with its anti-abuse policy.

3. Implementation Period

Registry Operator will have a 270 calendar days grace period, beginning on the Effective Date, to work with ICANN and backend providers to ensure that all technical operations and obligations have transitioned from the previous registry agreement for the TLD to this Registry Agreement.

4. Registry Lock

Registry Operator may offer the Registry Lock service, which is a registry service that allows an authorized representative from the sponsoring Registrar, request the activation or deactivation of any of the following EPP statuses: serverUpdateProhibited, serverDeleteProhibited and/or serverTransferProhibited.

5. Bulk Transfer After Partial Portfolio Acquisition

Bulk Transfer After Partial Portfolio Acquisition (BTAPPA) is a registry service available to consenting registrars in the circumstance where one ICANN-accredited registrar purchases, by means of a stock or asset purchase, merger or similar transaction, a portion but not all, of another ICANN-accredited registrar's domain name portfolio in the .MOBi top-level domain.

At least fifteen days before completing a BTAPPA, the losing registrar must provide to all domain name registrants for names involved in the bulk transfer, written notice of the bulk change of sponsorship. The notice must include an explanation of how the Whois record will change after the bulk transfer occurs, and customer support and technical contact information of the gaining registrar.

If a domain is transferred under the BTAPPA service during any applicable registry grace period, there is no credit. The expiration dates of transferred registrations are not affected.

Domain names in the following statuses at the time of the Transfer Request will not be transferred in a BTAPPA: "pendingTransfer", "Redemption Grace Period (RGP)", or "pendingDelete". Domain names that are within the auto-renew grace period window are subject to bulk transfer, but Registry Operator may decline to provide a credit for those names deleted after the bulk transfer, but prior to the expiration of the auto-renew grace period window.

Registry Operator has discretion to reject a BTAPPA request if there is reasonable evidence that a transfer under BTAPPA is being requested in order to avoid fees

otherwise due to Registry Operator or ICANN, or if a registrar with common ownership or management or both has already requested BTAPPA service within the preceding six-month period.

6. Searchable Whois

Notwithstanding anything else in this Agreement, Registry Operator may offer a searchable Whois service compliant with the requirements described in Section 1.10 of Specification 4 of this Agreement. Registry Operator must make available the services only to authenticated users after they logged in by supplying proper credentials (e.g., user name and password). Registry Operator must issue such credentials exclusively to eligible users and institutions that supply sufficient proof of their legitimate interest in this feature (e.g., law enforcement agencies). Registry Operator shall use rate-limiting to prevent abuse of the searchable Whois service.

7. Whois Contact Lookup

Registry Operator may offer the Whois contact lookup service, which is a service that extends the functionality specified in Specification 4 by allowing the end-user to look up for Contact data using the contact ROID as the lookup key:

Query format: whois "contact 5372809-ERL"

Response format:

```
Contact ID: 5372808-ERL
Name: EXAMPLE REGISTRANT
Organization: EXAMPLE ORGANIZATION
Street: 123 EXAMPLE STREET
City: ANYTOWN
State/Province: AP
Postal Code: A1A1A1
Country: EX
Phone: +1.5555551212
Phone Ext: 1234
Fax: +1.5555551213
Fax Ext: 4321
Email: EMAIL@EXAMPLE.TLD
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<
```

8. Internationalized Domain Names (IDNs)

Registry Operator may offer registration of IDNs at the second and lower levels provided that Registry Operator complies with the following requirements:

- 8.1.** Registry Operator must offer Registrars support for handling IDN registrations in EPP.
- 8.2.** Registry Operator must handle variant IDNs as follows:
 - 8.2.1.** By default variant IDNs (as defined in the Registry Operator’s IDN tables and IDN Registration Rules) must be blocked from registration.
 - 8.2.2.** Variant IDNs may be activated when requested by the sponsoring Registrar of the canonical name as described in the IDN Tables and IDN Registration Rules.
 - 8.2.3.** Active variant IDNs must be provisioned in the TLD’s DNS zone file as zone cuts using the same NS resource records as the canonical name.
- 8.3.** Registry Operator may offer registration of IDNs in the following languages/scripts (IDN Tables and IDN Registration Rules will be published by the Registry Operator as specified in the ICANN IDN Implementation Guidelines):
 - 8.3.1.** Arabic language
 - 8.3.2.** Belarusian language
 - 8.3.3.** Bosnian language
 - 8.3.4.** Bulgarian language
 - 8.3.5.** Chinese (Simplified) language
 - 8.3.6.** Chinese (Traditional) language
 - 8.3.7.** Danish language
 - 8.3.8.** Finnish language
 - 8.3.9.** French language
 - 8.3.10.** German language
 - 8.3.11.** Hindi language
 - 8.3.12.** Hungarian language
 - 8.3.13.** Icelandic language
 - 8.3.14.** Italian language
 - 8.3.15.** Korean language

- 8.3.16.** Latvian language
- 8.3.17.** Lithuanian language
- 8.3.18.** Macedonian language
- 8.3.19.** Montenegrin language
- 8.3.20.** Polish language
- 8.3.21.** Portuguese language
- 8.3.22.** Russian language
- 8.3.23.** Serbian language
- 8.3.24.** Spanish language
- 8.3.25.** Swedish language
- 8.3.26.** Ukrainian language

SPECIFICATION 1

CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

1. Consensus Policies.

- 1.1. “*Consensus Policies*” are those policies established (1) pursuant to the procedure set forth in ICANN’s Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this Specification. The Consensus Policy development process and procedure set forth in ICANN’s Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:
 - 1.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
 - 1.2.2 functional and performance specifications for the provision of Registry Services;
 - 1.2.3 Security and Stability of the registry database for the TLD;
 - 1.2.4 registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
 - 1.2.5 resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
 - 1.2.6 restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 of this Specification shall include, without limitation:
 - 1.3.1 principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
 - 1.3.2 prohibitions on warehousing of or speculation in domain names by registries or registrars;

- 1.3.3 reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
 - 1.3.4 maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.
 - 1.4. In addition to the other limitations on Consensus Policies, they shall not:
 - 1.4.1 prescribe or limit the price of Registry Services;
 - 1.4.2 modify the terms or conditions for the renewal or termination of the Registry Agreement;
 - 1.4.3 modify the limitations on Temporary Policies (defined below) or Consensus Policies;
 - 1.4.4 modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
 - 1.4.5 modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.
2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("**Temporary Policies**").
 - 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
 - 2.1.1 ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why

the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.

2.1.2 If the period of time for which the Temporary Policy is adopted exceeds ninety (90) calendar days, the Board shall reaffirm its temporary adoption every ninety (90) calendar days for a total period not to exceed one (1) year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one (1) year period expires or, if during such one (1) year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.

3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict.

SPECIFICATION 2

DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent (“**Escrow Agent**”) for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
 - 1.1. “**Full Deposit**” will consist of data that reflects the state of the registry as of 00:00:00 UTC (Coordinated Universal Time) on the day that such Full Deposit is submitted to Escrow Agent.
 - 1.2. “**Differential Deposit**” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names).
2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
 - 2.1. Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
 - 2.2. The other six (6) days of the week, a Full Deposit or the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.
3. **Escrow Format Specification.**
 - 3.1. **Deposit’s Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see Part A, Section 9, reference 1 of this Specification and draft-arias-noguchi-dnrd-objects-mapping, see Part A, Section 9, reference 2 of this Specification (collectively, the “DNDE Specification”). The DNDE Specification describes some elements as

optional; Registry Operator will include those elements in the Deposits if they are available. If not already an RFC, Registry Operator will use the most recent draft version of the DNDE Specification available at the Effective Date. Registry Operator may at its election use newer versions of the DNDE Specification after the Effective Date. Once the DNDE Specification is published as an RFC, Registry Operator will implement that version of the DNDE Specification, no later than one hundred eighty (180) calendar days after. UTF-8 character encoding will be used.

3.2. **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional “extension schemas” shall be defined in a case by case basis to represent that data. These “extension schemas” will be specified as described in Part A, Section 9, reference 2 of this Specification. Data related to the “extensions schemas” will be included in the deposit file described in Part A, Section 3.1 of this Specification. ICANN and the respective Registry Operator shall work together to agree on such new objects’ data escrow specifications.

4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see Part A, Section 9, reference 3 of this Specification. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see Part A, Section 9, reference 4 of this Specification, that are also royalty-free. The process to follow for the data file in original text format is:

- (1) The XML file of the deposit as described in Part A, Section 9, reference 1 of this Specification must be named as the containing file as specified in Section 5 but with the extension xml.
- (2) The data file(s) are aggregated in a tarball file named the same as (1) but with extension tar.
- (3) A compressed and encrypted OpenPGP Message is created using the tarball file as sole input. The suggested algorithm for compression is ZIP as per RFC 4880. The compressed data will be encrypted using the escrow agent’s public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
- (4) The file may be split as necessary if, once compressed and encrypted, it is larger than the file size limit agreed with the escrow agent. Every part of a

split file, or the whole file if not split, will be called a processed file in this section.

- (5) A digital signature file will be generated for every processed file using the Registry Operator's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 Section 9, reference 3, and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
- (6) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
- (7) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in Part A, Section 8 of this Specification.

5. **File Naming Conventions.** Files will be named according to the following convention: {gTLD}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:

- 5.1. {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
- 5.2. {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
- 5.3. {type} is replaced by:
 - (1) "full", if the data represents a Full Deposit;
 - (2) "diff", if the data represents a Differential Deposit;
 - (3) "thin", if the data represents a Bulk Registration Data Access file, as specified in Section 3 of Specification 4;
- 5.4. {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".
- 5.5. {rev} is replaced by the number of revision (or resend) of the file beginning with "0":

5.6. {ext} is replaced by “sig” if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by “ryde”.

6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party’s public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry Operator and ICANN will exchange public keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN (using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification (the “Interface Specification”)) a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit’s “id” and “resend” attributes in its statement. The attributes are explained in Part A, Section 9, reference 1 of this Specification.

If not already an RFC, Registry Operator will use the most recent draft version of the Interface Specification at the Effective Date. Registry Operator may at its election use newer versions of the Interface Specification after the Effective Date. Once the Interface Specification is published as an RFC, Registry Operator will implement that version of the Interface Specification, no later than one hundred eighty (180) calendar days after such publishing.

8. **Verification Procedure.**
 - (1) The signature file of each processed file is validated.
 - (2) If processed files are pieces of a bigger file, the latter is put together.
 - (3) Each file obtained in the previous step is then decrypted and uncompressed.
 - (4) Each data file contained in the previous step is then validated against the format defined in Part A, Section 9, reference 1 of this Specification.
 - (5) If Part A, Section 9, reference 1 of this Specification includes a verification process, that will be applied at this step.

If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.

9. **References.**

- (1) Domain Name Data Escrow Specification (work in progress),
<http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
- (2) Domain Name Registration Data (DNRD) Objects Mapping,
<http://tools.ietf.org/html/draft-arias-noguchi-dnrd-objects-mapping>
- (3) OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
- (4) OpenPGP parameters,
<http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>
- (5) ICANN interfaces for registries and data escrow agents,
<http://tools.ietf.org/html/draft-lozano-icann-registry-interfaces>

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendments thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated as a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within fifteen (15) calendar days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed to ICANN or to a party designated in writing by ICANN on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis, for any use related to the operation, maintenance or transition of the TLD.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one (1) year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent’s applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent’s compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow

sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.
6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four (24) hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
 - 6.1. the Registry Agreement has expired without renewal, or been terminated; or
 - 6.2. ICANN has not received a notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent within five (5) calendar days after the Deposit's scheduled delivery date; (a) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (b) ICANN has not, within seven (7) calendar days after such notice, received the notification from Escrow Agent; or
 - 6.3. ICANN has received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of failed verification of the latest escrow deposit for a specific date or a notification of a missing deposit, and the notification is for a deposit that should have been made on Sunday (i.e., a Full Deposit); (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven (7) calendar days after such notice, received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of verification of a remediated version of such Full Deposit; or
 - 6.4. ICANN has received five notifications from Escrow Agent within the last thirty (30) calendar days notifying ICANN of either missing or failed escrow deposits that should have been made Monday through Saturday (i.e., a Differential Deposit), and (x) ICANN provided notice to Registry Operator of the receipt of such notifications; and (y) ICANN has not, within seven (7) calendar days after delivery of such notice to Registry Operator, received notification from Escrow Agent of verification of a remediated version of such Differential Deposit; or

- 6.5. Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
- 6.6. Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Agreement; or
- 6.7. a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN; or
- 6.8. pursuant to Contractual and Operational Compliance Audits as specified under Section 2.11 of the Agreement.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon expiration or termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**

- 7.1. Within twenty-four (24) hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a notification generated for each Deposit. Reports will be delivered electronically using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification.
- 7.2. If Escrow Agent discovers that any Deposit fails the verification procedures or if Escrow Agent does not receive any scheduled Deposit, Escrow Agent must notify Registry Operator either by email, fax or phone and ICANN (using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification) of such nonconformity or non-receipt within twenty-four (24) hours after receiving the non-conformant Deposit or the deadline for such Deposit, as applicable. Upon notification of such verification or delivery failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to be delivered and pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.

8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.

9. **Indemnity.** Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members,

and stockholders (“Indemnitees”) absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys’ fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

SPECIFICATION 3

FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD, using the API described in draft-lozano-icann-registry-interfaces, see Specification 2, Part A, Section 9, reference 5, with the following content.

ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three (3) months after the end of the month to which the reports relate. Unless set forth in this Specification 3, any reference to a specific time refers to Coordinated Universal Time (UTC). Monthly reports shall consist of data that reflects the state of the registry at the end of the month (UTC).

1. **Per-Registrar Transactions Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field name	Description
01	registrar-name	Registrar’s full corporate name as registered with IANA
02	iana-id	For cases where the registry operator acts as registrar (i.e., without the use of an ICANN accredited registrar) 9999 should be used, otherwise the sponsoring Registrar IANA id should be used as specified in http://www.iana.org/assignments/registrar-ids
03	total-domains	total domain names under sponsorship in any EPP status but pendingCreate that have not been purged
04	total-nameservers	total name servers (either host objects or name server hosts as domain name attributes) associated with domain names registered for the TLD in any EPP status but pendingCreate that have not been purged
05	net-adds-1-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of one (1) year (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.

06	net-adds-2-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of two (2) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
07	net-adds-3-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of three (3) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
08	net-adds-4-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of four (4) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
09	net-adds-5-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of five (5) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
10	net-adds-6-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of six (6) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
11	net-adds-7-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of seven (7) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
12	net-adds-8-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of eight (8) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
13	net-adds-9-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of nine (9) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
14	net-adds-10-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of ten (10) years (and not deleted within the add grace

		period). A transaction must be reported in the month the add grace period ends.
15	net-renews-1-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of one (1) year (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
16	net-renews-2-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of two (2) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
17	net-renews-3-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of three (3) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
18	net-renews-4-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of four (4) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
19	net-renews-5-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of five (5) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
20	net-renews-6-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of six (6) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported

		in the month the renew or auto-renew grace period ends.
21	net-renews-7-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of seven (7) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
22	net-renews-8-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of eight (8) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
23	net-renews-9-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of nine (9) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
24	net-renews-10-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of ten (10) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
25	transfer-gaining-successful	number of domain transfers initiated by this registrar that were successfully completed (either explicitly or automatically approved) and not deleted within the transfer grace period. A transaction must be reported in the month the transfer grace period ends.
26	transfer-gaining-nacked	number of domain transfers initiated by this registrar that were rejected (e.g., EPP transfer op="reject") by the other registrar
27	transfer-losing-successful	number of domain transfers initiated by another registrar that were successfully completed (either explicitly or automatically approved)

28	transfer-losing-nacked	number of domain transfers initiated by another registrar that this registrar rejected (e.g., EPP transfer op="reject")
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed (reported in the month where the determination happened)
30	transfer-disputed-lost	number of transfer disputes this registrar lost (reported in the month where the determination happened)
31	transfer-disputed-nodecision	number of transfer disputes involving this registrar with a split or no decision (reported in the month where the determination happened)
32	deleted-domains-grace	domains deleted within the add grace period (does not include names deleted while in EPP pendingCreate status). A deletion must be reported in the month the name is purged.
33	deleted-domains-nograce	domains deleted outside the add grace period (does not include names deleted while in EPP pendingCreate status). A deletion must be reported in the month the name is purged.
34	restored-domains	domain names restored from redemption period
35	restored-noreport	total number of restored names for which the registrar failed to submit a restore report
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (both successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a "header line" as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read "Totals" while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

2. **Registry Functions Activity Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named "gTLD-activity-yyyymm.csv", where "gTLD" is the gTLD name; in case of an IDN-

TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars at the end of the reporting period
02	ramp-up-registrars	number of registrars that have received a password for access to OT&E at the end of the reporting period
03	pre-ramp-up-registrars	number of registrars that have requested access, but have not yet entered the ramp-up period at the end of the reporting period
04	zfa-passwords	number of active zone file access passwords at the end of the reporting period
05	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
06	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
07	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
08	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
09	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
10	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
11	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
12	srs-dom-check	number of SRS (EPP and any other interface) domain name “check” requests responded during the reporting period
13	srs-dom-create	number of SRS (EPP and any other interface) domain name “create” requests responded during the reporting period
14	srs-dom-delete	number of SRS (EPP and any other interface) domain name “delete” requests responded during the reporting period

Field #	Field Name	Description
15	srs-dom-info	number of SRS (EPP and any other interface) domain name "info" requests responded during the reporting period
16	srs-dom-renew	number of SRS (EPP and any other interface) domain name "renew" requests responded during the reporting period
17	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP "restore" requests delivering a restore report responded during the reporting period
18	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP "restore" requests responded during the reporting period
19	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name "transfer" requests to approve transfers responded during the reporting period
20	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name "transfer" requests to cancel transfers responded during the reporting period
21	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name "transfer" requests to query about a transfer responded during the reporting period
22	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name "transfer" requests to reject transfers responded during the reporting period
23	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name "transfer" requests to request transfers responded during the reporting period
24	srs-dom-update	number of SRS (EPP and any other interface) domain name "update" requests (not including RGP restore requests) responded during the reporting period
25	srs-host-check	number of SRS (EPP and any other interface) host "check" requests responded during the reporting period
26	srs-host-create	number of SRS (EPP and any other interface) host "create" requests responded during the reporting period

Field #	Field Name	Description
27	srs-host-delete	number of SRS (EPP and any other interface) host "delete" requests responded during the reporting period
28	srs-host-info	number of SRS (EPP and any other interface) host "info" requests responded during the reporting period
29	srs-host-update	number of SRS (EPP and any other interface) host "update" requests responded during the reporting period
30	srs-cont-check	number of SRS (EPP and any other interface) contact "check" requests responded during the reporting period
31	srs-cont-create	number of SRS (EPP and any other interface) contact "create" requests responded during the reporting period
32	srs-cont-delete	number of SRS (EPP and any other interface) contact "delete" requests responded during the reporting period
33	srs-cont-info	number of SRS (EPP and any other interface) contact "info" requests responded during the reporting period
34	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact "transfer" requests to approve transfers responded during the reporting period
35	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact "transfer" requests to cancel transfers responded during the reporting period
36	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact "transfer" requests to query about a transfer responded during the reporting period
37	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact "transfer" requests to reject transfers responded during the reporting period
38	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact "transfer" requests to request transfers responded during the reporting period
39	srs-cont-update	number of SRS (EPP and any other interface) contact "update" requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

For gTLDs that are part of a single-instance Shared Registry System, the Registry Functions Activity Report may include the total contact or host transactions for all the gTLDs in the system.

SPECIFICATION 4

REGISTRATION DATA PUBLICATION SERVICES

1. **Registration Data Directory Services.** Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

Registry Operator shall implement a new standard supporting access to domain name registration data (SAC 051) no later than one hundred thirty-five (135) days after it is requested by ICANN if: 1) the IETF produces a standard (i.e., it is published, at least, as a Proposed Standard RFC as specified in RFC 2026); and 2) its implementation is commercially reasonable in the context of the overall operation of the registry.

- 1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.
- 1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.
- 1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.
- 1.4. The fields specified below set forth the minimum output requirements. Registry Operator may output data fields in addition to those specified below, subject to approval by ICANN, which approval shall not be unreasonably withheld.

- 1.5. **Domain Name Data:**

- 1.5.1 **Query format:** whois EXAMPLE.TLD

- 1.5.2 **Response format:**

Domain Name: EXAMPLE.TLD

Domain ID: D1234567-TLD

WHOIS Server: whois.example.tld
Referral URL: http://www.example.tld
Updated Date: 2009-05-29T20:13:00Z
Creation Date: 2000-10-08T00:45:00Z
Registry Expiry Date: 2010-10-08T00:44:59Z
Sponsoring Registrar: EXAMPLE REGISTRAR LLC
Sponsoring Registrar IANA ID: 5555555
Domain Status: clientDeleteProhibited
Domain Status: clientRenewProhibited
Domain Status: clientTransferProhibited
Domain Status: serverUpdateProhibited
Registrant ID: 5372808-ERL
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX
Registrant Phone: +1.5555551212
Registrant Phone Ext: 1234
Registrant Fax: +1.5555551213
Registrant Fax Ext: 4321
Registrant Email: EMAIL@EXAMPLE.TLD
Admin ID: 5372809-ERL
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
Admin Street: 123 EXAMPLE STREET
Admin City: ANYTOWN
Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: EX
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext:
Admin Email: EMAIL@EXAMPLE.TLD
Tech ID: 5372811-ERL
Tech Name: EXAMPLE REGISTRAR TECHNICAL
Tech Organization: EXAMPLE REGISTRAR LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: EX
Tech Phone: +1.1235551234

Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLD
Name Server: NS01.EXAMPLEREGISTRAR.TLD
Name Server: NS02.EXAMPLEREGISTRAR.TLD
DNSSEC: signedDelegation
DNSSEC: unsigned
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.6. Registrar Data:

1.6.1 **Query format:** whois "registrar Example Registrar, Inc."

1.6.2 **Response format:**

Registrar Name: Example Registrar, Inc.
Street: 1234 Admiralty Way
City: Marina del Rey
State/Province: CA
Postal Code: 90292
Country: US
Phone Number: +1.3105551212
Fax Number: +1.3105551213
Email: registrar@example.tld
WHOIS Server: whois.example-registrar.tld
Referral URL: http://www.example-registrar.tld
Admin Contact: Joe Registrar
Phone Number: +1.3105551213
Fax Number: +1.3105551213
Email: joeregistrar@example-registrar.tld
Admin Contact: Jane Registrar
Phone Number: +1.3105551214
Fax Number: +1.3105551213
Email: janeregistrar@example-registrar.tld
Technical Contact: John Geek
Phone Number: +1.3105551215
Fax Number: +1.3105551216
Email: johngeek@example-registrar.tld
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. Nameserver Data:

1.7.1 **Query format:** whois "NS1.EXAMPLE.TLD", whois "nameserver (nameserver name)", or whois "nameserver (IP Address)"

1.7.2 **Response format:**

Server Name: NS1.EXAMPLE.TLD
IP Address: 192.0.2.123
IP Address: 2001:0DB8::1
Registrar: Example Registrar, Inc.
WHOIS Server: whois.example-registrar.tld
Referral URL: http://www.example-registrar.tld
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

- 1.8. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers (the extension will be provided as a separate field as shown above), email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.
- 1.9. In order to be compatible with ICANN's common interface for WHOIS (InterNIC), WHOIS output shall be in the format outline above.
- 1.10. **Searchability.** Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.
 - 1.10.1 Registry Operator will offer searchability on the web-based Directory Service.
 - 1.10.2 Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).
 - 1.10.3 Registry Operator will offer exact-match capabilities, at least, on the following fields: registrar id, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).
 - 1.10.4 Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.
 - 1.10.5 Search results will include domain names matching the search criteria.
 - 1.10.6 Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

- 1.11. Registry Operator shall provide a link on the primary website for the TLD (i.e., the website provided to ICANN for publishing on the ICANN website) to a web page designated by ICANN containing WHOIS policy and educational materials.

2. **Zone File Access**

2.1. **Third-Party Access**

- 2.1.1 **Zone File Access Agreement.** Registry Operator will enter into an agreement with any Internet user, which will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider, which may be ICANN or an ICANN designee (the "CZDA Provider"). Registry Operator (optionally through the CZDA Provider) will provide access to zone file data per Section 2.1.3 of this Specification and do so using the file format described in Section 2.1.4 of this Specification. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 below or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5 below.
- 2.1.2 **Credentialing Requirements.** Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address and IP address.
- 2.1.3 **Grant of Access.** Each Registry Operator (optionally through the CZDA Provider) will provide the Zone File FTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry's zone data archives. Registry Operator will grant the user a non-exclusive, nontransferable, limited right to access Registry Operator's (optionally CZDA Provider's) Zone File hosting server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using FTP, or other data transport and access protocols that may be

prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator (or the CZDA Provider) also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4 File Format Standard. Registry Operator (optionally through the CZDA Provider) will provide zone files using a subformat of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in lower case.
3. TTL must be present as a decimal integer.
4. Use of /X and /DDD inside domain names is allowed.
5. All domain names must be in lower case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No \$ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No \$INCLUDE directives.
12. No \$TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.
15. No blank lines.
16. The SOA record should be present at the top and (duplicated at) the end of the zone file.

17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.
 - 2.1.5 **Use of Data by User.** Registry Operator will permit user to use the zone file for lawful purposes; provided that (a) user takes all reasonable steps to protect against unauthorized access to and use and disclosure of the data and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to, (i) allow, enable, or otherwise support the transmission by email, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than user's own existing customers, or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar.
 - 2.1.6 **Term of Use.** Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.
 - 2.1.7 **No Fee for Access.** Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.
- 2.2. **Co-operation**
 - 2.2.1 **Assistance.** Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.
- 2.3. **ICANN Access.** Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time. Access will be provided at least daily. Zone files will include SRS data committed as close as possible to 00:00:00 UTC.
- 2.4. **Emergency Operator Access.** Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

3. **Bulk Registration Data Access to ICANN**

- 3.1. **Periodic Access to Thin Registration Data.** In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.
- 3.1.1 **Contents.** Registry Operator will provide, at least, 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, at least, it will provide: registrar name, registrar repository object id (roid), hostname of registrar Whois server, and URL of registrar.
- 3.1.2 **Format.** The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.
- 3.1.3 **Access.** Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.
- 3.2. **Exceptional Access to Thick Registration Data.** In case of a registrar failure, deaccreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data as soon as commercially practicable, but in no event later than five (5) calendar days following ICANN's request. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1 of this Specification.

SPECIFICATION 5

SCHEDULE OF RESERVED NAMES

Except to the extent that ICANN otherwise expressly authorizes in writing, and subject to the terms and conditions of this Specification, Registry Operator shall reserve the following labels from initial (i.e., other than renewal) registration within the TLD. If using self-allocation, the Registry Operator must show the registration in the RDDS. In the case of IDN names (as indicated below), IDN variants will be identified according to the registry operator IDN registration policy, where applicable.

1. **Example.** The ASCII label “EXAMPLE” shall be withheld from registration or allocated to Registry Operator at the second level and at all other levels within the TLD at which Registry Operator offers registrations (such second level and all other levels are collectively referred to herein as, “All Levels”). Such label may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator’s designation as operator of the registry for the TLD, such withheld or allocated label shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such name without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.
2. **Two-character labels.** All two-character ASCII labels shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Such labels may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator, provided that such two-character label strings may be released to the extent that Registry Operator reaches agreement with the related government and country-code manager of the string as specified in the ISO 3166-1 alpha-2 standard. The Registry Operator may also propose the release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes, subject to approval by ICANN. Upon conclusion of Registry Operator’s designation as operator of the registry for the TLD, all such labels that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.
3. **Reservations for Registry Operations.**
 - 3.1. The following ASCII labels must be withheld from registration or allocated to Registry Operator at All Levels for use in connection with the operation of the registry for the TLD: WWW, RDDS and WHOIS. The following ASCII label must be allocated to Registry Operator at All Levels for use in connection with the operation of the registry for the TLD: NIC. Registry Operator may activate WWW, RDDS and WHOIS in the DNS, but must activate NIC in the

DNS, as necessary for the operation of the TLD. None of WWW, RDDS, WHOIS or NIC may be released or registered to any person (other than Registry Operator) or third party. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD all such withheld or allocated names shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

- 3.2. Registry Operator may activate in the DNS at All Levels up to one hundred (100) names (plus their IDN variants, where applicable) necessary for the operation or the promotion of the TLD. Registry Operator must act as the Registered Name Holder of such names as that term is defined in the then-current ICANN Registrar Accreditation Agreement (RAA). These activations will be considered Transactions for purposes of Section 6.1 of the Agreement. Registry Operator must either (i) register such names through an ICANN-accredited registrar; or (ii) self-allocate such names and with respect to those names submit to and be responsible to ICANN for compliance with ICANN Consensus Policies and the obligations set forth in Subsections 3.7.7.1 through 3.7.7.12 of the then-current RAA (or any other replacement clause setting out the terms of the registration agreement between a registrar and a registered name holder). At Registry Operator's discretion and in compliance with all other terms of this Agreement, such names may be released for registration to another person or entity.
- 3.3. Registry Operator may withhold from registration or allocate to Registry Operator names (including their IDN variants, where applicable) at All Levels in accordance with Section 2.6 of the Agreement. Such names may not be activated in the DNS, but may be released for registration to another person or entity at Registry Operator's discretion. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Upon ICANN's request, Registry Operator shall provide a listing of all names withheld or allocated to Registry Operator pursuant to Section 2.6 of the Agreement. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

4. **Country and Territory Names.** The country and territory names (including their IDN variants, where applicable) contained in the following internationally recognized lists shall be withheld from registration or allocated to Registry Operator at All Levels:

- 4.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European

Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union

<http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm>;

- 4.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
- 4.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names (including their IDN variants according to the registry operator IDN registration policy, where applicable) may be released to the extent that Registry Operator reaches agreement with the applicable government(s). Registry Operator must not activate such names in the DNS; provided, that Registry Operator may propose the release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

5. **International Olympic Committee; International Red Cross and Red Crescent Movement.** As instructed from time to time by ICANN, the names (including their IDN variants, where applicable) relating to the International Olympic Committee, International Red Cross and Red Crescent Movement listed at <http://www.icann.org/en/resources/registries/reserved> shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Additional International Olympic Committee, International Red Cross and Red Crescent Movement names (including their IDN variants) may be added to the list upon ten (10) calendar days notice from ICANN to Registry Operator. Such names may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.
6. **Intergovernmental Organizations.** As instructed from time to time by ICANN, Registry Operator will implement the protections mechanism determined by the

ICANN Board of Directors relating to the protection of identifiers for Intergovernmental Organizations. A list of reserved names for this Section 6 is available at <http://www.icann.org/en/resources/registries/reserved>. Additional names (including their IDN variants) may be added to the list upon ten (10) calendar days notice from ICANN to Registry Operator. Any such protected identifiers for Intergovernmental Organizations may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such protected identifiers shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

SPECIFICATION 6

REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

1. Standards Compliance

- 1.1. **DNS.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF), including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1123, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 4343, and 5966. DNS labels may only include hyphens in the third and fourth position if they represent valid IDNs (as specified above) in their ASCII encoding (e.g., “xn--ndk061n”).
- 1.2. **EPP.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732 (if using host objects), 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.
- 1.3. **DNSSEC.** Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions (“DNSSEC”). During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants’ public-key material. Registry Operator shall publish its DPS following the format described in RFC 6841.
- 1.4. **IDN.** If the Registry Operator offers Internationalized Domain Names (“IDNs”), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <<http://www.icann.org/en/topics/idn/implementation-guidelines.htm>>.

as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.

- 1.5. **IPv6.** Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry's name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow "DNS IPv6 Transport Operational Guidelines" as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g., Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six (6) months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

2. **Registry Services**

- 2.1. **Registry Services.** "Registry Services" are, for purposes of the Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.
- 2.2. **Wildcard Prohibition.** For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a "Name Error" response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry

Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

3. **Registry Continuity**

- 3.1. **High Availability.** Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator. Registry Operator's emergency operations department shall be available at all times to respond to extraordinary occurrences.
- 3.2. **Extraordinary Event.** Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within twenty-four (24) hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of forty-eight (48) hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.
- 3.3. **Business Continuity.** Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

4. **Abuse Mitigation**

- 4.1. **Abuse Contact.** Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.
- 4.2. **Malicious Use of Orphan Glue Records.** Registry Operator shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided

with evidence in written form that such records are present in connection with malicious conduct.

5. **Supported Initial and Renewal Registration Periods**

- 5.1. **Initial Registration Periods.** Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.
- 5.2. **Renewal Periods.** Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

6. **Name Collision Occurrence Management**

- 6.1. **No-Activation Period.** Registry Operator shall not activate any names in the DNS zone for the Registry TLD (except for "NIC") until at least 120 calendar days after the effective date of this agreement. Registry Operator may allocate names (subject to subsection 6.2 below) during this period only if Registry Operator causes registrants to be clearly informed of the inability to activate names until the No-Activation Period ends.

6.2. **Name Collision Occurrence Assessment**

- 6.2.1 Registry Operator shall not activate any names in the DNS zone for the Registry TLD except in compliance with a Name Collision Occurrence Assessment provided by ICANN regarding the Registry TLD. Registry Operator will either (A) implement the mitigation measures described in its Name Collision Occurrence Assessment before activating any second-level domain name, or (B) block those second-level domain names for which the mitigation measures as described in the Name Collision Occurrence Assessment have not been implemented and proceed with activating names that are not listed in the Assessment.
- 6.2.2 Notwithstanding subsection 6.2.1, Registry Operator may proceed with activation of names in the DNS zone without implementation of the measures set forth in Section 6.2.1 only if (A) ICANN determines that the Registry TLD is eligible for this alternative path to activation of names; and (B) Registry Operator blocks all second-level domain names identified by ICANN and set forth at <http://newgtlds.icann.org/en/announcements-and-media/announcement-2-17nov13-en> as such list may be modified by ICANN from time to time. Registry Operator may activate names pursuant to this subsection and later activate names pursuant to subsection 6.2.1.

- 6.2.3 The sets of names subject to mitigation or blocking pursuant to Sections 6.2.1 and 6.2.2 will be based on ICANN analysis of DNS information including "Day in the Life of the Internet" data maintained by the DNS Operations, Analysis, and Research Center (DNS-OARC) <<https://www.dns-oarc.net/oarc/data/ditl>>.
- 6.2.4 Registry Operator may participate in the development by the ICANN community of a process for determining whether and how these blocked names may be released.
- 6.2.5 If ICANN determines that the TLD is ineligible for the alternative path to activation of names, ICANN may elect not to delegate the TLD pending completion of the final Name Collision Occurrence Assessment for the TLD, and Registry Operator's completion of all required mitigation measures. Registry Operator understands that the mitigation measures required by ICANN as a condition to activation of names in the DNS zone for the TLD may include, without limitation, mitigation measures such as those described in Section 3.2 of the New gTLD Name Collision Occurrence Management Plan approved by the ICANN Board New gTLD Program Committee (NGPC) on 7 October 2013 as found at <<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-07oct13-en.pdf>>.

6.3. **Name Collision Report Handling**

- 6.3.1 During the first two years after delegation of the TLD, Registry Operator's emergency operations department shall be available to receive reports, relayed by ICANN, alleging demonstrably severe harm from collisions with overlapping use of the names outside of the authoritative DNS.
- 6.3.2 Registry Operator shall develop an internal process for handling in an expedited manner reports received pursuant to subsection 6.3.1 under which Registry Operator may, to the extent necessary and appropriate, remove a recently activated name from the TLD zone for a period of up to two years in order to allow the affected party to make changes to its systems.

SPECIFICATION 7

MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to the rights protection mechanisms (“RPMs”) specified in this Specification. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all RPMs required by this Specification 7 and any additional RPMs developed and implemented by Registry Operator in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements set forth therein each of the mandatory RPMs set forth in the Trademark Clearinghouse as of the date hereof, as posted at <http://www.icann.org/en/resources/registries/tmch-requirements> (the “Trademark Clearinghouse Requirements”), which may be revised in immaterial respects by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse. If there is a conflict between the terms and conditions of this Agreement and the Trademark Clearinghouse Requirements, the terms and conditions of this Agreement shall control.
2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:
 - a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at <http://www.icann.org/en/resources/registries/pddrp> and <http://www.icann.org/en/resources/registries/rrdrp>, respectively). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and
 - b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN (posted at <http://www.icann.org/en/resources/registries/urs>), including the implementation of determinations issued by URS examiners.

SPECIFICATION 8

CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6th) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in item 50(b) of Attachment to Module 2 – Evaluation Questions and Criteria – of the gTLD Applicant Guidebook, as published and supplemented by ICANN prior to the date hereof (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. If Registry Operator elects to obtain an irrevocable standby letter of credit but the term required above is unobtainable, Registry Operator may obtain a letter of credit with a one-year term and an “evergreen provision,” providing for annual extensions, without amendment, for an indefinite number of additional periods until the issuing bank informs ICANN of its final expiration or until ICANN releases the letter of credit as evidenced in writing, if the letter of credit otherwise meets the requirements set forth in item 50(b) of Attachment to Module 2 – Evaluation Questions and Criteria – of the gTLD Applicant Guidebook, as published and supplemented by ICANN prior to the date hereof; provided, however, that if the issuing bank informs ICANN of the expiration of such letter of credit prior to the sixth (6th) anniversary of the Effective Date, such letter of credit must provide that ICANN is entitled to draw the funds secured by the letter of credit prior to such expiration. The letter of credit must require the issuing bank to give ICANN at least thirty (30) calendar days’ notice of any such expiration or non-renewal. If the letter of credit expires or is terminated at any time prior to the sixth (6th) anniversary of the Effective Date, Registry Operator will be required to obtain a replacement Continued Operations Instrument. ICANN may draw the funds under the original letter of credit, if the replacement Continued Operations Instrument is not in place prior to the expiration of the original letter of credit. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld).

2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an "Alternative Instrument"). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.
3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an Alternative Instrument that (i) provides for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operator replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such Alternative Instrument(s), and such instrument shall thereafter be considered the Continued Operations Instrument for purposes of this Agreement.

SPECIFICATION 9

REGISTRY OPERATOR CODE OF CONDUCT

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a “Registry Related Party”), to:
 - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
 - b. register domain names in its own right, except for names registered through an ICANN accredited registrar; provided, however, that Registry Operator may (a) reserve names from registration pursuant to Section 2.6 of the Agreement and (b) may withhold from registration or allocate to Registry Operator up to one hundred (100) names pursuant to Section 3.2 of Specification 5;
 - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, “front-running”);
or
 - d. allow any Affiliated registrar to disclose Personal Data about registrants to Registry Operator or any Registry Related Party, except as reasonably necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions.
2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.
3. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will conduct internal reviews at least once per calendar year to ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to

Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification; provided, however, ICANN shall not disclose Confidential Information contained in such results except in accordance with Section 7.15 of the Agreement.

4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.
5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for the exclusive use of Registry Operator or its Affiliates, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

SPECIFICATION 10

REGISTRY PERFORMANCE SPECIFICATIONS

1. Definitions

- 1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.
- 1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.
- 1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.
- 1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- 1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.
- 1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.
- 1.7. **RTT.** Round-Trip Time or RTT refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- 1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

2. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
DNS	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
RDDS	RDDS availability	≤ 864 min of downtime (≈ 98%)

	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
EPP	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

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.

3. DNS

- 3.1. **DNS service availability.** Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from “**DNS tests**” to each of their public-DNS registered “**IP addresses**” to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.
- 3.2. **DNS name server availability.** Refers to the ability of a public-DNS registered “**IP address**” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered “**IP address**” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from “**DNS tests**” to a name server “**IP address**” during a given time, the name server “**IP address**” will be considered unavailable.
- 3.3. **UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.4. **TCP DNS resolution 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 DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.5. **DNS resolution RTT.** Refers to either “**UDP DNS resolution RTT**” or “**TCP DNS resolution RTT**”.

- 3.6. **DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer “**DNS queries**” with data consistent with the change made. This only applies for changes to DNS information.
- 3.7. **DNS test.** Means one non-recursive DNS query sent to a particular “**IP address**” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a “**DNS resolution RTT**” 5 times higher than the corresponding SLR, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “**DNS resolution RTT**” or, undefined/unanswered.
- 3.8. **Measuring DNS parameters.** Every minute, every DNS probe will make an UDP or TCP “**DNS test**” to each of the public-DNS registered “**IP addresses**” of the name servers of the domain name being monitored. If a “**DNS test**” result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.
- 3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 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.
- 3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “**DNS test**” approximating the distribution of these queries.
- 3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on 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.

4. **RDDS**

- 4.1. **RDDS availability.** Refers to the ability of all the RDDS services 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 RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.

- 4.2. **WHOIS 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 WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 4.3. **Web-based-WHOIS 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 Registry Operator implements 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.
- 4.4. **RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based- WHOIS query RTT**”.
- 4.5. **RDDS 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 RDDS services reflect the changes made.
- 4.6. **RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS 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 RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.
- 4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the TLD being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.
- 4.8. **Collating the results from RDDS 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.
- 4.9. **Placement of RDDS probes.** Probes for measuring RDDS 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.

5. **EPP**

- 5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.
- 5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.
- 5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.
- 5.5. **EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.
- 5.6. **EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.
- 5.7. **Measuring EPP parameters.** Every 5 minutes, EPP probes will select one “**IP address**” of the EPP servers of the TLD being monitored and make an

“**EPP test**”; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an “**EPP test**” result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. **Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is 5 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.

5.9. **Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. **Emergency Thresholds**

The following matrix presents the emergency thresholds that, if reached by any of the services mentioned above for a TLD, would cause the emergency transition of the Registry for the TLD as specified in Section 2.13 of this Agreement.

Critical Function	Emergency Threshold
DNS Service (all servers)	4-hour total downtime / week
DNSSEC proper resolution	4-hour total downtime / week
EPP	24-hour total downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour total downtime / week
Data Escrow	Breach of the Registry Agreement as described in Specification 2, Part B, Section 6.

7. **Emergency Escalation**

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in

escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. **Emergency Escalation initiated by ICANN**

Upon reaching 10% of the Emergency thresholds as described in Section 6 of this Specification, ICANN's emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator's emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative troubleshooting of the monitoring failure between ICANN staff and the Registry Operator, and the commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

7.2. **Emergency Escalation initiated by Registrars**

Registry Operator will maintain an emergency operations department prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the registry for the TLD because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an emergency escalation to the emergency operations department of ICANN. ICANN then may initiate an emergency escalation with the Registry Operator as explained above.

7.3. **Notifications of Outages and Maintenance**

In the event that a Registry Operator plans maintenance, it will provide notice to the ICANN emergency operations department, at least, twenty-four (24) hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per its contractual obligations with ICANN, on services under a service level agreement and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend emergency escalation services for the monitored services involved.

8. **Covenants of Performance Measurement**

8.1. **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 DNS and RDDS) or registrar (for EPP).

8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

SPECIFICATION 11

PUBLIC INTEREST COMMITMENTS

1. Registry Operator will use only ICANN accredited registrars that are party to the Registrar Accreditation Agreement approved by the ICANN Board of Directors on 27 June 2013 in registering domain names. A list of such registrars shall be maintained by ICANN on ICANN's website.
2. (Intentionally omitted.)
3. Registry Operator agrees to perform the following specific public interest commitments, which commitments shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN (posted at <http://www.icann.org/en/resources/registries/picdrp>), which may be revised in immaterial respects by ICANN from time to time (the "PICDRP"). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination.
 - a. Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.
 - b. Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.
 - c. Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.
 - d. Registry Operator of a "Generic String" TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively

to a single person or entity and/or that person's or entity's "Affiliates" (as defined in Section 2.9(c) of the Registry Agreement). "Generic String" means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.

REFERENCE MATERIALS - BOARD PAPER NO. 2017.03.16.1d

TITLE: Renewal of .MOBI Registry Agreement

These Reference Materials provide additional details regarding the proposed renewal of the .MOBI Registry Agreement between ICANN Org and Afilias Technologies Limited:

- Protection of Legal Rights of Third Parties (Article 2.8 and Specification 7)
- Continued Operation Instrument (Article 2.12 and Specification 8)
- Fees (Article 6)
- Approved Services (Exhibit A)
- Schedule of Reserved Names (Specification 5)
- Registry Interoperability and Continuity (Article 2.7 and Specification 6)
- Minimum Requirements for Rights Protection Mechanisms (Specification 7)
- Registry Code of Conduct (Article 2.14 and Specification 9)
- Service Level Agreement Matrix (Specification 10)
- Emergency Transition (Specification 10)
- Public Interest Commitments (Specification 11)
- Deletion of Sponsorship Charter – Appendix S, Community Registration Policies (Specification 12)
- Miscellaneous Provisions

Protection of Legal Rights of Third Parties (Article 2.8 and Specification 7):

Processes and procedures for the launch of the TLD and initial registrations will not apply as the .MOBI TLD has been in operation since 2005.

Continued Operation Instrument (Article 2.12 and Specification 8): This requirement will not apply to the .MOBI TLD as it has been in continuous operation since 2005. As a

result, provisions in Section 4.3 (b) and (c) of the new gTLD Registry Agreement (Termination by ICANN Org) are not applicable to the .MOBI TLD.

Fees (Article 6): The proposed .MOBI Renewal Registry Agreement incorporates the same fee schedule applicable to new gTLD Registry Operators as well as other legacy gTLDs who have renewed using the form new gTLD Registry Agreements, namely .CAT, .JOBS, .PRO, TEL, and .TRAVEL. .MOBI's previous fee schedule consists of a quarterly Registry-Level Fee that is equal to the greater of 12,500 USD, or the average price of registration transactions multiplied by the applicable per transaction fee. Under the new fee schedule, .MOBI quarterly fixed fee is 6,250 USD and they will be subject to registry-level transaction fee of 0.25 USD (applicability as explained in Section 6.1 of the base new gTLD Registry Agreement). .MOBI will not be subject to the payment of Trademark Clearinghouse related fees.

Approved Services (Exhibit A): In addition to the common descriptions of the DNS, Anti-Abuse Services and Whois Contact Lookup, the Approved Services for .MOBI includes a 270-day implementation grace period to allow sufficient time for Afilias Technologies Limited to complete the transition of its technical operations to meet the requirements of the proposed renewal agreement. The Approved Services for .MOBI includes: Bulk Transfer After Partial Portfolio Acquisition, which was incorporated to the .MOBI Registry Agreement on 6 May 2014 as Amendment No.3 and also (i) Registry Lock, (ii) Searchable Whois and (iii) second-level Internationalized Domain Names.

Schedule of Reserved Names (Specification 5): The proposed Renewal Registry Agreement reflects the current provisions in Amendment 2 of the .MOBI Registry Agreement (dated 14 November 2008) regarding the changes in Appendix 6 (List of Reserved TLD Strings) permitting the registry operator to allocate previously reserved single-character labels at the second level within .MOBI through ICANN Org-accredited registrars based on its implementation process. Additionally, the registry operator may also release previously reserved two-character names to the extent that the registry operator reaches agreement with the government and country-code manager, or the ISO 3166 maintenance agency. The registry operator may also propose release of these names

based on its implementation of measures to avoid confusion with the corresponding country codes.

Registry Interoperability and Continuity (Article 2.7 and Specification 6): Section 6 of Specification 6 of the new gTLD registry agreement (Name Collision Occurrence Management) will not apply to the .MOBI TLD as it has been in operation since 2005.

Minimum Requirements for Rights Protection Mechanisms (Specification 7): The proposed .MOBI renewal agreement will not be subject to RPMs set forth in the Trademark Clearinghouse nor to the Registry Restrictions Dispute Resolution Procedure which was designed specifically for community TLDs under the New gTLD program. However, the proposed .MOBI renewal agreement will be required to implement Uniform Rapid Suspension and the Post-Delegation Dispute Resolution Procedure.

Registry Code of Conduct (Article 2.14 and Specification 9): .MOBI's cross-ownership restrictions were removed via Amendment No. 4 of the .MOBI Registry Agreement (dated 26 June 2014). As such, the registry operator is required to abide by the Code of Conduct. Additionally, the provision relating to the registry operator's use of up to 100 names for the operation and promotion of the TLD has not been included in the proposed Renewal Registry Agreement as the .MOBI TLD has been in operation since 2005.

Service Level Agreement Matrix (Specification 10): The proposed Renewal Registry Agreement provides a Service Level Agreement Matrix by which the Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. If the Registry Operator declares an outage on services under a service level agreement and performance requirements, it will notify the ICANN Org emergency operations department so ICANN Org can suspend emergency escalation services for the monitored services involved.

Emergency Transition (Specification 10): The proposed Renewal Registry Agreement states that the Registry Operator agrees that, in the event that any of the emergency thresholds for registry functions is reached, ICANN Org may designate an emergency

interim registry operator of the registry for the TLD which will mitigate the risks to the stability and security of the Domain Name System.

Public Interest Commitments (Specification 11): The .MOBI Renewal Registry Agreement includes the set of standard public interest commitments applicable to all new gTLDs, with the exception of removal of the provision that requires registry operator to comply with any public commitments set forth in registry operator's application.

Deletion of Sponsorship Charter – Appendix S, Community Registration Policies (Specification 12): .MOBI will be the first Sponsored TLD to convert to an unsponsored standard top-level domain. A Sponsored TLD is a specialized TLD that has a [Sponsorship Charter - Appendix S](#) (the “Sponsorship Charter”), which defines the purpose for which the TLD has been created and will be operated. In Afiliás’ prior agreement, .MOBI was a sponsored TLD that operated for the benefit of servicing mobile consumers and producers. Therefore, as part of the renewal the Sponsorship Charter in the current .MOBI Registry Agreement is not carried over to the .MOBI Renewal Registry Agreement.

For similar Sponsored TLD renewals, see: [.JOBS \(20 February 2015\)](#), [.CAT \(08 October 2015\)](#) and [.TRAVEL \(09 October 2015\)](#), the Sponsorship is incorporated into the Renewal Registry Agreement as Specification 12, a special section in the New gTLD Registry Agreement reserved for TLDs who were approved by the New gTLD Program with the “Community” designation. A “Community” TLD is operated for the benefit of a clearly delineated community.

In the case of the [.TEL \(01 December 2016\)](#) Sponsored TLD renewal, Specification 12 incorporates the language of the original [Sponsorship Charter - Appendix S](#) in the previous .TEL Agreement, with modifications to remove the requirement that the Registry control the name servers of delegated domain names, and the restriction that registrants cannot define the contents of the zone for their domain names.

Since the Sponsorship Charter in the current .MOBI Registry Agreement is not carried over in the form of Specification 12 (Community Registration Policies), the .MOBI

proposed Renewal Registry Agreement will no longer be categorized as a Sponsored TLD, nor will it be categorized as a "Community top-level domain TLD".

Misc. Provisions: Various other non-material provisions have been modified, at the request of the registry operator and after negotiation, to align with terms of the previous .MOBI Registry Agreement, to clarify rights previously afforded to .MOBI, or to remove terms in the form new gTLD Registry Agreement that are not applicable to a TLD that has been in operation since 2005.

Signature Block:

Submitted by: Cyrus Namazi

Position: Vice President, Domain Name Services & Industry Engagement

Date Noted: 3 March 2017

Email: cyrus.namazi@icann.org

REFERENCE MATERIALS - BOARD PAPER NO. 2017.03.16.1e

TITLE: GNSO Council Letter on IRTP-C Implementation

These Reference Materials provide additional details on the revisions to the Transfer Policy.

1. The Transfer Policy is an ICANN consensus policy that governs how domain name holders may transfer their names from one ICANN-accredited registrar to another, and includes standardized requirements for registrars handling of such transfer requests.
2. In 2008, the GNSO undertook a review of the Transfer Policy and identified areas that required clarification or improvement. It launched a series of five policy development processes (Parts A – E) to consider changes to the Policy. In 2012, the GNSO Council recommended, and the Board [approved](#) changes to the Policy in Part C. Among other things, Part C governs a series of requirements for a “Change of Registrant,” which the Working Group defined as any material changes to the registered name holder’s name, organization or email address.
3. As part of the process for implementing consensus policy recommendations, the ICANN organization worked with an Implementation Review Team made up of community members who volunteered to assist in developing the implementation details for the policy to ensure that the implementation conforms to the intent of the policy recommendations.
4. At issue in the letter from the GNSO Council is if the removal or addition of a privacy/proxy service should be considered a Change of Registrant, and why the Council believes it should not be. This is an issue that was raised during the

implementation phase. The Working Group's Report was silent on the issue, but ultimately the Implementation Review Team decided that the current language, wherein the removal or addition of privacy/proxy services is a Change of Registrant, reflected the intent of the policy recommendations. ICANN published for comment the final implementation and provided registrars with 15 months' lead time to come into compliance with the new requirements.

5. In August 2016, (1 year after the Transfer Policy was announced and 3 months before the Policy Effective Date), some members of the registrar community raised the same issue about privacy/proxy as it relates to the Transfer Policy. They asked ICANN org to revise the policy and not consider updates to privacy/proxy services a Change of Registrant. ICANN org indicated that this is an issue that was discussed with the Implementation Review Team and it was decided that the language reflected the intent of the policy recommendations. Also, ICANN org reminded those concerned about the process established by the GNSO to handle such issues (established in the [GNSO Policy & Implementation Working Group Final Recommendations Report](#)). Because the Transfer Policy has already been implemented, the process requires the Board to direct ICANN org if the Policy should be changed. Accordingly, ICANN org advised the Council to write a letter to the ICANN Board, detailing its specific concerns with respect to the Transfer Policy.
6. The GNSO Council is now asking the Board to: (1) instruct ICANN org to work with the RrSG and other interested parties to evaluate alternatives for evaluation of the implementation concerns, which could include moving this issue to the

PPSAI IRT, reconstituting the IRTP-C IRT, or employing some other new mechanisms under Policy & Implementation, and (2) instruct ICANN org to defer any privacy/proxy service compliance enforcement from the Transfer Policy relating to the enabling or disabling of privacy/proxy services pending further consultation and determination of this issue.

7. ICANN org supports the GNSO Council's above requests.

Signature Block:

Submitted by: Cyrus Namazi

Position: Vice President, Domain Name Services & Industry Engagement, Global Domains Division

Date Noted: 21 February 2017

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ICANN's Delegation of Authority Guidelines

Adopted 8 November 2016

Purpose

To identify the respective key roles of the Board and the Chief Executive Officer (CEO) and the delegation of authority from the Board to the CEO and key staff. This document also identifies the key interdependencies in those relationships.

Guiding Principles

- *The Board and CEO should be unified in their understanding and goals for ICANN.*
- *Board and CEO should communicate freely and frequently to avoid misunderstandings.*
- *Trust and mutual respect is key to the relationship between the CEO and the Board.*

This list includes what has been discussed by the Board and the CEO regarding delegation of authority, but other issues as they arise and are discussed will be added to the document after being confirmed by the Board.

ICANN Board – Key Roles

A primary source of the Board's powers comes directly from the ICANN Bylaws, as well as internal policies. The Board's key powers and roles include:

- The Board acts collectively by voting at meetings to authorize and direct management to take action on behalf of the ICANN organization.
- Interact with the ICANN community to ensure that ICANN is serving the global public interest within ICANN's mission.
- Respect and support accountability mechanisms, including:
 - Participating in the Empowered Community processes as specified in Bylaws;
 - Considering Requests for Reconsideration; and
 - Considering final Independent Review Process declarations.
- Consider policy recommendations arising out of Supporting Organizations (SOs), including participating in consultation processes if necessary.
- Acknowledge advice from Advisory Committee (ACs) and consider advice as appropriate.
- When necessary, follow consultation processes relating to AC advice.
- When necessary, create ACs and working groups to report recommendations and findings to the Board.
- Appoint membership of the RSSAC and SSAC, pursuant to the recommendations from the respective groups.
- Appoint the Nominating Committee Chair and Chair-Elect.
- Exercise strategic oversight, including oversight of the development of the strategic plan.

- Oversight of enterprise risk work within the organization.
- Delegate the Board's authority (within statutory limitations) to Board committees and management.
- Select the CEO and appoint other officers; and undertake CEO succession planning.
- Elect the Chair and Vice-Chair of the Board.
- Appoint members to membership and chair positions of the various board committees and working groups
- Setting and approving compensation structure for CEO. Approving compensation for officers.
- Setting and overseeing enforcement of conflicts of interest policy.
- Set the fiscal year, adopt annual budget, operation and strategic plans, appoint independent auditors and cause the annual financial report to be published.
- Overseeing the development of, and approval of, key financial direction such as the investment policies and reserve fund management policies.
- Set fees and charges for ICANN services.
- Appoint and oversee the performance of the Ombudsman.
- Authorize entering into expenditures and obligations as required by Contracting and Disbursement Policy.
- Approve new ICANN office locations, including hubs and engagement centers.
- Approve the need to move an ICANN Public Meeting from a previously identified location, or need to vary from approved meeting strategy.
- Consider recommendations from reviews.
- Selecting PTI Board membership.
- Setting agenda for the Board, and identifying the structure and information needed to support that agenda.
- Act in accordance with documented policies and procedures.

ICANN CEO – Key Roles

- The acts within the authority delegated by the Board.
- Interacts with the ICANN community to ensure that ICANN is serving the global public interest within ICANN's mission.
- Maintains open line of communication with the Board, and leads organizational communications with the Board.
- Interacts with governments and organizations within the scope of ICANN's Mission and Board's directives.
- Interacts with the broader Internet community and other interested parties within the scope of ICANN's Mission and Board's directives.
- Speaks for ICANN organization and serves as the external face of the organization.
- Leads and oversees ICANN's day-to-day operations (*i.e., the CEO is day-to-day decision maker*).

- Leads the ICANN organization, including the retention and supervision of staff.
- Executing global compensation structure for the organization based upon Board policies per legal obligations.
- Act in accordance with documented policies and procedures.
- Responsible for the IANA functions and reporting back to the ICANN Board on Public Technical Identifier's work as ICANN's contractor.

ICANN CEO and Senior Management – Key Roles

- Act within ICANN's Mission.
- Act in accordance with ICANN's Articles and Bylaws.
- Support accountability and transparency mechanisms, including coordination of reviews, supporting and advising the Board in considering Reconsideration Requests and declarations from Independent Review Processes, and document disclosure requests.
- Supporting the Empowered Community processes as necessary.
- Provide the Board with information as requested to enable the Directors to act on an informed manner
- Implement the decisions of the Board, *including implementation of policies approved by the Board and review recommendations approved by the Board.*
- Perform operational work in accordance with the strategic direction of the Board.
- Manage within the approved Budget.
- Identify sites for ICANN's Public Meetings within the approved Budget and meetings strategy.
- Upon Board approval of need to move a previously-announced ICANN Public Meeting or variance from meetings strategy, identify sites for ICANN Public Meetings within approved Budget and variance.
- Support community in development of and then implement Strategic Plan/Operating Plan as approved by Board.
- Ensure that ICANN remains in compliance with all applicable legal/regulatory requirements.
- Proactively protect the organization from third-party claims.
- Monitor and mitigate risks to the organization.
- Act in accordance with documented policies and procedures.
- Within budget, authorize entering into expenditures and obligations as required by Contracting and Disbursement Policy.
- Follow all applicable conflict of interest policy, confidentiality, employee conduct guidelines, applicable expense policies and travel guidelines, etc.

Interdependencies of Relationships

Across the roles and obligations that the Board, CEO and senior management share, there are numerous interdependencies in these relationships. These include:

- The CEO (or his designee) is the spokesperson for ICANN. The Chair is the spokesperson for the ICANN Board, unless delegated to other board members.
- Working together on Board workshop and Board meeting agendas, with the Organization responsible for timely delivery of materials to the Board in the circumstances when the Organization is informed that it should provide Board briefing materials.
- ICANN Board relies on management for information upon which the Board will base its decisions. The Board also relies on management to support the Board's interactions with the ICANN community.
- CEO oversees day-to-day operations, while the Board exercises oversight over the CEO, and is responsible for the identification of the strategic direction that the operations will serve.
- Management implements Board resolutions and acts within the scope of delegated authority reflected within those resolutions.
- Board and management actively engage with the community to ensure that ICANN serves the global public interest within ICANN's mission.
- Interdependencies highlighted through ICANN accountability mechanisms, including:
 - Empowered Community rights
 - Reconsideration of Board or staff actions
 - Independent review of Board or staff actions
- Management is responsible for leading the activities to develop budget and operating and strategic plans, and the Board approves those budget and operating and strategic plan and sets priorities.
- Once approved, the CEO (or to a person designated by the CEO) implements budget, plans and priorities approved by the Board.
- CEO has authority and obligation to lead day-to-day operations, within budget, plans and priorities.

REFERENCE MATERIALS – BOARD PAPER NO. 2017.03.16.1g

TITLE: **Community Anti-Harassment Policy**

Document/Background Links

The following attachments are relevant to the Board's consideration of the Community Anti-Harassment Policy

Attachment A is a redlined of the revised Community Anti-Harassment Policy, which incorporates many of the changes suggested during the public comment period.

Attachment B is Report of Public Comments.

The link to the public comment proceeding for the Community Anti-Harassment Policy is available at <https://www.icann.org/public-comments/anti-harassment-policy-2016-11-07-en>.

Submitted By: Amy A. Stathos, Deputy General Counsel
Date Noted: 24 February 2017
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ICANN Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure

ICANN is a unique multistakeholder environment. The ICANN community is comprised of participants from numerous and varied backgrounds, societal values, and cultural norms. A guiding goal of ICANN's Community Anti-Harassment Policy is to emphasize, encourage, and promote the spirit of mutual respect expected within the ICANN community. While society's values and norms have and will continue to evolve. However, such respect is timeless and is a guiding foundation of this Policy. This Policy is not intended to impede or inhibit free speech.

As a condition of participation in ICANN's multistakeholder processes, those who take part must:

1. Behave in a professional manner, demonstrate appropriate behavior and treat all members of the ICANN community in a respectful, dignified, decent manner at all times, including in face-to-face and on-line communications, irrespective of Specified Characteristics so that individuals of all backgrounds and cultures are made to feel welcome. Specified Characteristics means, but is not limited to, the following: age, ancestry, ethnicity, physical or mental disability, genetic information, medical condition, marital status, national origin, race, religion, sex (which includes, among other things, gender, gender identity and gender expression), sexual orientation, citizenship, primary language, immigration status, socioeconomic status, pregnancy, childbirth, or medical conditions related to pregnancy.
2. Refrain from harassment of any type. Harassment is unwelcome non-consensual hostile or intimidating behavior. Harassing conduct or commentary may take many forms, including, but not limited to, verbal acts and name-calling; graphic and written statements, which may include use of phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Conduct does not have to intend to harm, be directed at a specific target, or involve repeated incidents in order for it to be deemed harassment. Examples of the types of inappropriate conduct that are prohibited by this policy include, but are not limited to, the following:
 - Inappropriate touching, including, but not limited to, sexually suggestive touching such as grabbing, groping, kissing, fondling, hugging, stroking someone's hair, or brushing against another's body; or touching that the actor may not have intended to be sexually suggestive but which constitutes uninvited touching, such as rubbing or massaging someone's neck or shoulders
 - Use of offensive language
 - Violating someone's "personal space" after being told you are doing so
 - Leering, stalking, or suggestive whistling
 - Gesturing in a sexually suggestive manner
 - Circulating or posting written or graphic materials that show hostility or disrespect toward or that demean individuals because of Specified Characteristics as set forth above

- Lewd or graphic comments or jokes
 - Use or distribution of sexual imagery in public presentations and displays
 - Harassing photography or recordings
 - Repeated requests for dates, or unwanted communications of a romantic nature, after the individual receiving them indicates that she or he does not wish to receive them.
3. **Refrain from retaliation** against anyone for reporting any conduct or commentary that is inconsistent with the terms set forth above (“inappropriate behavior”) or for participating in an investigation of any such report or complaint.

Reporting and Complaint Procedure

The following reporting and complaint procedure is available to anyone who identifies inappropriate behavior.

1. The individual who identifies **inappropriate behavior** may: (i) communicate with the person(s) responsible and attempt to resolve the issue informally; and/or (ii) promptly report to the Ombudsperson the facts giving rise to a belief that **inappropriate behavior** has occurred and cooperate fully in the ensuing investigation of the complaint.
2. The Ombudsperson will review and evaluate the complaint. The evaluation will include the following, as appropriate in the sole discretion of the Ombudsperson, in an effort to obtain an understanding of the facts: (i) communication with the complainant to clarify the facts giving rise to the complaint; (ii) inquiries of the accused to obtain a response to the complaint if, in the Ombudsperson’s discretion, the complainant has provided sufficient facts to support the allegation that **inappropriate behavior** has occurred; and (iii) communication with other percipient witnesses, and review of documentary evidence, if any and if appropriate.
3. The Ombudsperson will determine whether **inappropriate behavior** has occurred and will communicate the results to the complainant and the accused. No “corroboration” is required to support a finding; the Ombudsperson will consider the credibility of each party in making a determination.
4. The Ombudsperson will determine what remedial action, if any, is appropriate in light of the findings of the evaluation. If the Ombudsperson in its discretion, finds that remedial action is appropriate, that remedial action may include, but is not limited to, excusing any individual responsible for **inappropriate behavior** from further participation in the ICANN process for a specified period of time, limiting the individual’s participation in some manner, and/or requiring satisfaction of pre-requisites such as a written apology as a condition of future participation.
5. The reporting and complaint procedure will be conducted in a manner to ensure confidentiality to the reporter as well as the person who is the subject of the complaint.

Staff Report of Public Comment Proceeding

Proposed ICANN Community Anti-Harrassment Policy			
Publication Date:	26 January 2017		
Prepared By:	Elizabeth Le		
Public Comment Proceeding		Important Information Links	
Open Date:	7 November 2016		
Close Date:	12 January 2017		
Staff Report Due Date:	26 January 2017		
		Announcement	
		Public Comment Proceeding	
		View Comments Submitted	
Staff Contact:	Elizabeth Le	Email:	elizabeth.le@icann.org
Section I: General Overview and Next Steps			
General Overview:			
<p>During and after ICANN55, the issue of certain community-member conduct toward one another was raised in various sessions and lists, and the Board agreed to address this matter. In response, the Board approved a revised ICANN Expected Standards of Behavior, and directed “the President and CEO, or his designees to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harrassment policies to assist in the development of a Community anti-harrassment policy/procedure to be followed at ICANN Public Meetings, which could include items such as complaints handling and resolution and enforcement processes.” (Resolution 2016.05.15.05)</p>			
<p>On 7 November 2016, ICANN published the proposed ICANN Community Anti-Harrassment Policy (the Draft Policy) for public comment. The Draft Policy sets out how participants in the ICANN community are expected to behave when participating in ICANN’s multistakeholder processes. It was created following consultation with experts and after consideration of the public comments received on the already adopted revisions to ICANN’s Expected Standards of Behavior. The community called for a more detailed policy statement and a complaint procedure, which is included in the proposal for the community’s consideration and input. The public comment period closed on 12 January 2017.</p>			
Section II: Contributors			

At the time this report was prepared, a total of 14 community submissions 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:

Name	Submitted by	Initials
At-Large Advisory Committee	Olivier Crepin-Leblond & Sebastien Bachollet	ALAC
Pakistan Telecommunication Authority	Waqas Hassan	PTA
Internet Service Provider and Connectivity Provider Constituency	Mark McFadden	ISPCP
Registries Stakeholder Group	Stéphane Van Gelder	RySG
Blacknight Internet Solutions Ltd	Michele Neylon	BIS
Internet Infrastructure Coalition (i2Coalition)	Jay Sudowski	i2c
NonCommercial Users Constituency	Corinne Cath	NCUC
Intellectual Property Constituency	Gregory S. Shatan	IPC
Non-Commercial Stakeholders Group	Matthew Shears	NCSG
Business Constituency	Steve DelBianco	BC

Individuals:

Name	Affiliation (if provided)	Initials
Stephanie Perrin		SP
Anna Loup	NCUC	AL
Darcy Southwell and Kathy Kleiman		DS & KK
Edward Morris		EM

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).*

In general, most of the commenters were very supportive of the Draft Policy and applaud the development of such a policy. BIS expressed concerns that such a policy may have a chilling effect and encouraged that the policy be kept as narrow in scope as possible. The commenters also suggested revisions to the Draft Policy, which are summarized below.

Comments regarding the Inclusion of a Mission Statement, Statement of Purpose and/or Preamble to the Policy

Several organizations (ISPCP, SP, RySG) and one individual (SP) suggest the inclusion of a mission statement and/or preamble that highlight the goal of the Community Anti-Harassment Policy. For example, the ISPCP suggests the inclusion of the following mission statement: “A guiding goal of ICANN’s Anti-Harassment Policy is to emphasize, encourage, and promote the spirit of mutual respect expected within the ICANN community. We understand that

society's values and norms have and will continue to evolve. However, such respect is timeless and is a guiding foundation of this policy.” (ISPCP)

Comments regarding Section 1 of the Draft Policy

The commenters agree that the “Specified Characteristics” listed in the Policy should not be exhaustive and suggest that language be revised to indicate that the draft list is not exhaustive. Several commenters (RySG, BIS, BC) suggest removing the reference to “cancer and genetic characteristics”. One commenter recommends adding “educational level and social background” to in the definition of “Specified Characteristics.” (RySG) The BC notes that referring to specific medical condition as “sex” does not comport with common understanding of gender characteristics and should be removed. The NCSG notes concerns that the current list of “Specified Characteristics” is unwieldy and can lead to unnecessary confusion” and suggests that the IETF anti-harassment policy provides a more concise and clear view. The NCSG recommends striking a “happy medium” between the IETF list and the current list in the Draft Policy.

Some commenters (ALAC, AL) object to term “professional manner”, while others (DS & KK, EM) express a preference for the terminology as it supports the global nature of the ICANN community.

Comments regarding Section 2 of the Draft Policy

Several organizations and individuals (ALAC, BIS, RySG, i2C, NCUC, NCSG and SP) suggest the definition of “harassment” should include acknowledgement of “the diversity of the ICANN global community and acceptance or otherwise of what are socially accepted norms within different cultures.” (ALAC) The commenters propose adding the notion of affirmative consent to the definition of harassment. Some commenters (IPC, AL, DS, KK, BIS) suggest adding the phrase “unwanted” or “unwelcome” to the definition. The RySG recommends that “the text be change to indicate that the listed examples [of harassment], to be considered as harassment and as such prohibited conduct, must be unwelcome, unsolicited and regarded as offensive or undesirable by the victim.” (RySG) The NCUC express support for this section generally but indicates concerns on the need for a list of “harassing behavior.” (NCUC) The NCSG, NCUC and AL suggest that the list of inappropriate conduct should be rewritten to include harassment in the broader sense rather than focusing on sexual conduct. The IPC suggests including language about what may not constitute harassment.

One individual (EM) believes that the inclusion of a qualification such as “unwanted” or “nonconsensual” is unnecessary since it assumes that “if a listed act is desired, it would not result in a complaint under this Policy.”

Some commenters express discomfort in how ‘inappropriate conduct’ is defined. SP and BC believe “intent” should be established before a behavior can be deemed inappropriate. IPC suggests changing references of “inappropriate conduct” to “behavior that violates the Anti-Harassment Policy”.

Comments regarding the Reporting and Complaint Procedure

Several organizations (RySG, i2c, NCUC, NCSG and IPC) believe that the reporting and complaint procedure should allow for informal reconciliation between the parties. However,

the IPC indicates that informal reconciliation should not be a precondition for moving forward in the complaint process. EM notes that in some offensive situations, a requirement for information reconciliation may result in further harm.

Several commenters (RySG, NCUC, NCSG) recommend providing a general timeline or expected path after a complaint is filed. Some commenters (i2C, DS & KK) suggest more specificity on implementation such as the “inclusion of the investigation procedure, criteria for decision-making, and possible remedial actions.” (DS & KK)

The commenters offer differing opinions on the role of the Ombudsman. The consensus is that the Ombudsman is given too much power. (BC, i2C, NCSG, NCUC, DS & KK and SP) The BC proposes a process that separates investigation and decision roles; whereby the Ombudsman will gather the facts and a recognized expert, contracted by ICANN, will make the determination of whether a violation has occurred. Several organizations agree that the Ombudsman *not* be allowed to make findings of fact and determine remedial action, but instead, allow another role within ICANN to take on this responsibility. AL suggests using a trained supporting committee of human resource coordinators to examine the case, provide determination, and call for remedial action. The NCSG and NCUC suggest the creation of an anti-harassment team consisting of 3 individuals from different genders and geographic locations. There is also a call from IPC, i2c and DS & KK to increase the diversity of the Ombudsman’s office so that the accused may have a choice to whom they report the harassing conduct to.

NCUC, NCSG, BC, IPC, AL, EM and SP agree that there should be a statement emphasizing anonymity and confidentiality for “both the alleged victim and the alleged perpetrator.” (EM)

There should be a statement allowing reporting parties to withdraw a report (AL), as well as a mechanism for dealing with vexatious complaints (NCUC).

Several organization and individuals (NCSG, NCUC, i2C, BC, IPC, DS & KK, SP and EM) suggest the inclusion of a grievance mechanism, which would include an appeals process.

Both the ISPCP and PTA suggest additional penalties if the Ombudsman determined a person to be in violation of the Policy. The PTA suggests that a set of remedies and penalties should be clearly specified and that a counter remedial action on complainants if the Ombudsman determined that the complaint “was malified and targeted towards tarnishing someone’s reputation.” (PTA)

Other Comments/Proposed Revisions to the Draft Policy

The NCSG and NCUC state that the Draft Policy does not address the issues of confidentiality and privacy, and suggest that the Draft Policy be updated to include such language.

Some commenters (AL, i2C, DS & KK and EM) agree that written policy alone is not sufficient. Instead, ICANN needs to engage in regular conversations to promote the existence of the policy and provide opportunities to educate the community about behaviors that are problematic. (AL and DS & KK)

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

ICANN appreciates all the comments and suggestions added to the public forum for the proposed Draft Policy. ICANN and members of the community share the goal of ensuring that ICANN community members are able to participate and contribute within an environment that remains free from harassment. ICANN worked with experts, as appropriate and necessary, to develop the Draft Policy. The Draft Policy incorporates many of the ideas suggested in response to the public comments received on the revised Expected Standards of Behavior.

Recommendation to Include a Mission Statement, Statement of Purpose and/or Preamble to the Policy

The Draft Policy was developed to work in parallel with ICANN's revised Expected Standards of Behavior. ICANN will re-evaluate the Draft Policy in conjunction with the revised Expected Standards of Behavior, as well as consult with experts, to develop a preamble to the policy as deemed appropriate.

Comments regarding Sections 1 and 2 of the Draft Policy

As a preliminary matter, in terms of comments about terminology in Sections 1 and 2 of the Draft Policy, we note that some suggest that certain definitions should be limited, while others suggest they should be expanded or reworded, partly due to cultural differences. It is well understood and expected that there are cultural differences among ICANN participants, and it is anticipated that any evaluation of conduct that might be challenged will certainly take those differences into consideration.

ICANN agrees that the "Specified Characteristics" identified in the Policy is not intended to be an exhaustive list and will revise the current language to so indicate. ICANN agrees with the recommendation to remove the reference to "cancer and genetic characteristics", as well as the recommendation to add "educational level and social background" to in the definition of "Specified Characteristics." ICANN will revise the current draft language accordingly.

ICANN acknowledges the importance of cultural norms when defining harassment. ICANN will further consult with experts regarding the comments on consent and the appropriateness of appending Section 2 to include this concept.

With respect to the examples of inappropriate conduct identified in Section 2 of the Draft Policy, ICANN notes that the bullet point list of examples of inappropriate conduct are intended to be examples only, and should in no way be viewed as an exhaustive list. With that said, ICANN will re-review the existing list and consider additional examples as needed.

Comments Regarding the Reporting and Complaint Procedure

With respect to the recommendation regarding informal reconciliation, while parties are

encouraged to resolve disputes informally, making informal reconciliation a requirement would not be appropriate.

With respect to the comments and suggestions regarding who should evaluate a complaint made under the Policy, the method of review, an appeals mechanism, ICANN will take the recommendations under consideration and consult with experts as to whether what changes, if any, may be appropriate.

As it relates to the concerns expressed regarding anonymity and confidentiality, pursuant to Article 5 of the ICANN Bylaws, the Ombudsman process is confidential unless waived by the complainant. Accordingly, it does not seem necessary to change the current draft language.

Next Steps: Following the completion of the public comment process, ICANN will consider the comments provide, and consult with experts as part of its assessment of whether the Draft Policy language requires any changes.

Organizational Effectiveness Committee Charter

As approved by the ICANN Board of Directors 28 July 2015

I. Purpose

The Organizational Effectiveness Committee (OEC) of the ICANN Board is responsible for the following:

- A. The review and oversight of all organizational reviews mandated by Article 4, Section 4.4 of ICANN's Bylaws or any replacement or revisions to that Section of the Bylaws (Organizational Reviews), which are aimed at enhancing ICANN's overall effectiveness, and achieving specific organizational objectives, structural relevance and effectiveness.
- B. The review and oversight of all Specific Reviews mandated by Section 4.6 of ICANN Bylaws or any replacement or revisions to that section of the Bylaws, which are aimed at **reviewing ICANN's** execution of commitments relating to: Accountability and Transparency; Security, Stability and Resiliency; Competition, Consumer Trust and Consumer Choice; and Registration Directory Service.
- C. The review and oversight of policies, processes, and procedures relating to the Organizational and Specific Reviews (collectively **"Reviews"**).
- D. The development and maintenance of a Review Framework, which is subject to Board approval that encapsulates the policies, processes and procedures applicable to the conduct of the Reviews.

The Committee shall use the Reviews to help assess whether ICANN has made progress in achieving key organizational objectives and commitments and whether its organizational structure is effective and relevant to its mission. The Committee shall issue recommendations towards enhancing ICANN's overall organizational effectiveness.

II. Scope of Responsibilities

The following activities are set forth as a guide for fulfilling the Committee's responsibilities. The Committee is authorized to carry out these activities and other actions reasonably related to the Committee's purposes or as assigned by the Board from time to time:

- A. Review, and recommend changes as warranted to streamline and standardize, where possible, ICANN's policies, processes and procedures governing the Reviews;
- B. Oversee the conduct of the Reviews as described in the Review Framework;
- C. Oversee work of the independent consulting firm/s engaged, including the quality and content of the independent consulting firm's work product and all necessary follow-up;
- D. Create and populate Working Groups for ICANN Board directed Ad Hoc Reviews, if and when deemed necessary. The members of the Working Groups are chosen among present and past Board Directors and Liaisons;
- E. Coordinate the work of the Working Groups for ICANN Board-directed Ad Hoc Reviews, and evaluate the recommendations coming from the review process;
- F. Regularly report to the full Board with respect to the Committee's activities; and,
- G. Oversee the implementation of review recommendations resulting from the Reviews and regularly report to the full Board on the implementation status.

III. Relationships with Affected Parties

There shall be a designated ICANN staff member responsible for support of the Reviews processes and the functions of the Committee. In carrying out its responsibilities, the Committee shall consult with all relevant and affected parties regarding all pertinent aspects of the Reviews.

IV. Composition

The Committee shall be comprised of at least three but not more than seven members. The majority of the Committee members shall be voting Board Directors and the minority shall be Liaisons, as determined and appointed annually by the Board. Each Committee member shall comply with the Conflicts of Interest Policy. The voting Directors shall be the voting members of the Committee. The members of the Committee shall serve at the discretion of the Board.

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

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

V. Meetings

A. Regularly Scheduled Meetings.

The Committee shall meet at least three times per year, or more frequently as it deems necessary to carry out its responsibilities. The schedule of these meetings will be established at the beginning of the calendar year. The Committee's meetings may be held by telephone and/or other remote meeting technologies. Regularly scheduled meetings shall be noticed at least one week in advance, unless impracticable, in which case the notice shall be as soon as practicable.

B. Special/Extraordinary Meetings.

Special/Extraordinary meetings may be called upon no less than forty-eight (48) hours notice by either (i) the Chair of the Committee or (ii) any two members of the Committee acting together. The purpose of the meeting must be included with the call for the meeting.

C. Action Without a Meeting

i. Making a Motion:

The Committee may take an action without a meeting for an individual item by using electronic means such as email. An action without a meeting shall only be taken if a motion is proposed by a member of the Committee, and seconded by another voting member of the Committee. All voting members of the Committee must vote electronically and in favor of the motion for it to be considered approved. The members proposing and seconding the motion will be assumed to have voted in the affirmative. The action without a meeting and its results will be noted in the next regularly scheduled Committee meeting and will be included in the minutes of that meeting.

- ii. Timing:
 - a. Any motion for an action without a meeting must be seconded by another Committee member within 48 hours of its proposal.
 - b. The period of voting on any motion for an action without a meeting will be seven days unless the Chair changes that time period. However, the period must be a minimum of two days and a maximum of seven days.

VI. Voting and Quorum

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

VII. Records of Proceedings

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

VIII. Review

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

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REFERENCE MATERIALS - BOARD PAPER NO. 2017.03.16.2a

TITLE: Organizational Effectiveness Committee Charter Revisions

Exhibits:

Exhibit A: OEC-Charter-(Revised-Redlined-from-Current)

Exhibit B: OEC-Charter-(revised-clean)

Signature Block:

Submitted by: Larisa Gurnick

Position: Director, Strategic Initiatives

Date Noted: 3 March 2017

Email: larisa.gurnick@icann.org

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION (ICDR)

Independent Review Panel

IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS
Pursuant to the Bylaws of the Internet Corporation for Assigned Names and Numbers (ICANN), the *International Arbitration Rules of the ICDR*, and the *ICDR Supplementary Procedures for ICANN Independent Review Process*

_____)	
Gulf Cooperation Council (GCC))	
)	
Claimant)	
)	
and)	ICDR Case
)	No. 01-14-0002-1065
Internet Corporation for Assigned Names and Numbers (ICANN))	
)	
Respondent)	
_____)	

**PARTIAL FINAL DECLARATION OF THE INDEPENDENT REVIEW PROCESS
PANEL**

Independent Review Panel

Lucy Reed, Chair
Anibal Sabater
Albert Jan van den Berg

I. INTRODUCTION

1. This case concerns the dispute between the Gulf Cooperation Council (“GCC”), and the Internet Corporation for Assigned Names and Numbers (“ICANN”) over the generic Top-Level-Domain name (“gTLD”) “.persiangulf”.
2. The underlying dispute is a broader one, concerning the name for the body of water separating the Arabian Peninsula from the Islamic Republic of Iran (“Iran”), which is a non-Arab nation historically called Persia. The Arab states, including members of the GCC, use the name “Arabian Gulf”, while Iran uses the name “Persian Gulf”. The sensitivity of this geographical name dispute, which has gone on for over 50 years, is well-known. It is representative of deeper disputes between GCC members and Iran over matters of religion, culture and sovereignty, prompting sanctions such as the banning of maps and censorship of publications that use either “Arabian Gulf” or “Persian Gulf”. (For purposes of neutrality, we will use the simple term “Gulf” in this Declaration.)
3. The particular dispute has its origins in the July 2012 application by a Turkish company founded by Iranian nationals, Asia Green IT System Bilgisayar San. Ve Tic. Ltd Sti (“**Asia Green**”), for registration of the “.persiangulf” gTLD as an international forum for people of Persian descent and heritage. The GCC has contested this application at every step of the ICANN gTLD review process, primarily on grounds that “.persiangulf” targets the Arabian Gulf Arab community, which was not consulted and opposes this use of the disputed geographical name.
4. The GCC initiated this Independent Review Process (“IRP”) in December 2015 to challenge the ICANN Board’s taking any further steps to approve registration of “.persiangulf” gTLD to Asia Green, alleged to violate the ICANN Articles and Bylaws.
5. Based on the IRP Panel’s review and assessment of the Parties’ submissions and evidence, our Partial Declaration is in the GCC’s favor. At the Parties’ joint request, the IRP Panel will allocate costs in a Final Declaration at a later stage.

II. THE PARTIES AND COUNSEL

6. The Claimant GCC is a political and economic alliance established in 1981 among six countries: the United Arab Emirates (“UAE”), Saudi Arabia, Kuwait, Qatar, Bahrain and Oman. The GCC is based in Saudi Arabia. Its address is Contact Information Redacted
7. The GCC is represented by Natasha Kohne and Kamran Salour of Akin Gump Strauss Hauer & Feld LLP, Sawwah Square, Al Sila Tower, 21st Floor, P.O. Box 55069, Abu Dhabi, UAE.
8. The Respondent ICANN is a non-profit public benefit corporation established under the laws of the State of California, USA. ICANN’s mission is “*to coordinate, at the overall level, the global Internet’s system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet’s unique identifier systems*”, including the domain name system.¹ ICANN’s address is 12025 Waterfront Drive, Suite 300, Los Angeles, CA 90094-2536, USA.
9. ICANN is represented by Jeffrey A. LeVee, Eric P. Enson, Charlotte Wasserstein and Rachel Zernik of Jones Day, 555 South Flower Street, 50th Floor, Los Angeles, CA 90071, USA.

III. BACKGROUND FACTS

10. We set out below the basic background facts, which are undisputed except where otherwise noted. More detailed background facts are included in the separate sections below on the jurisdiction and merits issues in dispute.

A. ICANN’s New gTLD Program

11. As set out in Article 3 of its Articles of Incorporation, ICANN is mandated to develop procedures to expand the number of top level domains and increase the number of companies approved to act as registry operators and sell domain name registrations. In

¹ ICANN’s Response to Gulf Cooperation Council’s Request for Emergency Relief (“**Response to Emergency Request**”), ¶ 6.

June 2011, ICANN launched a significant expansion with the “New gTLD Program”. According to ICANN, this Program is its “most ambitious expansion of the Internet’s naming system”. To illustrate, ICANN approved only seven gTLDs in 2000 and another small number in 2004-2005² and then received almost 2000 applications in response to the New gTLD Program.³

12. ICANN developed an Applicant Guidebook through several iterations, with Version 4 of the New gTLD Application Guidebook dated 4 June 2012 (“**Guidebook**”) being relevant here.⁴ The Guidebook, running to almost 350 pages, sets out comprehensive procedures for the gTLD application and review process. It includes instructions for applicants, procedures for ICANN’s evaluation of applications, and procedures for objections to applications. In line with ICANN’s policies of transparency and accountability, applications for new gTLDs are posted on the ICANN website for community review and comment. ICANN may take such community comments into account in deciding whether an application meets the criteria for approval of a new gTLD registry operator.
13. Decisions on applications for new gTLDs are made by the New gTLD Program Committee of the ICANN Board (“**NGPC**”).

B. The “.persiangulf” New gTLD Application

14. On 8 July 2012, Asia Green applied for the “.persiangulf” gTLD. In its application form, Asia Green identified the mission/purpose of the proposed gTLD in relevant part as follows:

There are in excess of a hundred million of Persians worldwide. They are a disparate group, yet they are united through their core beliefs. They are a group whose origins are found several millennia in the past, their ethnicity often inextricably linked with their heritage. Hitherto, however, there has been no way to easily unify them and their common cultural, linguistic and historical heritage. The .PERSIANGULF gTLD will help change this.⁵

² Response to Emergency Request, ¶¶ 12-13.

³ <https://newgtlds.icann.org/en/about/program>.

⁴ Response to Emergency Request, Exh. R-ER-3/R-2 (“**Guidebook**”).

⁵ Request for Independent Review Process (“**Request for IRP**”), ¶¶ 31 and 66.

15. Asia Green has also applied for a number of other gTLDs. Its application for “.pars” (referring to the ancient Persian homeland of Pars), which was based on essentially the same mission/purpose as “.persiangulf” to unite the Persian community, was successful and led to a registry agreement in 2014.⁶ Its applications for “.islam” and “.halal”, however, were not accepted by ICANN.⁷

C. The GCC’s Objections to Asia Green’s “.persiangulf” gTLD Application

16. The GCC objected to Asia Green’s application within the mechanisms provided by ICANN.

1. Concerns Raised with the Governmental Advisory Committee to ICANN

17. ICANN, which is a complex global organization, relies on committees to provide advice from different constituencies. As relevant here, the Governmental Advisory Committee to ICANN (“GAC”) consists of members appointed by and representing governments. The GAC was created to:

*consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN’s policies and various laws and international agreements, or where they may affect public policy issues.*⁸

18. Module 3.1 of the Guidebook, which is entitled “GAC Advice on New gTLDs”, allows GAC members to raise governmental concerns about a gTLD application. Such concerns are considered by the GAC as a whole, which may agree on advice to forward to the ICANN Board. Such GAC advice to the ICANN Board is one of two methods of governmental recourse against an application for a gTLD. (The second method, an “Early Warning Notice”, is discussed below.)
19. As set out in Module 3.1 of the Guidebook, the advice from the GAC to the ICANN Board may take one of the following three forms:
 - a. A “Consensus GAC Advice”, in which the GAC, on consensus, provides public policy advice to the ICANN Board that an application **should not** proceed, creating a strong

⁶ Request for IRP, ¶ 65.

⁷ Ibid., ¶ 61.

⁸ Guidebook, Module 3.1, p. 1.

- presumption of non-approval of the application by the ICANN Board; there is no equivalent form of consensus GAC advice that an application **should** proceed;
- b. The expression of **concerns** in the GAC about an application, after which the ICANN Board is expected to enter into a dialogue with the GAC to understand those concerns, and to give reasons for its ultimate decision; or
 - c. Advice that the application should not proceed unless remediated, creating a strong presumption that the ICANN Board should not allow the application to proceed unless the applicant implements a remediation method available in the Guidebook.
20. On 14 October 2012, the UAE wrote to the GAC and ICANN expressing its disapproval and non-endorsement of Asia Green’s “.persiangulf” application.⁹ Similar letters from Oman, Qatar and Bahrain followed.¹⁰ As members of the GCC and GAC, these governments objected to registration of “.persiangulf” as a new gTLD on grounds that the proposed domain refers to a geographical place subject to a long historical naming dispute and targets countries bordering the Gulf that were not consulted and did not support the domain, confirming that there was not community consensus in favor of the new gTLD. (The subsequent GAC consideration of these concerns is described below.)

2. Early Warning Process

21. During the public comment period for gTLD applications, the Guidebook (Module 1.1.2.4) also allows the GAC to issue an “Early Warning Notice” to the ICANN Board flagging that one or more governments consider the application to be sensitive or problematic. The Board in turn notifies the applicant for the gTLD. As the Early Warning is merely a notice, and not a formal objection, it alone cannot lead to ICANN’s rejection of the application.
22. On 20 November 2012, the governments of Bahrain, Oman, Qatar and the UAE raised their concerns about Asia Green’s “.persiangulf” application through the GAC Early Warning process. The reasons mirrored those of their GAC objections: “*The applied for*

⁹ Request for IRP, Annex 6.

¹⁰ Ibid., Annexes 7-9.

*new gTLD is problematic and refers to a geographical place with disputed name”; and “Lack of community involvement and support”.*¹¹

3. Independent Objector Review

23. The Guidebook (Module 3, Articles 3.2.1–3.2.5) also provides an “Independent Objector” process, when there has been negative public comment before any formal objection. ICANN appoints an Independent Objector whose role, as the name indicates, is to exercise independent judgement in the public interest to determine whether to file and pursue a “Limited Public Interest Objection” or a “Community Objection” to the application.
24. In December 2012, the Independent Objector for the “.persiangulf” gTLD application, Professor Alain Pellet, issued his comments aimed at “*informing the public of the reasons why the [Independent Objector] does not consider filing an objection*” in relation to the “.persiangulf” application.¹² Professor Pellet concluded that a Limited Public Interest Objection was not warranted, because there were no binding international legal norms to settle the naming dispute. Likewise, he found a Community Objection to be “*unadvisable*”.¹³ Although Professor Pellet found that there was a clearly delineated Gulf community at least implicitly targeted by Asia Green’s application and that a significant portion of that community opposed delegation of “.persiangulf”, he considered it “*most debateable*” that the gTLD would “*create a likelihood of material detriment to the rights or legitimate interests of a significant portion of the targeted community*” (meaning the Arab portion), which is a necessary criterion in the Guidebook for a Community Objection.¹⁴ He stated in this regard that:

*it is a matter of fact that there is a long-term dispute over the name of the Gulf and that both designation[s] [i.e. Persian Gulf and Arabian Gulf] are in use. It is indeed not the mission of the gTLD strings to solve nor to exacerbate such a dispute; but they probably should adapt to the status quo and the [Independent Objector] deems it unsuitable to take any position on the question. He notes that it is open to the Arabian Gulf community to file an objection as well as the same community could have applied for a “.Arabiangulf” gTLD.*¹⁵

¹¹ Ibid., Annex 10.

¹² Independent Objector’s Comments on Controversial Applications, Response to Emergency Request, Exh. R-ER-5.

¹³ Ibid., p. 6.

¹⁴ Ibid., p. 5.

¹⁵ Ibid., pp. 5-6.

4. Formal Community Objection by the GCC

25. Module 3 of the Guidebook also provides for formal objection by third parties to challenge a gTLD application. There are four types of formal objections, of which a “Community Objection” is one.
26. A Community Objection is made on the basis that “[t]here is *substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted*” (Module 3.2). Pursuant to Paragraph 3.2.3 of the Guidebook, the International Centre of Expertise of the International Chamber of Commerce (“ICC”) administers disputes brought by Community Objection. One expert hears a Community Objection (Paragraph 3.4.4).
27. On 13 March 2013, the GCC filed a Community Objection to the “.persiangulf” application. The ICC appointed Judge Stephen M. Schwebel as the Expert Panelist to hear the Objection (Case No. EXP/423/ICANN/40). (Judge Schwebel’s determination, which he issued on 30 October 2013, is discussed below.)

D. GAC Advice to the ICANN Board

28. Concurrent with the various opposition avenues described above, the GAC was considering the GCC’s concerns in the course of its regular meetings.
29. In its 11 April 2013 meeting in Beijing, China, the GAC issued advice to the ICANN Board concerning a number of gTLD applications, using the typical format of a post-meeting Communiqué. Certain of the advice in the Beijing Communiqué was Consensus GAC Advice against gTLD applications, creating a presumption that the ICANN Board should **not** approve the relevant applications. In the case of certain geographically-based strings, including “.persiangulf”, the Beijing Communiqué reflected that the GAC required time for further consideration. On that basis, the GAC advised the ICANN Board not to proceed beyond initial evaluation of Asia Green’s application.¹⁶

¹⁶ Request for IRP, Annex 23, p. 3.

30. The NGPC of the ICANN Board accepted this advice. The NGPC documented its decision in a Resolution with an annexed “Scorecard” setting out its response to each item in the GAC’s Beijing Communiqué.¹⁷
31. In its 13-18 July 2013 meeting in Durban, South Africa, the GAC gave further consideration to the Asia Green application for “.persiangulf”: Mr Abdulrahman Al Marzouqi, who represented the UAE and the GCC at the Beijing and Durban GAC meetings, testified that no consensus was reached to oppose or support the application. In his words:

5. I also attended the GAC Meetings in Durban, South Africa in July 2013. During the meetings in Durban, I again voiced the GCC’s opposition to the .PERSIANGULF gTLD application, again emphasizing the lack of community support and strong community opposition from the Arab community because “Persian Gulf” is a disputed name. A substantial amount of GAC members in attendance shared these concerns.

6. Despite this substantial opposition, GAC could not reach a consensus. Iran is the only nation in the Gulf that favors the “Persian Gulf” name, and Iran’s GAC representative obviously does not share the other GAC members’ concerns about the .PERSIANGULF gTLD application. Not wanting a single GAC member to block consensus, the GAC Meeting Chairperson... pulled me to the side to express her frustration that GAC could not reach a consensus.¹⁸

32. The Minutes of the Durban meeting (“**Durban Minutes**”), on which the GCC relies in these IRP proceedings, reported:

*The GAC finalized its consideration of .persiangulf after hearing opposing views, the GAC determined that it was **clear that there would not be consensus of an objection regarding this string** and therefore the GAC does not provide advice against this string proceeding. The GAC noted the opinion of GAC members from UAE, Oman, Bahrain, and Qatar that this application should not proceed due to lack of community support and controversy of the name.¹⁹ (Emphasis added.)*

33. The 18 July 2013 Durban Communiqué, on which ICANN relies as the document formally providing GAC advice to the ICANN Board, reported:

¹⁷ Response to Emergency Request, Exhs. R-ER-6 and R-ER-7.

¹⁸ Claimant’s Request for Emergency Arbitrator and Interim Measures of Protection, Witness Statement of Abdulrahman Al Marzouqi (22 December 2014) (“**Al Marzouqi Statement**”), paras. 5-6.

¹⁹ Request for IRP, Annex 34.

The GAC has finalised its consideration of the following strings, and does not object to them proceeding:

...

ii. *.persiangulf* (application number 1-2128-55439).²⁰ (Emphasis added.)

34. On 10 September 2013, relying on the Durban Communiqué, the NGPC of the ICANN Board passed a resolution to continue to process the “.persiangulf” gTLD application, with a notation that there was a Community Objection:

*ICANN will continue to process the application in accordance with the established procedures in the [Guidebook]. The NGPC notes that community objections have been filed with the International Centre for Expertise of the ICC against .PERSIANGULF.*²¹ (Emphasis added.)

35. The NGPC resolution and related Scorecard were posted on the ICANN website on 12 September 2013. The Board Minutes and related materials were posted more than two weeks later, on 30 September 2013.
36. It is the ICANN Board’s decision on 10 September 2013 to continue to process Asia Green’s “.persiangulf” gTLD application that the Claimant GCC challenges in these IRP proceedings.

E. Expert Determination of the Community Objection

37. On 30 October 2013, one month after ICANN’s posting of the Durban Minutes, Judge Schwebel issued his Expert Determination dismissing the GCC’s Community Objection.²²
38. Judge Schwebel first found that the GCC had standing to object to the “.persiangulf” application, as an institution created by treaty and having an ongoing relationship with a clearly delineated community, namely the Arab inhabitants of the six GCC states on the Gulf. He then proceeded to find in the GCC’s favor on the first three of the four elements required by the Guidebook for a successful Community Objection (which, it bears noting, are not the same as the elements applicable to these IRP proceedings). Judge Schwebel found that: (a) the community invoked is a clearly delineated community; (b) the relevant

²⁰ Ibid., Annex 24.

²¹ Response to Emergency Request, Exhs. R-ER-9 and R-ER-10.

²² Case No. EXP/423/ICANN/40, Expert Determination of Judge Stephen M. Schwebel, Request for IRP, Annex 2.

community was substantially opposed to the “.persiangulf” application, and (c) the relevant community was closely associated with and implicitly targeted by the gTLD string.

39. Judge Schwebel, however, then found against the GCC on the fourth element, on grounds that the GCC had failed to prove that the targeted community would “*suffer the likelihood of material detriment to their rights or legitimate interests*”. In his assessment, even though geographical name disputes such as the Arabian Gulf-Persian Gulf dispute can have significant impacts on international relations, “*it was far from clear that the registration would resolve or exacerbate or significantly affect the dispute*”.²³ Like the Independent Objector before him, Judge Schwebel noted that the GCC could apply for its own “.arabiangulf” string.
40. This Independent Review Process followed.

IV. THE INDEPENDENT REVIEW PROCESS: THE ARCHITECTURE

41. Article IV (Accountability and Review), Section 3 (Independent Review of Board Actions), of the ICANN Bylaws sets out the procedure for independent review of actions taken by the ICANN Board.
42. Paragraph 2 of Article IV, Section 3, provides:

Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board’s alleged violation of the Bylaws of the Articles of Incorporation, and not as a result of third parties acting in line with the Board’s action.

43. Paragraph 7 of Article IV, Section 3, provides that “[a]ll IRP proceedings shall be administered by an international dispute resolution provider appointed from time to time by ICANN”. As stated in the Supplementary Procedures for ICANN Independent Review Process (“**Supplementary Procedures**”), the ICANN Board has designated and approved

²³ Ibid., p. 11.

the International Centre for Dispute Resolution (“ICDR”) as the Independent Review Panel Provider.²⁴

44. The Supplementary Procedures apply to these proceedings, in addition to the ICDR International Arbitration Rules (“ICDR Rules”). Pursuant to Article 2 of the Supplementary Procedures, in the event of any inconsistency between the Supplementary Procedures and the ICDR Rules, the former prevail.
45. The Parties dispute whether the ICANN Bylaws are also applicable to this procedure, in particular in relation to the determination of costs. (This is discussed in Section IX below.)
46. The ICANN Bylaws provide a three-question standard of review for the Independent Review Process. As set out in Paragraph 4 of Article IV, Section 3:

Requests for such independent review shall be referred to an Independent Review Process Panel (“IRP Panel”), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

- a. did the Board act without conflict of interest in taking its decision?*
- b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and*
- c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?*

47. Article 8 of the Supplementary Procedures replicates this standard of review in similar terms.

V. THE INDEPENDENT REVIEW PROCESS: PROCEDURAL HISTORY

48. On 5 December 2014, the GCC filed its Request for Independent Review Process with the ICDR (“**Request for IRP**”). The Claimant attached a number of Annexes, and the Expert Report of Mr. Steven Tepp.

²⁴ The standing panel of reviewers contemplated in Article, IV, Section 3, Paragraph 6, of the ICANN Bylaws has not been established. Claimant’s Supplementary Request for Independent Review Process (“**Supplementary IRP Request**”), Annex S-8.

49. The Request for IRP invokes ICANN's accountability mechanisms for the independent review of ICANN Board action, as set out in Article IV, Section 3, of the ICANN Bylaws.
50. Also on 5 December 2014, the Claimant filed a Request for Emergency Arbitrator and Interim Measures of Protection ("**Emergency Request**"). In the Emergency Request, the GCC sought:
 - a. Timely appointment of an Emergency Arbitrator to hear its request for emergency relief to preserve its right to a meaningful independent review; and
 - b. An order enjoining ICANN from executing the ".persiangulf" registry agreement with Asia Green while the Request for IRP was pending.
51. On 9 December 2014, ICANN consented to the appointment of an Emergency Panelist. Mr. John A.M. Judge was appointed on the same day to fulfil that role.
52. On 17 December 2014, the Respondent submitted its Response to Gulf Cooperation Council's Request for Emergency Relief, asking that the Emergency Request be denied.
53. On 22 December 2014, the Claimant filed its Reply in Support of its Request for Emergency Arbitrator and Interim Measures of Protection. This submission included the Witness Statement of Mr. Al Marzouqi ("**Al Marzouqi Statement**").
54. On 23 December 2014, the Emergency Panelist conducted a hearing by telephone conference call.
55. On 20 January 2015, ICANN submitted its Response to Claimant's Request for Independent Review Process.
56. On 12 February 2015, Mr. Judge issued his Interim Declaration on Emergency Request for Interim Measures of Protection ("**Emergency Declaration**"). The Conclusion of the Emergency Declaration provided as follows:

96. Based on the foregoing analysis, this Emergency Panel makes the following order by way of an interim declaration and recommendation to the ICANN Board that:

- a. *ICANN shall refrain from taking any further steps towards the execution of a registry agreement for .PERSIANGULF, with Asia Green or any other entity, until the IRP is completed, or until such other order of the IRP panel when constituted;*
- b. *This order is without prejudice to the IRP panel reconsidering, modifying or vacating this order and interim declaration upon a further request;*
- c. *This order is without prejudice to any later request to the IRP panel to make an order for the provision of appropriate security by the Claimant; and*
- d. *The costs of this Request for Interim Measures shall be reserved to the IRP panel.*²⁵

57. Following the Emergency Declaration, the present IRP Panel was constituted. The chair was appointed on 4 December 2015.
58. On 6 January 2016, the IRP Panel held a preparatory conference call with the Parties. The Panel issued Procedural Order No. 1 on 8 January 2016 (corrected 13 January 2016), establishing the submissions and setting the timetable for the proceedings. The merits hearing by telephone conference call was scheduled for 17 May 2016.
59. Pursuant to Procedural Order No. 1, the GCC filed its Supplementary Request for Independent Review Process ("**Supplementary IRP Request**") on 12 February 2016. This submission included the Supplementary Witness Statement of Mr. Al Marzouqi ("**Supplementary Marzouqi Statement**"), which described the GCC's unsuccessful attempts to conduct a conciliation process with both ICANN and Asia Green after the GCC filed its Request for IRP.
60. On 14 March 2016, ICANN filed its Response to Claimant's Supplementary IRP Request ("**Response to Supplementary IRP Request**"). As was the case in the emergency proceedings, ICANN did not file any witness statements.
61. On 29 March 2016, the GCC submitted its Reply in Support of its Supplementary Request for IRP, with no additional witness statements. ICANN's Response followed on 12 April 2016, ("**Rejoinder to IRP Request**"), again with no witness statements.

²⁵ Interim Declaration on Emergency Request for Interim Measures of Protection ("**Emergency Declaration**"), ¶ 96.

62. On 7 May 2016, the Claimant requested that the hearing be postponed until July 2016. ICANN did not oppose. The IRP Panel rescheduled the hearing for 7 July 2016.
63. The hearing took place by telephone conference call on 7 July 2016, lasting approximately two hours. The IRP Panel heard submissions from counsel for both Parties. As agreed by the Parties, there was no fact or expert witness testimony.
64. Having determined that there was no need for further submissions, the Panel declared the hearing officially closed on 19 October 2016, except as to costs.

VI. THE RELIEF SOUGHT

65. The Claimant GCC seeks a Declaration:
 - a. stating that the ICANN Board violated ICANN's Articles, Bylaws and the New gTLD Application Guidebook of 4 June 2012;
 - b. recommending to the Board that ICANN take no further action on the ".persiangulf" gTLD, including by enjoining ICANN from signing the registry agreement with Asia Green, or any other entity;
 - c. awarding the GCC its costs in this proceeding; and
 - d. awarding such other relief as the Panel may find appropriate or that the GCC may request.²⁶
66. The Respondent ICANN seeks a Declaration:
 - a. denying the GCC's IRP Request;
 - b. awarding ICANN its reasonable fees and costs incurred, including legal fees, if it is the prevailing party.²⁷

²⁶ Supplementary IRP Request, ¶ 63.

²⁷ Response to Supplementary IRP Request, ¶¶ 30 and 32.

VII. JURISDICTION: TIMELINESS OF THE REQUEST FOR IRP

A. The Issue and Legal Framework

67. A preliminary jurisdictional issue for decision is whether the GCC's Request for IRP is time-barred. ICANN argues that the Request is time-barred; the GCC disagrees.
68. As a starting point, the 30-day deadline for challenging an ICANN Board action appears in Article IV, Section 3, Paragraph 3 of the ICANN Bylaws ("**IRP Deadline**"), which provides in relevant part:

A request for independent review must be filed within thirty days of the posting of the minutes of the Board meeting (and the accompanying Board Briefing Materials, if available) that the requesting party contends demonstrates that ICANN violated its Bylaws or Articles of Incorporation.

69. Article IV, Section 3, of the ICANN Bylaws, together with the ICANN document entitled "Cooperative Engagement Process – Requests for Independent Review" dated 11 April 2013 ("**CEP-IRP Document**"),²⁸ codify two exceptions to the IRP Deadline.
- a. The IRP Deadline is tolled if the parties are engaged in a Cooperative Engagement Process ("**CEP**"), referred to in Paragraph 14 of Article IV, Section 3, of the ICANN Bylaws:

Prior to initiating a request for independent review, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. The cooperative engagement process is published on ICANN.org and is incorporated into this Section 3 of the Bylaws.

Pursuant to the CEP-IRP Document (pp. 1-2):

If ICANN and the requestor have not agreed to a resolution of issues upon the conclusion of the cooperative engagement process, or if issues remain for a request for independent review, the requestor's time to file a request for independent review designated in the Bylaws shall be extended for each day of the cooperative engagement process, but in no event, absent mutual written agreement by the parties, shall the extension be for more than fourteen (14) days.

²⁸ Response to Claimant's Request for Independent Review Process ("**Response to IRP Request**"), Exh. R-5; Supplementary IRP Request, Exh. S-10.

b. Pursuant to the CEP-IRP Document (para. 6), ICANN and an IRP requestor may agree, in writing, to extend the IRP Deadline.

70. To recall, certain relevant facts are undisputed. Following the Durban GAC meeting and Communiqué, ICANN posted the Durban Minutes and related materials on 30 September 2013. The GCC filed its Request for IRP on 5 December 2014. Obviously, 5 December 2014 is more than 30 days after the 30 September 2013 posting of the Durban Minutes and related materials.
71. It is also undisputed that the Parties neither initiated a formal CEP nor agreed in writing to extend the IRP Deadline.
72. Accordingly, the issue before the IRP Panel is whether the 30-day IRP Deadline was tolled or otherwise extended despite the absence of a CEP or written extension of the IRP Deadline.

B. The Respondent's Position

73. ICANN takes the firm legal position, as advocated in both its written submissions and during the 7 July 2016 hearing, that the IRP Deadline is mandatory and cannot be tolled or extended for non-codified reasons. To allow equitable tolling in general would be to create unacceptable uncertainty for gTLD applicants and IRP applicants. To allow tolling in the instant circumstances for the GCC, which waited over a year to file its IRP Request, would be to provide impermissible special treatment.
74. As for the specific circumstances alleged by the GCC (described below), ICANN denies that any dealings and communications between its officials and GCC representatives effectively substituted for the CEP process or excused the GCC's failure to initiate the CEP process. To recall, as in the Emergency Request proceedings, ICANN presented no witness statements from named or unnamed representatives or any other factual evidence.

C. The Claimant's Position

75. The GCC presents an equitable reliance defense to its delayed initiation of the IRP process. The GCC argues, as a general matter, that ICANN should acknowledge non-written tolling

circumstances and, in the specific circumstances here, that the IRP Deadline must be deemed tolled by reason of the explicit and/or implicit representations made by ICANN officials to Mr. Al Marzouqi between October 2013 and November 2014.

76. The GCC asserts that *“following the Board’s September 2013 Board Action, ICANN represented repeatedly – through its words and actions – to the GCC that the deadline to file the IRP had not yet passed”*.²⁹
77. The GCC relies primarily on the Al Marzouqi Statement, and a 9 July 2014 letter from Mr. Mohammed Al Ghanim, Director General of the UAE Telecommunications Regulatory Authority, to ICANN CEO Mr. Fadi Chehade, to support this assertion. According to Mr. Al Marzouqi:
 - a. He and other GAC members expected that ICANN would treat the “.persiangulf” gTLD application in the same way it had treated the “.islam” and “.halal” applications, because all three applications *“lack community support, and the .PERSIANGULF gTLD application, unlike the .ISLAM and .HALAL gTLD applications, also is strongly opposed by the Arab community because ‘Persian Gulf’ is a disputed name”*.³⁰
 - b. After the posting of the ICANN Board decision to proceed with the “.persiangulf” application on 30 September 2013, he *“reached out to [his] ICANN counterparts to initiate an attempt at resolution”* and they *“instructed [him] to wait until the Independent Expert issued a declaration on the GCC’s Community Objection”*, which he did.³¹
 - c. After Judge Schwebel dismissed the Community Objection on 30 October 2013, Mr. Al Marzouqi again reached out and his *“ICANN counterparts advised they would get back to [him]”*.³²

²⁹ Supplementary IRP Request, ¶ 35.

³⁰ Al Marzouqi Statement, ¶ 7.

³¹ Ibid., ¶¶ 8-10.

³² Ibid., ¶ 11.

- d. “After several months of dialogue with [his] ICANN counterparts proved unsuccessful”, he arranged for “high-level” meetings “in hopes of facilitating a resolution”, which arrangements took substantial time due to schedules.³³
- e. In June 2014, Mr. Al Marzouqi and other GCC representatives met with the ICANN CEO, Mr. Chehade, during the GCC Telecom Council Ministers Meeting in Kuwait City.³⁴ According to Mr. Al Marzouqi, GCC representatives reiterated their objections to the “.persiangulf” application in that meeting.
- f. Mr. Al Marzouqi’s testimony about the meeting is corroborated by a 9 July 2014 letter from Mr. Al Ghanim to Mr. Chehade.³⁵ Mr. Al Ghanim reiterated the GCC’s concerns about lack of community involvement and support for the gTLD, which is “problematic and refers to a geographical place with disputed name”, and added:

While the GAC did not issue an advice objecting against the Application (due to lack of consensus because one particular country did not agree to the objection), this does not mean those countries which are part [sic] of the community targeted by the Application are agreeing to the Application to proceed and this certainly does not mean that ICANN should ignore this fact and continue to allow the Application to proceed.

.... The security, functionality and stability of Internet rely greatly on a successful operation of the DNS system. It is worrying to see how a TLD being opposed by majority of the community targeted would be able to operate and sustain. We believe the motive behind this Application has nothing to do with Internet community interest, nor commercial interest. We request ICANN to analyze the Application from financial and sustainability angle given that the community continues to oppose the Application.³⁶

- g. Thereafter, Mr. Al Marzouqi’s “ICANN counterparts again advised [him] that they had taken the GCC’s position under advisement and would get back to the GCC with an answer”.³⁷ That answer, testified Mr Al Marzouqi, came in September 2014, when Mr. Al Marzouqi’s “ICANN counterparts ... suggested to

³³ Ibid., ¶¶ 12-13.

³⁴ Ibid., ¶ 14.

³⁵ Ibid., attached Letter from Mr. Mohammed Al Ghanim to Mr. Fadi Chehade, 9 July 2014 (“Al Ghanim Letter”).

³⁶ Al Ghanim Letter, p. 2.

³⁷ Al Marzouqi Statement, ¶ 15.

[him] *that the GCC's only recourse toward resolution may be to file a request for independent review of ICANN's Board action*" (emphasis in original).³⁸

- h. Mr. Al Marzouqi spoke again with his "*ICANN counterparts*" in October 2014 at ICANN meetings in Los Angeles. As "*ICANN's handling of geographic gTLD applications was a topic of discussion at those meetings*", he "*remained hopeful that the GCC and ICANN could finally resolve the dispute*".³⁹
- i. In November 2014, there having been no resolution at the October meetings, Mr. Al Marzouqi advised the GCC to proceed with the IRP process.⁴⁰ He learned only in December 2014 that ICANN intended to sign the registry agreement for ".persiangulf", after which he advised the GCC to file the Emergency Request "*to ensure that the independent review process would not be rendered meaningless*".⁴¹
- j. According to Mr. Al Marzouqi: "*At no time from September 2013 to November 2014 did ICANN state, let alone suggest, that if the GCC engaged in resolution efforts it would be time-barred from seeking an independent review of the September 2013 Board action*".⁴²

78. Mr. Marzouqi, in his Supplementary Witness Statement, describes further attempts at conciliation with both ICANN and Asia Green after the GCC filed its IRP Request.⁴³ These attempts proved unsuccessful.

79. The GCC also relies, in support of its equitable reliance defense, on an email dated 19 December 2014 from Mr. Eric Enson, outside counsel to ICANN, to Mr. Kamran Salour, outside counsel to the GCC ("**ICANN Counsel Email**").⁴⁴ The relevant language is as follows:

³⁸ Ibid., ¶16.

³⁹ Ibid., ¶ 17.

⁴⁰ Ibid., ¶ 18.

⁴¹ Ibid., ¶ 22.

⁴² Ibid., ¶ 19.

⁴³ Supplementary Marzouqi Statement, Exh. S-9, ¶¶ 2-16.

⁴⁴ Supplementary Request for IRP, Exh. S-11.

Fourth, during the call yesterday, you mentioned the possibility of entering a Cooperative Engagement Process (“CEP”), as set forth in ICANN’s Bylaws. A CEP is supposed to take place before the filing of an IRP in the hope of avoiding, or at least minimizing, the costs associated with an IRP. That, obviously, did not happen in this matter. In addition, a CEP is supposed to be a dialogue between the parties, rather than counsel for the parties. ICANN is always willing to discuss amicable resolutions of issues, but I think we need additional information from the GCC before agreeing to engage in a CEP, at this point. First, ICANN would like to know whether the GCC believes that there is a realistic possibility that the GCC would dismiss its IRP based on CEP discussions. The reason this is important to ICANN is because ICANN representatives informed GCC representative[s], on several occasions, that the CEP was available to the GCC and should be invoked before the filing of an IRP.

80. The GCC considers this email to evidence ICANN’s earlier tolling of the 30-day IRP Deadline, because ICANN expressed willingness to enter into a CEP despite the GCC’s initiation of the IRP process on 5 December 2014.⁴⁵

D. The IRP Panel’s Analysis and Decision

81. Turning first to the Parties’ general arguments on whether and how the IRP Deadline can be tolled or extended other than by the two codified exceptions, we do not consider it our role as an IRP Panel to issue general directives. It suffices to record that, under an equitable reliance theory, a requesting party should be allowed to request an IRP after expiry of the 30-day IRP Deadline if that party can show reliance on a representation or representations by ICANN inviting or allowing extension of the IRP Deadline. Otherwise, ICANN would be allowed “to blow hot and cold” and ultimately undermine its own mandate. Such contradictory actions would be inconsistent with, for example, the core value set out in Article 1, Section 2, of the ICANN Bylaws, of ICANN’s “[m]aking decisions by applying documented policies neutrally and objectively, with integrity and fairness”.
82. Beyond that general proposition, our Declaration must be focused on the facts and circumstances of the case before us. The issue is whether ICANN did make such a representation or representations here, either explicitly or implicitly by conduct.

⁴⁵ Claimant’s Reply in Support of its Supplementary Request for IRP, ¶ 26.

83. We have carefully examined the GCC’s evidence of contacts and communications between GCC and ICANN representatives between September 2013 and November 2014. Although the Marzouqi Statement was conclusory and short on detail, for example, in not providing names for his “*ICANN counterparts*” who participated in discussions after September 2013, he did provide a credible account of a series of communications with ICANN, commensurate with the credible level of serious GCC concerns about registry of “.persiangulf” as a new gTLD.
84. We have not been helped by any contradictory or confirming witness statements, or other evidence, from ICANN, about that alleged series of contacts and communications. It is striking that ICANN does not dispute the fact that the meeting with its most senior representative, CEO Chehade, occurred in June 2014. ICANN does dispute other points of Mr. Al Marzouqi’s testimony, for example, his description of the instruction by unnamed ICANN officials that the GCC wait until after the Expert Panelist’s decision on the Community Objection to commence an IRP process, and his testimony that unnamed ICANN officials suggested an IRP process in September 2014 and participated actively in negotiations thereafter. However, ICANN provided no witness statements from ICANN representatives who did participate in the June 2014 meeting, no copy of any written response from ICANN to the Al Ghanim letter about the content of the discussions in that meeting, or any other factual evidence whatsoever countering Mr. Al Marzouqi’s account.
85. Having weighed such evidence as there is in the record, we find as follows, on the balance of probabilities:
- a. In October 2013, ICANN requested the GCC, through Mr. Al Marzouqi, not to commence dispute resolution proceedings – which by definition encompass an IRP process – until the Expert Panelist had resolved the GCC’s Community Objection to the “.persiangulf” gTLD application. This request was in effect a representation that the IRP Deadline was tolled until Judge Schwebel issued his expert decision, regardless of when that might be.
 - b. The GCC relied on that representation from ICANN, to the effect that the 30-day IRP Deadline was not yet running, in not filing an IRP request within 30 days

after the posting of the GAC's Durban Minutes and related materials on 30 September 2013.

- c. After Expert Panelist Schwebel dismissed the GCC's Community Objection on 30 October 2013, which happened to be the expiry of the IRP Deadline, ICANN continued to welcome – if not actively encourage – a series of communications and meetings to discuss the GCC's objections to registration of “.persiangulf”. Having previously tolled the IRP Deadline, if ICANN at that point believed that the 30-day deadline was running or had expired, it is reasonable to assume that ICANN would have told the GCC. It is thus reasonable – indeed, necessary – to conclude that, while those communications and meetings were taking place, the IRP Deadline remained tolled.
- d. By far the most compelling evidence is that the ICANN CEO himself, Mr. Chehade, met with Mr. Al Marzouqi and other GCC representatives in June 2014 to discuss the GCC's objections to the “.persiangulf” gTLD application, a meeting testified to by Mr. Al Marzouqi and corroborated by the 9 July 2014 Al Ghanim Letter. Regardless of whether ICANN officials thereafter expressly advised the GCC that ICANN had taken the GCC's objections under advisement, as Mr. Al Marzouqi testified, CEO Chehade's personal involvement made it reasonable for the GCC to consider that their opposition to “.persiangulf” remained under active consideration by the ICANN Board through July 2014.
- e. Not long thereafter, in September 2014, an ICANN representative or representatives suggested to Mr. Al Marzouqi that an IRP request might be the GCC's only recourse toward resolution. Considering that the 30-day IRP Deadline had passed over a year before, and assuming good faith on the part of ICANN throughout, it is reasonable that the GCC considered the IRP Deadline to remain tolled at this time.
- f. The GCC pursued a further settlement attempt with ICANN at meetings in Los Angeles in October 2014, which reflects that the GCC continued to rely on ICANN's holding the IRP Deadline open in hopes of settlement. Those hopes

dissipated by November 2014 when the GCC received nothing positive from the Los Angeles meetings.

- g. At this point, absent any further representations from ICANN about further negotiations, the limitations period reasonably ceased to be tolled and the IRP Deadline started to run.
 - h. On 5 December 2014, within the 30-day IRP Deadline, the GCC filed its Request for IRP.
86. Exchanges thereafter – in specific, the ICANN Counsel Email confirming that ICANN had entertained a CEP process – support the conclusion that ICANN itself considered the deadline for the submission of an IRP to have been tolled. Those exchanges show that ICANN could and did continue discussions with the GCC aimed at resolving the “.persiangulf” gTLD dispute by way of a formal or informal CEP process even after the 30-day IRP Deadline had passed and before the GCC filed a Request for IRP. As confirmed in the ICANN Counsel Email, the CEP is a dispute resolution mechanism that typically precedes, and is aimed at avoiding, an IRP filing. We need not interpret Mr. Enson’s email as confirmation that a CEP took place before the IRP was filed, to find that ICANN reasonably appeared to the GCC to remain open to a CEP, with certain conditions, well after 30 October 2013.
87. While there was no formal CEP, we conclude from the evidentiary record overall that ICANN explicitly and implicitly cooperated in a shadow conciliation process with the GCC. It was reasonable for the GCC to continue to participate in that process, without concern that ICANN would retroactively impose a strict 30 October 2013 time-bar for an IRP request should the shadow conciliation process fail.
88. In coming to this conclusion, we have not been swayed by the GCC’s umbrella argument that ICANN should have formally notified the GCC, at very least in the December 2014 ICANN Counsel Email, that the IRP Deadline was mandatory and had expired by 30 October 2014. Nor have we been swayed by ICANN’s mirror argument that the GCC should have formally reserved and documented its position that the IRP Deadline was tolled by ICANN’s conduct. It is because neither Party took such formal action that this

dispute comes before this Panel, and we are tasked with evaluating the legal import of the actions the Parties did take.

89. Nor have we been swayed by the political context. While the well-known sensitivities around the disputed names “Persian Gulf” and “Arabian Gulf” cannot **excuse** ICANN’s ignoring its own IRP Deadline for over a year, which implicitly encouraged the GCC to postpone filing its IRP Request, those sensitivities perhaps **explain** ICANN’s reluctance to apply the IRP Deadline strictly in this case. It would seem that both Parties hoped that such a political dispute would somehow resolve itself.
90. Although neither Party asked the IRP Panel to take any formal action in relation to the status of the Emergency Declaration, it should be clear from our conclusion that we agree with the assessment of Mr. Judge that *“the evidence of the ongoing contact between representatives of ICANN and the GCC from October 2013 to November 2014 supports a reasonable possibility that the time period for the filing of the IRP has been extended by the conduct of ICANN representatives and that the delay, as explained, is reasonable”*.⁴⁶ The Emergency Panelist cautioned that *“the evidentiary record is far from complete and additional evidence can be expected on this issue on the IRP itself”*,⁴⁷ but, as it transpired, ICANN did not provide any such additional evidence concerning the conduct of its officials.
91. To conclude, the Panel finds that: (a) at no point did the GCC cease its objections to ICANN’s registration of the “.persiangulf” gTLD; (b) through its conduct, ICANN made representations that the IRP Deadline, measured against the 30 September 2013 Board action, was tolled; (c) the GCC relied on those representations, in hopes of a resolution, in postponing a formal IRP process; and (d) the GCC timely submitted its IRP Request on 5 December 2014.

⁴⁶ Emergency Declaration, ¶ 83.

⁴⁷ Ibid., ¶¶ 83 and 86.

VIII. THE MERITS

A. The Standard of Review

92. As a preliminary matter, the Panel considers the standard of review to be clear. Pursuant to Article IV, Section 3, Paragraph 4, of the ICANN Bylaws (echoed in Article 8 of the Supplementary Procedures), we are:

charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. . . . [and] must apply a defined standard of review to the IRP request, focusing on:

- a. did the Board act without conflict of interest in taking its decision?*
- b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and*
- c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?*

(Emphasis added.)

93. The IRP Panel agrees with the GCC that this is a *de novo* standard of review, without a component of deference to the ICANN Board with regard to the consistency of the contested action with the Articles and Bylaws.⁴⁸ This is consistent with the very name of the IRP process – an **independent** review of the contested Board action. Other IRP Panels have recognized and applied this *de novo* standard of review.⁴⁹
94. We also agree with ICANN that an IRP Panel cannot abuse this independence to substitute its own view of the underlying merits of the contested action for the view of the Board, which has substantive discretion.⁵⁰ This proposition is reflected in the language of Article IV, Section 3, Paragraph 4, of the Bylaws: an IRP Panel is not entrusted with second-

⁴⁸ Supplementary IRP Request, ¶¶ 9-11.

⁴⁹ Relying upon Annex S-3, 19 February 2010, Final Declaration in *ICM Registry LLC v. ICANN*; Annex S-4, 3 March 2015, Final Declaration in *Booking.com v. ICANN*; Annex S-5, 9 July 2015 Final Declaration in *DotConnectAfrica Trust v. ICANN*.

⁵⁰ Response to Claimant's Supplementary IRP Request ("Response to Supplementary IRP Request"), ¶ 5; Annex S-2, 9 October 2015, Final Declaration in *Vistaprint v. ICANN*, ¶ 124; Exh. R-24, Final Declaration in *Merck v. ICANN*, ¶ 21; Annex S-4, Final Declaration in *Booking.com v. ICANN*, ¶ 108.

guessing the Board, but rather “*with declaring whether the Board has acted consistently with the provisions of [the ICANN] Articles of Incorporation and Bylaws*”.

95. To recall, the contested ICANN Board action here is the Board’s decision on 10 September 2013 to proceed with the “.persiangulf” gTLD application. It is irrelevant whether the IRP Panel considers this decision to be right or wrong on the merits, much less to be politically wise or unwise. Our role is to examine the **process** of the Board’s decision-making, in specific to answer the questions in Article IV, Section 3, Paragraph 4, of the Bylaws: (a) did the Board act without conflict of interest? (b) did the Board exercise due diligence and care in having a reasonable amount of facts? and (c) did the Board members exercise independent judgment, believed to be in the best interests of ICANN?

96. If the answer to any of those questions is “no”, the GCC will prevail in this Request.

B. The Claimant’s Standing to Pursue the IRP

97. A second preliminary question goes, as we find below, to the GCC’s standing to pursue this IRP proceeding.

98. The Parties devoted substantial attention in their written and oral submissions to the question of the type and level of harm that the GCC must establish it has suffered or will suffer as a result of the contested ICANN Board action. This question arises from the IRP-related test in Article IV, Section 3, Paragraph 2, of the ICANN Bylaws:

*Any person **materially affected** by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws **may submit a request for independent review** of that decision or action. In order to be **materially affected**, the person must suffer **injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation**, and not as a result of third parties acting in line with the Board's action. (Emphasis added.)*

99. The Parties agree that the term “*materially affected*” must be distinguished from the term “*material detriment*”, which is relevant in assessing the merits of a Community Objection to a gTLD application. One of the four elements to be proven for a successful Community Objection is that the application “*creates a likelihood of **material detriment** to the rights or legitimate interests of a significant portion of the community to which the string may be*

explicitly or implicitly targeted” (emphasis added). Factors evidencing material detriment go to actual operation of the gTLD by the applicant, including the likelihood that operation will cause reputational, security, and/or economic harm to the community represented.

100. ICANN, however, effectively equates the two terms “*materially affected*” and “*material detriment*” by using them interchangeably. The basic inquiry for both tests, according to ICANN, is whether an IRP requestor will be materially injured or harmed by the actual operation of the relevant string.⁵¹ In ICANN’s view, the GCC, however, has failed to identify any legally recognizable harm it will suffer if “.persiangulf is registered; the contention that a “.persiangulf” gTLD will create the false impression that the Gulf Arab nations accept the disputed name “Persian Gulf” is not a cognisable harm.⁵² To support its position, ICANN puts substantial weight on the findings of the Independent Objector and the Expert Panelist that the GCC fell short of proving that it would suffer harm reaching the level of “*material detriment*”.⁵³

101. In comparison, the GCC in its Supplementary IRP Request argues that the only relevant inquiry is whether it suffered injury or harm connected to ICANN’s alleged action inconsistent with the ICANN Articles or Bylaws.⁵⁴ The IRP Panel, according to the GCC, is to examine only whether that action – here, the Board’s 10 September 2013 decision to allow processing of the “.persiangulf” application – did cause harm “*materially affect[ing]*” the GCC and its members.⁵⁵ The GCC identifies that harm to be the denial of its due process rights to an ICANN decision on the contested “.persiangulf” gTLD application in which its objections were fully considered by the Board, and apparent discrimination against its Arab members in favor of Iran.⁵⁶

102. The IRP Panel agrees with ICANN that the question of whether the GCC was “*materially affected*” for purposes of Article IV, Section 3, Paragraph 2, of the ICANN Bylaws is one

⁵¹ Rejoinder to ICANN’s Response to Gulf Cooperation Council’s Reply in Support of Supplementary Request for Independent Panel Review (“**Rejoinder to IRP Request**”, ¶ 15.

⁵² *Ibid.*, ¶¶ 13-15; Response to Supplementary IRP Request, ¶ 25.

⁵³ Rejoinder to IRP, ¶ 14.

⁵⁴ Supplementary IRP Request, ¶ 41. The GCC took a position closer to ICANN’s in this respect in its original Request for IRP; see, e.g., ¶¶ 70-74.

⁵⁵ Supplementary IRP Request, ¶ 49.

⁵⁶ *Ibid.*, ¶ 42.

of standing.⁵⁷ This is the logical meaning of the language in Paragraph 2 that a “*person materially affected*” by an ICANN Board action perceived to be inconsistent with the Bylaws or Articles “*may submit a request for independent review*”; this cannot and does not presuppose a successful request for IRP. As a standing question, this question precedes the core IRP question of whether the ICANN Board acted inconsistently with its Articles or Bylaws.⁵⁸

103. However, we cannot agree with ICANN’s effective conflation of the two tests of “*materially affected*” and “*material detriment*”. Only the former test appears in, and is relevant to, the IRP-related standing test in Article VI, Section 3, Paragraph 2, of the ICANN Bylaws. To apply the “*material detriment*” test, which is a critical component of the Community Objection evaluation process under the Guidebook, would be to put the IRP Panel into a role it does not have – to examine and offer its views on the merits of the “.persiangulf” gTLD application under the relevant ICANN criteria. The determinations of the Independent Objector and the Expert Panelist, which were made in the Community Objection context and hence necessarily focused on the likelihood of “*material detriment*” to the interests of the Gulf community, are therefore irrelevant.⁵⁹
104. In this connection, we do not need to address the submissions of the Parties as to whether the GCC could have minimized or avoided injury or harm by applying for an “.arabiangulf” gTLD, and whether such an application is or is not foreclosed in the future. This may have been a factor for the Independent Objector and the Expert Panelist to consider in the Community Objection context, but it is not a proper issue of standing in an IRP case.
105. We recognize that the “*materially affected*” test in Article IV, Section 3, Paragraph 2, of the ICANN Bylaws is defined in relation to “*injury or harm that is directly or causally connected to the Board’s alleged violation of the Bylaws or the Articles*”. As Paragraph 2 goes to standing, however, it cannot reasonably be interpreted as requiring an IRP panel to find proof of concrete and measurable injury or harm at the time an IRP request is filed. It

⁵⁷ Rejoinder to IRP Request, ¶ 16.

⁵⁸ *Ibid.*, ¶ 16.

⁵⁹ Supplementary IRP Request, ¶¶ 43-49; The Gulf Cooperation Council’s Reply in Support of its Supplementary Request for Independent Review Process (“**Reply to IRP Request**”), ¶ 21.

must suffice for the IRP requestor, to meet the standing test, to allege reasonably credible injury or harm connected to the contested ICANN Board action. We are satisfied that the GCC has done so here by describing the harm caused to its Gulf members' due process rights, by definition, if the processing of the ".persiangulf" gTLD application were to continue on the basis of a Board decision made without regard to the GCC's objections. We now turn to the core merits question of whether the GCC has proven such inconsistent action by ICANN.

C. The Claimant's Position

106. The GCC's main submission is that ICANN failed to follow the GAC's advice from the Durban meeting, as well as the Guidebook procedures, in deciding in September 2013 to allow further processing of the ".persiangulf" gTLD.
107. The GCC relies on Module 3.1 of the Guidebook, which sets out three possible forms for GAC advice to the ICANN Board. These are set out at paragraph 19 above. Given that the GAC did not issue Consensus GAC Advice that the ".persiangulf" gTLD application should **not** proceed or advice that the application should not proceed unless remediated, by elimination the only available form of advice was an "*expression of concerns in the GAC*" about Asia Green's application, meant to prompt a dialogue between the GAC and the Board.⁶⁰ The GAC did identify such concerns, in the Durban Minutes, which explicitly: (i) referred to the opinions of GAC members from the UAE, Oman, Bahrain and Qatar that the application should not proceed; (ii) noted that the GAC had heard "*opposing views*" on the application; and (iii) concluded that "*it was clear that there would not be consensus on an objection*".⁶¹ In the GCC's view, these vigorous comments were a fully recognizable expression of its members' concerns.
108. The GCC disagrees with ICANN that only the Durban Communiqué constituted recognizable GAC advice to the ICANN Board. The GCC relies on Principle 51 of GAC's Operating Principles, which does not limit the GAC's advice to a communiqué.⁶² Further, ICANN's failure to review the Durban Minutes before passing its resolution on the

⁶⁰ Supplementary IRP Request, ¶ 20.

⁶¹ Ibid., ¶ 18; Reply to IRP Request, ¶ 6.

⁶² Reply to IRP, ¶ 8.

“.persiangulf” application was, in itself, a failure to exercise due diligence in making the decision, in violation of Article IV, Section 3, Paragraph 4(b), of the ICANN Bylaws.⁶³

109. In light of the foregoing, the ICANN Board was obligated to enter into a dialogue with the GAC to understand its members’ concerns, and to give reasons for its ultimate decision to allow Asia Green’s application to move forward – which ICANN failed to do.
110. The GCC argues in the alternative that, even if ICANN was somehow correct in following the GAC’s non-compliant advice to allow the “.persiangulf” application to proceed, ICANN violated several other Articles and Bylaws. Among others, the GCC identifies:

- a. Bylaws, Article I, Section 2:

In performing its mission, the following core values should guide the decisions and actions of ICANN:

....

4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

....

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

....

11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments’ or public authorities’ recommendations.

- b. Bylaws, Article II, Section 3:

ICANN shall not apply its standards, policies, procedures or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

- c. Bylaws, Article III, Section 1:

⁶³ Reply to IRP Request, ¶ 10.

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. ,

d. Articles of Incorporation, Article 4:

The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets.

111. The GCC puts special emphasis on Paragraph 2.1(b) of the GAC Principles Regarding New gTLDs, which directs that “*New gTLDs should respect: ... the sensitivities regarding terms with national, cultural, geographic and religious significance*”.
112. Against this backdrop of ICANN constituent documents, the GCC argues that the ICANN Board failed to collect and independently assess all relevant facts before resolving to allow the “.persiangulf” gTLD application to proceed. The Board failed to review the GAC’s Durban Minutes, which flagged that there were serious objections to the application and hence no consensus in favor of its proceeding. Nor did the Board explain, or even give any indication of, the reasons for its decision to allow the vigorously contested application to proceed. The bare Board resolution of 10 September 2013 gives no hint that the Board fulfilled its obligation to assess and balance the competing core values of ICANN. Neither that resolution nor any other document contains any reference to the ICANN core values guiding the Board in its 10 September 2013 decision on the “.persiangulf” application or any statement as to how the Board balanced core values that it found to be competing.
113. The Board also discriminated against the GCC by giving credence only to the Iranian position at the GAC and by ignoring the GCC’s Community Objection and strong government opposition. If registered with Asia Green, the “.persiangulf” string will be discriminatory because “it will falsely create the perception that the GCC accepts the disputed ‘Persian Gulf’ name”.⁶⁴ This is particularly egregious because the Persian

⁶⁴ Request for IRP, ¶ 58.

community already has the benefit of the “.pars” string, already registered with Asia Green for purposes overlapping with the “.persiangulf” application.

114. Further, according to the GCC, the Board handled Asia Green’s “.persiangulf” application inconsistently with Asia Green’s “.halal” and “.islam” applications. In those cases, although the Independent Expert dismissed the Community Objections because he did not find substantial community opposition, the Board intervened to stop the processing of both strings. Here, where the Community Objection and the Durban Minutes documented substantial community opposition, the Board nonetheless decided to allow continued processing of the “.persiangulf” application.
115. Overall, says the GCC, the Board’s NGPC acted unfairly in a non-transparent and discriminatory manner, without sensitivity to the national, cultural and geographic issues in the Gulf.⁶⁵ In reviewing the Board’s decision to allow Asia Green’s “.persiangulf” application to go forward, the Panel should follow the path of the IRP Panel in the *DotConnectAfrica Trust v ICANN* case. There, the IRP Panel held that the Board had breached its transparency obligations by simply adopting the GAC’s consensus advice not to proceed with the application for the “.africa” gTLD, stating that it “*would have expected the ICANN Board to, at a minimum, investigate the matter further before rejecting [DotConnectAfrica] Trust’s application*”.⁶⁶

D. The Respondent’s Position

116. ICANN’s defense to the GCC’s argument that the Board failed to follow the GAC’s advice is straightforward: the ICANN Board followed the GAC’s advice to the letter. According to ICANN, the GAC did **not** advise of any member concerns regarding the “.persiangulf” gTLD application, and so the proper course was for the Board’s NGPC to allow Asia Green’s application to progress. The Durban Communiqué expressly stated that the GAC had “*finalised its consideration ... and does not object to [the “.persiangulf” application] proceeding*”, without advising of any concerns whatsoever. ICANN emphasizes that the Board did not make a decision to approve the “.persiangulf application” based on the

⁶⁵ Supplementary IRP Request, ¶ 23-26; Reply to IRP Request, ¶¶ 16-18.

⁶⁶ *Ibid.*, Exh. S-5; Final Declaration, *DotConnectAfrica Trust v ICANN*, 9 July 2015, ¶ 113.

GAC's advice, but simply resolved to allow the ICANN staff to continue to process the application.⁶⁷

117. ICANN relies on GAC Operating Principles 51 to argue that the Durban Minutes, to the extent those Minutes say anything more than the Durban Communiqué, are not an official statement of GAC advice to the ICANN Board.⁶⁸ Nor were the Durban Minutes approved or posted until November 2013, and so they were not even before the Board for consideration at its meeting on 10 September 2013 to review and pass resolutions on the Durban Communiqué and Scorecard items. Further, in ICANN's view, the Durban Minutes are consistent with the Dublin Communiqué in reporting that there was no advice against the “.persiangulf” application proceeding. Comments made by individual GAC members at the Durban meeting, recorded in the Minutes, do not constitute GAC advice triggering Board duties under Module 3 of the *Guidebook*.⁶⁹
118. As for the GCC's alternative argument based on ICANN's failure to meet its mission and core value standards, ICANN denies both the theory and the facts. In ICANN's view, the Board independently evaluated the “.persiangulf” gTLD application, in an open and transparent fashion, as evidenced by: the posting of the Durban Communiqué and subsequent public comment period; the Board meetings to determine actions based on the GAC's advice in the Durban Communiqué, with a public record of the discussion on each item in the Durban Scorecard responding to the GAC's advice; and a unanimous vote adopting resolutions based on the Scorecard, again publicly posted. Nor can it be inferred that the Board failed to consider ICANN's core values simply because the Board did not explicitly state how it did so; it would be impossible for the Board to spell this out for the hundreds of resolutions it must manage each year.⁷⁰ Further, the Bylaws do not oblige the Board to accept any and all advice from the GAC; Article XI, 2.1.j of the Bylaws only requires the Board to take GAC advice into account and, if the advice is not followed, to provide reasons for not doing so.

⁶⁷ Response to IRP Request, ¶ 21.

⁶⁸ Ibid., ¶ 10, Exh. R-25.

⁶⁹ Reply to IRP Request, ¶ 9.

⁷⁰ Response to IRP Request, ¶¶ 13-20.

119. ICANN argues that the IRP Panel’s Declaration in the *DotConnectAfrica* case is inapposite, because the GAC provided Consensus Advice against the string proceeding. Similarly, as for the alleged inconsistent treatment of Asia Green’s applications for “.halal” and “.islam”, ICANN points out that in those cases, unlike the instant case, the GAC did in fact express concerns to the Board base on community concerns about the obvious religious sensitivities.
120. In sum, the ICANN Board’s NGPC considered and followed the GAC’s advice exactly as it was supposed to, fully consistently with the ICANN Articles and Bylaws.
121. Should the Tribunal find in the GCC’s favor, ICANN contests the GCC’s request for a declaration ordering ICANN to refrain from signing the registry agreement with Asia Green or any other entity. ICANN argues that, pursuant to Article IV, Section 3, Paragraph 3.11, of the Bylaws, an IRP Panel is limited to stating its opinion by “*declar[ing] whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws*” and recommending that the Board stay any action or decision or take any interim action until such time as the Board reviews and acts upon the opinion of the IRP Panel.

E. The IRP Panel’s Analysis and Decision

122. We turn first to the GCC’s main submission that the ICANN Board failed to follow the GAC’s advice from the Durban meeting, as well as the Guidebook, in deciding on 10 September 2013 to allow the “.persiangulf” gTLD to proceed in the application process.
123. This turns on whether the GAC did in fact properly provide post-Durban advice to the Board. We find this to be a difficult question, which overlaps with the GCC’s alternative submission concerning ICANN’s overall compliance with its mission and core values under the Bylaws and Articles.
124. To recall, Module 3.1 of the Guidebook envisions three forms of GAC advice to the Board: (a) Consensus GAC Advice that an application should **not** proceed, creating a strong presumption of non-approval; (b) the expression of **concerns** within the GAC, after which the ICANN Board is expected to enter into a dialogue with the GAC to understand those

concerns and then give reasons for its decision; or (c) advice that the application should not proceed unless **remediated**. It is undisputed, and we agree, that the GAC did not issue Consensus GAC Advice against the “.persiangulf” application or suggest remediation, leaving only the second form of advice – the expression of **concerns**, meant to prompt interaction with the Board.

125. If, as ICANN argues, only the Durban Communiqué could provide GAC advice to the Board, then the GAC clearly did **not** express concerns about the “.persiangulf” gTLD application. That Communiqué stated no more than this: “*The GAC has finalised its consideration of [the application] and does not object to [it] proceeding*”. This underlies ICANN’s main defense that the ICANN Board followed the GAC’s advice to the letter, by resolving to allow Asia Green’s application to proceed.
126. We find ICANN’s defense to be unduly formalistic and simplistic.
127. As we see it, the GAC sent a missive to the ICANN Board that fell outside all three permissible forms for its advice. The GAC’s statement in the Durban Communiqué that the GAC “*does not object*” to the application reads like consensus GAC advice that the application **should** proceed, or at very least non-consensus advice that the application should proceed. Neither form of advice is consistent with Module 3.1 of the Guidelines. Yet the ICANN Board proceeded to resolve to allow the application to proceed, as a routine matter, based on the Durban Communiqué.
128. Some of the fault for the outcome falls on the GAC, for not following its own principles. In particular, GAC Operating Principle 47 provides that the GAC is to work on the basis of consensus, and “[w]here consensus is not possible, the Chair shall convey the full range of views expressed by members to the ICANN Board”.⁷¹ The GAC chair clearly did not do so. Mr. Al Marzouqi testified to the views he expressed at the Durban meeting and that consensus proved impossible, which testimony stands unrebutted by ICANN here (quoted in paragraph 31 above):

⁷¹ ICANN Response to IRP Request, Exh. R-25.

5. *I also attended the GAC Meetings in Durban, South Africa in July 2013. During the meetings in Durban, I again voiced the GCC's opposition to the .PERSIANGULF gTLD application, again emphasizing the lack of community support and strong community opposition from the Arab community because "Persian Gulf" is a disputed name. A substantial number of GAC members in attendance shared these concerns.*

6. *Despite this substantial opposition, GAC could not reach a consensus. Iran is the only nation in the Gulf that favors the "Persian Gulf" name, and Iran's GAC representative obviously does not share the other GAC members' concerns about the .PERSIANGULF gTLD application. Not wanting a single GAC member to block consensus, the GAC Meeting Chairperson pulled me to the side to express her frustration that GAC could not reach a consensus.*

129. If the GAC had properly relayed these serious concerns as formal advice to the ICANN Board under the second advice option in Module 3.1 of the Guidebook, there would necessarily have been further inquiry by and dialogue with the Board. The directive of Module 3.1, which is a **procedural** protection for opponents to gTLD applications, bears emphasis:

The GAC advises ICANN that there are concerns about a particular application "dot.example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

130. It is difficult to accept that ICANN's core values of transparency and fairness are met, where one GAC member can not only block consensus but also the expression of serious concerns of other members in advice to the Board, and thereby cut off further Board inquiry and dialogue.
131. In any event, the IRP Panel is not convinced that just because the GAC failed to express the GCC's concerns (made in their role as GAC members) in the Durban Communiqué that the Board did not need to consider these concerns. The record reveals not only substantial sensitivity with respect to Asia Green's ".persiangulf" application, but also general discord around religious or culturally tinged geographic gTLD names. In addition to the Durban Minutes, the pending Community Objection, and public awareness of the sensitivities of the "Persian Gulf"- "Arabian Gulf" naming dispute, the Durban Communiqué itself – on which ICANN relies so heavily here – contained an express recommendation that "ICANN collaborate with the GAC in refining, for future rounds, the Applicant Guidebook with

regard to the protection of terms with national, cultural, geographic and religious significance".⁷² These materials and this general knowledge could and should have come into play, if not as a matter of following GAC advice then as part of the Board's responsibility to fulfil ICANN's mission and core values.

132. Although it is not necessary to the outcome of this IRP, the Panel cannot accept ICANN's argument that the GAC may provide official advice to the Board only through a Communiqué. It is Principle 46 of the GAC's Operating Principles that provides that "[a]dvice from the GAC to the ICANN Board shall be communicated through the Chair", while Principle 51 speaks only of the Chair's authority to "issue a communiqué to the Media" following a meeting.
133. Even if, as a matter of practice, ICANN is correct that the Durban Minutes were not a form of official communication from the GAC, the Minutes do express serious GAC member concerns and confirm that there was, in fact, no consensus in Durban in favor of the ".persiangulf" gTLD application proceeding. As quoted in paragraph 32 above, those Minutes recorded as follows:

The GAC finalized its consideration of .persiangulf after hearing opposing views, the GAC determined that it was clear that there would not be consensus of an objection regarding this string and therefore the GAC does not provide advice against this string proceeding. The GAC noted the opinion of GAC members from UAE, Oman, Bahrain, and Qatar that this application should not proceed due to lack of community support and controversy of the name. (Emphasis added.)

Given this language, we cannot accept ICANN's argument that the Durban Minutes are consistent with the Durban Communiqué, which succinctly stated that the GCC "*does not object to [the application] proceeding*", thereby creating the impression that GAC members took the position – whether by consensus or not – that the application **should** proceed.

134. It is difficult to accept that the Board was not obliged to consider the concerns expressed in the Durban Minutes if it had access to the Minutes. If it was not given the Minutes, it is equally difficult to accept that the Board – as part of basic due diligence – would not have

⁷² Request for IRP, Annex 24, Durban Communiqué, para. 7.

asked for draft Minutes concerning GAC discussions of such a geo-politically charged application.

135. This failure of due diligence is compounded by the fact that, as noted by the NGPC itself in the Minutes of the critical 10 September 2013 meeting, the GCC's Community Objection was pending. The relevant Board resolution bears quoting again:

ICANN will continue to process the application in accordance with the established procedures in the [Guidebook]. The NGPC notes that community objections have been filed with the International Centre for Expertise of the ICC against .PERSIANGULF. (Emphasis added.)

136. Yet there is no evidence or indication in the record that the NGPC bothered to consider the content of the Community Objection, before allowing the processing of the obviously controversial string application to proceed. Certainly, that the Expert Panelist – some three weeks later – dismissed the Community Objection cannot support the procedural propriety of the Board's decision on 10 September 2013 to allow the “.persiangulf” application to proceed.

137. In sum, ICANN may be correct that the Board followed all the routine steps of posting information about the application, meeting to review the application, and acting strictly on the basis of the Durban Communiqué and Scorecard items. The Board did post the Durban Communiqué on 1 August 2013 for public comment – but it contained only the one-line conclusion that the GAC had “*finalised its consideration of the [“.persiangulf”] string, and does not object to its proceeding*”. The Board did meet on 13 August 2013 – but the only discussion was whether to respond to the Durban Communiqué advice by Scorecard. The Board did meet on 10 September 2013 to discuss each of the Durban Scorecard items, and did vote unanimously in favor of continuing to process the “.persiangulf” application – but the relevant entry on the Scorecard merely repeated the one-line Durban Communiqué reporting that the GAC “*does not object*” to the “.persiangulf” application proceeding. The Minutes of the Board meetings were publicly posted.

138. In the IRP Panel's assessment, these were empty steps. ICANN's insistence in its Response to the Supplementary IRP Request (at paragraph 2) and Rejoinder to IRP Request (at paragraph 10) is equally empty. At the end of the day, there is simply no

evidence – or even the slightest indication – that the Board collected facts and engaged with the GCC’s serious concerns before resolving to allow the “.persiangulf” application to proceed. ICANN’s willingness to meet GCC representatives after the 10 September 2013 decision to allow the application to proceed was belated and could not cure or validate its failure to conduct due diligence and engage with the GCC before that uninformed decision.

139. If the Board had undertaken a modicum of due diligence and independent investigation, it would readily have learned about the GCC’s serious concerns as raised in the GAC meetings in Durban and in Beijing, and how and why the GAC failed to reach consensus in Durban against the “.persiangulf” application. The GCC may be right or wrong in submitting that it was Iran’s solitary support for the application in Durban that motivated the message in the Durban Communiqué. The correctness of the GCC’s position on this point is irrelevant in this IRP. The relevant issue is whether the Board’s decision to allow the “.persiangulf” application to proceed was consistent with the Bylaws and Articles.

140. While not binding upon this Panel, the IRP precedent that we find most helpful is the decision concerning the application by DotConnectAfrica Trust for the “.africa” string, in which the IRP Panel found that the actions and inactions of the ICANN Board were inconsistent with its Articles and Bylaws. In particular, the IRP Panel held that the ICANN Board had breached its transparency obligations by rotely adopting the GAC’s Consensus Advice not to proceed with that application. The Panel stated that it “*would have expected the ICANN Board to, at a minimum, investigate the matter further before rejecting [DotConnectAfrica] Trust’s application*”.⁷³ Contrary to ICANN’s attempt to distinguish the DotConnectAfrica case, we find that ICANN’s transparency obligations arose here despite the absence of Consensus GAC Advice. Indeed, transparency and the related need for further due diligence were more compelling in this case, given the pending Community Objection concerning a sensitive application.

141. Overall, based on the submissions and evidence in the record, we are constrained to find that the Board passed a bare-bones resolution, based on a bare-bones GAC Communiqué

⁷³ Note 66, *supra*.

and Scorecard, to allow Asia Green's ".persiangulf" application to proceed, to virtually certain registration and operation. We can only regard the Board's routine treatment of the non-routine ".persiangulf" gTLD application to have been non-transparent, unfair and essentially oblivious to the well-known geo-political sensitivities associated with the name "Persian Gulf". This treatment consequently fell far short of the mission and core values enshrined in ICANN's Articles of Incorporation and Bylaws, specifically Article 1, Section 2, Paragraphs 4, 8 and 11, of the Bylaws; Article II, Section 3, of the Bylaws; Article III, Section 1, of the Bylaws; and Article 4 of the Articles of Incorporation.

142. In this connection, we are sympathetic to ICANN's argument that the Board cannot be expected to spell out considerations going to mission and core values in every resolution passed on every gTLD application. However, our finding is not based on inferences from the lack of discussion about mission and core values in the Board's 10 September 2013 decision to allow the ".persiangulf" application to proceed. As noted, there was **no** discussion of **any** factors whatsoever in that decision. This cannot be reconciled with the requirement in Article 1, Section 2, of the Bylaws that ICANN "*exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values*".
143. In related vein, we are not here second-guessing the Board's assessment of a difficult application against the backdrop of its mission and core values. That is because, if nothing else, we have no evidence or indication of what, if anything, the Board **did** assess in taking its decision. Our role is to review the **decision-making process** of the Board, which here was virtually non-existent. By definition, core ICANN values of transparency and fairness were ignored.
144. Having made findings on the Board's duties to make decisions fairly and transparently, we do not need to make an additional finding on the GCC's allegation that the Board discriminated against the GCC, or failed to provide the GCC with consistent treatment, in failing to intervene to stop the ".persiangulf" application as it did with Asia Green's application for the ".halal" and ".islam" gTLDs, to which the GCC had also objected. We do note that it would seem mechanistic indeed for ICANN to justify the different treatment

of “.halal” and “.islam” on the basis that the GAC expressed member concerns about those strings based on community objections and religious sensitivity, when the GAC failed to relay similar member concerns about “.persiangulf”. This is despite the glaring fact that the Independent Expert reviewing the GCC’s Community Objections against all three strings dismissed them all on the same grounds.

145. In conclusion, turning to the IRP standard of review in Article IV, Section 3, Paragraph 4(b), of the ICANN Bylaws, we conclude that the ICANN Board failed to “*exercise due diligence and care in having a reasonable amount of facts in front of them*” before deciding, on 10 September 2013, to allow the “.persiangulf” application to proceed. We find, on the balance of probabilities on the basis of the Parties’ submissions and evidence, that this decision effectively was an unreasoned vote on an unreasoned Scoreboard entry reciting the one-line Durban Communiqué statement that the GAC “*does not object*” to the application proceeding. Under the circumstances, and by definition, the Board members could not have “*exercise[d] independent judgment in taking the decision, believed to be in the best interests of the company*”, as they did not have the benefit of proper due diligence and all the necessary facts. This reflects Board action inconsistent with the Articles and Bylaws, contrary to Article IV, Section 3, Paragraph 4(c), of the ICANN Bylaws.

146. As a final matter, we do not accept ICANN’s position that we lack authority to include affirmative declaratory relief. Like the IRP Panel in the *DotConnectAfrica Trust* case, we consider that Article IV, Section 3, Paragraph 11(d), of the ICANN Bylaws does give us “*the power to recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act*” inconsistently with its Articles of Incorporation and Bylaws.⁷⁴ That Bylaw bears repeating:

*The IRP Panel shall have the authority to recommend that the Board stay any action or decision or that the Board take any interim action, until such time as the Board reviews and acts upon the **opinion** of the IRP. (Emphasis added.)*

147. Recalling that, under Article IV, Section 3, Paragraph 2, of the Bylaws, the IRP process is designed to provide a remedy for any person “*materially affected*” by suffering injury or harm causally connected to the relevant Board violation, we agree with the

⁷⁴ Ibid, ¶ 126.

DotConnectAfrica Trust IRP Panel that the “*language and spirit*” of Paragraph 11(d) empowers us to recommend redress for such injury or harm.⁷⁵ The words “*shall*” and “*opinion*” reflect that, similar to any decision maker, the Panel may and should recommend affirmative steps to be taken by the Board to correct the consequences of actions it took inconsistent with the Bylaws and Articles of Incorporation. Here, given the harm caused to the GCC’s due process rights by the Board’s decision – taken without even basic due diligence despite known controversy – to allow Asia Green’s “.persiangulf” gTLD application to go forward, adequate redress for the GCC requires us to recommend not a stay of Asia Green’s application but the termination of any consideration of “.persiangulf” as a gTLD. The basic flaws underlying the Board’s decision cannot be undone with future dialogue. In recognition of ICANN’s core values of transparency and consistency, it would seem unfair, and could open the door to abuse, for ICANN to keep Asia Green’s application open despite the history. If the issues surrounding “.persiangulf” were not validly considered with the first application, the IRP Panel considers that any subsequent application process would subject all stakeholders to undue effort, time and expense.

IX. FIXING OF COSTS

148. The Parties disagree on whether the procedural rules governing this IRP include the ICANN Bylaws. This is potentially relevant because of differences in language between the costs sections of the Bylaws and the Supplementary Procedures, connected to the good faith pursuit of the cooperative engagement and conciliation processes.

149. Article 9 of the ICANN Supplementary Procedures provides:

The IRP shall fix costs in its DECLARATION. The party not prevailing in an IRP shall ordinarily be responsible for bearing all costs of the proceedings, but under extraordinary circumstances the IRP PANEL may allocate up to half of the costs to the prevailing party, taking into account the circumstances of the case, including the reasonableness of the parties’ positions and their contribution to the public interest.

⁷⁵ Ibid, ¶ 128.

150. Article IV, Section 3, of the ICANN Bylaws provides:

16. Cooperative engagement and conciliation are both voluntary. However, if the party requesting the independent review does not participate in good faith in the cooperative engagement and the conciliation processes, if applicable, and ICANN is the prevailing party in the request for independent review, the IRP Panel must award to ICANN all reasonable fees and costs incurred by ICANN in the proceeding, including legal fees.

18.... The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP Panel may in its declaration allocate up to half the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.

151. The Parties agreed to postpone final submissions on costs, including on the question of whether Paragraphs 16 and 18 of Article IV, Section 3, of the ICANN Bylaws apply in this IRP.

152. As the IRP Panel has determined that the GCC is the prevailing party, no question arises as to the application of Paragraph 16 of Article IV, Section 3, of the ICANN Bylaws.

153. We will await further submissions from the Parties before allocating all or a percentage of the costs of the proceedings to the GCC.

X. DECLARATION

For the foregoing reasons, the Independent Review Process Panel hereby Declares:

1. The action of the ICANN Board with respect to the application of Asia Green relating to the “.persiangulf” gTLD was inconsistent with the Articles of Incorporation and Bylaws of ICANN. These are, in specific: Article 1, Section 2, Paragraphs 4, 8 and 11, of the Bylaws; Article II, Section 3, of the Bylaws; Article III, Section 1, of the Bylaws; and Article 4 of the Articles of Incorporation.
2. Pursuant to Article IV, Section 3, Paragraph 11(d), of the ICANN Bylaws, the IRP Panel recommends that the ICANN Board take no further action on the “.persiangulf” gTLD application, and in specific not sign the registry agreement with Asia Green, or any other entity, in relation to the “.persiangulf” gTLD.

3. The GCC is the prevailing Party in this IRP.
4. The Parties are to file submissions on costs by 18 November 2016. Following those submissions, all or a percentage of costs will be allocated against ICANN in favor of the GCC.

This Partial Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute the Partial Declaration of this IRP Panel

<u>19 OCTOBER 2016</u>	<u>Lucy Reed</u>
Date	Lucy Reed, Panelist - Chair
<u>19 October 2016</u>	<u>[Signature]</u>
Date	Anibal Sabater, Panelist
<u>19 OCTOBER 2016</u>	<u>[Signature]</u>
Date	Albert Jan van den Berg, Panelist

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION (ICDR)

Independent Review Panel

IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS
Pursuant to the Bylaws of the Internet Corporation for Assigned Names and
Numbers (ICANN), the *International Arbitration Rules of the ICDR*, and the
Supplementary Procedures for ICANN Independent Review Process

Gulf Cooperation Council (GCC)))
Claimant)	
and)	ICDR Case
Internet Corporation for Assigned Names)	No. 01-14-0002-1065
and Numbers (ICANN))	
Respondent)	

**FINAL DECLARATION OF THE INDEPENDENT REVIEW PROCESS PANEL AS TO
COSTS**

Independent Review Panel

Lucy Reed, Chair
Anibal Sabater
Albert Jan van den Berg

I. INTRODUCTION

1. The Independent Review Panel, in our Partial Final Declaration of 19 October 2016 (“**Partial Declaration**”), declared the Claimant Gulf Cooperation Council (“**GCC**”) to be the prevailing Party. We found that the action of the Respondent Internet Corporation for Assigned Names and Numbers (“**ICANN**”) with respect to the application by Asia Green for the generic Top-Level-Domain name (“**gTLD**”) “.persiangulf” was inconsistent with several Articles of Incorporation and Bylaws of ICANN. We further recommended, pursuant to Article IV, Section 3, Paragraph 11(d), of the ICANN Bylaws, that the ICANN Board take no further action on the “.persiangulf” gTLD application, and in specific not sign the registry agreement with Asia Green, or any other entity, in relation to the “.persiangulf” gTLD. At the Parties’ request, we postponed final submissions and the decision as to costs.
2. This Final Declaration awards all costs to the GCC as the prevailing Party, for the reasons set forth below.

II. THE APPLICABLE STANDARD

3. Starting first with the applicable standard, it is undisputed that all costs of the Independent Review Process (“**IRP**”), which include the fees and expenses of the Panelists and the ICDR as the IRP Provider, are to be awarded to a prevailing claimant except in extraordinary circumstances, taking into account the reasonableness of the parties’ positions and their contribution to the public interest. This standard appears in both Article 11 of the ICANN Supplementary Procedures and Article IV, Section 3, paragraph 18 of the ICANN Bylaws.¹

Article 11 of the ICANN Supplementary Procedures provides:

¹ In extraordinary circumstances, Article 11 of the ICANN Supplementary Procedures envisions allocation of up to half of the total costs to the prevailing party while Article IV, Section 3, paragraph 18 of the ICANN Bylaws may limit that allocation to the IRP Provider administrative costs. Neither Party has argued for such a limitation here.

The IRP PANEL shall fix costs in its DECLARATION. The party not prevailing in an IRP shall ordinarily be responsible for bearing all costs of the proceedings, but under extraordinary circumstances the IRP PANEL may allocate up to half of the costs to the prevailing party, taking into account the circumstances of the case, including the reasonableness of the parties' positions and their contribution to the public interest.

In the event the Requestor has not availed itself, in good faith, of the cooperative engagement or conciliation process, and the requestor is not successful in the Independent Review, the IRP PANEL must award ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.

Article IV, Section 3, of the ICANN Bylaws provides, in relevant part:

18.... The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP Panel may in its declaration allocate up to half of the the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.

4. The issue for decision, therefore, is whether the circumstances here are extraordinary and hence warrant allocating up to half of the total IRP process costs to the GCC despite its status as prevailing Party.

III. THE PARTIES' POSITIONS

A. The Claimants' Position

5. The GCC submits that no extraordinary circumstances exist. In short, the GCC argues that ICANN's position "*was anything but reasonable*" throughout its treatment of the ".persiangulf" application, citing the Panel's conclusion that ICANN's actions were "*unduly formalistic and simplistic*" (Partial Declaration, para. 126). Nor, argues the GCC, did ICANN's position contribute to the public interest, because the ICANN Board "*picked a side on a decades-long divisive Gulf naming dispute and its treatment of the .PERSIANGULF gTLD application was, as this Panel declared, 'essentially oblivious to the well-known geo-political sensitivities associated with that dispute'*" (Partial Declaration, para. 141).

B. The Respondent's Position

6. ICANN submits that the GCC should bear its own costs because this IRP was extraordinary, for three main reasons. First, both sides presented “*reasonable and thorough positions on novel issues of geopolitical sensitivity*”. Second, the Parties’ briefing of these issues served the public interest. Third, the GCC failed to engage in ICANN’s Cooperative Engagement Process before initiating the IRP, and so failed to narrow the issues and reduce the costs.

IV. THE PANEL’S ANALYSIS AND DECISION

7. Having considered the Parties’ submissions against the background of the overall record and the Partial Declaration, the Panel cannot find any extraordinary circumstance warranting deviation from the undisputed standard that all IRP process costs go to the GCC as the prevailing Party. As this conclusion is based on the unique circumstances of this case, we did not find the IRP precedents cited by the Parties – also based on unique circumstances – helpful. Our analysis can be brief.
8. First, we weigh the reasonableness criterion in the GCC’s favour. While ICANN is correct that both sides put forth thorough reasons for their positions, we state and explain in our Partial Declaration why the ICANN Board did not act reasonably in allowing the “.persiangulf” application to proceed without at least entering into a dialogue with the Government Advisory Council to discuss member concerns. We found “*simply no evidence – or even the slightest indication – that the Board collected facts and engaged with the GCC’s serious concerns*” (Partial Declaration, para. 138) and, absent any independent investigation, the only possible conclusion was that the ICANN Board’s position was “*simplistic and formalistic*” (Partial Declaration, para. 126) rather than reasonable.
9. Second, we do not consider that the public interest criteria favors either side’s position in relation to costs. The GCC is correct that we found ICANN to be “*essentially oblivious to the well-known geo-political sensitivities associated with the name ‘Persian Gulf’*”

(Partial Declaration, para. 141). However, it is important to recall that our mandate was to review the Board's process and not the merits of the “.persiangulf” application. The Parties' agreement that the geopolitical issues associated with “Persian Gulf” are themselves extraordinary does not make the ICANN Board process issues extraordinary. We do not see that the GCC contributed to the broader public interest by prevailing in this process review or that the ICANN Board failed to benefit the public in taking the stance it took. The public interest factor, to us, is neutral.

10. This is not the case with ICANN's third argument, which faults the GCC for not first invoking the Cooperative Engagement Process and thereby narrowing issues and reducing costs. In this situation where ICANN is not the prevailing Party as addressed in the second paragraph of Article 11 of the ICANN Supplementary Procedures, it is unclear whether this argument goes to the reasonableness or public interest factor, but the outcome would be the same. In our jurisdictional analysis in the Partial Declaration, we found that “*ICANN explicitly and implicitly cooperated in a shadow conciliation process*” (Partial Declaration, para. 87), which obviously proved unsuccessful. There is no reason to believe that a formal Cooperative Engagement Process would have been any more successful than this informal conciliation process proved to be, or that it would have reduced the GCC's ultimate costs.

11. In sum, in the absence of any extraordinary circumstances, the GCC is entitled to reimbursement of its full costs in relation to the IRP process. This includes the administrative expenses of the ICDR, the Independent Review Panel panelists' fees and expenses, and the emergency IRP panelist's fees and expenses. ICANN did not contest the GCC's claim for the fees and expenses of the emergency IRP panelist in addition to this Panel's fees and expenses and the ICDR administrative expenses.

12. As per the last sentence of Article IV, Section 3, paragraph 18 of the ICANN Bylaws, each Party shall bear its own expenses, including legal representation fees.

V. DECLARATION AS TO COSTS

For the foregoing reasons, the Independent Review Process Panel hereby Declares:

1. There are no extraordinary circumstances to justify allocating less than full costs to the Claimant GCC as the prevailing Party, under Article 11 of the ICANN Supplementary Procedure and Article IV, Section 3, paragraph 18 of the ICANN Bylaws.
2. The Respondent ICANN is to bear the totality of the GCC's costs in relation to the IRP process, including: (a) the ICDR administrative expenses of \$7,500.00; (b) the Independent Review Panel panelists' fees and expenses of \$ 150,273.30; and (c) the emergency IRP panelist's fees and expenses of \$50,575.00. Accordingly, ICANN shall reimburse the GCC the sum of \$107,924.16 upon demonstration by GCC that these incurred costs have been paid.
3. This Final Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute the Final Declaration of this IRP Panel.

15 December 2016

Date



Lucy Reed, Panelist – Chair

15 December 2016

Date



Anibal Sabater, Panelist

15 December 2016

Date



Albert Jan van den Berg, Panelist

REFERENCE MATERIALS – BOARD SUBMISSION NO. 2017.03.16.2b

TITLE: **Consideration of *Gulf Cooperation Council vs. ICANN* Independent Review Process Final Declaration**

Document/Background Links

The following attachment is relevant to the Board’s consideration of the Panel’s Final Declarations in the Gulf Cooperation Council (GCC) IRP:

- Attachment A is the Panel’s [Final Declaration](#) on the merits issued on 19 October 2016.
- Attachment B is the Panel’s [Final Declaration As To Costs](#) issued on 15 December 2016.

Other Relevant Materials

The documents submitted during the course of the GCC IRP are available at:

<https://www.icann.org/resources/pages/gcc-v-icann-2014-12-06-en>.

GAC Early Warning against the .PERSIANGULF application, issued on 20 November 2012, available at:

<https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings?preview=/27131927/27197754/Persian+gulf-AE-55439.pdf>.

The IO’s decision to not file an objection against the .PERSIANGULF application is available at:

<http://www.independent-objector-newgtlds.org/home/the-independent-objector-s-comments-on-controversial-applications/persianguf-general-comment/>.

GAC Beijing Communiqué is available at: <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>.

NGPC Resolution 2013.06.04.NG01 is available at: <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-04-en>.

GAC Durban Communiqué is available at:

<http://archive.icann.org/en/meetings/durban2013/bitcache/GAC%20Communiqu%C3%A9%20>

[%20Durban,%20South%20Africa.pdf](#).

GAC Durban Meeting Minutes are available at IRP Request Annex 34:

<https://www.icann.org/en/system/files/files/gcc-irp-request-annex-26-05dec14-en.pdf>.

NGPC Resolution 2013.09.10.NG03 is available at: <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-09-10-en#2.c>.

ICC expert determination on 30 October 2013 that the GCC's Community Objection against the .PERSIANGULF application did not prevail is available at:

<https://newgtlds.icann.org/sites/default/files/drsp/12nov13/determination-1-1-2128-55439-en.pdf>.

Submitted by: Amy Stathos, Deputy General Counsel

Date Noted: 24 February 2017

Email: amy.stathos@icann.org

Office of the Ombudsman

Case 13-00392

In a matter of a Complaint by dot Sport Limited

Report dated 25 August 2014

Introduction

This investigation is one of a number in relation to the ICANN new gTLD program. Dot Sport Limited applied for .sport, and faced a community objection by a body called SportAccord. Under the procedure in the Applicant Guidebook (the AGB) this objection was dealt with by an expert panel appointed by ICC. ICC was the dispute resolution provider, which agreed to provide dispute resolution services for community objections to the new string applications. In this case the objection was successful. Dot Sport Limited was unhappy with that result, and sought reconsideration by the ICANN Board under the ICANN bylaws. Reconsiderations are dealt with by the Board Governance Committee (BGC) of the ICANN Board. This reconsideration request was also considered and rejected, by the New gTLD Program Committee, using the standard procedure for handling these requests. A further reconsideration request was then made, and rejected, through the same path, and the complainant has therefore come to the office of the Ombudsman to investigate whether the process and decision was unfair. This is to be found at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-07-18-en>

Jurisdiction

This is a matter where I have jurisdiction, although the jurisdiction must be limited to the way in which ICANN has handled the second reconsideration request. It is important to note that the reconsideration process has been followed using the standard process in this case, and there are no unusual features, save for the fact that it is a second reconsideration request on essentially the same issue. The issue is of course the alleged bias on the part of the ICC panellist. The complainant has again asserted that the panellist was biased, and that the reconsideration did not take this into account.

It is important to note that I do not have jurisdiction to review or act in some way as an appeal body, to the expert decision from the ICC Panel. The reason I do not have jurisdiction relates to the nature of the ICANN community, which is the limit of my mandate. An ombudsman operates with what has been called informality, which means that I am not bound by strict rules of procedure, nor do I operate as if this was a formal hearing, with submissions, evidence and a reasoned decision. My powers such as they are, are limited to making a recommendation to the ICANN Board. If I were to find an unfairness in the decisions, I would recommend a course of action to remedy that unfairness. This has to be done in the context of the limits to my jurisdiction expressed in my bylaw. So while I may adopt an informal process, this does not enable me to step outside of the limits.

The scope of the complaint also deals with the second decision of the ICANN reconsideration decision from the ICANN BGC. There is no difficulty with jurisdiction in this case, because that is clearly within my bylaw, and was suggested as the next step by the BGC.

Issues

The issues which I am required to investigate whether the decision of the the ICANN Board deciding the second reconsideration request, is unfair.

These are stated by the complainant as quoted from their complaint to me:-

1. Our second reconsideration request did not relate to the decision of the BGC on the first reconsideration request, as it is affected by the new facts that came to light in March 2014. That would have been impossible for the BGC, because neither us nor the BGC had that information at the time. It was essentially a fresh reconsideration based on new facts, and the failure related to the failure of the ICC and the panellist to properly disclose the conflict of interest. There was no allegation of failure of the BGC for their first decision based on the specific facts rendered on 8 January 2014.

Therefore the following assertion:

“Request 14-10 challenges Board and staff actions that occurred on or prior to 13 January 2014, yet was received on 2 April 2014, well past the 15-day deadline to file a reconsideration request.”

does not make much sense.

2. There was nothing about your report which indicated it was in draft form only. I attach a further copy of this for your ease of reference.

Therefore the sentence “On 31 March 2014, the Ombudsman issued a draft report on the Requester’s complaint, which was later withdrawn pending consultation with other relevant parties.” We would like you to reconsider whether an email making a formal recommendation can considered to be interim when it contains absolutely no reference to it being so.

3. It is not reasonable to require us to explain every minutae of how we came across new information relating to the Pf Tavil’s conflict of interest. The BGC wrote:

“The Requester does not explain how it suddenly became aware of this information on 25 March 2014, or explain why it could not reasonably have become aware of the information at an earlier date.”

Research does not happen overnight: it took a considerable amount of time to unearth the information because we had not previously widened the net to other members of his law firm. With respect it is ludicrous and totally contrary to the principles of natural justice for the BGC to write “The Requester does not explain why it failed to discover the alleged conflicts earlier. Because the Requester could have become aware of the alleged

conflicts earlier, the Requester's belated discovery of publicly-available information does not justify tolling the 15-day time limit." In essence, what they are saying is that we did not work hard enough to uncover a conflict with was hidden by the panellist and so we are denied any recourse. No court would accept this position.

4. *The BGC uses the flimsiest of pretexts to establish that there was no conflict of interest and direct commercial relationship between the panellist and the SportAccord:*

"The Requester concedes that the purported "direct commercial relationship" arose more than three months after the Expert Determination was rendered on 23 October 2013. The Requester does not even attempt to establish that the belated 7 February 2014 DirecTV Contract somehow affected the Expert's 23 October 2013 Determination. As a result, the Requester's claim that the Expert or the ICC violated established processes or procedures by failing to disclose this information at the time of the Expert's appointment is not supported because the DirecTV Contract did not exist until well after the Expert was appointed and after the Expert Determination was issued."

With respect, it is obvious to all that negotiations for the contractual rights would have been ongoing at around the time of the determination, and this would be the most critical time for the relationship between DirecTV and the IOC to be cemented. To argue otherwise is disingenuous.

5. *Our allegation that the Guidebook was not followed was made in the context of establishing what the proper course of action should be (replacement of the panellist). We firmly established elsewhere in our reconsideration request that proper procedure regarding independence was not followed:*

The BGC wrote: "Requester provides no evidence demonstrating that the Expert failed to follow the applicable ICC procedures for independence and impartiality prior to his appointment or that the ICC failed to require the Expert to do so."

The facts is that we demonstrated that the Panellist committed a gross breach of the statement of impartiality, which is within the ICC's own rules, on pages 8 to 10 of our request for reconsideration. We went to great lengths to do this.

Investigation

To undertake this investigation I have received the initial complaint and asked for further information. The complainant has given me the material provided to the Board Governance Committee and matters which were raised with the objector. I have also looked at the AGB, the ICC website, the ICANN website in relation to new gTLDs and my bylaw and framework. I have also reviewed the ICANN BGC material in relation to the reconsideration. I have also discussed matters with ICC.

Facts

The complainant is an applicant for a number of new gTLDs. For this application, both the Applicant and SportAccord (the Objector) applied for the .SPORT string, and are in the same contention set. The objector is a body set up to be a community representative of sporting interests. After the second reconsideration application was rejected, the complainant asked for the matter to be reviewed by the office of the ombudsman, and has made a submission and complaint about unfairness.

Reasoning

The first issue raised by the complainant relates to the way in which ICANN handled the reconsideration request. The complainant says that the finding that the reconsideration request was out of time, is not logical because they only discovered the material asserted to raise issues of impartiality with the expert, on or about 25 March 2014. The issue is whether it is unfair for the BGC to recommend, and that the NGPC to resolve to reject the request, because the material in relation to impartiality is a new issue which should not affect the time limits for filing a reconsideration request. It should be noted that although the BGC commented that the request was out of time, they then went on to consider the impartiality issue in any event. So while I considered that there could have been an issue about timing, because of the discovery of the new material by the complainant, the fact that the new material was considered on the merits means that the timing issue is of less importance. No unfairness actually resulted from the first BGC recommendation therefore.

The second issue which has been raised relates to the preliminary email which I sent to the parties with some concerns. At the time of sending that email I had not had comments from the parties, and the email, was a preliminary and tentative concern. Before I could consider the other issues and parties, the complainant then took the matter to the first reconsideration, which meant my jurisdiction was ousted before I could complete the investigation at that stage.

The third issue criticises the comments made by the BGC in relation to the efforts made to discover the conflicts of interest. The complainant says that the information was gathered over a period of time, but was actually submitted on the 25 March 2014. They say it is unfair to criticise them for not making the complaint and that it is against natural justice to refuse to allow them to do so. However as I have noted earlier, even though there was criticism from the BGC about timeliness of the complaint, the BGC then went on to consider the complaint on its merits. This is important because if the sole ground for rejecting the reconsideration was late filing of the request, but otherwise the request actually had merit (which I am stating is a hypothetical issue and not the actual finding), then this may have been unfair. So any perceived unfairness has been overcome by the decision on the merits.

The fourth issue criticises the analysis made by the BGC on the merits of the conflict of interest, which the complainant submits is sufficient to cause a perception of bias. In the course of my investigation I reached out to ICC to seek their comments on this matter. The process used to appoint the expert was their standard process, where the expert completed a conflict of interest

form. In terms of that procedure there is therefore nothing unusual, and therefore since the procedure is appropriate there is no unfairness. I appreciate that the point made by the complainant is that, notwithstanding the appointment process and the completion of a conflict of interest form, that there were in fact ties which cause, in the submission of the complainant, a perception of bias. The BGC in its recommendation, analysed the appointment process by ICC and discussed this with reference to the AGB. The conclusion reached by the BGC was that because the ICC Rules of Expertise and the AGB were followed, this was sufficient. In my view, with the greatest respect to the conclusion, that was not the issue raised by the complainant. But in the end, when the connections are analysed with the material which has come to light over the two reconsiderations, the connections do not meet the test established for conflicts of interest and apparent bias. On my own analysis of the connections, and relying upon the IBA Guidelines on Conflicts of Interest in International Arbitration issued in 2004 by the Council of the International Bar Association, I do not believe that there is such an unfairness. The IBA Guidelines refer to red orange and green issues to identify conflicts of interest. In summary, any conflicts identified as red are either issues where the arbitrator cannot act at all, or for lesser examples, the parties can choose to waive the interest which must be disclosed in any event. In the orange list, they should be disclosed, but if no objection is made the parties are deemed to have accepted the arbitrator. The guidelines emphasise that orange disclosure should not automatically result in disqualification of the arbitrator. In addition even if the party challenges the appointment, the arbitrator can still act if the authority that rules on the challenge decides that the challenge does not meet the objective test for disqualification. The green list sets out issues where there is no duty to disclose situations.

In my view therefore there are two tests which have to be determined to see if there is a conflict of interest. The correct category should be identified, and using the guidelines, if the conflicts of interest did fall within the non-waivable red list, then there could be a problem. But in this case the conflicts of interest only appear to come under the green list categories. The closest is not quite on point, but can be analogous. In the guideline 4.2.1 this is identified as the arbitrator's law firm having acted against one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator. The guidelines talk about affiliates of parties, but in this case the connections are not so clear. The interests complained about are in my view too remote to create the appropriate perception of bias that would be required to disqualify the expert appointed by ICC. I have looked at this issue a little differently from the BGC, because I was concerned whether a failure to identify a serious conflict of interest could have been a failure of procedure on the part of ICANN. They have not explicitly stated the basis for rejecting the complaint about conflict of interest, but the issues are clear and I have reached my own conclusions. However the procedure adopted by the BGC was, and this is significant in my view, their standard approach to a reconsideration request, with the parties able to make full submissions as prescribed by the bylaw. No unfairness results from this procedure.

It follows that the first point made by the complainant does not assist them. Because in my view the issues raised come under the green list category, there was no obligation to raise these in any event.

Result

As a result of this investigation, I cannot make any recommendation about unfairness.

Chris LaHatte

Ombudsman

ICDR CASE NO. 01-15-0002-9483

BETWEEN

DOT SPORT LIMITED

Claimant

-and-

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Respondent

FINAL DECLARATION

Independent Review Panel

Prof. Dr. Klaus Sachs

Dr. Brigitte Joppich

Wendy Miles QC (Chair)

Dated 31 January 2017

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1. OVERVIEW

- 1.1. This Final Declaration is issued in an Independent Review Process (“**IRP**”) under Article IV, Section 3 of the Bylaws for Internet Corporation for Assigned Names and Numbers (“**ICANN**”) as amended 30 July 2014 (“**Bylaws**”), which stipulates that an IRP is “a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws”. In accordance with Article IV, Section 3.7 of the Bylaws, this IRP is administered by the International Centre for Dispute Resolution (“**ICDR**”).
- 1.2. The dispute arises out of alleged actions or decisions by the ICANN Board: (i) to permit and uphold a third-party community objection to the Claimant’s application for the .sport gTLD; and (ii) to fail to take into account the alleged lack of independence and impartiality of the Expert appointed pursuant to the ICANN dispute resolution procedures finally to determine that community objection. The Claimant alleges that the ICANN Board failed to assure compliance with ICANN’s Articles of Incorporation (“**Articles**”) and Bylaws as well as secondary rules created by ICANN, such as the Applicant Guidebook, in dealing with the community objection.

2. THE PARTIES AND THEIR LAWYERS

- 2.1. The Claimant is dot Sport Limited (“**dSL**”), a subsidiary of Famous Four Media. The Claimant and Famous Four Media are offering services in the Internet’s Domain Name System (“**DNS**”).
- 2.2. The Claimant is represented by:
Mr. Flip Petillion
Crowell & Moring LLP
7, rue Joseph Stevens
B-1000 Brussels
Belgium
- 2.3. The Respondent is ICANN, a non-profit public-benefit corporation organised and existing under the laws of the State of California with its principal place of business at:

12025 Waterfront Drive
Suite 300
Los Angeles

CA 90094-2536

USA

- 2.4. The Respondent is represented by:

Messrs. Jeffrey LeVee and Eric Enson and Ms. Rachel Zernik

Jones Day

555 South Flower Street

50th Floor

Los Angeles

CA 90071-2300

USA

3. THE PANEL

- 3.1. On 9 September 2015, the full IRP Panel was confirmed, in accordance with the ICDR International Arbitration Rules (the “**ICDR Rules**”) and its “Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process” issued in accordance with the independent review procedures set forth in Article IV, Section 3 of the ICANN Bylaws (the “**Supplementary Rules**”).

- 3.2. The members of the IRP Panel are:

Professor Dr. Klaus Sachs

Dr. Brigitte Joppich

Ms. Wendy Miles QC (Chair)

4. PROCEDURAL HISTORY

- 4.1. On 19 March 2015, the Claimant filed a Request for IRP (the “**Request**”) with the ICDR. The Claimant alleged that ICANN had accepted the decision of an Expert in an Expert Determination “that is contrary to its policies” and that in so doing it had “failed both to act with due diligence and to exercise independent judgment.”
- 4.2. On 8 May 2015, the Respondent filed ICANN’s Response to the Request (the “**Response to Request**”).
- 4.3. On 28 September 2015, the Parties and the Panel conducted by telephone the first procedural hearing.

-
- 4.4. On 5 October 2015, following the first procedural hearing, the Panel issued Procedural Order No. 1 setting out the procedural stages and timetable for the proceedings and page limits for the Parties' respective submissions.
 - 4.5. On 9 November 2015, the Claimant submitted its Reply (the "**Reply**").
 - 4.6. On 21 December 2015, the Respondent submitted its Sur-Reply (the "**Sur-Reply**").
 - 4.7. On 3 May 2016, the IRP hearing proceeded by three-way video link with the Panel convened in Cologne, Germany, counsel for the Claimant convened in Brussels, Belgium and counsel for ICANN convened in Los Angeles. ICANN sought to use PowerPoint with its oral submissions. Following the Claimant's objection to further written submissions in the form of PowerPoint slides, the Panel directed that ICANN could use PowerPoint during its oral presentation but that the Panel would not retain hard copy slides as part of the record.
 - 4.8. On 11 May 2016, ICANN sent a further written communication to the Panel regarding two issues raised at the hearing in relation to the Ombudsman process. ICANN submitted two further documents as Respondent Exhibits 25 and 26. Also on 11 May 2016, the Claimant (without objecting to the new communication and exhibits) submitted comments in response.
 - 4.9. On 10 January 2017, the ICDR notified the Parties that the Panel had determined that the record for this matter had been closed as of 15 December 2016 and that the Panel should have the Final Declaration issued by no later than mid-January 2017.

5. OVERVIEW OF ICANN'S NEW GTLD PROGRAM AND DISPUTE RESOLUTION PROCESS

- 5.1. The Claimant raises fundamental procedural fairness issues arising out of two aspects of the program administered by ICANN for the allocation of new generic Top-Level Domain ("**gTLD**") names from 2012: (i) the community objection procedure; and (ii) the Expert Determination procedure. This IRP relates to the ICANN Board's alleged actions or decisions arising out of an Expert Determination that upheld the community objection against the Claimant, including its decision on the Claimant's two Requests for Reconsideration.
- 5.2. ICANN is the administrative body responsible for allocating Internet Protocol address space and assigning protocol identifiers and generic ("**gTLD**") and country-code

("ccTLD") TLDs and managing the DNS. TLDs exist at the top of the DNS naming hierarchy and consist of two or more letters.

- 5.3. The main policy-making body for gTLDs is the Generic Names Supporting Organization ("**GNSO**"). In 2005, the GNSO started a policy development process aimed at introducing new gTLDs. Representatives were consulted from a wide variety of stakeholder groups, including governments, individuals, civil society, business and intellectual property constituencies, and the technology community. They considered the demand, benefits and risks of new gTLDs, selection criteria to be applied, allocation procedures for new gTLDs, and contractual conditions for new gTLD registries going forward.
- 5.4. As of 2011, TLDs were limited in number to 22 gTLDs, and around 250 ccTLDs. Based on the GNSO recommendations, ICANN introduced a new gTLD Program, further opening up gTLDs in order to foster diversity, encourage competition, and enhance the utility of the DNS.
- 5.5. In June 2011, again based on the GNSO consultation, ICANN's Board approved and adopted a new Applicant Guidebook (the "**Applicant Guidebook**"). The ICANN Board further authorized the launch of the 2012 New gTLD Program (the "**New gTLD Program**") in accordance with ICANN's Bylaws, Articles and the new Applicant Guidebook.
- 5.6. The New gTLD Program application round, launched in 2012, permitted interested applicants to compete for the right to operate new gTLDs. The Applicant Guidebook preamble states that:

"The new gTLD program will open up the top level of the Internet's namespace to foster diversity, encourage competition, and enhance the utility of the DNS."

- 5.7. The Applicant Guidebook describes the New gTLD Program application process in six modules. The objection procedures are dealt with in Module 3, followed by an attachment containing the New gTLD Dispute Resolution Procedure for resolving disputes arising out of objections.
- 5.8. The application process specifically permits public comment and formal objection. Within the Module 3 objection procedures, Section 3.2.1 of the Applicant Guidebook

sets out the grounds for objections. The formal objection procedures ensure full and fair consideration of objections based on certain limited grounds outside ICANN’s evaluation of applications on their merits.

5.9. The four stated grounds for formal objections are:

“String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied for-gTLD string in the same round of applications.

Legal Rights Objection – The applied-for gTLD string infringes the existing legal rights of the objector.

Limited Public Interest Objection – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

Community Objection – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.”

5.10. The Applicant Guidebook provides that community objections may be made by “[e]stablished institutions associated with clearly delineated communities”. However, “[t]he community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection”.

5.11. A community objection must show:

- (a) “that the community expressing opposition can be regarded as a clearly delineated community” taking into account various identified factors;
 - (b) “substantial opposition within the community it has identified itself as representing” taking into account various identified factors;
 - (c) “a strong association between the applied-for gTLD string and the community represented by the objector” taking into account various identified factors;
- and

(d) “that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted” taking into account certain identified factors.

5.12. Following a formal community objection the applicant may file a response to the objection and enter the dispute resolution process within 30 days of notification. The designated Dispute Resolution Service Provider (“**DRSP**”) for disputes arising out of community objections is the International Centre for Expertise of the International Chamber of Commerce (the “**ICC Centre for Expertise**”). Through the ICC Centre for Expertise, any objection is resolved by Expert Determination.

5.13. Following an Expert Determination, the applicant may further apply for: (i) reconsideration by ICANN’s Board Governance Committee (the “**BGC**”) through a request for reconsideration (“**Reconsideration Request**”); (ii) involvement of the Ombudsman; and/or (iii) independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles or Bylaws through the IRP.

5.14. ICANN has designated the ICDR to administer the IRP. The Supplementary Rules apply, which incorporate by reference the ICDR Rules.

5.15. The current IRP arises out of the Claimant’s dispute with ICANN arising out of the community objection to its application, the Expert Determination that followed, two Reconsideration Requests and involvement of the Ombudsman.

6. FACTUAL BACKGROUND TO .SPORT GTLD

6.1. This IRP arises out of the Claimant’s application for the .sport gTLD in the New gTLD Program. The background to the Claimant’s application is summarized below.

A. Claimant’s .SPORT Application

6.2. On 13 June 2012, the Claimant filed Application No. 1-1174-59954 to operate the new gTLD called .sport (the “**Application**”).

6.3. According to the Application, the Claimant applied for .sport to:

“create an environment where individuals and companies can interact and express themselves in ways never before seen on the Internet, in a more

targeted, secure and stable environment. Its aim is to become the premier online destination for such creators and their wide range of users.”

6.4. The Claimant further submitted in its Application that:

“... the aim of .sport is to create a blank canvas for the online sports sector set within a secure environment. The Applicant will achieve this by creating a consolidated, versatile and dedicated space for the sport sector. As the new space is dedicated to those within this affinity group the Applicant will ensure that consumer trust is promoted. Consequently consumer choice will be augmented as there will be a ready marketplace specifically for sports-related enterprises to provide their goods and services. ...”

B. SportAccord’s .sport Application

6.5. On 13 June 2012 a separate applicant, SportAccord, also applied for the .sport gTLD (the “**SportAccord Application**”). SportAccord described itself in the SportAccord Application as a “Not-for-profit Association” that:

“serves as the umbrella organization for all (Olympic and non-Olympic) international sports federations as well as organizers of multi-sports games and sport-related international associations ... [comprising] 90 international sports federations governing specific sports and 15 organizations which conduct activities closely related to the international sports federations.”

C. SportAccord’s Community Objection

6.6. On 13 March 2013, the same SportAccord that had submitted the SportAccord Application for the .sport gTLD also opposed the Claimant’s Application by way of community objection.

6.7. On 21 May 2013, the Claimant filed a response to SportAccord’s objection. In its response, the Claimant alleged that the objector failed to prove that it had: “an on-going relationship” with a “clearly delineated Sport community”; that the alleged community was “clearly delineated”; “substantial opposition” to the application in the alleged community; a strong association between the applied-for gTLD string and alleged community represented by the objector; and a likelihood of material detriment

to the rights or legitimate interests of a significant portion of the alleged community to which the string might be explicitly or implicitly targeted.

D. The .sport Expert Determination

- 6.8. ICANN subsequently submitted the .sport community objection to a third-party Expert appointed by the ICC Centre for Expertise in accordance with Section 3.4.4 of the Applicant Guidebook. Section 3.4.4 provides, among other things, that:

“A panel will consist of appropriately qualified experts appointed to each proceeding by the designated DRSP. Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.”

- 6.9. On 25 June 2013, the ICC Centre for Expertise notified the parties that it had appointed Mr. Jonathan P. Taylor as Expert. In his Statement of Impartiality and Independence, Mr. Taylor indicated that he had nothing to disclose. In his accompanying curriculum vitae, he indicated that he had previously been involved with organizations and federations that are members of the objector SportAccord.
- 6.10. On 27 June 2013, the Claimant objected to the appointment of Mr. Taylor on the grounds that: (i) the issues at stake did not require sports law expertise and any sports lawyer would likely prefer a sports organization or federation over a commercial registry operator; and (ii) Mr. Taylor’s career appeared to have been intertwined with and depend heavily upon the entities involved with the community objection.
- 6.11. On 25 July 2013, the ICC notified the parties that it had decided not to confirm the appointment of Mr. Taylor.
- 6.12. On 30 July 2013, the ICC Center for Expertise informed the parties that it had proceeded with the appointment of Prof. Dr. Guido Santiago Tawil instead (the “Expert”). In his Statement of Impartiality and Independence, the Expert stated that he had nothing to disclose. There is nothing to suggest that the ICC Centre for Expertise took additional steps to ensure that the Expert was not also “intertwined with” or dependent upon the entities involved with the community objection. Nor is

there anything to suggest that the Claimant made any further or particular enquiries in that regard at the time of the Expert's appointment.

6.13. On 23 October 2013, the Expert issued his decision (the "**Expert Determination**") upholding SportAccord's community objection. In the Expert Determination, the Expert determined, inter alia, that:

- (a) "SportAccord is an established institution which has an ongoing relationship with a clearly delineated community";
- (b) SportAccord has "proved several links between potential detriments that the Sport Community may suffer and the operation of the gTLD by an unaccountable registry, such as the sense of official sanction or the disruption of some community efforts";
- (c) "the Appointed Expert shares Objector's argument that all domain registrations in a community based '.sport' gTLD will assure sports acceptable use policies" and "this cannot be warranted by Applicant in the same way in the event that the application for the '.sport' gTLD is approved by ICANN"; and
- (d) "... even though SportAccord has not proved that dot Sport Limited will not act (or will not intend to act) in accordance with the interests of the Sport Community, the Appointed Expert considers that this is only one factor, among others, that may be taken into account in making this determination."

6.14. The ICANN Board accepted the Expert Determination. Upon receipt of the Expert Determination, however, the Claimant says it started to investigate the Expert's links with the sports industry based on what the Claimant considered to be the "surprising" outcome of the Expert Determination. The Claimant's findings prompted it to submit a Request for Reconsideration.

E. Claimant's First Reconsideration Request

6.15. On 8 November 2013, pursuant to Article IV, Section 2 of the Bylaws, the Claimant filed a first Reconsideration Request with the BGC. The BGC is responsible for assisting the ICANN Board to enhance its performance and, among other things, to consider and respond to Reconsideration Requests submitted to the Board pursuant to the Bylaws. The Claimant sought reconsideration of the ICANN Board's acceptance of the Expert

Determination upholding the community objection regarding its .sport gTLD Application.

- 6.16. The Claimant raised two primary grounds for review: (i) failure to observe ICANN’s procedure by the Expert when applying the relevant standard (likelihood of material detriment to a community); and (ii) breach of ICANN’s policy on transparency based on the Expert’s failure to disclose material information relevant to his appointment.
- 6.17. In relation to the second ground, the Claimant alleged that the Expert had not disclosed his attendance at a conference of the International Bar Association in Rio de Janeiro, Brazil, on 22 February 2011 entitled “Olympic-Size Investments: Business Opportunities and Legal Framework”, where he co-chaired a panel entitled “The quest for optimising the dispute resolution process in major sport-hosting events”.
- 6.18. On 8 January 2014, the BGC denied the Claimant’s first Reconsideration Request. The BGC concluded that the Expert did not apply the wrong standard in contravention of established policy or process and did not appear to have proceeded inconsistently with the standards set forth in the Applicant Guidebook. In particular, the BGC concluded that the Claimant failed to demonstrate that the Expert had applied the wrong standards in that: (i) the Expert did not create a new standard for determining the likelihood of material detriment; (ii) the Expert did not fail to apply the existing standard for cause of the likelihood of material detriment to a community; and (iii) the Expert did not create a new test for examining the alleged material detriment.
- 6.19. The BGC further concluded that the Expert’s purported failure to disclose a possible conflict of interest did not support reconsideration, as a matter of process. In particular, the BGC noted that:

“[I]t does not appear that the [Claimant] has sought to challenge the Expert’s independence under the ICC Rules of Expertise. Although the alleged conflict of interest was discovered after the Expert rendered a determination, the ICC Rules of Expertise would still govern any issues relating to the independence of experts. The reconsideration process is for the consideration of policy- or process-related complaints. Without the [Claimant] attempting to challenge the Expert through the established process set forth in the Guidebook and the ICC Rules of Expertise, there can be no policy or process violation to support

reconsideration - *i.e.*, reconsideration is not the appropriate mechanism to raise the issue for the first time.”

6.20. In its determination, the BGC also stated that in accordance with Article IV, Section 2.15 of the Bylaws its determination would be final and did not require Board consideration.

6.21. On 15 January 2014, following the first Reconsideration Request decision, the Claimant wrote to the ICC Centre for Expertise to notify it of the Expert’s failure to disclose his involvement in the conference in Rio de Janeiro. On 21 January 2014, the ICC Centre for Expertise responded that:

“[T]he Expert is no longer in place in this matter and does not have any current functions in connection with this matter. In such situation, neither the Procedure nor the Rules provide a basis for a challenge or a request for the replacement of an Expert.”

6.22. The ICC Centre for Expertise concluded therefore that the Expert, having rendered his determination, was *functus officio* and that the ICC Centre for Expertise’s role as DRSP in the New gTLD Dispute Resolution Procedure in this matter was therefore at an end.

F. Claimant’s Complaint with ICANN’s Ombudsman

6.23. On 6 February 2014, the Claimant filed a complaint with ICANN’s Ombudsman pursuant to Article V, Section 2 of the Bylaws. The Ombudsman’s role is to make sure that ICANN community members are treated fairly. It acts as an impartial mediator to help resolve disputes on issues involving the ICANN Board or supplementary organisations.

6.24. Article V, Section 3 of the Bylaws describes the Ombudsman’s role as follows:

“The Office of Ombudsman shall:

1. facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN community (excluding employees and vendors/suppliers of ICANN) may have with specific actions or failures to act by the Board or ICANN staff which have not otherwise become the subject of either the Reconsideration or Independent Review Policies;

2. exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN's interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations”

6.25. The Claimant, meanwhile, continued its investigation into the Expert’s links to the sports industry and discovered new information that it considered further heightened the appearance of bias. In particular, the Claimant discovered that: (i) the Expert’s law firm represented a client, DirecTV, in negotiations with the International Olympic Committee (“**IOC**”) concerning broadcasting and sponsorship rights to the Olympic Games, which resulted in an agreement concluded 7 February 2014; and (ii) a senior partner in the Expert’s law firm acted as president of one of those clients, TyC.

6.26. On 26 March 2014, the Claimant informed ICANN and the Ombudsman about this additional information, as well as the ICC Centre for Expertise on 27 March 2014. On 29 March 2014, the ICC Centre for Expertise responded that there was a specific time limit to object to or challenge Experts within the ICC Expert Determination process, that an Expert Determination had been rendered and this case was closed, and that there was no procedure for re-opening the matter or making a challenge to the Expert within the Rules after closure of the matter.

6.27. On 31 March 2014, the Ombudsman issued a recommendation to members of the ICANN Board. The Ombudsman described the scope of inquiry before him as follows:

“I have been asked to consider whether new material, which has just come to hand, justifies a recommendation by me to the New gTLD Committee, that they not accept the decision of the expert, Dr. Guido Tawil, in the matter of the .sports objection.”

6.28. The Ombudsman took the view that the Expert should have disclosed the new information and that a reasonable appearance of bias might have been created by the ICC Centre of Expertise’s stance that it was too late for the Claimant to challenge the Expert Determination on the basis of that material. The Ombudsman recommended

to the ICANN Board that there should be a rehearing of the objection with a different Expert appointed:

“I am concerned that in this case, there has been no direct comment from Dr. Tawil. I am also concerned that the ICC have taken a stance that it is too late for Famous Four Media to challenge the decision on the basis of material recently disclosed. My concern is, that this may create a reasonable appearance of bias. My view is that the commercial relationship ought to have been disclosed, to give the applicant Famous Four Media an opportunity to make a considered choice as to the suitability of this appointment. Transparency is the best way to ensure that parties are able to make the best choices.

It is therefore my recommendation to the board, that there should be a rehearing of the objection with a different expert appointed.”

- 6.29. On 1 April 2014, the ICC Centre for Expertise sent a letter to ICANN objecting that the Ombudsman had never contacted the ICC for comment regarding the issue of the Expert. According to the ICANN, “the Ombudsman clarified for the Claimant that his email was not a final report and recommendation, and offered the ICC a chance to comment”.
- 6.30. On 2 April 2014, the Claimant filed a second Reconsideration Request with the BGC, as described in more detail below.
- 6.31. On 7 May 2014, the Ombudsman reported to ICANN that he had spoken to the Claimant’s representative “explaining that his [second request for] reconsideration would need to be withdrawn if he was to progress any complaint to me.” There is no other contemporaneous record of that conversation taking place or the Claimant’s reaction to it.
- 6.32. On 21 June 2014 in the second Reconsideration Request recommendation discussed further below, ICANN concluded in relation to the Ombudsman review as follows:

“Recognizing that pursuant to Article V, Section 2 of the ICANN Bylaws, a complaint lodged with the Ombudsman cannot concurrently be pursued while another accountability mechanism on the same issue is ongoing, ICANN has

been advised that the Ombudsman sought confirmation from the [Claimant] as to whether it was aware of these limitations in the Bylaws and how it wished to proceed. ICANN was advised on or about 13 May 2014 that the [Claimant] confirmed that it was fully aware of these Bylaws provisions and that it would like to pursue this [second] Reconsideration Request rather than the Ombudsman's request."

- 6.33. Subsequently, on 5 May 2015, in connection with the current IRP application, ICANN wrote to the Ombudsman stating that:

"I understand that in March of last year, you sent a draft report to Cherine, but that report was subsequently withdrawn pending a response from the ICC. Then, around April/May of last year, the Ombudsman investigation was placed on hold because [the Claimant] elected to pursue its reconsideration request. This request was considered and denied by the NGPC on 18 July 2014. Can you tell me what happened with the [Claimant's] complaint after the NGPC's 18 July 2014 decision? Did you finalize your report? Please let me know."

- 6.34. On the same day the Ombudsman responded by email:

"I did not take any steps at all after the draft report, and have not been asked to do so by any party. So I closed the file. After the NGPC rejected their complaint I think they decided not to continue with me, but I just never heard again. When I realised they had sought IRP that explained the lack of contact I think, as they had decided to review this differently. Does that help?"

G. Claimant's Second Reconsideration Request

- 6.35. On 2 April 2014, the Claimant filed its second Reconsideration Request with the BGC pursuant to Article IV, Section 2 of the Bylaws. In its second Reconsideration Request, the Claimant requested reconsideration of: (i) the Expert Determination and ICANN's acceptance of it; (ii) the ICC Centre for Expertise's designation of the Expert; and (iii) the BGC's determination denying the Claimant's first Reconsideration Request, in the light of the Expert's apparent bias (having attended an International Bar Association conference in February 2011 and as a consequence of the Expert's law firm's involvement with interested parties) and violation of ICANN policy and process.

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- 6.36. On 21 June 2014, the BGC recommended that the second Reconsideration Request be denied on the grounds that: (i) the Reconsideration Request was untimely; and (ii) even if it were timely, the “newly-discovered” evidence did not support reconsideration because neither the DirecTV contract nor the TyC relationship was evidence of a conflict of interest sufficient to support reconsideration.
- 6.37. The BGC found all three claims to be untimely pursuant to Article IV, Section 2.5 of the Bylaws as follows:

“The [Claimant] claims that its belated discovery of new evidence of a conflict of interest on the part of the Expert justifies a tolling of the 15-day deadline for reconsideration requests. Specifically, [the Claimant] claims that on 25 March 2014 it discovered that: (i) one of the Expert’s clients, DirecTV, acquired broadcasting rights for the Olympics on 7 February 2014, following the issuance of the Expert Determination (‘DirecTV Contract’); and (ii) a partner in the Expert’s law firm is president of TyC, a company which has a history of securing Olympics broadcasting rights and of which DirecTV Latin America is the principal shareholder (‘TyC Relationship’). In other words, the [Claimant] suggests that an alleged connection between the Expert (or his law firm) and DirecTV, a ‘recipient of IOC broadcasting rights,’ creates a conflict of interest because SportAccord and the IOC enjoy a ‘close collaborative relationship.’

“The [Claimant’s] argument does not support reconsideration. The [Claimant] does not explain how it suddenly became aware of this information on 25 March 2014, or explain why it could not reasonably have become aware of the information at an earlier date. The only recent event that the [Claimant] claims creates an alleged conflict of interest is the DirecTV Contract, but that contract was signed on 7 February 2014, almost two months prior to the filing of the instant Request (and nearly five months after the Expert issued the Determination). [The Claimant’s] only other evidence for an alleged conflict is the TyC Relationship, a business relationship that appears to be decades old. Further, all of the [Claimant’s] evidence regarding the DirecTV Contract and the TyC Relationship is based on publicly available information from Internet sites such as Wikipedia, Chambers and Partners, and a public sports website, which could have been discovered prior to 25 March 2014.

“The [Claimant] does not explain why it failed to discover the alleged conflicts earlier. Because the [Claimant] could have become aware of the alleged conflicts earlier, the [Claimant’s] belated discovery of publicly-available information does not justify tolling the 15-day time limit.”

- 6.38. Following consideration of all relevant information provided, on 18 July 2014, the New gTLD Program Committee (“**NGPC**”) reviewed and adopted the BGC’s recommendation and denied the second Request for Reconsideration as being untimely, and on the further basis that the allegedly “newly-discovered” information relating to a purported conflict of interest did not support reconsideration.
- 6.39. On the record, neither the BGC’s recommendation nor the NGPC’s decision took into account the substantive findings or recommendations of the Ombudsman, noting merely that the Ombudsman process had been discontinued when the second Reconsideration Request was commenced in accordance with the ICANN dispute resolution procedures.

H. Cooperative Engagement Process

- 6.40. The Claimant subsequently filed a Cooperative Engagement Process (“**CEP**”) Request pursuant to Article IV, Section 3.14 of the Bylaws.
- 6.41. The cooperative engagement process is published on ICANN.org and is incorporated into Section 3 of the Bylaws. The Cooperative Engagement Process description provides that:

“[P]rior to initiating an independent review process, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. It is contemplated that this cooperative engagement process will be initiated prior to the requesting party incurring any costs in the preparation of a request for independent review.”

- 6.42. In accordance with that Cooperative Engagement Process, the Independent Review Process filing date for the Claimant was extended.

I. IRP Request

- 6.43. On 19 March 2015, the Claimant submitted the current Notice and Request for IRP. The procedural history thereafter is summarized at Section 4 above.
- 6.44. In its Notice and Request for IRP, the Claimant seeks review of ICANN’s actions or decisions on the alleged grounds that:
- (a) the ICANN Board failed to establish, implement and supervise a fair and transparent dispute resolution process in failing to remedy apparent bias;
 - (b) the ICANN Board failed to establish, implement and supervise a fair and transparent dispute resolution process in the selection of the Expert;
 - (c) the ICANN Board failed to establish, implement and supervise a fair and transparent dispute resolution process in allowing the Expert to develop and perform an unfair and arbitrary review process:
 - (i) the ICANN Board failed to comply with its obligation to provide non-discriminatory treatment by accepting SportAccord’s community objection, while other objections with identical characteristics were denied;
 - (ii) the dispute resolution process was unfair and non-transparent because of the Expert’s disregard of ICANN’s policy;
 - (iii) the dispute resolution process was unfair, non-transparent and arbitrary because of the lack of meaningful reasoning; and
 - (d) the ICANN Board failed to correct the mistakes in the dispute resolution process and denied the Claimant its right to be heard by an independent and impartial Expert.

7. IRP PANEL’S ANALYSIS

A. Overview

- 7.1. This IRP is the final stage in the ICANN New gTLD Dispute Resolution Procedure. The process is governed by the ICANN Bylaws, Articles, Applicant Guidebook and “Core Values”. The IRP requires the Claimant to show that: (i) it was materially affected by a decision or action by the Board; (ii) the decision or action is inconsistent with the Articles or Bylaws; and (iii) the request for IRP was made within 30 days of the posting of the Board minutes recording that decision or action.

7.2. The essence of the Claimant’s complaint has been consistent throughout the New gTLD application, objection and dispute resolution process. The Claimant alleges that it: (i) satisfied the necessary criteria for the application process for .sport, which, unlike .olympic, was subject to an unrestricted, open and competitive application process; (ii) was treated less favourably than SportAccord during the community objection process as a result of SportAccord’s (a competitor’s) community objection; and (iii) was treated unfairly in the Expert Determination process by which SportAccord’s community objection was upheld because of the Expert’s apparent bias.

7.3. The Claimant contends that throughout the Reconsideration Requests, the Ombudsman procedure and the CEP, ICANN failed properly to take into account the Claimant’s concerns and reconsider and reject the Expert Determination in light of those concerns. According to the Claimant, it remains for this IRP Panel to determine whether or not the ICANN Board acted inconsistently with its Articles, Bylaws and other governing instruments in finding that the Expert Determination was not subject to reconsideration by ICANN, including as a result of apparent lack of independence or impartiality on the part of the Expert.

B. Timeliness

7.4. ICANN’s Bylaws, Article IV, Section 3.3 provides that:

“A request for independent review must be filed ***within thirty days of the posting of the minutes*** of the Board meeting (and the accompanying Board Briefing Materials, if available) that the requesting party contends demonstrates that ICANN violated its Bylaws or Articles of Incorporation.”

7.5. ICANN accepts that the Claimant’s request for IRP in relation to the first and second Reconsideration Requests is timely. ICANN does not accept that earlier decisions or actions by the ICANN Board, including its adoption of the Applicant Guidebook and/or the Expert Determination itself, are timely or otherwise open to review.

7.6. It is not necessary, however, for this IRP Panel to determine whether or not the Claimant is out of time to seek review of the Applicant Guidebook or the Expert Determination. The ICANN Board decisions or actions that the Claimant seeks to review are all contained within the scope of the first and second Reconsideration Requests. Some of those decisions and actions pertain to the ICANN Board’s

interpretation and application of the Applicant Guidebook and its response to and treatment of the Expert Determination. However, the decisions and actions themselves were taken within the scope of the Reconsideration Requests and therefore within the timely scope of the current IRP.

C. Alleged Grounds for Review

7.7. The Claimant has raised four separate grounds for review of the ICANN Board’s adoption of the BGC’s and NGPC’s decisions on the first and second Reconsideration Requests.

7.8. **First**, the Claimant relies on an overriding principle of good faith, which it claims “is considered to be the foundation of all law and all conventions”. The Claimant refers specifically to ICANN’s Core Values as requiring ICANN, among other things, “to obtain informed input from those entities most affected by ICANN’s decisions.”

7.9. Article I, Section 2 of the Bylaws further provides that the Core Values are “deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances”. The Bylaws state that:

“Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.”

7.10. **Second**, the Claimant relies on ICANN’s requirement of accountability. In particular, ICANN’s Core Values require that it must “[r]emain[] accountable to the Internet community through mechanisms that enhance ICANN’s effectiveness.” It further relies upon Article VI, Section 1 of the Bylaws, which requires ICANN to “be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in Article I of these Bylaws.”

7.11. **Third**, the Claimant relies on Article II of the Bylaws, which sets out the powers of ICANN, including restrictions at Section 2 and non-discriminatory treatment standards at Section 3. Specifically, Article II, Section 3 provides that:

“ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.”

- 7.12. **Fourth**, the Claimant relies on ICANN’s “Core Values” set out in the ICANN Bylaws, Article I, Section 2, together with ICANN’s mission statement, in respect of transparency. The Bylaws “should guide the decisions and actions of ICANN” when it is “performing its mission”, include, the Claimant submits, to “employ[] open and transparent policy development mechanisms”.
- 7.13. In general, ICANN’s Core Values, as set out in full in the ICANN Bylaws, Article I, Section 2, describe the overall goals and objectives that govern ICANN’s decision-making. Specifically, the 11 Core Values that “should guide the decisions and actions of ICANN” when it is “performing its mission” are:
- (a) to preserve and enhance the operational stability, reliability, security, and global interoperability of the Internet;
 - (b) to respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN’s activities to matters within ICANN’s mission;
 - (c) to the extent feasible and appropriate, to delegate coordination functions;
 - (d) to seek and support broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet;
 - (e) where feasible and appropriate, to promote and sustain a competitive environment;
 - (f) to introduce and promote competition in the registration of domain names;
 - (g) to employ open and transparent policy development mechanisms;
 - (h) to make decisions by applying documented policies neutrally and objectively, with integrity and fairness;
 - (i) to act with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected;

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- (j) to remain accountable to the Internet community through mechanisms that enhance ICANN's effectiveness; and
 - (k) to recognize that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

7.14. As to procedure, Article IV, Section 3 of the ICANN Bylaws – as part of the accountability and review provisions – deals with the IRP. The process is confined to review of ICANN Board actions or decisions asserted by an affected party to be inconsistent with the Articles or Bylaws. In particular, Section 3.2 provides that:

“Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action.”

7.15. For the sake of completeness, the Panel further notes that the Applicant Guidebook is described in its preamble as being “the implementation of Board-approved consensus policy concerning the introduction of new gTLDs, and has been revised extensively via public comment and consultation over a two-year period.” It is described in the IRP Final Declaration in *Booking.com v ICANN* as “the crystallization of Board-approved consensus policy concerning the introduction of new gTLDs.”

D. Standard of Review

7.16. The standard of review is set out at Article IV, Section 3.4 of the Bylaws and Article 8 of the Supplementary Rules.

7.17. Article IV, Section 3.4 of the Bylaws provides that:

“Requests for such independent review shall be referred to an Independent Review Process Panel (“IRP Panel”), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of

those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

- a. did the Board act without conflict of interest in taking its decision?;
- b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
- c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the community?"

7.18. Article 8 of the Supplementary Rules reiterates those three questions and further provide as follows:

"8. Standard of Review

The IRP is subject to the following standard of review: (i) did the ICANN Board act without conflict of interest in taking its decision; (ii) did the ICANN Board exercise due diligence and care in having sufficient facts in front of them; (iii) did the ICANN Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

If a requestor demonstrates that the ICANN Board did not make a reasonable inquiry to determine it had sufficient facts available, ICANN Board members had a conflict of interest in participating in the decision, or the decision was not an exercise in independent judgment, believed by the ICANN Board to be in the best interests of the company, after taking account of the Internet community and the global public interest, the requestor will have established proper grounds for review."

7.19. The IRP Panels in *Booking.com v ICANN* and *ICM Registry v ICANN* confirmed that the business judgement rule standard is "to be treated as a default rule that might be called upon in the absence of relevant provisions of ICANN's Articles and Bylaws and of specific representations of ICANN ... that bear on the propriety of its conduct." Where the Board's action or inaction may be compared against relevant provisions of ICANN's governing documents, the IRP Panel's task is to *compare* the Board's action or inaction to the governing documents and to *declare* whether they are consistent.

7.20. Unlike the IRP Requests in *Booking.com v ICANN* and *VistaPrint v ICANN*, which were determined effectively to be untimely challenges to the underlying process that had been established by the ICANN Board, this IRP Request concerns the review of the ICANN Board’s adoption of the two Reconsideration Request decisions.

E. Analysis

7.21. The Panel considers below whether the Board acted consistently with ICANN’s Articles, Bylaws and the procedures established in the Applicant Guidebook, comparing the Board’s decisions to Article II, Section 3 of the Bylaws, then to the standard set out in Article IV, Section 3.4 of the Bylaws and Article 8 of the Supplementary Rules and considers other relevant Bylaws and ICANN governing documents, including the Applicant Guidebook and ICANN’s Core Values.

7.22. The primary issues, once distilled, are as follows:

- (a) Did the ICANN Board fail to establish, implement and supervise a fair and transparent dispute resolution process:
 - (i) in failing to remedy apparent bias?
 - (ii) in the selection of the Panel?
 - (iii) in allowing the appointed Panel to develop and perform an unfair and arbitrary review process?
- (b) Did the ICANN Board fail to correct the mistakes in the dispute resolution process and deny the Claimant its right to be heard by an independent and impartial Panel?

7.23. Each of these issues is considered in relation to the two ICANN Board decisions to reject the Claimant’s Reconsideration Requests.

- (i) *Did the ICANN Board fail to establish, implement and supervise a fair and transparent dispute resolution process in failing to remedy apparent bias, in the selection of the Panel and/or in allowing the appointed Panel to develop and perform an unfair and arbitrary review process?*

1. Claimant's Position

- 7.24. The Claimant's first complaint arises out of the process that led to the appointment of the Expert and the lack of any opportunity to take into account the Expert's alleged lack of independence or impartiality and/or apparent bias if discovered only after the Expert Determination had been rendered.
- 7.25. The Claimant points out that "ICANN's community objection dispute resolution rules are silent on the discovery of apparent bias after an expert determination has been rendered." In its first Request for Reconsideration, the BGC concluded that the ICC Rules of Expertise would still govern the Expert's independence and impartiality; that was plainly not the case. The Claimant considers that the ICANN Board's decision to accept the Expert Determination knowing that there was no recourse to deal with the discovery of the Expert's apparent bias was in breach of ICANN's obligations to act in good faith, transparently, and without discrimination.
- 7.26. The Claimant further alleges that ICANN failed to provide the appointed panels with adequate training and to ensure that they were familiar with the industry, and that this violation resulted in ICANN's failure to provide due process.
- 7.27. As to the international law standard of good faith, the Claimant alleges that this encompasses an obligation to ensure procedural fairness and due process which was not discharged in this case. In particular, the Claimant alleges that the ICANN Board "allowed a community objection that was (i) arbitrary and discriminatory, (ii) not a fair application of ICANN's policy, and (iii) lacking in meaningful reasoning."
- 7.28. In particular, the Claimant alleges that:
- (a) the ICANN Board failed to comply with its obligation to provide non-discriminatory treatment by accepting SportAccord's community objection in circumstances where other objections with "identical characteristics" such as for .basketball, .gay, and .islam were all rejected;
 - (b) the ICANN Board permitted a dispute resolution process that was unfair and non-transparent because the Expert disregarded ICANN's policy by failing to make the necessary disclosures in his Declaration of Acceptance and Statement of Independence and Impartiality and "made an erroneous and unfair application of ICANN's policy on community objections by reversing the

burden of proof and using a divergent standard to assess the likelihood of material detriment to the community invoked by the objector”; and

- (c) the ICANN Board’s dispute resolution process was unfair, non-transparent and arbitrary because of the lack of meaningful reasoning in the Expert Determination.

2. ICANN’s Position

- 7.29. According to ICANN, “neither the appointment of the Expert nor the Expert Determination constitutes ICANN Board action.” Therefore, ICANN identifies the “only Board actions at issue here” as being “(1) the decisions by the Board to deny Claimants’ two Reconsideration Requests; and (2) the Board’s adoption of the Guidebook.”
- 7.30. ICANN submits that the Board properly denied reconsideration to the Claimant’s allegation concerning the Expert’s conflict of interest.
- 7.31. First, ICANN maintains that the Claimant “fails to demonstrate that the BGC or the NGPC violated ICANN’s Articles or Bylaws with respect to its determination on Claimant’s reconsideration requests” based on the Expert’s failure to disclose “his participation in the Dispute Resolution Conference” and “his law firm’s relationships with two companies with alleged ties to the IOC.”
- 7.32. In particular, ICANN submits that “[r]econsideration of the actions of a third-party service provider or expert in the New gTLD Program, such as the ICC (or its appointed expert), is appropriate only when its actions [contradicted] established ICANN policy(ies) or procedures”, in accordance with Article IV, Section 2.2(a) of the Bylaws. ICANN argues that:

“The Board (through the BGC and NGPC) properly denied both of Claimant’s reconsideration requests because, as the Board explained, the evidence reflects that: (1) both the ICC and the Expert followed the ICC’s established policies and procedures with respect to the Expert’s appointment (and thereby, followed ICANN’s established procedure that the ICC use its process for determining an expert’s impartiality); and (2) Claimant’s challenge to the Expert was untimely under the ICC’s Rules and Practice Note (and thereby

ICANN's established procedure that challenges to experts must comport with the ICC's rules)."

7.33. Secondly, ICANN submits that the Board correctly found that the ICC and Expert had followed established procedures with respect to the Expert's appointment. In particular, ICANN refers to Article 7(4) of the ICC Rules for Expertise. In response to the Claimant's allegation that the Expert failed to disclose certain information in relation to DirecTV and TyC, ICANN submits that:

"[T]he BGC and NGPC correctly determined that the Expert had followed established policy and procedure in completing the Impartiality Statement required by the ICC. Disclosure requirements for neutrals are generally assessed in accordance with the guidelines set forth in the International Bar Association's Guidelines on Conflicts of Interest in International Arbitration ("**IBA Conflict Guidelines**"). Nothing in the IBA Conflict Guidelines, however, requires disclosure of the type of information identified by the Claimant."

7.34. ICANN goes on to argue that (i) there is no provision in the IBA Conflict Guidelines to require an Expert to disclose that he participated in a conference involving an area of law allegedly relevant to a party; (ii) IBA Conflict Guideline 2.3.6 requiring disclosure of a significant commercial relationship "does not apply to the DirecTV Contract or the TyC Relationship" because "[n]either ... involves a commercial relationship with the IOC"; and (iii) even if there were a commercial relationship with the IOC, "the IOC is not an affiliate of SportAccord" but instead is "an umbrella organization for all international sports federations (*Olympic and non-Olympic*), as well as organizers of multi-sport games and sport-related international associations."

7.35. Thirdly, as to timeliness of the second Reconsideration Request, ICANN submitted that the Board was correct to find that the challenge to the Expert was untimely. ICANN cites Articles 7(4) and 11(4) of the ICC Rules for Expertise, and paragraph 9 of the ICC Practice Note, which provide that any objections to the Expert must be made within five days. ICANN relies upon this deadline as its basis for arguing that any challenge by the Claimant to the appointment of the Expert arising out of the DirecTV Contract and TyC Relationship is out of time. Moreover, after the Expert decision is delivered, the case is closed and cannot be reopened, i.e., the Expert is *functus officio* and cannot be subject to challenge.

7.36. Finally regarding timeliness, ICANN argues that “all of the information Claimant cites to support its conflicts argument was publicly available and could have been discovered earlier with an exercise of due diligence.”

3. Panel’s Determination

7.37. In considering whether or not the ICANN Board failed to establish, implement and supervise a fair and transparent New gTLD application dispute resolution process, it is necessary for the IRP Panel to review the dispute resolution process and examine its implementation and supervision by the ICANN Board in the current application. Such review is limited to considering the role of the ICANN Board in remedying apparent bias, in ensuring fairness in the selection of a Panel and in preventing an unfair and arbitrary Expert Determination review process, specifically in the context of the Claimant’s application for the .sport gTLD.

7.38. As set out at paragraphs 5.6 to 5.14 above, based on the GNSO recommendations, ICANN organized a new gTLD application process as set out in the Applicant Guidebook. The Applicant Guidebook sets out in six modules the stages in the application process. Module 3 sets out the objection procedures and the New gTLD Dispute Resolution Procedure.

7.39. Section 3.2.1 of the Applicant Guidebook provides that “[a] formal objection may be filed on any one of ... four grounds”, including:

“Community Objection – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.”

7.40. The Guidebook provides that community objections may be made by “[e]stablished institutions associated with clearly delineated communities”. However, “[t]he community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection”. In particular Section 3.2.2.4 provides in relation to standing that only:

“Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in

the application that is the subject of the objection. To qualify for standing for a community objection, the objector must prove both of the following:

It is an established institution – Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

It has an ongoing relationship with a clearly delineated community – Factors that may be considered in making this determination include, but are not limited to:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.”

- 7.41. There is nothing in the objection procedure that prevents an objection by another applicant in the gTLD process, including for the same gTLD. The string confusion objection process specifically names other applicants in the gTLD process as having standing in respect of a string objection. Therefore, provided that the community

objector satisfies the criteria outlined above, it is entitled to object irrespective of whether it is also an applicant in respect of the same gTLD.

- 7.42. Any complaint by the applicant arising out of a community objection is subject to the Applicant Guidebook, Module 3, New gTLD Dispute Resolution Procedure. The designated DRSP for community objections is the ICC Centre for Expertise. As indicated above, the Claimant in this IRP objected to the SportAccord community objection and the dispute was referred to the ICC Centre for Expertise for determination.
- 7.43. If the standing of a community objector is subject to challenge, it is for the Expert to determine whether or not the community objector has the necessary standing as a matter of fact. In the .sport Expert Determination, the Expert determined that SportAccord did have the necessary standing.
- 7.44. That said, it would appear that the Claimant's primary concern is not the standing of SportAccord to submit a community objection as such, but rather the treatment of the Claimant throughout the dispute resolution process in relation to that objection once it had been brought. In particular, the Claimant alleges that there was apparent bias on the part of the Expert insofar as he was, or appeared to have been, predisposed in favour of SportAccord in making his Expert Determination to uphold the community objection.
- 7.45. Thereafter, according to the Claimant, in failing to take any steps to deal with the apparent bias of the Expert, instead approving the Expert Determination, rejecting two Reconsideration Requests and failing to take into account the matters raised in the Ombudsman's report, the ICANN Board's own actions and decisions were inconsistent with the ICANN Articles, Bylaws and other governing instruments.
- 7.46. As set out above, the standard of review is set out at Article IV, Section 3.4 of the Bylaws and Article 8 of the Supplementary Rules. Therefore, in examining whether the ICANN Board acted in good faith, was accountable, and acted in a non-discriminatory and transparent manner, this IRP Panel must focus on the (i) existence of any conflict of interest; (ii) exercise of due diligence and care; and (iii) exercise of independent judgment believed to be in the best interests of the community.

7.47. **First**, in relation to conflict of interest, the Claimant has made no allegation in this respect on the part of the ICANN Board. The Claimant strongly suggests that potential conflicts of interest existed on the part of SportAccord in making its community objection and, potentially, on the part of the Expert due to his alleged apparent bias in favour of SportAccord. However, in order to meet the necessary standard of review for this IRP Panel, the Claimant would need to allege and establish that the ICANN Board, as opposed to a third-party objector or the Expert appointed pursuant to the dispute resolution procedure in the Applicant Guidebook, acted with a conflict of interest. Such conflict of interest may have been alleged on the part of the BGC, NGPC, or some other function of the ICANN Board, but it was not.

7.48. **Secondly**, the ICANN Board, including the BGC and NGPC, must have exercised due diligence and care in having a reasonable amount of facts in front of them in taking the decision or action under review. Accordingly, the IRP Panel must consider whether or not this standard was met in relation to:

- (a) the BGC's decision of 8 January 2014 to reject the first Reconsideration Request in light of the Claimant's concerns as to the Expert's apparent bias, the ICC Centre for Expertise's inability to take into account allegations of lack of independence and impartiality and the NGPC's acceptance of the Expert Determination despite these factors; and
- (b) the BGC's recommendation of 21 June 2014 and the NGPC's decision of 18 July 2014 to reject the second Reconsideration Request in light of the Claimant's new and additional concerns as to the Expert's apparent bias and in light of the content of the Ombudsman's recommendation to conduct a new Expert Determination.

7.49. Other IRP Panel Declarations have made clear that neither the NGPC acceptance of the Expert Determination nor the IRP itself is intended to be an appeal process or forum for substantive review of Expert Determinations. The IRP Panels in *Booking.com v ICANN* and *Vistaprint v ICANN* were asked to review the underlying Expert Determinations. Each concluded that a Reconsideration Request provides for procedural review and is not a substantive appeal:

- (a) in *Booking.com v ICANN*, the IRP Panel concluded that the Claimant was not challenging the validity or fairness of the process;

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- (b) in *Donuts v ICANN*, the IRP Panel stated that “whatever label one uses to describe the approach (e.g., ‘objective’, ‘de novo,’ or ‘independent’) that approach does not allow the Panel to base its determination on what it, itself, might have done, had it been the Board. The explicit standard of review—for better or for worse—is much narrower than that”;
 - (c) in *VistaPrint v ICANN* the IRP Panel characterized the claim of disparate treatment in the Expert Determination as “a close question”, recommending that the Board conduct the Reconsideration Request step in the process that was, at the time of the IRP Panel, not yet engaged; and
 - (d) in *Dot Registry v ICANN*, the IRP Panel addressed primarily issues of adequacy and burden of proof in respect to the BGC’s denial of a Reconsideration Request.

7.50. In the next gTLD application round, it has been proposed that a new appeal procedure for Expert Determinations be considered; at present no such appeal process exists. Accordingly, it is not currently possible for the Claimant to seek or obtain substantive review of the Expert Determination.

7.51. In the current case, in addition to substantive issues, questions of fairness and validity of the process are directly engaged. It is the Claimant’s fundamental concern of bias, or apparent bias, on the part of the Expert towards SportAccord and the organisations it is connected with, in particular, which leads to a procedural fairness concern. In the Claimant’s view, the Expert’s perceived connections and affinity to the IOC and other bodies associated with SportAccord may render him more inclined to consider SportAccord, as a sporting body, to be better suited to administer the .sport gTLD than a commercial body such as the Claimant. By contrast, an Expert with no such sporting affiliations would be more likely to assess the Claimant against the applicant criteria without making a choice of a sport body over a commercial body.

7.52. The procedural fairness concern created by the alleged apparent bias was at the centre of the first Reconsideration Request. The BGC rejected that first Reconsideration Request after the Claimant had drawn to the BGC’s attention its concerns as to the Expert’s alleged apparent bias. In particular, in its first Request for Reconsideration, the Claimant raised its concern that:

“[At] a major conference of the International Bar Association in Rio de Janeiro, Brazil entitled ‘Olympic-Size Investments: Business Opportunities and Legal Framework’, [the Expert] was co-chair of a panel entitled *‘The quest for optimising the dispute resolution process in major sport-hosting events’* in which the following was discussed:

‘The panel will debate the trends and best practices of resolving disputes in challenging environments with time-sensitive deadlines. Panellists will address issues related to arbitration, dispute boards, expert determination, mediation and electronic discovery on infrastructure projects for big international sports events. The experiences of Atlanta, Barcelona and the London Olympic Games will be discussed. The panel will also address the unique aspects of sports disputes and the potential use of a fast-track dispute resolution process in this area.’”

- 7.53. The Claimant submitted to the BGC that the Expert “failed in his obligation to disclose a material factor relevant to confirmation of his appointment, and for this reason the resulting Determination must now be considered invalid on the grounds of failure to disclose facts or circumstances that would have, in the eyes of the parties, given rise to doubts as to the arbitrator’s impartiality or independence, prior to accepting his or her appointment as Expert.” This, according to the Claimant, was an obvious breach of the ICANN policy on transparency.
- 7.54. In its decision to reject the first Reconsideration Request, dated 8 January 2014, the BGC applied the standard of review set out in the Bylaws, Article IV, Section 2. According to the BGC, a successful reconsideration requires that an action or inaction contradicts established ICANN policy, failed to take into account material information or resulted from the Board’s reliance on false or inaccurate information. It stated that:

“In the context of the New gTLD Program, the reconsideration process does not call for the BGC to perform a substantive review of expert determinations. Accordingly, here the BGC is not to evaluate the Panel’s conclusion that there is substantial opposition from a significant portion of the community to which the Requester’s applications for .sports may be targeted. Rather, the BGC’s review is limited to whether the Panel violated any established policy or process, which the Requester suggests was accomplished when the Panel

‘derogated substantially’ from the applicable standard for evaluating community objections.”

- 7.55. The BGC found that the Expert had not derogated substantially from the applicable standard because:
- (a) the Claimant had failed to demonstrate that the Expert had applied the wrong standards in contravention of established policy or process in that the Expert:
 - (i) did not create a new standard for determining the likelihood of material detriment;
 - (ii) did not fail to apply the existing standard for cause of the likelihood of material detriment to a community; and
 - (iii) did not create a new test for examining the alleged material detriment; and
 - (b) the Expert’s purported failure to disclose a possible conflict of interest does not support reconsideration.
- 7.56. The basis for the BGC’s conclusion that the Expert’s purported failure to disclose a possible conflict of interest did not support reconsideration was that the Applicant Guidebook provides that the ICC Centre of Expertise will follow its adopted procedures for requiring independence and that “[t]he ICC Rules of Expertise would therefore govern any challenges to the independence of experts appointed to evaluate community objections,” and that the Claimant “provides no evidence demonstrating that the Expert failed to follow the applicable ICC procedures for independence and impartiality prior to his appointment.”
- 7.57. The BGC’s conclusion in this respect is flawed. The duty of impartiality and independence is an ongoing one; the duty to disclose information that may, in the eyes of a party, give rise to concerns as to the impartiality or independence of the Expert continues throughout the dispute resolution process until a final decision is rendered. Accordingly, the fact that the Expert completed his Statement of Independence and Impartiality at the time of his appointment does not mean that no issue as to independence or impartiality can arise at a later stage.
- 7.58. This ongoing duty to disclose lies at the heart of ICC dispute resolution.

7.59. The second flaw in the BGC’s reasoning is its conclusion that:

“Although the alleged conflict of interest was discovered after the Expert rendered a determination, the ICC Rules of Expertise would still govern any issues relating to the independence of experts. The reconsideration process is for the consideration of policy- or process-related complaints. Without the [Claimant] attempting to challenge the Expert through the established process set forth in the Guidebook and the ICC Rules of Expertise, there can be no policy or process violation to support reconsideration – *i.e.*, reconsideration is not the appropriate mechanism to raise the issue for the first time.”

7.60. The BGC further relied upon the Claimant’s successful challenge of the initial Expert, Mr. Taylor, in support of the Claimant having “demonstrated familiarity with the ICC Rules of Expertise by successfully challenging and replacing the first expert appointed to the matter.”

7.61. This reasoning is wrong and failed to take into account the fact that once the Expert has rendered a decision he is *functus officio* and the ICC as administering body similarly has no ongoing role.

7.62. Nevertheless, on 15 January 2014, immediately following the BGC’s decision to reject the Claimant’s first Reconsideration Request, the Claimant wrote to the ICC Centre for Expertise to request that it “reconsider whether in fact the appointment of [the Expert] was valid in light of the information at hand.” By response dated 21 January 2014, the ICC stated that:

“... the Expert has rendered the Expert Determination in case EXP/471/ICANN/88 and that it was notified to the parties by letter dated 25 October 2013.

Subsequently, this matter has been closed.

Accordingly, the Expert is no longer in place in this matter and does not have any current functions in connection to this matter. In such situation, neither the Procedure nor the Rules provide a basis for a challenge or a request for the replacement of an Expert.”

7.63. According to the Applicant Guidebook, ICANN’s New gTLD Dispute Resolution Procedures “were designed with an eye toward timely and efficient dispute resolution” and “apply to all proceedings administered by each of the dispute resolution service providers (DRSP).” Moreover, “[e]ach of the DRSPs has a specific set of rules that will also apply to such proceedings.”

7.64. The scope of the dispute resolution procedure and role of the relevant DRSP is set out in more detail in the Applicant Guidebook as follows:

“(b) The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure (the “Procedure”).

(c) Dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider (“DRSP”) in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).

(d) By applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP’s Rules that are identified in Article 4(b); by filing an objection to a new gTLD, an objector accepts the applicability of this Procedure and the applicable DRSP’s Rules that are identified in Article 4(b). The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval of the relevant DRSP.”

7.65. The purpose of delegating dispute resolution services to independent third-party providers, such as the ICC and the ICDR, is to create an independent process outside of the ICANN framework. In order to retain that independence, it is unsurprising that ICANN, through the BGC or otherwise, has very limited review power in respect of the substantive procedure conducted through a DRSP, such as an Expert Determination.

7.66. In the implementation of the New gTLD Program as a whole, occasionally a situation may arise where the New gTLD Dispute Resolution Procedure and the applicable DRSP’s Rules, applied according to established policy or process, nevertheless do not

result in a fair, transparent or non-discriminatory outcome. One such example is the apparent inconsistency in several Expert Determinations arising out of string confusion objections, which led the ICANN Board to interfere with individual Expert Determinations which, on their face, appear to meet the necessary standard.

- 7.67. In the current situation, the Expert was appointed in accordance with the DRSP's Rules and rendered an Expert Determination. Subsequently, the Claimant raised an express concern that factors relating to the Expert's independence and impartiality became apparent only after the Expert Determination. The Claimant's concern appears to have at least facial validity.
- 7.68. As indicated above, as a matter of the ICC Centre for Expertise's procedure, as the ICC Centre for Expertise made clear in its letter of 21 January 2014, by the time these factors arose, the Expert Determination had been rendered and the Expert was *functus officio*. Accordingly, the ICC Centre for Expertise had no further function or role in relation to the Expert Determination. That power rested solely and exclusively with ICANN and its remaining procedures of Reconsideration Request, the Ombudsman and the IRP.
- 7.69. The BGC's decision to reject the first Request for Reconsideration on the basis that the Claimant "has not stated proper grounds for reconsideration" because "there is no indication that [the] Panel violated any policy or process in reaching the determination sustaining SportAccord's community objection" fails to take into account the following factors:
- (a) the Claimant reasonably became aware of the information concerning the independence and impartiality of the Expert after the Expert Determination had been rendered;
 - (b) such information may have impacted the integrity of the decision-making process and, therefore, the integrity of the Expert Determination;
 - (c) there was no "established process set forth in the Guidebook and the ICC Rules of Expertise" through which option "to challenge the Expert" at that time; and
 - (d) absent any "established process", any action or decision by the ICANN Board in response to a genuine complaint as to the Expert's impartiality or

independence arising after the Expert is *functus officio*, must be guided by the Core Values in ICANN's Bylaws, including to:

- (i) preserve and **enhance the operational stability, reliability**, security, and global interoperability of the Internet;
- (ii) where feasible and appropriate, to **promote and sustain a competitive environment**;
- (iii) **introduce and promote competition** in the registration of domain names;
- (iv) employ **open and transparent policy** development mechanisms;
- (v) make decisions by **applying documented policies neutrally and objectively, with integrity and fairness**; and
- (vi) **remain accountable** to the Internet community through **mechanisms that enhance ICANN's effectiveness**.

7.70. ICANN's documented policies leave a Claimant with the options only of a Reconsideration Request, Ombudsman or an IRP in order to seek redress in the event of an arbitrator's apparent bias that only arises or becomes known after the Expert Determination is rendered. In those circumstances, the outsourced delegated role of the ICC Centre for Expertise is fulfilled and at an end.

7.71. Broadly, it is for the ICANN Board, through its NGPC, BGC and/or Ombudsman, to preserve **and** enhance the reliability of the system, the competitive environment of the registration process and the neutrality, objectivity, integrity and fairness of the decision-making system.

7.72. In the event that an Expert appointed in accordance with the Module 3 procedure were lacking in independence or impartiality, or there were otherwise an appearance of bias, then it is the ICANN Board that must redress that bias. In the current circumstances, it is plain that reconsideration is the only mechanism available to the Claimant to raise the issue of new information concerning independence and impartiality that has arisen only after the Expert Determination has been rendered and the DRSP process is at an end.

7.73. Had the BGC considered and assessed the new information and determined that it did not give rise to a material concern as to lack of independence or impartiality so as to undermine the integrity or fairness of the Expert Determination, and refused reconsideration on that basis, that action or decision may have been unreviewable. However, the BGC simply refused to consider the new information and its refusal is in contravention of the BGC's obligation to exercise due care and diligence.

7.74. Immediately following the first Reconsideration Request decision, on 6 February 2014, the Claimant filed a complaint with ICANN's Ombudsman. According to the ICANN website:

"The ICANN Ombudsman is independent, impartial and neutral. The Ombudsman's function is to act as an informal dispute resolution office for the ICANN community, who may wish to lodge a complaint about ICANN staff, board or problems in supporting organizations. The purpose of the office is to ensure that the members of the ICANN community have been treated fairly. The Ombudsman is impartial and will attempt to resolve complaints about unfair treatment, using techniques like mediation, shuttle diplomacy and if needed, formal investigation. The Ombudsman is not an advocate for you, but will investigate without taking sides in a dispute. The process is informal, and flexible.

...

"The Ombudsman cannot make, change or set aside a policy, administrative or Board decision, act, or omission, but may investigate these events, and to use ADR technique to resolve them and make recommendations as to changes."

7.75. Given the nature of the Ombudsman's role, as neutral mediator, the status of his recommendation to the ICANN Board as a draft as opposed to a final recommendation, as alleged by ICANN, is irrelevant. The Ombudsman was engaged in a process to "facilitate the fair, impartial, and timely resolution of problems and complaints" raised by the Claimant as an "affected member[] of the ICANN community."

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- 7.76. The existence of a written recommendation to the ICANN Board, and the fact that the ICANN Board appears wholly to have disregarded that recommendation, is a relevant factor for this IRP Panel's consideration as to whether or not the ICANN Board acted in accordance with its governing instruments.
- 7.77. As ICANN is at pains to point out, including in further and unsolicited post-hearing submissions and evidence, the Ombudsman did not proceed after the Claimant submitted its second Reconsideration Request. The ICANN Board accordingly did not follow or refer to his recommendation in considering the Reconsideration Request.
- 7.78. Nevertheless, the content of the Ombudsman's recommendation, including his neutral recommendation that a new expert determine the .sport community objection, was before the BGC when it received the Claimant's second Reconsideration Request. It had not been formally withdrawn or revoked by the Ombudsman and provided valuable information to the BGC. That recommendation suggested that the Board refer the Claimant's community objection to a new expert due to concerns regarding the Expert's apparent bias.
- 7.79. The second Reconsideration Request contained two additional items of information that were neither before the BGC during its first Reconsideration Request decision nor the Ombudsman when he made his recommendation. These were that:
- (a) one of the Expert's clients, DirecTV, acquired broadcasting rights for the Olympics on 7 February 2014, following the issuance of the Expert Determination; and
 - (b) a partner in the Expert's law firm is president of TyC, a company which has a history of securing Olympics broadcasting rights and of which DirecTV Latin America is the principal shareholder.
- 7.80. The new allegations gave rise to a concern that the connection between the Expert (or his law firm) and DirecTV, a recipient of IOC broadcasting rights, created a conflict of interest because SportAccord and the IOC enjoy a close collaborative relationship.
- 7.81. In its recommendation on the second Reconsideration Request, commenced with the benefit of further allegations of apparent bias and following the Ombudsman's

recommendation, the BGC did consider the “newly-discovered” evidence, but found that it did not support reconsideration. In particular:

- (a) in relation to the DirecTV Contract, the BGC deemed this to be irrelevant because the contract in question had not been executed at the time of the Expert Determination and the first BGC decision; and
- (b) in relation to the TyC Relationship, the BGC considered this to be “decades old” and not considered earlier because it had not been raised earlier.

7.82. As with the first Reconsideration Request decision, the BGC appeared to focus on the role of the ICC procedures and the Expert’s duty to disclose. In relation to the TyC Relationship in particular, the BGC concluded that:

“[T]he Expert submitted to the ICC, and to the parties, his *curriculum vitae*, as well as his Declaration of Acceptance and Availability and Statement of Impartiality and Independence in accordance with the ICC Rules of Expertise. ... As such, reconsideration is not appropriate with respect to the Expert’s disclosure.”

7.83. The BGC failed to take into account the problems that arise from what the Expert ***did not*** disclose in his Statement of Impartiality and Independence. He did not disclose the panel participation that gave rise to the first Reconsideration Request, nor any existing DirecTV relationship that ultimately gave rise to the DirecTV Contract or TyC Relationship. In relation to the DirecTV relationship, although the DirecTV Contract itself was executed after the Expert Determination, the Expert’s law firm was likely in the process of negotiating that contract prior to the Expert Determination. All or some of these matters may give rise to apparent bias and the fact that they were not disclosed cannot be preclusive of any reconsideration in relation to them.

7.84. As to the BGC’s finding that the Claimant’s challenge to the Expert was untimely, the IRP Panel considers that, provided the Claimant was not reasonably aware of the factors giving rise to concerns of apparent bias at the time of the disclosure, and it has submitted that it was not, then it simply was not in a position to have challenged the arbitrator earlier. It quite justifiably relied on the Expert’s disclosure in the carefully designed ICC standard forms. As the Ombudsman said in his report:

“[T]he failure to undertake due diligence would in my view prevent any subsequent challenge to the appointment. In this case, there appears to have been both an adequate search, but also the entirely reasonable reliance upon the certificate of impartiality.”

7.85. As the Ombudsman recognized, a fair system of dispute resolution must allow for review of a decision by an impartial and independent decision-maker in the event that previously undisclosed information reasonably becomes available only after the final decision is rendered. The sole basis for the decision-maker’s mandate is the existence of his or her contracted-for independence and impartiality. If that falls away, the decision must be capable of reconsideration.

7.86. As to the BGC’s second finding that the “newly discovered” evidence did not support reconsideration, the Ombudsman, in contrast, looked to the IBA Conflict Guidelines 2004 to assess whether or not “in the eyes of the reasonable bystander, an appearance of bias” existed. In particular, the Ombudsman referred to the IBA Conflict Guidelines’ Waivable Red List, paragraph 2.3.7, which provides that “[t]he arbitrator’s law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.”

7.87. The Ombudsman referred further to the IBA Conflict Guidelines’ comment that:

“In addition, a later challenge based on the fact that an arbitrator did not disclose such facts or circumstances should not result automatically in either non-appointment, later disqualification or successful challenge to any award. In the view of the Working Group, non-disclosure cannot make an arbitrator partial or lacking independence; only the facts or circumstances that he or she did not disclose can do so.”

7.88. Tellingly, the BGC did not consider the IBA Conflict Guidelines (although it accepts in its submissions in this IRP that they are the standard governing neutrals), or any other standards for the requirements of independence and impartiality in neutral, binding decision-making bodies. Instead, it repeatedly relied upon a very technical argument that the necessary forms were completed, no objection was made during the process, and no steps can be taken now with the ICC as its role is at an end, therefore all delegated DRSPs have been complied with and the BGC having reviewed that process is satisfied.

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- 7.89. In relying on this technical, procedural point, the BGC fails to engage with the substance of the concerns raised by the Claimant, i.e., the actual evidence that it alleges gives rise to apparent bias. Only the Ombudsman engaged in that analysis to any degree, and the BGC failed to take into account his analysis. If the BGC refuses to deal with apparent bias based on information arising only after an Expert Determination is rendered, then the question arises what other mechanism exists in the ICANN dispute resolution process to address it. It cannot be the case that there is no such mechanism, otherwise the process would risk extremely unfair and unjust results.
- 7.90. Accordingly, the IRP Panel is of the view that in order to have upheld the integrity of the system, in accordance with its Core Values, the ICANN Board was required properly to consider whether allegations of apparent bias in fact gave rise to a basis for reconsideration of an Expert Determination. It failed to do so and, consequently, is in breach of its governing documents.
- 7.91. This is a meaningful breach because several of the IBA Conflict Guidelines are invoked by the factors raised by the Claimant. In particular:
- (a) in relation to the panel, Guideline 3.5.2 refers to circumstances where “[t]he arbitrator has publicly advocated a specific position regarding the case that is being arbitrated, whether in a published paper or speech or otherwise” and identifies that as Orange List;
 - (b) in relation to the TyC Relationship, Guideline 2.3.6 (referred to by the Ombudsman) refers to circumstances where “[t]he arbitrator’s law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties” and identifies that as Waivable Red List; and
 - (c) in relation to the TyC Relationship and/or the DirecTV Contract, three Orange List Guidelines are applicable:
 - (i) Guideline 3.1.4: “The arbitrator’s law firm has within the past three years acted for one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator”;

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- (ii) Guideline 3.2.1: “The arbitrator’s law firm is currently rendering services to one of the parties or to an affiliate of one of the parties without creating a significant commercial relationship for the law firm and without the involvement of the arbitrator”; and
 - (iii) Guideline 3.2.3: “The arbitrator or his or her firm represents a party or an affiliate to the arbitration on a regular basis but is not involved in the current dispute.”

7.92. In light of the direct applicability of the IBA Conflict Guidelines in repeated respects, it is highly possible that a proper review of the evidence of apparent bias against those Guidelines as a whole could result in the BGC – like the Ombudsman – ordering a rehearing with a different expert appointed.

- (ii) *Did the ICANN Board fail to correct the mistakes in the dispute resolution process and deny the Claimant its right to be heard by an independent and impartial Expert?*

7.93. The second limb of this IRP Request is that the Board failed to correct the mistakes in the process. In this respect, ICANN’s technical procedural argument is more compelling. That is, provided the process was followed to the letter, it is not subject to mistakes that require rectification.

7.94. The finding of the IRP Panel is that the process is not in fact at fault; it is implicit in the Bylaws, Articles and Applicant Guidebook that an apparent bias must be dealt with by the Board, if it arises after the Expert Determination has been rendered and no other recourse is available.

7.95. The process itself therefore does not contain mistakes; the mistake is in the implementation of the process. In particular, the BGC and NGPC failed to apply the necessary consideration to the new evidence of apparent bias, in substance, against a satisfactory standard such as the IBA Conflict Guidelines.

7.96. Accordingly, on this second limb, the IRP Panel finds no basis for review.

8. COSTS

8.1. The Claimant seeks recovery of its costs in this IRP. Neither party has submitted any costs submission as to the amount of legal or other costs incurred by the parties.

8.2. The ICDR Rules, Article 34, provide in relation to the costs of arbitration that:

“The arbitral tribunal shall fix the costs of arbitration in its award(s). The tribunal may allocate such costs among the parties if it determines that allocation is reasonable, taking into account the circumstances of the case.

Such costs may include:

- (a) the fees and expenses of the arbitrators;
- (b) the costs of assistance required by the tribunal, including its experts;
- (c) the fees and expenses of the Administrator;
- (d) the reasonable legal and other costs incurred by the parties;
- (e) any costs incurred in connection with a notice for interim or emergency relief pursuant to Articles 6 or 24;
- (f) any costs incurred in connection with a request for consolidation pursuant to Article 8; and
- (g) any costs associated with information exchange pursuant to Article 21.”

8.3. The Panel fixes costs in respect of (i) fees and expenses of the Panel and (ii) fees and expenses of the ICDR acting as administrator of the proceedings in the sum of US\$152,673.26

8.4. Taking into account the specific circumstances of this case, in particular the concerns outlined above in particular at paragraph 7.70, the Panel allocates the costs at paragraph 8.3 in favour of the Claimant. Accordingly, ICANN must reimburse to the Claimant its share of fees and expenses of the Panel and fees and expenses of the ICDR acting as administrator of the proceedings.

REFERENCE MATERIALS – BOARD SUBMISSION NO. 2017.03.16.2c

TITLE: **Consideration of the *dot Sport Limited v. ICANN* Independent Review Process Final Declaration**

Document/Background Links

The following attachment is relevant to the Board’s consideration of the Panel’s Final Declaration in the dot Sport Limited (dSL) IRP:

- Attachment A is the Panel’s [Final Declaration](#) issued on 31 January 2017.

Other Relevant Materials

The documents submitted during the course of the dSL IRP are available at:

<https://www.icann.org/resources/pages/dot-sport-v-icann-2015-03-27-en>.

Expert Determination upholding SportAccord’s Community Objection against dSL’s .SPORT application, issued on 23 October 2013, is available at:

<https://newgtlds.icann.org/sites/default/files/drsp/04nov13/determination-1-1-1174-59954-en.pdf>.

Reconsideration Request 13-16 and annexes thereto, filed on 2 November 2013, are available at:

<https://www.icann.org/resources/pages/13-16-2014-02-13-en>.

Board Governance Committee (BGC) Determination on Reconsideration Request 13-16 is available at:

<https://www.icann.org/en/system/files/files/determination-sport-08jan14-en.pdf>.

Reconsideration Request 14-10 and exhibits thereto, filed on 2 April 2014, are available at:

<https://www.icann.org/resources/pages/14-10-2014-04-03-en>.

Board Governance Committee (BGC) Recommendation on Reconsideration Request 14-10 is available

at: <https://www.icann.org/en/system/files/files/recommendation-sport-21jun14-en.pdf>.

New gTLD Program Committee (NGPC) Action on Reconsideration Request 14-10 is available at:

<https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-07-18-en>.

ICANN Ombudsman's draft report dated 31 March 2014 is included as Annex 23 to dSL's IRP Request is available at: <https://www.icann.org/en/system/files/files/dot-sport-irp-annex-redacted-24mar15-en.pdf> (pages 410-415).

ICANN Ombudsman's final report dated 25 August 2014 is attached here as Attachment B.

Letter from SportAccord to the Board Governance Committee on 1 March 2017 regarding the Final Declaration and the Panel's recommendation is available at:
<https://www.icann.org/en/system/files/correspondence/baumann-to-disspain-01mar17-en.pdf>.

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