

Curriculum vitae

PERSONAL  
INFORMATION

Andrew Sem de la Haije

Contact Information Redacted

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Curriculum vitae

Contact Information Redacted



24 May 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 a proposed change 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 Andrew de la Haije as a new member. Andrew is the Chief Operating Officer of Réseaux IP Européens (RIPE), a position he has held for over 10 years. He has been active in the Internet Engineering Task Force (IETF) and ICANN in various capacities for many years. He brings significant operational experience from the Regional Internet Registry (RIR) community including substantial technical expertise. The SSAC believes Andrew would be a significant contributing member of the SSAC.

The SSAC Membership Committee respectfully requests that the Board appoint Andrew de la Haije to the SSAC for a 3-year term beginning immediately upon approval of the board and ending on 31 December 2020. Attached is his résumé for your reference.

The SSAC welcomes comments from the Board concerning this request.

Patrik Fältström, SSAC Chair



# Business Constituency Charter (v3.1)

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## 1.0 Mission and Principles.

### 1.1 ICANN Bylaws.

The Commercial and Business Users Constituency (CBUC), hereafter “Business Constituency,” represents commercial users under the auspices of the Internet Corporation for Assigned Names and Numbers (ICANN), California, USA. The Business Constituency is organized under the Commercial Stakeholder Group (CSG) of the Generic Names Supporting Organization (GNSO) as specified within Article 11, Section 5 of the ICANN Bylaws.

### 1.2 Mission.

The mission of the Business Constituency is to ensure that ICANN is accountable and transparent in the performance of its functions and that its policy positions are consistent with the development of an Internet which:

- Is committed to a multi-stakeholder, bottom-up, consensus-driven model of engagement;
- Is technically stable, secure, and interoperable;
- Promotes user confidence in online communications and business interactions; and
- Offers choice in the supply of registry, registrar, and domain name-related services and such services are offered in a reasonable and pro-competitive manner for the benefit of the business community and users.

### 1.3 Principles.

The Officers, Designated Representatives, and Members of the Business Constituency are committed to:

- 1.3.1** Carrying out its mission in a fair, open and transparent manner and ensuring that new participants may easily access and understand its operations and processes;
- 1.3.2** Establishing and maintaining standards for leadership positions including impartiality, accountability, and disclosure of conflicts of interest;
- 1.3.3** Establishing and maintaining professional standards of behavior for all participants including:
  - a. Adhering to ICANN Bylaws, policies, and “[Expected Standards of Behavior](#)”;
  - b. Supporting the bottom-up consensus model and acting in a thoughtful, reasonable, and informed manner when participating in policy development and decision-making processes;



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- c. Treating all members of the ICANN community equally, irrespective of nationality, gender, racial or ethnic origin, religion or beliefs, disability, age, or sexual orientation;
- d. Treating others fairly and in good faith with dignity, respect, courtesy, and civility;
- e. Acting in a reasonable and informed manner when participating in policy development and decision-making processes; and
- f. Maintaining good community standing.

**1.3.4** Promoting ICANN as a unique global and multi-stakeholder community. Those who take part in the ICANN process are expected to acknowledge the value of all stakeholders by listening attentively, seeking to understand other points of view, and working in good faith to build consensus in finding solutions to the issues that fall within the areas of ICANN's responsibility.

## **2.0 Constituency Leadership: Executive Committee.**

### **2.1 Composition.**

The Business Constituency will have an Executive Committee (EC) comprised as follows:

#### **2.1.1 Voting Officers.**

- a. A Chair;
- b. A Vice-Chair for Finance and Operations;
- c. A Vice-Chair for Policy Coordination; and
- d. A Representative to the Commercial Stakeholder Group (CSG).

#### **2.1.2 Additional Non-Officer Voting Members: GNSO Council Representatives (CR).**

#### **2.1.3 Non-Voting Officer: General Counsel.**

- a. The BC shall maintain a non-voting officer position of General Counsel. The General Counsel shall be appointed by the EC and empowered to act on behalf of the BC solely as directed by the EC. The General Counsel shall not have the power to vote with the officers of the EC on any BC matters.
- b. Charter provisions §2.2 through §2.4 do not apply to the General Counsel position.

### **2.2 Eligibility and Elections.**





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To be eligible for an EC officer position:

- a. The Member must be in good standing according to the provisions in §5.6.2;
- b. The Member may not be owned by, or under common ownership or affiliated with, any entity which holds an elected position in another Stakeholder Group or Constituency within ICANN;
- c. A candidate must be a Member Representative (MR) or Alternate Member Representative (AMR) (see §5.2) of the Business Constituency; and
- d. An otherwise eligible MR or AMR may not concurrently hold an elected office or Council Representative (CR) position within the Business Constituency. Each Member may only fill one elected position within the Business Constituency simultaneously.

All EC positions shall be elected by the Members as provided in Chapter 6.0.

## **2.3 EC Term Limits.**

2.3.1 Officers of the EC will be elected for one-year terms.

2.3.2 An officer may be reelected for up to three (3) consecutive terms in one position, but no more than five (5) consecutive years in any EC position with exceptions granted when no other candidates exist.

2.3.3 CR term limits are defined in the ICANN Bylaws and GNSO Operating Procedures.

## **2.4 Vacancies.**

2.4.1 If at any point in time an officer or CR of the EC (a) leaves the Business Constituency, (b) is terminated for cause, or (c) has his/her membership rights/privileges suspended, he/she shall vacate the office upon the effective date of the action.

2.4.2 If the office of the Chair becomes vacant, then the Vice-Chair for Finance and Operations shall become acting Chair until the end of the current term or, at the EC's discretion, until an election for the Chair can be held. If the Vice-Chair for Finance and Operations is unable or unwilling to serve in this capacity, then the EC shall select another EC member to serve as acting Chair.

2.4.3 If a vacancy occurs with respect to an officer other than the Chair, with:

- a. Six (6) or more months left in the term, the Chair shall direct the EC to hold an election to replace the individual in accordance with the procedures described in §6.2; or



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- b. Less than six (6) months left in the term, the Chair, in consultation with the EC, shall appoint an individual to fill the vacancy until the term is expired.
- c. For any CR vacancy, pending replacement as outlined above, a Temporary Alternate may be named to the GNSO Council per the provisions contained in §3.3.5 and in the GNSO Operating Procedures.

## 2.5 Officer Duties.

2.5.1 On behalf of the Business Constituency membership, the Chair will:

- a. Organize and conduct meetings and teleconferences of the Business Constituency in an open and transparent manner, including a meeting of all Members during the ICANN public meetings on a day selected by the EC;
- b. Determine the agenda and meeting schedule of the EC and the Business Constituency;
- c. Be responsible for collaborating with the EC in coordinating the overall activities of the Business Constituency;
- d. Be a spokesperson for the Business Constituency;
- e. Serve as the alternate representative to the Commercial Stakeholders Group (CSG) Executive Committee in the absence of the CSG representative;
- f. Serve as the alternate representative to the Credentials Committee (CC) in the case where a CC member must recuse him/herself from deliberations or in the case of a temporary absence or removal pursuant to §5.6.2 of a CC member;
- g. Liaise with other Stakeholder Group representatives, Advisory Committees, the ICANN Board, and ICANN Staff on administrative and substantive matters;
- h. Request the membership to replace any member of the EC who is inactive;
- i. Participate in outreach, recruiting, and networking efforts; and
- j. Ensure that timelines and standards for the work of the officers and committees are set and met.

2.5.2 On behalf of the Business Constituency membership, the Vice-Chair for Finance and Operations will:

- a. Chair the Finance Committee (see §4.3);
  - i. Manage the Business Constituency budget, banking relationship, and membership fee collection;
  - ii. Seek sources of support from ICANN, grants, and other donations pursuant to Chapter 10.0;



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- iii. Ensure that the financial operations of the Business Constituency conform to generally accepted accounting practices and that any Secretariat function administers expenditures in accordance with the budget and funding; and
  - iv. Report to the Members of the Business Constituency at the end of each annual budget period concerning all funding and expenditures during that year and post to the Business Constituency website such graphs, tables, charts, and/or summaries as approved by the EC. Provide ad hoc financial status reports when called upon to do so during interim formal reporting periods.
- b. Arrange for the following Secretariat functions to be provisioned, which may include being performed by contracted services, ICANN Staff, or one or more EC Officers:
- i. Establish and manage all public and private communications facilities as described in Chapter 7.0;
  - ii. Establish and maintain the Business Constituency web presence(s) including publication of Member information as prescribed in §7.1.1;
  - iii. Provide timely notice on (a) the Private List (see §7.2.2) of all Business Constituency meetings, agendas, and minutes or other reports; and (b) the Public List (see §7.2.1) of all formal Business Constituency positions and/or statements;
  - iv. As directed by the EC, manage elections according to the provisions stipulated in §6.2 including the posting of Notices of Election and Requests for Nominations on the Private List;
  - v. Take minutes of public meetings and EC meetings pursuant to §8.1.3;
  - vi. Maintain all records, databases, and documents, including archives, of the Business Constituency for at least a four-year period or as specified by ICANN;
  - vii. Administer membership fees and the routine management of budgeted expenditures including periodic financial reporting to the Vice-Chair for Finance and Operations;
  - viii. Support Business Constituency committees and/or working groups as and when established according to this Charter;
  - ix. Support the Executive Committee and Credentials Committee;
  - x. Coordinate in-person and telephone meetings and associated outreach activities;
  - xi. Coordinate with the GNSO Secretariat;
  - xii. Act as liaison between ICANN Staff and Business Constituency participants in ICANN groups; and



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xiii. Respond to Member and prospect inquiries.

2.5.3 On behalf of the Business Constituency membership, the Vice-Chair for Policy Coordination will:

- a. Choose policy areas/issues to propose to Members as priorities and manage the discussion/debate on such matters during Business Constituency meetings;
- b. Appoint an Issue Manager and solicit volunteers from within the Business Constituency to initiate policy development research and develop written positions on policy issues;
- c. Ensure Business Constituency positions developed and put forward to the larger ICANN community meet the prescribed timelines;
- d. Strive to develop consensus among Members while creating mechanisms to properly and accurately reflect minority positions in Business Constituency policy development;
- e. Recommend the formation of new working groups to the EC, when appropriate, as well as the dissolution of completed and/or redundant groups;
- f. Assist with the identification and recruitment of Business Constituency Members and supporters to serve on GNSO working groups or drafting teams;
- g. Keep the EC and Members informed on the work of:
  - i. Issue Managers;
  - ii. Working groups convened by the EC to address policy issues; and
  - iii. The activities of the CRs as well as important GNSO Council discussions and decisions affecting the Business Constituency's policy interests.
- h. Coordinate with the CRs to be aware of any upcoming GNSO Council motions for which a CR will be unable to vote or intends to abstain and be prepared to recommend to the Chair whether a voting remedy should be exercised as described in §3.3.5;
- i. Recommend to the Business Constituency membership practical policy and voting strategies for its elected CRs; and
- j. Coordinate with the Business Constituency CSG Representative on policy coordination with the Commercial Stakeholder Group and the Non-Contracted Parties House.

2.5.4 The Representative to the Commercial Stakeholder Group (CSG) will:

- a. Represent the Business Constituency on all matters within the responsibility of the CSG Executive Committee; however, the Vice-Chair for Policy Coordination will have primary responsibility for the specific area of policy coordination;



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- b. Keep EC and Members informed of CSG discussions and decisions; and
- c. Perform other duties as requested by the CSG Executive Committee.

2.5.5 The General Counsel is empowered to:

- a. Maintain a continuous incorporation of “The ICANN GNSO Business Constituency LLC” in the District of Columbia as a non-profit entity in the District of Columbia;
- b. Process and forward the BC’s postal mail;
- c. Maintain an Employer Identification Number (EIN) for the BC;
- d. File and sign the BC’s applicable tax returns; and
- e. Utilize his/her registered address to facilitate his/her duties herein.

## **2.6 Executive Committee (EC) Duties.**

The Executive Committee is tasked with fulfilling the Business Constituency mission via administrative supervision and coordination. The Executive Committee will:

2.6.1 Conduct Elections. In accordance with provisions in §6.2, the EC will:

- a. Direct the Vice-Chair for Finance and Operations to:
  - i. Announce a call for candidate nominations;
  - ii. Establish a list of the Members eligible to vote in such election including their status/vote allocation, and
  - iii. Collect and post, via the Private List, statements of qualifications and intentions of all candidates on the ballot.
- c. Establish and oversee a secure, confidential, and accurate balloting procedure; and
- d. Notify Members of the results in a timely and transparent manner.

2.6.2 Manage Funding and Expenditures. The EC will:

- a. Approve and monitor Business Constituency funding from ICANN, Members, individuals and organizations that are not Members, and other sources;
- b. Approve a budget proposed by the Vice-Chair for Finance and Operations at least annually and approve reports on expenditures at the end of each budget period; and
- c. Ensure that records and accountings are maintained, as necessary, to satisfy the requirements of any funding source and/or ICANN.



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- 2.6.3 Make Appointments. The EC will confirm appointments or establish elections for Business Constituency candidates, as requested, to serve on, or liaise with, other ICANN structures, including the ICANN Nominating Committee. A candidate for a Nominating Committee position may be either a representative of a paid-up Member or someone who is nominated by an MR of the Business Constituency.
- 2.6.4 Establish Additional Committees and Working Groups.
- a. The EC, acting on its own or upon a request from a Business Constituency Member, may, at its sole discretion, propose to the membership the establishment of additional temporary or permanent committees or working groups. The EC shall post such a proposal on the Private List. The proposal will:
    - i. Explain the need for and intended purpose of such group;
    - ii. Describe group formation criteria, participation and eligibility requirements, functions, and procedures;
    - iii. State a date, not less than thirty (30) days after the proposal is posted, on which such group will be formed. If three (3) or more Members request in writing on the Private List that the EC's decision to create a new committee or working group be put to Member vote, the EC shall conduct a vote in accordance with the procedures set forth in §6.1.
  - b. Volunteers. The EC will direct the Secretariat to post, via Private List, a call for volunteers to serve on newly created committees or working groups before the first meeting is scheduled.
- 2.6.5 Resolve Disputes. The EC will hear and resolve Member disputes in a timely manner including conflicts of interest and any appeal from a decision of the Credentials Committee.
- 2.6.6 Perform with Diligence and Loyalty. EC members have a duty to perform their roles with diligence and loyalty to the Business Constituency and will promptly disclose any and all conflicts of interest in a timely fashion, recusing themselves from discussions and decisions whenever there is an actual conflict or offering to recuse themselves in situations which could be perceived to be a conflict.
- 2.6.7 Support Outreach and Education. The EC will:
- a. Devise and conduct recruitment and outreach programs; and
  - b. Cooperate to create and support opportunities for the Members to keep current with literature, research, and discussion of Internet policies being developed in the GNSO.
- 2.6.8 Decisions. All members of the EC will participate faithfully in making decisions. A quorum of at least two-thirds (2/3) of the members of the EC is required for making



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decisions not otherwise delegated to an individual officer. Wherever possible, decisions will be made by consensus; however, if the EC cannot resolve a matter through consensus, the Chair shall conduct a vote in which a simple majority will prevail. All members of the EC, including the Chair, have a vote. In the case of a tie, the Chair's vote is decisive; however, at the Chair's option, the EC may conduct a vote of the Members.

- 2.6.9 Additional EC Duties. The Executive Committee will also be responsible to:
- a. Facilitate policy development in the Business Constituency and advocate for its policy positions within the GNSO, GNSO Council, and before the ICANN Board;
  - b. Actively communicate with Members;
  - c. Ensure timely notification of relevant ICANN and GNSO decisions to the Business Constituency;
  - d. When present in whole or in part at an ICANN public meeting, issue statements on behalf of the Business Constituency that are consistent with existing Business Constituency positions;
  - e. Oversee the work of all chairs, officers, committees, working groups, CRs, and Secretariat functions.

## 2.7 **Executive Committee Accountability.**

If a Business Constituency Member files a complaint or the Chair is notified by ICANN Staff that an EC member or CR has failed to faithfully perform the duties of the office, including satisfying attendance and/or participation requirements, the EC shall conduct an investigation requesting supporting information with respect to the alleged deficiency.

- 2.7.1 As an initial step, the EC will communicate in writing with such leader outlining the deficiency and providing an opportunity for the leader to respond to the particulars, including rationale and/or remedy, within fourteen (14) days.
- 2.7.2 If the leader fails to respond or the response (a) does not commit to remedy the deficiency or (b) does not provide a rationale convincing to the EC, the EC will ask the leader to voluntarily resign from office within fourteen (14) days.
- 2.7.3 If the leader does not resign within the prescribed period, the EC, except the individual being investigated, will take a vote to recall such leader. If two-thirds (2/3) of the EC supports the recall:
  - a. The EC shall formally notify the individual of removal from office;
  - b. A message may be copied to the Private List stating that the individual is being removed pursuant to this provision; and
  - c. The EC shall call an election to fill such vacancy.



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## 3.0 GNSO Council Representatives (CRs).

### 3.1 Positions and Eligibility.

- 3.1.1 As specified in the ICANN Bylaws and the CSG Charter (§2.3.2), the Business Constituency, in cooperation with the other recognized Constituencies within the CSG, will select two (2) Council Representatives (CR) to serve a two-year term on the GNSO Council.
- 3.1.2 The Business Constituency's CRs will act on the GNSO Council as representatives of and spokespersons for the Business Constituency and CSG.
- 3.1.3 Eligibility criteria for GNSO CRs are the same as those for an EC Officer position except in the case of a conflict with the CSG Charter which shall take precedence.

### 3.2 CR Terms and Regional Representation.

- 3.2.1 The Business Constituency's CRs will be elected to serve staggered two-year terms under the rules for elections in §6.2. In any transitional phase, the natural term of an elected representative shall be served in full.
- 3.2.2 The Business Constituency shall seek to recruit and elect CRs from a variety of global regions as defined by ICANN. Determination of which regions are represented by CRs is made by the Credentials Committee subject to the CSG Charter provision (§4.2.1) that no more than three of the six Council Representatives may be domiciled in the same Geographic Region as defined by ICANN.

### 3.3 CR Duties and Obligations.

- 3.3.1. Constituency Participation. Each CR shall actively and faithfully participate in developing administrative and policy positions as members of the EC and the Business Constituency at large.
- 3.3.2 GNSO Council Participation. Each CR shall actively and faithfully participate in the activities of the GNSO Council and in advancing the goals of the Business Constituency in every aspect of the GNSO's administrative and policy development processes. In particular, CRs are expected to adhere to the following obligations:
  - a. Active participation: A CR is expected to actively participate in the regular affairs of the GNSO Council including, inter alia, attending its scheduled meetings, staying abreast of the technical and administrative agenda, engaging in relevant email and live discussions, reading minutes, evaluating reports, listening to meeting recordings (in the event of absence), voting responsibly on all matters before the Council, and, when requested, periodically reviewing the performance of the Council Chair and Vice-Chairs.





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- b. Reasonable inquiry: CR's shall request and receive sufficient information, including support from the Business Constituency, as appropriate, so that they may carry out their responsibilities. When a problem manifests itself or some issue does not make sense, a Councilor has a duty to inquire into the surrounding facts and circumstances and seek guidance from available Business Constituency resources (e.g. Chair, Vice-Chair for Policy Coordination, Members), in advance of any consequential discussions, decisions, or votes.
- 3.3.3 Communication. Each CR shall inform the Vice-Chair for Policy Coordination, in a timely manner, of:
- a. The initiation of a new working group or Policy Development Process (PDP) within ICANN;
  - b. The content of working group charters;
  - c. ICANN Public Comments solicitations and timeframes;
  - d. Any formal motion made by a GNSO Council Representative, wherever practicable, at least seven (7) calendar days in advance of the scheduled vote; and
  - e. Any other matter reasonably pertinent to permitting the full involvement in ICANN policy development by Business Constituency Members.
- 3.3.4 Constituency Positions. Each CR shall represent on the GNSO Council the goals and priorities of the Members to the best of his/her ability and in accordance with the following principles:
- a. Positions that are formally adopted within the Business Constituency, as described in §6.1 and §6.3, are presumptively binding on CR votes. This presumption may be rebutted only with the consent of the Members and in the event of very significant countervailing concerns, which concerns must be disclosed to the Members.
  - b. On motions, votes, and other matters for which a Business Constituency position has not been formally established, CRs are required to proactively consult with the EC as far in advance as is practicable. The EC shall determine if specific guidance should be provided to CRs consonant with the Members' interests.
  - c. In the absence of a formally adopted position or specific direction from the EC, CRs are authorized to vote on GNSO Council matters as they think best with a reasonable effort to reflect the positions held by Members of the Business Constituency.
- 3.3.5 Abstention, Absence, and Vacancy. It is important that votes of the Business Constituency be registered, through its elected CRs, on every matter of significance that comes before the GNSO Council for action. For CR occurrences of abstention, planned absence, and vacancy, the Business Constituency intends to utilize the voting



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remedies provided in the GNSO Operating Procedures (GOP) which include Voting Direction, Proxy, and Temporary Alternate.

- a. Abstention. In the event that a CR experiences a circumstance requiring a volitional or obligational abstention, as described in the GNSO Operating Procedures (§4.5.2), the CR must notify the EC as far in advance as practicable. The EC, coordinating with the appropriate Vice-Chair, will decide whether or not to utilize a prescribed remedy of Voting Direction or Proxy. For these two remedies, there is a requirement that the Business Constituency establish a position on the matter at issue. In the event that the Business Constituency does not have a formally adopted position (§3.3.4-a) and there is insufficient time to develop one using its normal procedures (§6.3):
  - i. For matters involving policy positions, the Chair, with the concurrence of the Vice-Chair for Policy Coordination, may interpret the Business Constituency's position using their best judgment so that a voting remedy may be exercised.
  - ii. For non-policy motions/votes, the Chair, with the concurrent of the Vice-Chair for Finance and Operations, may interpret the Business Constituency's position using their best judgment so that a voting remedy may be exercised.
- b. Planned Absence. When a CR expects to be unable to attend a GNSO Council meeting, in whole or in part, the CR is expected to notify the EC as far in advance as practicable. Consistent with the provisions in §3.3.5-a, the EC will determine whether to utilize the Proxy voting remedy as provided in the GNSO Operating Procedures (§4.5.3-b).
- c. Extended Absence or Vacancy. Under circumstances which will cause a CR to miss multiple GNSO Council meetings or otherwise be unable to fulfill his/her duties and obligations for an extended period, the EC may identify one or more Members who satisfy the GOP criteria and can be called upon to serve as a Temporary Alternate (§4.5.3-c).
- d. Unplanned Absence. Because unplanned absences, by definition, do not permit sufficient opportunity or time to apply a voting remedy, they are to be minimized. CRs who more than occasionally fail to attend GNSO Council meetings in whole or in part, for any reason, without providing the EC sufficient advance notice to evaluate and, at its option, execute a voting remedy, may be subject to removal per the provisions in §2.7.
- e. Communication to Members. Any EC judgment(s) applied under §3.3.5 must be communicated to the Members as soon as practicable after the decision is made.



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## 4.0 Other Committees.

### 4.1 General Provisions.

- 4.1.1 Chair Responsibilities. As set forth in §2.5.2(a), the Vice-Chair for Finance and Operations will serve as Chair of the Finance Committee; otherwise, the members of each committee shall elect a Chair annually who, among other duties mentioned elsewhere in this Charter, will:
- a. Schedule meetings and develop agendas;
  - b. Conduct deliberations consistent with the consensus provisions in §6.1;
  - c. Keep and publish (or direct others to keep and publish) minutes of committee meetings and records of committee actions, which shall be made available on the Private List (§7.2.2); and
  - d. Involve Business Constituency Members in the activities of the committee, as appropriate.
- 4.1.2 Conflicts of Interest. Committee members have a duty to perform their roles with diligence and loyalty to the Business Constituency and will promptly disclose any and all conflicts of interest in a timely fashion, recusing themselves from discussions and decisions whenever there is an actual conflict or offering to recuse themselves in situations which could be perceived to be a conflict.

### 4.2 Credentials Committee (CC).

- 4.2.1 Purpose. The CC is responsible for administering the Business Constituency's membership requirements including (a) approval or rejection of new or amended applications, (b) conducting eligibility/status reviews when warranted, (c) suspending rights/privileges of a Member or its Designated Representative(s), and (d) recommending permanent termination of a Member's status to the EC.
- 4.2.2 Composition. The Credentials Committee will be comprised of the Chair and 4 Business Constituency Members (5 total) if there are sufficient volunteers; otherwise, composition will be the Chair and 2 Business Constituency Members. If more than 4 members of the Business Constituency volunteer for service on the CC, an open election of the Business Constituency membership will be held. Volunteers will be elected or affirmed by the membership for a term of up to two years with a single one-year term extension possible. The composition of the CC should endeavor to achieve geographic diversity.
- 4.2.3 Duties. The Credentials Committee will:



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- a. Administer and enforce, where necessary, the Business Constituency's membership eligibility provisions as provided in Chapter 5.0.
- b. Receive and review new Member applications and, if the information in the application is insufficient to warrant acceptance, notify the applicant and request additional information;
- c. Establish and monitor compliance with the new Member application process assuring itself of the qualifications of any applicant both at the time of submission, and at any time thereafter based on presentation of documented concerns about eligibility to the CC as described in §5.6.2-a;
- d. Accept and welcome new Members who qualify in accordance with this Charter;
- e. Coordinate with the Vice-Chair of Finance and Operations to ensure that a list (or database) of Members, including appropriate contact information, is maintained and published on the Business Constituency's web presence(s);
- f. Determine the voting status of Members as defined in Chapter 5.0 including assessment of the number of geographic regions in which a Member is based as specified in §5.3.2;
- g. Conduct reviews upon request (see §5.6.2) or if there is a change in the circumstances of the Member that may impact on eligibility status or if the Member or any of its Designated Representatives allegedly engages in behavior inconsistent with this Charter; and
- h. Recommend amendments, when deemed appropriate, to Member eligibility criteria, voting status, the membership application form/process, the nature and amount of information necessary to evaluate Member eligibility/status, membership categories (§5.3.2), and any other provisions pertaining to Business Constituency membership.

## 4.3 Finance Committee (FC).

- 4.3.1 Purpose. The purpose of the Finance Committee is to provide financial oversight to the Business Constituency and to coordinate with Secretariat functions including the routine administration of expenditures in accordance with approved budgets.
- 4.3.2 Composition. The Finance Committee shall be comprised of the Chair and 4 Business Constituency Members (5 total) if there are sufficient volunteers; otherwise, composition will be the Chair and 2 Business Constituency Members. If more than 4 members of the Business Constituency volunteer for service on the FC, an open election of the Business Constituency membership will be held. Volunteers will be elected or affirmed by the membership for a term of up to two years with a single one-year term extension possible. The composition of the FC should endeavor to achieve geographic diversity.



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- 4.3.3 Duties. The Finance Committee is responsible for:
- a. Adopting the annual budget including the level of membership fees;
  - b. Recommending the annual budget to Members for their review and acceptance;
  - c. Establishing a reserve for operating costs that are borne by the Business Constituency.
  - d. Ensuring that the budget is balanced;
  - e. Delegating to the Secretariat the routine management of budgeted expenditures;
  - f. Authorizing exceptional expenditures not foreseen in the budget upon affirmation of the Executive Committee;
  - g. Recommending to the Executive Committee any action related to an application of hardship concerning Business Constituency membership fees; and
  - h. Assisting in Member retention. The Secretariat shall notify the FC of Members whose dues are outstanding at the time of the first reminder invoice. The FC will make contact with those Members to help ensure their retention.

## 5.0 Membership.

### 5.1 Eligibility.

- 5.1.1 Eligible Organizations. To be eligible to be a Member of the Business Constituency, an applicant must:
- a. Be a legally recognized for-profit entity which uses the Internet to conduct business related to electronic commerce (“Business User”); a trade association (whether non-profit or for-profit) which represents the interest of Business Users; or a consultant advising Business Users; and
  - b. Fully subscribe to the Business Constituency’s mission (§1.2) and principles (§1.3).
- 5.1.2 Ineligible Organizations. The purpose of the Business Constituency is to represent the interests of Business Users as described in §5.1.1. To avoid conflicts of interest, the following is a non-exhaustive list of entities which are not eligible to be a Member:
- a. Not-for-profit entities excepting trade associations or coalitions representing for-profit entities;
  - b. Entities which derive more than 30 percent of annual revenue as a registry operator, registrar, or domain name reseller (collectively, “Contracted Parties”);
  - c. Political organizations whose primary purpose is to elect government officials;



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- d. Individuals or entities that represent governments in any way or in any capacity at ICANN;
- e. Other groups not chartered to support Business Users as described in §5.1.1.

An entity which does not fall within the non-exhaustive criteria set forth above may nonetheless be ineligible to be a Member based upon a review and determination by the Credentials Committee in accordance with the provisions contained in §5.6.

5.1.3 Non-Voting Members: Any otherwise eligible Member according to §5.1.1 that votes in another Stakeholder Group or Constituency in either house of the GNSO, or is owned, controlled by, or under common ownership with any entity that votes in the Business Constituency or another Stakeholder Group or Constituency is ineligible for Voting status within the Business Constituency; however, such Member may be accorded Non-Voting status subject to the following:

- a. A representative of a Non-Voting Member may not hold an elected position, including Officer or GNSO Council Representative, within the Business Constituency; and
- b. With the exception of restrictions specified in §5.1.3, all other rights and privileges of membership apply to Non-Voting Members.

5.1.4 Representation. Whether Voting or Non-Voting, Members must agree to represent the interests of Business Users for all business and matters addressed inside the Business Constituency.

## 5.2 Member Representation.

5.2.1 Member Representative (MR). Each Member, whether it has Voting or Non-Voting status, shall appoint one Member Representative (MR) to act on its behalf and serve as its principal point-of-contact. At its discretion, each Member may also appoint an Alternate Member Representative (AMR) to serve in the capacity of the MR whenever circumstances warrant (e.g., scheduled or incidental absence); however, the AMR must satisfy all of the conditions and specifications below:

- a. The designated MR must be either a director or employee of that Member or majority-owned subsidiary and whose position aligns with the purpose and mission of the Business Constituency. An association will ordinarily designate a staff member as its MR, but may choose a director or employee of one of its member companies.
- b. An individual is ineligible to serve as an MR if s/he holds (a) executive office in a current or prospective ICANN Contracted Party, or (b) a 30% or greater ownership stake in such entity, or (c) derives more than 30% of income from one or more ICANN Contracted Parties.



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- c. Each MR shall have the power to speak publicly on behalf of the Member organization within the Business Constituency.
- d. Unless otherwise provided in this Charter, the MR or acting AMR is the only person able to vote on behalf of a Voting Member. A Voting Member may appoint a proxy for a specific meeting of the Business Constituency. The proxy must fulfill the conditions of appointment as an MR or be another Member's MR within the Business Constituency. A formally designated AMR, when serving in the capacity of MR, is assumed to have and is not required to pre-register a voting proxy. Notification of a proxy must be made in writing to the Secretariat at least 48 hours before the start of the meeting.
- e. A Member may change its MR if the departing MR or other qualified individual, as noted herein, of the organization:
  - i. Notifies the EC of the change; and
  - ii. Authorizes a new MR following the departure of the prior representative.
  - iii. A new MR appointed in accordance with this Charter does not assume an elected or appointed office within the Business Constituency held by the prior representative. The EC will fill any office vacancy created by a departing MR according to applicable provisions in this Charter.

5.2.2 Additional Contacts. A Member may request that a reasonable number of additional contacts be subscribed to Business Constituency email and/or publication lists for information purposes:

- a. Additional contacts do not vote on behalf of the Member organization; however, they may participate in Business Constituency discussions, meetings, committees, and working groups. Such contacts must identify themselves as affiliated with the Member when participating in Business Constituency affairs.
- b. The EC may establish eligibility guidelines for, and limits on the number of, additional contacts that will be applicable to all Member organizations.

5.2.3 The MR, AMR, and a Member's additional contacts are hereinafter collectively referred to as "Designated Representative(s)."

## 5.3 Fees and Member Voting Categories.

5.3.1 Fees. The Business Constituency has the right to require membership fees, which shall be established by the Finance Committee in accordance with the fiscal needs of the Business Constituency.

5.3.2 Member Voting Categories. Members will be assigned to one of three categories of declining fee and voting eligibility:



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- a. Category 1: (i) macro enterprises defined as companies which have 10 or more employees or annual revenue of at least US\$500,000; or (ii) associations with members based in more than one ICANN region [3 votes];
- b. Category 2: associations with members based in only one ICANN region [2 votes]; and
- c. Category 3: micro enterprises defined as companies which have fewer than 10 employees and annual revenue less than US\$500,000 [1 vote].

## 5.4 Applications for Membership and Eligibility Renewal.

- 5.4.1 Member Application and Eligibility. All prospective and existing Members must complete and maintain a **Member Eligibility and Application Form**, which shall be used by the Credentials Committee in evaluating new membership applications as well as renewals of existing Members for the purpose of confirming eligibility and voting status. This form, once initially approved by the Credentials Committee, will represent a permanent Member record and shall be updated whenever a Member's circumstances change materially or at any other time as specifically directed by request of the Executive Committee or Credentials Committee.
- 5.4.2 Effective Date. Membership and voting status are effective upon written notification from the Credentials Committee posted on the Business Constituency's Private List.

## 5.5 Member Rights/Privileges

The rights and privileges documented in this section apply to the Member and, where applicable, its Designated Representatives. They are subject to various restrictions and/or provisions contained elsewhere in this Charter; otherwise, each Member of the Business Constituency in good standing shall have the right to:

- 5.5.1 Vote. Vote in all general elections of the Business Constituency including, but not limited to officers and CRs; and, whenever a general membership vote has been called by an authorized officer of the Business Constituency.
- 5.5.2 Participate in Leadership Elections. Run for, or nominate other Members to, elected positions of the Business Constituency by complying with the procedures described in §6.2 and as determined by the Vice-Chair for Finance and Operations;
- 5.5.3 Receive Communications.
  - a. Have access to the Business Constituency web presence(s), Public and Private Email Lists, and any other communications mechanisms established pursuant to Chapter 7.0;





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- b. Be given timely notice of all policy development initiatives being considered by the Business Constituency; and
- c. Be provided timely information concerning meetings, significant actions, and decisions of the Executive, Finance, and Credentials Committees as well as relevant matters occurring within the GNSO Council.

5.5.4 Participate. Be afforded the opportunity to participate in Business Constituency discussions, whether via teleconference, e-mail list, website, or in person, on all policy and administrative issues for which notice is given on the Private List.

5.5.5 Submit Agenda Items. Submit agenda items for Business Constituency meetings. If there are too many agenda items to include in the time available, the Chair may limit the agenda excepting any items (a) submitted at least ten (10) days prior to the scheduled meeting and (b) seconded by a Member.

## 5.6 Determinations and Reviews of Member Eligibility, Status, and Rights/Privileges.

5.6.1 Determination of Eligibility and Status. The Credentials Committee is responsible for evaluating Business Constituency membership applications and determining Member eligibility and voting status consistent with Chapter 5.0.

### 5.6.2 Reviews of Member Eligibility, Status, and Rights/Privileges

- a. Any Member may request that a review be conducted of another Member, its Designated Representatives, or itself by submitting written documentation, including supporting rationale, to the Credentials Committee (CC). Requestors must be identified (i.e., not anonymous); however, the CC will maintain confidentiality of their identities until a disposition has been reached (see §5.6.2-c below). The CC will promptly notify the EC and the affected party or parties of the review's essential nature. Except in the case of a dismissal (§5.6.2-c-iv), in the interests of transparency, information concerning the review will be disclosed to the Business Constituency membership at its conclusion.
- b. Reviews will be conducted by the CC and must involve a thorough examination of all relevant facts including supporting documentation. A review is not limited to, but may be indicated when:
  - i. There is a potential conflict of interest;
  - ii. A Member or Designated Representative allegedly engages in behavior or activities which appears to be (a) inappropriate for or threatening to the stability, functionality, or reputation of the Business Constituency, or (b) is inconsistent with its Mission (§1.2) and/or Principles (§1.3);
  - iii. A Member's circumstance changes such that it would be grounds for refusal of an initial application; or



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- iv. A Member or prospective applicant may be involved in a violation §6.1.2(j) of the GNSO Operating Procedures which states, “No legal or natural person should be a voting member of more than one Group.” The Business Constituency discourages entities which might wish to switch voting status between multiple Stakeholder Groups or Constituencies over relatively short periods.
- c. After a review, the Credentials Committee may, by simple majority vote, apply the following actions, depending on the circumstances:
  - i. If a new membership denial, a formal written notice of the issue of concern, which will be sent through the Secretariat to the applicant.
  - ii. If an existing Member or Designated Representative, a defined period of suspension of some/all Business Constituency rights and/or privileges.
  - iii. Termination of membership in the Business Constituency. Such termination decisions must be reviewed by the Executive Committee. If a majority of the Executive Committee disagrees with the decision of the Credentials Committee, the members of both committees will meet together to discuss their respective viewpoints. If, after such discussion, agreement cannot be reached, the Executive Committee’s decision is final. Any affected Member should be notified that further appeal would be to the ICANN Ombudsman. Correspondence will be managed by the Secretariat. Except for instances where the Member would no longer qualify for membership, termination must be preceded by at least one other disciplinary action under this section.
  - iv. Dismissal of the review if, in the CC’s judgment, it is determined not to have merit or there are insufficient grounds for action. In such a case, with the concurrence of the EC, further communication of its nature shall remain confidential except to the originally affected party or parties.
- d. Before any action under this Section may take effect, the affected party or parties will have an opportunity to:
  - i. Review the cause of action and supporting rationale;
  - ii. Provide a written response to the CC; and
  - iii. Request reconsideration by the CC of any action if submitted within 21 days of notification.
  - iv. Appeal any decision of the CC to the EC (§2.6.5).
- e. CC or EC members who cannot maintain objectivity in conducting or evaluating a formal review of the alleged behavior or activity will recuse themselves from any denial/discipline process or related deliberation other than responding to direct communications with the Credentials and Executive Committees. A reviewed party may request the recusal of any such member by submitting a timely written statement including supporting rationale.



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- 5.6.3 Payment of Fees. Once approved by the Credentials Committee an applicant is expected to pay membership fees within a reasonable period of time in order to continue participating in the Business Constituency. Should exceptions be required, the Credentials Committee, Finance Committee, and Executive Committee should review the circumstances.

## 6.0 Decision-Making, Elections, and Policy Positions.

### 6.1 Decision-Making.

- 6.1.1 Commitment to Consensus. The Business Constituency, its various committees, working groups, drafting teams, and other deliberative bodies, shall endeavor to decide issues by general agreement whenever practicable. Formally chartered working groups, in particular, should follow the decision-making practices specified in the [GNSO Operating Procedures](#), Annex 1, entitled “GNSO Working Group Guidelines.” Except for elections (§6.2) and written policy development positions (§6.3), voting shall be relied upon only to the extent that is necessary in cases where general agreement cannot be reached.
- 6.1.2 Constituency, Committee, Group, and Team Voting. After all reasonable attempts to reach consensus have been exhausted, the presiding leader may call for a vote following these general guidelines:
- a. Before any vote may be taken, there must be a quorum of at least 50% of the Members registered as participants of the relevant entity. If an e-mail is forwarded to the entire Business Constituency list, it will be presumed to have met the quorum requirement.
  - b. A decision may be considered carried if at least 51% (simple majority) of those voting concur.
  - c. Voting shall normally be by a show of hands or call of Aye or Nay (For or Against) in a teleconference. Electronic voting shall also be permitted where the presiding leader indicates that this manner of voting shall be used.
  - d. When the result of a vote is in doubt, the presiding leader may take a second vote by a roll-call. A vote by roll-call shall also be taken if it is requested by not less than three (3) Members before the voting takes place.

### 6.2 Elections.

The EC shall authorize an election(s) for members of the EC, Nominating Committee delegates, and, subject to governing provisions in the CSG Charter, for CRs to represent the Business Constituency on the GNSO Council. Elections shall be generally supervised by the Vice-Chair for Finance and Operations; however, the EC shall arrange for a neutral third



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party (hereinafter “Elections Coordinator”) to administer the election process, which may be a Secretariat, ICANN Staff, or other contracted service as determined by the Vice-Chair for Finance and Operations. The timing of elections may vary depending upon the year, but shall be scheduled to ensure that published calendar requirements of ICANN, the Nominating Committee, the GNSO Council, and/or the CSG are satisfied.

- 6.2.1 Announcement. As directed by the EC, a Notice of Election and Request for Nominations will be posted on the Private List five (5) weeks before the start of the election.
- 6.2.2 Eligibility. Upon receipt from the EC of a notice of an upcoming election, the Vice-Chair for Finance and Operations will confirm the identity and status of Business Constituency Members eligible to vote and/or run for office at least four (4) weeks prior to the beginning of such election. In addition, the Vice-Chair for Finance and Operations will notify the membership if there are any constraints or restrictions pertaining to eligibility for an elected position.
- 6.2.3 Nominations and Candidates – Executive Committee.
  - a. The election process for the Executive Committee will be initiated by a nomination period of two (2) weeks. The Chair, Vice-Chairs, and CSG Representative will be elected at the same time. Candidate nominations will be published to the Private List upon the close of this period.
  - b. Any Member of the Business Constituency may nominate one (1) other MR or AMR for each elected position. If, at the close of nominations, it would result that all Executive Committee officer nominees (excepting GNSO Council Representatives) are from the same geographic region, the nomination period may be extended to improve diversity.
  - c. At the close of the nomination period, the Vice-Chair for Finance and Operations will (i) conduct a review to confirm that all nominated candidates satisfy the eligibility requirements for their respective positions and; (ii) within one week of the close, report any discrepancies to the candidates and the EC.
  - d. If more than four (4) nominations are received for any office, the Vice-Chair for Finance and Operations will direct the Elections Coordinator to hold a runoff election, according to the voting provisions of this Charter, sufficient to determine the top four (4) candidates to be included on the ballot. In the case of a dispute about this determination, any interested party may appeal the decision to the EC.
  - e. The Vice-Chair for Finance and Operations will notify the Elections Coordinator of the names of the candidates for each office at least one (1) week prior to the deadline for providing ballots to Business Constituency Members eligible to vote in such election.
- 6.2.4 Nominations and Candidates – Nominating Committee.



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- a. The election process for the Nominating Committee will be initiated by a nomination period of two (2) weeks. The Business Constituency shall nominate two candidates, one candidate representing Category 1 businesses ("Large Business"), and one candidate representing Category 2 and 3 businesses ("SME") as set forth in §5.3.2. Both positions will be elected at the same time. Candidate nominations will be published to the Private List upon the close of this period.
- b. Any Member of the Business Constituency may nominate one (1) other MR or AMR for each elected position. If, at the close of nominations, it would result that all Nominating Committee delegate nominees are from the same geographic region, the nomination period may be extended to improve diversity.
- c. At the close of the nomination period, the Vice-Chair for Finance and Operations will (i) conduct a review to confirm that all nominated candidates satisfy the eligibility requirements for their respective positions; and (ii) within one week of the close, report any discrepancies to the candidates and the EC.
- d. If more than four (4) nominations are received for either the Large Business or SME position, the Vice-Chair for Finance and Operations will direct the Elections Coordinator to hold a runoff election, according to the voting provisions of this Charter, sufficient to determine the top four (4) candidates to be included on the ballot. In the case of a dispute about this determination, any interested party may appeal the decision to the EC.
- e. The Vice-Chair for Finance and Operations will notify the Elections Coordinator of the names of the candidates for each position at least one (1) week prior to the deadline for providing ballots to Business Constituency Members eligible to vote in such election.

## 6.2.5 Voting.

- a. Immediately following the nomination period, a one (1) week discussion period may be scheduled (time permitting) to engage with the candidates about their qualifications.
- b. The Elections Coordinator will open an election period of one (1) week during which it will receive votes from Members of the Business Constituency electronically. During this time, advocating and/or campaigning for any candidates, whether on the Business Constituency's Public or Private List, shall be suspended.
- c. Business Constituency members are accorded 3, 2 or 1 vote(s) depending on membership category as specified in §5.3. Votes are cast as a block and are not divisible.
- d. Proxy votes are allowed subject to written notification to the Elections Coordinator by the Member Representative after the nomination period and



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before the start of the voting period and subject to the proxy conditions contained in §5.2.1.

- e. The winner(s) will be candidates receiving the largest number of votes.
- f. In case of a tie among those candidates receiving the most votes, a new one-week election period will be held among the tied nominees. Such additional election shall occur no later than one week after the tie is determined.

## 6.3 Developing a Written Policy or Position.

From time-to-time the Executive Committee, on the advice of the Vice-Chair for Policy Coordination, will appoint members as Issue Managers to work with other Business Constituency volunteers to develop positions on policy matters. This role involves drafting and consultation with the Members and the Vice Chair for Policy Coordination. Additionally, any Member of the Business Constituency is entitled to propose a position paper and, if there is sufficient support, be asked by the Executive Committee to take on this role.

Wherever possible, the Business Constituency will produce written positions on relevant issues following this procedure:

- 6.3.1 Discussion draft. The Issue Manager is responsible for preparing a draft of a Business Constituency position or other paper and thereafter coordinating comments within the Business Constituency and, where appropriate, with other Constituencies of the CSG through the Vice-Chair for Policy Coordination.
- 6.3.2 Consultation and approval. The draft position will be circulated and Members will be notified that there will be at least a 7-day period for comment from the day of circulation.
  - a. If no substantively opposing comments are received within the time allotted, the position will be deemed approved by the Members of the Business Constituency.
  - b. If any Member substantively opposes the draft position and seeks amendment(s) s/he should submit an alternative proposal in writing to the Vice-Chair for Policy Coordination. If the Vice-Chair for Policy Coordination determines that there exists at least 10% of Members who support the proposed alternative, it will then be forwarded to the Business Constituency e-mail list for a vote to be completed within 7 days, but at least a minimum of two business days. Only designated Member Representatives will be eligible to vote (non-weighted) unless otherwise delegated by proxy as described in §5.2.1. Members will be asked to vote for either the original draft or the alternative language. Whichever version receives a majority of the votes submitted will be deemed the official Business Constituency position.



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- c. In the event that the losing version is supported by at least 10% of Members, it shall be noted as a significant minority disagreement in the Business Constituency final position statement.
- 6.3.3 Updates. From time to time, as determined by the Vice-Chair for Policy Coordination, updates may be needed to position papers. In such instances, the Executive Committee will appoint an Issue Manager to coordinate any revision(s) and the above procedure will be followed.
- 6.3.4 Solidarity. In discussions or communications outside of the Business Constituency, when an MR declares himself/herself as representing the Business Constituency (as opposed to speaking in an individual capacity), the MR shall remain faithful to approved positions. While fulfilling their official roles, Executive Committee members will be required to support such positions.

## 7.0 Communications.

### 7.1 Web Presence.

- 7.1.1 Member Information. The Vice-Chair for Finance and Operations will maintain a public record in the Business Constituency web presence(s) including the following current, accurate information about each Member:
  - a. Name and contact information;
  - b. Status (i.e., Category 1, 2, or 3 Member);
  - c. Listing of all elected and appointed positions within ICANN structures, including Supporting Organizations (e.g., GNSO), Stakeholder Groups (e.g., CSG), Constituencies, Advisory Committees, and the Business Constituency; and
  - d. Name of Member Representative, Alternative Member Representative (if designated), and additional contacts, if applicable, to the Business Constituency.
- 7.1.2 Use of Site. Membership use of the web presence(s) must comply with the publication policies set forth in section §7.3.

### 7.2 Electronic Mailing Lists.

- 7.2.1 Public List. The objective of the Business Constituency Public List is to publish formal positions and/or statements and respond to any comments entered by a member of the public. The Public List shall be established by the EC and maintained by the Vice-Chair for Finance and Operations or, if so delegated, a Secretariat. The term Public List refers to any medium using email or equivalent means such as a



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web-based forum for group communication. The EC shall establish a mechanism to archive this list and make it accessible to the public.

- 7.2.2 Private List. The Business Constituency will also operate an internal (private) list to enable Members to engage in dialogue, via direct posting, concerning issues which may be developed into formal positions/statements as well as other matters including discussion of policies and practices, elections, policy issues, logistics; sharing of relevant news/information; and coordinating participation in ICANN-related events. Separate internal lists are also maintained, where warranted, for approved committees. The EC shall establish a mechanism to archive this list and make it accessible to all Members.

## 7.3 Publication Policies.

The following publication policies apply to all Business Constituency communications regardless of media:

- 7.3.1 Responsibility. The responsibility for posting accurate, appropriate, and authorized content will reside with the author. Only the MR, AMR, and/or designated Member additional contacts as specified in §5.2 are entitled to post to official Business Constituency media. Any Designated Representative's decision to post or submit content shall constitute acceptance of the Business Constituency publications policy as set forth in this section.
- 7.3.2 Supervision. The Executive Committee shall appoint the Vice-Chair for Finance and Operations to supervise the appropriate use of the Business Constituency's communications media in whatever form with the Secretariat serving in the capacity of administrator. Provisions related to the removal of inappropriate content (see §7.3.3) and/or the suspension of posting privileges are prescribed in §7.5.
- 7.3.3 Inappropriate Content. Inappropriate postings include, but are not limited to:
- a. Unsolicited bulk e-mail;
  - b. Discussions of subjects wholly unrelated to ICANN policy, meetings, activities, technical concerns, or other Internet policy matters;
  - c. Postings that are libelous, make personal allegations, speculate on personal motives, or are designed to harass, abuse, stalk, or threaten individuals or groups;
  - d. Derogatory or defamatory content about Business Constituency officers, members, employees or contractors;
  - e. Postings that are knowingly false, ad hominem, or misrepresentative of another person's statements or positions;
  - f. Postings that violate an obligation of confidentiality;





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- g. Content which constitutes a commercial solicitation;
- h. Content which is internal, but is inappropriately sent to the Public List;
- i. Content which is harmful to minors, is obscene, or otherwise objectionable;
- j. Content which infringes the intellectual property or privacy of third parties; and
- k. Content which intentionally interferes with a due process of the Business Constituency such as an election or vote.

## 7.4 Protection of Member Data.

The EC, the Secretariat position, and Members of the Business Constituency shall ensure reasonable care of Member data and, in particular, shall not utilize such data beyond what is necessary for its originally intended purposes.

## 7.5 Limits on Communication Privileges.

In addition to the above obligations and consequences, the Chair or Vice-Chair for Finance and Operations has the right to suspend or restrict a Designated Representative's posting privileges to or on any of the Business Constituency's communications mechanisms and to direct that posted material not conforming to the provisions of this Charter be removed. Any such action must be approved by a majority of EC members.

- 7.5.1 Delete. Before exercising the right to delete, a good faith effort must be made to determine that such Designated Representative has posted material that is inappropriate as specified in §7.3.3.
- 7.5.2 Suspend or Restrict. Before exercising the right to suspend or restrict, a good faith determination must be made that such Designated Representative's posting of inappropriate material represents an egregious violation of §7.3.3 or a pattern of abuse.
- 7.5.3 Notice. The EC must give notice to such Designated Representative if action is taken to suspend, restrict, or delete. Upon request, a statement of rationale will be provided. All formal communications related to this provision will also be communicated to the Member.
- 7.5.4 Appeal. Any determination to suspend, restrict, or delete may be appealed to the full EC and/or to the ICANN Ombudsman.

## 8.0 Meetings.

### 8.1 General Membership Meetings.



# Business Constituency Charter (v3.1)

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8.1.1 Format. The Business Constituency will meet in person at all ICANN meetings and, additionally, the Chair will schedule virtual (electronic) sessions at least once per month, wherever practicable, via the Business Constituency Private List and/or Calendar. Such sessions are intended to:

- Share information among Members;
- Discuss relevant Business Constituency and ICANN matters;
- Establish consensus on policy positions;
- Plan Business Constituency participation at ICANN meetings; or
- Address other topics, issues, and business as determined by the EC.

8.1.2 Members Not in Attendance. When Members cannot attend meetings, they may provide their written positions/views on agenda topics in advance via the Business Constituency Private List.

8.1.3 Minutes. The Vice-Chair for Finance and Operations will authorize and the Secretariat function will post to the Private List the transcript, chat room discussions, and audio recording from any general membership meeting within seven (7) days of such meeting. Whenever possible, for the convenience of Members, the Secretariat function will take minutes at Business Constituency meetings for the purpose of summarizing what transpires including the agenda, attendance, and any decisions or actions items that stemmed from discussions. If votes or consensus calls are taken at a meeting, the minutes shall indicate the outcomes as well key discussion points.

8.1.4 Private. Except for specifically designated public sessions held at ICANN meetings, Business Constituency meetings shall be private unless the Executive Committee decides that circumstances warrant an open invitation to the public.

8.1.5 Procedure. At the discretion of the Chair, meetings may be conducted informally or as appropriate for the size of the group and topic being discussed. Concerns or issues regarding the manner in which a meeting is conducted may be appealed to the EC.

8.1.6 Translation and Remote Participation. Upon request, the EC will make a reasonable effort to facilitate translation and remote participation services.

## 8.2 Committee Meetings.

The Chair of any standing or ad hoc committee shall consult its members when making determinations as to how its meetings are to be conducted including compliance with Section 8.1.

8.2.1 Format. Committee meetings may be conducted using electronic means.



# Business Constituency Charter (v3.1)

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8.2.2 Appeals. Concerns or issues regarding the manner in which a meeting is conducted may be appealed to the EC.

## 9.0 Outreach.

### 9.1 Outreach Policies.

9.1.1 Commitment. The Business Constituency is committed to being inclusive and representative of commercial Internet users globally and will conduct outreach to qualifying for-profit entities eligible for membership as outlined in §5.1.

9.1.2 Objective. Recruiting will be focused on assuring representation from each ICANN geographic region with emphasis in areas historically under-represented in ICANN structures.

### 9.2 Primary Officers.

The Chair and Vice-Chair for Finance and Operations are primarily responsible for allocating funds, proposing plans/programs, and encouraging Member participation in activities designed to achieve the Business Constituency's outreach and recruitment goals.

### 9.3 Outreach Opportunities.

The Chair and Vice-Chair for Finance and Operations will seek opportunities at each ICANN public meeting to recruit new Members and educate interested attendees about the Business Constituency and ICANN.

### 9.4 Special Committees/Groups/Teams.

Consistent with the Business Constituency's commitment to global outreach, the Executive Committee may create temporary or permanent committees/groups/teams (see §2.6.4) to focus on broadening geographic and participatory diversity including, but not limited to: (a) taking advantage of ICANN funding/programs targeted at outreach; (b) recruiting new members into the Business Constituency from under-represented regions; and (c) evaluating proposals to allocate internal funds designated for outreach activities not covered by other programs.

## 10.0 Finances.

### 10.1 Reasonable Fees.

The EC may propose and approve membership fees including granting exceptions for extenuating circumstances.



# Business Constituency Charter (v3.1)

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## 10.2 Funding Sources.

10.2.1 The Chair and Vice-Chair for Finance and Operations are primarily responsible for identifying non-dues financing sources and procuring such funding for the Business Constituency with the assistance of Members upon request.

10.2.2 Any prospective funding from external non-dues sources must be given without an obligation to support a particular policy position and must be free of conflicts of interest. The Vice-Chair for Finance and Operations shall disclose any proposed funding source to the membership for a period of not less than two (2) weeks before accepting it.

## 10.3 Invoicing.

The Business Constituency's membership cycle operates on a calendar year with fees invoiced annually for existing Members. A new Member joining during the first six months of a year will be invoiced for an entire year. A new Member joining during the last six months of a year will be invoiced on a pro-rata basis.

## 10.4 Delinquency.

10.4.1 Failure to Pay. A Member not paying a renewal invoice shall have its membership revoked and lose all rights and benefits of membership as specified in this Charter on the 14th day following the date on which the second reminder is sent. A membership revoked due to a failure to pay fees may be reinstated if payment is made within 30 days after revocation. If payment delinquency continues beyond 30 days, the Member will be required to re-apply unless an exception is granted per §10.4.2.

10.4.2 Exception: Upon a vote by the Executive Committee, the Vice-Chair for Finance and Operations may implement a special arrangement for a Member who asserts extenuating circumstances. Such arrangement may include a short extension or lowered dues within the applicable category. Exceptions are singular events and do not establish precedence.

## 10.5 Refunds.

No refund of membership fees will be given to a Member due to resignation or removal as a result of disciplinary action as specified in §5.6.2.

## 10.6 Accounting and Transparency.

The Business Constituency's accounting period is a calendar year. The proposed budget for each year and the year-end summary of accounts will be posted on the Private List.



# Business Constituency Charter (v3.1)

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## 11.0 Amendments, Revisions, and Version Control

### 11.1 Amendments.

This Charter may be amended from time-to-time, in whole or in part, subject to a two-thirds affirmative vote (super-majority) of Members. Any Member proposal for a Charter amendment that is not supported by the Executive Committee requires the support of 25% of Members before being put to a vote.

### 11.2 Interpretation.

If any dispute arises regarding the interpretation of this Charter, such interpretation will be decided upon solely by the Executive Committee without prejudice to the right of any Member to file a complaint to the ICANN Ombudsman.

### 11.3 Effect and Transition.

All articles of any revised Charter shall take effect immediately following an affirmative super-majority vote of the Business Constituency membership.

Version	Date	Name	Description
1.0	Jun 2003	Philip Sheppard	Business Constituency organized in 1999; however, first formal charter was approved in 2003.
2.0	Jan 2009	Marilyn Cade	Changes made to be consistent with the GNSO Improvement Initiatives resulting from the 2008 GNSO Review, which included a GNSO restructure, a bicameral Council, and updated nomenclature.
3.0	Sep 2016	Chris Wilson	Complete redraft to update and modernize provisions, improve language across the document, and incorporate new sections (e.g., Outreach, Finance) recommended by ICANN Staff. Voted for adoption by BC Membership on 17 Oct 2016.
3.1	Mar 2017	Chris Wilson	Updates to ICANN Bylaws reference (§1.1), General Counsel provision (§2.5.5), and Non-Voting Members (§5.1.3)

# Public Comment Issue Tracking Checklist (v3.0)

## Forum Title: Proposed Charter Amendments of the GNSO Business Constituency

<b>Open Date:</b>	6-Jan-2017	<b>Close Date:</b>	15-Feb-2017
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A total of 5 issues, suggestions, and recommendations were offered by the community and are documented in this Checklist. They are grouped into four categories as follows:

- Category A: Membership Eligibility Exclusion
- Category B: Diversity Concerns
- Category C: Non-Voting Membership Exclusion
- Category D: Miscellaneous

The following table shows the original disposition by Status category as of 28 Feb 2017 and 4 Mar 2017 after a thorough review and response provided to ICANN Staff by Andy Abrams, Andrew Mack, Jimson Olufuye, Marilyn Cade, Lawrence OlaWale-Roberts, and Steve DelBianco of the Business Constituency (approved in accord with the BC Charter).

<b>Status</b>	<b>Number of Issues 28 Feb 2017</b>	<b>Number of Issues 4 Mar 2017</b>
Resolved	1	5
Under Review	4	0
Deferred/Postponed	0	0
Unknown	0	0
Needs Clarification	0	0
<b>Total</b>	<b>5</b>	<b>5</b>

As unresolved items are evaluated, considered, and decided, the community will be updated accordingly.

## Public Comment Issue Tracking Checklist (v3.0)

1) Category A: Membership Eligibility Exclusion		
Issue/Suggestion/Recommendation	Status	Comments/Disposition
<p>1.1 BC Charter provision 5.1.2-b (“Ineligible Organizations”) excludes “domain name resellers” from BC membership. If it is true, as presented in the Public Comment feedback, that such resellers are ineligible to join any other GNSO Stakeholder Group or Constituency, exclusion from BC membership effectively precludes their participation in ICANN policy development.</p>	<p><b>Resolved</b></p>	<p><b>BC Response:</b> The [respondent’s] point regarding reseller eligibility for ICANN policy development participation is well taken and we certainly encourage resellers to actively participate in ICANN. Entities that earn less than 30% of their revenues from the reseller business are eligible for BC membership and we welcome their participation in the BC. The BC sympathizes with resellers who earn a greater percentage of their revenues from this business as they may presently have no formal eligibility within ICANN stakeholder groups. However, we respectfully believe that a reseller’s relationship to the DNS is substantially the same as a registrar’s and notably distinct from the position occupied by business users and registrants. The BC is tasked with representing the interests of businesses who <i>use</i> the DNS to conduct electronic commerce as opposed to entities that earn revenues from the business of <i>selling</i> domain names. For this reason, we believe it may be more appropriate for resellers to seek amendment of the Registrar Stakeholder Group Charter in order to obtain eligibility for membership in the RrSG.</p>
<p>1.2 BC Charter provision 5.1.2-b (“Ineligible Organizations”) decreases the annual revenue threshold from 50% to 30% that may be derived from being a registry operator, registrar, or domain name reseller (collectively, “Contracted Parties”). A concern has been raised that this reduction (or, indeed, any hard dollar limit) will disadvantage small business consultancies, constrain BC membership growth, engender membership instability, and inhibit diversity. One commenter requested that the ICANN Board disapprove the Charter unless this provision is amended to remove the restriction entirely or,</p>	<p><b>Resolved</b></p>	<p><b>BC Response:</b> Following the launch of the new gTLD program, which created a situation in which many entities would potentially have interests in multiple stakeholder groups and constituencies, a determination was made by an earlier iteration of the Charter drafting team to reexamine the previous revenue threshold for membership eligibility. A majority of the team settled upon a 10% threshold; however, given the sensitivity of the issue and the lack of unanimity, the provision was flagged for further consideration by the entire BC membership. Upon presentation</p>

## Public Comment Issue Tracking Checklist (v3.0)

<p>at the least, return it to the prior threshold.</p>	<p>of the revised Charter to the membership, the BC held two calls devoted solely to discussion of the Charter. During these calls as well as on a membership-wide email chain, [the respondent] made the points set forth in his public comment. His views were supported by several other members of the BC and opposed by others.</p> <p>The BC Executive Committee determined that further data was needed on this issue and worked with the drafting team to send out an anonymous survey to the full membership asking: (1) What do you prefer as the new revenue threshold? and (2) What percentage of your revenue is made from registry and registrar-related services? The results were as follows:</p> <ul style="list-style-type: none"> <li>• 6 BC members preferred to keep the revenue threshold at 50%.</li> <li>• 10 BC members preferred to lower the revenue threshold to 40%, 30%, 25%, or 10% (the new proposed threshold).</li> <li>• 14 BC members reported revenues from registry and registrar-related services at 10% or less.</li> <li>• 2 BC members reported revenues from registry and registrar-related services at between 10% to 30%.</li> <li>• 0 BC members reported revenues from registry and registrar-related services at greater than 30%.</li> </ul> <p>Based on this data demonstrating that (a) a majority of BC members supported lowering the revenue threshold and (b) no current members would be adversely affected by lowering the threshold to 30%, the Executive Committee decided to select a new threshold of 30% as a compromise between the previous 50% figure and the proposed 10% figure.</p>
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## Public Comment Issue Tracking Checklist (v3.0)

2) Category B: Diversity Concerns		
Issue/Suggestion/Recommendation	Status	Comments/Disposition
<p>2.1 One commenter recommended that the ICANN Board not approve the proposed Charter unless and until it incorporates firmer commitments to diversity, alleging that the BC’s membership and leadership team are not proportionately represented among the established ICANN geographic regions.</p> <p><i>Note: The BC, in a rebuttal comment, affirmed not only its progress in increasing geographic diversity, but its commitment to membership outreach as an organizational priority and continued encouragement of members from diverse regions to run for leadership positions.</i></p>	<p><b>Resolved</b></p>	<p><b>BC Response:</b></p> <p>The BC does not specifically target linguistic groups in our considerable efforts at outreach. Our Charter requires us to represent interests of global business registrants and users; accordingly, our outreach is focused on achieving diverse geographic coverage for businesses both large and small. BC outreach efforts have been wide and varied, including group, individual and conference activities. Our efforts over just the last 18 months include:</p> <ul style="list-style-type: none"> <li>• Outreach events, lunches and breakfasts for new potential BC members as part of ICANN meetings in Marrakech and Hyderabad</li> <li>• Production and translation of BC newsletters and wide dissemination both online and in hard copy at various events around the world with a special focus on regionally diverse audiences</li> <li>• BC representation at newcomer events/booths at ICANN and IGF Mexico 2016 and other related events such as the WSIS Forum</li> <li>• BC members speaking to and mentoring ICANN fellows at ICANN and other events</li> <li>• BC Outreach support for and speaking at the AfICTA Summits in Africa and the Asia - Oceania Computing Industry Organisation (ASOCIO) events in Asia</li> </ul> <p>The BC is very proud of these outreach efforts and will continue to maintain its commitment to diversity as reflected in our revised Charter. For these reasons, we respectfully disagree with [the respondent’s] request that the BC Charter be further amended to explicitly target linguistic diversity.</p>

## Public Comment Issue Tracking Checklist (v3.0)

3) Category C: Non-Voting Membership Exclusion		
Issue/Suggestion/Recommendation	Status	Comments/Disposition
<p>3.1 With respect to BC Charter provision 5.1.3 (“Non-Voting Members”), a commenter observed that although the proposed Charter gives clear guidance in the case of ownership or control, there is no such guidance to clarify membership status and voting rights for trade associations which represent the interest of Business Users or a consultant advising Business Users in case their respective members or client(s) is (are) a(n) entity(ies) that vote(s) in the BC or another SG.</p>	<p><b>Resolved</b></p>	<p><b>BC Response:</b></p> <p>The [respondent’s] point regarding clarification of membership status and voting rights for trade associations is well taken. It is the BC’s intent that a trade association be treated consistently with other BC member businesses; thus, a trade association that is eligible for membership in the BC as well as in another Constituency must expressly declare its choice to vote in a single Constituency. To clarify this position, the BC has modified Section 5.1.3 of its new Charter so that it reads as follows:</p> <p>5.1.3 <u>Non-Voting Members: Any <del>As</del> otherwise eligible Member according to §5.1.1 that <a href="#">votes in another Stakeholder Group or Constituency in either house of the GNSO, or</a> is owned, controlled by, or under common ownership with any entity that votes in the Business Constituency or another Stakeholder Group or Constituency <del>in either house of the GNSO</del>, is ineligible for Voting status within the Business Constituency; however, such Member may be accorded Non-Voting status subject to the following:</u></p> <ul style="list-style-type: none"> <li>a. A representative of a Non-Voting Member may not hold an elected position, including Officer or GNSO Council Representative, within the Business Constituency; and</li> <li>b. With the exception of restrictions specified in §5.1.3, all other rights and privileges of membership apply to Non-Voting Members.</li> </ul>

# Public Comment Issue Tracking Checklist (v3.0)

4) Category D: Miscellaneous		
Issue/Suggestion/Recommendation	Status	Comments/Disposition
4.1 One commenter noted that, in Section 11.3, the surname “Shepard” should be changed to “Sheppard.”	<b>Resolved</b>	<b>BC Response:</b> Corrected in BC Charter v3.1.

**Notes:**

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

# Report of Public Comment

<b>Title:</b>		<b>Proposed Charter Amendments of the GNSO Business Constituency</b>															
<b>Publication Date:</b>		8 March 2017															
<b>Prepared By:</b>		Robert Hoggarth															
<table border="1"> <tr> <td colspan="2"><b>Comment Period:</b></td> </tr> <tr> <td>Comment Open Date:</td> <td>6-Jan-2017</td> </tr> <tr> <td>Comment Close Date:</td> <td>15-Feb-2017</td> </tr> </table>		<b>Comment Period:</b>		Comment Open Date:	6-Jan-2017	Comment Close Date:	15-Feb-2017	<table border="1"> <tr> <td colspan="2" style="text-align: center;"><b>Important Information Links</b></td> </tr> <tr> <td colspan="2" style="text-align: center;">Announcement</td> </tr> <tr> <td colspan="2" style="text-align: center;">Public Comment Box</td> </tr> <tr> <td colspan="2" style="text-align: center;">View Comments Submitted</td> </tr> </table>		<b>Important Information Links</b>		Announcement		Public Comment Box		View Comments Submitted	
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View Comments Submitted																	
<b>Staff Contact:</b>	Robert Hoggarth	<b>Email:</b>	<a href="mailto:policy-staff@icann.org">policy-staff@icann.org</a>														
<b>Section I: General Overview and Next Steps</b>																	
<p>The GNSO Business Constituency (BC) completed Phase I of the formal ICANN Board Process for approval of community charter amendments and adopted its <b>Business Constituency Charter (v3.0)</b> by membership vote on 17 October 2016. This new Charter is the culmination of exhaustive work by a drafting team commissioned by the BC leadership, which held 34 hourly sessions since first involving ICANN Staff in the project back in October 2014. Since that time, the team produced 45 separate versions of the document – resulting in this final version being approved by the BC membership</p> <p>As part of its Phase II responsibilities, ICANN Staff completed a formal review and determined that there were no direct fiscal or liability concerns that would affect the ICANN organization.</p> <p>Phase III of the Board’s process requires that the new Charter be shared with the larger community via ICANN Public Comment.</p> <p>After review of this Summary of Public Comment and subsequent deliberations, the Organizational Effectiveness Committee (OEC) shall make a recommendation to the Board either to:</p> <ol style="list-style-type: none"> <li>a. Recognize the proposed charter amendment by a simple majority vote; or</li> <li>b. Reject the proposed amendment by a supermajority (2/3) vote and provide a specific rationale for its concerns.</li> </ol> <p>If neither above condition is met, the Board will ask for further explanation of the proposed amendments by the community.</p>																	
<b>Section II: Contributors</b>																	
<p><i>At the time this report was prepared, a total of five (5) 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.</i></p>																	
<u>Organizations and Groups:</u>																	
<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>															

AFNIC	Mathieu WEILL	AFNIC
Business Constituency-Outreach Committee	Steve DelBianco	BC-OC
Registries Stakeholder Group	(Undisclosed)	RySG

**Individuals:**

Name	Affiliation (if provided)	Initials
Philip Sheppard	Business Constituency	PS
John Berard	Business Constituency	JB

**Section III: Summary of Comments**

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

There were three substantive issues and one spelling correction identified by contributors concerning the Business Constituency’s (BC) Charter. The substantive issues focused on membership eligibility, membership voting exclusions and diversity matters.

**1) Membership Eligibility Exclusion: Section 5.1.2(b)-Ineligible Organizations**

*Provision language: “Entities which derive more than 30 percent of annual revenue as a registry operator, registrar, or domain name reseller (collectively, ‘Contracted Parties’).”*

The RySG identifies a particular concern with the exclusion of domain name resellers noting that, because they do not execute contracts with ICANN, they cannot be members of either the Registries or Registrars Stakeholder Group; moreover, such resellers are generally ineligible for membership within the Non-Contracted Parties House of the GNSO. RySG concludes that, “By excluding domain name resellers from BC membership, they are denied participation in ICANN policy development.”

JB, a BC member, observes that, “The [previous] Charter [had] a limit of 50 percent of such revenue. It is understood, though not clear, that the [new 30%] limit is not just on revenue derived as a ‘registry operator, registrar or domain name reseller,’ but in support of such contracted parties.”

If the noted provision remains as proposed, JB underscores three concerns that will “serve to disadvantage small business and will likely slow the growth of membership diversity, a key ICANN and community goal.”

“First, it ignores the nature of the work. A consultant may have subject matter expertise ... which can be valuable to a contracted party without being related to the sale and management of domain names.

Second, it ignores the fact that economic self-interest ... often has less to do with annual revenue than with potential financial benefit derived from warrants or shares held in client companies. ... For small consultancies ... they are not reflected in annual revenue until they are paid.

Third, a small business consultancy is ... more susceptible to shifts in opportunity. The normal mix of project and on-going work makes it difficult ... to predict its revenue totals exactly or know its client mix; [therefore,] almost any revenue limit runs the risk of being too high, whipsawing eligibility ... a recipe for ... [in]stability.”

JB adds that, “The legacy revenue limit of 50 percent offered ... a degree of assurance against this instability; [whereas] a limit of 30 percent more likely guarantees [it].”

JB requests that the ICANN Board “reject the proposed charter [unless it] eliminates any revenue limit on participation or, at the least, retains the previous [threshold of] 50 percent.”

## **2) Diversity**

AFNIC expresses its concern that “the new Charter does not demonstrate [a] stronger commitment towards diversity. The only references to diversity ... call for extending application deadlines when all applicants are from the same region or a vague endeavor to achieve geographic diversity.”

In particular, AFNIC advocates higher participation within the BC from among its French business constituents and expresses its conviction that, “the main area for improvement in the BC is increasing diversity within its membership and especially within its leadership.” AFNIC points out that the BC’s Executive Committee “is composed of 5 representatives from the United States of America and 1 from Nigeria. Both countries have English as an official language. This can hardly be acknowledged as representative of today’s businesses relying on the Internet unique identifiers to establish and grow their ventures.”

Concerned that this “obvious imbalance also raises concerns regarding potential capture by companies from a single country or Region,” AFNIC urges the ICANN Board and the BC to “include firmer commitments to diversity within [its] membership and leadership before approving [the proposed] Charter.” AFNIC encourages the BC “to reach out to the relevant [CCWG-Accountability] group in order to find out how a stronger commitment to diversity could materialize.”

The BC-OC, in response to AFNIC’s concerns, affirms “its continued commitment to increase diversity, especially geographic diversity.” BC-OC adds that the Business Constituency has made “significant efforts to expand representation from regions around the world, including outreach to SMEs and businesses from regions historically under-represented in ICANN.”

BC-OC notes that “many regions and languages are represented” within the BC ... and many [member] businesses “work around the world in multiple geographies and languages.” As it relates to AFNIC’s concern about French language representation, “the BC counts among its members ... many language groups – including a number of French and French-speaking businesses as well as associations with geographically and linguistically diverse memberships.”

BC reaffirms that its “goal is to represent businesses large and small and reflect the depth and regional diversity of the global business community. The BC ... will continue to encourage [its] members from diverse regions and backgrounds to run for leadership positions.”

### **3) Non-Voting Membership Exclusion: Section 5.1.3**

*Provision language: "An otherwise eligible Member according to §5.1.1 that is owned, controlled by, or under common ownership with any entity that votes in the Business Constituency or another Stakeholder Group or Constituency in either house of the GNSO is ineligible for Voting status within the Business Constituency."*

RySG observes that although "the proposed Charter gives clear guidance in the case of ownership or control, there is no such guidance to clarify membership status and voting rights for trade associations which represent the interest of Business Users or a consultant advising Business Users in case their respective members or client(s) is (are) a(n) entity(ies) that vote(s) in the BC or another SG."

### **4) Spelling Correction: Section 11.3**

PS requests that the spelling of his surname be corrected in Section 11.3.

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

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

The feedback summarized in Section III (above) does not require any special analysis by Staff other than to document the open questions/concerns in an "Issues Tracking Checklist: BC Charter" for further review and disposition as recommended by the OEC and/or ICANN Board.

## REFERENCE MATERIALS – BOARD PAPER NO. 2017.06.24.1d

**TITLE:** **Consideration of Reconsideration Requests 13-16 and 14-10 (.SPORT)**

### **Document/Background Links**

The following attachments are relevant to the Board's consideration of the BGC's further recommendation on Requests 13-16 and 14-10.

Attachment A is [Reconsideration Request 13-16](#), submitted on 8 November 2013.

Attachment B are Annexes 1 through 4 to Request 13-16, submitted on 8 November 2013.

Attachment C is the [BGC Determination on Request 13-16](#), issued on 8 January 2014.

Attachment D is the [BGC Further Recommendation on Requests 13-16 and 14-10](#), issued on 1 June 2017.

Attachment E is [Reconsideration Request 14-10](#), submitted on 2 April 2014.

Attachment F is [Exhibits 1-2](#) to Request 14-10, submitted on 2 April 2014.

Attachment G is a [letter from Howard Stupp of the International Olympic Committee to the BGC](#), dated 30 April 2014.

Attachment H is a [letter from SportAccord to the BGC](#), dated 15 May 2014.

Attachment I is the [BGC Recommendation on Request 14-10](#), issued 21 June 2014.



Attachment J is the [NGPC Action on Request 14-10](#), issued 18 July 2014.

Attachment K is a [letter from the Requestor to the ICANN Board](#), dated 14 June 2017.

Submitted By: Amy Stathos, Deputy General Counsel

Date Noted: 23 August 2017

Email: amy.stathos@icann.org

## **Reconsideration Request Form**

Version of 11 April 2013

ICANN's Board Governance Committee is responsible for receiving requests for reconsideration from any person or entity that has been materially affected by any ICANN staff action or inaction if such affected person or entity believes the action contradicts established ICANN policies, or by actions or inactions of the Board that such affected person or entity believes has been taken without consideration of material information. Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit <http://www.icann.org/en/general/bylaws.htm#IV> and <http://www.icann.org/en/committees/board-governance/>.

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

Requesters may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12 point font. *For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited. Please submit completed form to [reconsideration@icann.org](mailto:reconsideration@icann.org).*

### **1. Requester Information**

**Name:** dot Sport Limited

**Address:** Contact Information Redacted

**Email:** Contact Information Redacted

**Phone Number (optional):** Contact information Redacted

(Note: ICANN will post the Requester's name on the Reconsideration Request page at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>. Requestors address, email and phone number will be removed from the posting.)

### **2. Request for Reconsideration of (check one only):**

**Board action/inaction**

**Staff action/inaction**

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

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

the public record.)

Dot Sport Limited (referred to as the “**Requester**”) is seeking reconsideration of ICANN acceptance of the Expert Determination of the new gTLD Community Objection regarding the string .SPORT (Application ID 1-1174-59954) by the International Centre for Expertise in CASE No. EXP/471/ICANN/88. We attach the decision as Annex 1 (referred to as the “**Determination**”).

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

(Note: If Board action, this is usually the first date that the Board posted its resolution and rationale for the resolution or for inaction, the date the Board considered an item at a meeting.)

The Determination was forwarded on 25th October 2013 by the International Chamber of Commerce (referred to as the “**ICC**”)

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

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

25th October 2013

**6. Describe how you believe you are materially affected by the action or inaction:**

The Requester is one of two applicants for the .SPORT gTLD, and was in a contention set with SportAccord for the .SPORT string (Application ID 1-1174-59954). SportAccord was also the objector in the present case. The Determination will affect the Requester because according to the rules in the Applicant Guidebook, an application which is the subject of a successful community objection must be withdrawn. Therefore the objector

will automatically be delegated the .SPORT gTLD if a withdrawal is required.

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

Other applicants (third parties) in the current gTLD application round who are facing Community Objections are highly concerned that the Applicant Guidebook is being incorrectly applied by panelists appointed by the ICC, and that incorrect decisions already made are being cited as precedent by objectors. See attached letter to ICANN dated 1st November at Annex 2, prepared by various new gTLD applicants at page 5, who together represent, by volume, over 58% of all current open gTLD applications, a clear majority:

*"We also bring to ICANN's attention the fact that objectors on other unrelated cases are citing these decisions in their Supplemental Submissions in order to influence experts to weaken the objection criteria and rule in their favor. **If these are considered to be precedents for other Experts, we can assure you that most community objectors will unfairly prevail over applicants who applied as standard applicants in good faith.**"*

Applicants for future rounds will be put on notice that a community can be created over any generic word, which makes any application a risky proposition. As made clear by ICANN regarding the standard for objections, *"[t]here is a presumption generally in favor of granting new gTLDs to applicants who can satisfy the requirements for obtaining a*

*gTLD – and, hence, a corresponding burden upon a party that objects to the gTLD to show why that gTLD should not be granted to the applicant” p. 5 / 16 (New gTLD Draft Applicant Guidebook Version 3 – Public Comments Summary and Analysis, p. 67 available at <https://archive.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf>).*

**The Community Evaluation Panel would be rendered redundant by the Determination in many cases if it is accepted, since the community test for objections has been rendered an extremely simple hurdle compared to the Community Priority Evaluation. Internet users will be affected by the objector's amorphous registration policies for second level domains in the .SPORT gTLD (see Application ID 1-1012-71460 at Question 18).**

## **8. Detail of Board or Staff Action – Required Information**

**Staff Action:** If your request is in regards to a staff action or inaction, please provide a detailed explanation of the facts as you understand they were provided to staff prior to the action/inaction presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). Please identify the policy(ies) with which the action/inaction was inconsistent. The policies that are eligible to serve as the basis for a Request for Reconsideration are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing staff action, the outcomes of prior Requests for Reconsideration challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

**Board action:** If your request is in regards to a Board action or inaction, please provide a detailed explanation of the material information not considered by the Board. If that information was not presented to the Board, provide the reasons why you did not submit the material information to the Board before it acted or failed to act. “Material information” means facts that are material to the decision.

If your request is in regards to a Board action or inaction that you believe is based upon inaccurate, false, or misleading materials presented to the Board and those materials formed

the basis for the Board action or inaction being challenged, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections to the Board before it acted or failed to act.

Reconsideration requests are not meant for those who believe that the Board made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by the Board in order to state a reconsideration request. Similarly, new information – information that was not yet in existence at the time of the Board decision – is also not a proper ground for reconsideration. Please keep this guidance in mind when submitting requests.

**Provide the Required Detailed Explanation here:**

ICANN has determined that the Reconsideration process can properly be invoked for challenges of third party's decisions where it can be stated that either the vendor failed to follow its process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision (Recommendation of the Board Governance Committee (BGC) Reconsideration Request 13-5, August 1, 2013, page 4).

**Failure to observe ICANN procedure**

The new gTLD program included 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 the New gTLD Dispute Resolution Procedure (Article 1(b), New gTLD Dispute Resolution Procedure (referred to as the "**DRP**")).

Dispute resolution proceedings are required to be administered by a Dispute Resolution Service Provider (referred to as "**DRSP**") in accordance with the **DRP** and the applicable

DRSP Rules<sup>1</sup>. Any Panel appointed by the DRSP is obliged to apply the standards that have been defined by ICANN<sup>2</sup>. The DRP expressly provides that parties cannot derogate from the DRP without the express approval of ICANN<sup>3</sup>.

In the present case of .SPORT (Application ID 1-1174-59954), as the Requester evidences below, the sole expert appointed to the Panel (referred to as the "**Expert**") and ergo, the DRSP have derogated substantially from the DRP and the Expert has failed to apply the standards defined by ICANN in reaching his decision in the Determination. We provide full details of the failure to follow the DRP and the standards listed in the Applicant Guidebook at Point 10, after providing grounds for our claim.

#### **Breach of ICANN policy on Transparency**

However, we mention here that, whilst struggling to make sense of the wide number of deviations from the DRP, the Requester undertook further research into the subject of conflict of interest. We were concerned to learn that on 22 February 2011, at a major conference of the International Bar Association in Rio de Janeiro, Brazil entitled "Olympic-Size Investments: Business Opportunities and Legal Framework", Dr. Guido Tawil, 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*

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<sup>1</sup> Article 1(c) of the DRP

<sup>2</sup> Article 20(a) of the DRP

<sup>3</sup> Article 1(d) of the DRP

*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*"<sup>4</sup>.

The flyer for this event appears at Annex 3 and demonstrates that the conference was aimed at "*Brazilian and international lawyers both private or in-house, government officials, law professors, business executives at investment management firms, company representatives, **sports federation leaders**, bankers, academics, economists and politicians.*"<sup>5</sup>

Prior to Dr. Tawil's appointment, the Requester successfully challenged the appointment of Mr. Jonathan Taylor as sole panelist, on the basis that Mr. Taylor's legal practice was closely related to the activities of the objector and its constituent sports federations. In this context, Dr. Tawil should clearly have disclosed this information about his interest in sporting arbitration and his presence at the conference. We quote from the Applicant Guidebook (§3.5.4) on the Selection of Expert Panels "Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted

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<sup>4</sup> <http://www.int-bar.org/conferences/conf338/>

<sup>5</sup> <http://www.int-bar.org/conferences/conf338/>



procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence." The ICC's own rules state that: "Before an appointment, a prospective expert shall sign a statement of independence and disclose in writing to the Centre [ICC] any facts or circumstances which might be of such a nature as to call into question the expert's independence in the eyes of the parties<sup>6</sup>".

We note that Dr. Tawil was a member of the of the Conflicts of Interest Subcommittee which monitored developments concerning the IBA Guidelines on Conflicts of Interest in International Arbitration (the 'Guidelines'), adopted by the IBA Council in May 2004. To that extent, Dr. Tawil has no excuse for not disclosing this interest in the circumstances of his succession to Mr. Taylor. We quote section 3 of the Guidelines:

*"(a) If facts or circumstances exist that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence, the arbitrator shall disclose such facts or circumstances to the parties, the arbitration institution or other appointing authority (if any, and if so required by the applicable institutional rules) and to the co-arbitrators, if any, prior to accepting his or her appointment or, if thereafter, as soon as he or she learns about them...*

***(c) Any doubt as to whether an arbitrator should disclose certain facts or circumstances should be resolved in favour of disclosure."***

The failure to disclose is further exacerbated by the controversy surrounding the terms

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<sup>6</sup> Article 7(4) of ICC Expertise Rules Section III: Appointment Of Experts

of his recusal from a recent matter involving a US oil company. "Chapter 3: Legal vultures: Law firms driving demand for investment arbitration...In another case of a US oil company against Ecuador, the investor-appointed arbitrator, Guido Tawil, resigned following allegations of an "extremely close connection and relationship" with King & Spalding, the oil company's counsel"<sup>7</sup>. King & Spalding was ranked amongst the 20 busiest investment arbitration law firms actively promoting investment treaty disputes in 2011 by Corporate Europe Observatory<sup>8</sup>.

In summary, when there has been previous controversy involving the Expert over the links between big business and boosting arbitration practice and in the specific context of the recusal of the prior choice of expert precisely on the grounds of conflict of interest with the objector, it was imperative that Dr. Tawil should have disclosed his presence at the conference. It is clear that his mind has been recently focused on the prospect of creating business opportunities by close connections with industry, and very specifically, the organized sporting industry (of which SportAccord is a part). In the circumstances, Dr. Tawil 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. There

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<sup>7</sup> [http://corporateeurope.org/trade/2012/11/chapter-3-legal-vultures-law-firms-driving-demand-investment-arbitration#footnote63\\_smh55ia](http://corporateeurope.org/trade/2012/11/chapter-3-legal-vultures-law-firms-driving-demand-investment-arbitration#footnote63_smh55ia)

<sup>8</sup> Ibid.

has been an obvious breach of the relevant DRP of the designated ICANN service provider (as set out above) as well as a breach of the ICANN policy on Transparency as set out in ICANN's Bylaws:

- Article 3 Section 1 provides that *"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"*.

## **9. What are you asking ICANN to do now?**

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

We respectfully request that the BCG recommends that:

1. ICANN rejects the decision on .SPORT on the grounds that: (i) material disclosure (of facts or circumstances that would have, in the eyes of the parties, given rise to doubts as to the Expert's impartiality or independence) was not made by the Expert prior to his appointment in accordance with mandatory DRP rules (as detailed by the Requester in section 8, above), which renders the Determination void for failure to follow an ICANN procedure and, further, for violation of ICANN policy on transparency; AND/OR THAT (ii) the Expert was not appropriately qualified to render the Determination which renders the Determination void for failure by the DRSP to follow the mandatory ICANN process of appointment of an appropriately qualified expert (as set out in detail by the Requester in section 10, below); AND/OR THAT (iii) the Expert fails to follow the required ICANN procedure

and standards (in that he deviates arbitrarily and materially from the due process established by the Applicant Guidebook as set out in detail by the Requester in section 10, below).

2. In any case under section 9(1), above, the .SPORT matter should go back to a freshly convened panel which the ICC must demonstrate has been given substantial training in the Applicant Guidebook processes and standards which would be able to apply those standards and protocols in a non-arbitrary way.
3. Additionally, the Requester strongly requests that ICANN requests a formal account from Dr. Guido Tawil of whether he has any links, including current or prospective links, with the objector or any of its member federations.
4. Further, the Requester strongly requests that the ICC be formally requested to demonstrate that the Expert was given reasonable training in the Applicant Guidebook processes and standards which would have qualified and enabled him to be able to apply the ICANN standards and protocols in the required way.

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

We rely on the following grounds to demonstrate standing and the right to assert this Request for Reconsideration. The following are well known requirements within ICANN Bylaws and the new gTLD application process.

**a. Standing and Right**

ICANN has determined that the Reconsideration process can properly be invoked for challenges of third party's decisions where it can be stated that either the vendor failed to follow its process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision (Recommendation of the Board Governance Committee (BGC) Reconsideration Request 13-5, August 1, 2013, page 4). As an applicant under the ICANN process directly affected by a vendor's action, we respectfully consider that we have the standing and the right to assert the Request.

**b. Grounds/Justification**

- (i) **As a party with standing in good faith, the Requester has the right to expect and insist that the ICANN appointed vendor operates "in an open and transparent matter" to "the maximum extent possible":** Article 3 Section 1 provides that *"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"*.
  
- (ii) **As a party with standing in good faith, the Requester has the right to request that ICANN staff decline to accept the determination of the Expert on the grounds that the requisite ICANN standards, processes and policies have not been followed.** The Requester further relies on the guidance provided by the Recommendation of the Board Governance Committee (BGC) Reconsideration Request 13-10/10 October 2013, which state that where we can demonstrate

there is a breach of policy or process, we can properly invoke the

Reconsideration:

- "ICANN have determined that the Reconsideration process can properly be invoked for challenges of the third-party DRSP's decisions where it can be stated that either the DRSP failed to follow the established policies or processes in reaching the decision or that ICANN staff failed to follow its policies or processes in accepting that decision (at page 5)".
- "The Applicant Guidebook (Applicant Guidebook) sets out the standards used to evaluate and resolve objections". The requesting party must "establish any policy or process that either panel failed to follow (at page 10)."

**(iii) In addition, there has been sufficient deviancy from the DRP and application of ICANN standards in the context of the failure to disclose (as set out in section 8, above) as to call into account perceived neutrality of the Expert and of the objection procedure itself; which constitutes a breach of the relevant DRP rule:**

In administering objection proceedings, DRSPs **"shall apply the standards that have been defined by ICANN<sup>9</sup>."** Further Under the ICANN Bylaws, all decisions should be made by applying documented policies "neutrally and objectively, with integrity and fairness<sup>10</sup>."

**(iv)** Finally, Article 7(2) of ICC Expertise Rules Section III: Appointment Of Experts states: "Prior to the proposal of an expert, the Centre shall consider in particular

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<sup>9</sup> Art. 20(a) of the DRP

<sup>10</sup> See ICANN Bylaws (11 Apr. 2013) Art. I, §2.8

the prospective expert's qualifications relevant to the circumstances of the case, and the expert's availability, place of residence, and language skills": **From the failure of the Expert to apply the relevant DRP and the applicable standards set out in the DRP, it is clear that the Expert was not familiar with the Applicant Guidebook, clearly had not received any training prior to drafting the Determination, and to that extent did not have the requisite "qualifications relevant to the circumstances of the case"**. The Determination of an Expert who as demonstrated below has clearly reached his decision without an appropriate understanding or observance of the DRP, must clearly be rejected as invalid.

**The requisite ICANN standards, processes and policies have not been followed.**

**(a) Creating a new standard for the *likelihood* material detriment in the Determination**

The Expert has failed to follow the DRP requirement and/or failed to apply the relevant standard as required by the Applicant Guidebook in his definition and application of the test of "likelihood". He has completely replaced the standard with a lower standard: of future "possible" harm (at paragraphs 155 and 156 of the Determination). Almost universally, legal dictionaries define or equate the term likelihood with "probability" of something being true and vice versa; "The likelihood of a proposition or hypothesis

being true, from its conformity to reason or experience, or from superior evidence or arguments adduced in its favor<sup>11</sup>." By contrast, the Expert writes:

"Therefore, the standard that the Appointed Expert should apply to this issue is the "chance" that detriment will occur, which differs from the standard of "actual damage" invariably applied in litigation or arbitration. In other words, the standard of a "likelihood of material detriment" is, in the Appointed Expert's opinion, equivalent to future "possible" damage."<sup>12</sup>

There is little basis in established jurisprudence for interpreting "likelihood" as "possible" harm: a possibility is simply one of several outcomes which may or may not materialize. Likely harm, on the other hand, is clearly the *probability*, based on experience or superior reasoning, that harm will occur. For the Expert to select this definition which favours the objector, is blatantly and expressly failing to follow the required process and replacing the required standard as required of him by the Applicant Guidebook. This is an extremely serious deviation - to draw a parallel, the test for trademark infringement under US trademark law is "likely to cause confusion, or to cause mistake, or to deceive"<sup>13</sup>". Consider the outrage which would result if the test for "likelihood" in US trademark law was watered down in a single decision by a random arbitrator to the possibility of confusion (i.e. that it is theoretically possible that there is a consumer somewhere who might be confused, whether or not it is likely that such confusion might ever happen in reality) - and there was no recourse for the affected

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<sup>11</sup> <http://thelawdictionary.org/probability/>

<sup>12</sup> Page 23 of the Determination

<sup>13</sup> See 15 USC § 1114(1)(a) and (b) <http://www.law.cornell.edu/uscode/text/15/1114>



party from that decision. We re-iterate that this arbitrary creation of a new standard is an extremely serious violation of the DRP which ICANN cannot fail to address.

In addition, a detailed reading of the Determination provides no evidence whatsoever that the Expert even considered the “level of certainty that alleged detrimental outcomes would occur.” Unlikely and hypothetical situations are given credence over any level of certainty.

**(b) A failure to apply the existing standard for cause of the material detriment to a community**

The Expert also ignored the Applicant Guidebook requirements for a showing of material detriment specifically created by the application or at least linked to it. Among the requirements for proof is the objector's burden to provide tangible proof that its community and its reliance on the DNS is likely to be adversely affected by the application for the string in question. While the Expert is clearly aware that the objector needs to prove that “**the application** creates a likelihood of material detriment...<sup>14</sup>”, **none** of the factors that were considered included anything about the application itself. The Expert did not identify a single objectionable or lacking aspect in the application that creates a likelihood of material detriment. The likely actual merits or demerits of the application were entirely ignored in the context of detriment which might be caused

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<sup>14</sup> Applicant Guidebook §3.5.4

by the success of the application. In other words, the expert failed to apply the required obligatory test which would make *the application* the cause of the material detriment.

**(c) Creation of a new standard for material detriment with several limbs**

The Expert writes:

"Even though SportAccord did not prove that dot Sport Limited would not have acted (or did 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. Conversely, the Appointed Expert sees a strong dependence of the Sport Community on such domain name.<sup>15</sup>"

This is entirely the wrong test to be applied. SportAccord were never required to prove intention to cause material detriment - but they were always required to prove that the application was likely to cause material detriment. What the Expert has done effectively is to create a new test for material detriment, one with several limbs.

**(d) Creation of a new test for the subject of material detriment**

At paragraph 160, the Expert writes "Regarding the economic damage that SportAccord may suffer". The Expert was never meant to consider the economic damage that SportAccord suffered. Instead, objectors have to prove the "likelihood of material

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<sup>15</sup> Page 24 of the Determination

detriment to the rights or legitimate interests of a *significant portion of the community* to which the string may be explicitly or implicitly targeted.<sup>16</sup> In the Determination, the Expert either misread the Applicant Guidebook or incorrectly assumed that the objector was the sports community, effectively creating a new test for the subject of the material detriment.

**(e) Failure to apply the Applicant Guidebook standards consistently demonstrating that the Expert was not qualified to conduct the DRP to the required standard**

All of the foregoing points to a fundamental lack of understanding of the required DRP on the part of the Expert and/or the complete failure to apply the required ICANN standard (as set out in the Applicant Guidebook and the DRP).

We make one more point under this heading: In the Determination, the Expert expressly stated that, *"the concept of 'community' is not defined by the ICANN Guidebook."*<sup>17</sup>

*While the DRP might not define community, on the contrary, the Applicant Guidebook (the ICANN Guidebook) does in fact define the concept of community at Applicant Guidebook §4.2.3 under the heading Community Priority Evaluation Criteria:*

*"'Community' - Usage of the expression 'community' has evolved considerably from its Latin origin – 'communitas' meaning 'fellowship' –while still implying more of cohesion than a mere commonality of interest, [etc]".*

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<sup>16</sup> Applicant Guidebook §3.5.4

<sup>17</sup> Page 18 of the Determination

Such inaccuracies are forgivable in a layman: but for the dispute resolution process to engender trust in the validity of its outcome, the designated "expert" cannot afford to make such inaccurate statements at the most basic level, let alone completely redefine applicable standards and processes in the process of rendering a Determination without inviting questions as to *why*? Either there was a lack of training<sup>18</sup> and a corresponding lack of essential knowledge of the totality of the rules in the Applicant Guidebook and the procedural matrix in which all the applicants have been operating, i.e. that the Expert was unqualified for the task of making an ICANN decision under the DRP; or as, the further research we conducted on the Expert in order to explain such large deviations evidences, we would raise here the question about the whether the Determination was made by applying documented policies “neutrally and objectively, with integrity and fairness<sup>19</sup>” in light of the failure to disclose (set out in Section 8).

### **Conclusion**

A single deviation by a panelist is perhaps possible to overlook and may not amount to a breach of process. However, ICANN cannot look the other way when there are at least five demonstrably separate points on which the Expert has clearly deviated from the DRP Procedure, in the Determination, deviations so blatant and obvious as to be widely criticized in the domain industry. The following comment is typical of the thrust of these

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<sup>18</sup> The underlying question on the part of the Requester (and the 11 other new gTLD applicants who wrote to ICANN of 1st November at Annex 2): did the Expert actually read the Application Guidebook? The lack of due care and attention in his review of the evidence and his erroneous application or actual rewriting of the applicable standards presented would suggest otherwise.

<sup>19</sup> See ICANN Bylaws (11 Apr. 2013) Art. I, §2.8

comments from entirely independent observers extrapolating from the .SPORT Determination: "This lack of certainty and consistency isn't good for either applicants or objectors. *Yet ICANN may decide it's easier to just sit back and watch it unfold.*"<sup>20</sup>.

The decision in .SPORT demonstrates to date the clearest example of how completely it is possible for ICANN mandated standards to be utterly misapplied or for the DRP to be completely disregarded by an expert acting in an arbitrary and capricious way. The Expert himself would be unable to object to the grant of the Request. To quote from a Spanish language article referencing Dr. Tawil, on the liability of the state for judicial error, which is an analogous situation:

*"Conforme lo señala el profesor Guido Tawil, citando a Reyes Monterreal, "el error judicial capaz de acarrear la responsabilidad del Estado se producirá, cuando 'del contexto de la sentencia, de la realidad de los hechos y sus circunstancias y de la apreciación de la prueba y, por la otra, de la confrontación entre la solución dada y la que jurídicamente convenía al caso, resulte manifiesta la materialidad de la equivocación"*<sup>21</sup> [Translation: As noted by Professor Guido Tawil, citing Reyes Monterreal, "judicial error leading to state responsibility will occur when [on the one hand] 'in the context of the sentence, the reality of the facts and circumstances and the evaluation of

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<sup>20</sup> <http://ohashi.info/aggregator>; <http://domainnamewire.com/2013/10/29/breathaccord-wins-community-objection-against-breathe-top-level-domain-name/>; <http://domainincite.com/14918-famous-four-vows-to-fight-sport-objection-loss>, etc; See Annex 4 for sample articles.

<sup>21</sup> RESPONSABILIDAD DEL ESTADO. AUTOR. ALEJANDRO TARABORRELLI, martes, 23 de marzo de 2010 at <http://civiltaraborrelli.blogspot.com/2010/03/responsabilidad-del-estado-autor.html>.

the evidence and, on the other hand, of the confrontation between the solution given and the most legally appropriate in the case, the resulting error is manifestly obvious"]

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

Yes  
 No

**11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Explain.**

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

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>.

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

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar. The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

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

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.

A handwritten signature in blue ink, appearing to be 'A. J. ...', written in a cursive style.

Signature

8<sup>th</sup> November 2013

Date

## ANNEX 1



**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE  
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/471/ICANN/88

SPORTACCORD

(SWITZERLAND)

vs/

DOT SPORT LIMITED

(GIBRALTAR)

This document is an original of the Expert Determination rendered in conformity with the New gTLD Dispute Resolution Procedure as provided in Module 3 of the gTLD Applicant Guidebook from ICANN and the ICC Rules for Expertise.

**INTERNATIONAL CENTRE FOR EXPERTISE  
INTERNATIONAL CHAMBER OF COMMERCE**

**SPORTACCORD  
(Switzerland)**

**v.**

**DOT SPORT LIMITED  
(Gibraltar)**

**EXP/471/ICANN/88**

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**EXPERT DETERMINATION**

By

Prof. Dr. Guido Santiago Tawil

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This document is an original of the Expert Determination rendered in conformity with Article 21 of the ICANN New gTLD Dispute Resolution Procedure

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## **TABLE OF ABBREVIATIONS**

Applicant	dot Sport Limited
Appointed Expert	The Appointed Expert as defined in Section II of this Expert Determination
DRSP	Dispute Resolution Service Provider
GNSO	ICANN Generic Names Supporting Organization
gTLD	generic Top-Level Domain
ICANN	The Internet Corporation for Assigned Names and Numbers
ICANN Guidebook	Module 3 of the ICANN's gTLD Applicant Guidebook, version dated June 4, 2012.
ICC	The International Chamber of Commerce
ICC Centre	The International Centre for Expertise of the International Chamber of Commerce
ICC Practice Note	ICC Practice Note on the Administration of Cases
ICC Rules for Expertise	The Rules for Expertise of the International Chamber of Commerce in force as from January 1 <sup>st</sup> , 2003
Objector	SportAccord
Parties	SportAccord and dot Sport Limited
Rules of Procedure	The ICANN's Attachment to Module 3 – New gTLD Dispute Resolution Procedure

## **EXPERT DETERMINATION**

1. In accordance with Article 21 of the New gTLD Dispute Resolution Procedure (“Rules of Procedure”), the Appointed Expert renders this Expert Determination.

### **I. The Parties**

#### **A. Objector**

2. Objector in these proceedings is SPORTACCORD (“SportAccord” or “Objector”), an association established according to the laws of Switzerland, domiciled at Contact Information Redacted

3. In these proceedings, Objector is represented by:

Mr. Pierre Germeau  
SportAccord  
Contact Information Redacted

4. Notifications and communications arising in the course of these proceedings were made to the aforementioned e-mail address.

#### **B. Applicant**

5. Applicant in these proceedings is DOT SPORT LIMITED (“dot Sport Limited” or “Applicant”), a company established according to the laws of Gibraltar, domiciled at :

Contact Information Redacted

6. In these proceedings, Applicant is represented by:

Mr. Peter Young  
Contact Information Redacted

Contact Information Redacted

7. Notifications and communications arising in the course of these proceedings were made to the aforementioned e-mail address.

## **II. The Appointed Expert**

8. On July 29, 2013, the Chairman of the Standing Committee of the International Centre for Expertise of the International Chamber of Commerce (the "ICC Centre") appointed Prof. Dr. Guido Santiago Tawil as Expert in accordance with Articles 7 and 11(5) of the the Rules for Expertise of the International Chamber of Commerce in force as from January 1<sup>st</sup>, 2003 (the "ICC Rules for Expertise"). The Appointed Expert contact details are:

Guido Santiago Tawil  
M & M Bomchil  
Contact Information Redacted

9. Managers of the ICC Centre who are in charge of the file are:

Hannah Tümpel (Manager)  
Spela Kosak (Deputy Manager)  
Contact Information Redacted

## **III. Summary of the Procedural History**

10. On March 13, 2013, SportAccord filed an Objection pursuant to Module 3 of the gTLD Applicant Guidebook, version dated June 4, 2012 ("ICANN Guidebook"), the Attachment to Module 3 – New gTLD Dispute Resolution Procedure ("Rules of Procedure") and the Rules for Expertise of the International Chamber of Commerce in force as from January 1<sup>st</sup>, 2003 ("ICC Rules for Expertise") supplemented by the ICC Practice Note on the Administration of Cases ("ICC Practice

Note”).

11. On March 16, 2013, the ICC Centre acknowledged receipt of the Objection and conducted the administrative review of it in accordance with Article 9 of the Rules of Procedure for the purpose of verifying compliance with the requirements set forth in Articles 5 to 8 of the Rules of Procedure.

12. On April 5, 2013, the ICC Centre informed the Parties that the Objection was in compliance with Articles 5 to 8 of the Rules of Procedure. Accordingly, the Objection was registered for processing.

13. On April 12, 2013, the Internet Corporation for Assigned Names and Numbers (“ICANN”) published its Dispute Announcement pursuant to Article 10(a) of the Rules of Procedure.

14. On the same date, the ICC Centre informed the Parties that it was considering the consolidation of the present case with the case No. EXP/486/ICANN/103 (SportAccord v. Steel Edge LLC; gTLD: “.sports”) in accordance with Article 12 of the Rules of Procedure. Therefore, the ICC Centre invited the Parties to provide their comments regarding the possible consolidation no later than April 16, 2013.

15. On April 15, 2013, Applicant filed its comments on the possible consolidation by e-mail to the ICC Centre, a copy of which was sent directly to Objector.

16. On April 16, 2013, Objector filed its comments on the possible consolidation by e-mail to the ICC Centre, a copy of which was sent directly to Applicant.

17. On April 22, 2013, the ICC Centre informed the Parties that it decided not to proceed with the consolidation. It further invited Applicant to file a Response to the Objection within 30 days of the ICC Centre’s transmission of such letter in accordance with Article 11(b) of the Rules of Procedure.

18. On May 21, 2013, dot Sport Limited filed its Response to SportAccord’s Objection.

19. On May 22, 2013, the ICC Centre acknowledged receipt of Applicant’s Response. It further informed the Parties that the Response was in compliance with the Rules of Procedure.

20. On June 21, 2013, the ICC Centre appointed Mr. Jonathan P. Taylor as expert in accordance with Article 13 of the Rules of Procedure and Article 9(5)(d) of the Rules for Expertise.

21. On July 16, 2013, the ICC Centre acknowledged receipt of Applicant’s objection to Mr. Taylor’s appointment.

22. On July 25, 2013, the ICC Centre informed the Parties that it had decided not to confirm the appointment of Mr. Taylor as Expert in the present case and, there-

fore, it would proceed with the appointment of another Expert.

23. On July 29, 2013, the Chairman of the Standing Committee of the ICC Centre appointed Prof. Dr. Guido Santiago Tawil as Expert in accordance with Article 7 of the ICC Rules for Expertise and Article 3(3) of its Appendix I. On July 30, 2013, the ICC Centre notified the Parties of the Expert's appointment. It further sent the Parties the Expert's *curriculum vitae* as well as his Declaration of Acceptance and Availability, Statement of Impartiality and Independence.

24. On August 2, 2013, the ICC Centre reminded the Parties that the estimated costs had been paid in full by each party and confirmed the constitution of the expert panel.

25. On the same day, the electronic file was transferred by the ICC Centre to the Appointed Expert.

26. On August 5, 2013, the Appointed Expert issued Communication E-1 by means of which it informed the Parties that (i) based on their submissions and pursuant to Article 21 of the Rules of Procedure, it would render its Expert Determination, and (ii) at that stage, it did not consider necessary to request the Parties to submit any written statement in addition to the Objection and the Response, including their respective exhibits.

27. In accordance with point 6 of the ICC Practice Note on the Administration of Cases ("ICC Practice Note"), the requirement for the Expert Mission contained in Article 12(1) of the ICC Rules for Expertise has been waived.

28. Pursuant to Article 21(a) of the Rules of Procedure, the time-limit for rendering this Expert Determination expires on September 16, 2013.

29. The Expert Determination was submitted in draft form to the ICC Centre on August 23, 2013, within the 45 day time limit in accordance with Article 21(a) of the Procedure.

#### **IV. Procedural Issues and Applicable Rules**

30. SportAccord filed a "Community Objection", defined as "*a substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted*" according to Article 3.2.1. of the ICANN Guidebook, against dot Sport Limited's application for the gTLD ".sport".

31. Pursuant to Article 5(a) of the Rules of Procedure, all submissions –including this Expert Determination– have been made in English. Further, all submissions and communications between the Parties, the Appointed Expert and the ICC Centre were filed electronically as stated in Article 6(a) of the Rules of Procedure.



32. In accordance with Article 4(d) of the Rules of Procedure, the seat of these proceedings is the location of the ICC Centre in Paris, France.

33. For the purpose of rendering this Expert Determination, the applicable rules are: the ICC Rules for Expertise, supplemented by the ICC Practice Note, the ICANN Guidebook and the Rules of Procedure.

## V. Summary of the Parties' Positions

34. The issues to be addressed by the Appointed Expert shall be those resulting from the Parties' submissions and those which the Appointed Expert considers to be relevant to make a determination on the Parties' respective positions.

35. Based on the Parties' written submissions (SportAccord's Objection, dot Sport Limited Response and their respective exhibits), the main issues and claims under determination can be summarised as follows.

### A. Objector's Position

36. SportAccord claims that it has standing to object to applications for the gTLD ".sport" on the grounds that it is an established international representative institution of the Sport Community,<sup>1</sup> which has been impacted by such gTLD application. Further, Objector states that it is a not-for-profit association constituted in accordance with the Swiss Civil Code and comprises several autonomous and independent international sports federations and other international organizations<sup>2</sup> which contribute to sport in various fields.<sup>3</sup>

37. Regarding the description of the basis for the Objection as established in Article 3.3.1 of the ICANN Guidebook, SportAccord states that the Sport Community

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<sup>1</sup> According to Objector, the Sport Community is organized on local, national and international levels and is clearly delineated by way of its organizational structures and its values. See: Objection, page 6.

<sup>2</sup> SportAccord has 91 full members: international sports federations governing specific sports world-wide and 16 associate members: organizations which conduct activities related to the international sports federations. See: Exhibit Ap-2.

<sup>3</sup> Indeed, Objector claimed that "*SportAccord is the umbrella organisation for both Olympic and non-Olympic international sports federations as well as organisers of international sporting events*". See: Objection, page 6. Article 2 of SportAccord Statutes establishes several purposes of this association which, among others, include: "*a) to promote sport at all levels, as a means to contribute to the positive development of society; b) to assist its Full Members in strengthening their position as world leaders in their respective sports... d) to increase the level of recognition of SportAccord and its Members by the Olympic Movement stakeholders as well as by other entities involved in sport... j) to coordinate and protect the common interests of its Members... k) to collaborate with organisations having as their objective the promotion of sport on a world-wide basis*". See: Exhibit Ap-1. Objector states that its programs include, among others, "*International Federation (IF) recognition, IF relations, doping-free sport, fighting illegal betting, governance, sports' social responsibility, multi-sports games, the '.sport' initiative, the sports hub, the annual SportAccord Convention and the annual IF Forum*". See: Objection, page 7.

is organized, delineated, of long-standing establishment and impacted by sport-related domain names. In light of this statement, Objector expresses its substantial opposition to the application, claiming representation of a significant portion of the Sport Community. It further argues that there is no evidence of community support for any of the non-community-based applications.<sup>4</sup>

38. According to SportAccord, the Sport Community is both targeted implicitly and explicitly by the application for the “.sport” gTLD.<sup>5</sup>

39. Finally, Objector elaborates on the material “*detriment*” to the rights and legitimate interests of the Sport Community –and to users in general– if dot Sport Limited’s application is allowed to proceed or even finally approved.<sup>6</sup>

40. Based on these allegations, Objector requests that the Appointed Expert acknowledges that (i) the “.sport” gTLD string targets the Sport Community, (ii) there is a substantial opposition to such application from a significant portion of the Sport Community, and (iii) therefore, the application for the “.sport” gTLD is to be rejected.

#### B. Applicant’s Position

41. Applicant rejects SportAccord’s Objection. From the outset of its Response, Applicant alleges that the “.sport” gTLD is intended and designed to increase availability and access to create, produce and disseminate informative, creative and innovative sport-related content. It further alleges that mechanisms have been established to ensure that the gTLD “*operates and grows in a manner that is responsible, protects consumers and promotes consumer and industry trust and confidence*”.<sup>7</sup>

42. In addition, dot Sport Limited alleges that SportAccord has no standing to object on the ground that it fails to prove that it has “*an on-going relationship*” with a clearly delineated Sport Community as a whole.<sup>8</sup>

43. In relation to the “Community” argument, dot Sport Limited explains that the Sport Community is not “*clearly delineated*” because it is comprised of a significant number of stakeholders who do not necessarily share similar goals, values or interests. It also emphasizes that such “Community” lacks formal boundaries, which is also proved by the fact that there is a disagreement about the entities that make up such “Community”.<sup>9</sup>

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<sup>4</sup> See: Objection, page 8.

<sup>5</sup> See: Objection, page 10.

<sup>6</sup> See: Objection, page 11.

<sup>7</sup> See: Response, page 4. In particular, Applicant claims that the objection process “*is not a substitute for Community Evaluation and was not envisaged to be a mechanism by which one applicant could gain a competitive advantage over another*”.

<sup>8</sup> See: Response, pages 4 and 5.

<sup>9</sup> See: Response, page 5.

44. Further, Applicant rejects Objector's argument that the substantial opposition to the application comes from a significant portion of the Sport Community. Indeed, it is Applicant's position that Objector represents a subset of the alleged Community and does not represent the interests, goals, or values of numerous stakeholders in such "Community".<sup>10</sup>

45. In any event, dot Sport Limited states that *"there is not a strong association between the "Community" represented by Objector and the applied for ".sport" TLD" string.*<sup>11</sup>

46. Finally, concerning the material *"detriment"* to the rights and legitimate interests of the Sport Community –as alleged by Objector–, Applicant argues that SportAccord failed to prove a likelihood of material detriment. It further states that the damages alleged by SportAccord are speculative in nature and there is no evidence that such alleged detrimental outcomes would occur.<sup>12</sup>

47. Based on these arguments, dot Sport Limited requests the Appointed Expert to hold that SportAccord's objection is invalid and, therefore, deny the Objection.

## **VI. Findings of the Appointed Expert**

48. In order to make its determination, the Appointed Expert will address the following issues, in accordance with the criteria listed in the ICANN Guidebook :

(1) *Does SportAccord have standing to put forward a Community Objection against the application made by dot Sport Limited?*

(2) *Is the Sport Community clearly delineated?*

(3) *Is there a substantial opposition to the application ".sport" gTLD on behalf of a significant part of the Sport Community?*

(4) *Is the Sport Community explicitly or implicitly targeted by the application ".sport" gTLD?*

(5) *Is there any material detriment to the rights or legitimate interests of the Sport Community if the application ".sport" gTLD is allowed to proceed?*

49. In the following Sections, the Appointed Expert sets out and summarises his understanding of the Parties' positions concerning each of these issues, as elaborated by the Parties in their written pleadings, followed by the Appointed Expert's own analysis and determination concerning such issues.

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<sup>10</sup> See: Response, page 8.

<sup>11</sup> See: Response, page 10.

<sup>12</sup> See: Response, page 11.

A. Objector's Standing

(1) *Does SportAccord have standing to put forward a Community Objection against the application made by dot Sport Limited?*

50. The Appointed Expert is of the view that prior to considering the grounds of the Objection, it is necessary to address this preliminary issue, namely the question of whether SportAccord has standing to put forward a "Community Objection" against the application ".sport" gTLD made by dot Sport Limited.

51. The Appointed Expert will start by deciding this preliminary question in the understanding that if the Appointed Expert finds that the Objector lacks *ius standi* to object, it will become unnecessary to enter into the analysis of the grounds of the Objection.

(i) *Positions of the Parties*

52. Applicant has challenged Objector's standing to file an objection against the application for the ".sport" gTLD. In its Response, Applicant argues that Objector failed to prove that it has "*an on-going relationship*" with a "*clearly delineated Sport Community*" as a whole, failing to meet the standard established in Article 3.2.2.4 of the ICANN Guidebook.<sup>13</sup>

53. While dot Sport Limited recognizes that Objector is an "established institution", it affirms that SportAccord only has an on-going relationship "*with a particular subset of stakeholders*".<sup>14</sup>

54. Applicant goes further and states that, in fact, there is no Sport Community since there are so many activities which can be legitimately identified as "sports". Based on this statement, dot Sport Limited reaffirms its position by stating that the alleged Sport Community is not "*clearly delineated*", because "*just about anyone could claim to have an interest in sport*".<sup>15</sup> Additionally, Applicant criticizes Objector's policies for creating obstacles to free and open participation in its activities, membership and leadership.

55. Although Objector has not dealt directly with these arguments, which were put forward once SportAccord had submitted its Objection, it claims that it has standing to object to the application for the ".sport" gTLD since it is an established international representative institution of the Sport Community, which has been impacted by the mentioned string application.

56. Objector states that it is a not-for-profit association established since 1967,

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<sup>13</sup> See: Response, page 4.

<sup>14</sup> See: Response, page 5. According to Applicant, "*Objector's mission statement clearly shows that Objector only represents a particular subset of the alleged community, organized sports, failing to represent other stakeholders such as: unorganized sports...; sports equipment manufacturers and retailers; media outlets such as newspapers, TV, bloggers... Objector cannot speak for them*".

<sup>15</sup> See: Response, page 5.

which has an ongoing relationship with the Sport Community due to the fact that it comprises autonomous and independent international sports federations and other international organizations.

57. In particular, SportAccord alleges that it has (i) 91 full members: international sports federations governing specific sports worldwide, and (ii) 16 associate members: organizations which conduct activities closely related to the international sports federations. In Objector's words, "*SportAccord is the umbrella organisation for both Olympic and non-Olympic international sports federations as well as organisers of international sporting events*".<sup>16</sup>

58. Finally, in the Objector's view, the Sport Community is highly organized on local, national and international levels and, thus it is clearly delineated by way of its organizational structures and values.

(ii) *Considerations of the Appointed Expert*

59. Pursuant to Article 3.2.2 of the ICANN Guidebook, it is for the Appointed Expert to determine whether the Objector has standing to object.

60. In accordance with the ICANN Guidebook, objectors must satisfy certain standing requirements to have their objections considered by the expert panel. In the case of a "Community Objection", "*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...*".<sup>17</sup>

61. Therefore, to qualify for standing for a "Community Objection", the Objector shall fulfill two conditions, namely that (i) it is an established institution, and (ii) it has an ongoing relationship with a clearly delineated community.

62. The ICANN Guidebook provides useful guidelines so as to determine whether these two requirements should be considered as satisfied by the Objector.

63. Regarding the first condition to be met (i.e.: "*established institution*"), Article 3.2.2.4 of the ICANN Guidebook lists some key factors which may be considered by the expert panel in making its determination. These factors are: (i) the level of global recognition of the institution, (ii) the length of time the institution has been in existence; and (iii) the 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.

64. In order to evaluate its standing "*the institution must not have been estab-*

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<sup>16</sup> See: Objection, page 6.

<sup>17</sup> Article 3.2.2.4 of the ICANN Guidebook.

*lished solely in conjunction with the gTLD application process*.<sup>18</sup>

65. SportAccord (previously known as “GAISF”, the General Association of International Sports Federations) is a not-for-profit association established in 1967.<sup>19</sup> The length of time that SportAccord has been in existence –almost half a century– is sufficient, in the Appointed Expert’s view, to consider Objector as a long-established institution and clearly evidences that such association was not created with the sole intention to participate in the gTLD application process.

66. Additionally, the Appointed Expert notes that Objector also meets the standard of “global recognition”, as mentioned in the ICANN Guidebook, since it has a very large membership, comprising of 91 international sports federations and 16 organizations related to sports. In the Appointed Expert’s opinion, this is also indicative of Objector’s public historical evidence of its existence.

67. Even though Applicant has relied on a survey according to which Objector is hardly known to the majority of the public surveyed,<sup>20</sup> it is the Appointed Expert’s view that the level of global recognition of any institution should be analysed within the context of the community that such institution is claiming to be a part of, not the public in general.

68. Although the facts described above would be enough to confirm Objector’s compliance with the first condition, the Appointed Expert notes that the very same Applicant has recognized that Objector is an “*established institution*”,<sup>21</sup> focussing its challenge on the second condition required to file an objection (i.e.: an on-going relationship with a clearly delineated community).

69. Based on these reasons, the Appointed Expert concludes that Objector is an “*established institution*” in the terms of Article 3.2.2.4 of the ICANN Guidebook.

70. Having decided that Objector meets the first standard contained in the ICANN Guidebook, the Appointed Expert now turns to the issue of whether Objector has an on-going relationship with a clearly delineated community.

71. To make a determination on this issue, the Appointed Expert should take into account the guidelines provided in Article 3.2.2.4 of the ICANN Guidebook. To this end, such provision sets out the following elements to be considered: (i) the presence of mechanisms for participation in activities, membership, and leadership, (ii) the institutional purpose related to the benefit of the associated community, (iii) the performance of regular activities that benefit the associated community; and (iv) the level of formal boundaries around the community.

72. Referring to these factors, the ICANN Guidebook states that “*the panel will*

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<sup>18</sup> See: Article 3.2.2.4 of the ICANN Guidebook.

<sup>19</sup> See: Exhibit Ap-1.

<sup>20</sup> Response, page 8 and Annex A-1.

<sup>21</sup> Response, page 4.

*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”.*<sup>22</sup>

73. Applicant has challenged Objector’s standing on the grounds that it only has an on-going relationship *“with a particular subset of stakeholders”* and not the community as a whole.<sup>23</sup>

74. In the Appointed Expert’s view, Applicant’s argument is not convincing. First, because even though Objector may not represent the “entire” Sport Community, it acts for a preponderant part of such community.

75. The ICANN Guidebook does not require that an “entire” community agree on an objection to an application. In fact, it would be almost impossible for an institution to represent any community as a whole. If such was the requirement, there would be no reason to provide for the possibility of community objections.

76. It is difficult to imagine which other association may claim representation of the Sport Community besides an institution that represents, as Objector does, more than a hundred well-known sports federations and institutions related to sports.

77. Furthermore, Objector’s declared purposes are closely associated with the benefits of the community members it represents<sup>24</sup> and its regular activities are naturally intended to benefit its members.

78. In addition, the Appointed Expert notes that Objector, as an institution that represents multiple sports federations, has explicitly foreseen –through its statutes– different mechanisms for participation in activities, membership and leadership among the sport federations and organizations. For instance, SportAccord’s statutes regulate in detail the procedure to become a member of the institution and participate accordingly.<sup>25</sup>

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<sup>22</sup> Article 3.2.2.4 of the ICANN Guidebook.

<sup>23</sup> Response, page 4.

<sup>24</sup> According to Objector’s statutes (See: Exhibit Ap-1): *“The objectives of SportAccord are: a) to promote sport at all levels, as a means to contribute to the positive development of society; b) to assist its Full Members in strengthening their position as world leaders in their respective sports; c) to develop specific services for its Members, and provide them with assistance, training and support; d) to increase the level of recognition of SportAccord and its Members by the Olympic Movement stakeholders as well as by other entities involved in sport; e) to organise multi-sports games and actively support the organisation of multi-sports games by its Members; f) to be a modern, flexible, transparent and accountable organisation; g) to organise, at least once a year, a gathering of all of its Members, and of other stakeholders of the sport movement, preferably on the occasion of its General Assembly; h) to recognise the autonomy of its Members and their authority within their respective sports and organisation; i) to promote closer links among its Members, and between its Members and any other sport organisation; j) to coordinate and protect the common interests of its Members; k) to collaborate with organisations having as their objective the promotion of sport on a world-wide basis; l) to collect, collate and circulate information to and among its Members”.*

<sup>25</sup> See: Exhibit Ap-1, SportAccord’s Statutes, Articles 5 to 15.

79. Regarding Applicant's argument that Objector's policies create obstacles to free and open participation in its activities, membership and leadership (for instance, by excluding some sports activities, such as card games), in the Appointed Expert's view such "obstacles" are simply the conditions that any organization has to meet to become a member of the institution, as occurs in any other field.<sup>26</sup>

80. In analysing Objector's statutes, membership is open to "*any sport organisation... which groups together the majority of the National Federations (or organisations) throughout the world practising its sport and regularly holding international competitions...*" and "*any sport organisation which groups together the activities of several members... for the purpose of organising competitions*",<sup>27</sup> which shows that membership, far from being closed and exclusive, is accessible to any organization which complies with these minimum standards.

81. Finally, although the issue of the existence of a "Sport Community" is related to the merits of the Objection –and will be analysed in section B–, the Appointed Expert is of the view that Objector's "community", which includes multiple organizations associated with sports, is "*clearly delineated*" for the purpose of objecting to the application for ".sport" gTLD made by dot Sport Limited.

82. Therefore, in the Appointed Expert's view, SportAccord is an established institution which has an ongoing relationship with a clearly delineated community and, consequently, has standing to object to Applicant's application in the present case.

#### B. The "Sport Community"

##### (2) *Is the Sport Community clearly delineated?*

83. Having decided that SportAccord has standing to object to the application for ".sport" gTLD made by dot Sport Limited, the Appointed Expert will now focus on the issue of whether the Sport Community is clearly delineated.

84. The Parties have discussed at length the independent existence of a "Sport Community" and diverging positions were advanced on this issue.

##### (i) *Positions of the Parties*

85. In its Objection, SportAccord defines the Sport Community as "*the community of individuals and organizations who associate themselves with Sport*".<sup>28</sup> According to Objector, Sport is an activity done by individuals or teams of individuals, aiming at healthy exertion, improvement in performance, perfection of skill, fair

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<sup>26</sup> It should be also noted that not all game cards –as claimed by Applicant– are excluded from Objector's membership. The World Bridge Federation is, for instance, a member of SportAccord.

<sup>27</sup> See: Exhibit Ap-1, SportAccord's Statutes, Article 6.

<sup>28</sup> See: Objection, page 8.



competition and desirable shared experience between practitioners as well as organizers, supporters and audience.

86. Objector's position is that the Sport Community *"is highly organized"* both at a local level (local clubs, etc.) and a higher level (Sport Community governance is exercised by regional, national, and international Sport Federations, which collaborate at the local, national and international levels in sport events or with event organizers, governments, the various bodies of the Olympic Movement, associations or federations).

87. Even though Objector states that it represents 107 International Sport Federations, individual practitioners of sport, sport spectators, sport fans and sport sponsors are also part of the Sport Community and share their values and objectives.<sup>29</sup>

88. Finally, Objector explains that the Sport Community *"is clearly delineated"* since it has formal lines of accountability on all levels. In Objector's view, the key-word *"delineated"* should not imply a focus on rigid edges of a community, like card-carrying membership organizations.<sup>30</sup>

89. Applicant rejects Objector's assertion that the Sport Community is *"clearly delineated"*. Indeed, dot Sport Limited contends that the Sport Community lacks this characteristic since *"it is comprised of a significant number of stakeholders who do not necessarily share similar goals, values or interests, thus the community lacks formal boundaries, evidenced by disagreement as to which stakeholders are considered members of the Sport community"*.<sup>31</sup>

90. According to Applicant, the alleged Sport Community is associated with a "generic" string (".sport") and, therefore, it cannot meet the *"clearly delineated"* criteria due to its broad definition and the nature of the generic term ("sport"), which is by definition used by a significant number of people, who do not necessarily share similar goals, values or interests.

91. Further, Applicant criticizes Objector's assertion that the Sport Community is *"highly organized"* when there is no organization, for instance, for viewers, the media or amateur sportspeople who play sport for fun in their spare time. In Applicant's view, *"there is therefore confusion as to who actually comprises the sport community. This is simply because there is no clearly delineated community"*.<sup>32</sup>

92. In addition, dot Sport Limited states that, according to a survey undertaken by itself, there is a low level of public recognition of a Sport Community since 74% of participants surveyed did not see formal organization or registration as a requirement to participate in sports.<sup>33</sup>

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<sup>29</sup> See: Objection, page 9.

<sup>30</sup> See: Objection, page 9.

<sup>31</sup> See: Response, page 5.

<sup>32</sup> See: Response, page 6.

<sup>33</sup> See: Response, Annex 1.

93. Applicant also argues that there is no agreement among experts as to the definition of “sport”, giving examples of different accepted definitions. In analyzing Objector’s definition of “sport”, Applicant concludes that such concept fails to recognize other community stakeholders, for example, non-federation sport organizations (such as, community recreational leagues), media outlets that cover sports, equipment producers and retailers, video game industry, etc.

94. Finally, it is dot Sport Limited’s position that the Sport Community is not clearly delineated because there is no agreement as to the entities that make up the alleged community. Applicant explains that, for instance, Objector’s membership criteria exclude legitimate sport activities from membership such as poker, electronic gaming and hunting.<sup>34</sup>

95. To conclude, Applicant states that Objector acknowledged that the Sport Community is comprised of “billions of members” and, consequently, a community comprising the majority of the human race is not clearly, or even slightly, delineated.<sup>35</sup>

(ii) *Considerations of the Appointed Expert*

96. The Appointed Expert has to decide whether the “Sport Community” is clearly delineated.

97. In accordance with Article 3.5.4 of the ICANN Guidebook, “...for an objection to be successful... the objector must prove that the community expressing opposition can be regarded as a clearly delineated community”.

98. As mentioned before, the ICANN Guidebook offers useful guidelines in order to determine whether a community is clearly delineated. “A panel could balance a number of factors to determine this, including but not limited to: (i) the level of public recognition of the group as a community at a local and/or global level; (ii) the level of formal boundaries around the community and what persons or entities are considered to form the community; (iii) the length of time the community has been in existence; (iv) the global distribution of the community (this may not apply if the community is territorial); and (v) the number of people or entities that make up the community”.<sup>36</sup>

99. Having set out the factors to be considered, the ICANN Guidebook further provides that “...if opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail”.

100. The concept of “community” is not defined by the ICANN Guidebook. The

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<sup>34</sup> See: Response, page 7.

<sup>35</sup> See: Response, page 7.

<sup>36</sup> Article 3.5.4 of the ICANN Guidebook.

word “community” is broad and allows more than one interpretation. Besides the political (nationality), religious or ethnic meanings or implications that the term may have, it generally refers to a “group of people” that may be considered as a “unit” that share similar interests, goals or values.<sup>37</sup>

101. Furthermore, the word “sport” is also a generic term. If someone mentions the word “sport” without any specificity, it is highly probable that different listeners will imagine different aspects, ideas or own preconceptions about what the speaker does want to refer. The same occurs with other generic terms such as “health”, “law”, “government”, “commercial”, etc.

102. Nevertheless, the generic nature of these words does not constitute an obstacle for a community to identify itself with them. For instance, the word “lawyer” (or, more precisely, the “.lawyer” gTLD) may identify the community of lawyers around the world, even though it would be difficult (or impossible) to find that all lawyers share the same goals, values or interests.

103. In the case at hand, it is the Appointed Expert’s view that the community represented by Objector (international sports federations and organization) enjoys a high level of public recognition in its field and has existed for decades. Further, since it was established in 1947, it has succeeded in increasing the number of its members, rather than becoming smaller or less representative.

104. Further, regarding the “*number of... entities that make up the community*”, an aspect that the ICANN Guidebook highlights as relevant, the Appointed Expert notes that Objector is comprised of 91 well-known international sports federations and 16 organizations related to sports. If SportAccord had not obtained a high level of recognition in the sport field since it had been established, some of the well-known federations included in such association would not have remained part of it.

105. In any event, the Appointed Expert understands that this is not a case in which a single sport association or organization claims for the priority use of the “.sport” gTLD –irrespective of other federations or organization which could claim for the same right or interest–, but the whole community of sports federations and organization (or, at least, the most part of it) represented by Objector.

106. Finally, the Appointed Expert cannot accept Applicant’s argument that the Sport Community is not organized when Objector has proved that it has its own mechanism of participation, programs and organization through its statutes and government bodies. The fact that the media (which may constitute a different community) or viewers are unable to be part of this association is irrelevant to consider Objector as a delineated community. Otherwise, no community could be

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<sup>37</sup> According to the British English Dictionary, the word “community” has three different meanings “1) the people living in one particular area or people who are considered as a unit because of their common interests, social group, or nationality, 2) a group of animals or plants that live or grow together, 3) the general public”. See British English Dictionary, Cambridge Ed., 2013.

recognized under the ICANN gTLD proceedings since it would be easy for any Applicant to find secondary or not closed-related members outside of it.

107. The “Sport Community”, in the Appointed Expert’s view, is a community that clearly distinguishes itself from other communities by its characteristics, objectives and values.

108. Therefore, the Appointed Expert concludes that the Sport Community is clearly delineated for the purpose of these proceedings and, consequently, Applicant’s objections in this respect must also fail.

*C. The “Substantial Opposition” to the Application*

*(3) Is there a substantial opposition to the application for the “.sport” gTLD on behalf of a significant part of the Sport Community?*

109. Having decided that the Sport Community is clearly delineated, the Appointed Expert now turns to determine whether there is a substantial opposition of a significant part of the Sport Community.

*(i) Positions of the Parties*

110. Objector highlights that it expresses opposition on behalf of the 107 International Federations encompassed in such association, as listed in Appendix A-2 of the Objection. Objector has proffered more than 50 letters of opposition from different federations and also points to other individual oppositions.<sup>38</sup>

111. SportAccord notes that while many international sport bodies, international sport federations and specialized agencies have already expressed their opposition, there is no evidence, by contrast, of community support in favour of the application “.sport” gTLD made by dot Sport Limited.

112. According to SportAccord, “*the portion of the community expressing opposition through its representative organization is not just significant, but overwhelming*”.<sup>39</sup> It also argues that Applicant’s application targets the most visible and highly organized segments of the Sport Community, represented by national and international sport federations.

113. Finally, Objector elaborates on the argument that although individual practitioners of the Sport Community (who do not need organization to practise sports) have not made opposition to the application, it is natural that the organized segment of such Community reacts and raises objections on behalf of their stakeholders.

114. In turn, Applicant claims that SportAccord has failed to prove “substantial

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<sup>38</sup> See: Objection, page 9.

<sup>39</sup> See: Objection, page 10.

opposition” to the application, since Objector represents a subset of the alleged community and does not represent the interests, goals, or values of numerous stakeholders in the alleged community (for instance, sports excluded from membership and the other stakeholders not represented by Objector).<sup>40</sup>

115. Applicant insists on the “relative” low number of oppositions compared with the composition of the alleged community. In Applicant’s own words, “*expressions of opposition from Objector are small compared to the large composition of the alleged ‘sport’ community*”.<sup>41</sup>

116. Further, dot Sport Limited also claims that Objector did not provide examples of support from members of the alleged community that do not comprise its membership. Based on this argument, Applicant states that Objector does not encompass all sport activities by any means.

117. Applicant also alleges that Objector organized a campaign among its members to support its Objection by using a standard template letter that requires no thought or effort to sign it.<sup>42</sup> Notwithstanding so, Applicant notes that only half of SportAccord’s members have actually shown support to the Objection. Further, Applicant states that Objector has offered no proof that its membership as a whole signed on to the opposition.

118. Regarding the counter-argument related to individual sport practitioners (not organized) advanced by Objector, dot Sport Limited answers that such assertion “*totally ignores the fact that the sports industry includes a great number of professional organisations such as media outlets, who could easily have objected*” but did not do so.<sup>43</sup>

(ii) *Considerations of the Appointed Expert*

119. The Appointed Expert has to decide whether there is a substantial opposition to the application for the “.sport” gTLD on behalf of a significant part of the Sport Community.

120. To this end, the Appointed Expert will focus on Article 3.5.4 of the ICANN Guidebook, which establishes the standards to be analysed in order to make a determination on this issue.<sup>44</sup>

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<sup>40</sup> See: Response, page 8. Moreover, dot Sport Limited states that, according to the sports survey undertaken by itself, the vast majority of the public are not even aware of the existence of SportAccord.

<sup>41</sup> See: Response, page 8.

<sup>42</sup> See: Response, page 9.

<sup>43</sup> See: Response, page 9.

<sup>44</sup> According to such provision, “*a panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to: (i) number of expressions of opposition relative to the composition of the community; (ii) representative nature of entities expressing opposition; (iii) level of recognized stature or weight among sources of opposition; (iv) distribution or diversity among sources of expressions of opposition, including: (a) regional (b) subsectors of community, (c) the leadership of community, (d) membership of community; (v) historical defense of the*

121. In order to determine the appropriate standard to evaluate the Objection, it should be noted that Article 3.5.4 of the ICANN Guidebook does not require that the “entire” community expresses its opposition. Rather, it requires that Objector proves a “substantial” opposition within the community it has identified itself as representing.

122. Therefore, the Appointed Expert is of the view that the argument on the “relative low number” of oppositions compared to the composition of the Sport Community, as put forward by Applicant, should be balanced with the relevance and representative nature of each opposition within the community. For instance, in the present case, the opposition made by an individual rugby player or fan will not have the same weight in order to determine if an objection represents substantial opposition as the one made by the International Rugby Board.<sup>45</sup>

123. In this respect, the Appointed Expert is satisfied with the evidence produced by Objector, which includes 55 letters of opposition submitted by different recognized sport federations,<sup>46</sup> together with other statements from different reputable sport organizations and specialized agencies, such as the International Olympic Committee (IOC), the World Anti-Doping Agency (WADA) or the United Nations Office on Sport for Development and Peace (UNOSDP).<sup>47</sup>

124. Aside from this, the Appointed Expert notes that Objector represents all its members in these proceedings. Indeed, in accordance with its internal organization, the fact that SportAccord’s Executive Council has decided to object to dot Sport Limited’s application implies that all members of the association are deemed to have agreed to such decision to object.<sup>48</sup>

125. Therefore, to require individual letters from all SportAccord’s members –as Applicant has suggested– is simply redundant. The fact that other sport federations represented by Objector did not explicitly object to dot Sport Limited application should not be seen, in the Appointed Expert’s view, as an opposition to SportAccord’s claim.

126. Consequently, based on the representative nature of the Objector for the Sport Community, the relevance of the entities which have expressed their opposition (either individually or through the Objector) and the global recognition of the entities which are represented by Objector in these proceedings, the Appointed Expert concludes that there is a substantial opposition to the application “.sport” gTLD on behalf of a significant part of the Sport Community as established in Article 3.5.4 of the ICANN Guidebook.

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*community in other contexts; and (vi) costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition”.*

<sup>45</sup> See: Objection, Appendix A-3, tab 34.

<sup>46</sup> See: Objection, Appendix A-2.

<sup>47</sup> See: Objection, Appendix A-3.

<sup>48</sup> SportAccord’s Statutes, Article 33.3 “...the Council represents and commits SportAccord with regard to third parties”. See Exhibit Ap-1.

D. Targeting

(4) *Is the Sport Community explicitly or implicitly targeted by the application “.sport” gTLD?*

127. The next issue to be decided by the Appointed Expert is whether the Sport Community has been explicitly or implicitly targeted by the application for the “.sport” gTLD made by Applicant.

(i) *Positions of the Parties*

128. Due to the fact that word “sport” is almost exclusively associated with organized sport, sport for leisure and sport for health, Objector states that the Sport Community is “*explicitly*” targeted by the application for the “.sport” gTLD. In any event, SportAccord also argues that the “.sport” gTLD string “*implicitly*” targets the Sport Community.

129. Therefore, Objector concludes that the criterion of “*strong association*” between the Sport Community and the gTLD string “.sport” is, in its view, completely satisfied.<sup>49</sup>

130. Conversely, Applicant alleges that Objector failed to prove a “*strong association*” between the applied-for gTLD string and the alleged community since SportAccord does not represent the community as a whole. According to dot Sport Limited, “*whereas Applicant’s use of the TLD would target the entire sports industry, Objector plans to restrict the TLD at launch to persons of their choosing, beginning with Federations and other governing sports bodies, before later opening up the TLD to persons of its choosing outside the restricted definitions, using vague and unspecified post validation procedures and unspecified eligibility requirements*”.<sup>50</sup>

131. Applicant considers that it has a broader target than the alleged Sport Community, and the “*strong association*” alleged by Objector is purely ancillary or derivative.

(ii) *Considerations of the Appointed Expert*

132. It is for the Appointed Expert to decide whether the Sport Community is explicitly or implicitly targeted by the application for the “.sport” gTLD.

133. Pursuant to Article 3.5.4 of the ICANN Guidebook, “*the objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be balanced by a panel to determine this include but are not limited to: (i) Statements contained in application; (ii) other*

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<sup>49</sup> See: Objection, page 10.

<sup>50</sup> See: Response, page 10.

*public statements by the applicant; (iii) associations by the public”.*

134. In the Appointed Expert’s opinion, since the community represented by Objector is the “Sport Community”, it is evident that the application for “.sport” gTLD made by Applicant explicitly targets such community.

135. Having recognized that the Sport Community is clearly delineated, it cannot be denied that there is a strong (or even identical) association between the applied-for gTLD string “.sport” and the community represented by Objector.

136. Therefore, the Appointed Expert concludes that the Sport Community has been explicitly targeted by the “.sport” gTLD.

#### *E. Detriment*

*(5) Is there any material detriment to the rights or legitimate interests of the Sport Community if the application for the “.sport” gTLD is allowed to proceed?*

137. Finally, the Appointed Expert has to address the issue of whether the application for the “.sport” gTLD causes any material detriment to the rights or legitimate interests of the Sport Community.

#### *(i) Positions of the Parties*

138. Objector states that the “.sport” gTLD application made by dot Sport Limited lacks accountability to the Sport Community. Regarding the detriment that such application may generate, SportAccord points to ambush marketing, cybersquatting, typo-squatting, brand-jacking, misuse of sport themes for pornography, the systematic exacerbation of naming conflicts and the massive utilization of name-defensive registrations, giving examples on how each situation (in any given scenario) may affect the rights or legitimate interests of the Sport Community.<sup>51</sup>

139. In its Objection, SportAccord describes other possible detriments, such as the false sense of official sanction that consumers may have if an unaccountable registry operator manages such domain.<sup>52</sup>

140. Further, according to Objector, *“Under the United States Department of Commerce’s agreement with ICANN, the Affirmation of Commitments, ICANN must demonstrate that the new gTLD program contributes, in part, to consumer trust. Delegating “.sport” to an unaccountable registry operator, which lends a false sense of official sanction to the .sport domain name space, would inevitably erode consumer trust by misleading individuals through unofficial content”*.<sup>53</sup>

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<sup>51</sup> See: Objection, page 11.

<sup>52</sup> See: Objection, page 13. SportAccord says that, for example, “Rugby.Sport” domain will lead internet users to believe that the International Rugby Board sanctions such a website.

<sup>53</sup> See: Objection, page 13.



141. Objector also notes that if the “.sport” gTLD application is allowed to proceed, the Sport Community would suffer a loss in its image and prestige by the misappropriated use of community-specific keywords. *“The very reason why there is a community-based objection (as opposed to a rights infringement objection) is the fact that keywords targeting a sub-community are a commons and that each member of the sub-community has the right to expect that community institutions ensure the responsible management of those keywords.”*<sup>54</sup>

142. According to Objector, while in many cases there is no concept of individual ownership in terms of intellectual property, each community has a natural concept of collective ownership of keywords essential to it or to its sub-communities. Based on this argument, SportAccord considers that the uncontrolled or unaccountable operation of the “.sport” registry would constitute the *“tragedy of the commons”*, a material detriment which cannot be measured in monetary units.

143. Objector expands on the disruption of Sport Community efforts and achievements. It provides examples of the loss of credibility of community-based governance models and states that community-based communication policies for anti-doping, anti-drug, anti-racism, ticket scalping, illegal or undesirable gambling, etc., will be disrupted if key domain names related to them are used without adherence to those policies. This can only be avoided, in Objector’s view, if the gTLD registry is directly accountable to the Sport Community.<sup>55</sup>

144. Further, SportAccord focuses on the actual and certain damages that the Sport Community would suffer in case the “.sport” gTLD is operated by a registry without appropriate community-based accountability. In Objector’s view, not only would this situation generate an economic damage, but also a detriment of the reputation, the values and the governance of the Sport Community as a whole.<sup>56</sup>

145. Finally, Objector points to the loss of benefits for not operating the “.sport” TLD by the Sport Community itself, the loss of opportunity to create a community-based organizational tool and, most important, the irreversible damage caused by the forfeiture of the opportunity for the Sport Community to build the right image through the operation of the gTLD.<sup>57</sup>

146. Applicant contends that, in fact, Objector failed to prove a likelihood of material detriment to the rights or legitimate interests of the alleged community. In its opinion, Objector speculates that the alleged detriments would befall the alleged Sport Community should the gTLD be delegated to Applicant, but *“most of the alleged detriments are detriments inherent in the nature of the Internet and not attributable to Applicant’s plans for operating the gTLD”*.<sup>58</sup>

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<sup>54</sup> See: Objection, page 14.

<sup>55</sup> See: Objection, page 15.

<sup>56</sup> See: Objection, page 17.

<sup>57</sup> See: Objection, page 18.

<sup>58</sup> See: Response, page 11.

147. Applicant claims that it has taken measures to address the detriments inherent in the nature of the Internet. *“Thus, Objector’s alleged detriment seems to purely stem from the fact that Applicant would be delegated the gTLD instead of Objector”*.<sup>59</sup>

148. Further, it is dot Sport Limited’s position that Objector proves no kind or amount of damage to the reputation of the Sport Community that would result from Applicant’s operation of the applied-for gTLD string. In Applicant’s words, *“Consumer trust will be a core operating principle: abusive registrations and abuse of the gTLD will result in rapid sanctions”*.<sup>60</sup>

149. In addition, dot Sport Limited accuses Objector of not offering evidence (i) that Applicant is not acting or does not intend to act in accordance with the interests of the Sport Community or of users more widely; (ii) that Applicant’s operation of the “.sport” gTLD string will interfere with the core activities of the alleged community; and (iii) much less that the Objector’s core activities depend on the domain name system.<sup>61</sup>

150. Applicant also states that the alleged economic damage to the Sport Community has not been proved by Objector. In any case, abusive behaviour or Objector’s speculative detriments, if they occur, may be easily corrected or penalized. In addition, dot Sport Limited criticizes some evidence advanced by Objector which, in its view, does not show any actual damage to the alleged Sport Community.<sup>62</sup>

151. To conclude, it is Applicant’s position that the Objector’s alleged damages are hypothetical and would not result from Applicant’s operation of the applied-for gTLD string.<sup>63</sup>

(ii) *Considerations of the Appointed Expert*

152. The Appointed Expert has to decide on the likelihood of material detriment to the rights or legitimate interests of the Sport Community in the event that the application process ends with the adjudication of the string (“.sport”) to Applicant.

153. The Appointed Expert first notes that, in accordance with Article 3.5.4 of the ICANN Guidebook, *“the objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant por-*

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<sup>59</sup> See: Response, page 11.

<sup>60</sup> See: Response, page 11. Applicant further believes that there are benefits to rights and legitimate interests of the sports industry created by operation of a free and open TLD by a commercial entity. *“Given that there is no special regulated definition of the word “sport” or any restriction on the use of the word worldwide, combined with the fact that consumers understand that a domain name registration in a particular gTLD does not confer or even define special status for the holder worldwide and for every purpose, there will not be any loss of trust in the sports industry...”*.

<sup>61</sup> See: Response, page 12.

<sup>62</sup> See: Response, page 13.

<sup>63</sup> See: Response, page 13.

*tion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment”.*

154. Such Article also provides the factors that could be used by an expert panel in making this determination. These elements include, but are not limited to, “(i) *nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant’s operation of the applied-for gTLD string; (ii) evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests; (iii) interference with the core activities of the community that would result from the applicant’s operation of the applied-for gTLD string; (iv) dependence of the community represented by the objector on the DNS for its core activities; (v) nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant’s operation of the applied-for gTLD string; and (vi) level of certainty that alleged detrimental outcomes would occur*”.<sup>64</sup>

155. First, the Appointed Expert finds that the ICANN Guidebook does not call for “actual damage” for an objection to be accepted. It establishes a lower bar, namely a “*likelihood of material detriment*”, logical consequence of the impossibility of assessing any damage when the Applicant has yet to start operating the gTLD string.

156. Therefore, the standard that the Appointed Expert should apply to this issue is the “chance” that detriment will occur, which differs from the standard of “actual damage” invariably applied in litigation or arbitration. In other words, the standard of a “*likelihood of material detriment*” is, in the Appointed Expert’s opinion, equivalent to future “possible” damage.

157. In this regard, the Appointed Expert agrees with Applicant that many detriments alleged by Objector are purely hypothetical, such as the risk of cybersquatting, ambush marketing or the misuse of sport themes for purposes foreign to sport values.

158. Notwithstanding so, the Appointed Expert is of the opinion that Objector 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.

159. Further, the Appointed Expert shares Objector’s argument that all domain registrations in a community-based “.sport” gTLD will assure sports acceptable use policies. On the other hand, this cannot be warranted by Applicant in the same way in the event that the application for the “.sport” gTLD is approved by

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<sup>64</sup> Article 3.5.4 of ICANN Guidebook.

ICANN.

160. Regarding the economic damage that SportAccord may suffer, the Appointed Expert is of the view that although the figures and calculations on negative externalities provided by Objector may have been exaggerated,<sup>65</sup> the risk of economic damages which would be inflicted to Objector due to the operation of the gTLD by an unaccountable registry shows a reasonable level of certainty and could not be avoided if the application is allowed to proceed.

161. Therefore, the Appointed Expert is not in a position to accept Applicant's argument that Objector's alleged detriment only relies on the fact that Applicant would be delegated the ".sport" gTLD instead of Objector.

162. Finally, 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. Conversely, the Appointed Expert sees a strong dependence of the Sport Community on such domain name.

163. For these reasons, the Appointed Expert concludes that there is a strong likelihood of material detriment to the rights or legitimate interests of the Sport Community if the application ".sport" gTLD is allowed to proceed.

## VII. Decision

164. Having read all the submissions and evidence provided by the Parties, for the reasons set out above and in accordance with Article 21(d) of the Rules of Procedure, I hereby render the following Expert Determination:

- I. The "Community Objection" which has been put forward by SportAccord in these proceedings is successful.
- II. Objector SportAccord prevails.
- III. The ICC Centre will refund SportAccord the advance payment of costs it made in connection with these proceedings.

Date: October 23, 2013

Signature: \_\_\_\_\_

Prof. Dr. Guido Santiago Tawil  
Expert

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<sup>65</sup> See: Objection, Appendix A-13.

## ANNEX 2

To,

Mr. Cherine Chalaby, Chair, NGPC, ICANN

Mr. Fadi Chehadé, President and CEO, ICANN

Mr. Akram Atallah, President, Generic Domains Division, ICANN

Ms. Christine Willett, VP of New gTLD Operations, ICANN

CC: Ms. Špela Košak, Deputy Manager, ICC

1<sup>st</sup> November 2013

Dear Mr.Chalaby, Mr.Chehadé, Mr. Atallah, Ms. Willett,

We, the undersigned, are writing to express our ever-growing concerns relating to the Community Objection process. Some of our concerns in this regard have already been communicated to you in two letters, dated 22<sup>nd</sup> July 2013 and 24<sup>th</sup> September 2013.

Unfortunately, the issues surrounding Community Objection determinations are growing, and we are more concerned than ever that this process, and therefore the entirety of the New gTLD Program, is being corrupted by significant departures from the Applicant Guidebook (AGB). The undersigned strictly followed and relied upon the AGB throughout the application process. This included consideration about whether or not to apply for strings that may have been subject to Community Objections or contested by Community Priority Applicants. We were part of the ICANN community's discussion that set a high bar for prevailing Community Objections and resulted in the high standard that is in the AGB. The analysis we present herein related to the ICC's Expert Panels shows a disregard of the model and the standards set forth in the AGB. This is intolerable and deserves immediate mitigation.

While the decision regarding .SPORT provided by the expert can be questioned in all four criteria, the analysis is most clearly erroneous and is in clear contradiction of the AGB with regard to two specific criteria: community definition, and the likelihood of material detriment. Specifically, the record clearly demonstrates that panelists are not considering the very stringent definition of "community" set forth in the AGB. The decisions to date indicate that panelists are employing their own personal assumptions of "community" or have accepted the objectors' definition of "clearly delineated communities" without question. Additionally, panelists are ignoring the AGB requirements for a showing of material detriment. Among those requirements is the objector's burden to prove that its community is likely to be adversely affected by the delegation of the string in question.

Please note that the undersigned represent a variety of companies, including both single-string applicants and portfolio applicants, not all of which are facing community objections. We must stress that this is an issue that affects the entire New gTLD Program and ICANN community, and the support of applicants not directly affected by Community Objection proceedings speaks to our shared interest in strictly adhering to *all* AGB procedures.

To recap our prior correspondence, the first letter brought to ICANN's attention the fact that Expert Panels appointed by the DRSPs for the purpose of providing an Expert Determination on each community objection are three degrees removed from ICANN. They have neither prior experience with the new gTLD program nor a deep understanding of the AGB. It was then explicitly suggested that these Expert Panels should be provided with training or education materials that reinforce certain standards—primarily that the Panels must strictly follow the AGB to arrive at Expert Determinations. We are concerned that this process was never put into place.

The second letter pointed out specific examples of serious lapses on ICC Experts' parts in the Expert Determinations for .ARCHITECT and .FLY. The letter was a sincere attempt to inform ICANN of the fact that, although ICANN may have spent significant amounts of time working with the personnel at the DRSPs to familiarize them with the AGB, it is clear that the requisite knowledge and understanding of the AGB has not been successfully conferred to the actual Expert Panels appointed by the ICC. It was also recommended that ICANN should make appropriate appeal mechanisms available to parties who have been materially affected by decisions that departed from AGB standards. Finally, we urged ICANN to consider temporarily suspending all objection adjudications until a certain basic level of training was conducted to ensure that all concerned Experts are well versed with the AGB.

The response that was received from ICANN to this letter was disappointing, to say the least, given that ICANN's only follow-through was a simple acknowledgement of the correspondence, with no forthcoming engagement on these very serious issues.

Although the form response we received from Customer Service claimed that our comments would be "considered carefully," we believe this assurance was not genuine. We say this because the ICC recently published an Expert Determination on a community objection against an application for the .SPORT<sup>1</sup> generic TLD which, again, is fatally flawed. In particular, we draw ICANN's attention to at least five examples of glaring errors in this determination, which prove that at least one of ICC's Experts is not familiar with the AGB or its intent.

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<sup>1</sup> .SPORT Expert Determination: [http://www.iccwbo.org/Data/Documents/Buisness-Services/Dispute-Resolution-Services/Expertise/ICANN-New-gTLD-Dispute-Resolution/EXP\\_471\\_ICANN\\_88\\_Expert\\_Determination/](http://www.iccwbo.org/Data/Documents/Buisness-Services/Dispute-Resolution-Services/Expertise/ICANN-New-gTLD-Dispute-Resolution/EXP_471_ICANN_88_Expert_Determination/)

1. The Expert reported that, *“the concept of ‘community’ is not defined by the ICANN Guidebook.”*<sup>2</sup>

Clearly, the Expert did not know that the concept of “community” is actually explained by the ICANN Guidebook:

“‘Community’ - Usage of the expression ‘community’ has evolved considerably from its Latin origin – ‘communitas’ meaning ‘fellowship’ –while still implying more of cohesion than a mere commonality of interest. Notably, as “community” is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some understanding of the community’s existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.”<sup>3</sup>

We reiterate that the above definition of the term “community” was relied upon by *all* applicants whilst making their decisions to stake hundreds of thousands of dollars applying as standard applicants for generic strings in the new gTLD Program. It is absolutely unfair and unacceptable for an application to be rejected under the premise that the concept of “community” is not defined in the AGB. This is blatantly untrue and to disregard this is to compromise the integrity of the AGB, the New gTLD Program, and ICANN.

We understand that the above description of “community” is referenced with regard to community applications; however, the context is relevant to “community” objections as well. This is because, like a community application, a community objection that is upheld directly eliminates the bona fide standard application against which it is filed. Consequently, it is the Expert’s duty to thoroughly test the existence of a “clearly delineated community” as per AGB descriptions before eliminating the standard application from the program altogether.

2. While the Expert is clearly aware that the objector needs to prove that “the application creates a likelihood of material detriment...”, none of the factors that were considered included anything about the application. The Expert did not identify a single objectionable or lacking aspect in the application that creates a likelihood of material detriment.
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<sup>2</sup> Page 18 of the .SPORTExpert Determination

<sup>3</sup> §4-11 of AGB



*“In other words, the standard of a “likelihood of material detriment” is, in the Appointed Expert’s opinion, equivalent to future “possible” damage.”<sup>4</sup>*

In this case, the Expert opines that “likelihood” is equivalent to “future possible.” It almost appears as if the criteria have been deliberately weakened in order to allow the objector to prevail. In fact, the Expert even made this statement:

*“...Expert agrees with Applicant that many detriments alleged by Objector are purely hypothetical...”*

In spite of this, the Expert ruled in favor of the Objector. If the Expert’s current logic is followed, every application, including the Objector’s own application, creates “possible” damage. In this case, an allegation of material detriment against any application would be upheld because there is future “possible” damage. How can any applicant guarantee that it is “not possible,” in all conceived hypotheticals, for any future damage to occur?

The .SPORT ruling leaves no doubt the panelist replaced the word “likelihood” with the word “possibility” thus materially altering AGB fourth test to read as follows:

*“The application creates a ~~likelihood~~ possibility 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.”<sup>5</sup>*

Procedurally, the guidebook explicitly does not provide the panelist with discretion to change the burden of proof the objector bears. If this is not true, then ICANN did not notify applicants and other interested parties of such discretion provided to the panelist. Either way a procedural error has occurred. In the spirit of fairness and due process, we call upon ICANN to incorporate an appeals process for exactly such procedural errors in the community objection proceedings.

4. The Expert has erroneously considered the “economic damage” that the *objector* “may suffer.”<sup>6</sup> Instead, he was supposed to consider the “nature and extent of damage to the reputation of the *community* represented by the objector...”. It appears that the Expert misread the AGB or inappropriately assumed that the Objector IS the “sports community.”
5. The decision provides no evidence that the Expert even considered the “level of certainty that alleged detrimental outcomes would occur.” As noted above, in point 3,

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<sup>4</sup> Page 27 of the .SPORT Expert Determination

<sup>5</sup> §3-24 of AGB

<sup>6</sup> Page 28 of the .SPORT Expert Determination

unlikely and hypothetical situations have been given credence over any level of certainty.

To evidence that unbiased industry insiders share our viewpoint on this subject, please take note of two recently published relevant articles, both by reputed journalists who are not participants in the new gTLD program:

- 1) <http://www.thedomains.com/2013/10/29/wow-icc-upholds-objection-of-sportsaccord-to-famous-fours-app-for-new-gtld-sport-giving-sportaccord-the-extension/>. In this case, the title itself expresses shock over this Expert Determination.
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We also bring to ICANN's attention the fact that objectors on other unrelated cases are citing these decisions in their Supplemental Submissions in order to influence Experts to weaken the objection criteria and rule in their favor. If these are considered to be precedents for other Experts, we can assure you that most community objectors will unfairly prevail over applicants who applied as standard applicants in good faith.

Not only does this situation cause immense commercial damage to the affected applicants, but also sets a precedent for future application rounds where applicants cannot rely on the application documents and ICANN can expect absolutely any applicant to use (or rather, abuse) the community objection process as its first attempt at contention resolution. These current decisions by ICC Experts will probably be used as grounds for rejecting future applications on the most generic words.

ICANN should *immediately* rectify this obvious deficiency. We sincerely request ICANN to take a more active role in the Dispute Resolution Process altogether. This includes impressing upon the ICC that its Experts need appropriate training before additional decisions are published to avoid any further inadequate decision making, by ensuring that the AGB is followed for future cases, and by putting in place an appeals mechanism so that procedural errors such as those in the .sport decision can be rectified. As applicants in the program, we are confident that ICANN will do the right thing, and ensure that its contracted parties uphold the AGB at any cost.

We thank you for taking the time to read this letter, and look forward to a positive and constructive response from you.

Sincerely,

Shweta Sahjwani, Radix FZC

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Employ Media, LLC

Famous Four Media Limited

Merchant Law Group, LLP

DOTSTRATEGY CO.

## ANNEX 3

To,

Mr. Cherine Chalaby, Chair, NGPC, ICANN

Mr. Fadi Chehadé, President and CEO, ICANN

Mr. Akram Atallah, President, Generic Domains Division, ICANN

Ms. Christine Willett, VP of New gTLD Operations, ICANN

CC: Ms. Špela Košak, Deputy Manager, ICC

1<sup>st</sup> November 2013

Dear Mr.Chalaby, Mr.Chehadé, Mr. Atallah, Ms. Willett,

We, the undersigned, are writing to express our ever-growing concerns relating to the Community Objection process. Some of our concerns in this regard have already been communicated to you in two letters, dated 22<sup>nd</sup> July 2013 and 24<sup>th</sup> September 2013.

Unfortunately, the issues surrounding Community Objection determinations are growing, and we are more concerned than ever that this process, and therefore the entirety of the New gTLD Program, is being corrupted by significant departures from the Applicant Guidebook (AGB). The undersigned strictly followed and relied upon the AGB throughout the application process. This included consideration about whether or not to apply for strings that may have been subject to Community Objections or contested by Community Priority Applicants. We were part of the ICANN community's discussion that set a high bar for prevailing Community Objections and resulted in the high standard that is in the AGB. The analysis we present herein related to the ICC's Expert Panels shows a disregard of the model and the standards set forth in the AGB. This is intolerable and deserves immediate mitigation.

While the decision regarding .SPORT provided by the expert can be questioned in all four criteria, the analysis is most clearly erroneous and is in clear contradiction of the AGB with regard to two specific criteria: community definition, and the likelihood of material detriment. Specifically, the record clearly demonstrates that panelists are not considering the very stringent definition of "community" set forth in the AGB. The decisions to date indicate that panelists are employing their own personal assumptions of "community" or have accepted the objectors' definition of "clearly delineated communities" without question. Additionally, panelists are ignoring the AGB requirements for a showing of material detriment. Among those requirements is the objector's burden to prove that its community is likely to be adversely affected by the delegation of the string in question.

Please note that the undersigned represent a variety of companies, including both single-string applicants and portfolio applicants, not all of which are facing community objections. We must stress that this is an issue that affects the entire New gTLD Program and ICANN community, and the support of applicants not directly affected by Community Objection proceedings speaks to our shared interest in strictly adhering to *all* AGB procedures.

To recap our prior correspondence, the first letter brought to ICANN's attention the fact that Expert Panels appointed by the DRSPs for the purpose of providing an Expert Determination on each community objection are three degrees removed from ICANN. They have neither prior experience with the new gTLD program nor a deep understanding of the AGB. It was then explicitly suggested that these Expert Panels should be provided with training or education materials that reinforce certain standards—primarily that the Panels must strictly follow the AGB to arrive at Expert Determinations. We are concerned that this process was never put into place.

The second letter pointed out specific examples of serious lapses on ICC Experts' parts in the Expert Determinations for .ARCHITECT and .FLY. The letter was a sincere attempt to inform ICANN of the fact that, although ICANN may have spent significant amounts of time working with the personnel at the DRSPs to familiarize them with the AGB, it is clear that the requisite knowledge and understanding of the AGB has not been successfully conferred to the actual Expert Panels appointed by the ICC. It was also recommended that ICANN should make appropriate appeal mechanisms available to parties who have been materially affected by decisions that departed from AGB standards. Finally, we urged ICANN to consider temporarily suspending all objection adjudications until a certain basic level of training was conducted to ensure that all concerned Experts are well versed with the AGB.

The response that was received from ICANN to this letter was disappointing, to say the least, given that ICANN's only follow-through was a simple acknowledgement of the correspondence, with no forthcoming engagement on these very serious issues.

Although the form response we received from Customer Service claimed that our comments would be "considered carefully," we believe this assurance was not genuine. We say this because the ICC recently published an Expert Determination on a community objection against an application for the .SPORT<sup>1</sup> generic TLD which, again, is fatally flawed. In particular, we draw ICANN's attention to at least five examples of glaring errors in this determination, which prove that at least one of ICC's Experts is not familiar with the AGB or its intent.

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<sup>1</sup> .SPORT Expert Determination: [http://www.iccwbo.org/Data/Documents/Buisness-Services/Dispute-Resolution-Services/Expertise/ICANN-New-gTLD-Dispute-Resolution/EXP\\_471\\_ICANN\\_88\\_Expert\\_Determination/](http://www.iccwbo.org/Data/Documents/Buisness-Services/Dispute-Resolution-Services/Expertise/ICANN-New-gTLD-Dispute-Resolution/EXP_471_ICANN_88_Expert_Determination/)

1. The Expert reported that, *“the concept of ‘community’ is not defined by the ICANN Guidebook.”*<sup>2</sup>

Clearly, the Expert did not know that the concept of “community” is actually explained by the ICANN Guidebook:

“‘Community’ - Usage of the expression ‘community’ has evolved considerably from its Latin origin – ‘communitas’ meaning ‘fellowship’ –while still implying more of cohesion than a mere commonality of interest. Notably, as “community” is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some understanding of the community’s existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.”<sup>3</sup>

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## ANNEX 4

# New TLD applicants flummoxed by objection results

BY ANDREW ALLEMANN - NOV 05, 2013  POLICY & LAW  1 COMMENT

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## Applicants ask ICANN to intervene in objection process.

A dozen applicants for new top level domain names have sent a letter ([pdf](#)) to ICANN urging the group to step in and fix what they believe are flawed new top level domain objection results.


The applicants are questioning the rhyme or reason to objection decisions, including a recent [bewildering decision](#) in a community objection against a .sport application.

While legal rights objections certainly frustrated some objectors and applicants, string confusion and community objections have been plagued by seemingly contradictory decisions. Winning (or losing) a string confusion case had more to do with who the panelist was than the merits of the case, and the same pattern seems to be emerging in community objections.

This lack of certainty and consistency isn't good for either applicants or objectors. Yet ICANN may decide it's easier to just sit back and watch it unfold.

<http://domainnamewire.com/2013/11/05/new-tld-applicants-flummoxed-by-objection-results/>

# BreatheAccord wins community objection against .Breathe top level domain name

BY ANDREW ALLEMANN - OCT 29, 2013  POLICY & LAW  2 COMMENTS

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*The following is a satirical response to [news](#) that SportAccord won a community objection against the .sport top level domain name.*

An International Chamber of Commerce panelist has upheld a community objection brought by BreatheAccord against dotBreathe LLC's top level domain name application for .breathe.

The decision by panelist Aru Kiddinme means that BreatheAccord, the only other applicant for .breathe, will now have a clear path to delegation for the domain name.

Panelist Kiddinme first determined that the breathe community is clearly delineated.

"It is clear to me that the community is easily defined," he wrote. "The formal boundaries of the community are defined by only those human beings who have ever breathed a breath on the planet Earth."

BreatheAccord argued that, through the various associations that are in its membership, it represents the approximately 7 billion living creatures who have ever breathed.

Kiddinme agreed that "although the objector might not represent all people who have ever breathed, it acts for a preponderant part of such community of human beings."

"In fact, it would be almost impossible for an institution to represent any community as a whole," Kiddinme wrote. "If such was the requirement, there would be no reason to provide for the possibility of community objections."

BreatheAccord had collected 12,982 e-signatures on Change.org from people in the breathing community who were opposed to dotBreathe, LLC getting the .breathe domain name.

dotBreathe, LLC argued that the "expressions of opposition from the Objector are small compared to the large composition of the alleged community of breathers of seven billion people".

<http://domainnamewire.com/2013/10/29/breatheaccord-wins-community-objection-against-breathe-top-level-domain-name/>

## Famous Four vows to fight .sport objection loss

Kevin Murphy, October 31, 2013, 19:37:06 (UTC), [Domain Registries](#)

**Famous Four Media has promised to pursue “all available legal avenues” after losing a Community Objection over the .sport gTLD to its Olympic-backed rival.**

The portfolio applicant lost out to SportAccord in an October 23 decision by International Chamber of Commerce panelist Guido Santiago Tawil, meaning its .sport application should be rejected by ICANN.

But Famous Four says it's not over yet. In a statement today, the company said:

Famous Four Media shall pursue rigorously all available legal avenues available to it to have the decision independently reviewed by ICANN and/or others as the case may be, and reversed.

The logical first step of such a threat would be a Reconsideration Request, a relatively cheap way to challenge an ICANN decision with a virtually zero chance of succeeding.

That could be followed by a demand for an Independent Review Panel procedure, which would take much longer and cost significantly more. When ICM Registry won an IRP, the bill ran to millions.

Or Famous Four could try its luck in the courtroom, which could be flustered by the fact that all new gTLD applicants had to sign fairly one-sided legal waivers when they applied.

So what's the company so worked up about?

It's lost the chance to run .sport, because the ICC panelist ruled that SportAccord, which is backed by the International Olympic Committee and dozens of official sporting associations, represents the “sport” community and would be harmed if Famous Four were to run the TLD.

Famous Four had argued in its defense that SportAccord can only purport to represent a “subset” of this community — its sporting organization members — rather than everyone who has an interest in sport.

Rather amusingly, in its statement today, FFM linked to the [IOC's own marketing](#), which bears the slogan “Sport Belongs to All”, to prove its point:

it is Famous Four Media's unshakable belief that this statement is true and just and that is why Famous Four Media applied for an open TLD – a top level domain that is open to everyone and offered to everyone on a level and equitable basis. Trying to claim ownership and representation of sport is akin to claiming representation for the human race.

An alternative reading would be to state that the IOC's marketing slogan is, like all marketing slogans, bullshit.

But it actually cuts to the heart of the case itself, which Guido Santiago Tawil found in favor of SportAccord, writing:

The ICANN Guidebook does not require that an “entire” community agree on an objection to an application. In fact, it would be almost impossible for an institution to represent any community as a whole. If such was the requirement, there would be no reason to provide for the possibility of community objections.

It is difficult to imagine which other association may claim representation of the Sport Community besides an institution that represents, as Objector does, more than a hundred well-known sports federations and institutions related to sports.

Another key, and related, factor Community Objection panelists have to consider is whether a community is “clearly delineated”.

It's here where the arguments that an applicant can use to win a Legal Rights Objection seem to fail under Community Objection scrutiny.

Famous Four said that “sport” is not clearly delineated along the lines defined by SportAccord — ie, members of its federations — because it doesn't allow, say, hobbyists or the media to get involved.

Similar arguments were made in LROs.

Applicants regularly defended themselves against LROs — where the objector owns a trademark rather than purporting to represent a community — by pointing out all the non-infringing uses of the string.

That defense apparently doesn't work in Community Objections, with the .sport ICC panelist ruling:

<http://domainincite.com/14918-famous-four-vows-to-fight-sport-objection-loss>

**Please see Errata attached at the end of this document.**

**DETERMINATION OF THE BOARD GOVERNANCE COMMITTEE (BGC)**

**RECONSIDERATION REQUEST 13-16**

**8 JANUARY 2014**

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The Requester seeks reconsideration of the 23 October 2013 Expert Determination in favor of SportAccord's community objection to the Requester's application for the .SPORTS gTLD.

**I. Brief Summary**

Both the Requester dot Sport Limited ("Requester" or "dot Sport") and SportAccord applied for the .SPORTS string, and are in the same contention set. SportAccord won its Community Objection against the Requester's application. The Requester claims that the Panel failed to apply the requisite ICANN standards, processes and policies in reaching the Determination by: (a) creating a new standard for determining the *likelihood* of material detriment; (b) failing to apply the existing standard for cause of the material detriment to a community; and (c) creating a new standard for examining the alleged material detriment. The Requester also claims that the Expert violated established policy or process by failing to disclose material information relevant to his appointment in. As a result, the Requester asks ICANN to reject the Expert Determination, and send the .SPORT matter back to a new panel that the ICC must show has been given substantial training in the Guidebook processes and standards. In the alternative, the Requester asks that ICANN request a formal accounting of the Expert's current or prospective links with SportAccord or any of its member federation, and that the ICC demonstrate that the Expert was given reasonable training in the Guidebook processes and standards.



With respect to the first claim, the Requester failed to demonstrate that the Panel applied the wrong standard and there is no indication that: (a) the Panel created a new standard for determining the likelihood of material detriment; (b) the Panel ignored the causation requirement for evaluating the likelihood of material detriment; and (c) the Panel created a new test for examining material detriment.

With respect to the second claim, the Requester provides no evidence demonstrating that the Expert failed to follow the applicable ICC procedures for independence and impartiality. Rather, the Requester is challenging the merits of the Expert's disclosure. Such challenges should be brought to the ICC under the ICC Rules of Expertise, not through the Reconsideration process.

Therefore, it is the BGC's recommendation that Request 13-16 be denied.

## **II. Facts.**

### **A. Background Facts.**

The Requester and SportAccord applied for the .SPORTS string, and are in the same contention set.

On 13 March 2013, SportAccord filed a Community Objection with the ICC<sup>1</sup> to the Requester's application asserting that 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." (Applicant Guidebook ("Guidebook"), § 3.2.1; New gTLD Dispute Resolution Procedure ("Procedure"), Art. 2(e).)

On 21 May 2013, the Requester filed a response to SportAccord's Objection.

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<sup>1</sup> International Centre for Expertise of the International Chamber of Commerce.

On 29 July 2013, the ICC appointed Professor Dr. Guido Santiago Tawil as the expert (“Expert” or “Panel”) to consider SportAccord’s Objection and notified the parties of the appointment. The ICC provided the parties with the Expert’s *curriculum vitae* as well as his Declaration of Acceptance and Availability, Statement of Impartiality and Independence.

On 23 October 2013, the Panel rendered an “Expert Determination” in favor of SportAccord. The Panel determined that SportAccord had standing to object as an “established institution which has an ongoing relationship with a clearly delineated community.” (Determination, Pg. 12, ¶ 82.) Based on the submissions and evidence provided by the parties, the Panel determined that SportAccord established that there is substantial opposition from a significant portion of the community to which the Requester’s application for the .SPORTS string may be targeted. The Panel deemed SportAccord to be the prevailing party and the Requester to be the losing party. (Determination, Pg. 24, ¶ 164.)

On 8 November 2013, the Requester filed Request 13-16, seeking reconsideration of the Expert Determination.

**B. Requester’s Claims.**

Requester seeks reconsideration on the following grounds:

First, the Requester claims that the Panel failed to apply the requisite ICANN standards, processes and policies in reaching the Determination. Specifically, the Requester contends the Panel:

- Created a new standard for determining the *likelihood* of material detriment;
- Failed to apply the existing standard for cause of the material detriment to a community; and
- Created a new standard for examining the alleged material detriment.

(Request, Section 10b(iv)(a)-(d).) The Requester further asserts that the Panel’s alleged failure to apply the proper standard is evidence that the Expert was not qualified to render a determination on SportAccord’s objection, and thus, the ICC’s failure to appoint an appropriately qualified expert demonstrates a process violation sufficient to void the Expert Determination.

(Request, Sections 9 & 10b(iv)(e).)

Second, the Requester alleges that the Expert failed to disclose material information about his interest in sporting arbitration and the organized sporting industry (of which SportAccord is a part), as well as his co-chairing of a panel entitled “The quest for optimizing the dispute resolution process in major sport-hosting events,” which the Requester suggests gives rise to doubts as to the Expert’s impartiality and independence. The Requester claims that the Expert’s failure to disclose these interests constitutes a breach of the relevant dispute resolution procedures as well as a breach of the ICANN policy on transparency as set out in Article 3, Section 1 of the Bylaws, which states that ICANN shall operate “in an open and transparent manner and consistent with procedures designed to ensure fairness.” (Request. Section 8.)

### **III. Issues.**

As noted above, the Requester asks ICANN to consider: (i) whether the Panel failed to follow the requisite ICANN standards, processes and policies in rendering the Expert Determination; and (ii) whether the Expert failed to disclose material information relevant to his appointment which should invalidate the Expert Determination.

In view of the claims set forth in Request 13-16, the issues for reconsideration are:

- A. Whether the Panel applied the wrong standard in contravention of established ICANN policy or process by:
  - 1. Creating a new standard for determining the *likelihood* of material detriment in the Determination;

2. Failing to apply the existing standard for cause of the likelihood of material detriment to a community; and
  3. Creating a new standard for examining the alleged material detriment.
- B. Whether the Expert failed to disclose material information relevant to his appointment in violation of established policy or process.

#### **IV. The Relevant Standards for Evaluating Reconsideration Requests and Community Objections.**

ICANN's Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with the specified criteria.<sup>2</sup> (*See* Bylaws, Art. IV, § 2.) Dismissal of a request for reconsideration relating to staff action or inaction is appropriate if the BGC<sup>3</sup> concludes, and the Board or the NGPC<sup>4</sup> agrees to the extent that the BGC deems that further consideration by the Board or NGPC is necessary, that the requesting party does not have standing because the party failed to satisfy the reconsideration criteria set forth in the Bylaws. ICANN has previously determined that the reconsideration process can properly be invoked for challenges to expert determinations rendered by panels formed by third party dispute resolution service providers, such as the ICC, where it can be stated that the Panel failed to follow the established policies or

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<sup>2</sup> Article IV, Section 2.2 of ICANN's Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
- (b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
- (c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

<sup>3</sup> Board Governance Committee.

<sup>4</sup> New gTLD Program Committee.

processes in reaching the expert determination, or that staff failed to follow its policies or processes in accepting that determination.<sup>5</sup>

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 application 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. (Request, Section 8.)

The standards for evaluating community objections include a four-part test to help an expert panel determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- 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.

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<sup>5</sup> See BGC Recommendation on Reconsideration Request 13-5 at <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.doc>.

(Guidebook, Section 3.5.4.) Section 3.5.4 also includes a list of factors that could be used to evaluate each of the four criteria. (*See id.*) The factors relevant to Requester’s claims are discussed below.

**V. Analysis and Rationale.**

**A. Requester Failed To Demonstrate That The Panel Applied The Wrong Standards In Contravention Of Established Policy Or Process.**

The Requester contends that the Panel applied the wrong standard in evaluating SportAccord’s community objection to Requester’s application for .SPORTS. Specifically, the Requester claims that the Panel: (i) created a new standard for determining the “likelihood of material detriment”; (ii) failed to apply the existing standard for cause of the likelihood of material detriment to a community; and (iii) created a new test for examining the alleged material detriment. (Request, Section 10b(iv)(a)-(d).)

**1. The Panel did not Create a New Standard for Determining the Likelihood of Material Detriment.**

The Requester claims that the Panel erroneously interpreted the standard for assessing the “likelihood of material detriment” as requiring a “potential” harm, which is a lesser standard than the “probability” of harm that is purportedly required in the Guidebook. (Request, Section 10(b)(iv)(a).) The Requester’s conclusions in this respect are not supported.

As noted above, to prevail on a community objection, the objector must, among other things, establish 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.” (Guidebook, Section 3.5.4.) The Guidebook includes a list of factors that could be used by a panel in making this determination. The factors include but are not limited to the following:

- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant’s operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant’s operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant’s operation of the applied-for gTLD string; and
- Level of certainty that alleged detrimental outcomes would occur.

(Guidebook, Section 3.5.4.)

Here, the Panel correctly referenced the above standard (Determination, Pgs. 22-23;

¶¶ 153-154) and noted:

Therefore, the standard that the Appointed Expert should apply to this issue is the “chance” that detriment will occur, which differs from the standard of “actual damage” invariably applied in litigation or arbitration. In other words, the standard of a “*likelihood of material detriment*” is, in the Appointed Expert’s opinion, equivalent to future “possible” damage.

(Determination, Pg. 23, ¶ 156.)

The Requester has failed to establish how the Panel’s interpretation of “likelihood” is a violation or contradiction of the Guidebook. Contrary to the Requester’s assertion, the Guidebook does not specifically define “likelihood of material detriment” but provides a set of factors that can be used to make a determination, and the Requester’s interpretation of the meaning of “likelihood” is not supported by the Guidebook. Nevertheless, and notwithstanding the Panel’s agreement with Requester that many detriments alleged by SportAccord were “purely

hypothetical” (such as the risk of cybersquatting, ambush marketing, or the misuse of sport themes for purposes foreign to sport values), the Panel concluded that there was a “strong likelihood of material detriment to the rights or legitimate interests of the Sport Community if the application ... is allowed to proceed.” (Determination, Pg. 24, ¶ 163 (emphasis added).) The Panel determined that SportAccord “proved several links between potential detriments” that the community may suffer and the operation of the .SPORTS string by Requester (such as the sense of official sanction or the disruption of some community efforts.) (Determination, Pg. 23, ¶¶ 157-58.) The Requester’s argument therefore does not support reconsideration because the Requester has failed to demonstrate how the Panel’s actions contradict any established policy or process.

**2. The Panel did not Fail to Apply the Existing Standard for Cause of the Likelihood of Material Detriment to a Community.**

The Requester alleges that the Panel ignored the requirement that the objector prove that the application “specifically created” or is the “cause” of the likelihood of material detriment. The Requester claims that the Panel “did not identify a single objectionable or lacking aspect in the application that creates a likelihood of material detriment.” (Request, Section 10b(iv)(b).) Requester’s arguments here are likewise unsupported.

Based on the Expert Determination, it appears that the Panel’s analysis of the detriment element centered on whether the Requester’s application for the .SPORTS string was likely to cause a material detriment – *i.e.*, whether the Requester’s operation of the .SPORTS gTLD was likely to create the detriment alleged by SportAccord. (Determination, Pgs. 20-24, ¶¶ 137-163.) More specifically, SportAccord asserted that the Requester’s application for .SPORTS lacked accountability to the sport community and that such an application would generate numerous detriments to the interests of the community. (Determination, Pgs. 20-21, ¶¶ 137-145.) The



Requester challenged SportAccord’s assertions by claiming, among other things, that any alleged detriments were hypothetical and would not result from the Requester’s operation of the .SPORTS string. (Determination, Pgs. 21-22, ¶¶ 146-151.) As explained above, the Expert agreed with the Requester that many detriments alleged by SportAccord were purely hypothetical, but concluded that SportAccord was able to prove that Requester’s operation of the .SPORTS string was linked to potential detriments that the sport community may suffer. (Determination, Pg. 23, ¶¶ 157-58.) Thus, there is no support for the Requester’s claim that the Panel ignored the causation requirement for evaluating the likelihood of material detriment.

**3. The Panel did not Create a New Test for Examining the Alleged Material Detriment.**

The Requester asserts that the Panel created a new test for examining the alleged material detriment. To support this assertion, the Requester claims that the Panel applied the wrong test by considering both the Requester’s intent to act in accordance with the interests of the sport community and the economic damage that SportAccord (as opposed to the sport community) may suffer if the Requester’s application is allowed to proceed. (Request, Section 10b(iv)(c)-(d).) The Requester claims that SportAccord was never required to prove intention to cause material detriment; rather, it was required to prove that the application was likely to cause material detriment.

Turning first to the Requester’s claim that the Panel erred by considering the Requester’s intent to act in accordance with the interests of the sport community, “[e]vidence that the applicant is not acting or does not intend to act in accordance with the interests of the community” is one of the expressed factors set forth in the Guidebook that a panel may consider in evaluating detriment. (Guidebook, Section 3.5.4.) The Panel was therefore correct in addressing this factor.

With respect to the Requester's claim that the Panel improperly considered the economic damage to SportAccord (as opposed to the Sport Community), there is no support for this assertion. In setting forth the parties' positions on detriment, the Panel noted that SportAccord "focuses on the actual and certain damages that the Sport Community would suffer [if .SPORT] is operated by a registry without appropriate community-based accountability." (Determination, Pg. 21, ¶ 144 (emphasis added).) It is clear from SportAccord's focus on the alleged damages to the sport community and the Panel's evaluation of the alleged damages as presented that the Panel was referencing the community represented by SportAccord (and not SportAccord itself) in the Expert Determination. Based on the parties' submissions, the Panel concluded:

Regarding the economic damage that SportAccord may suffer, the Appointed Expert is of the view that although the figures and calculations on negative externalities provided by the Objector may have been exaggerated, the risk of economic damages which would be inflicted to Objector due to the operation of the gTLD by an unaccountable registry shows a reasonable level of certainty and could not be avoided if the application is allowed to proceed.

Therefore, the Appointed Expert is not in a position to accept Applicant's argument that Objector's alleged detriment only relies on the fact that Applicant would be delegated [.SPORT] instead of Objector.

(Determination, Pg. 24, ¶¶ 160-161 (footnote omitted.) One of the factors that a panel may consider in evaluating detriment is the "nature and extent of concrete or economic damage to the community represented by the objector ...." (Guidebook, Section 3.5.4.) As such, the Panel's evaluation does not appear inconsistent with the standards set forth in the Guidebook.

Because there is no support for the Requester's claim that the Panel applied the wrong standard in evaluating SportAccord's community objection, there is also no support for the Requester's contention that the Expert Determination should be voided due to the ICC's alleged failure to appoint an appropriately qualified expert.

**B. The Expert’s Purported Failure To Disclose A Possible Conflict Of Interest Does Not Support Reconsideration.**

The Requester also claims that the Expert Determination should be void because the Expert failed to disclose information about his purported “interest in sporting arbitration and his presence at [a sporting event] conference” in February 2011. (Request, Section 8.) In particular, Requester relies on the Expert’s alleged participation as co-chair of a panel at the conference entitled “The quest for optimizing the dispute resolution process in major sport-hosting events.” (Request, Section 8.) The Requester contends that the Expert’s participation at the conference reflects his “recent[] focus on the prospect of creating business opportunities by close connections with ... the organized sporting industry (of which SportAccord is a part)” and constitutes a conflict of interest that should have been disclosed prior to accepting the appointment. (Request, Section 8.) The Requester asks that ICANN request a formal account from the Expert of whether he has any links, including current or prospective links, with the objector or any of its member federations.

Section 3.4.4 of the Guidebook provides that the ICC will “follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.” (Guidebook, Section 3.4.4.) The ICC Rules of Expertise<sup>6</sup> would therefore govern any challenges to the independence of experts appointed to evaluate community objections. Requester provides no evidence demonstrating that the Expert failed to follow the applicable ICC procedures for independence and impartiality prior to his appointment. Article 7(4) of the ICC Rules for Expertise and Article 3(3) of its Appendix I provide that “a prospective expert shall sign a statement of independence and disclose in writing to the Centre [ICC] any

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<sup>6</sup> <http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Expertise/ICC-Rules-for-Expertise/>.

facts or circumstances which might be of such nature as to call into question the expert's independence in the eyes of the parties.” (Request, Section 8; ICC Expertise Rules, Art. 7(4) & Appendix I.) The Panelist submitted his *curriculum vitae* as well as his Declaration of Acceptance and Availability, Statement of Impartiality and Independence. (Determination, Pg. 4.) Requester seeks to challenge the merits of said disclosure. However, from the Request, it does not appear that the Requester 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 Requester 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.<sup>7</sup>

## **VI. Decision.**

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and therefore denies dot Sport Limited's Request for Reconsideration. As there is no indication that Panel violated any policy or process in reaching the determination sustaining SportAccord's community objection, this Request should not proceed. If the Requester believes that it has somehow been treated unfairly in the process, the Requester is free to ask the Ombudsman to review this matter.

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<sup>7</sup> Notably, the Requester demonstrated familiarity with the ICC Rules of Expertise by successfully challenging and replacing the first expert appointed to the matter. (Request, Section 8.)

In accordance with Article IV, Section 2.15 of the Bylaws, the BGC's determination on Request 13-16 shall be final and does not require Board consideration. Article IV, Section 2, Paragraph 16 of the Bylaws provides that the BGC is delegated with authority by the Board to make a final determination and recommendation for all Reconsideration Requests brought regarding staff action or inaction and that the BGC's determination on such matters is final and establishes precedential value. (Bylaws, Art. IV, § 2.15.) The BGC has the discretion, but is not required, to recommend the matter to the Board for consideration and action, as the BGC deems necessary. (*See id.*) As discussed above, Request 13-16 seeks reconsideration of action or inaction taken by staff. After consideration of this particular Reconsideration Request, the BGC concludes that its determination on this matter is sufficient and that no further consideration by the Board is warranted.

## ERRATA SHEET

The Recommendation of ICANN's Board Governance Committee ("BGC") on Reconsideration Request 13-16, which was published on 8 January 2014, is a true record of the BGC's Recommendation, with the following exceptions:

Page	Paragraph	Corrections
1	1	<u>“.SPORTS” should read “.SPORT”</u>
1	2	<u>“.SPORTS” should read “.SPORT”</u>
2	4	<u>“.SPORTS” should read “.SPORT”</u>
3	2	<u>“.SPORTS” should read “.SPORT”</u>
6	1	<u>“.SPORTS” should read “.SPORT”</u>
7	1	<u>“.SPORTS” should read “.SPORT”</u>
9	1	<u>“.SPORTS” should read “.SPORT”</u>
9-10	2 <sup>nd</sup> full para.	<u>Each reference to “.SPORTS” should read “.SPORT”</u>

Date: 28 July 2014

**REVISED RECOMMENDATION**  
**OF THE BOARD GOVERNANCE COMMITTEE**  
**ON RECONSIDERATION REQUESTS 13-16 AND 14-10**

**1 JUNE 2017**

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In an Independent Review Process (IRP) proceeding, dot Sport Limited (dSL or Requestor), claimed, among other things, that the ICANN Board failed to take into account newly discovered evidence about alleged conflicts of interest of the Expert presiding over the Community Objection filed against the Requestor’s application for .SPORT. The IRP Panel recommended in the Final Declaration that the ICANN Board “reconsider its decisions on the Reconsideration Requests in the aggregate, weighing the new evidence in its entirety against the standard applicable to neutrals as set out in the IBA Conflict Guidelines.” Following consideration of the Final Declaration, the Board directed the Board Governance Committee (BGC) to re-evaluate the relevant Reconsideration Requests.

**I. Brief Summary**

The Requestor and SportAccord both applied for .SPORT and are in the same contention set. SportAccord filed a Community Objection (Objection) against the Requestor’s application (Application). The Expert rendered a determination in favor of SportAccord (Expert Determination). The Requestor then filed Reconsideration Request 13-16 (Request 13-16), challenging the International Centre for Expertise of the International Chamber of Commerce’s (ICC) appointment of expert, Dr. Guido Santiago Tawil (Expert), claiming that because the Expert allegedly violated established policy or process by failing to disclose material information relevant to his appointment. On 8 January 2014, the BGC denied Request 13-16, finding, among other things, that the Requestor had not demonstrated that the Expert had failed to follow the

applicable ICC procedures for independence and impartiality.

The Requestor then complained to the Ombudsman and on 31 March 2014, the Ombudsman issued a “preliminary email” concerning the Requestor’s Ombudsman complaint.<sup>1</sup> While the Ombudsman complaint was still pending, the Requestor filed a second Reconsideration Request (Request 14-10), claiming that it had discovered additional evidence that the Expert had a conflict of interest. The Ombudsman advised ICANN that he sought and received confirmation from the Requestor that it wished to pursue Request 14-10 rather than its complaint to the Ombudsman, recognizing that pursuant to the applicable version of the Bylaws,<sup>2</sup> a complaint lodged with the Ombudsman could not be pursued while another accountability mechanism on the same issue was ongoing.<sup>3</sup>

Following the NGPC’s determination on Request 14-10, the Requestor lodged a new complaint with the Ombudsman.<sup>4</sup> On 25 August 2014, the Ombudsman issued a final report on the Requestor’s new complaint (Ombudsman Final Report).<sup>5</sup>

The Requestor then initiated an IRP. On 31 January 2017, the IRP Panel declared the Requestor to be the prevailing party, and recommended that the Board reconsider Requests 13-16 and 14-10 “in the aggregate, weighing the new evidence in its entirety against the standard applicable to neutrals as set out in the [International Bar Association Guidelines on Conflicts of Interest in International Arbitration]” (IBA Conflict Guidelines or the Guidelines).<sup>6</sup> On 16

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<sup>1</sup> Ombudsman Final Report at Pg. 4, (attached to this Recommendation as Attachment 1).

<sup>2</sup> ICANN Bylaws, Amended 7 February 2014, available at <https://www.icann.org/resources/pages/bylaws-2014-10-06-en>.

<sup>3</sup> NGPC Resolution 2014.07.18.01, available at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-07-18-en#1.b>.

<sup>4</sup> Ombudsman Final Report at Pg. 4.

<sup>5</sup> *See id.*

<sup>6</sup> IRP Final Declaration at ¶ 9.1(a)-(b).



March 2017, the ICANN Board accepted the IRP Panel’s recommendation.<sup>7</sup>

Following passage of the 16 March 2017 Resolution, the BGC has carefully considered whether the alleged evidence of apparent bias should have been disclosed by the Expert in light of the IBA Conflict Guidelines. The BGC has also evaluated the Ombudsman Final Report, which was issued after the NGPC’s determination on Request 14-10. The BGC concludes that the Requestor’s claims are unsupported because the alleged evidence of bias does not “give rise to doubts as to the arbitrator’s impartiality or independence,”<sup>8</sup> under the IBA Conflict Guidelines. The BGC notes that its previous findings regarding timeliness are not relevant to its re-evaluation of Requests 13-16 and 14-10.

## **II. Facts**

### **A. Background Facts**

The Requestor and SportAccord each applied to operate .SPORT. On 13 March 2013, SportAccord, an umbrella organization for international sports federations and other sport-related international associations, filed its Objection, asserting that there was “substantial opposition to the Application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.”<sup>9</sup>

On 20 June 2013, the ICC – the dispute resolution provider – appointed Jonathan P. Taylor as the expert to assess SportAccord’s Objection. The Requestor objected to Mr. Taylor’s appointment on the basis that Mr. Taylor was a sports lawyer, that he had represented the International Rugby Board, and that he worked for the International Olympic Committee (IOC). In light of the Requestor’s objection, the ICC did not confirm Mr. Taylor as the expert. On 29

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<sup>7</sup> ICANN Board Resolution 2017.03.16.10, *available at* <https://www.icann.org/resources/board-material/resolutions-2017-03-16-en#2.c>.

<sup>8</sup> 2004 IBA Conflict Guidelines General Standard 3(a).

<sup>9</sup> BGC Determination on Reconsideration Request 13-16 at Pg. 2.

July 2013, the ICC notified the parties that it had nominated Dr. Guido Santiago Tawil to consider the Objection. Dr. Tawil provided his *Curriculum Vitae* (CV) and completed the required Declaration of Acceptance and Availability and Statement of Impartiality and Independence, stating that he had nothing to disclose and could be impartial and independent.<sup>10</sup> Dr. Tawil is a lawyer, and his practice focuses not on sports law, but instead on international arbitration, administrative law, and regulator practice. The Requestor did not object to Dr. Tawil's appointment.<sup>11</sup>

On 23 October 2013, the Expert Determination was issued, upholding SportAccord's Objection. Following the issuance of the Expert Determination, on 2 November 2013, the Requestor filed Request 13-16, stating that it had discovered that the Expert had co-chaired a panel at a conference in February 2011 (Conference) entitled "The quest for optimizing the dispute resolution process in major sport-hosting events."<sup>12</sup> According to the Conference flyer, the Conference panel planned to "debate the trends and best practices of resolving disputes in challenging environments with time-sensitive deadlines," including "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."<sup>13</sup>

Request 13-16 sought reconsideration of the Expert Determination on the grounds that, among other things, the Expert failed to disclose material information relevant to his

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<sup>10</sup> BGC Determination on Reconsideration Request 13-16 at Pg. 3.

<sup>11</sup> ICANN's Response to Dot Sport Limited's IRP Request at ¶ 20.

<sup>12</sup> BGC Determination on Reconsideration Request 13-16 at Pg. 3-4.

<sup>13</sup> Request 13-16, Annex 3 at 3, *available at* <https://www.icann.org/en/system/files/files/request-annex-sport-3-08nov13-en.pdf>.

appointment, meaning his involvement in the Conference. The Requestor suggested that the Expert's involvement in the Conference indicated that the Expert was attempting to create connections within the organized sporting industry, an industry of which SportAccord was a part.<sup>14</sup> The Requestor submitted the Conference flyer in support of its Request.<sup>15</sup>

On 8 January 2014, the BGC denied Request 13-16. With respect to the Requestor's claim that the Expert should have disclosed his participation in the Conference, the BGC noted that pursuant to the New gTLD Applicant Guidebook (Guidebook), the ICC Rules of Expertise govern challenges to the appointment of experts, and that the Requestor had not shown that either the Expert, or the ICC itself, had failed to follow the ICC's disclosure rules.<sup>16</sup>

On 6 February 2014, the Requestor filed a complaint with ICANN's Ombudsman (Complaint) reiterating the arguments the Requestor had raised in Request 13-16.<sup>17</sup>

The Requestor claims that on 25 March 2014, during the pendency of this Ombudsman Complaint, it discovered that: (i) DirecTV, a client of the Expert's firm, acquired broadcasting rights for the Olympics from the IOC on 7 February 2014 (the DirecTV Contract); and (ii) a partner in the Expert's law firm is the president of Torneos y Competencias S.A. (TyC), a company that has a history of securing Olympic broadcasting rights (the TyC Relationship). The Requestor forwarded this information to ICANN's Ombudsman in support of its Complaint.<sup>18</sup>

On 27 March 2014, the Requestor sent a letter to the ICC regarding this information, stating that in the Requestor's view there was "little question . . . that Dr. Tawil provided false and/or information [*sic*] in respect to his declaration of impartiality" and requesting further

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<sup>14</sup> Request 13-16 at § 8, Pg. 9.

<sup>15</sup> Request 13-16, Annex 3 at Pg. 3, *available at* <https://www.icann.org/en/system/files/files/request-annex-sport-3-08nov13-en.pdf>.

<sup>16</sup> BGC Determination on Reconsideration Request 13-16 at Pg. 12-13.

<sup>17</sup> IRP Final Declaration at ¶ 6.23.

<sup>18</sup> Request 14-10 at § 5, Pg. 2; § 8, Pg. 6-8.

information regarding the “specific steps leading to the selection and the appointment of Dr. Guido Tawil by the relevant ICC Standing Committee, including but not limited to any correspondence, minutes and the CVs of other potential candidates who may have been suggested.” On 29 March 2014, the ICC responded and informed the Requestor that the ICC’s Rules and the Practice Note “set a specific time limit for objections,” and that the case had been closed and “neither the [Practice Note] nor the [ICC’s] Rules provide[d] a basis for reopening of a matter or a challenge of the Expert after closure of the matter.”<sup>19</sup>

On 31 March 2014, without seeking comment from the ICC, and relying solely on the ICC’s letter to the Requestor, the Ombudsman sent an email to ICANN, the Requestor, and the ICC, regarding the Requestor’s Complaint, recommending to the Board that the Objection be reheard with a different expert.<sup>20</sup> On 1 April 2014, the ICC sent a letter to ICANN, objecting to the Ombudsman’s email on the basis that the ICC “was not given the opportunity to provide [the Ombudsman] with information relevant to the issues raised in the letter or to request additional comments from the concerned expert.”<sup>21</sup> In response, the Ombudsman clarified that his email was only a draft report, and offered the ICC a chance to comment.<sup>22</sup>

On 2 April 2014, the Requestor filed Request 14-10, seeking reconsideration of, among other things the BGC’s denial of Request 13-16 and the ICC’s appointment of the Expert.<sup>23</sup> The Ombudsman advised the Requestor that, under Article V, Section 2 of the then-applicable Bylaws, an Ombudsman complaint cannot be pursued concurrently with another accountability

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<sup>19</sup> ICANN’s Response to dSL’s IRP Request at ¶ 29.

<sup>20</sup> ICANN’s Response to dSL’s IRP Request at ¶ 30; dSL’s IRP Request, Annex-23.

<sup>21</sup> ICANN’s Response to dSL’s IRP Request at ¶ 30.

<sup>22</sup> IRP Final Declaration at ¶ 6.29.

<sup>23</sup> IRP Final Declaration at ¶ 6.35.

mechanism, such as a request for reconsideration, on the same issue.<sup>24</sup> The Requestor chose to pursue Request 14-10, rather than its Complaint with the Ombudsman.<sup>25</sup>

In Request 14-10, the Requestor raised the information that it purportedly discovered on 25 March 2014: (i) the DirecTV Contract; and (ii) the TyC Relationship. The Requestor argued that the IOC “was named as an interested party” in the Objection, “SportAccord is effectively controlled by the IOC,” and “[t]he IOC and SportAccord are inextricably linked.”<sup>26</sup>

On 21 June 2014, the BGC recommended that the Request 14-10 be denied, finding that the Requestor’s arguments regarding the allegedly newly-discovered information regarding the Expert’s conflict of interest were not timely under the ICC’s rules, and did not support reconsideration because the Requestor had not established that the DirecTV Contract affected the Expert’s determination, or that the TyC Relationship should have been disclosed under “the applicable ICC procedures.”<sup>27</sup> On 18 July 2014, the NGPC accepted the BGC’s recommendation.<sup>28</sup>

Following the NGPC’s determination on Request 14-10, the Requestor lodged a new complaint with the Ombudsman.<sup>29</sup> On 25 August 2014, the Ombudsman issued a Final Report concluding that the Expert was not required to disclose the relationships and events identified by the Requestor, as they fell within the IBA Conflict Guidelines “green list category,” which, as described below, comprise circumstances that do not require disclosure.<sup>30</sup> Accordingly, the

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<sup>24</sup> IRP Final Declaration at ¶ 6.34.

<sup>25</sup> ICANN’s Response to dSL’s IRP Request at ¶ 31.

<sup>26</sup> Request 14-10 at § 8, Pg. 5.

<sup>27</sup> BGC Recommendation on Request 14-10, Pg. 8-12.

<sup>28</sup> IRP Final Declaration at ¶¶ 6.36, 6.37, 6.38.

<sup>29</sup> Ombudsman Final Report.

<sup>30</sup> Ombudsman Final Report at Pg. 5.

Ombudsman was unable to “make any recommendation about unfairness.”<sup>31</sup>

On 24 March 2015, the Requestor initiated an IRP. The Requestor’s IRP Request asked that ICANN be “required either to overturn the [expert] determination [...] and allow the Claimant’s application to proceed on its own merits, or to have the community objection reheard by an independent and impartial expert who has received proper and transparent training.”<sup>32</sup>

On 31 January 2017, the IRP Panel declared the Requestor to be the prevailing party<sup>33</sup>. The IRP Panel stated that “[h]ad 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.”<sup>34</sup>

The IRP Panel further declared that: (i) the ICANN Board “did not follow or refer to [the Ombudsman’s draft] recommendation in considering the Reconsideration Request,” which the IRP Panel determined was a “relevant factor for this IRP Panel’s consideration as to whether or not the ICANN Board acted in accordance with its governing documents”<sup>35</sup>; and (ii) “the BGC did not consider the IBA Conflict Guidelines (although it accepts in its submissions in this IRP

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<sup>31</sup> Ombudsman Final Report at Pg. 6.

<sup>32</sup> dSL’s IRP Request, at ¶ 9.

<sup>33</sup> IRP Final Declaration at ¶ 9.1(a).

<sup>34</sup> IRP Final Declaration at ¶ 7.73.

<sup>35</sup> IRP Final Declaration at ¶¶ 7.76-7.77. After the Final Declaration, SportAccord contacted the Panel and indicated that the Ombudsman issued a final report on 25 August 2014, and therefore suggested that the Panel made a mistake in paragraph 7.77 of the Declaration. The IRP Panel responded “that it will not make any changes to the Final Declaration” because: (1) “no application has been made by either party pursuant to the ICDR Rules to correct ‘any clerical, typographical, or computational error in the Declaration,’ including at paragraph 7.77”; (2) “it is not clear that any change to the Final Declaration in relation to Sport Accord’s concerns regarding paragraph 7.7 would fall within the scope of ‘any clerical, typographical, or computational error’ for the Panel to correct on its own initiative”; and (3) the discussion in the Final Declaration at paragraph 7.77 remains accurate in the context of the discussion because the Ombudsman had not proceeded to a final report prior to the Second Reconsideration Request decision.”

that they are the standard governing neutrals), or any other standards for the requirements of independence and impartiality in neutral, binding, decision-making bodies.”<sup>36</sup>

The IRP Panel recommended that the “Board reconsider its decisions on the Reconsideration Requests, in the aggregate, weighing the new evidence in its entirety against the standard applicable to neutrals as set out in the IBA Conflict Guidelines.”<sup>37</sup>

On 16 March 2017, the Board adopted the IRP Panel’s recommendation and directed the President and CEO of ICANN to facilitate re-evaluation of the Requests 13-16 and 14-10.<sup>38</sup>

## **B. The Requestor’s Claims.**

The Requestor’s claims that the Board has directed the BGC to re-evaluate are:

1. The Requestor claims that the Expert’s failure to disclose that he co-chaired a panel at the Conference constitutes a breach of the ICC dispute resolution procedures as well as a breach of the ICANN policy on transparency as set out in the applicable Article III, Section 1 of the Bylaws.<sup>39</sup>
2. The Expert violated ICANN policy and process by failing to disclose that: (i) one of the Expert’s law firm’s clients, DirecTV, acquired broadcasting rights for the Olympics from the IOC on 7 February 2014 (after the Expert Determination and the BGC’s Determination on Request 13-16 were issued) (i.e., the DirecTV Contract); and (ii) a partner in the Expert’s law firm is the president of TyC, a company which has a history of securing

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<sup>36</sup> IRP Final Declaration at ¶ 7.88.

<sup>37</sup> IRP Final Declaration at ¶ 9.1(b).

<sup>38</sup> ICANN Board Resolution 2017.03.16.10, *available at* <https://myicann.org/news/articles/15681/related/67576?language=es#2.b>.

<sup>39</sup> Request 13-16 at § 8, Pg. 6-7.

Olympic broadcasting rights and of which DirecTV Latin America is the principal shareholder (i.e., the TyC Relationship).<sup>40</sup>

**C. Relief Requested.**

The Requestor asks that ICANN: (i) revoke the designation of authority of Dr. Tawil as Expert for undisclosed conflict of interest and/or obvious bias; (ii) reject the Expert Determination and refund the Requestor the ICC fees it paid; (iii) instruct the ICC to give a full account of how the Expert's resume came to be considered by the ICC and what the consideration process entailed; (iv) instruct the Expert to give an account of why he failed to disclose his alleged conflict of interest; (v) request the ICC to demonstrate that the expert received reasonable training; and (vi) request a formal account from the Expert of whether he has links with SportAccord "or any of its member federations"; or alternatively (vii) refer the Objection to a new panel of three experts for *de novo* review.<sup>41</sup>

**III. Issues.**

Given the specific Board resolution to re-evaluate the Reconsideration Requests in light of the IBA Conflict Guidelines, the issue is whether the Requestor's allegations of apparent bias of the Expert support reconsideration of the Expert Determination. Specifically, whether the Guidelines required the Expert to disclose any of the following alleged conflicts of interest:

1. The Expert co-chaired a panel at the Conference;<sup>42</sup>
2. The DirecTV Contract;<sup>43</sup> and
3. The TyC Relationship.<sup>44</sup>

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<sup>40</sup> Request 14-10 at § 8, Pg. 5-8.

<sup>41</sup> Request 14-10 at § 9, Pg. 11-12; Request 13-16 at § 9, Pg. 10-11.

<sup>42</sup> Request 13-16 at § 8, Pg. 7.

<sup>43</sup> Request 14-10 at § 8, Pg. 5-8.

<sup>44</sup> Request 14-10 at § 8, Pg. 5-8.



#### **IV. The Relevant Standards for Evaluating Reconsideration Requests and Community Objections.**

The applicable version of ICANN's Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.<sup>45</sup> Dismissal of a request for reconsideration is appropriate if the BGC recommends, and in this case the Board agrees, that the Requestor does not have standing because the party failed to satisfy the reconsideration criteria set forth in the Bylaws.<sup>46</sup>

ICANN has previously determined that the reconsideration process can properly be invoked for challenges to new gTLD-related expert determinations rendered by panels formed by third party dispute resolution service providers, such as the ICC, where it can be stated that the provider failed to follow the established policies or processes it is required to follow in reaching the expert determination, or that staff failed to follow its policies or processes in accepting that determination.<sup>47</sup>

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, the BGC's

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<sup>45</sup> As previously noted, Requests 13-16 and 14-10 are being re-reviewed in accordance with the Bylaws in effect when the Board made its previous determinations on those Reconsideration Requests, as those are the Bylaws that were in place when the Board (via the BGC and NGPC, respectively) made its determinations at issue in the IRP. Article IV, § 2.2 of ICANN's then-operative Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
- (b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
- (c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

<sup>46</sup> Bylaws, Art. IV, § 2.9.

<sup>47</sup> See Recommendation of the BGC on Reconsideration Request 13-5, *available at* <https://www.icann.org/en/system/files/files/recommendation-booking-01aug13-en.pdf>.

review is not to evaluate the ICC Panel’s conclusion that there is substantial opposition from a significant portion of the community to which the Requestor’s application for .SPORT may be targeted. Rather, the BGC’s review is limited to whether the Expert violated the IBA Conflict Guidelines, which the Requestor suggests was accomplished when the Expert failed to disclose the DirecTV Contract, the TyC Relationship, and his participation as co-chair of a panel at the Conference.<sup>48</sup>

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

Under the applicable version of the Bylaws, reconsideration of the actions of a third-party service provider or expert in the New gTLD Program, such as the ICC, is appropriate only where it can be stated that either the vendor failed to follow *its process* in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision.<sup>49</sup> Although the *processes* that third-party service providers must follow reflect guidance set forth in the Articles and Bylaws, there is no obligation for third parties to comply with ICANN’s Articles or Bylaws. Rather, under the applicable version of the Bylaws, reconsideration is designed to allow ICANN to undertake a procedural review of decisions by third party vendors.

Originally, the Board (through the BGC and the NGPC) denied both of the Requestor’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) the Requestor’s challenge to the Expert was untimely under the ICC’s Rules and Practice Note (and thereby ICANN’s established

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<sup>48</sup> Request 13-16 at § 8, Pg. 6.

<sup>49</sup> Recommendation of the BGC on Reconsideration Request 13-5, pg. 4, *available at* <https://www.icann.org/en/system/files/files/recommendation-booking-01aug13-en.pdf>.

procedure that challenges to experts must comport with the ICC's rules). The BGC does not believe that the ICANN Board was obligated to expand the scope of its review beyond that previously conducted.

Nonetheless, the BGC takes very seriously the results of one of ICANN's long-standing accountability mechanisms. For the reasons set forth in the Board's Resolution and Rationale adopting the IRP Panel's Final Declaration, the BGC has re-reviewed Requests 13-16 and 14-10 to consider the Requestor's claims of apparent bias of the Expert against the standard applicable to neutrals as set out in the IBA Conflict Guidelines. The BGC also considered the Ombudsman Final Report, which was issued after the BGC rendered its recommendations and the NGPC issued its determination on Requests 13-16 and 14-10.

Following careful consideration of the alleged evidence of bias against the IBA Conflict Guidelines, the BGC has concluded that the Guidelines did not mandate the Expert to disclose the DirecTV Contract, the TyC Relationship, or the Expert's presentation at the Conference. Accordingly, because the Expert was not required under the IBA Conflict Guidelines to disclose any of the alleged conduct giving rise to the claims of apparent bias asserted by the Requestor, reconsideration is not warranted.

**A. The IBA Conflict Guidelines Do Not Require Disclosure of the DirecTV Contract or the TyC Relationship.**

Contrary to the Requestor's claims, the IBA Conflict Guidelines do not require the Expert to disclose the DirecTV Contract or the TyC Relationship. Disclosure requirements for neutrals are generally assessed in accordance with the guidance set forth in the IBA Conflict Guidelines.<sup>50</sup> The 2004 IBA Conflict Guidelines that were in effect during the Objection proceedings generally

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<sup>50</sup> The IBA Conflict Guidelines were first drafted in 2004 and were amended in 2014, after the appointment of the Expert in 2013.

require an ICC expert to disclose “facts or circumstances . . . that may, in the eyes of the parties, give rise to doubts as to the arbitrator’s impartiality or independence.”<sup>51</sup>

In an effort to achieve “greater consistency and fewer unnecessary challenges and arbitrator withdrawals and removals,” the Guidelines set forth “lists of specific situations that . . . do or do not warrant disclosure or disqualification of an arbitrator”<sup>52</sup> (Guidelines Application List). The lists are designated Red, Orange and Green. Circumstances identified on the Red List *must* be disclosed to the parties and will disqualify an expert unless the parties affirmatively *waive* the conflict.<sup>53</sup> An expert has a duty to disclose issues appearing on the Orange List, but those issues will not disqualify an expert unless the parties affirmatively *object* to the conflict.<sup>54</sup> Further, even if a party objects to an Orange List disclosure, an expert may still be appointed if the authority that rules on the challenge decides that it does not meet the objective test for qualification.<sup>55</sup> Conduct appearing on the Green List need not be disclosed at all.<sup>56</sup>

The 2004 IBA Conflict Guidelines note that “a later challenge based on the fact that an arbitrator did not disclose” facts or circumstances in the orange category “should not result automatically in either non-appointment, later disqualification or a successful challenge to any award. . . . [N]on-disclosure cannot make an arbitrator partial or lacking independence; only the facts or circumstances that he or she did not disclose can do so.”<sup>57</sup>

The IRP Panel and Ombudsman in his Final Report identified several Guidelines that they viewed as being potentially implicated by the DirecTV Contract and the TyC Relationship.<sup>58</sup>

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<sup>51</sup> 2004 IBA Conflict Guidelines General Standard 3(a).

<sup>52</sup> 2004 IBA Conflict Guidelines Introduction at ¶ 3.

<sup>53</sup> 2004 IBA Conflict Guideline II.2. Certain Red issues are not waivable. *Id.*

<sup>54</sup> 2004 IBA Conflict Guideline II.3.

<sup>55</sup> 2004 IBA Conflict Guideline II.4.

<sup>56</sup> 2004 IBA Conflict Guideline II.6.

<sup>57</sup> 2004 IBA Conflict Guidelines at II.5.

<sup>58</sup> Ombudsman Final Report at Pg. 5; IRP Final Declaration at ¶ 7.91.

The BGC has carefully considered the Guidelines in their entirety, including those sections of the Guidelines identified by the IRP Panel and the Ombudsman. As discussed below, the BGC concludes that the Guidelines did not require the Expert to disclose the DirecTV Contract or the TyC Relationship.

1. Guidelines 4.2.1 and 3.4.1 (Law Firm Adversary)

The Ombudsman suggested that Guideline 4.2.1 was arguably invoked by the Expert's law firm's representation of DirecTV in negotiations with the IOC.<sup>59</sup> Guideline 4.2.1 categorizes as Green (i.e., with no disclosure requirement) the circumstance where "[t]he arbitrator's law firm has acted against one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator."<sup>60</sup>

After careful consideration, the BGC concludes that Guideline 4.2.1 does not fit the circumstances here because the IOC is not an affiliate of SportAccord, as discussed further below. However, even if Guideline 4.2.1 applied, that Guideline does *not* require disclosure. Accordingly, Guideline 4.2.1 cannot support Reconsideration. Notably, the Ombudsman recognized in his final report that Guideline 4.2.1 "is not quite on point," but found it to be the "closest" set of facts to the Expert's law firm's representation of DirecTV in negotiations with the IOC. The Ombudsman added that although "[t]he guidelines talk about affiliates of parties," the "connections" in this case were "not so clear."<sup>61</sup> The BGC agrees, inasmuch as SportAccord lacks any business, corporate, or other relationship with the IOC, but rather merely participates in the same industry, as discussed further below. Either way, as the Ombudsman noted, even if Guideline 4.2.1 *was* on point, an arbitrator's law firm's past adversity to a party or affiliate is on

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<sup>59</sup> Ombudsman Final Report at Pg. 5.

<sup>60</sup> 2004 IBA Conflict Guideline Application List at ¶ 4.2.1.

<sup>61</sup> Ombudsman Final Report at Pg. 5.

the Green List and therefore need not have been disclosed.

The BGC has additionally considered Guideline 3.4.1. Guideline 3.4.1, categorized as Orange (i.e., disclosure required), discusses when “[t]he arbitrator’s law firm is currently acting adverse to one of the parties or an affiliate of one of the parties,” and characterizes it as Orange List. Guideline 3.4.1 does not apply here because the Expert’s law firm was adverse to *the IOC* in its representation of DirecTV. The IOC was neither a party to the Objection nor an affiliate of a party. The IBA Conflict Guidelines make clear that the term affiliate is used to describe different entities “within the same group of companies,” including entities with a parent-subsidary relationship or sister companies controlled by the same parent entity.<sup>62</sup> With respect to affiliates, the Guidelines are specifically focused on entities that have a “controlling influence” on a party.<sup>63</sup>

As the Requestor acknowledges, SportAccord 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. SportAccord has ninety-two full members; the IOC is *not* among them.<sup>64</sup> Nor is SportAccord a member of the IOC.<sup>65</sup> In an industry as interconnected as the international sporting industry, the mere fact that: (1) the IOC’s website notes that SportAccord is one of several associations organizing IOC-recognized sports federations;<sup>66</sup> and (2) that *two* of the six members of SportAccord’s Executive Council are

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<sup>62</sup> 2004 IBA Conflict Guidelines Explanation 6(b); *Id.* Application List note 5.

<sup>63</sup> *Id.* Explanation 6(c).

<sup>64</sup> See <http://www.sportaccord.com/about/mission/>.

<sup>65</sup> See <http://www.olympic.org/ioc-members-list>.

<sup>66</sup> The IOC recognizes various international sports federations that “administer[] one or more sports at world level” and whose rules and activities “conform with the Olympic Charter.” On its website, the IOC notes that there are a number of associations, including SportAccord, that those federations use to “discuss common problems and decide on events calendars.” <http://www.olympic.org/content/the-ioc/governance/international-federations/>

among the **102** members of the IOC does not demonstrate an affiliation.<sup>67</sup> These facts do not create an affiliation between the two entities that is comparable to an affiliation between two members of the same group of companies.<sup>68</sup> Ultimately, there is nothing that shows, from the Requestor or otherwise, that the IOC has a “controlling influence” on SportAccord as a result of an affiliation or otherwise. Therefore, Guideline 3.4.1 did not mandate disclosure of the DirecTV Contract.

## 2. Guideline 2.3.6 (Law Firm Significant Commercial Relationship)

Guideline 2.3.6 categorizes as Red (i.e., disclosure required) the circumstance when the arbitrator’s “law firm currently has a significant commercial relationship with one of the parties or an affiliate with one of the parties.” The IRP Panel declared that Guideline 2.3.6 was invoked and recommended that ICANN consider whether it required the Expert to disclose his law firm’s “relationship” with TyC.<sup>69</sup> That “relationship” consists of the fact that a partner in the Expert’s law firm is the president of TyC, and the Expert’s law firm has represented TyC in negotiations for Olympic broadcasting rights from the IOC.<sup>70</sup>

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<sup>67</sup> Far from being affiliates, SportAccord and the IOC in recent years have in fact been competitors. On 20 April 2015, SportAccord’s president, Marius Vizier made a speech that was sharply critical of the IOC. He called on the IOC’s president to “stop blocking [] SportAccord [] in its mission to identify and organize conventions and multi-sport games” and noted that he had “tried to develop a constructive collaboration with the IOC” but that that had “never become a reality.”

Reuters noted that the IOC has had an “uneasy relationship” with Mr. Vizier (who took over SportAccord in 2013) due to Mr. Vizier’s unsuccessful attempt to set up a competing international multi-sports event, the United World Games. “SportAccord chief launches scathing attack on IOC,” (Reuters, 20 April 2015) *available at* <http://www.reuters.com/article/2015/04/20/us-olympics-ioc-sportaccord-idUSKBN0NB13M20150420>; *see also* “Marius Vizier voted SportAccord Chief,” (ESPN.com, 31 May 2013) (“In a potential direct challenge to the IOC and the Olympics, [] Marius Vizier plans to organize a global world championship[] every four years for all international sports federations . . . . Vizier won on a platform of transforming SportAccord into a more powerful and lucrative body”), *available at* [http://espn.go.com/olympics/story/\\_/id/9328014/new-sportaccord-chief-marius-vizer-plans-global-games](http://espn.go.com/olympics/story/_/id/9328014/new-sportaccord-chief-marius-vizer-plans-global-games).

<sup>68</sup> *See* 2004 IBA Conflict Guidelines Explanation 6(b).

<sup>69</sup> IRP Final Declaration at ¶ 7.91(b).

<sup>70</sup> Request 14-10 at § 8, Pg. 6-8.

Guideline 2.3.6 reflects the IBA’s view that anyone with a “significant economic interest in the matter at stake”<sup>71</sup> should not serve as an arbitrator in that matter. This is because one with a financial interest in the outcome of an arbitration cannot be – or will be perceived as not being – impartial and independent in the matter.<sup>72</sup> As a result, Guideline 2.3.6 prohibits the appointment of an arbitrator whose law firm currently maintains a “significant commercial relationship”<sup>73</sup> with one of the parties or an affiliate of a party.

The IBA’s reasons for drafting Guideline 2.3.6 have no application here. The Expert’s law firm’s “relationship” with TyC is limited to the fact that another partner at the law firm is the president of TyC, and the firm—not the Expert—has represented TyC. The Requestor has not demonstrated that the law firm itself had a substantial (or any) financial stake in TyC or that TyC’s business has any effect on the law firm’s finances. The Requestor presented no evidence that would support the Requestor’s claim that the Expert—or his law firm—would have received any benefit, commercial or otherwise, from deciding for or against SportAccord.

Finally, even if the Expert’s law firm did have a significant commercial relationship with TyC, TyC is *not* a party or affiliate of SportAccord. TyC was, if anything, across the table from and *adverse to* the IOC – TyC negotiated with the IOC for Olympic broadcasting rights. The Requestor has not asserted that TyC had any actual connection to the party at issue here, SportAccord, except through the IOC, which as discussed above is not an affiliate of SportAccord. For this additional reason, Paragraph 2.3.6 of the IBA Conflict Guidelines did not require the Expert to disclose the TyC Relationship.

### 3. Guidelines 3.1.4, 3.2.1, and 3.2.3 (Party Client)

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<sup>71</sup> 2004 IBA Conflict Guidelines Explanation 2(d).

<sup>72</sup> *Cf. Id.*

<sup>73</sup> 2004 IBA Conflict Guideline Application List at ¶ 2.3.6.



Because the IOC is neither a party nor an affiliate of a party to the Objection, the remaining Guidelines—Guidelines 3.1.4, 3.2.1, and 3.2.3—that the IRP Panel identified as arguably applicable to the Requestor’s claims cannot be interpreted to require the Expert to disclose the TyC Relationship or the DirecTV Contract.

Guideline 3.1.4, categorized as Orange, applies when “[t]he 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.”

Guideline 3.2.1, categorized as Orange, applies when “[t]he 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 and without the involvement of the arbitrator.”

Guideline 3.2.3, categorized as Orange, applies when “[t]he 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.”

The Requestor has not identified a party or affiliate of a party who is a client of the Expert’s law firm, and as discussed the IOC is not a party or affiliate of a party. Therefore, none of the above-listed Guidelines are analogous to the purported conflicts that the Requestor identified here.

Finally, the IBA Conflict Guidelines recognize that the “growing size of law firms” can unduly limit the ability of a party to “use the arbitrator of its choice.”<sup>74</sup> Therefore, “the activities of an arbitrator’s law firm” cannot “automatically constitute a source of . . . conflict or a reason for disclosure.”<sup>75</sup> Reading the IBA Conflict Guidelines to require disclosure of law firm

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<sup>74</sup> 2004 IBA Conflict Guidelines Explanation 6(a).

<sup>75</sup> 2004 Conflict Guidelines General Standard 6(a).

relationships that are as tenuously connected to the subject of a dispute as the TyC Relationship and the DirecTV Contract were to the Objection would impose an unnecessary and excessive limit on the ability of parties to “use the arbitrator[s of their] choice.” The BGC cannot recommend that result.

**B. The IBA Conflict Guidelines Do Not Require Disclosure of the Expert’s Presentation at the Dispute Resolution Conference.**

The Requestor also claims that the Expert should have disclosed his participation in a February 2011 program entitled “[t]he quest for optimizing the dispute resolution process in major sport-hosting events,” at a conference aimed at, among others, “sports federation leaders.”<sup>76</sup> None of the rules in the IBA Conflict Guidelines, however, require such disclosure.

The IRP Panel suggested that Guideline 3.5.2 of the IBA Conflict Guidelines is relevant to assessing whether the Expert was required to disclose his participation on a panel. Guideline 3.5.2 applies when “[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.” Guideline 3.5.2 is part of the Orange List.

Guideline 3.5.2 would apply *only if* the Expert “publicly advocated *a specific position regarding the case* that is being arbitrated” (emphasis added), which the Expert here did not do. Rather, the Expert participated in the Conference at issue in February 2011, *more than two years before* SportAccord filed its Objection and almost two and a half years before the ICC nominated the Expert to consider the Objection. Therefore, it is logically impossible that the Expert’s 2011 presentation advocated a specific position regarding the Objection; as the Objection had not been filed and would not be filed for two years *after* the Conference. Further,

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<sup>76</sup> Request 13-16 at § 8, Pg. 7.

the Requestor has not asserted that the Expert advocated a specific position regarding the Objection at the Conference; instead, the Requestor argued simply that the Conference was “aimed at . . . sports federation leaders.”<sup>77</sup> Identifying a target audience for a Conference does not rise to the level of “advocat[ing] a specific position regarding the case that is being arbitrated,” as is required to implicate Guideline 3.5.2.

The IBA issued updated Conflict Guidelines in 2014, which, although issued after the Expert’s appointment, provide additional guidance regarding conflict disclosures. The 2014 IBA Conflict Guidelines further clarified that an “arbitrator must, in principle, be considered to bear the identity of his or her law firm, but the activities of the arbitrator’s firm should not automatically create a conflict of interest. The relevance of the activities of the arbitrator’s firm . . . and the relationship of the arbitrator with the law firm, should be considered in each case.”

The 2014 Guidelines include a new Guideline 4.3.4, which identifies as Green the circumstance that “[t]he arbitrator was a speaker, moderator or organizer in one or more conferences, or participated in seminars or working parties of a professional, social or charitable organization, with another arbitrator or counsel to the parties.”<sup>78</sup>

The 2014 IBA Conflict Guidelines make clear that an arbitrator need *not* disclose that he or she “was a speaker, moderator or organizer in one or more conferences, or participated in seminars or working parties of a professional, social or charitable organization, with another arbitrator or counsel to the parties.”<sup>79</sup>

Here, the Expert participated in a panel relating to sports law; his connection to the

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<sup>77</sup> Request 13-16 at ¶ 8.

<sup>78</sup> 2014 IBA Conflict Guideline Application List at ¶ 4.3.4.

<sup>79</sup> 2014 IBA Conflict Guidelines Application List at ¶ 4.3.4.

subject matter raises no inference of bias or partiality, nor does it signify a relationship with one of the parties, an affiliate of the parties, or counsel to a party. If participation in a panel with counsel to the parties need not be disclosed,<sup>80</sup> there is no reason to believe that participation in a panel covering the same genre as the arbitration covered should require disclosure.

In addition to carefully considering the Guidelines identified by the IRP Panel and the Ombudsman (all of which are discussed above), the BGC also reviewed the IBA Conflict Guidelines in their entirety. Based on that review, the BGC concludes that no other guideline is even arguably applicable to the alleged conflicts raised by the Requestor, and thus no other guideline suggests, let alone mandates, that the alleged conflicts should have been disclosed.

Under the standard of review set forth in the Bylaws in effect when the Requestor submitted Requests 13-16 and 14-10, the BGC's review would conclude after evaluating whether the ICC failed to follow *its processes* concerning the appointment of the Expert. However, pursuant to the IRP Panel's recommendation, and the Board's resolution, the BGC has considered the Expert's compliance with the IBA Conflict Guidelines and, additionally, considered "whether the alleged conflicts 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."<sup>81</sup> For the reasons discussed in detail above, The DirecTV Contract and The TyC Relationship cannot possibly create a material concern of lack of independence or impartiality, or undermine the integrity or fairness of the Expert. Likewise, the mere fact that the Expert participated on a panel relating to the general topic of sports law raises no inference of bias or partiality, nor does it signify a relationship with one of the parties, an affiliate of the parties, or

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<sup>80</sup> 2014 IBA Conflict Guidelines Application List at ¶ 4.3.4.

<sup>81</sup> IRP Final Declaration at ¶ 7.73.

counsel to a party.

The BGC concludes, for the reasons discussed above, that the IBA Conflict Guidelines did not mandate the disclosure by the Expert of the DirecTV Contract, the TyC Relationship, or the Expert's presentation at the Conference, nor did the alleged conflicts give rise to a material concern as to the independence or impartiality of the Expert or the integrity or fairness of the Expert Determination.

## **VI. Recommendation.**

The BGC takes very seriously the results of ICANN's long-standing accountability mechanisms, including the IRP. For the reasons set forth in the Board's Resolution and Rationale adopting the recommendation in the IRP Panel's Final Declaration, Requests 13-16 and 14-10 were re-evaluated to weigh the Requestor's allegations that the Expert was required to disclose the DirecTV Contract, TyC Relationship, and his participation at the Conference, under the IBA Conflict Guidelines.

Following careful consideration of the IBA Conflict Guidelines against the Requestor's alleged conflicts of interest, the BGC concludes that the IBA Conflict Guidelines did not mandate the disclosure by the Expert of the DirecTV Contract, TyC Relationship, or the Expert's presentation. Nor do the alleged conflicts 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.<sup>82</sup> Accordingly, the BGC recommends that reconsideration is not warranted and that Requests 13-16 and 14-10 again be denied.

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<sup>82</sup> This conclusion is consistent with the Ombudsman Final Report, which concluded that "the issues raised come under the green list category," and "[t]he 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." Ombudsman Final Report at Pg. 5.

## ATTACHMENT 1

## **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

## Reconsideration Request Form

Version of 11 April 2013

ICANN's Board Governance Committee is responsible for receiving requests for reconsideration from any person or entity that has been materially affected by any ICANN staff action or inaction if such affected person or entity believes the action contradicts established ICANN policies, or by actions or inactions of the Board that such affected person or entity believes has been taken without consideration of material information. Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit <http://www.icann.org/en/general/bylaws.htm#IV> and <http://www.icann.org/en/committees/board-governance/>.

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

Requesters may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12 point font.

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

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

### **1. Requester Information**

**Name:** dot Sport Limited

**Address:** Contact Information Redacted

**Email:** Contact Information Redacted

**Phone Number (optional):** Contact Information Redacted

(Note: ICANN will post the Requester's name on the Reconsideration Request page at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>. Requestors address, email and phone number will be removed from the posting.)

### **2. Request for Reconsideration of (check one only):**

Board action/inaction

Staff action/inaction

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

- (i) Board Rejection of Reconsideration Request 13-16 on 8 January 2014 available at <https://www.icann.org/en/groups/board/governance/reconsideration/13-16/determination-sport-08jan14-en>; and/or
- (ii) Community Objection Determination by expert Guido Tawil ("Expert") a Senior Partner of M&M Bomchil on 23 October 2013 available at <http://www.iccwbo.org/products-and-services/arbitration-and-adr/expertise/icann-new-gtld-dispute-resolution/expert-determination/> as a result of his failure to disclose his conflict of interest through his direct commercial interest in the broadcast rights of the Objector and the International Olympic Committee ("Conflict") during his acceptance of the appointment as Expert on 25 July 2013 and his appointment as Expert by the ICC under false circumstances on 29 July 2013, attached as Exhibit 1 and Exhibit 2. The failure to disclose is a failure to follow multiple ICANN policies both pursuant to the Applicant Guidebook and ICANN Bylaws; and/or
- (iii) Decision of International Chamber of Commerce ("ICC") of 29 July 2013 to appoint Guido Tawil as Expert on the basis of false information provided to the ICC by Guido Tawil.<sup>1</sup>

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

As set out above.

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

In respect of the conflict of interest, we discovered the existence of such on 25 March 2014.

**6. Describe how you believe you are materially affected by the action or inaction:**

We believe we have lost the Community Objection as a direct result of a lack of impartiality of the appointed Expert, Guido Tawil.

As an innocent party, acting in good faith, we have lost large amounts of money: application fees, legal fees, Dispute Resolution Procedures ("DRP") fees, as a result of our good faith adherence to the rules set out in the Applicant Guide Book.

We have lost the right to an impartial community objection hearing.

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

- The entire ICANN community is angered by the lack of consistency and the obvious unfairness of many of the determinations ostensibly conducted under the DRP. Innocent parties, acting in good faith, have lost large amounts of money: application fees, legal fees, DRP fees, etc. In addition, they have unfairly lost the right to participate

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<sup>1</sup> ICANN has already determined that the reconsideration process can be properly invoked for challenges to the actions of the DRSP.

in the auction process lined up for Contention Sets.

- The ICANN Board will be adversely affected by inaction and could lose credibility due to the behavior of the ICC and the Expert. Transparency, accountability and the disclosure and proper handling of conflict of interests is one of the sacred tenets of ICANN Board practice. The NGPC was created precisely because of conflicts of interest.  
<http://www.icann.org/en/news/in-focus/accountability/expected-standards>

See No. 2 on the list of expected standards for the Board to:

- **Act** in accordance with ICANN's Bylaws. In particular, participants undertake to act within the mission of ICANN and in the spirit of the values contained in the Bylaws.
- **Adhere** to ICANN's conflict of interest policies.  
<http://www.icann.org/en/groups/board/governance/coi>

This conflict of interest policy applies to the ICC (and by extension, Guido Tawil) because it applies to the Board.

- Stakeholders in the .sport registry have lost the opportunity of the registry being operated by us.
- Our shareholders have lost the business opportunity of the .sport registry being operated by us.

## **8. Detail of Board or Staff Action – Required Information**

**Staff Action:** If your request is in regards to a staff action or inaction, please provide a detailed explanation of the facts as you understand they were provided to staff prior to the action/inaction presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). Please identify the policy(ies) with which the action/inaction was inconsistent. The policies that are eligible to serve as the basis for a Request for Reconsideration are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing staff action, the outcomes of prior Requests for Reconsideration challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

**Board action:** If your request is in regards to a Board action or inaction, please provide a detailed explanation of the material information not considered by the Board.

Information provided at Annex 1.

If that information was not presented to the Board, provide the reasons why you did not submit the material information to the Board before it acted or failed to act. "Material information" means facts that are material to the decision.

The information in Annex 1 was not known to the Requester before 25 March 2014.

If your request is in regards to a Board action or inaction that you believe is based upon

inaccurate, false, or misleading materials presented to the Board and those materials formed the basis for the Board action or inaction being challenged, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections to the Board before it acted or failed to act. No such prior opportunity existed, as the Expert deliberately presented inaccurate, false, or misleading materials to the Board designate (ICC) the falseness of which the Requester asked the ICC to investigate, without success, but which the Requester has itself now investigated, with success.

Reconsideration requests are not meant for those who believe that the Board made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by the Board in order to state a reconsideration request. Similarly, new information – information that was not yet in existence at the time of the Board decision – is also not a proper ground for reconsideration. Please keep this guidance in mind when submitting requests.

The information presented in Annex 1 is not new information. It is information which was in existence at the time of the actions/inactions set out in points 3(i) to 3(iv), above

**Provide the Required Detailed Explanation here:**

### **Background**

On 23 October 2013 the Panelist Dr. Guido Tawil, partner in M&M Bomchil Abogados, appointed by the International Centre for Expertise in the case of SportAccord v dot Sport Limited EXP 471/ICANN/88 ("Determination"), found in favour of the Objector, SportAccord in a community objection by SportAccord to the gTLD registry application of dot Sport Limited. The International Olympic Committee was specifically named as a party interested in the proceedings, and is a supporter of the SportAccord community application for the .sport string.

Famous Four Media were not alone in finding the Determination irregular in a number of respects. For example, Dr. Tawil re-interpreted a key ICANN standard, inexplicably turning the ordinary meaning of the term "likelihood" to "possible" in the context of deciding the 'likelihood of material detriment' to the community in question.

### **Reconsideration Request 13-16**

Dot Sport Limited submitted a Reconsideration Request to ICANN on 8 November 2013 in which, amongst other matters, we raised the question of whether Dr. Guido Tawil had any connection to the Objector or any of its constituent member organisations.



Furthermore, we requested that ICANN ask the relevant Dispute Resolution Service Provider, the International Chamber of Commerce ("ICC"), to review its appointment of Dr. Tawil. ICANN rejected the Reconsideration Request on 8 January 2014.

Furthermore, Famous Four Media wrote to the ICC on two occasions to request that the ICC question Dr. Tawil directly about his links with SportAccord or the International Olympic Committee ("IOC"). The ICC repeatedly declined to do so.

### **SportAccord and IOC**

It should be noted that the IOC was named as an interested party in the Objection.

SportAccord is effectively controlled by the IOC. The IOC and SportAccord are inextricably linked. Two of the six members of the Executive Council (Marisol Casado and Franco Kasper) are also members of the IOC. Five of the eight members of the Council of SportAccord are directly appointed by three out of the only four sport associations officially recognised by the IOC on their website: ASOIF, AIOWF, ARISF<sup>2</sup>; the fourth sport association officially recognised by the IOC being SportAccord itself

"International Sports Federations seeking IOC recognition must ensure that their statutes, practice and activities conform with the Olympic Charter." However, conformity is not limited to just abstract documentary and/or legal conformity. The IOC is deeply entwined in the day to day operations and mission of SportAccord. On its own website Sport Accord states that it enjoys "a close collaborative relationship with the IOC". The IOC plays a key supporting role to several project areas of SportAccord: "The sharing of values and knowledge allows for a more complex approach in addressing a wide range of topics such as anti-doping, illegal betting, match-fixing, sustainable sports events, sports for all and IF recognition".<sup>3</sup> The relevant portion

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<sup>3</sup> <http://www.sportaccord.com/en/what-we-do/dfsu/?idContent=16323>

of the SportAccord website is abstracted below. More at:

<http://www.sportaccord.com/en/what-we-do/dfsu/?idContent=16323#sthash.G6CFf0Wu.dpuf>

## INTERNATIONAL OLYMPIC COMMITTEE

SportAccord holds a close collaborative relationship with the International Olympic Committee (IOC).

SportAccord fully recognises the IOC and the Olympic Movement's authority, it is and will remain a loyal partner in the achievements of the Olympic Movement objectives.

The IOC plays a key supporting role to several project areas of SportAccord. The sharing of values and knowledge allows for a more complex approach in addressing a wide range of topics such as anti-doping, illegal betting, match-fixing, sustainable sports events, sports for all and IF recognition.

The SportAccord Doping-Free Sport Unit's (DFSU) strategic alliance with the International Olympic Committee (IOC) began in 2009. The IOC and World Anti-Doping Agency's (WADA) funding for the DFSU enables the DFSU to provide expert advice and support its members, signatories of the Code, in becoming Code compliant, maintaining this status and implementing best practices in anti-doping.

An advisory board composed of three representatives (SportAccord, WADA and IOC), provides guidance, advice and recommendations on the global vision, strategies and operational plans of the DFSU. This board meets at least once a year.

The IOC plays a vital role in the work of the Sports' Social Responsibility Unit. Its financial support enables the development of specific services for SportAccord members as well as assistance, training and support in harnessing the power of sport to contribute to the positive social change. This contribution ranges across six special projects utilising sport for: child & youth development, the environment, gender, health, persons with disabilities, peace.

Specifically in the Sport and Health project, SportAccord collaborates with the IOC in the World Conference on Sport for All. The 15<sup>th</sup> World Conference held in Peru in April 2013, aimed at promoting health, fitness and well-being as well as encouraging people of all ages and abilities to participate in sports activities and experience the Olympic values.

Additionally, the IOC is fully in line with SportAccord's commitment to develop a Sustainable Event Management Strategy. Currently under development, an IOC-SportAccord education tool, to be released November 2012, will contribute to overcoming the knowledge gap regarding sustainability within the sports movement. This service will complement the Online Reporting Tool which provides a sustainability summary report used not only for communication and marketing purposes but also as basis for a solid sustainability policy.

Through this instrumental partnership, the IOC insures the continuous improvement of SportAccord's support in sports' social responsibility issues. The members obtain a case specific attention to their demands as SportAccord becomes increasingly relevant for each and every member, independently of its sport, size or location.

### Commercial relationship between Guido Tawil and the IOC

The Requester has uncovered evidence of direct commercial relationships between Guido Tawil, the M&M Bomchil law firm and the IOC. Guido Tawil is a Senior Partner of the law firm M&M Bomchil.

1. Guido Tawil, DirecTV and IOC broadcasting rights

One of Guido Tawil's 'significant clients' (according to the Chambers & Partners law directory) is **DirectTV** (<http://www.chambersandpartners.com/19/572/editorial/9/1>). On 7 February 2014, just 3 months after having provided his decision in SportAccord v dot Sport Limited EXP 471/ICANN/88 DirecTV secured a highly lucrative and sought after broadcasting rights deal covering Latin America for the 2014 winter Olympic Games in Sochi, Russia and the 2016 summer Olympics in Rio de Janeiro, Brazil. DirecTV will broadcast the Olympics in Argentina, Chile, Colombia, Ecuador, Peru, Uruguay and Venezuela. The deal covers television, online and mobile platforms.

2. DirectTV, Torneos y Competencias S.A. and Guido Tawil

Direc TV Latin America is the principal shareholder in Torneos y Competencias S.A. ("TyC", also referred as "Torneos"). TyC is another sports broadcasting firm in the Latin American region and is headquartered in Buenos Aires. ([http://en.wikipedia.org/wiki/Torneos\\_y\\_Competencias](http://en.wikipedia.org/wiki/Torneos_y_Competencias)

TyC is also a major client of M&M Bomchil law firm. What is more, the President of TyC is Marcelo Bombau, who is also a Senior Partner in M&M Bomchil and is therefore a business partner of Guido Tawil. (Source: [m.chambersandpartners.com/firm/2373/9](http://m.chambersandpartners.com/firm/2373/9); see also [http://en.wikipedia.org/wiki/Torneos\\_y\\_Competencias](http://en.wikipedia.org/wiki/Torneos_y_Competencias) page last modified on 8 February 2014.) In other words, Guido Tawil's business partner in the same law firm, has a direct commercial interest in a direct recipient of IOC broadcasting rights. Guido Tawil's own legal practice and business is built around a company for whom IOC broadcasting rights are a core aspect of its business.

In the M. & M. Bomchil Attorneys Firm Brochure from 2008, the Executive Director of TyC, Luis Nofal, endorses M&M Bomchil. Marcelo Bombau is also a Board Member of the Fundacion

Torneos y Competencias along with the son and daughter of the Founder, Luis Nofal. TyC shareholders include DirecTV Latin America (33.2%) and Luis Nofal Sports Holding SA (by Luis Nofal, 23.53%).

### 3. TyC and IOC broadcasting rights

TyC has a long standing business relationship with IOC having secured broadcasting rights for the Olympics on 5 consecutive occasions since the Atlanta Games in 1996. It most recently won the Argentinian television rights for the Vancouver 2010 Winter Olympics and London 2012 Olympic Games [http://www.sportspromedia.com/news/new\\_broadcast\\_deals\\_for\\_tyc](http://www.sportspromedia.com/news/new_broadcast_deals_for_tyc).

### 4. Summary of Interests

4.1 TyC, is a major client and source of income of Guido Tawil. IOC broadcasting rights are a core aspect of its business

4.2 TyC is run by a business partner of Guido Tawil. IOC broadcasting rights are a core aspect of his business

4.3 Guido Tawil's firm was involved in TyC obtaining IOC broadcasting rights.

4.4 DirecTV is a major client and source of income of Guido Tawil. IOC broadcasting rights are a core aspect of it business

4.5 DirecTV Latin America acquired Olympic broadcasting rights 3 months following the decision made by Guido Tawil

4.6 DirecTV is the principal shareholder in TyC.

4.7 It is understood that Guido Tawil's firm was involved in DirecTV Latin America obtaining IOC broadcasting rights.

### 5. Falsifying declaration in the Conflicts of Interest form

We extract from the Statement of Impartiality and Independence which Giudo Tawil signed on 25 July 2013 (N°: EXP/471/ICANN/88)

**ICC EXPERT  
DECLARATION OF ACCEPTANCE AND AVAILABILITY,  
STATEMENT OF IMPARTIALITY AND INDEPENDENCE**

Family Name(s): Tawil

Given Name(s): Guido Santiago

*Please tick all relevant boxes.*

**1. ACCEPTANCE**

I agree to serve as expert under and in accordance with ICANN's gTLD Applicant Guidebook, including the New gTLD Dispute Resolution Procedure ("**Procedure**"), the Rules for Expertise of the ICC ("**Rules**") including Appendix III to the ICC Rules and supplemented by the ICC Practice Note on the Administration of Cases. I confirm that I am familiar with these rules and documents. I accept that my fees and expenses will be fixed exclusively by the ICC International Centre for Expertise ("**Centre**") (Article 3 Appendix III to the ICC Rules).

**NON-ACCEPTANCE**

I decline to serve as expert in this case.  
*(If you tick here, simply date and sign the form without completing any other sections.)*

**2. AVAILABILITY**

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this proceeding diligently, efficiently and in accordance with the time limits provided in the Procedure, subject to any extensions granted by the Centre pursuant to Article 21(a) of the Procedure.

3. **INDEPENDENCE AND IMPARTIALITY**

*(Tick one box and provide details below and/or, if necessary, on a separate sheet.)*

In deciding which box to tick, you should take into account, having regard to Article 11(1) of the Rules and Article 13(c) of the Procedure, whether there exists any past or present relationship, direct or indirect, between you and any of the parties, their related entities or their lawyers or other representatives, whether financial, professional or of any other kind. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

**Nothing to disclose:** I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

**Acceptance with disclosure:** I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

Date: July 25, 2013

Signature:



We note that the duty of disclosure includes any:

- i. **Relationship whether financial, professional or of any other kind**
- ii. That is either ***past or present*** and that is
- iii. ***direct or indirect*** between
- iv. ***you*** [Guido Tawil] and any ***parties their related entities or their lawyers***

We further note that the standard of disclosure is so high that

- a. ***any doubt must be resolved in favour of disclosure***
- b. Disclosure includes anything that ***might be called into question***
- c. Guido Tawil was required to have made ***due enquiry*** and that
- d. Guido Tawil is a jurist and can not argue ignorance as to the meaning or standard of this duty

The research we have provided in this section would have clearly necessitated that Guido Tawil tick the box "Acceptance with Disclosure". Guido Tawil had and has multiple financial and professional relationships both direct and indirect with the IOC which is clearly a related entity to SportAccord. By ticking the box "nothing to disclose", he has provided false statement that:

- there are no facts of circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and
- no circumstances that could give rise to reasonable doubts as to my impartiality.
- clearly he knew that his key client would benefit from IOC rights; and he either knew and withheld the information (or made no due enquiry as to whether or not) any member of his law firm would have stood to gain by this.

### **Recommendation of the Ombudsman**

On 31 March 2014, the Ombudsman (with whom we shared the new material discovered on 25 March 2014) advised the Board as follows:

*"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."*

### **9. What are you asking ICANN to do now?**

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

- (i) Revoke the designation of authority of Guido Tawil as Expert for undisclosed conflict of

interest and/or obvious bias in deciding the Determination.

- (ii) Reject the finding of the Expert Determination, dismiss the Objection and provide a refund of the fees of the ICC to dot Sport Limited
- (iii) Instruct the ICC to give a full account of how the Expert's resume came to be considered by the ICC and what the consideration process was.
- (iv) Instruct the Expert to give an account of why he failed to disclose his deep professional involvement in two major clients involved in multi-million deals for broadcast rights to the Olympic games over the last decade, which would clearly indicate his professional alignment with SportAccord interests.

Alternatively, dot Sport Limited would request that the matter be referred, at no cost to dot Sport Limited, to a new fully independent panel of **THREE** Experts selected under an entirely transparent process, for a de novo review and determination<sup>4</sup>. This matter should not be reheard by a single Expert alone, since this has repeatedly proven (not just in the .SPORT decision) to be unreliable and lead to inconsistent decision making; or

Refer the community objections against dot Sport's .SPORT application back to an accountability mechanism established by ICANN to deal with incorrect, inconsistent or otherwise improper determinations.

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

*(Include in this discussion how the action or inaction complained of has resulted in material harm and adverse impact. To demonstrate material harm and adverse impact, the requester must be able to demonstrate well-known requirements:*

- a. there must be a loss or injury suffered (financial or non-financial):*
  - (i) Loss of gTLD application fee
  - (ii) Loss of Objection fee
  - (iii) Loss of opportunity to participate in an impartial and fair hearing
  - (iv) Loss of opportunity to participate in a Contention Set Auction for the .SPORT top level domain ("TLD")
- b. that is a directly and causally connected to the Board or staff action or inaction that is the basis of the Request for Reconsideration.*
  - (i) Guido Tawil provided false information at the time of submitting his conflict of interest form.

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<sup>4</sup> Indeed, this is a likely consequence of paragraph 2.4.3.2 of the AGB: *"In a case where ICANN determines that a Panelist has failed to comply with the Code of Conduct, the results of that Panelist's review for all assigned applications will be discarded and the affected applications will undergo a review by new panelists."*



This is a clear breach of ICANN policy<sup>5</sup> and the Applicant Guidebook. The AGB provides extensive guidance, at paragraph 2.4.3, in the Code of Conduct for Panelists:

*Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, **or even the appearance of compromise, are not acceptable.***

Dr Tawil has fallen short of the requirements in a number of respects. First, there is obvious apparent bias, as has been found by the Ombudsman. Second, as we stated in our previous Reconsideration Request, the determination was received within the ICANN community as a poorly decided one, lacking in appropriate reasoning and imposing new standards for a community objection not defined in the AGB. This exacerbates the appearance of bias in this case.

- (ii) The Requester would not have approved Guido Tawil as Expert under any circumstances, had he disclosed his alignment of both direct and indirect interests with the IOC and SportAccord.
  - (iii) The Board may not have rejected the previous Reconsideration Request had the information about Dr. Guido Tawil's bias been known at the time.
  - (iv) The Ombudsman has specifically recommended to the Board that the decision of the Expert should be disregarded and there be a rehearing.
- c. *The requestor must be able to set out the loss or injury and the direct nature of that harm in specific and particular details.*

See point 10(a)(i) - (iii) above.

The relief requested from the BGC must be capable of reversing the harm alleged by the requester. Injury or harm caused by third parties as a result of acting in line with the Board's decision is not a sufficient ground for reconsideration. Similarly, injury or harm that is only of a sufficient magnitude because it was exacerbated by the actions of a third party is also not a sufficient ground for reconsideration.)

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

Yes

No

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<sup>5</sup> <http://www.icann.org/en/news/in-focus/accountability/expected-standards>

**11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Explain.**

N/A

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

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>.

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

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

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

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.



\_\_\_\_\_  
Signature

2 April 2014  
Date

# **EXHIBIT 1**



International Chamber of Commerce

*The world business organization*

International Centre for Expertise □ Centre international d'expertise

Case N°: EXP/471/ICANN/88

## ICC EXPERT DECLARATION OF ACCEPTANCE AND AVAILABILITY, STATEMENT OF IMPARTIALITY AND INDEPENDENCE

Family Name(s): Tawil

Given Name(s): Guido Santiago

*Please tick all relevant boxes.*

### 1. ACCEPTANCE

I agree to serve as expert under and in accordance with ICANN's gTLD Applicant Guidebook, including the New gTLD Dispute Resolution Procedure ("**Procedure**"), the Rules for Expertise of the ICC ("**Rules**") including Appendix III to the ICC Rules and supplemented by the ICC Practice Note on the Administration of Cases. I confirm that I am familiar with these rules and documents. I accept that my fees and expenses will be fixed exclusively by the ICC International Centre for Expertise ("**Centre**") (Article 3 Appendix III to the ICC Rules).

### NON-ACCEPTANCE

I decline to serve as expert in this case.  
*(If you tick here, simply date and sign the form without completing any other sections.)*

### 2. AVAILABILITY

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this proceeding diligently, efficiently and in accordance with the time limits provided in the Procedure, subject to any extensions granted by the Centre pursuant to Article 21(a) of the Procedure.

.../...

ICC International Centre for ADR □ Centre international d'ADR de la CCI

38 Cours Albert 1er, 75008 Paris, France

Tel +33 (0)1 49 53 30 52 Fax +33 (0)1 49 53 30 49

E-mail [expertise@iccwbo.org](mailto:expertise@iccwbo.org) Website [www.iccexpertise.org](http://www.iccexpertise.org)

**3. INDEPENDENCE AND IMPARTIALITY**


*(Tick one box and provide details below and/or, if necessary, on a separate sheet.)*

In deciding which box to tick, you should take into account, having regard to Article 11(1) of the Rules and Article 13(c) of the Procedure, whether there exists any past or present relationship, direct or indirect, between you and any of the parties, their related entities or their lawyers or other representatives, whether financial, professional or of any other kind. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

**Nothing to disclose:** I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

**Acceptance with disclosure:** I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

Date: July 25, 2013

Signature: 

*The information requested in this form will be considered by the ICC International Centre for Expertise solely for the purpose of your appointment. The information will remain confidential and will be stored in a case management database system. It may be disclosed solely to the parties and their counsel in the case referenced above for the purposes of that proceeding. According to Article 32 and, in particular, Article 40 of the French law "Informatique et Libertés" of 6 January 1978, you may access this information and ask for rectification by writing to the Centre.*

# **EXHIBIT 2**



International Chamber of Commerce

*The world business organization*

International Centre for Expertise • Centre international d'expertise

**EXP/471/ICANN/88**

**SPORTACCORD (SWITZERLAND) vs/ DOT SPORT LIMITED (GIBRALTAR)**

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SPORTACCORD  
Mr. Pierre Germeau  
Contact Information Redacted

*By email:* Contact Information Redacted

FAMOUR FOUR MEDIA LIMITED  
Mr. Peter Young  
Contact Information Redacted

*By e-mail:* Contact Information Redacted

30 July 2013

Dear Sirs,

The Centre writes to you with reference to our dated 25 July 2013.

We inform you that the Centre has now proceeded with the appointment in replacement of the previous Expert, pursuant to Articles 7 and 11(5) of the Rules and has appointed

Mr. Guido Santiago Tawil  
M. & M. BOMCHIL  
Suipacha 268, 12th Floor  
C1008AAF Buenos Aires  
Argentina

Tel: Contact Information Redacted  
Email:

as the sole member of the Panel in accordance with Article 13 of the Procedure.

.../...

**ICC International Centre for ADR • Centre international d'ADR de la CCI**

38 Cours Albert 1er, 75008 Paris, France

Tel +33 (0)1 49 53 30 52 Fax +33 (0)1 49 53 30 49

E-mail [expertise@iccwbo.org](mailto:expertise@iccwbo.org) Website [www.iccexpertise.org](http://www.iccexpertise.org)

**Chairman of the Standing Committee of the Centre**

The Chairman of the Standing Committee appointed the Expert on 29 July 2013, pursuant to Article 7 of the Rules and Article and 3(3) of Appendix I to the Rules.

**Expert's Availability and Independence**

We enclose the Expert's ICC *curriculum vitae*, his professional *curriculum vitae* as well as his Declaration of Acceptance and Availability, Statement of Impartiality and Independence.

Please be advised that the Expert has declared that he is available and able to serve as sole member of the Panel in this matter.

**Transfer of the File**

The Centre will proceed with the transfer of the file to the Expert shortly.

Should you have any further questions, please do not hesitate to contact us.

Yours faithfully,



Špela Košak  
Deputy Manager  
ICC International Centre for Expertise

Enclosures:

- Expert's ICC *curriculum vitae*
- Expert's professional *curriculum vitae*
- Expert's Declaration of Acceptance and Availability, Statement of Impartiality and Independence

c.c. (*without enclosures*):

Mr. Guido Santiago Tawil

*By email:* Contact Information Redacted





INTERNATIONAL  
OLYMPIC  
COMMITTEE

Legal Affairs Department

Ref. No. ICA/2014/HMS/mlb  
By e-mail only

To:  
ICANN Board Governance  
Committee  
Members of the Board Governance  
Committee

Lausanne, 30 April 2014

### **Request for Reconsideration 14-10 dot Sport Limited**

Dear Members of the Board Governance Committee,

On April 2, 2014, dot Sport Limited, a division of Famous Four Media, filed with ICANN a Request for Reconsideration (“RFR”) concerning the International Chamber of Commerce (“ICC”) panel’s decision denying dot Sport Limited’s application for the .SPORT gTLD.<sup>1</sup> The International Olympic Committee (“IOC”), in support of SportAccord, respectfully requests that the Board Governance Committee recommend that dot Sport’s RFR be denied.

#### **I. INTRODUCTION**

In October 2013, SportAccord, a non-profit entity charged with overseeing multiple sports federations, prevailed in a Community Objection over competing commercial applicant Famous Four for the .SPORT gTLD.<sup>2</sup> The decision is well-reasoned, and followed the standards provided by ICANN for such determinations.<sup>3</sup>

Now, nearly six months after the decision, and having already been denied in a related RFR,<sup>4</sup> Famous Four again seeks to undermine that decision. Famous Four cannot substantively appeal the decision through a RFR, so it has spent the ensuing months devising an argument alleging that the expert panelist who rendered the decision was not “impartial” and therefore that his decision cannot stand. Famous Four’s RFR should be denied for the following reasons.

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<sup>1</sup> See Request 14-10: dot Sport Limited, *available at* <http://www.icann.org/en/groups/board/governance/reconsideration/14-10>.

<sup>2</sup> See SportAccord v. dot Sport Limited, ICC Case No. EXP/471/ICANN/88 (Oct. 23, 2013), *available at* <http://newgtlds.icann.org/sites/default/files/drsp/04nov13/determination-1-1-1174-59954-en.pdf>.

<sup>3</sup> See *id.*

<sup>4</sup> See Request 13-16: dot Sport Limited.

## II. REASONS THE REQUEST FOR RECONSIDERATION SHOULD BE DENIED

### A. *The Objection Should Have Been Raised Earlier In The Proper Forum, But Was Not, And Is Waived*

The ICC has impartiality rules in place, as required by the Applicant Guidebook. In particular, Article 7 of the ICC’s Rules of Expertise, requires all potential experts to “sign a statement of independence and disclose in writing . . . any facts or circumstances which might be of such a nature as to call into question the expert’s independence in the eyes of the parties.”<sup>5</sup> From there, the ICC’s rules give the parties an opportunity to comment on, or object to, the selected expert based on potential conflicts of interest.<sup>6</sup>

Here, as Famous Four acknowledges, the Panelist signed a statement of independence in compliance with Article 7 of the ICC’s Rules of Expertise.<sup>7</sup> Famous Four was provided with the Panelist’s curriculum vitae when he was assigned to the case.<sup>8</sup> Famous Four had previously objected to the appointment of another Panelist – demonstrating that it understood how and when to do so under ICC rules.<sup>9</sup> In this case, even though it had the information necessary and a demonstrated ability and opportunity to raise its concerns, Famous Four did not object to the Expert based on any potential conflict of interest. Only now, after a decision unfavorable to it, and long after it has waived its ability to object under ICC rules, does Famous Four object to the appointed Panelist’s ability to impartially render a decision. This untimely objection has been waived under ICC Rules, as reinforced by ICANN New gTLD Dispute Resolution Procedure, Article 13(d) (“The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.”).

### B. *The Objection Lacks Sufficient Substantive Grounds*

Even if Famous Four had properly raised its objection, the objection would not be well-taken. As in Request 14-8, where the Requestor challenged the

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<sup>5</sup> See ICC Rules of Expertise, available at [http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/icc-rules-of-arbitration/#article\\_11](http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/icc-rules-of-arbitration/#article_11).

<sup>6</sup> See *id.*

<sup>7</sup> See Request 14-10, pp. 8-10.

<sup>8</sup> See ICC Case No. EXP/471/ICANN/88, p. 4 (“On July 30, 2013, the ICC Centre notified the Parties of the Expert’s appointment. **It further sent the Parties the Expert’s curriculum vitae** as well as his Declaration of Acceptance and Availability, Statement of Impartiality and Independence.”) (emphasis added).

<sup>9</sup> See *id.*, pp. 3-4 (“On June 21, 2013, the ICC Centre appointed Mr. Jonathan P. Taylor as expert in accordance with Article 13 of the Rules of Procedure and Article 9(5)(d) of the Rules for Expertise. On July 16, 2013, the ICC Centre acknowledged receipt of Applicant’s objection to Mr. Taylor’s appointment. On July 25, 2013, the ICC Centre informed the Parties that it had decided not to confirm the appointment of Mr. Taylor as Expert in the present case and, therefore that it would proceed with the appointment of another Expert.”).

impartiality of the Expert Panelist assigned to the underlying Community Objection, any relationship between the Panelist and the prevailing Objector in this case is tenuous at best. In Request 14-8, the Requester claimed that the Expert had a “potential appearance of bias” because he “worked for Samsung,” which is a “strategic business partner” of Google, one of the Requestor’s competing applicants for .MUSIC.<sup>10</sup>

The BGC noted as follows:

[T]he Expert was retained by Samsung as an expert in an International Trade Commission investigation involving Samsung and Ericsson Inc. relating to electronic devices. The fact that Samsung and Google may have an agreement relating to the licensing of patents – which was entered into on January 26, 2014, six months after this matter was assigned to the Expert and a mere three-weeks before the Expert Determinations were issued simply fails to suggest that the Expert had a bias in favor of Google or against Requester.<sup>11</sup>

In this case, according to Famous Four: the Expert Panelist works for a law firm that has a client that entered into an agreement with the IOC involving television broadcasting rights. Consequently, the Panelist is, at least, four times removed from any indirect connection:

Panelist → Law Firm → DirecTV → IOC → SportAccord.

The Panelist had no direct connection to or interest in SportAccord or the IOC, and Famous Four does not allege such a connection; rather, it alleges an indirect connection between the Panelist and the IOC, which is not a party to the underlying Community Objection. Further, the .SPORT Community Objection decision does not have any material effect on DirecTV.

The causal connection claimed by Famous Four is thus far too speculative and attenuated. If this little was sufficient to undermine a well-reasoned decision on the merits, almost all civil attorneys would be disqualified from practicing as expert panelists.

**C. *Granting This Objection Would Undermine The Finality Of New gTLD Dispute Resolution Decisions***

In addition, the finality of all decisions would be threatened if losing parties like Famous Four were permitted to raise such tenuous RFRs long after a decision was rendered. Reconsideration is not a mechanism for direct, *de novo* appeal of

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<sup>10</sup> Request 14-8, p. 11.

<sup>11</sup> *Id.*, p. 12.

panel decisions with which the requester disagrees, and seeking such relief is, in fact, in contravention of the established processes within ICANN.<sup>12</sup>

### III. CONCLUSION

For these reasons, the IOC respectfully requests that the Board Governance Committee recommend that the RFR be denied. Should the BGC require any additional information or submissions from the IOC regarding this matter, please contact the undersigned.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "H. Stupp", is written over a light blue horizontal line.

Howard M. Stupp  
Director of Legal Affairs

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<sup>12</sup> See, e.g., Request 13-7: DISH DBS Corp.

15 May 2014

Dr. Bruce Tonkin  
Chair, ICANN Board Governance Committee

Re: Reconsideration Request 14-10 (Dot Sport Limited)

Dear Dr. Tonkin,

I am the Director General of SportAccord, and I am writing in response to Reconsideration Request (14-10) filed by Famous Four Media's subsidiary Dot Sport Limited (hereinafter FFM). It is my duty to respond on the behalf of the Sport community and explain why this latest FFM Reconsideration Request should be summarily dismissed along the same lines that the ICANN Board Governance Committee (BGC) properly dismissed FFM's first Reconsideration Request.

The present filing is nothing more than misstatements of facts mixed with veiled innuendos seeking to undermine the credibility of an international recognized jurist and ICC Expert panelist Dr. Guido Tawil. SportAccord will seek to shed light on some of the veiled innuendoes which FFM has made by citing to public facts.<sup>1</sup> SportAccord would also like to address a number of troubling procedural issues in connection with FFM's recent actions, e.g. multiple Reconsideration Request filings; failure of FFM to allow the Ombudsman to issue his final report before filing this second Reconsideration Request; there being no legal/procedural basis for the relief FFM is seeking; and the lengthy delay between bring this second Reconsideration Request and the underlying allegations at issue.

## **BACKGROUND**

Based on its charter and in coordination with 108 members and other international Sport Governing Bodies, SportAccord decided to proactively apply for a .SPORT TLD on behalf of the global Sport community. One of the key aspects of this initiative was a recognition that the operation of the TLD had to be based on a solid framework with built in community-based accountability mechanisms to advance the values and ideals of Sport.

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<sup>1</sup> Since SportAccord has not engaged in any ex-parte communications with Dr. Tawil, we are unaware if any of these allegations have been communicated to him. In the interest of openness and transparency, we have copied Dr. Tawil on this communication as we believe he should have the opportunity to defend himself against the serious allegations made against him.

On this basis, SportAccord issued a public call for proposals among potential registry operators interested in operating the .SPORT TLD in collaboration with SportAccord. One of the participants in this RFP was FFM who was represented by Mr. Geir Rasmussen. FFM was included in a short list of candidates to provide an in person presentation at SportAccord's offices at the Maison du Sport International in Lausanne, Switzerland. In the end, SportAccord selected another candidate from the shortlist and FFM was immediately informed of the outcome. FFM did not communicate with SportAccord or make any public announcement before submitting an ICANN TLD application for .SPORT in May 2012.

SportAccord was surprised to learn of FFM's pursuit of the .SPORT string as well as several other sport themed TLDs in its portfolio of applications: .RUGBY, .BASKETBALL, .FOOTBALL, .CRICKET, .HOCKEY, and .SOCCER. This behavior is hard to reconcile with FFM's claims of it being "an innocent party" having "lost large amounts of money" as a result of its "good faith" when it knew about the Sport community's commitment to the .SPORT string since as early as 2011.

SportAccord objected to FFM's ".SPORT" application and Donuts' ".SPORTS" application on behalf of the global Sport community. The objections were supported by explicit letters of opposition by 50 international sport federations, the IOC and other global sport bodies. Both .SPORT(S) community objections prevailed, as did SportAccord's "' .SPORT/.SPORTS" string confusion objection.

Following these adverse decisions, FFM has engaged in a pattern of vexatious and dilatory tactics with the sole purpose of delaying SportAccord from moving forward with its single community application.<sup>2</sup> All the while, FFM has moved forward with multiple generic strings from its portfolio of applications. The ICANN Board needs to do the right thing and summarily dismiss FFM's Reconsideration Request *again*, and then direct ICANN staff to issue a CIR to SportAccord.

#### **FFM'S SECOND BITE AT THE RECONSIDERATION REQUEST APPLE**

In FFM's first Reconsideration Request (13-16) filed last year, FFM previously challenged the impartiality of Dr. Tawil based upon him co-chairing a panel on the use of dispute resolution in sport hosting events. The BGC in rejecting FFM's allegations stated "the Requester provides no evidence demonstrating that the Expert failed to follow the applicable ICC procedures for independence and impartiality. Rather, the Requester is challenging the merits of the Expert's disclosure. Such challenges should be brought to the ICC under the ICC Rules of Expertise, not through the Reconsideration process."

As the BGC noted in its 13-16 decision, FFM is familiar with the ICC rules regarding challenges to the appointment of a panelist as they successfully exercised them in connection with the initial appointment of Mr. Taylor. However, FFM did not exercise these rights at the time Dr. Tawil was appointed probably because there was no real basis then, as there is none today, to block his selection.

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<sup>2</sup> FFM's vexatious and dilatory tactics include but are not limited to: (i) FFM's original challenge to Mr. Taylor as a panelist; (ii) FFM's first Reconsideration Request (13-16); (iii) FFM's complaint to the Ombudsman during the Singapore ICANN meeting; and (iv) Failing to allow the Ombudsman to complete his investigation prior to filing this second Reconsideration Request (14-10).

SportAccord respectfully submits that FFM's second Reconsideration Request should be summarily denied by the BGC, once again, for being **procedurally inadmissible** on the following grounds:

- (i) This new Reconsideration Request is clearly untimely under ICANN's Bylaws; and
- (ii) FFM's claim that Dr. Tawil may have had a conflict of interest is not a basis for reconsideration; and any challenge to Dr. Tawil's impartiality should have been brought to the ICC under the ICC Rules of Expertise, not through a reconsideration process.

### *FFM's Reconsideration Request Is Untimely*

The Bylaws make clear that Reconsideration Requests must be submitted within fifteen (15) days after "the date on which information about the challenged Board action is first published in a resolution with an accompanying rationale." (Bylaws, Art. IV, § 2.5.) The specific actions that FFM requests to be reconsidered are:

Board's Rejection<sup>3</sup> of Reconsideration Request 13-16 on \_\_\_\_\_ ;  
Community Objection Determination by expert Dr. Tawil on **23 October 2013**; and/or  
Decision of International Chamber of Commerce ("ICC") of **29 July 2013** to appoint Dr. Tawil as expert.

The Reconsideration Request was received on **2 April 2014**, significantly later than the maximum fifteen (15) days from the date upon which the challenged resolutions were first published, thereby rendering this filing untimely under the ICANN Bylaws. Aware of this deficiency, FFM's conveniently claims that they discovered the existence of such conflict on 25 March 2014.

This appears to a patently false assertion as all relevant information was publicly known and available long before Dr. Tawil's appointment, and any new information cited by FFM (namely the latest round of adjudications of Olympic broadcasting rights) simply match the previously known fact that some clients of M.&M. Bomchil Abogados need to negotiate sport broadcasting rights in the normal course of their business.

FFM's argument about possible expert bias is extremely attenuated and based on information that was in the public domain long before the Expert's appointment. It is therefore impossible to argue that there is any reasonably likelihood of Dr. Tawil providing a false declaration or any information of sufficient weight to justify an exceptional extension of the time frames allowable under the ICANN bylaws. In conclusion, FFM's Reconsideration Request is untimely and should be denied on this basis alone. Notwithstanding this, next we will discuss that even if exceptional allowances were made to accept FFM's Request as timely, the stated ground for the Request do not support reconsideration.

### *Dr. Tawil's Allegedly Conflict Of Interest Is Not a Basis for Reconsideration*

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<sup>3</sup> <https://www.icann.org/en/groups/board/governance/reconsideration/13-16/determination-sport-08jan14-en>

Under Art. 13 (c) of Attachment to Module 3 of the ICANN Applicant Guidebook, “[a]ll Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.” Paragraph (d) of the same Article states that “[t]he applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.” According to Art. 4 (b) (iv) of Attachment to Module 3 of the ICANN Applicant Guidebook, “[f]or a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.” Thus, any challenge to Dr. Tawil’s impartiality should have been brought to the ICC under the ICC Rules of Expertise, not through a reconsideration process.

FFM is perfectly familiar with the ICC rules regarding challenges to the appointment of a panelist. It challenged the initial appointment of Mr. Taylor, arguing that “the panelist must not be a sport lawyer” - hardly a convincing argument for the choice of an expert about the Sport community. The ICC nevertheless went along and appointed Dr. Tawil.

FFM did not challenge the appointment of Dr. Tawil. Now, after losing the objection, FFM falsely alleges for the second time that its new Reconsideration Request is based on “new” information. There is no relevant new information. It was sufficiently clear at the time from readily available public information<sup>4</sup> that M.&M. Bomchil Abogados has a TMT (Technology, Media and Telecoms) practice and that Mr. Marcelo Bombau is President of TyC, that TyC is partly owned by DirectTV, etc.

FFM itself mentions “M.&M. Bomchil Attorneys Firm Brochure from 2008” on page 7 of the Request. The long-term relationship between M.&M. Bomchil Abogados, Mr. Marcelo Bombau, TyC and DirectTV have been advertised so prominently and so for so long that nobody can reasonably argue to have just recently “discovered” them. These are companies with a necessary and obvious interest in sport broadcasting. Olympic live broadcasting occurs every two years, so it is not “new information” that they negotiate the required rights ahead of the respective games.

The fact that some customers of M.&M. Bomchil Abogados are strongly dependent on broadcasting rights has been public information long before Dr. Tawil was appointed. Bomchil customers have been assigned sport broadcasting rights before, not only for the Olympics, but also for other sports represented by many of the 50 international sport federations who explicitly opposed FFM’s bid for the .SPORT TLD.

The most pressing suspicion in this context is that FFM was keenly aware of M.&M. Bomchil Abogados’ sports-broadcasting-related client relationships at the time it decided not to challenge Dr. Tawil’s appointment. FFM’s previous challenge of Mr. Taylor<sup>5</sup> on the grounds of him being a “sports

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<sup>4</sup> The ready availability of the information at the time is evidenced among other things by relevant Wikipedia articles’ version history prior to July 2013, such as [http://en.wikipedia.org/w/index.php?title=Torneos\\_y\\_Competiciones&oldid=524791765](http://en.wikipedia.org/w/index.php?title=Torneos_y_Competiciones&oldid=524791765) from December 2012. M.&M. Bomchil Abogados’ own web site not only described TMD as one of its the areas of specialization, but carried links to external reviews, such as <http://www.chambersandpartners.com> or <http://www.legal500.com/c/argentina> .

<sup>5</sup> Mr Taylor’s response in the ICC questionnaire was identical to that of Dr. Tawil. When challenging Mr. Taylor’s appointment, FFM did not argue that Mr. Taylor failed to make a declaration. Now FFM pretends that



lawyer” was indeed at odds with FFM’s objection response arguments about the purported non-existence of a sport community.

## **MISSTATEMENTS OF FACTS**

There are several misstatements of facts in FFM’s filing including but not limited to:

- (i) SportAccord is NOT controlled by the IOC.
- (ii) There is no direct relationship between DirecTV and the IOC.
- (iii) There are no irregularities in Dr. Tawil’s decision.

### *SportAccord Is a Separate and Independent Entity from the International Olympic Committee*

One of the more egregious misstatement of fact in FFM’s Reconsideration Request is that the SportAccord is effectively controlled by the International Olympic Committee (IOC). SportAccord is a separate legal entity with its own offices, staff and budget. Although SportAccord and the IOC offices are both located in Lausanne, Lausanne is touted as the home of international sport and is home to over 30 International and European sports Federations. Unlike the IOC which represents a total 35 Olympic federations (28 summer and 7 winter), SportAccord has a much wider remit and obligation to the global sport community and its 108 members (92 federations and 16 organizations).

Another misstatement by FFM is the claim that the IOC appoints six (6) out of the eight (8) SportAccord Council members. The SportAccord Council is an executive body consisting of eight (8) members: the President which is selected by the General Assembly; two (2) members designated by the Association of Summer Olympic International Federations (ASOIF); one (1) member designated by the Association of International Olympic Winter Sport Federations (AIOWF); two (2) members designated by the Association of IOC - Recognized International Sports Federations (ARISF); one (1) member designated by the Full Members that do not belong to the above groups; and one (1) member designated by the Associate Members. The ASOIF, AIOWF and ARISF are separate legal entities which are independent of the IOC and each which have their own procedure to designate its representatives.

SportAccord does not deny that it has a collaborative working relationship with the IOC and other Sport governing bodies. However, SportAccord respectfully submits that this collaborative working relationship is no different than the common shared interest which many in the ICANN community have with other key internet stakeholders, e.g. IAB, IETF, RIRs, etc.<sup>6</sup> ICANN’s own legal counsel and staff should be able to attest to the separation of SportAccord and the IOC based upon ICANN’s in-

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Dr. Tawil failed to make a declaration although the circumstances are identical with respect to the respective law firms’ customer portfolio.

<sup>6</sup> See for example the preliminary ICANN Board report from 27 March 2014, “the IETF is a good example of collaboration between ICANN and the IETF communities.”

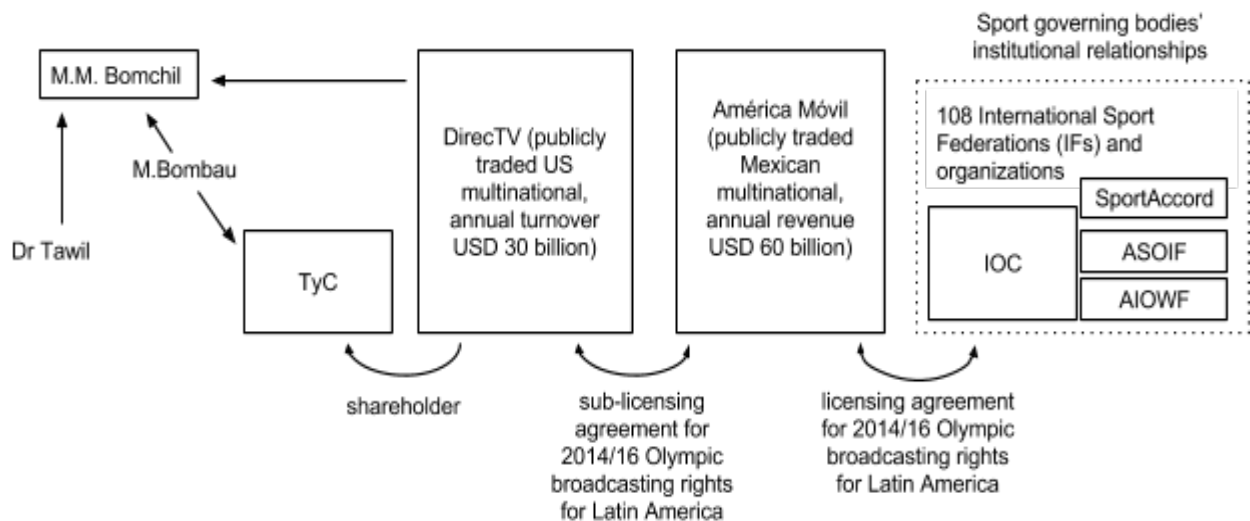
<http://www.icann.org/en/groups/board/documents/prelim-report-27mar14-en.htm>

depth discussion with the IOC in connection with the reservation of the Olympic marks at both the top and second level domain.

In its disparaging choice of words, FFM describes SportAccord as “inextricably linked” to the IOC. This carries a deliberate innuendo designed to instill the suspicion of covert or undesirable ties. The essence of the relationship between the IOC and SportAccord is that both are accountable to the Sport community and have solid institutional governance to guarantee such accountability.

*There Is No Direct Relationship Between the IOC And DirecTV*

The underpinnings of FFM’s allegation that Dr. Tawil falsified his panelist declaration is an attenuated claim of a conflict of interest based on another lawyer in Dr. Tawil’s firm negotiating a deal on behalf of a firm client (DirecTV) for Olympic broadcast rights. The broadcast rights that DirecTV secured constitute sub-license through América Móvil.<sup>7</sup>



*Diagram of relationships in which FFM purports to see new evidence of a potential conflict of interest linking Dr. Tawil to SportAccord. It is hard to imagine how Dr. Tawil, specialized in arbitration and administrative law, as one of 18 partners in an Argentinian law firm, could have been a factor in negotiations conducted by a Mexican multinational with the IOC over broadcasting rights in Latin America sublicensed to a large US company. FFM does not assert (despite such deliberate innuendo) that the Expert had any part in the broadcasting rights negotiations.*

It is important to note that broadcasting rights licensing agreements are arms-length relationships in which a sports governing body (such as the IOC) acts on behalf of the sport community, or the given

<sup>7</sup> The IOC announced the granting of the 2014 & 2016 Olympic broadcast rights to América Móvil on 22 March 2014, see <http://www.olympic.org/news/ioc-awards-2014-2016-broadcast-rights-in-latin-america/194907> . DirecTV was the *third* sub-license of these broadcast rights in a deal with América Móvil announced on 7 February 2014, see [http://www.sportspromedia.com/news/america\\_movil\\_sells\\_more\\_olympics\\_rights/](http://www.sportspromedia.com/news/america_movil_sells_more_olympics_rights/)

subset of the Sport community based on an objective process. This is comparable to ICANN entering into a registry agreement with a registry operator, or contracting with a dispute resolution provider. If it was enough to show a chain of unrelated relationships as proof of likely bias, then most of ICANN's panels would be "biased" because ICANN itself has contracts with some parties pleading before those panels.

Give FFM's propensity to manufacture conflicts and controversy out of thin air. SportAccord would like to proactively identify the following issues. First, in the IOC's 30 April 2014 letter to the ICANN BGC, the IOC directly responded to FFM's allegation of the conflict being between DirecTV and the IOC and does not address the existence of América Móvil. Second, in the firm brochure which FFM previously cited, it appears that América Móvil is also a client of M.&M. Bomchil Abogados. Whether América Móvil or DirecTV are still clients of the firm or whether they represented them in the current Olympic broadcast rights deal is unknown. Only Dr. Tawil and his firm can answer these questions. Notwithstanding the status of these relationships, the link to Dr. Tawil being a panelist in a proceeding brought by SportAccord is so remote that there should be no basis for the BGC to grant the relief FFM is seeking.

#### *There Were No Irregularities in Dr. Tawil's Determination*

In a press release issued by FFM just before the filing of this Reconsideration Request, FFM in addition to raising claims about Dr. Tawil's impartiality also claimed that there were a number of irregularities in his decision.<sup>8</sup> SportAccord respectfully submits that if the entire body of Community Objections involving SportAccord and related International Sport Federations is looked at, it will be clearly seen an established body of precedent and no irregularities as alleged by FFM.

#### SportAccord v Steel Edge, LLC<sup>9</sup>

SportAccord prevailed in a related ICC Community Objection filed against portfolio applicant Steel Edge, LLC regarding their .SPORTS application. In this complaint SportAccord raised the same issues to those raised in the FFM complaint. The Expert appointed by the ICC in this case was Jonathan Taylor, a partner in the international law firm Bird & Bird. In addition to co-chairing the firm's sport's law practice group, Mr. Taylor is widely recognized as one of the world's leading sports lawyers, advising nationally and internationally on cutting-edge commercial, regulatory and contentious issues across all major sports.

#### The International Rugby Board

The International Rugby Board (IRB) filed two ICC community objections against dot Rugby Limited<sup>10</sup> (another FFM subsidiary) and Atomic Cross, LLC<sup>11</sup> (another Donuts subsidiary). The ICC in this case

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<sup>8</sup> See <http://www.famousfourmedia.com/2014/03/statement-concerning-sport/>

<sup>9</sup> See <http://newgtlds.icann.org/sites/default/files/drsp/27jan14/determination-1-1-1614-27785-en.pdf>

<sup>10</sup> See <http://newgtlds.icann.org/sites/default/files/drsp/10feb14/determination-1-1-1206-66762-en.pdf>

<sup>11</sup> See <http://newgtlds.icann.org/sites/default/files/drsp/10feb14/determination-1-1-1612-2805-en.pdf>

appointed the same expert Mark Kantor for both proceedings. Similar to the Experts in the .SPORT and .SPORTS proceedings, Mr. Kantor ruled in favor of the IRB finding that the rugby community was clearly delineated and that there was a likelihood of material detriment in connection with the respective applications. Mr. Kantor, as a former partner Milbank, Tweed, Hadley & McCloy's Corporate and Project Finance Groups appeared to have no direct or indirect ties to the sport community.

United States Polo Association v. Ralph Lauren Corporation<sup>12</sup>

The United States Polo Association (USPA) filed an ICC community objections against Ralph Lauren Corporation's .POLO application. The ICC appointed Professor Burkhard Hess as the Expert in this proceeding, who ruled that the USPA had successfully established the four necessary elements set forth in the Community Objection standard. Unlike the other sport related community objections in which the Objector was either directly or indirectly associated with a competing application, USPA appeared to have no association with any competing application. Similar to Mr. Kantor and Dr. Tawil, Professor Hess appears to have no direct relationship with the sports community.

Fédération Internationale de Ski v Wild Lake, LLC<sup>13</sup>

The Fédération Internationale de Ski (FIS) filed and prevailed in a Community Objection filed against Wild Lake, LLC (another subsidiary of Donuts). The Expert appointed by the ICC, Mr. Taylor, ruled in favor of FIS consistent with the principles cited in the other referenced ICC Community decisions.

Fédération Internationale de Basketball

The only sports International Federation to file an ICC Community Objection and lose was the Fédération Internationale de Basketball (FIBA). Similar to the .SPORT/.SPORTS and .RUGBY proceedings, FIBA filed objections against portfolio applicants Donuts (Little Hollow, LCC)<sup>14</sup> and FFM (dot Basketball Limited)<sup>15</sup>. The ICC appointed a single Expert, Jennifer Kirby, for these two proceedings. Although Ms. Kirby appeared to have no direct association with the sport community, upon information and belief she had served as an Ad Hoc Clerk in The Court of Arbitration of Sport.

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<sup>12</sup> See <http://newgtlds.icann.org/sites/default/files/drsp/25oct13/determination-1-1-1125-1032-en.pdf>

<sup>13</sup> See <http://newgtlds.icann.org/sites/default/files/drsp/27jan14/determination-1-1-1636-27531-en.pdf>

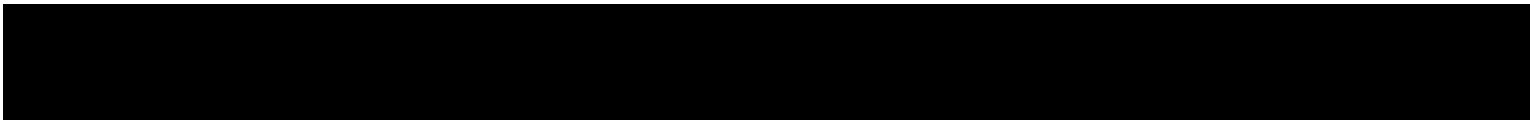
<sup>14</sup> See <http://newgtlds.icann.org/sites/default/files/drsp/17jan14/determination-1-1-1355-53565-en.pdf>

<sup>15</sup> See <http://newgtlds.icann.org/sites/default/files/drsp/17jan14/determination-1-1-1199-43437-en.pdf>



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**Please see Errata attached at the end of this document.**

**RECOMMENDATION OF THE BOARD GOVERNANCE COMMITTEE (BGC)**

**RECONSIDERATION REQUEST 14-10**

**21 JUNE 2014**

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The Requester, dot Sport Limited, seeks reconsideration of: (i) the Expert Determination, and ICANN's acceptance of that Determination, upholding SportAccord's Community Objection to the Requester's application for .SPORTS; (ii) the ICC's<sup>1</sup> designation of the Expert Panelist who presided over the underlying objection; and (iii) the BGC's<sup>2</sup> Determination denying Reconsideration Request 13-16.

**I. Brief Summary.**

The Requester and SportAccord both applied for .SPORTS and are in the same contention set. SportAccord filed a Community Objection to the Requester's application. The Expert Panel ("Expert" or "Panel") rendered an Expert Determination in favor of SportAccord. The Requester then filed Reconsideration Request 13-16, suggesting that, among other reasons, the Expert allegedly violated established policy or process by failing to disclose material information relevant to his appointment. On 8 January 2014, the BGC denied Request 13-16, finding, among other things, that the Requester had provided no evidence demonstrating that the Expert had failed to follow the applicable ICC procedures for independence and impartiality.

The Requester, in this second Reconsideration Request for the same matter, now claims that on 25 March 2014, it discovered additional evidence that the Expert had a conflict of interest. Specifically, the Requester claims that it just recently discovered that the Expert now has, and

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<sup>1</sup> International Centre for Expertise of the International Chamber of Commerce

<sup>2</sup> Board Governance Committee.

previously has had, financial and professional relationships, both direct and indirect, with an entity that is “related” to SportAccord. The Requester claims the Expert should have, but did not disclose those relationships in the underlying objection proceeding.

The Requester’s claims are unsupported. First, the Request is untimely. 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. While the Requester claims that this second Reconsideration Request is appropriate because the Requester only recently discovered the Expert’s alleged conflict of interest, as is discussed below, such a claim does not justify an untimely reconsideration request. Second, the allegedly newly discovered information relating to a purported conflict of interest does not support reconsideration. Therefore, the BGC recommends that the Request be denied.

## **II. Facts.**

### **A. Background Facts.**

Both dot Sport Limited (“Requester”) and SportAccord applied for .SPORTS and are in the same contention set.

On 13 March 2013, SportAccord filed a Community Objection (“Objection”) to the Requester’s application, asserting that there was “substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.” (Applicant Guidebook (“Guidebook”), § 3.2.1; New gTLD Dispute Resolution Procedure (“Procedure”), Art. 2e.)

On 29 July 2013, the ICC appointed Dr. Guido Santiago Tawil as the expert (“Expert” or “Panel”) to consider SportAccord’s Objection and notified the parties of the appointment.

On 23 October 2013, the Panel rendered an Expert Determination in favor of SportAccord (“Expert Determination”).

On 2 November 2013, the Requester filed Reconsideration Request 13-16, seeking reconsideration of the Expert Determination on the grounds that: (i) the Panel applied the wrong standard in contravention of established ICANN policy or process; and (ii) the Expert failed to disclose material information relevant to his appointment in violation of established policy or process.

On 8 January 2014, the Board Governance Committee (“BGC”) denied Request 13-16.

On 25 March 2014, the Requester purportedly discovered additional facts regarding an alleged commercial relationship between the Expert and the International Olympic Committee (“IOC”), an entity that the Requester contends “effectively control[s]” SportAccord.<sup>3</sup> (Request, § 8, Pg. 5.) Specifically, the Requester claims that it discovered that: (i) one of the Expert’s clients, DirecTV, acquired broadcasting rights for the Olympics from the IOC on 7 February 2014 (after the Expert Determination and the BGC’s Determination on Request 13-16 were issued); and (ii) a partner in the Expert’s law firm is the president of Torneos y Competencias S.A. (“TyC”), a company which has a history of securing Olympic broadcasting rights and of which DirecTV Latin America is the principal shareholder. The Requester forwarded that information to the Ombudsman, with whom it had previously filed a complaint.

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.

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<sup>3</sup> In support of its contention, the Requester offers only that (1) two of the six members of SportAccord’s Executive Council are also members of the IOC, and (ii) “[f]ive of the eight members of the Council of SportAccord are directly appointed by three out of the only four sport associations officially recognized by the IOC on their website.” (Request, § 8, Pg. 5.) The Requester also points out that SportAccord’s website states that SportAccord enjoys a “close collaborative relationship” with the IOC. (*Id.*)



On 2 April 2014, the Requester filed Reconsideration Request 14-10, seeking reconsideration of: (i) the denial of Reconsideration Request 13-16; (ii) the Expert Determination; and (iii) the ICC's appointment of the Expert.<sup>4</sup>

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 Requester 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 Requester confirmed that it was fully aware of these Bylaws provisions and that it would like to pursue this Reconsideration Request rather than the Ombudsman's request.

**B. The Requester's Claims.**

The Requester makes three claims. First, the Requester claims that the BGC failed to consider material information in rejecting Reconsideration Request 13-16, namely the allegedly newly-discovered information regarding the Expert's alleged conflict of interest. Second, the Requester claims the Expert violated ICANN policy and process by failing to reveal his alleged conflict of interest. Finally, the Requester claims that the ICC violated ICANN policy and process in appointing the Expert.

**C. Relief Requested.**

The Requester asks that ICANN: (i) revoke the designation of authority of Guido Tawil as Expert for undisclosed conflict of interest and/or obvious bias; (ii) reject the Expert

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<sup>4</sup> Although the Requester only requests reconsideration of the ICC's appointment of the Expert, it also appears to object to the ICC's response to the Requester's newly-discovered information, stating that the Requester's representative "wrote to the ICC on two occasions to request that the ICC question [the Expert]" about the alleged conflict of interest, but that the ICC "repeatedly declined to do so." (Request, § 8, Pg. 5.) However, this claim is untimely, and the Requester has not identified any policy or procedure that the ICC allegedly violated that would support reconsideration.

Determination and refund the Requester the ICC fees it paid; (iii) instruct the ICC to give a full account of how the Expert's resume came to be considered by the ICC and what the consideration process entailed; and (iv) instruct the Expert to give an account of why he failed to disclose his alleged conflict of interest. (Request, § 9, Pg. 12.)

Alternatively, the Requester asks that the Objection be referred for *de novo* review to a new panel composed of three experts. (*Id.*)

### **III. Issues.**

In view of the claims set forth in Request 14-10, the issues are as follows:

- A. Whether the Board failed to consider material information in rejecting Reconsideration Request 13-16, namely the allegedly newly-discovered information regarding the Expert's alleged conflict of interest;
- B. Whether the Expert violated any ICANN policy and process by failing to disclose his alleged conflict of interest; and
- C. Whether the ICC violated any ICANN policy and process in appointing the Expert.

### **IV. The Relevant Standards for Evaluating Reconsideration Requests and Community Objections.**

ICANN's Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.<sup>5</sup> (Bylaws, Art. IV, § 2.) Requester is challenging both Board

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<sup>5</sup> Article IV, § 2.2 of ICANN's Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
- (b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
- (c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

and staff action or inaction. Dismissal of a request for reconsideration is appropriate if the BGC recommends, and the Board or the NGPC<sup>6</sup> agrees, that the requesting party does not have standing because the party failed to satisfy the reconsideration criteria set forth in the Bylaws for challenges of a Board or staff action or inaction. (Bylaws, Art. IV, § 2.9.)

ICANN has previously determined that the reconsideration process can properly be invoked for challenges to expert determinations rendered by panels formed by third party dispute resolution service providers, such as the ICC, where it can be stated that the Panel failed to follow the established policies or processes in reaching the expert determination, or that staff failed to follow its policies or processes in accepting that determination.<sup>7</sup>

Reconsideration requests must be submitted within fifteen days of either “the date on which information about the challenged Board action is first published in a resolution [including rationale]” or “the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action.” (Bylaws, Art. IV, § 2.5.)

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

### **A. The Request is Untimely**

The Request is untimely. Reconsideration requests must be submitted within 15 days of either “the date on which information about the challenged Board action is first published in a resolution [including rationale]” or “the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action.” (Bylaws, Art. IV, § 2.5.) The Requester seeks reconsideration of the appointment of the Expert, and of the Expert Determination (which is to be evaluated as a staff action or inaction) that was issued on

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<sup>6</sup> New gTLD Program Committee.

<sup>7</sup> See <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.doc>, BGC Recommendation on Reconsideration Request 13-5.

23 October 2013. The Requester also seeks reconsideration of the BGC's determination on Reconsideration Request 13-16, which was issued on 8 January 2014 and posted on 13 January 2014. The instant Request, however, was received on 2 April 2014, over six months after the Expert was appointed, nearly six months following the issuance of the Expert Determination, and nearly three months following the BGC's determination on Request 13-16.

The Requester 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. (*Id.*, § 5, Pg. 2.) Specifically, Requester 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 the 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 Requester 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." (*Id.*, § 8, Pg. 5-8.)

The Requester's argument does not support reconsideration. 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. The only recent event that the Requester 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). Requester'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 Requester'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 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. (Bylaws, Art. IV, § 2.5; *see also id.* at Art. IV, § 2.2 (reconsideration based on alleged failure to consider material information is inappropriate where the requester could have submitted, but did not submit, the information for the Board's consideration).)

Notwithstanding the foregoing, which alone is sufficient basis to deny this Request, the allegedly newly-discovered information does not support reconsideration, for the reasons discussed below.

**B. The “Newly-Discovered” Evidence Does Not Support Reconsideration.**

The Requester cites to two pieces of “newly-discovered” evidence that allegedly establish the Expert's conflict of interest: (1) the DirecTV Contract; and (2) the TyC Relationship. Neither supports reconsideration.<sup>8</sup>

**1. The DirecTV Contract is Not Evidence of a Conflict of Interest Sufficient to Support Reconsideration.**

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<sup>8</sup> In support of its Request, the Requester references a 31 March 2014 communication the Ombudsman sent to the Board regarding the Expert's alleged conflict of interest, in which the Ombudsman expressed concern and recommended “a rehearing of the objection with a different expert appointed.” (Request, § 8, Pg. 11.) However, the Ombudsman's communication, by itself, does not support reconsideration because it does not constitute Board action. Moreover, the Ombudsman's communication has subsequently been withdrawn. As such, it would be premature for the BGC to consider the Ombudsman's comments on any alleged conflict of interest issues.

In support of its claim that there is a “direct commercial relationship” between the IOC and the Expert, the Requester relies on the DirecTV Contract, stating that “on 7 February 2014, just 3 months after having provided his decision in SportAccord v. dot Sport Limited EXP 471/ICANN/88[,] Direct TV[, one of the Expert’s clients,] secured a highly lucrative and sought after broadcasting rights deal covering Latin America for the 2014 winter Olympic Games in Sochi, Russia and the 2016 summer Olympic Games in Rio de Janeiro, Brazil.” (*Id.*, § 8, Pg. 7.) 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.

The BGC likewise could not have considered this information on 8 January 2014, when it rendered its determination on Request 13-16, because the DirecTV Contract had not yet been executed. Because the Requester has failed to demonstrate that the Expert or the ICC violated established policies or procedures or that the BGC failed to consider material information, reconsideration is not appropriate. (Bylaws, Art. IV, § 2.)

## **2. The TyC Relationship Does Not Support Reconsideration.**

The Requester also alleges a “newly discovered” conflict of interest based on the TyC Relationship. (Request, § 8, Pgs. 7-8.) Specifically, the Requester claims that Direct TV Latin America is the principal shareholder of TyC, another sports broadcasting firm in the Latin

American region. (*Id.*, § 8, Pg. 7.) The Requester states that TyC is “a major client of M&M Bomchil law firm,” where the Expert is a partner. (*Id.*) The Requester further states that the President of TyC is also a Senior Partner in M&M Bomchil and “is therefore a business partner of Guido Tawil [the Expert].” (*Id.*) The Requester alleges the existence of a conflict of interest based on its claim that TyC “has a longstanding business relationship with IOC having secured broadcasting rights on 5 consecutive occasions since the Atlanta Games in **1996**,” and that TyC “most recently won the Argentinean television rights for the Vancouver 2010 Winter Olympics and London 2012 Olympic Games.” (*Id.* at § 8, Pg. 8 (emphasis added).)

In this regard, the Requester claims that the Expert should have disclosed the TyC Relationship and, having failed to do so, has violated Section 2.4.3 of the Guidebook. (*Id.* at § 10, P. 13.) The Requester’s claim does not support reconsideration. Section 2 of the Guidebook “describes the evaluation procedures and criteria used to determine whether applied-for gTLDs are approved for delegation.” Section 2.4.3 of the Guidebook, upon which the Requester relies, sets forth the “Code of Conduct Guidelines for Panelists” for purposes of the initial evaluation process for new gTLD applications. The Expert that the Requester challenges here was not appointed pursuant to Section 2.4.3 of the Guidebook. Instead, the Expert was appointed to hear a community objection filed by SportAccord. The selection of expert panels for purposes of an objection proceeding, such as the one invoked by SportAccord here, is governed by a different section of the Guidebook, namely Section 3, which discusses dispute resolution procedures.

Specifically, Section 3.4.4 of the Guidebook is the relevant provision that governs the selection of expert panels for purposes of the objection procedures at issue here. Section 3.4.4 provides that the ICC will “follow its adopted procedures for requiring such independence,

including procedures for challenging and replacing an expert for lack of independence.”

(Guidebook, Section 3.4.4.) The ICC Rules of Expertise would therefore govern any challenges to the independence of experts appointed to evaluate community objections. 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. As the BGC noted in its determination on Request 13-16, the 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. (13-16 Determination at Pgs. 12-13.) As such, reconsideration is not appropriate with respect to the Expert’s disclosure.

Reconsideration is also unwarranted with respect to the BGC’s failure to consider the TyC Relationship in its determination on Request 13-16. The Requester failed to submit evidence of the alleged conflict of interest based on the TyC Relationship to the BGC for consideration in support of Reconsideration Request 13-16. Reconsideration is appropriate for “actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, *except where the part submitting the request could have submitted, but did not submit, the information for the Board’s consideration at the time of the action or refusal to act.*” (Bylaws, Art. IV, § 2.2(b)) (emphasis added). As discussed above, the TyC Relationship appears to be decades-old, and the Requester gives no explanation for why it could not have submitted information regarding the relationship to the BGC at the time the BGC considered Request 13-16. Because the Requester did not submit the evidence for the BGC’s consideration with Request 13-16, the BGC was not able to consider the alleged conflict in its determination of that request. The Requester’s failure to provide the evidence to the



BGC's consideration does not constitute a failure on the part of the BGC to consider material evidence and does not constitute a basis for reconsideration of Request 13-16.

## **VI. Recommendation.**

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and therefore recommends that Reconsideration Request 14-10 be denied without further consideration.

In terms of timing of the BGC's Recommendation, it notes that Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a Reconsideration Request within thirty days following receipt of the request, unless impractical. (Bylaws, Art. IV, § 2.16.) To satisfy the thirty-day deadline, the BGC would have to have acted by 2 May 2014. Due to the Requester's invocation of multiple accountability mechanisms on parallel tracks, including the complaint the Requester lodged with the Ombudsman and the instant Reconsideration Request, additional time was required to confer with the Requester and to clarify which accountability mechanism the Requester intended to pursue, delaying of the BGC's consideration of this matter. Moreover, due to the volume of Reconsideration Requests received within recent months, the first practical opportunity for the BGC to take a decision on this Request was on 21 June 2014; it was impractical for the BGC to do so sooner. Upon making that determination, ICANN staff notified the Requester of the BGC's anticipated timing for its review of Request 14-10.

## **ERRATA SHEET**

The Recommendation of ICANN's Board Governance Committee ("BGC") on Reconsideration Request 14-10, which was published on 21 June 2014, is a true record of the BGC's Recommendation, with the following exceptions:

Page	Paragraph	Corrections
1	1	<u>“.SPORTS” should read “.SPORT”</u>
1	2	<u>“.SPORTS” should read “.SPORT”</u>
2	2	<u>“.SPORTS” should read “.SPORT”</u>
10	2	<u>“.SPORTS” should read “.SPORT”</u>

Date: 28 July 2014

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# Approved Resolutions | Meeting of the New gTLD (generic Top Level Domain) Program Committee

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a. **Name Collision Occurrence Management Framework**

b. **Reconsideration Request 14-10, dot Sport Limited Rationale for Resolution 2014.07.18.NG01**

1. Main Agenda:

a. **Name Collision Occurrence Management Framework**

No resolution taken.

b. **Reconsideration Request 14-10, dot Sport Limited**

Whereas, dot Sport Limited filed Reconsideration Request 14-10 asking the New gTLD (generic Top Level Domain) Program Committee ("NGPC") to reconsider: (i) the Expert Determination, and ICANN (Internet Corporation for Assigned Names and Numbers)'s acceptance of that Determination, upholding SportAccord's Objection to the Requester's application for .SPORTS; (ii) the International Centre for Expertise of the International Chamber of Commerce's designation of the Expert Panelist who presided over the objection proceedings; and (iii) the Board Governance Committee's ("BGC's") Determination denying Reconsideration Request 13-16.

Whereas, the BGC considered the issues raised in Reconsideration Request 14-10.

Whereas, the BGC recommended that the Request be denied because the Requester has not stated proper grounds for reconsideration, and the NGPC agrees.

Resolved (2014.07.18.01), the NGPC adopts the BGC Recommendation on Reconsideration Request 14-10, which can be found at <https://www.icann.org/en/system/files/files/recommendation-sport-21jun14-en.pdf> (/en/system/files/files/recommendation-sport-21jun14-en.pdf) [PDF, 147 KB].

**Rationale for Resolution 2014.07.18.NG01**

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  - ▶ Contact (/contact)

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## i. **Brief Summary**

SportAccord filed a Community Objection against Dot Sport Limited's (the "Requester") application for .SPORTS and prevailed. The Requester then filed Request 13-16, suggesting that, among other reasons, the Expert Panel ("Expert" or "Panel") allegedly violated established policy or process by failing to disclose material information relevant to his appointment. On 8 January 2014, the BGC denied Request 13-16, finding, among other things, that the Requester had provided no evidence demonstrating that the Expert had failed to follow the applicable ICC (International Chamber of Commerce) procedures for independence and impartiality.

The Requester, in this second Reconsideration Request for the same matter, now claims that on 25 March 2014, it discovered additional evidence that the Expert had a conflict of interest. Specifically, the Requester claims that it recently discovered that the Expert now has, and previously has had, financial and professional relationships with an entity that is "related" to SportAccord. The Requester claims the Expert should have but did not disclose those relationships in the objection proceeding.

The Requester's claims are unsupported. First, the Request is untimely. 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. While the Requester claims that this second Reconsideration Request is appropriate because the Requester only recently discovered the Expert's alleged conflict of interest, as is discussed below, the Requester's a claim does not justify an untimely reconsideration request. Second, the allegedly newly discovered information relating to a purported conflict of interest does not support reconsideration. Therefore, the BGC has recommended that Reconsideration Request 14-10 be denied. The NGPC agrees.

## ii. **Facts**

### 1. **Relevant Background Facts**

Both dot Sport Limited (the "Requester") and SportAccord applied for .SPORTS and are in the same contention set.

On 13 March 2013, SportAccord filed a Community Objection ("Objection") to the Requester's application, asserting that there was "substantial opposition to the gTLD (generic Top Level Domain) application from a significant portion of the community to which the gTLD (generic Top Level Domain) string may be explicitly or implicitly targeted." (Applicant Guidebook ("Guidebook"), § 3.2.1; New gTLD (generic Top Level Domain) Dispute Resolution Procedure ("Procedure"), Art. 2e.)

On 29 July 2013, the ICC (International Chamber of Commerce) appointed Dr. Guido Santiago Tawil as the expert ("Expert" or "Panel") to consider SportAccord's Objection. On 23 October 2013, the Panel rendered an Expert Determination in favor of SportAccord ("Expert Determination")<sup>1</sup>.

On 8 November 2013, the Requester filed Request 13-16<sup>2</sup>, seeking reconsideration of the Expert Determination, claiming that the Panel applied the wrong standard in contravention of established ICANN (Internet Corporation for Assigned Names and Numbers) policy or process and the Expert failed to disclose material information relevant to his appointment in violation of established policy or process. On 8 January 2014, the Board Governance Committee ("BGC") denied Request 13-16<sup>3</sup>.

On 25 March 2014, the Requester purportedly discovered additional facts regarding an alleged commercial relationship between the Expert and the International Olympic Committee ("IOC"), an entity that the Requester contends "effectively control[s]" SportAccord.<sup>4</sup> (Request, § 8, Pg. 5.) Specifically, the Requester claims that it discovered that: (i) one of the Expert's clients, DirecTV, acquired broadcasting rights for the Olympics from the IOC on 7 February 2014 (but only after the Expert Determination and

the BGC's Determination on Request 13-16 were issued); and (ii) a partner in the Expert's law firm is the president of Torneos y Competencias S.A. ("TyC"), a company which has a history of securing Olympic broadcasting rights and of which DirecTV Latin America is the principal shareholder.<sup>5</sup> The Requester forwarded that information to the Ombudsman, with whom it had filed a complaint.

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.

On 2 April 2014, the Requester filed Request 14-10<sup>6</sup>, seeking reconsideration of: (i) the denial of Request 13-16; (ii) the Expert Determination and ICANN (Internet Corporation for Assigned Names and Numbers)'s acceptance of it; and (iii) the ICC (International Chamber of Commerce)'s appointment of the Expert.<sup>7</sup>

Recognizing that pursuant to Article V, Section 2 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, a complaint lodged with the Ombudsman cannot concurrently be pursued while another accountability mechanism on the same issue is ongoing, the Ombudsman advised ICANN (Internet Corporation for Assigned Names and Numbers) that he sought confirmation from the Requester as to whether it was aware of these Bylaws parameters and asked how the Requester wished to proceed. ICANN (Internet Corporation for Assigned Names and Numbers) was advised on or about 13 May 2014 that the Requester confirmed that it was fully aware of these Bylaws provisions and that it would like to pursue this Reconsideration Request rather than the Ombudsman's request.

## 2. Requester's Claims

The Requester makes three claims. First, the Requester claims that the BGC failed to consider material information in rejecting Request 13-16,

namely the allegedly newly-discovered information regarding the Expert's alleged conflict of interest. Second, the Requester claims the Expert violated ICANN (Internet Corporation for Assigned Names and Numbers) policy and process by failing to reveal his alleged conflict of interest. Third, the Requester claims that the ICC (International Chamber of Commerce) violated ICANN (Internet Corporation for Assigned Names and Numbers) policy and process in appointing the Expert.

### iii. **Issues**

The issues for reconsideration are as follows:

1. Whether the Board failed to consider material information in rejecting Reconsideration Request 13-16, namely the allegedly newly-discovered information regarding the Expert's alleged conflict of interest;
2. Whether the Expert violated any ICANN (Internet Corporation for Assigned Names and Numbers) policy and process by failing to disclose his alleged conflict of interest; and
3. Whether the ICC (International Chamber of Commerce) violated any ICANN (Internet Corporation for Assigned Names and Numbers) policy and process in appointing the Expert.

### iv. **The Relevant Standards for Evaluating Reconsideration Requests**

ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws call for the BGC to evaluate and make recommendations to the Board with respect to Reconsideration Requests. See Article IV, Section 2 of the Bylaws. The NGPC, bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC Recommendation on Request 14-10 and finds the analysis sound.<sup>8</sup>

### v. **Analysis and Rationale**



## 1. **The Request is Untimely.**

The BGC concluded, and the NGPC agrees, that Reconsideration Request 14-10 is untimely and does not support reconsideration. Reconsideration requests must be submitted within 15 days of either "the date on which information about the challenged Board action is first published in a resolution [including rationale]" or "the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action." (Bylaws, Art. IV, § 2.5.) The Requester seeks reconsideration of: (i) the appointment of the Expert, which occurred on 29 July 2013; (ii) the Expert Determination, which was issued on 23 October 2013; and (iii) the BGC's determination on Reconsideration Request 13-16, which was issued on 8 January 2014 and posted on 13 January 2014.

Reconsideration Request 14-10<sup>9</sup>, however, was received on 2 April 2014, which is: (i) over six months after the Expert was appointed; (ii) nearly six months following the issuance of the Expert Determination; and (iii) nearly three months following the BGC's determination on Request 13-16.

The Requester claims that on 25 March 2014 it discovered new evidence 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 the 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 sum, the Requester 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." (Request, § 8, Pg. 5-8.)

Based upon this belated discovery of new evidence, the Requester claims the 15-day deadline for

reconsideration requests should be tolled. (Request, § 5, Pg. 2.) The Requester, however, 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 Requester 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 Requester's only other evidence for an alleged conflict is the TyC Relationship, a business relationship that appears to be decades old. In addition, all of the Requester'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 long prior to 25 March 2014.

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. (Bylaws, Art. IV, § 2.5; see also, *id.* at Art. IV, § 2.2 (reconsideration based on alleged failure to consider material information is inappropriate where the requester could have submitted, but did not submit, the information for the Board's consideration).)

## 2. **The "Newly-Discovered" Evidence Does Not Support Reconsideration.**

The Requester cites to two pieces of "newly-discovered" evidence that allegedly establish the Expert's conflict of interest: (1) the DirecTV Contract; and (2) the TyC Relationship. Separate and apart from the timeliness issue, the BGC concluded, and the NGPC agrees, that the "newly-discovered" evidence of an alleged conflict of interest does not support reconsideration<sup>10</sup>

**1. The DirecTV Contract is Not Evidence of a Conflict of Interest Sufficient to Support Reconsideration.**

In support of its claim that there is a "direct commercial relationship" between the IOC and the Expert, the Requester relies on the 7 February 2014 DirecTV Contract, stating that: " just 3 months after [the Expert's Determination on the SportAccord Objection,] Direct TV[, one of the Expert's clients,] secured a highly lucrative and sought after broadcasting rights deal covering Latin America for the 2014 winter Olympic Games in Sochi, Russia and the 2016 summer Olympic Games in Rio de Janeiro, Brazil." (Request, § 8, Pg. 7.) The Requester concedes that the purported "direct commercial relationship" arose more than three months after the Expert Determination, and does not even attempt to establish that the belated 7 February 2014 DirecTV Contract somehow affected the Expert's 23 October 2013 Determination.

Likewise, the BGC could not have considered this information on 8 January 2014, when it rendered its determination on Request 13-16, because the DirecTV Contract had not yet been executed.

As a result, the Requester has failed to demonstrate that the Expert or the ICC (International Chamber of Commerce) violated established policies or procedures or that the BGC failed to consider material information. Therefore, reconsideration is not appropriate. (Bylaws, Art. IV, § 2.)

**2. The TyC Relationship Does Not Support Reconsideration.**

The Requester also alleges a "newly discovered" conflict of interest based on the TyC Relationship. (Request, § 8, Pgs. 7-8.) Specifically, the Requester claims that DirecTV Latin America is the

principal shareholder of TyC, another sports broadcasting firm in the Latin American region. (Id., § 8, Pg. 7.) The Requester states that TyC is "a major client of M&M Bomchil law firm," where the Expert is a partner. (Id.) The Requester further states that the President of TyC is also a Senior Partner in M&M Bomchil and "is therefore a business partner of [the Expert]." (Id.) The Requester alleges a conflict of interest based on its claim that TyC "has a longstanding business relationship with IOC having secured broadcasting rights on 5 consecutive occasions since the Atlanta Games in 1996," and that TyC "most recently won the Argentinean television rights for the Vancouver 2010 Winter Olympics and London 2012 Olympic Games." (Id. at § 8, Pg. 8 (emphasis added).) In this regard, the Requester claims that the Expert should have disclosed the TyC Relationship and, having failed to do so, has violated ICANN (Internet Corporation for Assigned Names and Numbers) policy and process.

Section 3.4.4 of the Guidebook governs the selection of expert panels for purposes of the objection procedures at issue here. Section 3.4.4 provides that the ICC (International Chamber of Commerce) will "follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence." (Guidebook, Section 3.4.4.) The ICC (International Chamber of Commerce) Rules of Expertise would therefore govern any challenges to the independence of experts appointed to evaluate community objections. Requester provides no evidence demonstrating that the Expert failed to follow the applicable ICC (International Chamber of Commerce) procedures for independence and impartiality prior to his appointment or that the ICC (International Chamber of Commerce) failed to require the Expert to do so. As the BGC noted in its determination on Request 13-16, the Expert submitted to the ICC (International Chamber of

Commerce), 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 (International Chamber of Commerce) Rules of Expertise. (13-16 Determination at Pgs. 12-13.) As such, reconsideration is not appropriate with respect to the Expert's disclosure.

Reconsideration is also unwarranted with respect to the BGC's failure to consider the TyC Relationship in its determination on Request 13-16. Reconsideration is appropriate for "actions or inactions of the ICANN (Internet Corporation for Assigned Names and Numbers) Board that have been taken or refused to be taken without consideration of material information, **except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of the action or refusal to act.**" (Bylaws, Art. IV, § 2.2(b)) (emphasis added). As discussed above, the TyC Relationship appears to be decades-old, and the Requester gives no explanation for why it did not submit, or could not have submitted, the information regarding the relationship to the BGC at the time the BGC considered Request 13-16.

The Requester's failure to submit the evidence for the BGC's consideration with Request 13-16 does not constitute a failure on the part of the BGC to consider material evidence and does not constitute a basis for reconsideration of Request 13-16.

#### vi. **Decision**

The NGPC had the opportunity to consider all of the materials submitted by or on behalf of the Requester or that otherwise relate to Request 14-10. Following consideration of all relevant information provided, the NGPC reviewed and has adopted the BGC's Recommendation on Request 14-10, which shall be deemed a part of this Rationale. The

full text of Recommendation can be found at <https://www.icann.org/en/system/files/files/recommendation-sport-21jun14-en.pdf> ([/en/system/files/files/recommendation-sport-21jun14-en.pdf](https://www.icann.org/en/system/files/files/recommendation-sport-21jun14-en.pdf)) [PDF, 147 KB] and is attached to the Reference Materials to the NGPC Submission on this matter.

In terms of timing of the BGC's Recommendation, Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation to the Board [or NGPC as appropriate] with respect to a Reconsideration Request within thirty days following receipt of the request, unless impractical. See Article IV, Section 2.16 of the Bylaws. To satisfy the thirty-day deadline, the BGC would have to have acted by 2 May 2014. Due to the Requester's invocation of multiple accountability mechanisms on parallels tracks, including the complaint the Requester lodged with the Ombudsman and the instant Reconsideration Request, additional time was required for the Ombudsman to confer with the Requester and to clarify which accountability mechanism the Requester intended to pursue, delaying the BGC's consideration of this matter. Moreover, due to the volume of Reconsideration Requests received within recent months, the first practical opportunity for the BGC to make a decision on this Request was on 21 June 2014; it was impractical for the BGC to do so sooner. Accordingly, the NGPC meeting on 18 July 2014, was the first NGPC meeting that has been scheduled following the BGC's action on Request 14-10 with sufficient time to evaluate and consider the BGC's Recommendation.

Adopting the BGC's recommendation has no financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) and will not negatively impact the systemic security, stability and resiliency of the domain name system.

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

Published on 22 July 2014

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<sup>1</sup> <https://www.icann.org/en/system/files/files/request-annex-sport-1-08nov13-en.pdf> (/en/system/files/files/request-annex-sport-1-08nov13-en.pdf) [PDF, 142 KB]

<sup>2</sup> <https://www.icann.org/en/system/files/files/request-sport-08nov13-en.pdf> (/en/system/files/files/request-sport-08nov13-en.pdf) [PDF, 160 KB]

<sup>3</sup> <https://www.icann.org/en/system/files/files/determination-sport-08jan14-en.pdf> (/en/system/files/files/determination-sport-08jan14-en.pdf) [PDF, 142 KB]

<sup>4</sup> In support of its contention, the Requester offers only that: (a) two of the six members of SportAccord's Executive Council are also members of the IOC; and (b) "[f]ive of the eight members of the Council of SportAccord are directly appointed by three out of the only four sport associations officially recognized by the IOC on their website." (Request, § 8, Pg. 5.) The Requester also points out that SportAccord's website states that SportAccord enjoys a "close collaborative relationship" with the IOC. (*Id.*)

<sup>5</sup> <https://www.icann.org/en/system/files/files/request-sport-02apr14-en.pdf> (/en/system/files/files/request-sport-02apr14-en.pdf) [PDF, 867 KB]

<sup>6</sup> <https://www.icann.org/en/system/files/files/request-sport-02apr14-en.pdf> (/en/system/files/files/request-sport-02apr14-en.pdf) [PDF, 867 KB]

<sup>7</sup> Although the Requester only requests reconsideration of the ICC (International Chamber of Commerce)'s appointment of the Expert, it also appears to object to the ICC (International Chamber of Commerce)'s response to the Requester's newly-discovered information, stating that the Requester's representative "wrote to the ICC (International Chamber of Commerce) on two occasions to request that the ICC (International Chamber of Commerce) question [the Expert]" about the alleged conflict of interest, but that the ICC (International Chamber of Commerce) "repeatedly declined to do so." (Request, § 8, Pg. 5.) However, this claim is untimely, and the Requester has not identified any policy or procedure that the ICC (International Chamber of Commerce) allegedly violated that would support reconsideration.

<sup>8</sup> Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval, positively affects ICANN (Internet Corporation for Assigned Names and Numbers)'s transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s policies, Bylaws, and Articles of Incorporation.

<sup>9</sup> <https://www.icann.org/en/system/files/files/request-sport-02apr14-en.pdf>  
(/en/system/files/files/request-sport-02apr14-en.pdf) [PDF, 867 KB]

<sup>10</sup> In support of its Request, the Requester references a 31 March 2014 communication the Ombudsman sent to the Board regarding the Expert's alleged conflict of interest, in which the Ombudsman expressed concern and recommended "a rehearing of the objection with a different expert appointed." (Request, § 8, Pg. 11.) However, the Ombudsman's communication, by itself, does not support reconsideration because it does not constitute Board action. Moreover, the Ombudsman's communication has subsequently been withdrawn. As such, it would be premature for the NGPC to consider the Ombudsman's comments on any alleged conflict of interest.



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Our ref FPE/mne/.sport

Flip Petition  
Contact Information Redacted  
+32 (0)2 282 40 82

14 June 2017

By E-mail : [reconsideration@icann.org](mailto:reconsideration@icann.org)

**Members of the ICANN Board**

Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536, USA

Dear Members of the ICANN Board of Directors,

**Re: Reconsideration requests 13-16 and 14-10**

I send you this letter on behalf of dot Sport Limited, Requester in Reconsideration requests 13-16 and 14-10.

I refer to the Board Governance Committee (BGC)'s revised recommendation on reconsideration requests 13-16 and 14-10 of 1 June 2017. Requester submits that the ICANN Board should not accept the BGC's recommendation as:

- The BGC did not take due account of the IRP Declaration in ICDR Case No. 01-15-0002-9483;
- The BGC mischaracterized the conflict of interest;
- The BGC made an incorrect appreciation of the IBA Guidelines on Conflicts of Interest;
- The BGC relies on inaccurate, irrelevant and incomplete information; and
- The BGC did not examine and fails to disclose the discussions between ICANN and the IOC.

**1. The BGC fails to take due account of the IRP Declaration in ICDR Case No. 01-15-0002-9483**

The Panel that ruled in ICDR Case No. 01-15-0002-9483 consisted of eminent experts in the field of rules of ethics and conflicts of interests. The Chair of the Panel, Ms. Wendy Miles, currently acts as Vice President of the ICC Court of Arbitration and as Vice Chair of the IBA Arbitration Committee. In these capacities, she is regularly called upon to deal with questions of ethics and conflicts of interest in alternative dispute resolution, and she is seen as an authority in this field.

On 31 January 2017, this eminent IRP Panel decided:

*"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.”<sup>1</sup>*

In other words, the IRP Panel found that the IBA Conflict Guidelines apply in repeated respects with respect to the allegations of apparent bias. The Panel had reviewed the evidence of apparent bias, and concluded that a rehearing with a different expert appointed was a highly possible remedy to be ordered by the BGC or the ICANN Board. The Panel indeed considered:

- that the actual evidence alleged by Requester “*gives rise to apparent bias*”;<sup>2</sup> and
- “*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.*”<sup>3</sup>

The IRP Panel thus found that it was “highly possible” that the ICANN Board order a rehearing with a different expert appointed to address the apparent bias which results from the Requester’s evidence.

The IRP Panel may have given discretion to the ICANN Board with respect to the specific redress mechanism; however, the IRP Panel was abundantly clear about the fact that apparent bias existed and that the ICANN Board must offer redress.

## **2. The BGC mischaracterized the conflict of interest**

The BGC appears to be bending over backwards in arguing that there was no need for Dr. Tawil to disclose his conflict of interest to rule in the matter between the Requester and SportAccord. Just like ICANN did in the IRP proceedings, the BGC is trying to characterize the relationship of Dr. Tawil’s long time firm clients TyC and DirecTV as *adverse to the IOC*.<sup>4</sup>

This argument did not convince the IRP Panel, which decided that the relationship between Dr. Tawil’s long time firm clients and the IOC gave rise to the direct applicability of the IBA Conflict Guidelines.

Indeed, in assessing Dr. Tawil’s conflict of interest, it is important to unravel the dynamics of the monetized sporting industry. A broadcasting company (such as TyC or DirecTV) which is interested in obtaining broadcasting rights for a major sporting event is not simply adverse to the organizer of the event. The interests of the broadcasting company are very much aligned with the interests of organizations such as the IOC, FIFA and related associations. It would be harmful for Dr. Tawil’s and his law firm’s significant clients to go against the interests of the IOC and its related associations, such as SportAccord. Indeed, because of the large financial interests in sponsoring and broadcasting events such as the Olympic Games or the FIFA World Cup, companies such as TyC and DirecTV make great efforts and concessions to accommodate the interests of the “adverse” party with a view to obtain the broadcasting and/or sponsorship rights. TyC went too far in accommodating the interests of organizers of major sports events, and paid bribes and kickbacks to obtain and retain media rights contracts.<sup>5</sup> That is one of the reasons why a controlling principal of TyC was indicted in May 2015 by the Grand Jury of the United States

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<sup>1</sup> ICDR Case No. 01-15-0002-9483, Final Declaration, § 7.92.

<sup>2</sup> ICDR Case No. 01-15-0002-9483, Final Declaration, § 7.89.

<sup>3</sup> ICDR Case No. 01-15-0002-9483, Final Declaration, § 7.72.

<sup>4</sup> See ICDR Case No. 01-15-0002-9483, ICANN’s Response to Claimant Dot Sport Limited’s Request for Independent Review Process, 8 May 2015, §§48-49; ICDR Case No. 01-15-0002-9483, ICANN’s Sur-Reply to the Reply of Claimant Dot Sport Limited, 21 December 2015, § 35; BGC’s revised recommendation on reconsideration requests 13-16 and 14-10, 1 June 2017, p. 16.

<sup>5</sup> See ICDR Case No. 01-15-0002-9483, Claimant’s Annex 28, p. 38, § 87.

District Court of the Eastern District of New York.<sup>6</sup> The fact that TyC's president is a senior partner in the same law firm where Dr. Tawil is also a senior partner does not remove the Requester's justifiable doubts as to the impartiality and independence of Dr. Tawil to render an expert determination in relation to Requester's application for .sport.

The relationship between SportAccord and the IOC which existed at the time of the expert determination proceedings should also not be minimized, especially in the context of SportAccord's application for .sport. Indeed, ICANN has had confidential discussions with the IOC on .sport, and the IOC supported SportAccord's application for .sport. These facts support a clear affiliation and a commonality of interest between SportAccord and the IOC with respect to the dispute giving rise to Dr. Tawil's expert determination.

The BGC ignores this evidence of apparent bias of Dr. Tawil.

### **3. The BGC made an incorrect appreciation of the IBA Guidelines on Conflicts of Interest**

The IBA Conflict Guidelines contain general standards regarding impartiality, independence and disclosure, as well as lists with practical examples in which the general standards are applied. The IBA Conflict Guidelines specify that "[t]hese lists cannot cover every situation. In all cases, the General Standards should control the outcome."

The general standards provide *inter alia* that a panelist shall disclose to the parties, the arbitration institution or other appointing authority the facts or circumstances that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence.

The BGC failed to examine the General Standards of the IBA Conflict Guidelines. Instead, the BGC made an extremely narrow interpretation of the lists of practical examples in which the General Standards are applied. The BGC completely ignores that Requester's successful challenge of a previously nominated panelist because of his activities in sports law and his involvement with sports federations, such as the IOC, shows that in the eyes of the parties, activities in sports law and involvement with sports federations gave rise to doubts as to a panelist's impartiality or independence. As a result, the fact that Dr. Tawil and his law firm have vested interests in dealings with the IOC, and that Dr. Tawil has been lecturing on dispute resolution in major sport-hosting events at a high-profile conference, should have been disclosed.

The BGC's argument that Dr. Tawil did not have to disclose this information, because the conflict of interest in his case purportedly does not exactly match any of the IBA's practical examples is a tenuous one. The general standard required disclosure. Moreover, Dr. Tawil's conflict of interest closely matches numerous situations on the IBA's Red and Orange lists.

The point is all the stronger, as the IRP Panel considered these arguments made by ICANN, and concluded that apparent bias existed and that it was highly possible that a proper review of the evidence of apparent bias could result in the BGC ordering a rehearing with a different expert appointed.

### **4. The BGC relies on inaccurate and incomplete information**

The BGC seems to attach great weight to a second report by the Ombudsman of 25 August 2014. It is, however, unclear in which circumstances the second report was created. Requester fails to understand why the Ombudsman would have engaged in the drafting of a new report after the

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<sup>6</sup> See ICDR Case No. 01-15-0002-9483, Claimant's Annex 28, P; 14, § 29.

NGPC had rejected dSL's reconsideration request and during the Cooperative Engagement Process (CEP). According to ICANN's interpretation of its Bylaws, the Ombudsman could not act on a complaint concurrently with another accountability mechanism, which the CEP is.<sup>7</sup>

The situation is all the more puzzling as the Ombudsman wrote the following in an email to ICANN of 5 May 2015:

*"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?"<sup>8</sup>*

It is unclear why ICANN elected not to produce the second Ombudsman report before. Moreover, the BGC's reading of the Ombudsman's second report as if Requester lodged a new complaint with the Ombudsman<sup>9</sup> is contradicted by the Ombudsman himself. Indeed, in his communication of 5 May 2015, the Ombudsman declares that he never heard from Requester again.

More importantly, the Ombudsman's findings in his second report are also at odds with the IRP Panel's finding that the BGC should have considered the IBA Conflict Guidelines and any other standards for the requirements of independence and impartiality in neutral, binding decision-making bodies. Following the IRP Declaration, the IRP Panel has examined the second Ombudsman's report, and concluded that the report had no impact on the Panel's findings. As a result, the second Ombudsman's report is of no relevance, especially when the circumstances in which the report was created are unclear.

##### **5. The BGC fails to examine and disclose the discussions between ICANN and the IOC**

Finally, the BGC fails to examine the confidential discussions between ICANN and the IOC on .sport. The fact that the BGC goes against the findings of the IRP Panel and decides not to offer the highly possible redress in the form of a rehearing with a different expert, calls for a close examination and disclosure of the discussions between ICANN and the IOC, as the BGC's recommendation directly benefits an application which is supported by the IOC and which ICANN privately discussed with the IOC.

In view of the above, Requester respectfully requests the ICANN Board to reject the revised recommendation of the BGC, to examine and disclose ICANN's discussions with the IOC, and to order a rehearing of the ICC expert determination on .sport with a different expert.

I thank you for your consideration of this matter.

Yours sincerely,

  
Flip Petillion

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<sup>7</sup> See ICDR Case No. 01-15-0002-9483, ICANN's Response to Claimant Dot Sport Limited's Request for Independent Review Process, 8 May 2015, § 17.

<sup>8</sup> ICDR Case No. 01-15-0002-9483, Final Declaration, § 6.34; Resp. Ex. 26.

<sup>9</sup> BGC's revised recommendation on reconsideration requests 13-16 and 14-10, 1 June 2017, p. 2.

## REFERENCE MATERIALS – BOARD PAPER NO. 2017.06.24.1e

**TITLE:** **Consideration of Reconsideration Request 17-1**

### **Document/Background Links**

The following attachments are relevant to the Board's consideration Reconsideration Request 17-1.

Attachment A is [Reconsideration Request 17-1](#), submitted on 9 March 2017.

Attachment B is the [Supplement to Reconsideration Request 17-1](#), submitted on 16 March 2017.

Attachment C is the [Response from the Ombudsman regarding Request 17-1](#), dated 7 April 2017.

Attachment D is the [BGC Recommendation on Request 17-1 and Attachments 1 through 4](#), issued 1 June 2017.

Attachment E is the [Requestor's Rebuttal to the BGC Recommendation on Request 17-1](#), submitted on 2 June 2017.

Attachment F is the [Requestor's Addendum to the Rebuttal to the BGC Recommendation on Request 17-1](#), submitted on 12 June 2017.

Submitted By: Amy Stathos, Deputy General Counsel

Date Noted: 23 August 2017 23 August 2017

Email: amy.stathos@icann.org

## **Reconsideration Request Form**

Version of 1 October 2016

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

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

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

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

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

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

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

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

**1. Requestor Information**

**Name:** Russ Smith

**Address:** Contact Information Redacted

**Email:** Contact Information Redacted

**Phone Number (optional):**

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

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

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

My domain was ordered transferred under the UDRP and I have filed court action to review the case (1:15-cv-00081-JBS-AMD SMITH v. DIRECTOR'S CHOICE, LLP). For this case I need historical whois data. Verisign has refused my request claiming the data is "sensitive."

According to <https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en> at section 9.3.3 it is ICANN's policy to make whois data public.

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

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

I received the following message from ICANN. It appears to be a "stock" answer and it appears ICANN staff did not review the issues contained in my message:

Dear Russ Smith,

Thank you for submitting a Whois SLA complaint concerning the domain name [directorschoice.com](http://directorschoice.com). ICANN has reviewed and closed your complaint because:



- ICANN does not have contractual authority to address any customer-service related matters that fall outside of the Registrar Accreditation Agreement (RAA) or Registry Agreement (RA) and ICANN policies. Complaints about a registrar or registry's performance that cannot be resolved with that entity may be addressed by private-sector agencies involved in addressing customer complaints (e.g., the Better Business Bureau at <http://www.bbb.org/> or the International Consumer Protection and Enforcement Network <http://www.icpen.org/> ). If you believe your complaint concerns an illegal matter, please contact the appropriate law enforcement agency (which will vary depending on jurisdiction) or you may consult an attorney for legal advice.

ICANN considers this matter now closed.

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

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

3/9/2017

**5. Describe how you believe you are materially and adversely affected by the action or inaction:**

The action will prevent me from seeking a full court review pursuant to the UDRP. ICANN may now be liable under the intentional misconduct provision of the UDRP and may be subject to claims under the Anti-Cybersquatter Protection Act.

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

This is a security issue because unauthorized entities are compiling whois data and selling it. Verisign referred me to these entities but said the data could be unreliable. I understand some of these private services are run by pornographers and others who were involved in massive cybersquatting lawsuits.

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

Please provide a detailed explanation of the facts as you understand they were provided to the Board or the ICANN organization (acting through its staff) prior to the action/inaction and the reasons why ICANN's action or inaction was: (i)

contrary to ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies); (ii) taken or refused to be taken without consideration of material information; or (iii) taken as a result of ICANN's reliance on false or inaccurate relevant information..

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

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

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

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

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

Please keep this guidance in mind when submitting requests.

**Provide the Required Detailed Explanation here:**

It is my understanding that it is ICANN's policy to allow public access to whois data without regard to whether it is "historical." Further, these requirements are part of the agreements ICANN has with the registrars and registries. As

discussed above, the current situation has security implications for the public.

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

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

Ensure there is public access to all whois data. If there is some reason that the historical whois data is not be public then that should be explained at the ICANN web site and an explanation should be provided to the US Dept. of Commerce.

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

(Include in this discussion how the action or inaction complained of has resulted in material harm and adverse impact. To demonstrate material harm and adverse impact, the Requestor must be able to demonstrate well-known requirements: there must be a loss or injury suffered (financial or non-financial) that is a directly and causally connected to ICANN's action or inaction that is the basis of the Reconsideration Request. The Requestor must be able to set out the loss or injury and the direct nature of that harm in specific and particular details. The relief requested must be capable of reversing the harm alleged by the Requestor. Injury or harm caused by third parties as a result of acting in line with the ICANN's decision/act is not a sufficient ground for reconsideration. Similarly, injury or harm that is only of a sufficient magnitude because it was exacerbated by the actions of a third party is also not a sufficient ground for reconsideration.)

I will suffer a monetary loss because I will have the expense of filing subpoenas.

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

Yes

No

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

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

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

No.

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

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

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

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

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

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

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

Russ Smith  
Signature

3/9/2017  
Date

Since I filed the reconsideration request I had additional contacts from ICANN in response to my inquiry.

I was told to search for commercial services that collect and resell whois data. However, I have been told by my registrar that the main source of this historical whois data did not have authorization to collect and resell the whois data. From what I understand many of these services are selling what is essentially “stolen” data. I do not believe it is proper for ICANN staff to recommend users purchase questionable and potentially stolen data on the black market. I previously complained about one of these services and they filed a federal lawsuit against me [Domain Tools LLC v. Smith 2:12-cv-00498] which was dismissed. In any case the data I need is from 2000 and predates any known services offering unauthorized historical data for sale.

I was also referred to the “compliance” department. They stated:

Thank you for your follow-up inquiry on the closed Whois SLA complaint concerning the domain name directorschoice.com. ICANN has reviewed and closed your complaint previously because it was determined from your comments that your complaint did not implicate a breach of an ICANN policy or agreement.

Please note that, ICANN is a private sector, not-for-profit organization with limited technical responsibility for coordinating the unique assignment of Internet domain names and IP addresses. ICANN's authority is purely contractual, and limited to the Registrar Accreditation Agreement (RAA: <https://www.icann.org/resources/pages/registrars/registrars-en>), the Registry Agreements (RA:<http://www.icann.org/en/about/agreements/registries>), and ICANN’s Consensus Policies. ICANN does not have contractual authority to address any customer-service related matters that fall outside of the aforementioned agreements and policies.

The RAA requires ICANN-accredited registrars to provide access to Whois data to the public. Whois data is a collection of data about the registered domain name, its name servers and registrar, the domain name creation date, the domain name expiration date, the contact information for the registered name holder, the technical contact, and the administrative contact – to list a few. Among other things, Whois services are used to identify domain holders for business purposes and to identify parties who are able to correct problems associated with the registered domain.

However, please note, ICANN does not have contractual authority to address complaints about website content, such as historical Whois data found on third-party websites, since these types of consumer complaints are not addressed by the RAA, the RA, or ICANN’s Consensus Policies. If you believe the website content refers to anything illegal, your best course of action is to contact a law enforcement agency in your jurisdiction or to seek legal advice from an attorney.

Sincerely,

ICANN Contractual Compliance

However, the matter has nothing to do with any private contract between me and a registrar. Further, the access to the whois data is an ICANN policy which is posted at <https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en> None of the replies refers to this posted policy as part of the explanation as to why ICANN can’t answer my question about historical whois access.

**Subject:** Re: [reconsider] Reconsideration Request 17-1

**Date:** Friday, April 7, 2017 at 3:58:58 PM Pacific Daylight Time

**From:** Herb Waye (sent by reconsider-bounces@icann.org <reconsider-bounces@icann.org>)

**To:** Reconsideration

**CC:** ombudsman

Reconsideration Request 17-1

Pursuant to Article 4, Section 4.2(l)(iii), I am recusing myself from consideration of Request 17.1.

Best regards,

Herb Waye  
ICANN Ombudsman

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

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

Twitter: @IcannOmbudsman

ICANN Expected Standards of Behavior:

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

Community Anti-Harassment Policy

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

Confidentiality

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

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

**Date:** Friday, April 7, 2017 at 3:46 PM

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

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

**Subject:** Reconsideration Request 17-1

Dear Herb,

ICANN recently received the attached reconsideration request (Request 17-1) (which was submitted on 9 March 2017 and subsequently updated on 16 March 2017) by Russ Smith seeking reconsideration of ICANN Contractual Compliance's investigation of a Whois Service Level Agreement (SLA) complaint concerning the domain name [directorschoice.com](http://directorschoice.com)[[directorschoice.com](http://directorschoice.com)]. The Board Governance Committee (BGC) has determined that Request 17-1 is sufficiently stated pursuant to Article 4, Section 4.2(k) of the ICANN Bylaws. Pursuant the Article 4, Section 4.2(l) of the ICANN Bylaws, a reconsideration request must be sent to the Ombudsman for consideration and evaluation if the request is not summarily dismissed following review by the BGC to determine if the request is sufficiently stated. Specifically, [Section 4.2 \(l\)\[icann.org\]](#) states:

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

- (i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to perform this task to the extent it is within the budget allocated to this task.
- (ii) The Ombudsman shall submit to the Board Governance Committee his or her substantive evaluation of the Reconsideration Request within 15 days of the Ombudsman's receipt of the Reconsideration Request. The Board Governance Committee shall thereafter promptly proceed to review and consideration.
- (iii) For those Reconsideration Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his or her role as the Ombudsman pursuant to [Article 5](#) of these Bylaws, or involving the Ombudsman's conduct in some way, the Ombudsman shall recuse himself or herself and the Board Governance Committee shall review the Reconsideration Request without involvement by the Ombudsman.

Please advise whether you are accepting Request 17-1 for evaluation or whether you are recusing yourself pursuant to the grounds for recusal set forth in Section 4.2(l)(iii). If you are accepting Request 17-1 for evaluation, please note that your substantive evaluation must be provided to the BGC within 15 days of receipt of Request 17-1.

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



**RECOMMENDATION  
OF THE BOARD GOVERNANCE COMMITTEE (BGC)  
RECONSIDERATION REQUEST 17-1  
1 JUNE 2017**

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The Requestor, Russ Smith, seeks reconsideration of the ICANN Contractual Compliance department's decisions to close both his WHOIS Service Level Agreement (SLA) Complaint concerning the domain name directorschoice.com, and his follow-up complaint expressing his dissatisfaction with the handling of his WHOIS SLA Complaint without making the requested historical WHOIS data for directorschoice.com available.

**I. Brief Summary.**

The Requestor is the named registrant for directorschoice.com.<sup>1</sup> The Requestor submitted a WHOIS SLA Complaint essentially asking ICANN to compel Verisign to produce the historical WHOIS data for directorschoice.com, which the Requestor stated Verisign refused to do. The Requestor suggested that making historical WHOIS data publicly available was required under the 2009 Affirmation of Commitments by the United States Department of Commerce and ICANN (AoC)<sup>2</sup> and ICANN's Registrar Accreditation Agreements (RAAs) and Registry Agreements (RAs).

ICANN's Contractual Compliance department reviewed the WHOIS SLA Complaint and concluded that: (i) the RAA does not require registrars to provide historical WHOIS data; (ii) the RAA does not apply to registry operators (i.e. Verisign); and (iii) no other ICANN contractual obligation or any established policy requires registry operators to maintain and provide registrants, or anyone else, with historical WHOIS data. Accordingly, ICANN

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<sup>1</sup> WHOIS lookup, <https://whois.icann.org/pt/lookup?name=directorschoice.com>, at 1 (attached to this Recommendation as Attachment 1).

<sup>2</sup> Request § 2, Pg. 2.

Contractual Compliance advised the Requestor that ICANN does not have the contractual authority to address any “customer-service related matters that fall outside of the Registrar Accreditation Agreement (RAA) or Registry Agreement (RA) and ICANN policies” and thereafter closed the Requestor’s WHOIS SLA Complaint.<sup>3</sup>

On 16 March 2017, the Requestor lodged another complaint with ICANN Contractual Compliance (Complaint Ticket), expressing his dissatisfaction with the handling of his WHOIS SLA Complaint and again essentially requesting that ICANN provide, or compel Verisign to provide, the historical WHOIS data for directorschoice.com.<sup>4</sup> The Contractual Compliance department again determined, and informed the Requestor that the WHOIS SLA Complaint “did not implicate a breach of an ICANN policy or agreement.”<sup>5</sup>

The Requestor claims that reconsideration of ICANN’s decision to close the WHOIS SLA Complaint and Complaint Ticket without action is warranted for two reasons. *First*, the Requestor asserts that by not providing, or not requiring Verisign to provide, the requested historical WHOIS data, ICANN violated established policies, as set forth in: (i) the AoC;<sup>6</sup> and (ii) the terms of ICANN’s contracts with registrars and registries, both of which the Requestor suggests require ICANN “to allow public access to whois [*sic*] data without regard to whether it

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<sup>3</sup> Report ZFH-228-06335 at 2 (attached to this Recommendation as Attachment 2).

<sup>4</sup> Ticket JSW-129-11418, Pg. 1 (attached to this Recommendation as Attachment 3).

<sup>5</sup> *See id.*

<sup>6</sup> Request § 2, Pg. 2. The AoC was terminated on 6 January 2017, but some of the relevant requirements, such as ICANN’s commitment to making available accurate, up-to-date domain name registration information, are enumerated in ICANN’s Bylaws. *See* Letter from Stephen D. Crocker, Chairman of the Board of Directors, ICANN, to Lawrence E. Strickling, Assistant Secretary for Communications & Information, U.S. Dep’t of Commerce, 3 January, 2017; *see also* Letter from Strickling to Crocker, 6 January, 2017, attaching countersigned copy of 3 January letter (“Termination Letter”), *available at* [https://www.ntia.doc.gov/files/ntia/publications/ntia-icann\\_affirmation\\_of\\_commitments\\_01062017.pdf](https://www.ntia.doc.gov/files/ntia/publications/ntia-icann_affirmation_of_commitments_01062017.pdf); ICANN Bylaws, 1 October 2016, Art. 1, § 1.1(a)(i) and Annexes G-1 and G-2.

is ‘historical.’”<sup>7</sup> *Second*, the Requestor claims that the WHOIS SLA Complaint was closed “without consideration of material information” in violation of Article 4, Section 2(c)(ii) of ICANN’s Bylaws.<sup>8</sup>

The BGC has considered Request 17-1 and all relevant materials<sup>9</sup> and recommends that the Board deny Request 17-1 because: (i) neither ICANN’s Mission, Core Values, and Commitments, nor any established ICANN policy, requires ICANN to ensure that *historical* WHOIS data is publicly available; (ii) ICANN considered all material information provided by the Requestor as part of the investigation of the Requestor’s WHOIS SLA Complaint and Complaint Ticket. Therefore, Request 17-1 does not set forth a proper basis for reconsideration.

## **II. Facts.**

### **A. Background Facts.**

The Requestor is the named registrant for directorschoice.com.<sup>10</sup> The Requestor asserts that directorschoice.com was ordered transferred under the UDRP, and that he has filed a separate action challenging the transfer; ICANN is not involved in that action. He claims to “need historical whois [*sic*] data” to support his claims in the pending litigation.<sup>11</sup>

Verisign is the registry operator for .COM. The Requestor states that he requested historical WHOIS data for directorschoice.com from Verisign, but Verisign refused his request because the data is “sensitive.”<sup>12</sup> Then, on 8 March 2017, the Requestor submitted the WHOIS SLA Complaint to ICANN,<sup>13</sup> stating that Verisign “will not make historical whois [*sic*]

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<sup>7</sup> Request § 7, Pg. 4.

<sup>8</sup> ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(c)(ii).

<sup>9</sup> Supplement to Request 17-1, Attachments 1-4.

<sup>10</sup> WHOIS lookup, <https://whois.icann.org/pt/lookup?name=directorschoice.com>, at 1.

<sup>11</sup> Request § 2, Pg. 2.

<sup>12</sup> Request § 2, Pg. 2.

<sup>13</sup> Report ZFH-228-06335 at 1.

information publicly available” to the Requestor and that the Requestor understood that there was an “understanding between ICANN and the DOC [Department of Commerce] which mandates whois [*sic*] data be public without regard to whether it is ‘historical.’”<sup>14</sup> Essentially, Requestor asked ICANN to produce, or compel Verisign to produce, the historical WHOIS data for directorschoice.com.

On 9 March 2017, ICANN’s Contractual Compliance department reviewed the Requestor’s WHOIS SLA Complaint and concluded that the RAA does not require registrars to provide historical WHOIS data, that the RAA does not apply to registry operators (i.e. Verisign), and that there are no other ICANN contractual obligations or any established policies requiring registry operators to maintain and provide registrants with historical WHOIS data.<sup>15</sup> Therefore, ICANN’s Contractual Compliance team advised the Requestor that ICANN does not have contractual authority to address “customer-service related matters that fall outside of the [RAA] or [RA] and ICANN policies,”<sup>16</sup> and closed the WHOIS SLA Complaint.

On the same day, the Requestor submitted Request 17-1. In his email transmitting Request 17-1, the Requestor stated that he was also submitting a complaint to the Ombudsman.<sup>17</sup>

On 10 March 2017, the Requestor submitted the Complaint Ticket, expressing his dissatisfaction with the Contractual Compliance department’s handling of the WHOIS SLA Complaint.<sup>18</sup>

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<sup>14</sup> Report ZFH-228-06335 at 1.

<sup>15</sup> In evaluating Request 17-1, the BGC has considered materials provided by ICANN’s Contractual Compliance department, which are attached to this Recommendation. It has also considered information provided by Contractual Compliance pursuant to Section 4.2(m) of Article 4, as set forth in this Recommendation and made public by the public posting of this Recommendation.

<sup>16</sup> Report ZFH-228-06335 at 2.

<sup>17</sup> 9 March 2017 email from R. Smith to ICANN (attached to this Recommendation as Attachment 4).

<sup>18</sup> Ticket JSW-129-11418, Pg. 1. The Requestor appended to the Complaint Ticket another complaint that he submitted to ICANN’s Global Support team regarding the same issue.

On 16 March 2017, ICANN Contractual Compliance considered and responded to the Complaint Ticket, advising the Requestor that his complaint did not implicate a breach of an ICANN policy or agreement.<sup>19</sup> Later that day, the Requestor supplemented Request 17-1 to incorporate the response he received to the Complaint Ticket.<sup>20</sup> The Requestor claims that the ICANN Contractual Compliance department incorrectly addressed the WHOIS SLA Complaint as though it concerned a “private contract between [the Requestor] and a registrar,” did not reference the AoC, and did not “explain . . . why ICANN can’t answer my question about historical WHOIS access.”<sup>21</sup>

The Requestor argues that the closure of the WHOIS SLA Complaint and Complaint Ticket violated ICANN’s Mission, Commitments, Core Values and/or established ICANN policy in two ways. *First*, the Requestor asserts that the 9 and 16 March 2017 decisions by the ICANN Contractual Compliance department violated ICANN’s established policy to “allow public access to [WHOIS] data without regard to whether it is ‘historical,’”<sup>22</sup> as set forth in the AoC<sup>23</sup> and ICANN’s contracts with registries and registrars.<sup>24</sup> *Second*, he believes that ICANN’s Contractual Compliance department closed the WHOIS SLA Complaint “without consideration of material information” in violation of Article 4, Section 4.2(c)(ii) of ICANN’s Bylaws.<sup>25</sup>

The Requestor now seeks reconsideration of the ICANN’s closing the WHOIS SLA Complaint and Complaint Ticket. The Requestor states that he will be unable to seek a full court review of the UDRP transfer and will incur the monetary expense of filing subpoenas to obtain

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<sup>19</sup> Ticket JSW-129-11418, Pg. 1.

<sup>20</sup> Supplement to Request 17-1.

<sup>21</sup> Supplement to Request 17-1, Pg. 1.

<sup>22</sup> Request § 7, Pg. 4.

<sup>23</sup> Request § 2, Pg. 2.

<sup>24</sup> Request § 7, Pg. 4.

<sup>25</sup> ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(c)(ii).

historical WHOIS data for the domain name directorschoice.com if ICANN does not provide the information or direct Verisign to provide that data to him.<sup>26</sup>

The Requestor submitted a copy of Request 17-1 to the Ombudsman concurrently with his submission to the BGC.<sup>27</sup> On 6 April 2017, the BGC determined that Request 17-1 was sufficiently stated pursuant to Article 4, Section 4.2(k) of the ICANN Bylaws.

On 7 April 2017, ICANN transmitted Request 17-1 to the Ombudsman for consideration pursuant to Article 4, Section 4.2(l) of the ICANN Bylaws. The Ombudsman recused himself pursuant to Article 4, Section 4.2(l)(iii) of ICANN's Bylaws.<sup>28</sup> Accordingly, the BGC reviews Request 17-1 pursuant to Article 4, Sections 4.2(l)(iii) and 4.2(q).

### **B. Relief Requested**

The Requestor asks ICANN to “[e]nsure there is public access to all whois [*sic*] data,” or in the alternative “explain[] at the ICANN web site” the “reason that the historical whois [*sic*] data is not . . . public and [requests that] and explanation . . . be provided to the US Dept. of Commerce.”<sup>29</sup>

### **III. Issue.**

The issues are as follows:

1. Whether the ICANN Contractual Compliance department's decision to close the WHOIS SLA Complaint and Complaint Ticket without action contravenes any established ICANN policy.<sup>30</sup>
2. Whether the ICANN Contractual Compliance department closed the WHOIS

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<sup>26</sup> Request § 9, Pg. 5.

<sup>27</sup> 9 March 2017 email from R. Smith to ICANN.

<sup>28</sup> ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(l)(iii); *see also* Response from Ombudsman Regarding Request 17-1, Pg. 1.

<sup>29</sup> Request § 8, Pg. 5.

<sup>30</sup> 2009 AoC, § 9.3.1; *see also* Request § 2, Pg. 2.

SLA Complaint without considering material information.

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

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

- (i) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or
- (iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.<sup>31</sup>

Pursuant to Article 4, Section 4.2(k) of the Bylaws, if the BGC determines that the Request is sufficiently stated, the Request is sent to the Ombudsman for review and consideration.<sup>32</sup> If the Ombudsman recuses himself from the matter, the BGC reviews the Request without involvement by the Ombudsman, and provides a recommendation to the Board.<sup>33</sup> Denial of a request for reconsideration of ICANN action or inaction is appropriate if the BGC recommends and the Board determines that the requesting party has not satisfied the reconsideration criteria set forth in the Bylaws.<sup>34</sup>

On 6 April 2017, the BGC determined that the Request is sufficiently stated and sent the Request to the Ombudsman for review and consideration.<sup>35</sup> The Ombudsman thereafter recused

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<sup>31</sup> ICANN Bylaws, 1 October 2016, Art. 4, §§ 4.2(a), (c).

<sup>32</sup> ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(l).

<sup>33</sup> ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(l)(iii).

<sup>34</sup> ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(e)(vi), (q), (r).

<sup>35</sup> Response from Ombudsman Regarding Request 17-1, Pg. 2.

himself from this matter.<sup>36</sup> Accordingly, the BGC has reviewed the Request and issues this Recommendation.

**V. Analysis and Rationale.**

**A. No Established Policy Requires ICANN to Make Historical WHOIS Data Available to the Public.**

No established policy or procedure requires ICANN to make historical WHOIS data available to the public. Accordingly, the Requestor cannot identify any ICANN established policies or procedures that require disclosure of historical WHOIS data. The WHOIS system “is the system that asks the question, *who is* responsible for a domain name or an IP address.”<sup>37</sup> The WHOIS system does not, and was never intended to, ask the question, “*who was*” responsible for a domain name or an IP address. Accordingly, the WHOIS lookup tool that ICANN maintains on its website enables the public to identify the *current* domain name registrant—not all prior registrants of the domain name.<sup>38</sup> ICANN makes this clear on its website, stating that “ICANN does not generate, collect, retain or store the results shown other than for the transitory duration necessary to show these results in response to real-time queries.”<sup>39</sup> As such, ICANN did not violate ICANN’s Mission, Commitments, Core Values or any established ICANN policies in its handling of the WHOIS SLA Complaint and Complaint Ticket.

**1. The AoC Was Terminated on 6 January 2017, But Did Not Require ICANN to Make Historical WHOIS Data Publicly Available In Any Event.**

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<sup>36</sup> Response from Ombudsman Regarding Request 17-1, Pg. 1.

<sup>37</sup> <https://whois.icann.org/en/about-whois> (emphasis in original).

<sup>38</sup> <https://whois.icann.org/en> (emphasis added).

<sup>39</sup> <https://whois.icann.org/en/history-whois>.



The Requestor claims<sup>40</sup> that ICANN violated policy established in the AoC when it closed his WHOIS SLA Complaint and Complaint Ticket, because he believes that the AoC requires ICANN to “make whois data public, . . . without regard to whether it is ‘historical.’”<sup>41</sup> However, the Requestor’s argument is unavailing, for two reasons.

First, the AoC was terminated on 6 January 2017.<sup>42</sup> Therefore, it was not an “established ICANN policy” on 9 March 2017, when ICANN closed the WHOIS SLA Complaint or on 16 March 2017, when it closed the Complaint Ticket. Because the AoC was not in effect at the time of the ICANN staff action, a violation of it (even if one had occurred, which it did not) would not support reconsideration.

Second, even if the AoC were still in effect, the Requestor misstates ICANN’s obligations set forth in the AoC. In relevant part, the 2009 AoC required ICANN to “implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information.”<sup>43</sup> While the Requestor claims that this language required ICANN to make available “historical” WHOIS data, a plain reading of the AoC confirms that the Requestor’s reading of the AoC is not supported, as the AoC does not reference “historical” data at all.<sup>44</sup> To the contrary, when discussing the WHOIS data ICANN was expected to make available, the AoC referred to the “registrant” in the present tense, not to prior registrants, thus supporting the notion that ICANN’s obligations extended only to current WHOIS data. Accordingly, the AoC has never required

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<sup>40</sup> As previously noted, the Requestor cited section 9.3.3 of the 2009 AoC in support of Request 17-1, but the 2009 AoC does not contain a section 9.3.3. The relevant section is 9.3.1, which the BGC analyzes here.

<sup>41</sup> Request § 2, Pg. 2; *id.* § 7, Pg. 4.

<sup>42</sup> Termination Letter.

<sup>43</sup> 2009 AoC, § 9.3.1.

<sup>44</sup> *See* 2009 AoC, § 9.3.1.

ICANN to make historical WHOIS data available and ICANN’s responses to the Requestor’s WHOIS SLA Complaint and Complaint Ticket would not have violated established ICANN policy even if the AoC was still in effect.

To the extent that ICANN’s obligations in the AoC were incorporated into ICANN’s Bylaws, the Bylaws also do not require ICANN to make historical WHOIS data available. Rather, the Bylaws explicitly reference “up-to-date,” meaning *current*, WHOIS data.<sup>45</sup> In particular, part of ICANN’s Mission is to “coordinate[] the development and implementation of policies concerning the registration of second-level domain names,” including developing policies for the “maintenance of and access to accurate and *up-to-date information* concerning registered names[,], name servers[, and] domain name registrations.”<sup>46</sup> The Requestor does not argue that ICANN failed to provide accurate or up-to-date information on registered names, name servers, or domain name registrations.

## **2. ICANN’s Contracts with Registries and Registrars Do Not Require ICANN to Make Historical WHOIS Data Publicly Available.**

The Requestor claims that ICANN’s contracts with registries and registrars require ICANN to “allow public access to whois [*sic*] data without regard to whether it is ‘historical.’”<sup>47</sup> The Requestor is incorrect.

ICANN’s Registry Agreement with Verisign for the .COM registry (.COM RA) requires Verisign to “operate a WHOIS service . . . providing free public query-based access to *up-to-date* data concerning domain name and nameserver registrations.”<sup>48</sup> This demonstrates that the

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<sup>45</sup> ICANN Bylaws, 1 October 2016, Annexes G-1, G-2.

<sup>46</sup> ICANN Bylaws, 1 October 2016, Art. 1, § 1.1(a)(i) and Annexes G-1 and G-2 (emphasis added).

<sup>47</sup> Request § 7, Pg. 4.

<sup>48</sup> .COM RA, Appendix 5, available at <https://www.icann.org/resources/pages/appendix-05-2012-12-07-en>.

obligations in the .COM RA extend only to *current*, not *historical*, registration information.<sup>49</sup> Appendix 5 provides an example WHOIS display,<sup>50</sup> which again identifies *current* information, and makes no reference to *historical* WHOIS data.<sup>51</sup> No other portion of the .COM RA (or any other registry agreement ICANN maintains with a registry operator) makes any reference to historical WHOIS data.<sup>52</sup> Therefore, Verisign is not required under the .COM RA to provide the data that the Requestor seeks, and ICANN had no grounds under the .COM RA to compel Verisign to provide that information.<sup>53</sup>

The Requestor also argues that the RAA required ICANN and the registrar to make historical WHOIS data available. The RAA requires registrars to operate a WHOIS service which provides free access to, among other things, “[t]he name . . . of the Registered Name Holder” (i.e. the registrant)—again, in the present tense.<sup>54</sup> Further, the RAA requires the registrar to validate registrant information only as it pertains to the *current* registrant,<sup>55</sup> the registrar is required to retain that information for “the duration of [the registrant’s registration of the domain name] and for a period of two additional years thereafter.”<sup>56</sup> The Requestor registered the domain name directorschoice.com on March 7, 2000.<sup>57</sup> Accordingly, assuming the

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<sup>49</sup> *Id.*; .COM RA, available at <https://www.icann.org/resources/pages/com-2012-12-07-en>.

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

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> 2013 RAA, § 3.3.1, available at <https://www.icann.org/en/system/files/files/approved-with-specs-27jun13-en.pdf>. The 2009 RAA is identical in substance. 2009 RAA, § 3.2.1, available at <https://www.icann.org/resources/pages/ra-agreement-2009-05-21-en#3>.

<sup>55</sup> 2013 RAA § 2.1, available at <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#whois-accuracy>.

<sup>56</sup> 2013 RAA § 6.1.1, available at <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#data-retention>.

<sup>57</sup> WHOIS lookup, <https://whois.icann.org/pt/lookup?name=directorschoice.com>, at 1.

domain name was previously registered to a different registrant, under the RAA, the registrar was only required to retain that information until no later than March 7, 2002.

The .COM RA and RAA do not require *ICANN* to make *any* WHOIS data available. The .COM RA requires Verisign to do so.<sup>58</sup> Under the current RA, ICANN is only entitled to “thin” WHOIS data—the registrar of record for each domain name—from Verisign.<sup>59</sup> ICANN is not entitled to *any* registrant data under the .COM RA. Accordingly, ICANN is unable to provide the WHOIS data that the Requestor seeks.

Likewise, the RAA requires the registrar, not ICANN, to make the referenced WHOIS data available. To be sure, as previously noted, “ICANN does not generate, collect, retain or store the [WHOIS lookup] results shown other than for the transitory duration necessary to show these results in response to real-time queries.”<sup>60</sup> In other words, ICANN does not maintain WHOIS data, and therefore is unable to provide access to it in all events. Accordingly, reconsideration is not warranted on account of the obligations the Requestor erroneously believes derive from ICANN’s contracts with registries and registrars.

#### **B. ICANN Staff Considered All Material Information.**

The Request also appears to claim that ICANN closed the WHOIS SLA Complaint “without consideration of material information” in violation of Article 4, Section 2(c)(ii) of ICANN’s Bylaws,<sup>61</sup> insofar as he claims that ICANN “did not review the issues contained in” the WHOIS SLA Complaint before closing it.<sup>62</sup> The Requestor has not submitted any evidence

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<sup>58</sup> .COM RA, Appendix 5, available at <https://www.icann.org/resources/pages/appendix-05-2012-12-07-en>.

<sup>59</sup> See Thick Whois Transition Policy for .COM, .NET and .JOBS, available at <https://www.icann.org/resources/pages/thick-whois-transition-policy-2017-02-01-en>.

<sup>60</sup> <https://whois.icann.org/en/history-whois>.

<sup>61</sup> ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(c)(ii).

<sup>62</sup> Request § 2, Pg. 2.

establishing—or even suggesting—that ICANN’s Contractual Compliance department did not review all material information concerning the WHOIS SLA Complaint prior to furnishing the Requestor with its response. Rather, the Requestor appears to be dissatisfied with the response provided, which is not a basis for reconsideration.

As part of its evaluation of Request 17-1, the BGC asked whether ICANN’s Contractual Compliance department considered all material information in its evaluation of the WHOIS SLA Complaint and Complaint Ticket.<sup>63</sup> ICANN’s Contractual Compliance confirmed that it considered all information provided by the Requestor.

## **VI. Recommendation**

The BGC has considered the merits of Request 17-1, and, based on the foregoing, concludes that ICANN did not violate ICANN’s Mission, Commitments and Core Values or established ICANN policy(ies) in its treatment of the WHOIS SLA Complaint or the Complaint Ticket, nor did it fail to consider all material information, when it closed the WHOIS SLA Complaint. Therefore, the BGC recommends that the Board deny Request 17-1.

In terms of the timing of this decision, Section 4.2(q) of Article 4 of the Bylaws provides that the BGC shall make a final recommendation with respect to a reconsideration request within thirty days following receipt of the reconsideration request involving matters for which the Ombudsman recuses himself or herself, unless impractical. Request 17-1 was submitted on 9 March 2017. On 16 March 2017, the Requestor supplemented Request 17-1. To satisfy the thirty-day deadline, the BGC would have to have acted by 15 April 2017. Due to scheduling, the first opportunity that the BGC has to consider Request 17-1 is 1 June 2017, which is within 90 days of receiving Request 17-1.<sup>64</sup>

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<sup>63</sup> ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(m).

<sup>64</sup> ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(q).

## ATTACHMENT 1

# ICANN WHOIS

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*Showing results for: DIRECTORSCHOICE.COM*

Original Query: directorschoice.com

## Contact Information

### Registrant Contact

Name: Russ Smith

Organization: Russ Smith

Mailing Address: PO Box 597, Moorestown NJ 08057 US

Phone: +1.8565810704

Ext:

Fax:

Fax Ext:

Email:whois716@foi.com

### Admin Contact

Name: Russ Smith

Organization: Russ Smith

Mailing Address: PO Box 597, Moorestown NJ 08057 US

Phone: +1.8565810704

Ext:

Fax:

Fax Ext:

Email:whois716@foi.com

### Tech Contact

Name: Russ Smith

Organization: Russ Smith

Mailing Address: PO Box 597, Moorestown NJ 08057 US

Phone: +1.8565810704

Ext:

Fax:

Fax Ext:  
Email:whois716@foi.com

## Registrar

WHOIS Server: whois.tucows.com  
URL: <http://tucowsdomains.com>  
Registrar: TUCOWS, INC.  
IANA ID: 69  
Abuse Contact Email:domainabuse@tucows.com  
Abuse Contact Phone: +1.4165350123

## Status

Domain Status:clientTransferProhibited <https://icann.org/epp#clientTransferProhibited>  
Domain Status:clientUpdateProhibited <https://icann.org/epp#clientUpdateProhibited>

## Important Dates

Updated Date: 2016-07-28  
Created Date: 2000-03-07  
Registration Expiration Date: 2018-03-07

## Name Servers

IVY.NS.CLOUDFLARE.COM  
WOZ.NS.CLOUDFLARE.COM

## Raw WHOIS Record

Domain Name: DIRECTORSCHOICE.COM  
Domain ID: 21740219\_DOMAIN\_COM-VRSN  
Registrar WHOIS Server: whois.tucows.com



Registrar URL: <http://tuowdomains.com>  
Updated Date: 2016-07-28T13:33:06Z  
Creation Date: 2000-03-07T16:11:07Z  
Registrar Registration Expiration Date: 2018-03-07T16:11:07Z  
Registrar: TUCOWS, INC.  
Registrar IANA ID: 69  
Registrar Abuse Contact Email: [domainabuse@tuowdomains.com](mailto:domainabuse@tuowdomains.com)  
Registrar Abuse Contact Phone: +1.4165350123  
Domain Status: clientTransferProhibited  
<https://icann.org/epp#clientTransferProhibited>  
Domain Status: clientUpdateProhibited  
<https://icann.org/epp#clientUpdateProhibited>  
Registry Registrant ID:  
Registrant Name: Russ Smith  
Registrant Organization: Russ Smith  
Registrant Street: PO Box 597  
Registrant City: Moorestown  
Registrant State/Province: NJ  
Registrant Postal Code: 08057  
Registrant Country: US  
Registrant Phone: +1.8565810704  
Registrant Phone Ext:  
Registrant Fax:  
Registrant Fax Ext:  
Registrant Email: [whois716@foi.com](mailto:whois716@foi.com)  
Registry Admin ID:  
Admin Name: Russ Smith  
Admin Organization: Russ Smith  
Admin Street: PO Box 597  
Admin City: Moorestown  
Admin State/Province: NJ  
Admin Postal Code: 08057  
Admin Country: US  
Admin Phone: +1.8565810704  
Admin Phone Ext:  
Admin Fax:  
Admin Fax Ext:  
Admin Email: [whois716@foi.com](mailto:whois716@foi.com)  
Registry Tech ID:  
Tech Name: Russ Smith  
Tech Organization: Russ Smith  
Tech Street: PO Box 597  
Tech City: Moorestown  
Tech State/Province: NJ  
Tech Postal Code: 08057  
Tech Country: US  
Tech Phone: +1.8565810704  
Tech Phone Ext:  
Tech Fax:  
Tech Fax Ext:  
Tech Email: [whois716@foi.com](mailto:whois716@foi.com)

Name Server: IVY.NS.CLOUDFLARE.COM  
Name Server: WOZ.NS.CLOUDFLARE.COM  
DNSSEC: unsigned  
URL of the ICANN WHOIS Data Problem Reporting System:  
<http://wdprs.internic.net/>  
>>> Last update of WHOIS database: 2016-07-28T13:33:06Z <<<

"For more information on Whois status codes, please visit  
<https://icann.org/epp>"

The Data in the Tucows Registrar WHOIS database is provided to you by  
Tucows  
for information purposes only, and may be used to assist you in  
obtaining  
information about or related to a domain name's registration record.

Tucows makes this information available "as is," and does not guarantee  
its  
accuracy.

By submitting a WHOIS query, you agree that you will use this data only  
for  
lawful purposes and that, under no circumstances will you use this data  
to:

a) allow, enable, or otherwise support the transmission by e-mail,  
telephone, or facsimile of mass, unsolicited, commercial advertising or  
solicitations to entities other than the data recipient's own existing  
customers; or (b) enable high volume, automated, electronic processes  
that  
send queries or data to the systems of any Registry Operator or  
ICANN-Accredited registrar, except as reasonably necessary to register  
domain names or modify existing registrations.

The compilation, repackaging, dissemination or other use of this Data is  
expressly prohibited without the prior written consent of Tucows.

Tucows reserves the right to terminate your access to the Tucows WHOIS  
database in its sole discretion, including without limitation, for  
excessive  
querying of the WHOIS database or for failure to otherwise abide by this  
policy.

Tucows reserves the right to modify these terms at any time.

By submitting this query, you agree to abide by these terms.

NOTE: THE WHOIS DATABASE IS A CONTACT DATABASE ONLY. LACK OF A DOMAIN  
RECORD DOES NOT SIGNIFY DOMAIN AVAILABILITY.

## ATTACHMENT 2

ICANN

## ZFH-228-06335: Whois SLA Problem Report on: directorschoice.com

**Department:** Whois SLA**Owner:** Elif Karabag**Type:** Issue**Status:** Closed**Priority:** Normal**Created:** 08 March 2017 12:21 AM **Updated:** 08 March 2017 12:21 AM

Whois SLA

**Whois SLA Resolved Code** Customer service

WHOIS

**Registrar Contact** Contact Information Redacted**Reporter Organization****Other Domains****Description**

Verisign will not make historical whois information publicly available claiming the information is "sensitive." However, public whois data cannot become sensitive just because someone updates their records. I understand there is an understanding between ICANN and DOC which mandates whois data be public without regard to whether it is "historical." I am a party to a lawsuit (1:15-cv-00081-JBS-AMD SMITH v. DIRECTOR'S CHOICE) and I need the information for the conduct of the case.

**Registrar Name** Tucows Domains Inc.**Reporter Telephone Number****Complaint Type** 2\_not\_meet\_sla**IANA ID** 69**Registry Name****Reporter Name** Russ Smith**Reporter Email** Contact Information Redacted**Anonymous Submission****Anonymous Reason****Domain Name** directorschoice.com**Registrant Name****Registrant Address****Administrative Contact Name****Administrative Contact Address****Administrative Contact Phone****Registrar Secondary Contact** not-found-in-radar**Registry Secondary Contact****ID of Parent Ticket****From Bulk Upload****RAA Version** 2013**Accreditation Date** 2013-12-12**Registrar Abuse Contact** not-found-in-radar**Registrar Abuse Contact Phone** not-found-in-radar**Reseller**

WHOIS service data

**Report ID** 83cd472a33c54292dd5e46a08b2590eef749071b**Problem Mask****Closed Email Sent** 1

GENERIC REGISTRY

**TLD****Country****Mailing Address****State/Region****Postcode****City****Registry Compliance Contact Name****Registry Compliance Email Address****Registry Primary Contact Name****Registry Primary Contact Email**

# Posts

Tickets processing ...

(User)

Dear Russ Smith,

Thank you for submitting a Whois SLA complaint concerning the domain name directorschoice.com. ICANN has reviewed and closed your complaint because:

- ICANN does not have contractual authority to address any customer-service related matters that fall outside of the Registrar Accreditation Agreement (RAA) or Registry Agreement (RA) and ICANN policies. Complaints about a registrar or registry's performance that cannot be resolved with that entity may be addressed by private-sector agencies involved in addressing customer complaints (e.g., the Better Business Bureau at <http://www.bbb.org/> or the International Consumer Protection and Enforcement Network <http://www.icpen.org/> ). If you believe your complaint concerns an illegal matter, please contact the appropriate law enforcement agency (which will vary depending on jurisdiction) or you may consult an attorney for legal advice.

ICANN considers this matter now closed.

Please do not reply to the email. If you require future assistance, please email [compliance@icann.org](mailto:compliance@icann.org); if you have a new complaint, please submit it at <http://www.icann.org/resources/compliance/complaints> .

ICANN is requesting your feedback on this closed complaint. Please complete this optional survey at <https://www.surveymonkey.com/s/8F2Z6DP?ticket=ZFH-228-06335> .

Sincerely,

ICANN Contractual Compliance

#####

The problem summary

Time of submission/processing: Wed Mar 8 00:13:08 2017

Reporter Name: Russ Smith

Description of problem: Verisign will not make historical whois information publically available claiming the information is "sensitive." However, public whois data cannot become sensitive just because someone updates their records. I understand there is an understanding between ICANN and DOC which mandates whois data be public without regard to whether it is "historical." I am a party to a lawsuit (1:15-cv-00081-JBS-AMD SMITH v. DIRECTOR'S CHOICE) and I need the information for the conduct of the case.

The whois at the time of processing is:

REGISTRAR WHOIS:

Domain Name: DIRECTORSCHOICE.COM  
Domain ID: 21740219\_DOMAIN\_COM-VRSN  
Registrar WHOIS Server: whois.tucows.com  
Registrar URL: <http://tucowsdomains.com>  
Updated Date: 2016-07-28T13:33:06Z  
Creation Date: 2000-03-07T16:11:07Z  
Registrar Registration Expiration Date: 2018-03-07T16:11:07Z  
Registrar: TUCOWS, INC.  
Registrar IANA ID: 69  
Registrar Abuse Contact Email: [domainabuse@tucows.com](mailto:domainabuse@tucows.com)  
Registrar Abuse Contact Phone: +1.4165350123  
Domain Status: clientTransferProhibited  
<https://icann.org/epp#clientTransferProhibited>  
Domain Status: clientUpdateProhibited  
<https://icann.org/epp#clientUpdateProhibited>  
Registry Registrant ID:  
Registrant Name: Russ Smith  
Registrant Organization: Russ Smith  
Registrant Street: PO Box 597  
Registrant City: Moorestown  
Registrant State/Province: NJ  
Registrant Postal Code: 08057  
Registrant Country: US  
Registrant Phone: +1.8565810704

Registrant Phone Ext:  
Registrant Fax:  
Registrant Fax Ext:  
Registrant Email: [whois716@foi.com](mailto:whois716@foi.com)  
Registry Admin ID:  
Admin Name: Russ Smith  
Admin Organization: Russ Smith  
Admin Street: PO Box 597  
Admin City: Moorestown  
Admin State/Province: NJ  
Admin Postal Code: 08057  
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Admin Phone: +1.8565810704  
Admin Phone Ext:  
Admin Fax:  
Admin Fax Ext:  
Admin Email: [whois716@foi.com](mailto:whois716@foi.com)  
Registry Tech ID:  
Tech Name: Russ Smith  
Tech Organization: Russ Smith  
Tech Street: PO Box 597  
Tech City: Moorestown  
Tech State/Province: NJ  
Tech Postal Code: 08057  
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Tech Phone: +1.8565810704  
Tech Phone Ext:  
Tech Fax:  
Tech Fax Ext:  
Tech Email: [whois716@foi.com](mailto:whois716@foi.com)  
Name Server: IVY.NS.CLOUDFLARE.COM  
Name Server: WOZ.NS.CLOUDFLARE.COM  
DNSSEC: unsigned  
URL of the ICANN WHOIS Data Problem Reporting System:  
<http://wdprs.internic.net/>  
>>> Last update of WHOIS database: 2016-07-28T13:33:06Z <<<

"For more information on Whois status codes, please visit  
<https://icann.org/epp>"

The Data in the Tucows Registrar WHOIS database is provided to you by  
Tucows  
for information purposes only, and may be used to assist you in obtaining  
information about or related to a domain name's registration record.

Tucows makes this information available "as is," and does not guarantee its  
accuracy.

By submitting a WHOIS query, you agree that you will use this data only for  
lawful purposes and that, under no circumstances will you use this data to:  
a) allow, enable, or otherwise support the transmission by e-mail,  
telephone, or facsimile of mass, unsolicited, commercial advertising or  
solicitations to entities other than the data recipient's own existing  
customers; or (b) enable high volume, automated, electronic processes that  
send queries or data to the systems of any Registry Operator or  
ICANN-Accredited registrar, except as reasonably necessary to register  
domain names or modify existing registrations.

The compilation, repackaging, dissemination or other use of this Data is  
expressly prohibited without the prior written consent of Tucows.

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database in its sole discretion, including without limitation, for  
excessive  
querying of the WHOIS database or for failure to otherwise abide by this  
policy.

Tucows reserves the right to modify these terms at any time.

By submitting this query, you agree to abide by these terms.

NOTE: THE WHOIS DATABASE IS A CONTACT DATABASE ONLY. LACK OF A DOMAIN RECORD DOES NOT SIGNIFY DOMAIN AVAILABILITY.

REGISTRY WHOIS:

Whois Server Version 2.0

Domain Name: DIRECTORSCHOICE.COM  
Registrar: TUCOWS DOMAINS INC.  
Sponsoring Registrar IANA ID: 69  
Whois Server: whois.tucows.com  
Referral URL: <http://www.tucowsdomains.com>  
Name Server: IVY.NS.CLOUDFLARE.COM  
Name Server: WOZ.NS.CLOUDFLARE.COM  
Status: clientTransferProhibited  
<https://icann.org/epp#clientTransferProhibited>  
Status: clientUpdateProhibited  
<https://icann.org/epp#clientUpdateProhibited>  
Updated Date: 28-jul-2016  
Creation Date: 07-mar-2000  
Expiration Date: 07-mar-2018

For more information on Whois status codes, please visit <https://icann.org/epp>

Registrar: TUCOWS DOMAINS INC.  
Whois Server: whois.tucows.com

#####

Posted on: 09 March 2017 01:17 PM

**Russ Smith**

The problem summary

(User)

Time of submission/processing: Wed Mar 8 00:13:08 2017  
Reporter Name: Russ Smith  
Description of problem: Verisign will not make historical whois information publically available claiming the information is &quot;sensitive.&quot; However, public whois data cannot become sensitive just because someone updates their records. I understand there is an understanding between ICANN and DOC which mandates whois data be public without regard to whether it is &quot;historical.&quot; I am a party to a lawsuit (1:15-cv-00081-JBS-AMD SMITH v. DIRECTOR&#039;S CHOICE) and I need the information for the conduct of the case.

The whois at the time of processing is:

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Registrar WHOIS Server: whois.tucows.com  
Registrar URL: <http://tucowsdomains.com>  
Updated Date: 2016-07-28T13:33:06Z  
Creation Date: 2000-03-07T16:11:07Z  
Registrar Registration Expiration Date: 2018-03-07T16:11:07Z

Registrar: TUCOWS, INC.  
Registrar IANA ID: 69  
Registrar Abuse Contact Email: [domainabuse@tuows.com](mailto:domainabuse@tuows.com)  
Registrar Abuse Contact Phone: +1.4165350123  
Domain Status: clientTransferProhibited  
<https://icann.org/epp#clientTransferProhibited>  
Domain Status: clientUpdateProhibited  
<https://icann.org/epp#clientUpdateProhibited>  
Registry Registrant ID:  
Registrant Name: Russ Smith  
Registrant Organization: Russ Smith  
Registrant Street: PO Box 597  
Registrant City: Moorestown  
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Registrant Postal Code: 08057  
Registrant Country: US  
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Registrant Phone Ext:  
Registrant Fax:  
Registrant Fax Ext:  
Registrant Email: [whois716@foi.com](mailto:whois716@foi.com)  
Registry Admin ID:  
Admin Name: Russ Smith  
Admin Organization: Russ Smith  
Admin Street: PO Box 597  
Admin City: Moorestown  
Admin State/Province: NJ  
Admin Postal Code: 08057  
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Admin Phone: +1.8565810704  
Admin Phone Ext:  
Admin Fax:  
Admin Fax Ext:  
Admin Email: [whois716@foi.com](mailto:whois716@foi.com)  
Registry Tech ID:  
Tech Name: Russ Smith  
Tech Organization: Russ Smith  
Tech Street: PO Box 597  
Tech City: Moorestown  
Tech State/Province: NJ  
Tech Postal Code: 08057  
Tech Country: US  
Tech Phone: +1.8565810704  
Tech Phone Ext:  
Tech Fax:  
Tech Fax Ext:  
Tech Email: [whois716@foi.com](mailto:whois716@foi.com)  
Name Server: IVY.NS.CLOUDFLARE.COM  
Name Server: WOZ.NS.CLOUDFLARE.COM  
DNSSEC: unsigned  
URL of the ICANN WHOIS Data Problem Reporting System:  
<http://wdprs.internic.net/>  
>>> Last update of WHOIS database: 2016-07-28T13:33:06Z <<<

"For more information on Whois status codes, please visit  
<https://icann.org/epp>"

The Data in the Tucows Registrar WHOIS database is provided to you by  
Tucows  
for information purposes only, and may be used to assist you in obtaining  
information about or related to a domain name's registration record.

Tucows makes this information available "as is," and does not guarantee its  
accuracy.

By submitting a WHOIS query, you agree that you will use this data only for  
lawful purposes and that, under no circumstances will you use this data to:  
a) allow, enable, or otherwise support the transmission by e-mail,



telephone, or facsimile of mass, unsolicited, commercial advertising or solicitations to entities other than the data recipient's own existing customers; or (b) enable high volume, automated, electronic processes that send queries or data to the systems of any Registry Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

The compilation, repackaging, dissemination or other use of this Data is expressly prohibited without the prior written consent of Tucows.

Tucows reserves the right to terminate your access to the Tucows WHOIS database in its sole discretion, including without limitation, for excessive querying of the WHOIS database or for failure to otherwise abide by this policy.

Tucows reserves the right to modify these terms at any time.

By submitting this query, you agree to abide by these terms.

NOTE: THE WHOIS DATABASE IS A CONTACT DATABASE ONLY. LACK OF A DOMAIN RECORD DOES NOT SIGNIFY DOMAIN AVAILABILITY.

REGISTRY WHOIS:

Whois Server Version 2.0

Domain Name: DIRECTORSCHOICE.COM  
Registrar: TUCOWS DOMAINS INC.  
Sponsoring Registrar IANA ID: 69  
Whois Server: whois.tucows.com  
Referral URL: <http://www.tucowsdomains.com>  
Name Server: IVY.NS.CLOUDFLARE.COM  
Name Server: WOZ.NS.CLOUDFLARE.COM  
Status: clientTransferProhibited  
<https://icann.org/epp#clientTransferProhibited>  
Status: clientUpdateProhibited  
<https://icann.org/epp#clientUpdateProhibited>  
Updated Date: 28-jul-2016  
Creation Date: 07-mar-2000  
Expiration Date: 07-mar-2018

For more information on Whois status codes, please visit  
<https://icann.org/epp>

Registrar: TUCOWS DOMAINS INC.  
Whois Server: whois.tucows.com

Posted on: 08 March 2017 12:21 AM

## ATTACHMENT 3

ICANN

## JSW-129-11418: Re: Question - for questions concerning operations and content [ ref:\_00Dd0huNE.\_5000W13E18A:ref ]

**Department:** compliance@icann.org**Owner:** Elif Karabag**Type:** Issue**Status:** Closed**Priority:** Normal**Created:** 10 March 2017 07:37 PM **Updated:** 16 March 2017 01:08 PM

### Posts

---

**Elif Karabag**

Dear Russ Smith,

(Third Party)

Thank you for your follow-up inquiry on the closed Whois SLA complaint concerning the domain name directorschoice.com. ICANN has reviewed and closed your complaint previously because it was determined from your comments that your complaint did not implicate a breach of an ICANN policy or agreement.

Please note that, ICANN is a private sector, not-for-profit organization with limited technical responsibility for coordinating the unique assignment of Internet domain names and IP addresses. ICANN's authority is purely contractual, and limited to the Registrar Accreditation Agreement (RAA: <https://www.icann.org/resources/pages/registrars/registrars-en>), the Registry Agreements (RA:<http://www.icann.org/en/about/agreements/registries>), and ICANN's Consensus Policies. ICANN does not have contractual authority to address any customer-service related matters that fall outside of the aforementioned agreements and policies.

The RAA requires ICANN-accredited registrars to provide access to Whois data to the public. Whois data is a collection of data about the registered domain name, its name servers and registrar, the domain name creation date, the domain name expiration date, the contact information for the registered name holder, the technical contact, and the administrative contact – to list a few. Among other things, Whois services are used to identify domain holders for business purposes and to identify parties who are able to correct problems associated with the registered domain.

However, please note, ICANN does not have contractual authority to address complaints about website content, such as historical Whois data found on third-party websites, since these types of consumer complaints are not addressed by the RAA, the RA, or ICANN's Consensus Policies. If you believe the website content refers to anything illegal, your best course of action is to contact a law enforcement agency in your jurisdiction or to seek legal advice from an attorney.

Sincerely,

ICANN Contractual Compliance

Posted on: 16 March 2017 01:08 PM

**r@russ-smith.com**

In other words you are refusing to forward the issue to the correct department. Why didn't you just forward the issue to them and take responsibility for the ticket being answered?

(User)

Russ Smith

On 3/10/2017 1:47 PM, ICANN Global Support Center wrote:

&gt; Dear Russ Smith,

&gt;

&gt; Thank you for the message.

&gt;

&gt; My apologies for the inconvenience. In order for ICANN to determine if the Registry or Registrar is out of compliance, the issue has to

be reviewed by the compliance team. Unfortunately, that determination cannot be made by the Global Support department.

>

> If you have received a reply from our Contractual Compliance team and the ticket has been closed, but you are not satisfied with the reply or need further clarification, please submit a new Complaint or email [Compliance@ICANN.org](mailto:Compliance@ICANN.org).

>

> I hope this information is helpful to you. Please contact us if you have any additional questions or concerns.

>

> Thank you,

> Aisha Herrell

> Global Support Analyst II

> ICANN Global Support Team

>

>

> ----- Original Message -----

> From: **Contact Information Redacted**

> Sent: 3/10/2017 10:25 AM

> To: [globalsupport@icann.org](mailto:globalsupport@icann.org); [ombudsman@icann.org](mailto:ombudsman@icann.org)

> Subject: Re: Question - for questions concerning operations and content [ ]

>

> I filed a complaint, the complaint was closed, and then I contacted

> you. You are just sending me in circles because you don't want to

> bother looking into the issue. I have a court case with deadlines and I

> will have to file a subpoena if I cannot get a reasonable reply. I have

> also filed an ICANN reconsideration request but i expect that process

> will take too long to be completed within the schedule set by the court.

>

> Thank You

>

> Russ Smith

>

>

> On 3/10/2017 12:41 PM, ICANN Global Support Center wrote:

>> Dear Russ Smith,

>>

>> Thank you for your message.

>>

>> If you filed a complaint with the ICANN Compliance department please allow 3-5 business days for the complaint to be processed.

>> After the complaint is processed you will receive notification from the ICANN Compliance department with a ticket number for you to track your complaint.

>>

>> If you have not received a ticket number from Contractual Compliance please email [Compliance@ICANN.org](mailto:Compliance@ICANN.org) directly, for assistance.

>>

>> I hope this information is of assistance to you. Please contact us if you have any additional questions or concerns. This case will now be resolved. Thank you for contacting ICANN.

>>

>>

>> Best Regards,

>> Aisha Herrell

>> Global Support Analyst II

>> ICANN Global Support Team

>>

>>

>>

>> ----- Original Message -----

>> From: **Contact Information Redacted**

>> Sent: 3/10/2017 9:28 AM

>> To: [globalsupport@icann.org](mailto:globalsupport@icann.org)

>> Cc: [ombudsman@icann.org](mailto:ombudsman@icann.org)

>> Subject: Re: Question - for questions concerning operations and content [ ]

>>

>> I already filed the complaint form and that is why you responded in the

>> first place. ICANN just tries to wear people down by constantly sending

>> them in circles. please direct this to the correct department so I can

>> get an answer to my inquiry. f the information was posted on the ICANN

>> whois page then all of this red tape could have been avoided.

>>  
>> Thank You  
>>  
>> Russ Smith  
>>  
>>  
>> On 3/10/2017 12:22 PM, ICANN Global Support Center wrote:  
>>> Dear Russ Smith,  
>>>  
>>> Thank you for the message.  
>>>  
>>> We recommend filing a Whois Service Complaint form. To file a complaint regarding a Whois Service, please use our Whois Service Complaint Form: <https://forms.icann.org/en/resources/compliance/complaints/whois/service-form>.  
>>>  
>>> This complaint will be submitted to the ICANN Compliance department. They will determine if the Registry or Registrar is out of compliance. Please allow 3-5 business days for the complaint to be processed.  
>>>  
>>> I hope this information is of assistance to you. Please contact us if you have any additional questions or concerns. Thank you for contacting ICANN.  
>>>  
>>> Best Regards,  
>>> Aisha Herrell  
>>> Global Support Analyst II  
>>> ICANN Global Support Team  
>>>  
>>>  
>>>  
>>> ----- Original Message -----  
>>> From: **Contact Information Redacted**  
>>> Sent: 3/9/2017 5:57 PM  
>>> To: [globalsupport@icann.org](mailto:globalsupport@icann.org); [ombudsman@icann.org](mailto:ombudsman@icann.org)  
>>> Subject: Re: Question - for questions concerning operations and content [ ]  
>>>  
>>> No, the matter is not resolved. I have filed a reconsideration request  
>>> and I contacted the ombudsman on this message so maybe he can sort  
>>> through the issues and get to correct person who can address the issue.  
>>>  
>>> The whois is mandated to be public information. You can see section  
>>> 9.3.3 at  
>>> <https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en>.  
>>> I have asked Verisign for the historic registrar information and they  
>>> refused claiming it is "sensitive" information. i asked them for the  
>>> authority they were using to claim the historical information is  
>>> sensitive but they will not answer.  
>>>  
>>> I understand there are third party services that effectively hack and  
>>> steal information from the various whois databases. These sources are  
>>> not official and are not reliable. many of then are operated by  
>>> pornographers and those involved in massive cybersquatting lawsuits. In  
>>> this specific case the information needed is from 2000 and commercial  
>>> services selling stolen whois data do not go back that far.  
>>>  
>>> In this specific case the information in question is related to the UDRP  
>>> which is administered by ICANN. Currently case 1:15-cv-00081-JBS-AMD  
>>> SMITH v. DIRECTOR'S CHOICE, LLP is a lawsuit to review the UDRP decision  
>>> and the whois data requested is needed for trial. It may be necessary  
>>> for ICANN to appear in court if this issue is not resolved. I am  
>>> preparing a subpoena now for Versign to force them to release the  
>>> historical whois data.  
>>>  
>>> Further, do not close this issue until your confirm with me that the  
>>> issue is resolved. f there is a reason the historical whois data is  
>>> not public then please provide me a link to the explanation instead of  
>>> closing the case. It is very frustrating that I cannot get an answer to  
>>> a well known issue and ICANN keeps giving irrelevant responses and

>>> closing the issue.

>>>

>>> Thank You

>>>

>>> Russ Smith

>>>

>>>

>>>

>>>

>>>

>>>

>>>

>>> On 3/9/2017 7:20 PM, ICANN Global Support Center wrote:

>>>> Dear Russ Smith,

>>>>

>>>> Thank you for contacting the ICANN Global Support Center.

>>>>

>>>> I will be happy to provide you with further information regarding the Whois Policy. Unfortunately, ICANN does not retain the WHOIS history of a domain. However, there are many companies that offer that information as a free service. To identify companies that offer WHOIS history for free you may enter some of the following key words into a web search engine:

>>>>

>>>> "WHOIS History Lookup Free"

>>>> "Domain WHOIS History Free"

>>>> "Historical WHOIS Free"

>>>> "Free Domain History Lookup"

>>>>

>>>> My apologies for the inconvenience. I hope this information can be of some assistance to you. Please contact us if you have any additional questions or concerns. This case will now be resolved. Thank you for contacting ICANN.

>>>>

>>>> Best Regards,

>>>> Aisha Herrell

>>>> Global Support Analyst II

>>>> ICANN Global Support Team

>>>>

>>>>

>>

> ref:\_00Dd0huNE.\_5000W13E18A:ref

>

Posted on: 10 March 2017 07:37 PM

ATTACHMENT 4

**Subject:** [reconsider] Reconsideration request  
**Date:** Thursday, March 9, 2017 at 6:08:01 AM Pacific Standard Time  
**From:** Contact Information Redacted (sent by reconsider-bounces@icann.org <reconsider-bounces@icann.org>)  
**To:** reconsideration@icann.org, ombudsman  
**Attachments:** img132.pdf, ATT00001.txt

Attached is a reconsideration request.

I am also submitting this to the ombudsman for review.

Please confirm receipt of this reconsideration request and ombudsman complaint.

Thank You

Russ Smith



## **Rebuttal to Reconsideration Request 17-1**

The reply I received is incomplete and designed to simply deny my reconsideration request rather than address the actual issue.

The issues are that either ICANN should compel all whois data be publicly available or, if there is a distinction about historical data, it should be explained on the whois section of the ICANN web site. However, in the “issues” section in section III the only issue was whether ICANN should compel the historical whois data. The issue of ICANN explaining the distinction between current and historical data disappeared from the reply in Section III.

Further, the rebuttal completely ignored the fact that ICANN staff is recommending user buy stolen black market whois data when access to historical whois data is requested. If it is actually the official position of ICANN to recommend users buy stolen data on the black market then that should be posted on the ICANN’s whois page.

**-Historical whois records:** Generally, when ICANN discusses whois data they make no distinction between current data and historical data. Therefore, any such discussion encompass both current and historical data as it is all “whois data.” The notion that because whois contains the word “is” and, therefore, does not contain historical data is a frivolous argument. Whois data is whois data. The fact that the whois data must be up-to-date does not mean that the historical whois data is not included when referencing “whois data.” Even if the various references to whois data is meant to be current data then ICANN should take steps to correct the wording in its various agreements and explanations to the public. Currently there is no mention of historical data on the ICANN web page about the whois system.

The failure of ICANN to properly explain the historical whois data distinction has led to Verisign making nonsensical claims to the public. Verisign claimed to me that historical whois data is “sensitive.” However, it is clearly nonsensical to claim that current whois data is public information yet if someone makes a change to their registration data then the records somehow transform to “sensitive” data not available to the public.

The purpose of this reconsideration request is to correct problems with the way ICANN presents explanations about whois data. Instead of addressing that issue ICANN has chosen to provide a litigious response that contains “cute” and frivolous arguments and ICANN is making no effort to correct the misleading explanations to the public. Access to historical whois data in the conduct of the UDRP is well within the mission of ICANN.

The recusal of the ombudsman is another problem with ICANN’s system. The ombudsman position is nothing more than a figurehead who searches out petty and unimportant issues to make it look like there is actually an ombudsman. Any substantive or important issue results in a recusal so the ombudsman position is currently useless to the majority of Internet users who have issues with ICANN.

Russ Smith

## **Addendum to Rebuttal of Reconsideration Request**

I am now in receipt of the attachments to the reply to my reconsideration request and this is my updated rebuttal.

In ICANN's fervor to deny the request they disregarded the posted privacy policy and published private communications I had with ICANN staff. This was posted without my prior knowledge or permission.

A complaint was made to the posted privacy policy contact. There does not appear to be a dedicated privacy contact as stated in the posted privacy policy and the request was diverted to the office I complained about in the first place.

While ICANN took inordinate amounts of time to insert "sic" because I did not capitalize "whois," they did not rule of the bulk of my request. All they did was pick and choose items that they could deny while ignoring issues they did not feel like dealing with. The reply was designed to intimate me for complaining and the common ICANN practice of "wearing people down" by sending them down useless rat holes to deter them from raising issues in the future. I request that a legitimate response be provided to my reconsideration request that addresses the issues I raised.

Further, ICANN staff will not sign any of the communications and no individual will take responsibility for the reply I received. The staff is most likely too embarrassed to attach their personal name to these abusive communications.

## REFERENCE MATERIALS TO BOARD SUBMISSION No. 2017.06.24.1f

**TITLE: March 2019 ICANN Meeting Venue Contracting**

### **DETAILED ANALYSIS:**

#### **1. Background:**

In July 2016, ICANN called for expressions of interest to assist as host of the March 2019 ICANN Public Meeting, which is to be held in the Asia Pacific region. The proposal that is recommended for approval, from JPNIC, is discussed below.

#### **2. Site Visit:**

- Kobe, Japan: A preliminary site visit was conducted in January 2017.

#### **3. Discussion of Issues:**

- Meeting Rooms: The Kobe Conference Center & Kobe Portopia Hotel have excellent conference facilities for an ICANN Meeting.
- Primary Hotel: The Kobe Portopia Hotel will serve as the primary hotel for the Meeting.
- Area Hotels: The Hotel Pearl City Kobe and the Ariston Hotel Kobe are a 4-minute walk from the conference center. Other nearby hotels, within a 20-minute shuttle bus ride, offer a wide variety of guest room accommodations at various price points.
- Food & Beverage Outlets: The Kobe Portopia Hotel has 9 restaurants, and will make food available for purchase by delegates in the conference center. There are other restaurants within a short walk of the hotel, and a grocery store adjacent to the conference center.
- Air Travel & Ground Transportation: Air access to Kobe is primarily through Kansai International Airport (KIX). Once at KIX, there are two ways to reach Kobe City Center a 30-minute ferry ride (US\$17) or a 60-minute limousine bus ride (US\$20). In addition, a taxi can be hired for this trip, however, it is expensive (US\$170). The trip from Kobe City Center to the conference center is a 10-minute ride via the Port Liner rail line. An alternate, closer airport is Kobe Airport, which offers domestic flights from 6 major cities in Japan. Kobe is also served by the Shinkansen Bullet train, which provides easy access from all over Japan.
- Safety & Security: A risk assessment by ICANN security has not identified any areas of concern for Kobe that would require other than standard security measures provided for an ICANN Meeting.
- Gala: JPNIC may provide a Gala for delegates.

Representatives from JPNIC are capable and anxious to host.

Staff recommends that the board approve Kobe, Japan as the location of the March 2019 ICANN Meeting.

Confidential Negotiation Information

Confidential Negotiation Information

**\*\*\* Confidential Proposal Information Set Forth Above\*\*\***

Submitted by:	Nick Tomasso
Position:	VP, Meetings
Date Noted:	15 May 2017
Email:	<a href="mailto:nick.tomasso@icann.org">nick.tomasso@icann.org</a>

Confidential Negotiation Information

Confidential Negotiation Information







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## REFERENCE MATERIALS TO BOARD SUBMISSION No. 2017.06.24.1g

**TITLE: November 2019 ICANN Meeting Venue Contracting**

### **DETAILED ANALYSIS:**

#### **1. Background:**

In July 2016, ICANN called for expressions of interest to assist as host of the November 2019 ICANN Public Meeting, which is to be held in the North America region. The proposal that is recommended for approval, from Montréal Cyberjustice Laboratory, is discussed below.

#### **2. Site Visit:**

- Montréal, Canada: A preliminary site visit was conducted in January 2016.

#### **3. Discussion of Issues:**

- Meeting Rooms: The Palais des Congrès de Montréal has excellent conference facilities for an ICANN Meeting.
- Primary Hotel: The Hyatt Regency, a 5-minute walk away, and Le Westin Montréal and the Intercontinental Hotel, both adjacent to the convention center, will serve as our primary hotels for the Meeting.
- Area Hotels: Nearby hotels offer a wide variety of guest room accommodations. Most of them are within walking distance of the Palais des Congrès de Montréal, directly connected by underground path.
- Food & Beverage Outlets: The Palais des Congrès de Montréal will provide food for sale for Meeting delegates. There are several casual food restaurants in the center. In addition, there are a number of other restaurants in close proximity to the Palais des Congrès de Montréal.
- Air Travel: Air access to Montréal is good, and there are direct flights from Montréal Pierre Elliott Trudeau International Airport to more than 130 destinations, including 26 US destinations, and 25 European destinations. However, some international itineraries will require a stop.
- Ground Transportation: Montréal Pierre Elliott Trudeau International Airport is 13 miles / 21 kilometers from the Palais des Congrès de Montréal and surrounding hotels. Taxi fare is approximately US\$30.
- Safety & Security: A risk assessment by ICANN security has not identified any areas of concern for Montréal that would require other than standard security measures provided for an ICANN Meeting.
- Gala: The Montréal Cyberjustice Laboratory has no current plans to provide a Gala for delegates.

Representatives from Montréal Cyberjustice Laboratory are capable and anxious to host. In addition, ISOC Quebec and PointQuébec have committed support.

Staff recommends that the board approve Montréal, Canada as the location of the November 2019 ICANN Meeting.

Confidential Negotiation Information

Confidential Negotiation Information

**\*\*\* Confidential Proposal Information Set Forth Above\*\*\***

Submitted by:	Nick Tomasso
Position:	VP, Meetings
Date Noted:	15 May 2017
Email:	<a href="mailto:nick.tomasso@icann.org">nick.tomasso@icann.org</a>

# Report on the Delegation of eight top-level domains representing India in various languages to the National Internet Exchange of India (NIXI)

9 June 2017

This report is a summary of the materials reviewed as part of the process for the delegation of eight top-level domains representing India to the National Internet Exchange of India. It includes details regarding the proposed delegation, evaluation of the documentation pertinent to the request, and actions undertaken in connection with processing the delegation.

## FACTUAL INFORMATION

### Country

The “IN” ISO 3166-1 two-letter country code from which the application’s eligibility derives, is designated for use to represent India.

### String

The eight domains under consideration for the delegation at the DNS root level are:

1. The string “ಭಾರತ” represented in ASCII-compatible encoding to the IDNA specification as “xn--2scrj9c”. The individual Unicode code points that comprise this string are U+0CAD U+0CBE U+0CB0 U+0CA4. The string is expressed in Kannada script, and in Kannada language.
2. The string “ഭാരതം” represented in ASCII-compatible encoding to the IDNA specifications as “xn--rvc1e0am3e”. The individual Unicode points that comprise this string are U+0D2D U+0D3E U+0D30 U+0D24 U+0D02. The string is expressed in Malayalam script, and in Malayalam language.
3. The string “ভাৰত” represented in ASCII-compatible encoding to the IDNA specifications as “xn--45br5cyl”. The individual Unicode points that comprise this string are U+09AD U+09BE U+09F0 U+09A4. The string is expressed in Bengali script, and in Assamese language.
4. The string “ଊଋ” represented in ASCII-compatible encoding to the IDNA specifications as “xn--3hcrj9c”. The individual Unicode points that comprise this string are U+0B2D U+0B3E U+0B30 U+0B24. The string is expressed in Oriya script, and in Oriya language.
5. The string “بَارَت”. This is represented in ASCII-compatible encoding to the IDNA specifications as “xn--mgbbh1a”. The individual Unicode points that comprise this string are U+0628 U+0627 U+0631 U+062A. The string is expressed in Arabic script, and in Kashmiri language.



6. The string “भारतम्” represented in ASCII-compatible encoding to the IDNA specifications as “xn--h2breg3eve”. The individual Unicode points that comprise this string are U+092D U+093E U+0930 U+0924 U+092E U+094D. The string is expressed in Devanagari script, and in Sanskrit language.
7. The string “भारोत्” represented in ASCII-compatible encoding to the IDNA specifications as “xn--h2brj9c8c”. The individual Unicode points that comprise this string are U+092D U+093E U+0930 U+094B U+0924. The string is expressed in Devanagari script, and in Santali language.
8. The string “پارت” represented in ASCII-compatible encoding to the IDNA specifications as “xn--mgbgu82a”. The individual Unicode points that comprise this string are U+0680 U+0627 U+0631 U+062A. The string is expressed in Arabic script, and in Sindhi language.

The selected strings have a transliteration equivalent to “Bharat”, “Bharot”, or “Bharatom”, and each have a meaning equivalent to “India”.

### **Chronology of events**

The National Internet Exchange of India (NIXI) is a not-for-profit incorporated on 19 June 2003 under section 25 of the Indian Companies Act (now section 8 under Companies Act, 2013). The Board of Directors of NIXI is comprised of three members nominated from the Government of India, ten members nominated by the country’s Internet Service Provider Association (ISPAI), and one member from the Indian Institute of Technology (IIT).

NIXI has been responsible for managing the .IN (India) country code top-level domain since 2005, in accordance with an order passed by the Government of India. A request to redelegate the .IN domain to NIXI was completed in 2009.

Between October 2009 and December 2011, outreach workshops were held in different regions of India by the applicant in order to raise awareness of internationalized domain names, and then specifically on how Indian internationalised domain names should be deployed.

In 2011, seven IDN ccTLDs representing India were delegated to NIXI.

Additional multi-stakeholder consultations and meetings were held in the following years by NIXI, MeitY (Ministry of Electronics and Information Technology), and the Centre for Development of Advance Computing (C-DAC).

On 31 July 2015, applications were submitted to ICANN’s “IDN Fast Track” process to have eight additional strings recognized as IDN ccTLDs representing India.

On 8 January 2016, a review by the IDN Fast Track DNS Stability Panel found that the “ਭਾਰਤ”, “ഭാരതം”, “ভারত”, and “ଭାରତ” strings “present none of the threats to

the stability or security of the DNS identified in Module 4 of the Fast Track implementation plan, and present an acceptably low risk of user confusion."

On 13 April 2016 the “ಭಾರತ”, “இந்தியம்”, “ভারত”, and “ଭାରତ” strings successfully passed the Fast Track string evaluation.

On 15 May 2016, a review by the IDN Fast Track DNS Stability Panel found that the “بارت”, “भारतम्”, and “भारोत” strings “present none of the threats to the stability or security of the DNS identified in Module 4 of the Fast Track implementation plan, and present an acceptably low risk of user confusion.”

On 11 June 2016, a review by the IDN Fast Track DNS Stability Panel found that the “پارت” string “presents none of the threats to the stability or security of the DNS identified in Module 4 of the Fast Track implementation plan, and presents an acceptably low risk of user confusion.”

On 15 August 2016, the “بارت”, “भारतम्”, “भारोत”, and “پارت” strings successfully passed the Fast Track string evaluation.

On 11 May 2017, NIXI commenced a request for delegation of the eight approved strings as top-level domains representing India in various languages .

### **Proposed Manager and Contacts**

The proposed manager is the National Internet Exchange of India, a not-for-profit organization under Indian law. It is based in India.

The proposed administrative and technical contact is Rajiv Kumar, Systems Analyst at the National Internet Exchange of India. The contact is understood to be based in India.

## **EVALUATION OF THE REQUEST**

### **String Eligibility**

The top-level domains are eligible for delegation as the strings have been deemed appropriate representations of India through the ICANN Fast Track String Selection process, and India is presently listed in the ISO 3166-1 standard.

### **Public Interest**

Letters of support were provided by the following:

- Centre for Development of Advance Computing (C-DAC), A Scientific Society

of the Ministry of Communications and Information Technology

- Internet Service Providers Association of India (ISPAI)
- The Internet & Mobile Association of India (IAMAI)
- Cyber Café Association of India (CCAOI)
- Internet Society India Bangalore Chapter
- Internet Society India Delhi Chapter
- Internet Society India Kolkata Chapter
- Internet Society India Trivandrum Chapter

The application is consistent with known applicable laws in India. The proposed manager undertakes responsibilities to operate the domain in a fair and equitable manner.

### **Based in country**

The proposed manager organization is constituted in India. The proposed administrative contact is understood to be a resident of India. The registry is to be operated in India.

### **Stability**

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

The application is not known to be contested.

### **Competency**

The application has provided information on the technical and operational infrastructures and expertise that will be used to operate the proposed new domain.

Proposed policies for management of the domain have also been tendered.

## **EVALUATION PROCEDURE**

PTI is tasked with coordinating the Domain Name System root zone as part of a set of functions governed by a contract with ICANN. This includes accepting and evaluating requests for delegation and transfer of top-level domains.

A subset of top-level domains are designated for the local Internet communities in countries to operate in a way that best suits their local needs. These are known as country-code top-level domains (ccTLDs), and are assigned to responsible managers that meet a number of public-interest criteria for eligibility. These criteria largely relate to the level of support the manager has from its local Internet community, its capacity to ensure stable operation of the domain, and its

applicability under any relevant local laws.

Through the IANA Services performed by PTI, requests are received for delegating new ccTLDs, and transferring or revoking existing ccTLDs. An investigation is performed on the circumstances pertinent to those requests, and, the requests are implemented where they are found to meet the criteria.

### **Purpose of evaluations**

The evaluation of eligibility for ccTLDs, and of evaluating responsible managers charged with operating them, is guided by a number of principles. The objective of the assessment is that the action enhances the secure and stable operation of the Internet's unique identifier systems.

In considering requests to delegate or transfer ccTLDs, input is sought regarding the proposed new manager, as well as from persons and organizations that may be significantly affected by the change, particularly those within the nation or territory to which the ccTLD is designated.

The assessment is focused on the capacity for the proposed manager to meet the following criteria:

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

### **Method of evaluation**

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

to operate the domain; the legal authenticity, status and character of the proposed manager; and the nature of government support for the proposal.

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

Once all the documentation has been received, various technical checks are performed on the proposed manager's DNS infrastructure to ensure name servers are properly configured and are able to respond to queries correctly. Should any anomalies be detected, PTI will work with the applicant to address the issues.

Assuming all issues are resolved, an assessment is compiled providing all relevant details regarding the proposed manager and its suitability to operate the relevant top-level domain.



**I C A N N**  
**POLICY FORUM**

**59**

**JOHANNESBURG**

26–29 June 2017

Board Work Shop Session  
Final FY18 Operating Plan and Budget and  
5-Year Operating Plan Update

23 June 2017

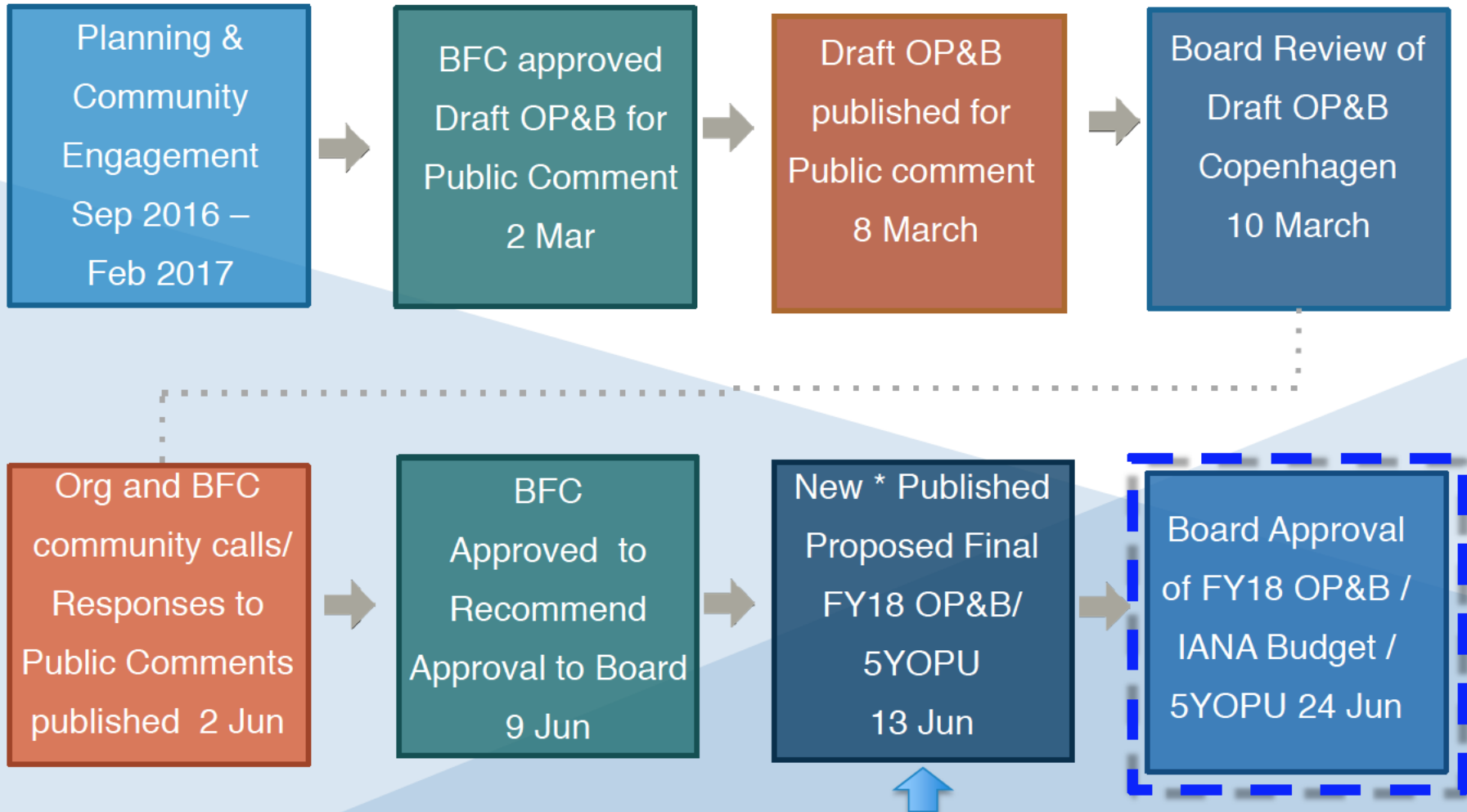


# Agenda

- Public Comment Conclusions
- Decisions
  - FY18 Operating Plan & Budget, the FY18 IANA Budget and the FY18 Update to the Five-Year Operating Plan
- Appendix



# FY18 Operating Plan and Budget (OP&B) Process



**\*New Step = Increased Transparency**

# Public comments: Group/ Individual Breakdown

134 comments received by 16 groups/ individuals

Group/ Individual	# Comments	Group/ Individual	# Comments
ccNSO SOP	49	Liu Yue	3
BC	22	RrSG	2
Edward Morris	14	ccNSO Council	1
RySG	12	CCWG-Accountability -WS2	1
ALAC	8	GAC	1
IPC	8	GAC - USR WG	1
GNSO Council	5	RDS PDP WG	1
ISPCP	5	RySG/RrSG	1

# Public comments: Thematic Breakdown

134 comments received relating to 17 Themes

Theme	# Comments	Theme	# Comments
KPI Definition and Structure	26	Empowered Community/ Caretaker Budget	4
General/ Other (Positive statements on opportunities to Engage)	20	IANA Stewardship & Accountability	3
Budget Development Process & Document Contents/Structure	13	Policy Development	3
Headcount/ Staffing	13	Reserve Fund	3
Community Outreach/ Engagement/ Programs	12	Strategic/Operating Priorities	3
Funding	8	Unfunded Portfolios	2
Community Travel Support/ Funding	7	Unfunded potential FY18 activities	2
GDD Operations and gTLDs	7	Contractual Compliance	1
IT Projects	7		

# Public comments: Top 4 Themes

- ⦿ Improving the calculation and explanations of the KPIs
- ⦿ Concerns over headcount and expense growth
- ⦿ Request for more Community Outreach/ Engagement/ Programs
- ⦿ Growing demand for travel support

## Net Expense Increases of \$3.1M

- As a result of public comment
  - Constituent travel funding expense increase (GAC, ccNSO, ALAC and RySG) \$0.2M
  - Policy Development Support increase \$0.1M (GNSO)
  - IANA Stewardship Transition WS2 expense \$3.1M funded by Reserve Fund
- From ICANN Org
  - Board travel and training expense \$0.2M
  - FY18 Contingency expense decrease of \$0.5M

# FY18 Budget Changes—Recommended for Board Approval

in Millions, USD	FY18 Proposed Budget		
	Baseline- ICANN Operations	IANA Transition	Total ICANN Operations
<b>Funding</b>	\$142.8	\$0.0	\$142.8
Personnel	69.5	0.9	70.4
Travel & Meetings	17.8	0.2	18.0
Professional Svcs.	27.7	2.0	29.7
Administration	18.8	0.0	18.8
Capital	3.6	0.0	3.6
Contingency	5.3	0.0	5.3
<b>Baseline Cash Expenses</b>	\$142.8	\$3.1	\$145.9
<b>Increase/ (Decrease) to Net Assets</b>	\$0.0	(\$3.1)	(\$3.1)
<b>Average Headcount</b>	413.8	4.3	418.1

• No change to Funding.

• No change to Baseline expenses which remains balanced

• \$0.5M of additional expenses offset by contingency reduction

• FY18 Contingency still within acceptable range for unforeseen expenses in FY18

Proposed Budget recommended by BFC 9 June 2017

# FY18 Total ICANN Budget Draft Published

FY18 Draft OP&B published for Public comment 8 March

in Millions, USD	FY18 Draft Budget		
	ICANN Operations	New gTLD*	Total ICANN
<b>Funding</b>	<b>\$142.8</b>	<b>\$19.5</b>	<b>\$162.3</b>
Personnel	69.5	\$2.5	72.0
Travel & Meetings	17.6	0.7	18.3
Professional Svcs.	27.6	7.0	34.6
Administration	18.7	0.7	19.3
Capital	3.6	0.0	3.6
Contingency	5.8	0.0	5.8
<b>Baseline Cash Expenses</b>	<b>\$142.8</b>	<b>\$10.9</b>	<b>\$153.7</b>
<b>Increase/ (Decrease) to Net Assets</b>	<b>\$0.0</b>	<b>\$8.6</b>	<b>\$8.6</b>
<b>Average Headcount</b>	<b>413.8</b>	<b>0.0</b>	<b>413.8</b>

# FY18 Total ICANN Budget Proposed Final

## FY18 Final Budget Recommended for Board Adoption

in Millions, USD	FY18 Proposed Final Budget			
	Baseline- ICANN Operations	IANA Transition	New gTLD	Total ICANN
<b>Funding</b>	<b>\$142.8</b>	<b>\$0.0</b>	<b>\$19.5</b>	<b>\$162.3</b>
Personnel	69.5	0.9	\$2.5	73.0
Travel & Meetings	17.8	0.2	0.7	18.7
Professional Svcs.	27.7	2.0	7.0	36.6
Administration	18.8	0.0	0.7	19.5
Capital	3.6	0.0	0.0	3.6
Contingency	5.3	0.0	0.0	5.3
<b>Baseline Cash Expenses</b>	<b>\$142.8</b>	<b>\$3.1</b>	<b>\$10.9</b>	<b>\$156.8</b>
<b>Increase/ (Decrease) to Net Assets</b>	<b>\$0.0</b>	<b>(\$3.1)</b>	<b>\$8.6</b>	<b>\$5.5</b>
<b>Average Headcount</b>	<b>413.8</b>	<b>4.3</b>	<b>0.0</b>	<b>418.1</b>



# FY18 Caretaker Budget - Empowered Community (EC)

- Board decision, subject to EC rejection powers, becomes effective 28 days after ICANN Secretary notification to EC of Board approval
  - The FY18 Budget, if approved on 24 June and EC does not initiate rejection process, has an effective date of July 22 or 22 days after the beginning of the fiscal year
- FY18 Caretaker Budget in effect during the first 22 days of FY18 and ICANN Org will manage limited operational impact
  - No New positions created, Travel and Professional Fees reduction of 10%
- Starting with the FY19 planning process, Board approval will be at least 30 Days (1 month) in advance of the beginning of the fiscal year.

1

### **BFC's recommendation**

- The BFC voted 9 June to recommend to the Board the approval of the proposed final FY18 Operating Plan and Budget, the FY18 IANA Budget and the FY18 Update to the Five Year Operating Plan

2

### **Board approval**

- Board resolution attached
- Accompanying documents to the Board resolution
  - Proposed Final FY18 Operating Plan and Budget
  - Proposed Final FY18 Update to Five Year Operating Plan
  - Public comment report (published on 2 June 2017)

The image features a world map where the continents are defined by a complex network of white nodes and connecting lines. The nodes vary in size, and the lines are thin and light blue, creating a digital or network-like appearance. The background is a solid, dark blue color. The word "Appendix" is written in a clean, white, sans-serif font on the left side of the map.

# Appendix

# CCWG - Accountability WorkStream2

## Extension into FY18

- FY18 Budget developed by the Project Cost Support Team (PCST)
  - The budget is a detailed (“bottoms up”) budget based on the work plans submitted by the Co-Chairs.
  - Budget of \$3.1m estimated
- FY17
  - Total project expense approved by the Board for FY17 was \$8.8m
    - Funded from Reserve Fund
  - FY17 estimated expenses are below budget by \$3.1M
    - FY18 WS2 budget will be within the approved project total budget of \$8.8M

## Changes to Five-Year Operating Plan

- As a result of public comment
  - IANA Stewardship Transition WS2 - the Accountability WS2 activities will be carried into FY18.
- From ICANN Org
  - Portfolio and KPI description updates



# Draft Five-Year Operating Plan Update - FY18

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Second Annual Update – June 2017

# Introduction

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ICANN developed a multiyear planning framework based on extensive input from the ICANN Community during the development of its Strategic Plan. The framework includes the following three elements:

## Five-Year Strategic Plan FY16-FY20

To be updated every five years or earlier if appropriate. It includes a vision and mission, strategic objectives, goals, key success factors, and strategic risks. ICANN's Board adopted the current Strategic Plan on 16 October 2014.

## Five-Year Operating Plan FY16-FY20

To be updated each year. It includes:

- ⦿ A five-year planning calendar
- ⦿ Strategic goals with corresponding key performance indicators
- ⦿ Dependencies
- ⦿ Five-year phasing
- ⦿ A list of portfolios
- ⦿ A five-year financial management strategy

## Fiscal-Year Operating Plan and Budget

Developed from the ICANN Five-Year Operating Plan and structured community input. It includes portfolios of activities that support the achievement of the goals and objectives with corresponding key performance indicators, dependencies, budgets, and projects.

This is the second update to the Five-Year Operating Plan. ICANN's Board adopted the initial version of the Plan on 28 April 2015.

ICANN acknowledges that stakeholder bandwidth and support remains a key dependency to meeting the goals outlined in this plan.

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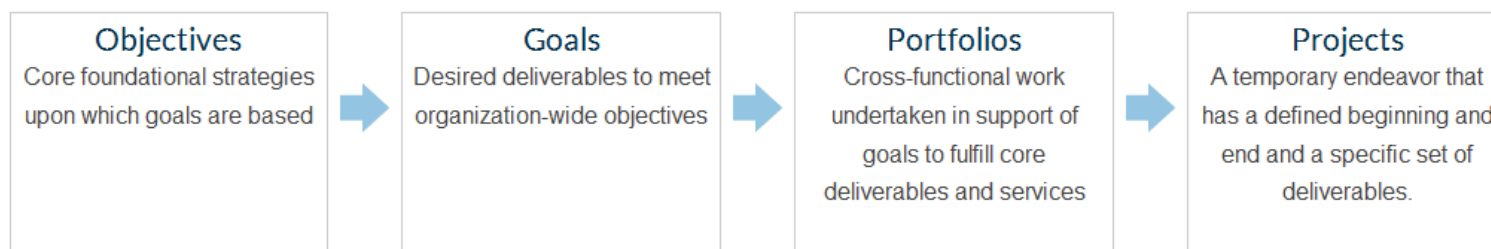
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# Planning Structure

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The Five-Year [Strategic Plan](#) defines our strategic objectives and goals and also describes strategic risks. This analysis informs an overall risk management approach. ICANN systematically reviews and manages risks.

This diagram shows the hierarchical structure for ICANN's [Portfolio Management System](#), which turns the strategic plan into operational reality.



Our portfolios and projects are planned cross-functionally, which means that work in one goal often supports work in another goal.

Our key performance indicators are reviewed and refined systematically to make sure that they remain useful measures of our success. They typically start with one of the following:

\$ = Value of

# = Number of

% = Percentage of

The [ICANN online glossary](#) defines all the terms of art used in this document.

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# Community Roles and Responsibilities

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The planning process is part of the bottom-up, multistakeholder process. It requires the collaborative effort of the whole ICANN Community. A detailed schedule for the process and the roles of each group can be found on [ICANN's website](#).

# Operating Plan – Strategic Goal Level

## Summary of Changes

This document is the second update to ICANN’s Five-Year Operating Plan. ICANN updates this document each year to take account of what has been achieved and to review and refine the planned future work based on what has already been delivered and the changing environment.

This section below provides a high-level overview of changes from the first annual Five-Year Operating Plan Update. Changes have been made both as a result of ICANN analysis and review and also the [Public Comment process](#). This table describes changes to portfolios, key performance indicators, dependencies, and year-by-year phasing of work.

In each goal section, a status update box has been added to note the work completed and planned to be accomplished during FY18.

<b>PTI Budget</b>  PTI was incorporated during FY17 and developed an Operating Plan and Budget in consultation with community. It was adopted by the PTI Board in January 2017 and has been incorporated into ICANN’s draft Five-year Operating Plan updated and draft FY18 Operating Plan and Budget.	<b>IANA Transition WS2</b>  The IANA Stewardship Transition was completed in early FY17. All of the Implementation activities for the project will be completed in FY17. The Accountability WS2 activities will be carried into FY18.	<b>Review Activities</b>  Reviews associated with the Affirmation of Commitments have now been incorporated into the Bylaws and are called Specific Reviews.  Organizational and Specific Reviews will be running over the course of FY18.
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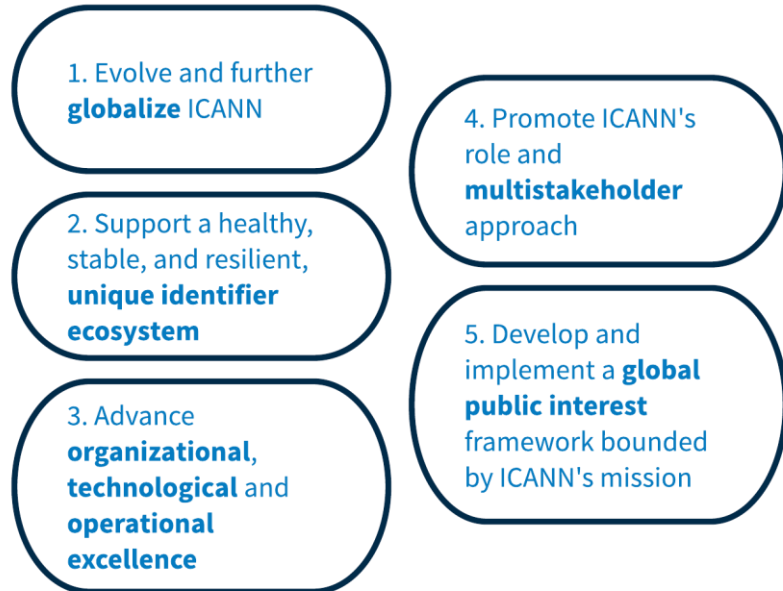
Goal Number	Change Type	Change Summary
All	Dependency	Availability of appropriate resources, including community bandwidth, is a dependency for all ICANN’s work
1.1	KPI	KPIs now more focused on ICANN Public Meetings

1.1	Dependencies	IANA Stewardship Transition dependency replaced with a dependency on data availability
1.2	Portfolio	Broadcast and Engage with Global Stakeholders renamed Meeting Services
1.2	KPI	KPI refocused towards regional engagement at ICANN Public Meetings and away from digital services metrics
1.3	KPI	KPIs thoroughly restructured
1.3	Dependencies	Phrasing adjusted for 1-4
1.3	Dependencies	IANA Stewardship Transition dependency removed as that is now complete
2.1	Portfolio	IANA Operations renamed PTI Operations
2.1	Portfolio	IANA System Enhancements renamed PTI Technical System Enhancements
2.1	Portfolio	New portfolio consolidates all WHOIS/RDS work
2.1	KPI	KPI on SLAs reworded
2.1	KPI	New customer satisfaction KPI
2.1	Dependencies	Dependency reworded to call out the engineering projects that could affect service delivery
2.1	Phasing	Delivery of IANA Services as defined by the community added to FY18 phasing
2.2	Dependencies	New dependencies defined
2.2	Portfolio	WHOIS portfolio removed as all WHOIS/RDS work will be integrated into a single portfolio in 2.1
2.2	Portfolio	Removed Technical Experts Group portfolio and added Technical Reputation portfolio
2.3	Portfolio	New Registrant Services portfolio
2.3	Portfolio	Next gTLD Round Planning renamed to New gTLD Subsequent Procedures Planning
2.3	Portfolio	Removed the WHOIS/RDS portfolio as all this work is now consolidated in 2.1
2.3	Portfolios	Revised names of 2.3.5 and 2.3.6
2.3	KPI	KPI title changed to replace “Index” with “Indicators Report”
2.3	Dependencies	New dependency related to community consultation and data source availability for Domain Name Marketplace Health Indicators Report
2.3	Phasing	FY18-FY20 phasing updated to reflect new name for Domain Name Marketplace Health Indicators Report
3.1	Portfolio	Organizational Excellence and Intelligence portfolio renamed and moved to 3.3
3.1	Portfolio	Security Operations portfolio added
3.1	Portfolio	Internal Controls Review and Audit portfolio added
3.1	KPI	Language refined
3.2	Phasing	“IANA functions” rephrased to “IANA Services”
3.3	Portfolio	Organizational Excellence and Intelligence portfolio moved from 3.1 and renamed Organizational Assessment and Continuous Improvement
3.3	Portfolio	Talent Management renamed People Management
3.3	Portfolio	Support ICANN Board moved from 5.1 and renamed Board Operations

3.3	Portfolio	New Global Operations portfolio created
4.1	Dependencies	Updated dependencies
4.2	Dependencies	Updated dependency
4.3	Phasing	Updated phasing following the IANA Stewardship Transition
4.4	Portfolio	Strategic Initiatives portfolio moved to 5.2
4.4	KPI	KPI restructured to focus on Contractual Compliance service level targets
4.4	KPI	New KPI on safeguards role
4.4	Dependencies	Dependencies reworded and new dependency for contracted parties
4.4	Dependencies	External dependency updated to reflect safeguards role
4.4	Phasing	New customer satisfaction focus for FY18 and review work item for current practices
4.4	Phasing	FY18 updated to reflect extra safeguards-related activities
5.2	Portfolio	AoC Reviews renamed Specific Reviews, because of Bylaws Article 4, Section 4.6
5.2	Portfolio	Strategic Initiatives portfolio moved from 4.4
5.2	KPI	IANA Stewardship Transition KPI element removed as that is now completed
5.2	KPI	New KPI element relating to reporting on reviews
5.2	Dependencies	IANA Stewardship Transition dependency removed as that is now complete
5.2	Dependencies	New dependency relating to the ability of the community to completed WS2 work on schedule
5.2	Phasing	New work on streamlining and recalibrating reviews, concluding several reviews, standards for reviews, and the Cross Community Working Group on Accountability. Some terminology updated.
5.2	Phasing	Schedule for FY19 and FY20 updated to reflect work planned for FY18
5.2	Portfolio	Portfolio added to Strategic Goal 5.2 for “Enhancing ICANN Accountability WS2”
5.2	Goal	Strategic Goal 5.2 title corrected to “Promote ethics, transparency and accountability across the ICANN community”
5.3	Portfolio	Portfolios restructured and renamed
5.3	KPI	KPI text refined
Financial Management Strategy	Updated	Previously titled Five-Year Financial Model

ICANN's five strategic objectives are subdivided into 16 strategic goals. These are each divided into portfolios of projects.

## 5 Strategic Objectives | 16 Goals



- 1.1 Further Globalize and Regionalize ICANN Functions
- 1.2 Bring ICANN to the world by creating a balanced and proactive approach to regional engagement with stakeholders
- 1.3 Evolve Policy Development and Governance Processes, Structures and Meetings to be More Accountable, Inclusive, Efficient, Effective and Responsive
- 2.1 Foster and Coordinate a Healthy, Secure, Stable, and Resilient Identifier Ecosystem
- 2.2 Proactively Plan for Changes in the Use of Unique Identifiers, and Develop Technology Roadmaps to Help Guide ICANN Activities
- 2.3 Support the Evolution of the Domain Name Marketplace to be Robust, Stable and Trusted
- 3.1 Ensure ICANN's Long-Term Financial Accountability, Stability and Sustainability
- 3.2 Ensure Structured Coordination of ICANN's Technical Resources
- 3.3 Develop a globally diverse culture of knowledge and expertise available to ICANN's Board, Organization and stakeholders
- 4.1 Encourage Engagement with the Existing Internet Governance Ecosystem at National, Regional and Global Levels
- 4.2 Clarify the Role of Governments in ICANN and Work with Them to Strengthen their Commitment to Supporting the Global Internet Ecosystem
- 4.3 Participate in the Evolution of a Global, Trusted, Inclusive Multistakeholder Internet Governance Ecosystem that Addresses Internet Issues
- 4.4 Promote Role Clarity and Establish Mechanisms to Increase Trust Within the Ecosystem Rooted in the Public Interest
- 5.1 Act as a Steward of the Public Interest
- 5.2 Promote ethics, transparency and accountability across the ICANN community
- 5.3 Empower Current and New Stakeholders to Fully Participate in ICANN Activities

## Strategic Goal 1.1 Further Globalize and Regionalize ICANN Functions

### Portfolios

1. Raising Stakeholder Awareness of ICANN Worldwide
2. GSE Executive team coordination and administration
3. Language Services

### Key Performance Indicators

- ⦿ # of remote participation session hours and number of remote participants at ICANN meetings
- ⦿ % of Sessions with live interpretation at ICANN meetings

### Dependencies

1. Availability of data and collection mechanisms will be a large part of all data gathering projects.

### Phasing

FY16	<p><b>Planned</b></p> <ol style="list-style-type: none"> <li>1. Integrate global and regional communications strategies.</li> <li>2. Comprehensive regional engagement plans and strategies covering most ICANN regions.</li> <li>3. Further distribute ICANN functions at Hub Offices.</li> </ol>	<p><b>Status at the end of FY16</b></p> <ol style="list-style-type: none"> <li>1. Regional newsletters streamlined and uniform across regions. We are also capturing foreign language social media statistics across the regions in one place.</li> <li>2. Communications strategies for the regions now in place.</li> <li>3. Community-driven Engagement Strategies in place for five regions and all regions/functional areas have yearly work plans. We have started tracking with regional scorecards.</li> <li>4. Several departments added staff and distributed resources to hub and engagement offices (for example – Global Customer Service Center in Istanbul hub).</li> </ol>
FY17	<ol style="list-style-type: none"> <li>1. Sustain implementation of communications strategies</li> <li>2. Wide awareness raising and educational effort if supporting ICANN with another new gTLD round</li> <li>3. Examine how hubs and engagement offices are supporting ICANN globalization</li> </ol>	<p><b>Intended status and the end of FY17</b></p> <ol style="list-style-type: none"> <li>1. Completed review of ICANN regional offices and delivery of services to the community.</li> <li>2. Gap analysis completion and beginning of mapping exercises.</li> <li>3. Completion of organization-wide review of engagement activities against the ICANN mission.</li> </ol>
FY18	<ol style="list-style-type: none"> <li>1. Conduct mapping of community to regional engagement.</li> <li>2. Implement recommendations resulting from examination of ICANN regional offices in support of ICANN globalization.</li> </ol>	



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FY19	<ol style="list-style-type: none"><li>1. Survey community on GSE engagement and support of community engagement at high level.</li><li>2. Implement improvements for GSE based on community mapping in FY18.</li></ol>
FY20	<ol style="list-style-type: none"><li>1. Implement improvements on review of GSE web, customer relationship management tools from 2019.</li></ol>

## Strategic Goal 1.2 Bring ICANN to the world by creating a balanced and proactive approach to regional engagement with stakeholders

### Portfolios

1. Engage Stakeholders Regionally
2. Meeting Services

### Key Performance Indicators

- ⦿ Global/regional engagement Activities to show a balanced and proactive approach to regional engagement
- ⦿ Stakeholder Participation at ICANN Meetings by Region

### Dependencies

1. Retaining expertise to support ICANN's efforts across the hubs and regions in multiple languages for a diverse range of stakeholders.
2. ICANN Meeting Registration statistics rely on participants self-selecting the data we use.

### Phasing

FY16	<b>Planned</b> <ol style="list-style-type: none"> <li>1. Implement Global Stakeholder Engagement (GSE) web tools for supporting Stakeholder Engagement activities at regional and local level.</li> <li>2. Examine effectiveness of regional strategies launched in FY13-FY14.</li> </ol>	<b>Status at the end of FY16</b> <ol style="list-style-type: none"> <li>1. Internal collaboration tool adopted and used by all GSE regional/functional teams to support Stakeholder Engagement.</li> <li>2. Several community-driven regional Engagement Strategies were updated (Africa, LAC and Middle East).</li> </ol>
FY17	<ol style="list-style-type: none"> <li>1. Examine # of community participants in ICANN programs to enable measurement of the Stakeholder Journey</li> <li>2. Complete first cycle regional Engagement Strategies and regional plan</li> </ol>	<b>Intended status at the end of FY17</b> <ol style="list-style-type: none"> <li>1. Continue working with the community and internally on data collection mechanisms, and reporting.</li> <li>2. FY17 Regional work plans will have run their full lifecycle by the end of FY17.</li> </ol>
FY18	<ol style="list-style-type: none"> <li>1. Map Stakeholder Journey to regional engagement.</li> <li>2. Enhance online ICANN meeting hubs to contribute to and increase engagement during meetings.</li> <li>3. Review effectiveness of ICANN web tools for supporting globalization and regionalization for community.</li> </ol>	
FY19	<ol style="list-style-type: none"> <li>1. Implement improvements for GSE based on Stakeholder Journey mapping in FY18.</li> <li>2. Increase participation of active participants across technical community, civil society, governments and business stakeholders.</li> </ol>	
FY20	<ol style="list-style-type: none"> <li>1. ICANN participants cover all regions.</li> </ol>	

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- |  |   |
|--|---|
|  | <ol style="list-style-type: none"><li>2. Achieve participation from all sectors of community and support improvement of Stakeholder Journey in contributions to ICANN.</li><li>3. Survey community on engagement with, and support of, community at high level.</li><li>4. Implement improvements on review of GSE web, customer relationship management tools from FY19.</li></ol> |
|--|---|

## Strategic Goal 1.3 Evolve Policy Development and Governance Processes, Structures and Meetings to be More Accountable, Inclusive, Efficient, Effective and Responsive

### Portfolios

1. Support Policy Development, Policy-Related and Advisory Activities
2. Reinforce Stakeholder Effectiveness, Collaboration and Communication Capabilities
3. Evolving Multistakeholder Model

### Key Performance Indicators

- ⊙ Representation and participation in the policy development and governance processes
- ⊙ Quantity of Activity index
- ⊙ Quantity of Activity and Productivity index

### Dependencies

1. Community Collaboration - Successful identification and measurement of key performance indicators are challenging as multiple factors affect policy development workload and work progress. Refining the intended deliverables will require further engagement between staff and community.
2. Collaboration with IT/Online Community Services (OCS) team is necessary to ensure that improved tools and mechanisms reach and can be accessed by our global stakeholders. Successful tool development depends on availability of OCS resources.
3. Dedicated communications strategies and services are required to ensure successful outcomes.
4. The General Counsel's Office may be called upon to provide inputs and guidance in the policy and decision-making process.

### Phasing

FY16	<p><b>Planned</b></p> <ol style="list-style-type: none"> <li>1. Complete a comprehensive inventory of all resources and capabilities that ICANN provides to the current stakeholder communities.</li> <li>2. Complete a comprehensive assessment of delivery of all resources and capabilities that are provided to the stakeholders.</li> </ol>	<p><b>Status at the end of FY16</b></p> <ol style="list-style-type: none"> <li>1. 2, and 3, In FY16, the staff updated an initial inventory of resources and capabilities available to the community. This inventory helps both the community and staff to assess the delivery of those capabilities and to analyze and evaluate how those resources are balanced. A Community Engagement and Policy staff team worked to comprehensively align policy development activities of support and engagement matters.</li> <li>4. The staff continued to collaborate with community leaders in the non-contracted house of the GNSO to offer tailored secretariat support services to those groups. More experience is needed to confirm the value of a permanent resource, but assessments so far confirm the value of this support to community groups.</li> </ol>
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	<ol style="list-style-type: none"> <li>3. Analyze, evaluate and plan for how to balance resource abilities and capabilities among stakeholders.</li> <li>4. Evolve Generic Names Supporting Organization (GNSO) Secretariat Pilot program into permanent support status.</li> <li>5. Assess implementation of Accountability and Transparency Review Team 2 (ATRT2) Recommendation 7, in preparation for ATRT3</li> </ol>	<ol style="list-style-type: none"> <li>5. Implementation of the ATRT2 Recommendation 7 started in January 2105. In December 2015, staff published a report assessing the value of the implementation effort. The report concluded that the process and operational enhancements to the public comment forum infrastructure provided substantial value and should be continued. The report is on the <a href="#">Community Wiki</a>.</li> </ol>
FY17	<ol style="list-style-type: none"> <li>1. Complete assessment of language services capabilities for proficiency, accuracy consistency and reliability</li> <li>2. Review ICANN's Language Services Policy</li> <li>3. Conduct final Supporting Organization and Advisory Committee special request process</li> <li>4. Assess effectiveness and value of telecoms vendors</li> <li>5. Assess implementation of relevant accountability provisions resulting from final plans to transition stewardship of the IANA functions</li> <li>6. Begin multiyear planning for At-Large General Assemblies and summits</li> </ol>	<p><b>Intended status at the end of FY17</b> Staff modified this phasing plan to reflect implementation delays caused by reassignment of resources and other operational activities in FY16 and FY17. We intend to deliver the following status by the end of FY17:</p> <ol style="list-style-type: none"> <li>1. Language services continue to be expanded in various ways in FY17. A complete assessment is not likely to be completed this year but will be started in the future.</li> <li>2. As this year's priority focus was the complete community services inventory effort, a comprehensive assessment of the current language services policy is not likely to be completed.</li> <li>3. The special request budget process is being conducted in FY17. We have not yet finalized plans to phase out the program and a decision will be made in FY18 whether to repeat for FY19.</li> <li>4. Staff teams continue to collaborate on maximizing the effectiveness and capabilities of our telecommunications vendors to deliver the best value and results for each community. This work is an ongoing effort.</li> <li>5. An implementation assessment in FY17 would be premature because of the timing of the accountability work currently being conducted by the community.</li> <li>6. This effort is likely to begin this year as planned.</li> </ol>
FY18	<ol style="list-style-type: none"> <li>1. Complete a comprehensive assessment of delivery of all resources and capabilities that are provided to the stakeholders (every two years).</li> <li>2. Analyze, evaluate and plan for how to balance resource abilities and capabilities among stakeholders (every two years).</li> <li>3. Assess progress towards five-year goal – toward wide use of improved tools and mechanisms for global participation and representation, including the use of remote participation to engage stakeholders from emerging regions.</li> <li>4. Implement improvements resulting from ICANN Reviews as part of continuous accountability enhancement work.</li> </ol>	

	5. Support one or more At-Large General Assemblies.
FY19	<ol style="list-style-type: none"> <li>1. Implement improvements resulting from ICANN Reviews as part of continuous accountability enhancement work.</li> <li>2. Support one or more At-Large General Assemblies.</li> </ol>
FY20	<ol style="list-style-type: none"> <li>1. Stakeholders and staff use improved tools and mechanisms for global participation and representation to collaborate. This participation and collaboration includes the use of remote participation to engage stakeholders from emerging regions.</li> <li>2. Implement improvements resulting from ICANN Reviews as part of continuous accountability enhancement work.</li> <li>3. Support an At-Large summit.</li> </ol>

## Strategic Goal 2.1 Foster and Coordinate a Healthy, Secure, Stable, and Resilient Identifier Ecosystem

### Portfolios

1. PTI Operations<sup>1</sup>
2. PTI Technical System Enhancements<sup>2</sup>
3. Action Request Register Management
4. Global Domains Division Operations
5. Global Customer Support
6. Product Management
7. Registration Data Services (WHOIS)

### Key Performance Indicators

- ⦿ % of Service Level Targets met for delivery of services across multiple departments including but not limited to IANA Services, Global Domains Division (GDD) Operations, and Global Customer Support departments.

### Dependencies

1. Engineering project delivery including: [Root Zone Management System](#), [Board Advice Register](#), [GDD Portal](#), [Centralized Zone Data Service](#), SLA Monitoring<sup>3</sup>, Technical Compliance Monitoring.

### Phasing

FY16	Planned	Status at the end of FY16
	<ol style="list-style-type: none"><li>1. Develop and achieve community approval of all domain name system (DNS)/Unique identifiers health metrics.</li><li>2. Develop and achieve community approval of the stability and resiliency exercises specified.</li></ol>	<ol style="list-style-type: none"><li>1. Adopted key performance indicators for IANA functions (names, numbers, and protocol parameters) after public consultation in 2013 and post <a href="#">monthly reports on measurements</a> for each of the KPIs. Development is underway to collect measurements defined by <a href="#">CWG</a> for Service Level Expectations in processing root zone and root zone data changes.</li><li>2. Moved to Goal 2.2</li><li>3. Moved to Goal 2.3</li><li>4. Moved to Goal 2.2</li><li>5. Moved to goal 2.2</li></ol>

<sup>1</sup> This portfolio is a part of PTI's FY18 plans, which have been consulted on ([Appendix B](#)), published for [Public Comment](#), adopted by the [PTI Board](#).

<sup>2</sup> This portfolio is a part of PTI's FY18 plans, which have been consulted on ([Appendix B](#)), published for [Public Comment](#), adopted by the [PTI Board](#).

<sup>3</sup> Specification 10, New gTLD Registry Agreement

	<ol style="list-style-type: none"> <li>3. Develop and achieve community approval of the ICANN legitimacy survey designed.</li> <li>4. Collaborate with community to reduce gap of IPv6 and DNSSEC deployment by 5% year over year (Year over Year).</li> <li>5. Develop and achieve community approval of the Identifier registration data access/update system requirements specified</li> </ol>	<p>In FY16, we deployed a Global Customer Support team to provide 24x5 coverage for inquiries from contracted parties, registrants and the community at large. Both the Global Support and GDD Operations teams delivered service according to published service level targets. Service delivery against those targets was published on a monthly basis.</p>
FY17	<ol style="list-style-type: none"> <li>1. Deliver services to the ICANN Community according to service level targets</li> <li>2. Monitor and manage service delivery against targets, identify opportunities for improvement and efficiency</li> <li>3. Implement process improvements for increased operational efficiency and customer satisfaction</li> <li>4. Implement system enhancements for increased operational efficiency and effectiveness</li> </ol>	<p><b>Intended Status at the End of FY17</b></p> <ol style="list-style-type: none"> <li>1. The Global Domains Division expects to have consistently delivered services to the ICANN Community at or above published service level targets.</li> <li>2. We continued to monitor and manage service delivery to identify areas for improvement and efficiency.</li> <li>3. We implemented operational improvements to enhance efficiency and customer satisfaction scores improved by over 3% for the year.</li> <li>4. Multiple Enhancements were implements to support operational effectiveness including: <ol style="list-style-type: none"> <li>a. Registry services v1 automation launched and in production.</li> <li>b. Planning completed for Registrar services.</li> <li>c. <a href="#">CZDS 2.0</a> planning completed.</li> </ol> </li> </ol> <p><b>Extra items anticipated for completion by end of FY17</b></p> <ol style="list-style-type: none"> <li>5. PTI Operations: <ol style="list-style-type: none"> <li>a. Established ongoing operations of PTI including incorporation of PTI, execution of contracts between ICANN and PTI for the delivery of the IANA services and updates to IANA services processes, procedures, and systems to reflect the retirement of the NTIA IANA contract.</li> <li>b. Implemented and deployed <a href="#">real-time customer facing performance dashboard</a>.</li> <li>c. PTI Technical System Enhancements.</li> <li>d. Completed the first Key Roll of Root Zone Key Signing Key (KSK).</li> <li>e. Enhanced physical security features of the Key Management Facility.</li> <li>f. Implemented recommendations by <a href="#">Framework of Interpretation</a> Working Group.</li> </ol> </li> </ol>



		<p>6. WHOIS:</p> <ul style="list-style-type: none"> <li>a. Led and supported Registration Data Services (WHOIS) activities to promote trust and confidence in the Internet for all stakeholders.</li> <li>b. Completed implementation of the 2012 WHOIS Review Team’s recommendations.</li> </ul>
FY18	<ol style="list-style-type: none"> <li>1. Deliver services to the ICANN Community according to service level targets.</li> <li>2. Monitor and manage service delivery against targets, identify opportunities for improvement and efficiency.</li> <li>3. Implement process improvements for increased operational efficiency and customer satisfaction.</li> <li>4. Implement system enhancements for increased operational efficiency and effectiveness including: <ul style="list-style-type: none"> <li>a. Registry services automation launched and in production.</li> <li>b. Registrar services and Compliance in Beta.</li> <li>c. CZDS improvements launched and in production.</li> <li>d. Develop Technical Compliance Monitoring system.</li> <li>e. Incremental SLA Monitoring system enhancement.</li> </ul> </li> <li>5. First phase of redesign and implementation of the Protocol Parameter Registry Workflow System (multiyear project).</li> <li>6. Modernization and enhancements of the IANA website.</li> <li>7. Enhancements to Root Zone Management System.</li> <li>8. Continue to lead and support Registration Data Services (WHOIS) activities to promote trust and confidence in the Internet for all stakeholders: <ul style="list-style-type: none"> <li>a. Initiate the next review of the effectiveness of the procedures to address WHOIS conflicts with privacy laws.</li> <li>b. Support the RDS PDP Working Group’s and RDS Review Team’s work.</li> <li>c. Continue implementation work on various Registration Data Services (WHOIS) related policies and requirements.</li> </ul> </li> </ol>	
FY19	<ol style="list-style-type: none"> <li>1. Deliver services to the ICANN Community according to service level targets.</li> <li>2. Monitor and manage service delivery against targets, identify opportunities for improvement and efficiency.</li> <li>3. Implement process improvements for increased operational efficiency and customer satisfaction.</li> <li>4. Implement system enhancements for increased operational efficiency and effectiveness including: <ul style="list-style-type: none"> <li>a. Offer mobile friendly GDD services.</li> <li>b. Implement other desired system enhancements as defined by Registries and Registrars.</li> <li>c. Improvements to Technical Compliance and SLA monitoring systems.</li> <li>d. Registry Reporting Interfaces and other legacy system enhancements to increase functionality.</li> </ul> </li> <li>5. Continuation of project for the Registry Workflow System (multiyear project).</li> <li>6. Continue to lead and support Registration Data Services (WHOIS) activities to promote trust and confidence in the Internet for all stakeholders: <ul style="list-style-type: none"> <li>a. Support the RDS PDP Working Group’s and RDS Review Team’s work&gt;</li> <li>b. Continue implementation work on various Registration Data Services (WHOIS) related policies and requirements&gt;</li> </ul> </li> </ol>	

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FY20	<ol style="list-style-type: none"><li>1. Deliver services to the ICANN Community according to service level targets.</li><li>2. Monitor and manage service delivery against targets, identify opportunities for improvement and efficiency.</li><li>3. Implement process improvements for increased operational efficiency and customer satisfaction.</li><li>4. Implement system enhancements for increased operational efficiency and effectiveness including:<ol style="list-style-type: none"><li>a. Monitor Domain Name Health indicators and define a plan with systems enhancements and improvements in support of a healthy domain name marketplace.</li><li>b. Simplify and make less burdensome contracted party interaction with ICANN systems and services through improved retrievable, broadcast and syndicated methods.</li></ol></li><li>5. Continuation project for the Registry Workflow System (multiyear project).</li><li>6. Continue to lead and support WHOIS activities to promote trust and confidence in the Internet for all stakeholders:<ol style="list-style-type: none"><li>a. Support the RDS PDP Working Group's and RDS Review Team's work.</li><li>b. Continue implementation work on various Registration Data Services (WHOIS) related policies and requirements.</li></ol></li></ol>
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## Strategic Goal 2.2 Proactively Plan for Changes in the Use of Unique Identifiers, and Develop Technology Roadmaps to Help Guide ICANN Activities

### Portfolios

1. Identifier Evolution
2. Technical Reputation
3. Security, Stability, and Resiliency of Internet Identifiers

### Key Performance Indicators

- An Identifier Technologies Health Index, which will measure ICANN's contribution to the health of identifiers in both the ICANN and broader Internet communities

### Dependencies

1. Identifier Evolution, including disruptive new technology, change of business models, governmental regulation, market acceptance, and technological failure, such as catastrophic risks associated with technology.
2. [Technical Reputation](#) (see page 13) including recognition of ICANN's technical expertise, security incident or cyberattack against ICANN's infrastructure or interests, and intentional misrepresentation of ICANN's technical expertise.
3. Security, Stability, and Resiliency of Internet Identifiers, such as cyberattack against and/or using unique identifiers, introduction of disruptive technologies, change of business models, governmental regulation, market acceptance, technological failure, such as catastrophic risks associated with technology.

### Phasing

FY16	<b>Planned</b> <ol style="list-style-type: none"> <li>1. Department fully staffed.</li> <li>2. Draft technology roadmap developed.</li> <li>3. Relationships with protocol/technology development organizations enhanced.</li> <li>4. Ratio of registered domain names to active IP addresses base lined.</li> </ol>	<b>Status at the end of FY16</b> <ol style="list-style-type: none"> <li>1. Office of the Chief Technology Officer department researchers and administrative staff hired, although more staff needed.</li> <li>2. The Roadmap for evolution for Root Zone Management System was drafted based on requirements from the <a href="#">CWG</a>.             <ol style="list-style-type: none"> <li>a. Implementation of the roadmap has begun with milestones set for delivery of <a href="#">SLE</a> measurements and removal of the NTIA authorization module</li> <li>b. Started the project to draft a technology roadmap</li> </ol> </li> <li>3. Relationship with <a href="#">IETF</a>, <a href="#">DNS-OARC</a>, and other technology development organizations enhanced by increased participation. <a href="#">ISOC</a> included ICANN staff in teaching joint sessions on</li> </ol>
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	5. Ratio of registered domain names to Internet users regionally and globally base lined	ICANN-related topics to policy attendees (fellows) to IETF. Relationships with <a href="#">RIRs</a> still being developed. 4. Ratios being established. 5. Ratios being established.
FY17	1. More technology roadmaps approved by community 2. At least five white papers related to identifier technology are published 3. Demonstrate growth in ratios in developing regions	<b>Intended status at the end of FY17</b> 1. The roadmaps were drafted and are on schedule for community approval in FY17. 2. We are on schedule for publication of five white papers during FY17. 3. Metrics show growth in the ratios in less developed regions.
FY18	1. Implementation of first year of technology roadmaps completed. 2. At least two more white papers on identifier technology are published. 3. Demonstrate growth in ratios in developing regions.	
FY19	1. Implementation of second year of technology roadmap. 2. Extra white papers on identifier technologies are published. 3. Demonstrate growth in ratios in developing regions.	
FY20	1. Review of technology roadmaps and recommendations received. 2. Implementation of third year of technology roadmap. 3. Extra white papers on identifier technologies are published. 4. Demonstrate growth in ratios in developing region.	

## Strategic Goal 2.3 Support the Evolution of the Domain Name Marketplace to be Robust, Stable and Trusted

### Portfolios

1. GDD Technical Services
2. Internationalized Domain Names
3. New gTLD Program
4. Outreach and Relationship Management with Existing and new Registry, Registrar Community
5. Domain Name Registrants
6. Subsequent Procedures for New gTLDs
7. Universal Acceptance
8. Registry Services
9. Registrar Services
10. Registrant Services

### Key Performance Indicators

- Publishing a Domain Name Marketplace Health Indicators report twice a year

### Dependencies

1. IT resources availability and prioritization.
2. Ongoing consultation with the community Advisory Panel on the Domain Name Marketplace Health Indicators initiative.
3. Availability of relevant internal and third-party data sources for selected indicators.

### Phasing

FY16	<b>Planned</b> <ol style="list-style-type: none"><li>1. Multistakeholder satisfaction survey baseline completed.</li><li>2. Baseline of Domain Name industry segments defined</li></ol>	<b>Status at the end of FY16</b> <ol style="list-style-type: none"><li>1. Development of customer satisfaction on track for completion by end of FY16. Baseline to include results from Global Support and IANA ratings.</li><li>2. Development of Domain Name Marketplace Health Index on target. Baseline was completed in FY16.</li></ol>
FY17	In FY17, we will continue to support the development of a robust, stable and trusted domain marketplace by:	<b>Intended stats at the end of FY17</b> <ol style="list-style-type: none"><li>1. Domain Name Marketplace Indicators initiative:<ol style="list-style-type: none"><li>a. Iteration of Beta report released in December 2016.</li></ol></li></ol>

	<ol style="list-style-type: none"> <li>1. Ongoing development and monitoring of the Domain Name Marketplace Health Index</li> <li>2. Improve customer satisfaction by reducing survey gap by at least 10% year over year</li> <li>3. Show stable healthy year over year growth in the domain name industry</li> <li>4. Finish the current round of the New gTLD Program and a committed plan toward the start of a subsequent round year over year</li> <li>5. Conclude policy work on WHOIS improvements and the Next Generation Registry Directory Services</li> <li>6. Develop implementation plans for new WHOIS policies or Next Generation Registration Directory Services as appropriate</li> </ol>	<ol style="list-style-type: none"> <li>b. The community advisory panel support is expected to help identification of revised indicators by FY18.</li> <li>c. Evaluation and acquisition of relevant datasets, tapping into both internal and external sources. Publication schedule, report format, and data coverage of Version 1 report will be contingent on data acquisition.</li> <li>2. Status to be determined.</li> <li>3. Status to be determined.</li> <li>4. By the end of FY17 we expect that the New gTLD Program will be more than 95% complete with fewer than 130 applications remaining.</li> <li>5. WHOIS/Registration Directory Services portfolio moved to Goal 2.1.</li> <li>6. WHOIS/Registration Directory Services portfolio moved to Goal 2.1.</li> </ol> <p><b>Extra items anticipated for completion by end of FY17</b></p> <ol style="list-style-type: none"> <li>7. Activities related to new Portfolio: Registrant Services: <ol style="list-style-type: none"> <li>a. Define activities and plan to better inform, educate, service and support registrants.</li> <li>b. Define activities, work plan, key success factors and metrics.</li> </ol> </li> </ol>
FY18	<ol style="list-style-type: none"> <li>1. Ongoing development and monitoring of the Domain Name Marketplace Health Indicators: <ol style="list-style-type: none"> <li>a. Evaluate expansion of the initial report version’s data coverage, format, and release schedule by continuing to evaluate and acquire relevant datasets that can present indicators suggested by the Advisory Panel.</li> <li>b. Collaborate with the Advisory Panel for inputs on the direction of the Version 1 report.</li> </ol> </li> <li>2. Show stable healthy year over year growth in the domain name industry.</li> <li>3. Continue to execute activities to better inform, educate, service and support registrants.</li> </ol>	
FY19	<ol style="list-style-type: none"> <li>1. Ongoing development and monitoring of the Domain Name Marketplace Health Indicators: <ol style="list-style-type: none"> <li>a. Continue to fine-tune Version 1 report coverage, report format, release schedule, based on inputs received from the Advisory Panel.</li> <li>b. Collaborate with the Advisory Panel for input on the direction of Version 2 of the report.</li> </ol> </li> <li>2. Show stable healthy year over year growth in the domain name industry.</li> <li>3. Drive completion of the New gTLD Program to 98%.</li> <li>4. Implement policy recommendations related to subsequent procedures for new gTLD.</li> <li>5. Continue to execute activities to better inform, educate, service and support registrants.</li> </ol>	
FY20	<ol style="list-style-type: none"> <li>1. Ongoing development and monitoring of the Domain Name Marketplace Health Indicators: <ol style="list-style-type: none"> <li>a. Identification of any revised indicators expected with the support of Advisory Panel for Version 2 of the report.</li> </ol> </li> </ol>	

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	<p>b. Evaluation and acquisition of relevant datasets, tapping into both internal and external sources. Publication schedule, format, and data coverage of Version 2 report will be contingent on data acquisition.</p> <ol style="list-style-type: none"><li>2. Show stable healthy year over year growth in the domain name industry.</li><li>3. Drive completion of the New gTLD Program to 99%.</li><li>4. Continue to execute activities to better inform, educate, service and support registrants.</li></ol>
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## Strategic Goal 3.1 Ensure ICANN’s Long-Term Financial Accountability, Stability and Sustainability

### Portfolios

1. Strategic and Operating Planning
2. Finance and Procurement
3. Enterprise Risk Management
4. Security Operations

### Key Performance Indicators

- Financial accountability, stability and sustainability indices (composite index of ratios and metrics) including but not limited to:
  - Actual to budget Reserve Fund balance and utilization, and financial performance metrics
  - Internal control performance indicators
  - % project completion indices (with emphasis on major projects)
  - % turnover compared to market benchmark
  - % comparisons of actual to target enterprise risk management roadmap achievements
- On-time delivery and quality index of the ICANN Planning process (includes: Five-Year Operating Plan, Fiscal Year Operating Plan and Budget, achievements and progress reporting)

### Dependencies

1. Enabling the analytics improvements, metric tracking/reporting/review, and process improvement implementation depends on the the IT roadmap implementation.
2. Community bandwidth and focus to provide direction and feedback.

### Phasing

FY16	Planned	Status at the end of FY16
	<ol style="list-style-type: none"> <li>1. Refine the FY15 model – financial framework, roadmap, targets and metrics - with target to achieve within three years the foundation for Key Success Factors (KSFs) (outcome) supported by adequate system advancement in place.</li> <li>2. Align with budget availability and IT system implementation roadmap.</li> <li>3. Review and obtain approval by Board, staff and stakeholders</li> </ol>	<ol style="list-style-type: none"> <li>1. Developed roadmap to complete Five-Year Operating Plan update and FY17 Operating Plan and Budget.</li> <li>2. Launched and completed FY16 total organization continuous improvement internal assessment based on EFQM Excellence Model, identified gaps and developed improvement roadmap.</li> <li>3. Launched Dashboard reporting beta, progressed to Version 1 and continued to advance on metrics, contents and systems.</li> </ol>



		<ol style="list-style-type: none"> <li>4. Continued to conduct and refine quarterly stakeholders calls increasing accountability and transparency.</li> <li>5. Completed FY15 financial reporting and annual audit with no deficiencies noted.</li> <li>6. Concluded enterprise risk management maturity assessment and working on deriving maturity targets to refine risk management discipline.</li> <li>7. Selected ERP system and began to launch implementation.</li> </ol>
FY17	<ol style="list-style-type: none"> <li>1. Achieve financial roadmap targets.</li> <li>2. Review operational processes and implement improvements.</li> <li>3. Modify roadmap as needed.</li> </ol>	<p><b>Intended status at the end of FY17</b></p> <ol style="list-style-type: none"> <li>1. On-track to meet financial roadmap targets.</li> <li>2. We reviewed our operational processes and made improvements intended to: <ol style="list-style-type: none"> <li>a. Implement integrated workflows across our Enterprise Resource Planning system. This new system replaces multiple legacy systems, simplifies processes, and is designed to deliver efficient and integrated Finance and Procurement functions.</li> <li>b. Measure and manage risk for the ICANN organization.</li> <li>c. The Security Operations function has been expanded to elevate ICANN’s security preparedness. The team has embarked on the roadmap developed with international security best practices deployed to fit the unique culture and identity of ICANN.</li> </ol> </li> <li>3. We updated the roadmap to improve our management of security for <a href="#">ICANN Public Meetings</a>, other key ICANN events, and office locations.</li> </ol>
FY18	<ol style="list-style-type: none"> <li>1. Achieve the foundation for Key Success Factors (outcomes) supported by adequate systems advancement.</li> <li>2. Continue to improve and achieve elevated target performance levels as per roadmap.</li> <li>3. Modify roadmap as needed.</li> </ol>	
FY19	<ol style="list-style-type: none"> <li>1. Continue to improve and achieve elevated target performance levels as per roadmap.</li> <li>2. Modify roadmap as needed.</li> <li>3. Initiate strategic planning process.</li> </ol>	
FY20	<ol style="list-style-type: none"> <li>1. Complete roadmap as planned.</li> <li>2. Reassess and plan for future years.</li> <li>3. Conclude strategic planning process and develop Five-Year Operating Plan.</li> </ol>	

## Strategic Goal 3.2 Ensure Structured Coordination of ICANN’s Technical Resources

### Portfolios

1. Cybersecurity Hardening and Control
2. IT Infrastructure and Service Scaling
3. Root Systems Operations

### Key Performance Indicators

- % of global IT infrastructure uptime (scaling from 99.9% in FY 2016 to 99.999% in 2020 for ICANN Community engagement and information web services)

### Phasing

FY16	<p><b>Planned</b></p> <ol style="list-style-type: none"> <li>1. Develop and socialize a suite of uptime metrics for IT services.</li> <li>2. Define, divide and socialize IT services into a three-tier classification.</li> <li>3. Define, socialize and adopt a baseline Lean Process Capability metric for IANA services.</li> <li>4. Measure and record a baseline for the IANA services.</li> <li>5. Define, develop and socialize a metric for on-time, on-budget IT projects delivery.</li> </ol>	<p><b>Status at the end of FY16</b></p> <ol style="list-style-type: none"> <li>1. Metrics for all areas of IT have been developed and socialized internally</li> <li>2. All IT services were classified and this classification has been socialized</li> <li>3. The process capabilities were documented and reviewed</li> <li>4. A baseline for availability was established</li> <li>5. A project delivery metric has been developed and socialized and an internal report is published monthly.</li> </ol>
FY17	<ol style="list-style-type: none"> <li>1. Measure and record a baseline for IT Services uptime by tier</li> <li>2. Reflective of Post-Transition IANA, measure and record a new baseline of capabilities and costs for IANA functions year over year</li> <li>3. Report on metric for on-time, on-budget IT projects delivery</li> </ol>	<p><b>Intended status at the end of FY17</b></p> <ol style="list-style-type: none"> <li>1. All 85+ business services have baseline monitoring data from eight geographic locations.</li> <li>2. A history of IANA support has been developed. IANA Service consumption and charge back algorithm to be completed.</li> <li>3. Monthly metrics for IT services are all posted internally. Status of major community-supporting projects is posted to icann.org for consumption.</li> </ol>
FY18	<ol style="list-style-type: none"> <li>1. Drive IT Services uptime for Tier 1 towards 99.99% availability.</li> <li>2. Measure and compare metric for the IANA Services against baseline for year over year improvement.</li> <li>3. Report on metric for on-time, on-budget IT projects delivery, driving to improvement year over year on performance.</li> </ol>	
FY19	<ol style="list-style-type: none"> <li>1. Drive IT Services uptime for Tier 1 to 99.999% availability.</li> </ol>	

	<ol style="list-style-type: none"> <li>2. Drive uptime for Tier 2 towards 99.99% availability.</li> <li>3. Measure and compare metric for the IANA Services against baseline for year over year improvement.</li> <li>4. Report on metric for on-time, on-budget IT projects delivery, driving to improvement year over year on performance.</li> </ol>
FY20	<ol style="list-style-type: none"> <li>1. Maintain IT Services uptime for Tier 1 to 99.999% availability.</li> <li>2. Maintain uptime for Tier 2 to 99.99% availability or better.</li> <li>3. Drive uptime for Tier 3 towards 99.9% availability or better.</li> <li>4. Measure and compare metric for the IANA Services against baseline for year over year improvement.</li> <li>5. Report on metric for on-time, on-budget IT project delivery, driving to improvement year over year on performance.</li> </ol>

## Strategic Goal 3.3 Develop a globally diverse culture of knowledge and expertise available to ICANN’s Board, Organization and stakeholders

### Portfolios

1. People Management
2. ICANN Technical University
3. Organizational Assessment and Continuous Improvement
4. Board Operations
5. Global Operations

### Key Performance Indicators

- ⊙ % of achievement in comparison to best practice benchmark metrics of global diverse culture, and knowledge levels of Board, staff and stakeholders
- ⊙ % of completion - actual to target implementation milestones of global development programs to advance the knowledge and expertise of staff, Board and stakeholders

### Dependencies

1. IT system implementation roadmap enabling efficiency and advancement in analytics, metric tracking/reporting/review, process improvement implementation, and mitigation assessment and implementation.
2. Community bandwidth and focus to provide direction and feedback.

### Phasing

FY16	<b>Planned</b> <ol style="list-style-type: none"> <li>1. Build on the FY15 achievements related to this goal KSFs (outcome).</li> <li>2. Complete first internal European Foundation for Quality Management (EFQM) radar evaluation &amp; assessment of key areas of focus, identify gaps and developed mitigation/ improvement roadmap.</li> <li>3. Identify benchmark organizations and derive key benchmarking metrics</li> </ol>	<b>Status at the end of FY16</b> <ol style="list-style-type: none"> <li>1. Board Operations continued to improve the Board’s training program and was on track with plan and Chairman’s direction.</li> <li>2. On target with staff talent management roadmap implementation. This included:               <ol style="list-style-type: none"> <li>a. Updated of the new hire orientation program.</li> <li>b. Continuous improvement of staff communication.</li> <li>c. Elevated quality of management development and training</li> <li>d. The development of succession plan.</li> </ol> </li> </ol>
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		<ol style="list-style-type: none"> <li>3. Supported, and collaborated where needed, on cross-functional efforts to “Empower current and new stakeholders to fully participate in ICANN activities” as part of the stakeholder-endorsed Strategic Goal 5.3. These programs include: <ol style="list-style-type: none"> <li>a. The development and implementation of an internship framework.</li> <li>b. Development and Public Responsibility Department (DPRD) programs that address participation needs such as NextGen@ICANN, the Fellowship Program, the Newcomer Program, and the Community Onboarding Mentor Pilot Program.</li> <li>c. The relaunch of an improved Online Learning Platform, <a href="#">ICANN Learn</a>.</li> <li>d. Supporting academic outreach efforts by the community and the GSE team.</li> </ol> </li> </ol>
FY17	<ol style="list-style-type: none"> <li>1. Develop and perform regular reporting of performance metrics against key benchmark metrics.</li> <li>2. Identify gaps and implement mitigation</li> </ol>	<p><b>Intended status at the end of FY17</b></p> <ol style="list-style-type: none"> <li>1. We deployed v2 of <a href="#">ICANN’s KPI Dashboard</a> earlier in FY17. We are developing a new presentation layer for the dashboard data to give the community an interactive interface, which aims to improve understanding of the components of each KPI.</li> <li>2. Major HR systems improvements have been delivered through ICANN’s Enterprise Resource Planning system. The first phase of the implementation was completed in December 2016.</li> <li>3. HR has been developing and deploying change management and a strategic HR partnership function to better support the organization’s needs.</li> <li>4. <a href="#">How It Works</a> sessions continue to be provided at ICANN and other meetings and are supported by the improved <a href="#">ICANN Learn</a> platform and targeted training activities. Staff-focused informational sessions are provided through lectures from staff, and an invited guest speaker series.</li> <li>5. We have continued to use comprehensive and non-prescriptive continuous improvement models, the <a href="#">EFQM Excellence Model</a>, <a href="#">SOC/2 and SOC/3</a>, and the <a href="#">20 Critical Security Controls Framework</a> to identify both strengths and areas for improvement across the organization, and drive the prioritized improvements.</li> <li>6. Board Operations has improved its structure and systems to elevate the strategically focused quality of services to both the ICANN and PTI Boards.</li> <li>7. Global Operations work in the hubs is being synchronized with the globalization strategy, especially for local team building, improvement initiatives, and organization-wide best practice programs.</li> </ol>

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FY18	<ol style="list-style-type: none"><li>1. Identify areas form improvement, prioritize, and continue to improve.</li><li>2. Advance on applying systems to refine measurements.</li><li>3. Collaborate with stakeholders on progress evaluation and improvements.</li></ol>
FY19	<ol style="list-style-type: none"><li>1. Continue evaluation against best practice and advance.</li></ol>
FY20	<ol style="list-style-type: none"><li>1. Continue evaluation against best practice and advance.</li></ol>

# Strategic Goal 4.1 Encourage Engagement with the Existing Internet Governance Ecosystem at National, Regional and Global Levels

## Portfolios

1. Coordination of ICANN Participation in Internet Governance

## Key Performance Indicators

- ⦿ A trended composite index measuring interactions between ICANN and national governments, regional governmental entities, and Intergovernmental organizations, and international organizations

## Dependencies

1. Changes in individual government compositions reflected in changes in individual or regional policies.
2. Changes in economic conditions that lead to a reduction in government engagement in IGF meetings and activities.
3. Changes in perception of ICANN following the successful IANA Stewardship Transition.

## Phasing

FY16	<p><b>Planned</b></p> <ol style="list-style-type: none"> <li>1. Increase % participation rates from documented baseline established in FY15.</li> <li>2. Increase # of demonstration projects in the regions reflecting collaboration with organizations active in the IG ecosystem</li> </ol>	<p><b>Status at the end of FY16</b></p> <ol style="list-style-type: none"> <li>1. <a href="#">WSIS</a> participation and successful outcome led to continued follow-up in <a href="#">CSTD</a>, <a href="#">ITU</a> and other forums.</li> <li>2. Active participation at IGFs at the global regional and national levels.</li> <li>3. Continued support for the multistakeholder model in global IG forums.</li> <li>4. Active engagement to support a positive outcome in the <a href="#">OECD</a> Ministerial meeting.</li> <li>5. Increased total participation rates for FY16 compared to the baseline established in FY15. In addition, participation data was collated to compare FY activity by quarters to show trends.</li> <li>6. Joint projects were added as key regional metrics.</li> </ol>
FY17	<ol style="list-style-type: none"> <li>1. Continuation of FY16 activities to increase % participation rates documented as baseline established in FY16</li> <li>2. Continuation of FY16 activities to support the development of global acceptance by stakeholders of the IANA Stewardship Transition</li> </ol>	<p><b>Intended status at the end of FY17</b></p> <ol style="list-style-type: none"> <li>1. Increased total participation rates for FY17 compared to the baseline established in FY16.</li> <li>2. Successful defense of ICANN's multistakeholder community role in the DNS at the <a href="#">WTSA</a> through education and negotiation to prevent resolutions that would have assigned a role in delegation to the ITU.</li> </ol>

		<ol style="list-style-type: none"> <li>3. Statements from governments and Intergovernmental Organizations welcoming the IANA Stewardship Transition.</li> <li>4. Management decision to bring some FY18 work forward into second half of FY17 by reviewing and revising the IG engagement strategy and the Government Engagement strategy in preparation for submission to Board WG on Internet Governance.</li> </ol>
FY18	<ol style="list-style-type: none"> <li>1. Complete third year review and revisions of strategy as necessary based upon FY17 work.</li> <li>2. Evolution of global and regional work plans if necessary to reflect outcome of strategy review and revision.</li> </ol>	
FY19	<ol style="list-style-type: none"> <li>1. Increase from baseline participation rates documented as baseline established in FY18.</li> </ol>	
FY20	<ol style="list-style-type: none"> <li>1. Strong fully structured working relationships with organizations and entities active in the Internet governance ecosystem.</li> </ol>	



## Strategic Goal 4.2 Clarify the Role of Governments in ICANN and Work with Them to Strengthen their Commitment to Supporting the Global Internet Ecosystem

### Portfolios

1. Support GAC Engagement
2. Engagement with Governments and Intergovernmental Organizations

### Key Performance Indicators

- Increase # of GAC members attending ICANN meetings, reported by region

### Dependencies

1. Changes in government resource budgeting that affects participation rates in the face-to-face GAC sessions at ICANN meetings.

### Phasing

FY16	<p><b>Planned</b></p> <ol style="list-style-type: none"> <li>1. Updated Government Engagement Strategy is reflected in the work plan for each region.</li> <li>2. Baseline determination completed to map existing entities within the Internet governance (IG) ecosystem and their posture toward ICANN and the multistakeholder model</li> </ol>	<p><b>Status at the end of FY16</b></p> <ol style="list-style-type: none"> <li>1. Effective regional webinars were held increasing regional awareness and participation.</li> <li>2. Active engagement to work toward successful ICANN 55 High-Level Government Meeting and African Ministerial meeting.</li> <li>3. Active engagement to work toward GAC support for the IANA Stewardship Transition process.</li> <li>4. Effective participation in GAC and ICANN work.</li> </ol>
FY17	<ol style="list-style-type: none"> <li>1. Increase the # of governmental entities actively participating in ICANN</li> </ol>	<p><b>Intended status at the end of FY17</b></p> <ol style="list-style-type: none"> <li>1. Completion of a regional capacity building workshop for regional GAC members as part of the demand driven engagement.</li> <li>2. Planning for FY18 events in support of GAC member participation and engagement.</li> <li>3. Started the review and revision of government engagement strategy as part of process of presentation of strategy to the Board.</li> </ol>

FY18	<ol style="list-style-type: none"> <li>1. Third year review of strategy and implementation of any changes developed through review and revision brought forward to FY17.</li> <li>2. Revise global and regional work plans to reflect outcome of strategy review.</li> <li>3. Two informational and technical skills workshops for regional GAC members as part of demand driven engagement.</li> </ol>
FY19	<ol style="list-style-type: none"> <li>1. Increase # of governmental entities actively participating in ICANN processes and stakeholder groups.</li> </ol>
FY20	<ol style="list-style-type: none"> <li>1. Continued information and technical skills workshops to enhance relationships with governmental entities that encourage them to work collaboratively and support the adoption of the multistakeholder IG approaches on national, regional and global levels.</li> </ol>

## Strategic Goal 4.3 Participate in the Evolution of a Global, Trusted, Inclusive Multistakeholder Internet Governance Ecosystem that Addresses Internet Issues

### Portfolios

1. Support Internet Governance Ecosystem Advancement

### Key Performance Indicators

- Quarterly trend data showing cumulative participation in Internet Governance ecosystem evolution.

### Phasing

FY16	<p><b>Planned</b></p> <ol style="list-style-type: none"> <li>1. Increase in # of cooperation agreements with respective Internet organizations and regional and national multistakeholder IG approaches over baseline established in FY 2015.</li> <li>2. Increase # national IG multistakeholder approaches over baseline established in 2015</li> </ol>	<p><b>Status at the end of FY16</b></p> <ol style="list-style-type: none"> <li>1. Worked to develop and finalize cooperation agreements with Intergovernmental Organizations/International Organizations (such as <a href="#">GSMA</a>, <a href="#">CTO</a>, <a href="#">OSCE</a> and others).</li> <li>2. Increased participation of governments and <a href="#">IGOs</a> in ICANN work.</li> <li>3. Promoted multistakeholder model for Internet Governance at national and regional levels.</li> </ol>
FY17	<ol style="list-style-type: none"> <li>1. Identification of potential best practices among national and regional multistakeholder IG approaches. These best practices are to be highlighted in outreach work for further adoption of multistakeholder model IG governance mechanisms.</li> <li>2. Establish a baseline measurement of projects and work reflecting collaboration with respective Internet organizations.</li> </ol>	<p><b>Intended status at the end of FY17</b></p> <p>A review of the Key Success Factor for Goal 4.3 in the strategic plan shows that they have been broadly achieved:</p> <ol style="list-style-type: none"> <li>1. ICANN is an effective contributor and supporter of a global and reliable Internet governance ecosystem and that addresses technical and non-technical issues for the global community.</li> <li>2. Recognition by decision-makers across stakeholder sectors of the multistakeholder approach to govern the Internet. Global support for the IANA Stewardship Transition demonstrates the trust and endorsement of the multistakeholder model and the trust shown to the stakeholder community to undertake the oversight of ICANN.</li> <li>3. Demonstrate leadership by implementing best practices in multistakeholder mechanisms within the distributed Internet Governance ecosystem while encouraging all stakeholders to implement the principles endorsed at</li> </ol>

		<p><a href="#">NETmundial</a>. NETmundial principles were endorsed globally and the platform was retired at the request and in coordination with the global community.</p> <p>4. Proliferation of national and regional multistakeholder Internet governance structures. The figures in the <a href="#">ICANN KPI Dashboard</a> chart 4.3 show a consistent yearly increase in FY15, FY16 and so far in FY17.</p> <p>In light of the changes in requests from the global community and our focus on demand driven engagement, we have updated our reporting to reflect our changed focus. Following the IANA Stewardship Transition, all engagement activity is evaluated against ICANN's restated Bylaws language. The global engagement strategy review and revision work was brought forward into FY17 to address this need.</p>
FY18	<ol style="list-style-type: none"> <li>1. Third year review of the goals and delivery strategy for those goals with the mission and mandate of the post-transition ICANN.</li> <li>2. Evolution and improvement of global engagement work plan based on completed review.</li> <li>3. Definition of new measurements for activity if the work of 4.3 is still separate from 4.1 - if so continuation of FY17 projects and work to reflect collaboration with respective Internet organizations.</li> </ol>	
FY19	<ol style="list-style-type: none"> <li>1. Revise global strategy and goals as reflected in revised regional implementation strategies and work plans.</li> <li>2. Develop measurement mechanism to assess perception of whether technical and non-technical IG issues are successfully addressed using multistakeholder model.</li> </ol>	
FY20	<ol style="list-style-type: none"> <li>1. ICANN involvement, consistent with its mission and within its mandate, in a full implementation of a distributed trusted fully inclusive multistakeholder Internet Governance ecosystem.</li> <li>2. Perception that technical and non-technical Internet Governance issues are successfully addressed using multistakeholder model.</li> </ol>	

## Strategic Goal 4.4 Promote Role Clarity and Establish Mechanisms to Increase Trust Within the Ecosystem Rooted in the Public Interest

### Portfolios

1. Contractual Compliance Functions
2. Contractual Compliance Initiatives and Improvements
3. Contractual Compliance and Safeguards

### Key Performance Indicators

- ⦿ % of Contractual Compliance service level targets that are met
- ⦿ Ensure that the safeguards role becomes an important part of the ICANN organization’s portfolio of responsibilities and is fully integrated and active within the ICANN Community

### Dependencies

1. External:
  - a. ICANN Community expectations.
  - b. Understanding of the contractual compliance and safeguards scope.
  - c. Ability to reach consensus.
2. Internal:
  - a. Resources (people and systems).
  - b. Ability to clarify expectations and implement where applicable.
3. Contracted parties:
  - a. Compliance with the contract and policies.
  - b. Interpretation of the contract and policies.
  - c. Impact of local laws and regulations.

### Phasing

FY16	<b>Planned</b> <ol style="list-style-type: none"> <li>1. Assess current practices and documentation.</li> <li>2. Assemble and refine Accountability-related KPIs, in line with Accountability Framework proposed by One World Trust in response to recommendations of Accountability and Transparency Review Teams to implement a means of measuring ICANN's accountability.</li> </ol>	<b>Status at the end of FY16</b> FY16 was on target – <ol style="list-style-type: none"> <li>1. On-going effort for continuous improvement</li> </ol>
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	<ol style="list-style-type: none"> <li>3. Identify and propose best practices.</li> <li>4. Propose measurements and benchmarks</li> </ol>	<ol style="list-style-type: none"> <li>2. This work moved to 5.2 mid-year and is reported there</li> <li>3. This work moved to 2.1 mid-year and is reported there</li> <li>4. Measurement metrics for contractual compliance service level targets are included in the <a href="#">ICANN Beta KPI Dashboard</a></li> </ol>
FY17	<ol style="list-style-type: none"> <li>1. Implement agreed-upon plan and practices</li> <li>2. Implement ongoing measurement, benchmarking and reporting of accuracy rates</li> </ol>	<p><b>Intended status at the end of FY17</b></p> <p>Several key initiatives were launched. They include:</p> <ul style="list-style-type: none"> <li>⦿ Increased monitoring and audits</li> <li>⦿ Focused efforts on areas of non-compliance such as WHOIS inaccuracy</li> <li>⦿ Outreach to community members</li> <li>⦿ Improved reporting on compliance activities</li> <li>⦿ Increased engagement with working groups and policy teams</li> </ul> <p>The <a href="#">Compliance Dashboard</a> has more information.</p>
FY18	<ol style="list-style-type: none"> <li>1. Implement Overall Satisfaction Survey (based on the feedback Contractual Compliance requests from reporters and contracted parties at the closure of a complaint) and report the results and outcomes.</li> <li>2. Implement ongoing measurement, benchmarking and reporting.</li> <li>3. Assess current practices in light of the changing environment and adjust as needed.</li> <li>4. Integrate role within ICANN organization and the community.</li> <li>5. Develop strategic outreach plan and execute.</li> <li>6. Develop a report on the role of safeguards in the DNS market place, including successes and areas for improvement.</li> </ol>	
FY19	<ol style="list-style-type: none"> <li>1. Implement agreed-upon plan and practices.</li> <li>2. Implement ongoing measurement, benchmarking and reporting.</li> </ol>	
FY20	<ol style="list-style-type: none"> <li>1. Assess and adjust plan and practices as needed.</li> </ol>	

## Strategic Goal 5.1 Act as a Steward of the Public Interest

### Portfolios

1. Legal Advisory Function
2. Public Interest Decision Making
3. Legal Internal Support
4. Support ICANN Board

### Key Performance Indicators

- # of ICANN decisions and advice (Board, staff and stakeholders) that are rationalized based on common consensus-based definitions and understandings of public interest within ICANN's remit

### Dependencies

1. Community, Board and staff involvement in the dialogue regarding the public interest understandings, definitions and framework to hold as an ICANN standard.

### Phasing

FY16	<b>Planned</b> 1. Create Framework for ICANN Supporting Organizations and Advisory Committee to assist them in assessing how their actions are aligned to the public interest	<b>Status at the end of FY16</b> 1. A High Interest Session on this topic was held at ICANN55 where discussions took place on next steps and planning. Detailed progress on this collaborative dialogue- along with details on developments to date are on the <a href="#">Community Wiki</a> .
FY17	1. Measure and baseline the % of actions by ICANN in decision making and how rationales are including the public interest assessments as part of decision making	<b>Intended status at the end of FY17</b> 1. The Community deferred this work while it focused on the IANA Stewardship Transition. Now that the bulk of the IANA Stewardship Transition work has been completed, work resumed at ICANN57 and is on target for a definition to be agreed by June 2017.
FY18	1. Increase from the baseline the % actions by ICANN in decision making and how rationales are including the public interest assessments as part of decision making. 2. part of decision making.	
FY19	1. Continue to increase from the baseline the % actions by ICANN in decision making and how rationales are including the public interest assessments as part of decision making.	

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FY20	1. Reach goal of all material actions including a consideration of decision making and how rationales are including the public interest assessments as part of decision making.
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## Strategic Goal 5.2 Promote Ethics, Transparency and Accountability Across the ICANN Community

### Portfolios

1. [Specific Reviews](#) (Bylaws Article 4, Section 4.6)
2. [Organizational Reviews](#)
3. Conflicts of Interest and Organizational Ethics
4. Accountability and Transparency Mechanisms
5. Strategic Initiatives
6. Enhancing ICANN Accountability – WS2

### Key Performance Indicators

- Public interest framework index (based on elements reported in Section 5.2 of the [KPI Dashboard](#))
  - Develop a framework for increasing trust in ICANN’s fulfillment of its commitments through efficient and effective Reviews
  - Broad and diverse participation in ICANN Reviews
  - Community engagement in using ICANN Reviews to drive continuous improvement in accountability, transparency and organizational effectiveness (such as community participation in public comments pertaining to Reviews and other forms of engagement)
  - Transparent and timely reporting mechanisms on the progress of each review

### Dependencies

1. Community, Board and staff agreement on a clear, actionable Accountability and Ethical Framework.
2. The outcomes of work to enhance ICANN’s accountability.
3. Under the new Bylaws, the selection of Review Team members for Specific Reviews is now the responsibility of the ICANN Community.
4. Community participation in conducting Reviews.
5. Ability of the Cross-Community Working Group on Enhancing Accountability (WS2) to complete its work on a timely basis, in accordance with the deadlines agreed to by the Co-Chair and Board.

### Phasing

FY16	<b>Planned</b>	<b>Status at the end of FY16</b>
	<ol style="list-style-type: none"> <li>1. Create and publish revised Accountability and Ethical Framework and develop baseline metrics to measure to demonstrate impact on organization</li> </ol>	<ol style="list-style-type: none"> <li>1. Work supporting the IANA Stewardship Transition continued with the <a href="#">IANA Stewardship Transition Coordination Group</a> finalizing its proposal on schedule and the <a href="#">CCWG-Accountability</a> sought consensus from its six Chartering Organizations with delivery of final proposal in February 2016</li> </ol>

		<ol style="list-style-type: none"> <li>2. <a href="#">ATRT2 implementation</a> is proceeding on-schedule with quarterly updates published</li> <li>3. The <a href="#">Competition, Consumer Trust and Consumer Choice Review</a> started on schedule.</li> <li>4. Community feedback has been respected and the Second Security, Stability and Resiliency of the DNS Review and the Second WHOIS Policy Review have been delayed</li> <li>5. The independent examiner report on the review of the Generic Names Supporting Organization <a href="#">was published</a> and the review of the At-Large Organization is scheduled</li> <li>6. The reviews process has been enhanced based on best practices and <a href="#">improved reviews web pages</a> have been published</li> </ol>
FY17	<ol style="list-style-type: none"> <li>1. Measure against the baseline metrics developed in FY16 and show increase in acceptance and impact of Accountability and Ethical Framework</li> <li>2. Continue to review for improvements and enhancements. Measure and baseline the % of actions by ICANN in decision making and how rationales are including the public interest assessments as part of decision making</li> <li>3. Complete the first AoC Review on Competition, Consumer Choice and Trust in new gTLDs</li> <li>4. Launch and conduct the second AoC Review on Security, Stability and Resiliency</li> <li>5. Launch and conduct the second AoC Review on WHOIS</li> <li>6. Preparation for and launch the third AoC Review on Accountability and Transparency</li> </ol>	<p><b>Intended status at the end of FY17</b></p> <ol style="list-style-type: none"> <li>1. Measurements: <ol style="list-style-type: none"> <li>a. Expanded reporting within the <a href="#">dashboard</a> measuring against targets</li> <li>b. Publication of Annual Transparency Report targeted for third quarter FY17, to include narrative explanations and underlying data, where applicable.</li> </ol> </li> <li>2. Support the completion of the work of Cross Community Working Group on Accountability.</li> <li>3. Competition, Consumer Choice and Trust: <ol style="list-style-type: none"> <li>a. Review of Competition, Consumer Choice and Trust in new gTLDs (<a href="#">CCT</a>) targeted for completion in FY17</li> <li>b. CCT Review Fact Sheet developed and published on a quarterly basis.</li> </ol> </li> <li>4. Second Review of Security, Stability and Resiliency of the DNS (<a href="#">SSR2</a>) started in June 2016 and the Review Team is expected to convene and begin working in the second half of FY17. Implementation of <a href="#">SSR1 recommendations</a> will be completed in the second half of FY17.</li> <li>5. Second Registration Directory Service (<a href="#">RDS2</a>) Review (formerly WHOIS Review) started in October 2016 and the Review Team is expected to begin working in the second half of FY17. Implementation of <a href="#">WHOIS recommendations</a> will be completed in the second half of FY17.</li> </ol>

		<p>6. Third Accountability and Transparency Review (<a href="#">ATRT3</a>) started in January 2017 and the Review Team is expected to convene and begin working in the second half of FY17. Implementation of <a href="#">ATRT2 recommendations</a> will be completed in the second half of FY17.</p> <p>7. Organizational Reviews:</p> <ul style="list-style-type: none"> <li>a. Review of the <a href="#">GNSO</a> was completed in June 2016 and moved into implementation, which will continue through FY18.</li> <li>b. Review of the <a href="#">At-Large</a> Community started, with Final Report expected in FY17.</li> <li>c. Review of the Nominating Committee (<a href="#">NomCom</a>) will start in the second half of FY17.</li> <li>d. Review of the <a href="#">ASO</a> started and is expected to be completed in FY17.</li> </ul> <p>8. Operating Standards for reviews developed through community consultation.</p>
FY18	<ol style="list-style-type: none"> <li>1. Meet increased metrics developed in FY16-FY17 and show increase in acceptance and impact of Accountability and Ethical Framework.</li> <li>2. Reviews Streamlining and Recalibration work in consultation with the community.</li> <li>3. Support the completion of the work of Cross Community Working Group on Accountability.</li> <li>4. Coordinate the operationalization of the output of Cross Community Working Group on Accountability.</li> <li>5. Implementation of the recommendations from the first Review on Competition, Consumer Choice and Trust in new gTLDs.</li> <li>6. Conclude the second Specific Review on Security, Stability and Resiliency of the DNS; begin planning for implementation.</li> <li>7. Conclude the second Specific Review on Registration Directory Service; begin planning for implementation.</li> <li>8. Conclude the third Specific Review on Accountability and Transparency; begin planning for implementation.</li> <li>9. Conclude Organizational Reviews of ASO and NomCom, and start Reviews of RSSAC, SSAC and ccNSO and begin planning for implementation. Continue implementation of GNSO Review and At-Large Review.</li> <li>10. Evolve Operating Standards for Reviews as a well-understood and accepted guide for conducting reviews</li> </ol>	
FY19	<ol style="list-style-type: none"> <li>1. Meet increased metrics developed in FY16-FY18 and show increase in acceptance and impact of Accountability and Ethical Framework.</li> <li>2. Reviews Streamlining and Recalibration work in consultation with the community.</li> <li>3. Continue implementation of recommendations of Specific and Organizational Reviews, following project management best practices.</li> </ol>	
FY20	<ol style="list-style-type: none"> <li>1. Reach five-year goals in acceptance and impact on organization set out in the Accountability and Ethical Framework.</li> <li>2. Reviews Streamlining and Recalibration work in consultation with the community.</li> <li>3. Continue implementation of recommendations of Specific and Organizational Reviews, following project management best practices.</li> </ol>	

## Strategic Goal 5.3 Empower Current and New Stakeholders to Fully Participate in ICANN Activities

### Portfolios

1. Supporting Public Interest Initiatives
2. Supporting Stakeholder Participation
3. Supporting Education

### Key Performance Indicators

- # of stakeholders participating in development and public responsibility programs, tools, and collaborations

### Dependencies

1. Clear understanding of the definition in relation to ICANN's mandate and mission.
2. Engagement and support both with and for other ICANN internal departments.
3. SO/AC buy-in and support for approach.
4. Working relationships with governments in developing and underdeveloped regions as key points of access.

### Phasing

FY16	<b>Planned</b> 1. Establish engagement baseline for under-represented countries and communities and other underrepresented groups and address critical engagement gaps	<b>Status at the end of FY16</b> 1. Development and Public Responsibility Department efforts to address current critical multistakeholder gaps can be tracked through the <a href="#">ICANN Beta Dashboard</a> . More work is underway to increase understanding of current gaps and underrepresented groups, along with potential remedies in the form of programs, tools, or collaborative efforts in the greater ecosystem.
FY17	1. Increase access, knowledge, and capability of priority groups through a fully operational Development and Public Responsibility Department	<b>Intended status at the end of FY17</b> 1. Tools and programs were improved to better serve the community. The Fellowship Program's <a href="#">eligibility criteria</a> were changed to lower barriers to participation. <a href="#">ICANN Learn</a> was further enhanced by increasing the number of courses available in multiple languages and overall quality of content. Relevant content was updated, while outdated courses were discontinued, guided by feedback from the community. Collaborations were focused on education and capacity development efforts across regions, with youth and underrepresented groups as key targets. Work is underway to better understand gaps in participation from underrepresented groups. Potential

		next steps to address issues related to diversity and inclusion in multistakeholder participation through pilot programs, tools, or collaborative efforts will be produced on an ongoing basis, going beyond end of FY17.
FY18	1.	Continue improvement of increased access, knowledge, and capability of target audiences and consolidation of regional strategies.
FY19	1.	Continue improvement of increased access, knowledge, and capability of target audiences.
FY20	1.	Assess efforts and impact on target audiences and plan for evolution of operations to continue to address evolving community needs.

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# Financial Management Strategy

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## Introduction

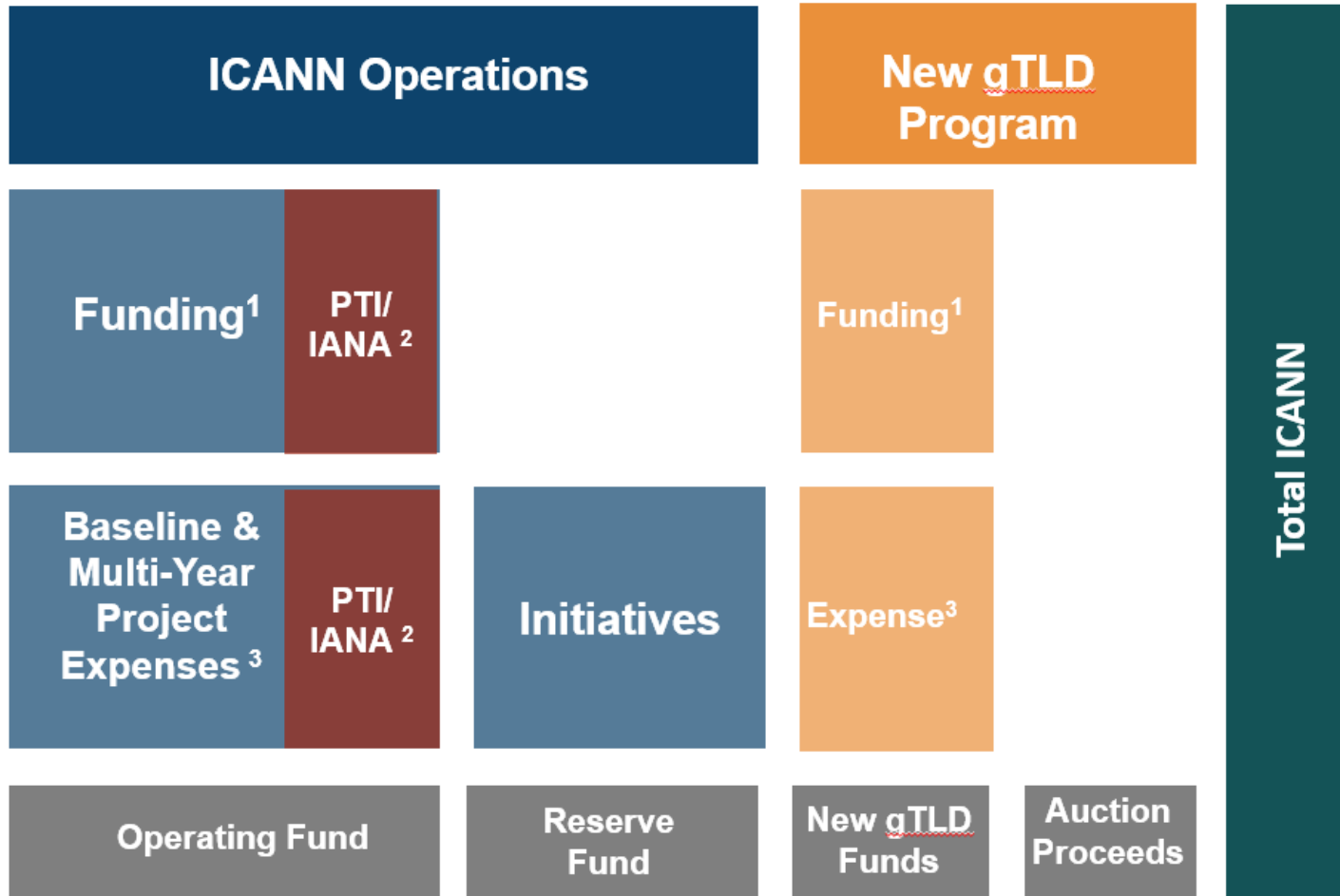
The five-year financial management strategy provides a long-term perspective on ICANN's high-level financial management trends. It is a forward looking perspective based on strategic assumptions.

The benefit of evaluating the five-year financial management strategy is to raise strategic questions, suggest possible trends, and to provide a tool for management to plan the financial impact of organizational activities. As events and activities unfold, adjustments may become necessary and will naturally impact the five-year financial management strategy.

The financial management strategy is not:

- ⦿ The result of a detailed budget-like exercise.
- ⦿ A public position statement.
- ⦿ Fixed for a long time.

# Approach to Five-Year Financial Management Strategy



<sup>1</sup> Funding was previously labeled Revenue  
<sup>2</sup> IANA Services includes ICANN's and PTI's IANA Expenses  
<sup>3</sup> Excludes depreciation and bad debt expenses

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## Principles

The five-year financial management strategy includes the following key principles:

- ⦿ Reflect a conservative approach.
- ⦿ Plan based on ICANN having balanced cash flow (incoming funds should equal or exceed outgoing funds).
- ⦿ Plan based on the level of outgoing funds reflecting the costs of the resources required to achieve the Strategic and Operating Plans.
- ⦿ Include an assumption on maintaining the appropriate level of cash reserve.
- ⦿ Include Revenue and Expense in line with the Strategic and Operating Plans assumptions.
- ⦿ Include consideration of risks and opportunities to a baseline trend.
- ⦿ Provide the sensitivity of fluctuations (for example, scenarios, high, mid, low).
- ⦿ Define aggregates (envelopes), not itemized components.





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# FY18 Operating Plan and Budget

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For ICANN Board Adoption June 2017

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# 0 – Summary of Changes

This section shows changes made to the final budget based on input received from the Public Comment period which ended on 28 April 2017. The report on responses to public comments can be found on ICANN.org [FY18 Report on Public Comments](#).

Section/Topic	Public Comments/Rationale for Change	Actions
Supporting documents	Executive Summary	Supporting document added
Section 3.1 - Financial Overview ICANN Operations Baseline	Community travel support, policy support, training and the addition of the FY18 Budget for WS2.	Table revised
Section 3.1 - Financial Overview ICANN Operations Baseline	Public comment response on clarifying the contingency amount included in FY18 Budget.	Table revised
Section 3.3 – ICANN Operations Baseline Cash Expenses	Updated table on Baseline expense variance to reflect changes to Budget. Updated table of Capital projects to clarify the Website enhancements	Tables revised
Section 3.4 - IANA Transition WS2	Additional expenses supporting the extension of the Accountability WS2 activities in FY18	Section 3.4 was added
Section 3.5 - Risks and Opportunities	Updated Analysis to remove the risk for IANA Transition WS2.	Table revised
Section 3.6 -Unfunded Potential FY18 Activities	Updated Analysis to add the Information Transparency Imitative project	Table revised
Section 3.7-Caretaker Budget	Analysis updated	Table revised
Section 4.1 - IANA Budget Overview	Additional commentary added	Table revised
Section 5.2 - New gTLD Program - Multiyear View	Comment on the Auction Proceeds line on this table	Table revised
Section 6.1 - FY18 Financial Overview Total ICANN	Community travel support, policy support, training and the addition of the FY18 Budget for WS2.	Table revised
Section 6.2 – Headcount – Three Year Overview	Addition of the FY18 Budget for WS2. Correction to ICANN headcount now including New gTLD	Table revised
Section 6.3 - Cash Flow Synopsis	Revised analysis for the impact of the WS2 activities. Addition of commentary and a link to the ICANN investment policies	Table revised
Section 7.4 - Portfolio 1.3.2 – Reinforce Stakeholder Effectiveness, Collaboration and Communication Capabilities	Additional Community travel support was added	Budget changes to reflect additional support

<b>Section/Topic</b>	<b>Public Comments/Rationale for Change</b>	<b>Actions</b>
Section 7.7 - Portfolio 2.3.5 – Domain Name Registrants	Organization revised name for consistency.	Table revised
Section 7.7 - Portfolio 2.3.6 Subsequent Procedures for New gTLDs	Organization revised name for consistency.	Table revised
Section 7.13 - Portfolio 4.3.1 Support Internet Governance Ecosystem Advancement	Revised analysis	A funded project was added to the portfolio.
Section 7.15 - Portfolio 5.1.4 Support ICANN Board	Additional Training Support	Revised budget for training
Section 7.16- Portfolio 5.2 Promote Ethics, Transparency and Accountability...	Addition of the FY18 Budget for WS2.	Portfolio 5.2.6 Enhancing ICANN Accountability - WS2 Added

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# 1 – Introduction

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This document contains the Internet Corporation for Assigned Names and Numbers' (ICANN's) final Fiscal-Year 2018 (FY18) Operating Plan and Budget, which was submitted for public comment as required by ICANN's Bylaws, and in accordance with [ICANN's public comment procedures](#)

Enabling the engagement of all stakeholders in the planning process of ICANN, through accessible information and effective interaction, is a fundamental part of ICANN's multistakeholder model. The publishing of the draft version of the FY18 Operating Plan and Budget for public comment was a key element of the transparency and community engagement in ICANN's planning process. [ICANN online glossary](#) defines and explains terminology used in this document.

ICANN welcomes and recognizes the past, present and future engagement of all stakeholders into the ICANN's planning process, whether relative to the strategic plan, operating plan, budget, or on-going operational and financial updates.

This document provides final details of ICANN's planned activities for its FY18 that will run from 1 July 2017 to 30 June 2018. Where useful, comparative information for FY17 is provided, using actual and forecast information. As Public Technical Identifiers' (PTI) operations are an aspect of ICANN's total operations, they are documented here. They are presented with background shading to indicate that PTI's FY18 Operating Plan and Budget was submitted for Public comment in late 2016 and was adopted by the PTI Board in January 2017.

The IANA Stewardship Transition was completed in early FY17. All of the Implementation activities for the initiative are estimated to be completed in FY17 with the exception of the work resulting from the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability Work stream 2- WS2). This initiative funded by the Reserve fund carries over into FY18. The budgeted expense for IANA Transition WS2 in FY18 is projected to \$3.1m.

The Operating Plan and Budget includes:

- ⦿ Highlights of ICANN Operations (excluding the New gTLD Program).
- ⦿ The activities that have already been submitted for public comment and adopted as a part of PTI's FY18 Operating Plan and Budget.
- ⦿ Highlights of the New gTLD Program.
- ⦿ An overview of ICANN's FY18 Budget, combining ICANN Operations and the New gTLD Program.
- ⦿ The detailed Operating Plan predefined in the management system:
  - Planned portfolios of activities to support the achievement of the goals and objectives described in ICANN's Strategic Plan with detailed descriptions.



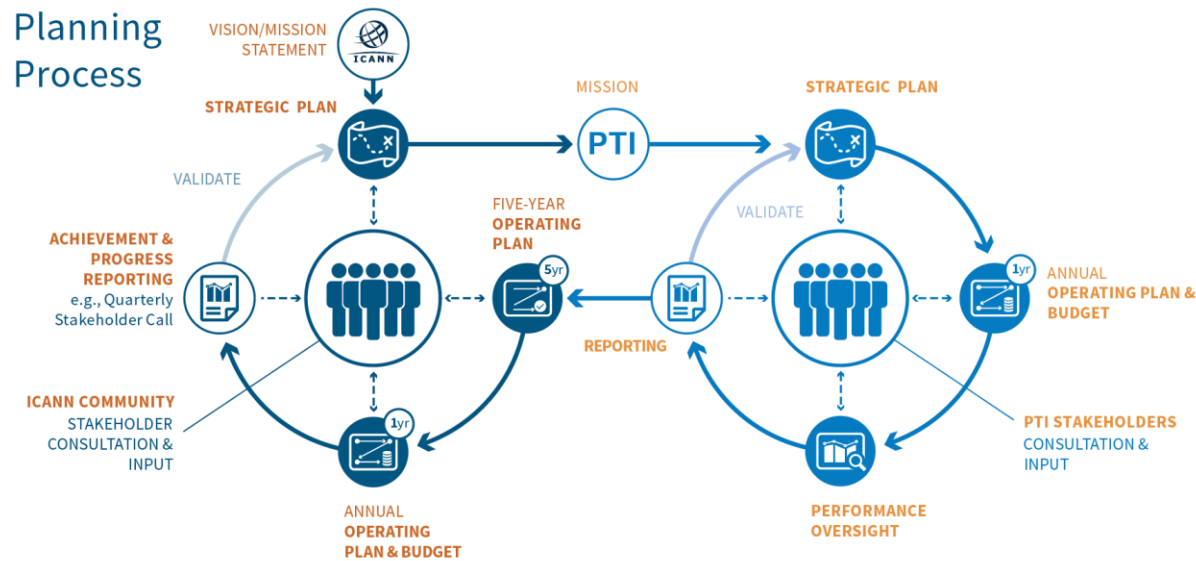
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- Updated Key Performance Indicators for each strategic goal.
  - An Appendix linking to a list of projects, for each portfolio, with the project-level budgeted costs by category.

The Supporting Organization (SO) and Advisory Committee (AC) Additional Budget Requests were evaluated and approved the Board on 19 April 2017. The list of the special request decisions adopted can be found on the [Finance Community Wiki](#).

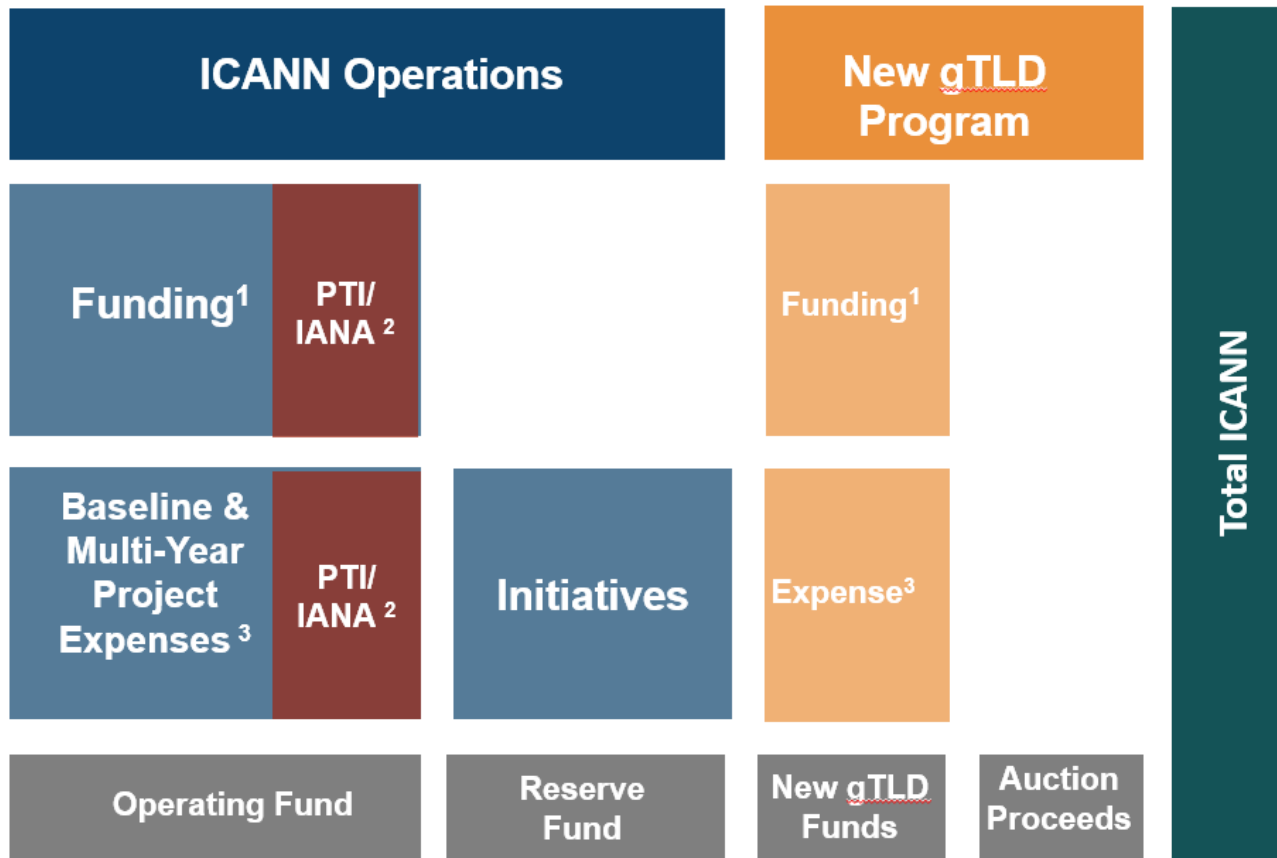
This final FY18 Operating Plan and Budget includes data on all projects planned to be carried out during FY18, and displays all cost categories for each project. Each project is also mapped to one of the five objectives of the ICANN Strategic Plan for fiscal years 2016–2020, through the hierarchy of portfolios and goals, making the rationale for each project and activity clear and transparent.

# 2 – Planning and Budget Overview

This graphic shows the five-year planning cycle (FY16-FY20), at a high level. The planning process consists of the ICANN Strategic Plan for fiscal years 2016–2020 and the Five-Year Operating Plan, which provide input and a basis for the annual planning process. This FY18 process has seen the introduction of the consultation on and development of an Operating Plan and Budget for PTI. PTI’s plans feed into the consultation on and development of both the IANA Services and ICANN Budgets.



This diagram shows the structure of the budget data in the rest of this document.



<sup>1</sup> Funding was previously labeled Revenue

<sup>2</sup> IANA Services includes ICANN's and PTI's IANA Expenses

<sup>3</sup> Excludes depreciation and bad debt expenses

# 3 – ICANN Operations

This section provides an overview of the ICANN Operations funding and baseline cash expenses.

## 3.1 – Financial Overview

in Millions, USD	FY18 Proposed Budget					FY17 Forecast					Increase/(Decrease) vs. FY17 Forecast					
	ICANN Operations	IANA - PTI	Baseline-ICANN Operations <sup>(1)</sup>	IANA Transition	Total ICANN Operations	ICANN Operations	IANA - PTI	Baseline-ICANN Operations <sup>(1)</sup>	IANA Transition	Total ICANN Operations	ICANN Operations	IANA - PTI	Baseline-ICANN Operations <sup>(1)</sup>	IANA Transition	Total ICANN Operations	%
<b>Funding</b>	\$142.8	\$0.0	\$142.8	\$0.0	\$142.8	\$135.9	\$0.0	\$135.9	\$0.0	\$135.9	\$6.9	\$0.0	\$6.9	\$0.0	\$6.9	5.1%
Personnel	63.8	5.8	69.5	0.9	70.4	\$55.2	\$5.2	\$60.4	\$2.1	\$62.4	8.6	\$0.5	\$9.1	(\$1.1)	8.0	13%
Travel & Meetings	17.2	0.6	17.8	0.2	18.0	17.6	\$0.4	\$18.0	\$0.2	18.2	(0.4)	0.2	(0.2)	(0.0)	(0.2)	-1%
Professional Svcs.	26.2	1.4	27.7	2.0	29.7	25.9	1.3	27.2	3.5	30.7	0.3	0.1	0.4	(1.5)	(1.1)	-3%
Administration <sup>(2)</sup>	17.3	1.6	18.8	0.0	18.8	15.3	1.7	17.0	0.0	17.0	1.9	(0.1)	1.8	(0.0)	1.8	11%
Capital	3.4	0.2	3.6	0.0	3.6	7.6	0.1	7.7	0.0	7.7	(4.2)	0.1	(4.1)	0.0	(4.1)	-53%
Contingency <sup>(3)</sup>	4.9	0.5	5.3	0.0	5.3	0.0	0.0	0.0	0.0	0.0	4.9	0.5	5.3	0.0	5.3	n/a
<b>Baseline Cash Expenses</b>	\$132.8	\$10.0	\$142.8	\$3.1	\$145.9	\$121.6	\$8.7	\$130.4	\$5.7	\$136.1	\$11.2	\$1.3	\$12.5	(\$2.6)	\$9.9	7%
<b>Increase/ (Decrease) to Net Assets</b>	\$10.0	(\$10.0)	\$0.0	(\$3.1)	(\$3.1)	\$14.3	(\$8.7)	\$5.5	(\$5.7)	(\$0.2)	(\$4.2)	(\$1.3)	(\$5.5)	\$2.6	(\$2.9)	1564%
<b>Average Headcount</b>	386.8	22.6	413.8	4.3	418.1	336.9	21.3	358.2	10.8	369.0	49.9	1.3	55.6	(6.4)	49.1	13%

(1) Baseline consists of both the ICANN Operations and IANA - PTI figures.

(2) ICANN Operations excludes Depreciation and Bad Debt.

(3) The FY18 contingency expense represents an amount of budgeted expenses unallocated to specific activities or departments. FY17 activities covered by the contingency have been reported in the expense categories above based on the nature of the expense.

The following table describes Baseline-ICANN Operation's planned cash expenses by function for FY18.

in Millions, USD		FY18 Proposed Budget <sup>(1)</sup>			FY17 Forecast			Increase/(Decrease)			
Executive Group	Executive	EOP Hdct <sup>(2)</sup>	Avg Hdct	Total	EOP Hdct	Avg Hdct	Total	EOP Hdct	Avg Hdct	Total	%
DNS Industry and Engagement	Atallah	28.0	28.0	7.8	27	25.7	7.2	1	2.3	0.6	9%
GDD Ops & Online Comm. Svcs	Atallah	53.0	52.5	\$13.4	46	33.3	\$9.1	7	19.2	\$4.3	46.5%
IANA	Atallah	18.0	18.0	4.6	15	13.5	3.1	3	4.5	1.5	47%
Operations	Bennett	17.0	17.0	\$8.1	17	9.9	\$6.5	-	7.1	\$1.6	24.6%
Strategic Communications	Burns	26.0	26.0	9.4	26	25.2	9.5	-	0.8	(0.1)	-1%
Finance & Procurement and ERM	Calvez	20.0	20.0	5.2	20	15.8	4.8	-	4.2	0.4	8%
Technical Functions	Conrad	19.0	18.0	8.6	17	14.6	6.8	2	3.4	1.8	27%
GSE, Meetings Ops, DPRD	Costerton	48.0	48.0	16.4	46	43.9	16.5	2	4.1	(0.2)	-1%
Contr. Compliance & Consumer Safeguards	Hedlund	29.0	29.0	5.6	26	26.2	4.9	3	2.8	0.7	14%
Governance Support	Jeffrey	20.0	19.0	9.0	17	16.2	7.4	3	2.8	1.6	21%
Governmental & IGOs Engagement	Kamel	8.0	8.0	3.3	7	7.0	3.3	1	1.0	0.1	2%
Executive	Marby	3.0	3.0	2.1	3	3.0	2.0	-	-	0.1	6%
Policy Dev Support and SO/AC Engagement	Olive	35.0	34.9	9.7	34	30.4	9.8	1	4.5	(0.1)	-1%
IT	Rangan	66.0	66.0	24.9	61	59.9	25.4	5	6.1	(0.4)	-2%
Global Human Resources & Admin	Schroeder	22.0	21.7	9.4	21	19.6	10.6	1	2.1	(1.2)	-11%
MSSI	Swinehart	17.0	17.0	6.9	17	12.9	6.3	-	4.1	0.7	11%
Ombudsman	Ombudsman	1.0	1.0	0.6	1	1.0	0.4	-	-	0.3	71%
New gTLD Allocations & Corporate (includes attrition)	Calvez	(13.3)	(13.3)	(2.2)	-	-	(3.1)	(13)	(13.3)	0.9	-28%
	<b>Total</b>	<b>417</b>	<b>413.8</b>	<b>\$142.8</b>	<b>401</b>	<b>358.2</b>	<b>\$130.4</b>	<b>16</b>	<b>55.6</b>	<b>\$12.5</b>	<b>8%</b>

(1) Includes contingency (\$5.3M).

(2) EOP = End of Period. This indicates the end of the Fiscal Year

## 3.2 – Funding

This section provides an overview of ICANN’s funding, starting with the assumptions that support the FY18 estimates. The best estimate matches the FY18 funding included in the FY18 budget. The high and low estimates provide for a sensitivity analysis of some of the funding items and are the result of variations of the best estimate.

	Funding Type	Best Estimate	High Estimate	Low Estimate
<b>Legacy TLDs</b>	Transaction-based fees	Assumes growth of transaction volume of 2.3% as per historical average.	Same as Best estimate	Growth of 1.5%
<b>New TLDs</b>	Fixed Fees	1,238 TLDs delegated assumed as of July 1, 2017 and 1,240 assumed delegated by June 31, 2018.	Same as Best estimate	Same as Best estimate
	Transaction-based fees	Transactions estimated using the per-TLD average number of transactions per month since delegation (average transactions during month 1, month 2,...) resulting in y/y transaction growth of 29.9%	Growth of 60.0% vs. 2017	Same as Best estimate

	Funding Type	Best Estimate	High Estimate	Low Estimate
<b>Registrar Accreditation</b>	Application fees	The number of accredited registrars is maintained at current levels and increases based on pending applications and 15 each Quarter, 60 for the year	Same as Best estimate	Same as Best estimate
	Accreditation fees	The number of registrars is reduced by 250 each quarter after FY18Q1 as a measure to account for a possible decline in AfterMarket accreditations as per conservative future outlook.	The number of accredited registrars is maintained at current levels and increases based on pending applications and 15 each Quarter, 60 for the year	Same as Best estimate
	Per-registrar variable fee	Constant total of \$3.4m	Same as Best estimate	Same as Best estimate
<b>New gTLD Program</b>	Application fees Revenue	Portion of application fees recognized in Funding ratably based on evaluation expense incurred vs total evaluation expenses forecasted	Same as Best estimate	Same as Best estimate

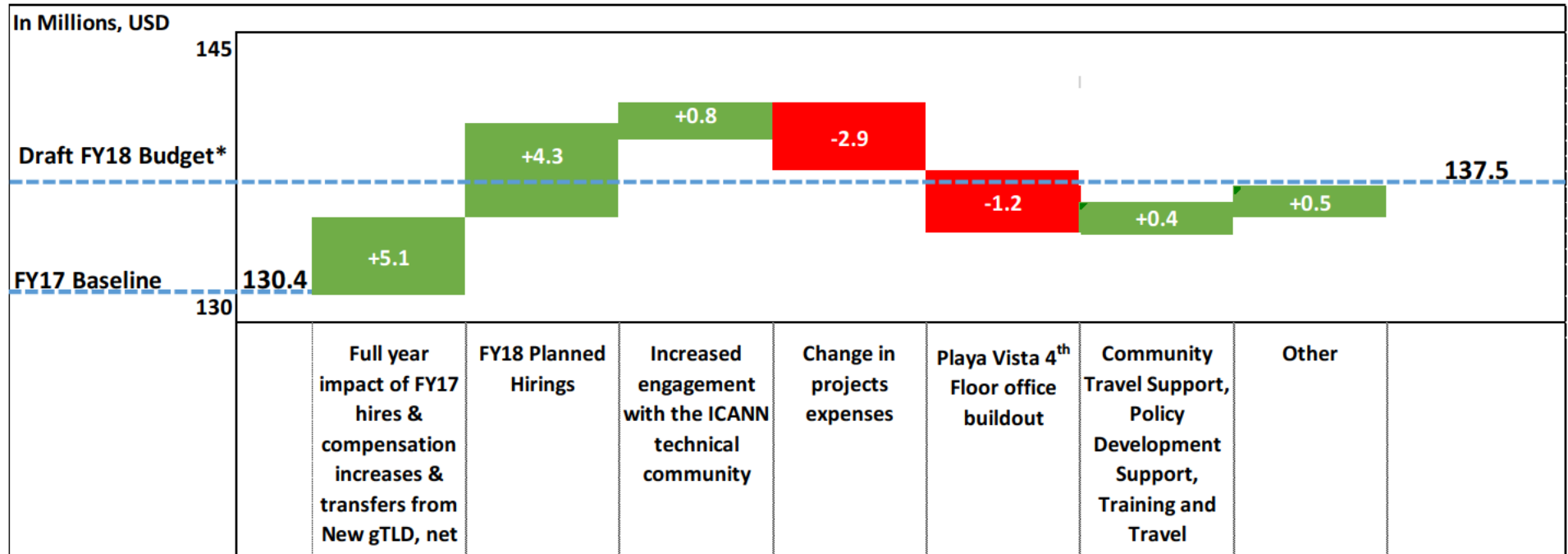
The following table describes ICANN's funding by source and type, comparing for each the best estimate for the FY18 budgeted year and for the FY17 current year.

In Millions, US dollars	FY 18 Best Estimate	FY17 Forecast	+Incr./-Decr.	%	FY18 Estimates	
					High	Low
<b>Transactions</b>						
Registry transaction fees - Legacy	\$ 48.4	\$ 46.4	\$ 2.0	4.3%	\$ 48.4	\$ 48.1
Registry transaction fees - New gTLD	8.9	6.1	2.7	44.9%	10.9	8.9
Registrar transaction fees - Legacy	29.4	27.8	1.6	5.9%	29.4	29.2
Registrar transaction fees- New gTLD	7.5	5.2	2.3	44.1%	9.2	7.5
<b>Sub-total</b>	<b>94.2</b>	<b>85.5</b>	<b>8.7</b>	<b>10.1%</b>	<b>98.0</b>	<b>93.7</b>
<i>Volume: legacy transactions (millions)</i>	163.6	159.9	3.7	2.3%	163.6	162.3
<i>Volume: New gTLD transactions (millions)</i>	41.7	32.1	9.6	29.9%	51.4	41.7
<b>Sub-total</b>	<b>205.3</b>	<b>192.0</b>	<b>13.3</b>	<b>6.9%</b>	<b>214.9</b>	<b>204.0</b>
<i>Volume: New gTLD billable transactions (millions)</i>	35.4	27.0	8.4	31.1%	43.7	35.4
<i>New gTLD Billable rate - average</i>	85.0%	84.2%	0.8%		85.0%	85.0%
<b>Registry Fixed Fees</b>	<b>30.8</b>	<b>30.0</b>	<b>0.8</b>	<b>2.8%</b>	<b>30.8</b>	<b>30.8</b>
<b>Registrars accreditation</b>						
Application fees	0.2	3.0	(2.8)	-93.0%	0.2	0.2
Accreditation fees - annual	10.5	10.3	0.2	1.9%	10.5	10.5
Per-registrar variable fees	3.4	3.4	-	0.0%	3.4	3.4
<b>Sub-total</b>	<b>14.1</b>	<b>16.7</b>	<b>(2.6)</b>	<b>-15.5%</b>	<b>14.1</b>	<b>14.1</b>
<i>Count of total Registrars - at end of year</i>	2,241	2,989	(748)	-25.0%	2,241	2,241
<i>Incr./(Decr.) new Registrars - at end of year</i>	(748)	858	(1,606)	-187.2%	(748)	(748)
<b>Contributions</b>						
RIR	0.8	0.8	-	0.0%	0.8	0.8
ccTLD	2.1	2.1	-	0.0%	2.1	2.1
Meeting Sponsorships/other	0.8	0.8	-	0.0%	0.8	0.8
<b>Sub-total</b>	<b>3.7</b>	<b>3.7</b>	<b>-</b>	<b>0.0%</b>	<b>3.7</b>	<b>3.7</b>
<b>ICANN Ops Revenue</b>	<b>\$ 142.8</b>	<b>\$ 135.9</b>	<b>\$ 6.9</b>	<b>5.1%</b>	<b>\$ 146.6</b>	<b>\$ 142.3</b>



### 3.3 – ICANN Operations Baseline Cash Expenses

ICANN Operations baseline cash expenses budget (excluding contingency) is \$137.5 million this represents a \$7.1 million increase from \$130.4 million in FY17. See comments below.



(+) indicates an increase in expenses. (-) indicates a decrease in expenses.

\*Excludes ICANN Ops Contingency of \$5.3M.

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The \$7.1 million increase from \$130.4 million in FY17 to \$137.5 million in FY18 is driven by the following:

- ⦿ Full year impact of people hired in FY17 on FY18 budget: Increase in personnel costs due to:
  - i. 43 Organization members estimated to be hired in FY17 working a full year in FY18 versus a partial year in FY17.
  - ii. Personnel costs increases (merit, taxes, and fringe benefits).
  - iii. Nine Organization members transferring from the New gTLD Program to ICANN Operations at the beginning of FY18.
  - iv. Partially offset by estimated attrition.
- ⦿ Impact of FY18 new employees: average 26.1 Full-Time Equivalent (FTEs).
- ⦿ Increased technical engagement with the ICANN Community, with emphasis on proactively planning for changes in the use of unique identifiers and developing technology roadmaps to help guide ICANN activities.
- ⦿ Lower projects expenses in FY18 due to the planned completion of prior year projects in FY17, such as the Root Zone Management System (RZMS) Enterprise Resource Planning (ERP) projects.
- ⦿ Expenses for the Playa Vista fourth floor office buildout incurred in FY17 that will not be incurred in FY18.
- ⦿ Community Travel Support, Policy Development Support, Training and Travel expense added as a result of public comment and ICANN organization changes
- ⦿ Other: Limited growth in all other areas (for example, inflationary increases).

The following table describes ICANN’s planned capital projects for FY18.

In Millions, USD		
Capital Purchase Type	FY18 Proposed Budget	Description
Computer Software	1.2	Development and testing outsourcing for Salesforce (Zensar and others)
<b>Total Development &amp; Testing</b>	<b>\$1.2</b>	
Computer Software & Equipment	1.0	Salesforce maintenance, routing upgrades, L-root servers, DNS Stats machines, firewall, storage, etc.
Furniture & Fixtures/ Leasehold Improvements	0.2	Playa Vista hub office 4th floor improvements.
Machinery & Equipment (non-computer)	0.6	Hub office/ engagement center projectors, security equipment, copiers. IANA KMF maintenance and security replacement/ upgrades. SLA monitoring system, root server system support.
<b>Total On-going replacements &amp; improvements</b>	<b>1.7</b>	
Computer Software	0.4	Technical Services Programs
Computer Software & Equipment	0.3	Website Enhancements Internal ICANN projects
<b>Total Strategic</b>	<b>0.7</b>	
<b>Grand Total</b>	<b>\$3.6</b>	

Key Management Facility (KMF): An ISO term. A protected enclosure for a room and cryptographic equipment and its contents where cryptographic elements reside. This is used to manage the Root DNS Key Signing Key

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## 3.4 – IANA Transition WS2

The FY18 Budget includes IANA Transition WS2 expenses of \$3.1 million (see section 3.1 – Financial Overview table for the FY18 IANA Stewardship Transition budget by expense category. The WS2 work of the IANA Stewardship Transition expenses of \$8.8 million were not completed in FY17 and carry over to FY18. Total initiative expense approved for FY17 was \$8.8 million, funded from Reserve Fund. FY17 expenses are forecasted to be below budget by \$3.1 million which allows to fund FY18 WS2 expenses.

The WS2 FY18 budget was developed by the Project Cost Support Team (PCST) at the request of and based on the work plan submitted by the Co-Chairs.

Several chartering organizations indicated their support to the public comment requesting that the IANA Transition WS2 expense be included in the FY18 Budget

The CCWG-Accountability Work Stream 2: focuses on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition. More information can be found at [WS2 - Enhancing ICANN Accountability Home](#).

For FY18, WS2 work requires support from ICANN organization for:

- organization of calls
- notes and follow up
- meetings organization and support
- constituent travel support
- professional services and advice (including legal advice).

### 3.5 – Risks and Opportunities

This section outlines the risks and opportunities to the FY18 budget and provides the potential impact of the risk or opportunity on the FY18 budget assumptions as either lower or higher funding or cost.

Risks (Probability)		Opportunities (Probability)	
Funding: Lower Legacy transactions	Low (\$0.5M)	Funding: Higher new <u>gTLD</u> transaction growth	Med +\$3.8M
Expenses: Potential impact of the bylaw-driven cycle of reviews both on Community and ICANN Organization workload and bandwidth.	Low	Expenses: Ability to reduce headcount growth as result of possible optimization of resources.	Med

Risk: defined as the possibility of lower funding or higher costs/opportunity is the opposite

### 3.6 – Unfunded Potential FY18 Activities

The following table describes activities that were considered during budget development, but are not included in the final FY18 Operating Plan and Budget. These activities will be considered for approval during FY18, based on priority and availability of funding. The list of activities is evolving and may change as additional information becomes available.

Function	Name	Description	FY18 Cash Expense	Total Project Expense	Annual recurring Expense	Estimated Start Date	Estimated End Date
Operations	Internal Controls Audit function	Create an Internal Controls Audit function, aiming at ensuring existence and effectiveness of the internal controls across ICANN	\$0.4	n/a	\$0.5	TBD	ongoing
Comms/LS	Communications/Language Services	Various projects of legacy translations, localization, and Comms meeting.	\$0.2	\$0.2	n/a	Jul-17	Jun-18
MSSI	Reviews support	Additional resources for review support, dependent upon reviews schedule	\$0.2	\$0.2	n/a	Jul-17	Jun-18
GSE	SSR capacity building and additional headcount	Additional resources for capacity building events and engagement in EMEA; Headcount in Brussels for SSR capacity building, Turkey engagement in Istanbul, Africa engagement (personnel, plus \$100k administrative)	\$0.4	n/a	\$0.3	Jul-17	ongoing
Meetings	Additional Meetings headcount	Dependent upon meeting schedule and staff availability (Personnel, travel)	\$0.2	n/a	\$0.2	TBD	ongoing
Legal	Additional Legal resources	Legal expertise in non-US locations (Personnel)	\$0.3	n/a	\$0.3	TBD	ongoing
Legal	Additional defense resources	Additional legal fees for defense in pre-litigation or litigation activities.	\$1.0	\$1.0	n/a	Jul-17	Jun-18
Finance	Additional business analysis	Additional resources to sustain the need for project analysis and increased reporting/transparency.	\$0.2	n/a	\$0.2	TBD	ongoing
Contractual Compliance	Additional professional services	Additional audit and metrics related activities for accountability/transparency.	\$0.1	\$0.1	n/a	Jul-17	Jun-18
Comms/LS	Communications	Ongoing management of ICANN.org	\$0.4	n/a	\$0.4	Jul-17	ongoing
Comms/LS	Communications	Government Relations support	\$0.2	n/a	\$0.2	Jul-17	ongoing
Policy Development Support	Document Production Pilot Support	Additional FY18 pilot resources to support testing of document development and production for self-identified eligible communities.	\$0.1	\$0.1	n/a	Jul-17	Dec-17
Community Travel Support	Community Regional Outreach program	This program was to be transferred from a the pilot special request category in prior years to the "core" icann budget planned for FY18 at an amount of 161,000.	\$0.1	\$0.2	n/a	Jul-17	Jun-18
Policy Development Support	Additional professional services	Additional FY18 funding for special professional services assistance in support of certain ccNSO and/or GNSO PDPs currently underway. This may take the form of some special advice, expertise or data needed to advise the PDP group in its formulation of a policy proposal to the Board.	\$0.1	\$0.1	n/a	Jul-17	Jun-18
Government Engagement	Additional professional services (engagement - capacity building)	Additional support trainer/workshops in underserved regions and developing economies for governments and law enforcement capacity building on DNS (meeting, travel, professional services) building on successful model from 2017 event	\$0.3	\$0.3	n/a	Jul-17	Jun-18
Communications	Information Transparency Initiative (ITI)	Implement content governance through a new internal Document Management System and externally facing Content Management System, a foundation for ICANN ecosystem-wide governance.	Not yet estimated	Not yet estimated	Not yet estimated	Jul-17	Jun-18
	<b>Sub-total</b>		<b>\$3.9</b>	<b>\$2.1</b>	<b>\$2.0</b>		



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## 3.7 – Caretaker Budget

As per “Section 6.2. Powers and Acknowledgements”, ICANN Bylaws define powers and rights attributed to the Empowered Community. One of these powers is:

(iii) Reject ICANN Budgets, IANA Budgets, Operating Plans (as defined in [Section 22.5\(a\)\(i\)](#)) and Strategic Plans (as defined in [Section 22.5\(b\)\(i\)](#)).

After approved by the Board, the IANA Budget and ICANN Budget each can only come into effect after giving time for the Empowered Community to consider whether it will raise a petition rejecting the budget. This is typically a 28 day period (21 days to raise a petition; 7 days to achieve support). Therefore, even when no petition is raised against the budget, there is a 28-day waiting period for the budget to go into effect.

If the Board approves either the IANA Budget or the ICANN Budget for the next fiscal year with less than 28 days remaining before that fiscal year begins, then a “Caretaker Budget” must be adopted. Under the Bylaws, there is both a “Caretaker ICANN Budget” and a “Caretaker IANA Budget” (described at Annexes E and F, respectively), which is required to go into effect if the respective budget is not able to come into full force and effect at the beginning of a fiscal year. The Caretaker Budget would also remain in effect during any Empowered Community Petition Process, if it were initiated, and remains in effect until the ICANN or IANA Budget at issue has been approved by the Board and not rejected by the Empowered Community.

Excerpts from the Bylaws on a “Caretaker ICANN Budget” and a “Caretaker IANA Budget” in Annexes E and F are reproduced in Appendix C.

Below is an attempt at a pragmatic approach to define the ICANN caretaker budget:

Using the Operating Plan and Budget that the ICANN Board would adopt as a basis, and with respecting the principles of the caretaker budget:

- ⦿ Suspend the publication of any new positions for hire, from the date of the rejection by the Empowered Community that is the veto date, until a new budget is adopted by the Board.
- ⦿ Reduce by 10% the total amount of allowed expenses for the categories Travel/Meeting and Professional Services of the Board-adopted budget, for the period starting on the date of the rejection by the Empowered Community until a new budget is adopted by the Board, using the monthly breakdown of the adopted budget.
- ⦿ Exclude any expense directly associated with the reason for which the Empowered Community rejected the Board-adopted budget”, if such expense can reasonably be isolated and avoided.



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# 4 – PTI Operating Plan and Budget and IANA Budget Process Overview

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The planning process for PTI and the IANA budget is incorporated into the ICANN planning process. PTI's and IANA's multiyear plans are a part of ICANN's Five-Year Operating Plan. The adopted version of the PTI Operating Plan and Budget becomes a component of ICANN's FY18 Operating Plan and Budget.

FY17 is the first year of the PTI and the IANA budget planning process. To further enhance the understanding and transparency of its activities, and ultimately its accountability in the management of funds in the public interest, the CCWG recommended that "PTI should submit a budget to ICANN at least nine months in advance of the fiscal year to ensure the stability of the IANA Services. It is the view of the CWG-Stewardship that the IANA Budget should be approved by the ICANN Board in a much earlier timeframe than the overall ICANN budget."

Consultations were conducted on PTI's final FY18 Operating Plan and Budget. After developing a final draft, it was published for Public Comment from 24 October 2016 until 10 December 2016. A report of responses to Public Comments was published in January 2017 and the completed Operating Plan and Budget was adopted by PTI's Board at the end of January 2017. The sections of this ICANN FY18 Operating plan and Budget relating to PTI are therefore already finalized and described in the PTI Operating Plan and Budget document.

## 4.1 – IANA Budget Overview

ICANN receives the input from PTI on its budget and then develops an IANA budget each year. The draft Operating Plan and Budget was presented for Public Comment on using ICANN’s Public Comment process. When that process ends, the ICANN organization develops a proposed Operating Plan and Budget for the ICANN Board to review and adopt. The adopted Budget forms the basis for ICANN’s funding of PTI operations.

FY18 PTI Budget in Millions, USD	PTI Operations FY18 Budget	PTI Operations FY17 Budget	Increase/(Decrease)	
			Total	%
<b>FUNDING</b>	<b>\$9.6</b>	<b>\$9.0</b>	<b>\$0.6</b>	<b>7.0%</b>
Personnel	\$5.8	\$5.2	\$0.5	10.4%
Travel & Meetings	\$0.6	\$0.4	\$0.2	42.3%
Professional Services	\$1.1	\$1.0	\$0.1	11.9%
Administration	\$1.2	\$1.2	\$0.0	2.4%
Contingency	\$0.5	\$0.6	(\$0.1)	-17.7%
Capital	\$0.1	\$0.1	(\$0.0)	-14.1%
Depreciation (b)	\$0.4	\$0.5	(\$0.1)	-26.2%
<b>TOTAL CASH EXPENSES</b>	<b>\$9.6</b>	<b>\$9.0</b>	<b>\$0.6</b>	<b>7.0%</b>
<b>EXCESS/(DEFICIT)</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>0.0%</b>
<b>AVERAGE HEADCOUNT (FTE) (a)</b>	<b>22.6</b>	<b>21.3</b>	<b>1.3</b>	<b>6.2%</b>

FY18 IANA Services Budget in Millions, USD	IANA Services FY18 Budget	IANA Services FY17 Budget	Increase/(Decrease)	
			Total	%
PTI Operations	\$9.6	\$9.0	\$0.6	7.0%
RZMA (Operating Exps & Capital) (c)	\$0.4	\$0.3	\$0.1	33.3%
<b>TOTAL</b>	<b>\$10.0</b>	<b>\$9.3</b>	<b>\$0.7</b>	<b>7.8%</b>

(a) FTE: Full-time staff equivalent

(b) Depreciation is treated as a cash expense for PTI since it will be reimbursed to ICANN

(c) RZMA = Root Zone Maintainer Agreement. It will be funded by ICANN Operations

The growth of expenses of the IANA budget from prior year, are largely driven by additional resources supporting both existing and new PTI activities resulting from the new governance model which replaces the role of the U.S. Government. On the basis of the scope of activities currently planned in the Operating Plan and Budget for the IANA functions, it is not currently expected that the IANA functions expenses would continue to increase year on year at the same rate.

## 5 – New gTLD Program

### 5.1 – New gTLD Program – Financial Summary

This section provides a financial summary of the New gTLD program.

ICANN (NgTLD) FEBRUARY 2017	FINANCIAL SUMMARY	In Millions, USD
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### VARIANCE EXPLANATIONS

	FULL PROGRAM		
	Current Estimate (Feb 2017)	Prior Estimate (Feb 2016)	Increase/ (Decrease)
Total Application Fees	-\$362.4	-\$362.2	
Less: Total Refunds	52.7	52.7	
<b>Net Application Fees</b>	<b>-309.7</b>	<b>-309.5</b>	<b>0.3</b>
<b>Expenses</b>			
Evaluation Costs	115.9	120.5	-4.6
Overheads	60.3	60.4	-0.2
Historical Development Costs	32.5	32.5	0.0
<b>Total Operating Expenses</b>	<b>208.6</b>	<b>213.4</b>	<b>-4.8</b>
<b>Others *</b>	5.4	6.7	-1.4
<b>Remaining Balance</b>	<b>-\$95.8</b>	<b>-\$89.3</b>	<b>-\$6.5</b>

#### Evaluation Costs

**-\$4.6**

Lower costs for legal professional fees due to internalization of efforts (-\$4.1M) for contracting and (-\$0.5M) for change requests.

#### Overhead

**-\$0.2**

New gTLD team (-\$2.0M); Other overhead (-\$0.5M); Allocation for ICANN staff support (+\$2.3M)

#### Others

**-1.4**

This includes actual risk costs of (+\$0.8M) and net investment gains (-\$2.1M). Future risk cost through the end of the program cannot be estimated.

\* Includes net investment gains/loss and actual risk costs.

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\*All information is related to the current round of the New gTLD Program (2012-2018)

## 5.2 – New gTLD Program – Multiyear View

1930 Applications	Statement of Activities by Fiscal Year								Statement of Activities for Full Program (Feb 2017)
	FY12 Actual	FY13 Actual	FY14 Actual	FY15 Actual	FY16 Actual	FY17 Forecast	FY18 Forecast	FY19 & Beyond Forecast	
New gTLD Applicant Fees		(166,846)	(45,887)	(71,366)	(27,390)	(21,013)	(28,532)	-	(361,034)
ICANN Applicant Support Contributions		-	-	-	-	(138,000)	-	-	(138)
Additional Fees		-	(539,576)	(513,684)	(228,893)	4,530	-	-	(1,278)
Refunds		8,936,382	12,080,161	18,448,194	2,189,095	2,003,075	9,045,957	-	52,703
<b>Revenue (Net of Refunds)</b>	<b>\$ -</b>	<b>\$ (157,909)</b>	<b>\$ (34,347)</b>	<b>\$ (53,432)</b>	<b>\$ (25,429)</b>	<b>\$ (19,144)</b>	<b>\$ (19,486)</b>	<b>\$ -</b>	<b>\$ (309,747)</b>
Initial Evaluation	3,172	57,491	3,650	23	-	-	-	-	64,336
Extended Evaluation	-	-	760	383	(15)	-	-	-	1,128
Quality Control	-	7,100	462	62	-	-	-	-	7,624
String Contentions	-	-	5	-	-	-	-	-	5
Objection Processes	39	3,550	(1,064)	(23)	-	-	-	-	2,503
Pre-delegation	-	124	4,003	3,072	2,371	2,144	1,808	-	13,522
Program Administration	450	2,347	4,800	3,911	1,947	5,569	4,093	3,700	26,816
gTLD Team	689	1,827	3,796	3,352	1,807	1,951	-	-	13,422
ICANN Staff Allocation	1,137	5,725	9,947	7,518	7,434	4,788	4,894	-	41,444
Other Overhead	107	228	1,991	2,034	345	626	56	-	5,388
<b>Total Operating Expenses</b>	<b>\$ 5,594</b>	<b>\$ 78,394</b>	<b>\$ 28,350</b>	<b>\$ 20,331</b>	<b>\$ 13,889</b>	<b>\$ 15,078</b>	<b>\$ 10,851</b>	<b>\$ 3,700</b>	<b>\$ 176,187</b>
Investment (Income)/Loss		811,131	(2,456,868)	(896,428)	(1,540,891)	(837,424)	-	-	(4,920)
Investment Unrealized (Gains)/Losses		-	-	-	(479,183)	261,875	-	-	(217)
Investment Realized (Gains)/Losses		-	-	-	337,689	(228)	-	-	337
Investment Management Fees	-	14	213	279	60	33	-	-	598
Historical Development Costs	-	15,396	4,616	5,956	2,322	2,122	2,042	-	32,454
Risk Costs	281	1,068	1,012	2,466	3,352	1,498	-	-	9,676
<b>Total Other Income/(Expense)</b>	<b>\$ 281</b>	<b>\$ 17,289</b>	<b>\$ 3,384</b>	<b>\$ 7,804</b>	<b>\$ 4,052</b>	<b>\$ 3,077</b>	<b>\$ 2,042</b>	<b>\$ -</b>	<b>\$ 37,928</b>
<b>Change in Net Remaining Funds</b>	<b>\$ 5,874</b>	<b>\$ (62,227)</b>	<b>\$ (2,612)</b>	<b>\$ (25,297)</b>	<b>\$ (7,488)</b>	<b>\$ (988)</b>	<b>\$ (6,593)</b>	<b>\$ 3,700</b>	<b>\$ (95,632)</b>

### 5.3 – New gTLD Program – Variance Analysis

EXPENSES	REVENUE
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	Current Estimate (Feb 2017)	Prior Estimate (Feb 2016)	Increase/ (Decrease)	Current Estimate (Feb 2017)	Prior Estimate (Feb 2016)	Increase/ (Decrease)
FY12	\$5.6	\$5.6	\$0.0	\$0.0	\$0.0	\$0.0
FY13	93.8	93.8	0.0	-157.9	-157.9	0.0
FY14	33.0	33.0	0.0	-34.3	-34.3	0.0
FY15	26.3	26.3	0.0	-53.4	-53.4	0.0
FY16	16.2	20.4	-4.2	-25.4	-13.9	11.5
FY17	17.2	19.1	-1.9	-19.1	-27.7	-8.5
FY18	12.9	11.6	1.3	-19.5	-22.2	-2.7
FY19 & Beyond	3.7	3.7	0.0	0.0	0.0	0.0
<b>Full Program *</b>	<b>\$208.6</b>	<b>\$213.4</b>	<b>-\$4.8</b>	<b>-\$309.7</b>	<b>-\$309.5</b>	<b>\$0.3</b>

\* Excludes Actual Risk Costs.

#### VARIANCE EXPLANATIONS

Expenses \* **-\$4.8**

Evaluation Processing (-\$4.6M), gTLD team (-\$2.0M), and Other Overhead (-\$0.5M); offset by ICANN Staff Allocation (+\$2.3M).

\* Detailed explanation of expenses provided in the following pages

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## 5.4 – New gTLD Program – Operating Expenses Variance Analysis

Prior Estimate (Feb 2016)

Operating Expenses \$181.0

### Variations - Increase/(Decrease):

<b>Pre-Delegation</b>	-4.1	Lower professional services costs for contracting due to internalized contracting efforts by New gTLD team.
<b>Program Administration</b>	-0.5	Higher professional services costs for CCT Metrics and Program Reviews
<b>gTLD Team</b>	-2.0	Lower costs due to re-allocation of staff to ICANN Operations
<b>ICANN Staff Allocation</b>	2.3	Allocation for ICANN staff increased due to shift of New gTLD staff to ICANN Ops
<b>Other Overhead</b>	-0.5	Depreciation (-\$0.2M); All other i.e. travel, etc. (-\$0.3M).

Current Estimate (Feb 2017) \$176.2

# 6 – Total ICANN Overview

## 6.1 – FY18 Financial Overview

in Millions, USD	FY18 Proposed Budget			FY17 Forecast			Increase/(Decrease) vs. FY17 Forecast					
	Total ICANN Operations	New gTLD	Total ICANN	Total ICANN Operations	New gTLD	Total ICANN	Total ICANN Ops	%	New gTLD	%	Total ICANN	%
<b>Funding</b>	<b>\$142.8</b>	<b>\$19.5</b>	<b>\$162.3</b>	<b>\$135.9</b>	<b>\$154.1</b>	<b>\$290.0</b>	<b>\$6.9</b>	<b>5.1%</b>	<b>(\$134.7)</b>	<b>-87.4%</b>	<b>(\$127.7)</b>	<b>-44.0%</b>
Personnel	70.4	\$2.5	73.0	\$62.4	\$4.6	\$67.0	8.0	13%	(\$2.1)	-45%	5.9	9%
Travel & Meetings	18.0	0.7	18.7	18.2	\$1.0	19.2	(0.2)	-1%	(0.3)	-32%	(0.5)	-3%
Professional Svcs.	29.7	7.0	36.6	30.7	11.4	42.1	(1.1)	-3%	(4.4)	-39%	(5.4)	-13%
Administration <sup>(1)</sup>	18.8	0.7	19.5	17.0	1.1	18.1	1.8	11%	(0.4)	-37%	1.4	8%
Capital	3.6	0.0	3.6	7.7	0.0	7.7	(4.1)	-53%	0.0	n/a	(4.1)	-53%
Contingency <sup>(2)</sup>	5.3	0.0	5.3	0.0	0.0	0.0	5.3	n/a	0.0	n/a	5.3	n/a
<b>Baseline Cash Expenses</b>	<b>\$145.9</b>	<b>\$10.9</b>	<b>\$156.8</b>	<b>\$136.1</b>	<b>\$18.0</b>	<b>\$154.0</b>	<b>\$9.9</b>	<b>7%</b>	<b>(\$7.1)</b>	<b>-40%</b>	<b>\$2.7</b>	<b>2%</b>
<b>Increase/ (Decrease) to Net Assets</b>	<b>(\$3.1)</b>	<b>\$8.6</b>	<b>\$5.5</b>	<b>(\$0.2)</b>	<b>\$136.2</b>	<b>\$136.0</b>	<b>(\$2.9)</b>	<b>1564%</b>	<b>(\$127.5)</b>	<b>-94%</b>	<b>(\$130.4)</b>	<b>-96%</b>
<b>Average Headcount</b>	<b>418.1</b>	<b>0.0</b>	<b>418.1</b>	<b>369.0</b>	<b>9.0</b>	<b>378.0</b>	<b>49.1</b>	<b>13%</b>	<b>(9.0)</b>	<b>-100%</b>	<b>40.1</b>	<b>11%</b>

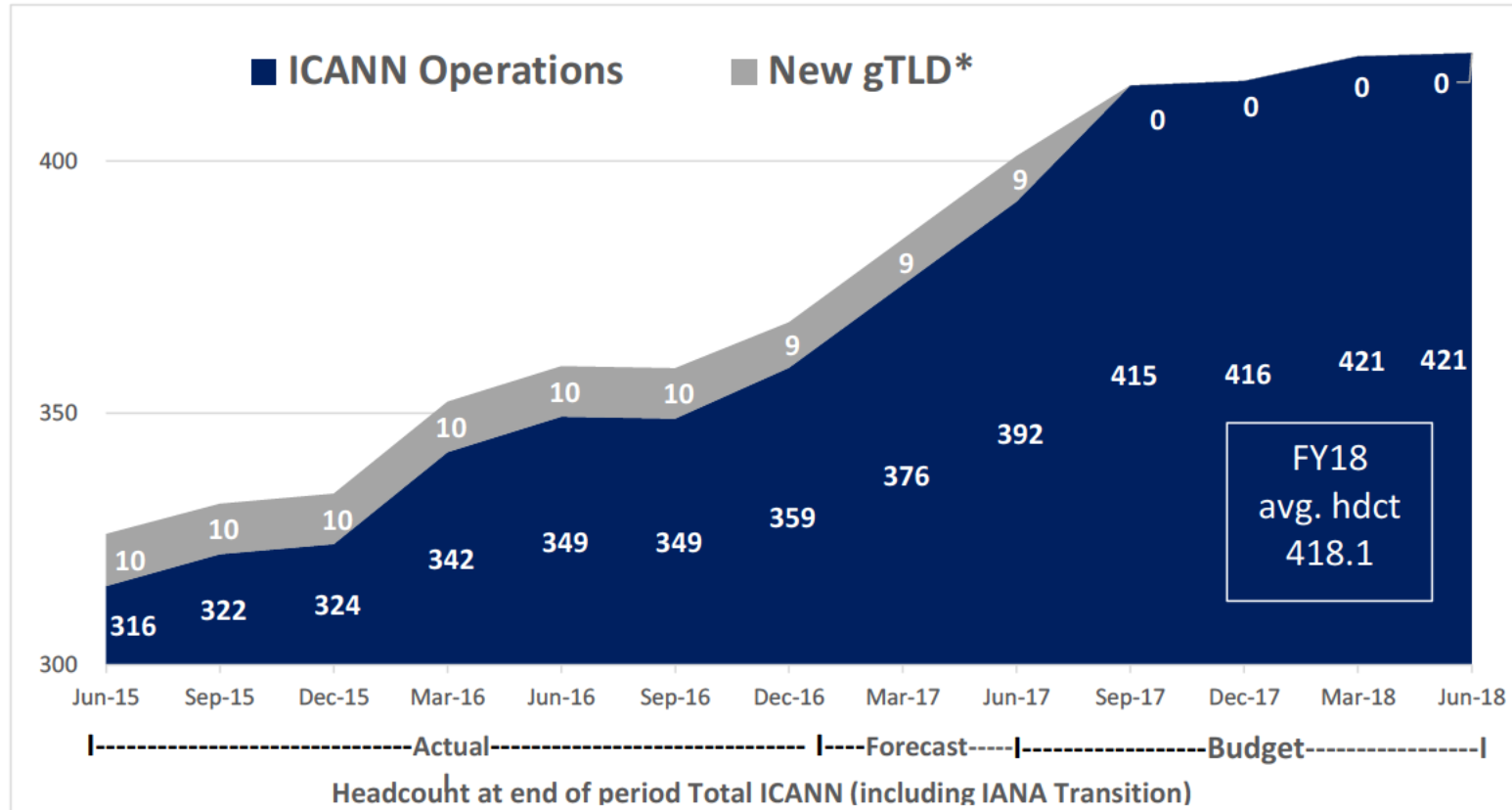
(1) ICANN Operations excludes Depreciation and Bad Debt.

(2) The FY18 contingency expense represents an amount of budgeted expenses unallocated to specific activities or departments. FY17 activities covered by the contingency have been reported in the expense categories above based on the nature of the expense.



## 6.2 – Headcount – Three Year Overview

The headcount below represents the number of ICANN Organization members working on the last calendar day of each period.



\*As the New gTLD Program progresses, the dedicated resources previously reported under the Program are transferring to ICANN Operations in FY18 and continue to support the Program as required.

## 6.3 – Cash Flow Synopsis

The following table describes ICANN’s planned cash inflows and outflows for FY18.

Cash Flow Statement	For the Year Ended 6/30/2018				
	Operating Fund	Reserve Fund	NgTLD	Auction Proceeds	Total
In Millions, US dollars					
<b>Funds Under Management - June 30, 2017</b>	\$ 44.9	\$ 58.6	\$ 123.7	\$ 233.0	\$ 460.1
Collected/ (refunded) from contracted parties	141.3		(9.0)		132.3
Auction Proceeds	-		-		-
Paid to vendors, net of reimbursement	(65.0)		(8.3)		(73.3)
Paid to employees, net of reimbursement	(71.8)		(2.5)		(74.3)
Reimbursement from Reserve Fund - IANA Transition Project Costs <sup>(1)</sup>	\$ 6.0	\$ (6.0)			-
Historical Development Costs	2.0		(2.0)		-
Capital expenditures	(3.6)		-		(3.6)
Change in investment market value		1.2	0.3	0.5	1.9
<b>Funds Under Management - June 30, 2018</b>	<b>\$ 53.8</b>	<b>\$ 53.7</b>	<b>\$ 102.0</b>	<b>\$ 233.5</b>	<b>\$ 443.0</b>

(1) The IANA Transition Project Costs are reimbursed from the Reserve Fund every six months for the previous six months of expenses. The FY18 impact represents the project expenses for (i) H2 FY17 ( January 2017 through June 2017) and (ii) H1 FY18 (July 2017 through December 2017).

The above positions for the Operating Fund and Reserve Fund do not reflect the effect of potential decisions to be considered and approved by the Board that could affect these positions, for example a replenishment of the Reserve Fund by an allocation from the Operating Fund. Such Board decisions are made using the audited financial statements of each fiscal year, which are available by the end of October of every year, for the fiscal year closed on the previous 30 of June.

ICANN’s investment policies for the Reserve Fund and the New gTLD/Auction Proceeds are published on the ICANN.org website located at [ICANN investment-policy](#) and [New gTLD and Auction Proceeds investment-policy](#).

## 7 – FY18 Operating Plan and Budget – Description

### 7.1 – Management System

ICANN’s Five-Year Operating Plan informs the FY18 Operating Plan and Budget. The FY18 Operating Plan and Budget is aligned to the Five-Year Operating Plan in phasing and Key Performance Indicators. This allows us to map all activities and resources back to the five main Strategic Objectives developed by a community driven bottom up process.

- Five Objectives – these were reviewed and revised during the development of ICANN Strategic Plan for fiscal years 2016–2020, which was adopted by the Board in October 2014.
- 16 Goals – owned by the President and CEO’s executive team. Each goal has defined Key Success Factors to clarify what constitutes progress towards achieving a goal.
- 59 Portfolios – each goal contains a set of portfolios, which are groups of related projects. These also have defined success metrics.
- Over 320 Projects – Projects reflect ongoing work. Expenses are budgeted at the project level. A breakdown of all projects is linked from the Appendix. The budgeted amounts in this document are inclusive of capital expenditures and multiyear projects.

The budget amounts for each portfolio in the following sections are provided by cost category:

Meaning	Abbreviation
Personnel	Pers
Travel and Meetings	T&M
Administration	Admin
Capital	Capital
Full Time Equivalent	FTE

Values are shown in millions, USD. The term FTE refers to the full-time Organization equivalent dedicated to each portfolio.

The next page shows how ICANN's five strategic objectives are subdivided into 16 strategic goals. These are each divided into portfolios of projects.



- 1.1 Further Globalize and Regionalize ICANN Functions
- 1.2 Bring ICANN to the world by creating a balanced and proactive approach to regional engagement with stakeholders
- 1.3 Evolve Policy Development and Governance Processes, Structures and Meetings to be More Accountable, Inclusive, Efficient, Effective and Responsive
- 2.1 Foster and Coordinate a Healthy, Secure, Stable, and Resilient Identifier Ecosystem
- 2.2 Proactively Plan for Changes in the Use of Unique Identifiers, and Develop Technology Roadmaps to Help Guide ICANN Activities
- 2.3 Support the Evolution of the Domain Name Marketplace to be Robust, Stable and Trusted
- 3.1 3.1 Ensure ICANN's Long-Term Financial Accountability, Stability and Sustainability
- 3.2 Ensure Structured Coordination of ICANN's Technical Resources
- 3.3 Develop a globally diverse culture of knowledge and expertise available to ICANN's Board, Organization and stakeholders
- 4.1 Encourage Engagement with the Existing Internet Governance Ecosystem at National, Regional and Global Levels
- 4.2 Clarify the Role of Governments in ICANN and Work with Them to Strengthen their Commitment to Supporting the Global Internet Ecosystem
- 4.3 Participate in the Evolution of a Global, Trusted, Inclusive Multistakeholder Internet Governance Ecosystem that Addresses Internet Issues

4.4 Promote Role Clarity and Establish Mechanisms to Increase Trust Within the Ecosystem Rooted in the Public Interest

5.1 Act as a Steward of the Public Interest

5.2 Promote ethics, transparency and accountability across the ICANN community

5.3 Empower Current and New Stakeholders to Fully Participate in ICANN Activities

## 7.2 – 1.1 Further Globalize and Regionalize ICANN Functions

In FY18, we will focus on the following activities that work towards further globalizing and regionalizing ICANN functions:

1. Map community to regional engagement.
2. Implement recommendations resulting from examination of ICANN regional offices in support of ICANN globalization.

We will measure our success in achieving this goal by:

- ⦿ # of remote participation session hours and number of remote participants at ICANN meetings
- ⦿ % of sessions with live interpretation at ICANN meetings

### Portfolios

#### 1.1.1 – Raising Stakeholder Awareness of ICANN Worldwide

Description: This portfolio pertains to how ICANN communicates with stakeholders around the world to help raise awareness of ICANN’s mission, its multistakeholder model and its work. This portfolio is grouped with 1.2.1. Metrics to measure ongoing communications activities include active social and traditional media monitoring and measurement, global newsletter open rates and reach of speaking engagements.

#### 1.1.2 – GSE Executive team coordination and administration

Description: This portfolio covers ICANN’s Global Stakeholder Engagement (GSE) prioritization and planning, across regions and functional areas. This portfolio is grouped closely with 1.2.2. The planning portfolio covers the organization of GSE and regionalization of ICANN functions and communications.

#### 1.1.3 – Language Services

Description: Make information about ICANN and its work accessible to those who speak languages other than English in ways that enhance participation in, and the effectiveness of, the multistakeholder model. ICANN's translations are available in the six United Nations languages – Arabic, Chinese (Simplified), English, French, Russian and Spanish – to make ICANN more effective as a global organization. More languages are being supported to promote inclusion.

We do this in two ways:

- ⦿ By providing support to hub and engagements offices, such as Turkish for the Istanbul hub.

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- ◉ By promoting the Translation/Localization Kit Program, where ICANN Language Services works with the community to translate documents into languages not supported within the UN set of languages.

These languages include Japanese, Korean, and some others. ICANN Language Services also promotes teleconference interpretation support in the six United Nations languages for all working group calls and any other teleconference call where the presence of support of availability of other languages may increase and facilitate participation.

Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
1.1.1 Raising Stakeholder Awareness of ICANN Worldwide	18.0	2.9	0.2	0.7	0.2	0.0	4.0
1.1.2 GSE Executive Team Coordination and Administration	4.5	0.9	0.1	0.1	0.2	0.0	1.2
1.1.3 Language Services	5.8	0.6	0.0	3.8	0.4	0.0	4.8
<b>Total</b>	<b>28.3</b>	<b>\$4.3</b>	<b>\$0.4</b>	<b>\$4.5</b>	<b>\$0.8</b>	<b>\$0.0</b>	<b>\$10.0</b>

## 7.3 – 1.2 Bring ICANN to the World by Creating a Balanced and Proactive Approach to Regional Engagement with Stakeholders

In FY18, we will focus on the following activities that work towards bringing ICANN to the world by creating a balanced and proactive approach to regional engagement with stakeholders:

1. Map Stakeholder Journey to regional engagement.
2. Enhance online ICANN meeting hubs to contribute to and increase engagement during meetings.
3. Review effectiveness of ICANN web tools for supporting globalization and regionalization for community.

We will measure our success in achieving this goal by:

- ⦿ Global/regional engagement activities to show a balanced and proactive approach to regional engagement
- ⦿ Stakeholder Participation at ICANN meetings by region

### Portfolios

#### 1.2.1 – Engage Stakeholders Regionally

Description: This portfolio covers the mechanisms for delivering on ICANN’s regional and functional engagement strategies (including regional and functional area work plans, stakeholder engagement heat map).

#### 1.2.2 – Meeting Services

Description: All work associated with planning and running ICANN’s three public meetings a year.

Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
<b>1.2.1 Engage Stakeholders Regionally</b>	<b>28.8</b>	<b>5.0</b>	<b>1.8</b>	<b>0.3</b>	<b>0.9</b>	<b>0.3</b>	<b>8.3</b>
<b>1.2.2 Meeting Services</b>	<b>9.2</b>	<b>1.4</b>	<b>6.0</b>	<b>2.1</b>	<b>0.5</b>	<b>0.0</b>	<b>10.1</b>
<b>Total</b>	<b>38.0</b>	<b>\$6.4</b>	<b>\$7.8</b>	<b>\$2.4</b>	<b>\$1.4</b>	<b>\$0.3</b>	<b>\$18.4</b>



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## 7.4 – 1.3 Evolve Policy Development and Governance Processes, Structures and Meetings to be More Accountable, Inclusive, Efficient, Effective and Responsive

For FY18, we continue to consolidate progress made towards the following activities that work towards evolving policy development and governance processes, structures and meetings to be more accountable, inclusive, efficient, effective and responsive:

1. Complete a comprehensive assessment, every two years, of delivery of all resources and capabilities that are provided to the stakeholders.
2. Analyze, evaluate and plan for how to balance resource abilities and capabilities among stakeholders (every two years).
3. Assess progress towards five-year goal – toward wide use of improved tools and mechanisms for global participation and representation, including the use of remote participation to engage stakeholders from emerging regions.
4. Implement improvements resulting from ICANN Reviews as part of continuous accountability enhancement work.
5. Support one or more At-Large General Assemblies.

We will measure our success in achieving this goal by:

- ⦿ Representation and Participation in the policy development and governance processes
- ⦿ Quantity of Activity index
- ⦿ Quantity of Activity and Productivity index

### Portfolios

#### 1.3.1 – Support Policy Development, Policy-Related and Advisory Activities

Description: Optimize efficiency and effectiveness of community policy development and advice efforts.

#### 1.3.2 – Reinforce Stakeholder Effectiveness, Collaboration and Communication Capabilities

Description: To optimize collaboration and engagement of ICANN Supporting Organizations and Advisory Committees, and increase and measure the number of exchanges (meetings and correspondence) that take place between them (and the Board as appropriate) as they consult and discuss strategic and policy issues/matters.

#### 1.3.3 – Evolving Multistakeholder Model

Description: Planning and implementation of ICANN’s online education platform to:

- ⦿ Support increased, informed, global involvement in ICANN
- ⦿ Plan for evolving ICANN’s multistakeholder model
- ⦿ Facilitate the development and publication of academic research on the multi-stakeholder model for DNS coordination, Internet policy development and governance.

Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
<b>1.3.1 Support Policy Development, Policy-Related and Advisory Activities</b>	<b>34.5</b>	<b>4.5</b>	<b>1.1</b>	<b>1.1</b>	<b>0.1</b>	<b>0.0</b>	<b>6.7</b>
<b>1.3.2 Reinforce Stakeholder Effectiveness, Collaboration and Communication Capabilities</b>	<b>1.5</b>	<b>0.2</b>	<b>1.9</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>2.1</b>
<b>1.3.3 Evolving Multistakeholder Model</b>	<b>0.6</b>	<b>0.2</b>	<b>0.0</b>	<b>0.3</b>	<b>0.0</b>	<b>0.0</b>	<b>0.5</b>
<b>Total</b>	<b>36.5</b>	<b>\$4.8</b>	<b>\$3.0</b>	<b>\$1.4</b>	<b>\$0.1</b>	<b>\$0.0</b>	<b>\$9.3</b>

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## 7.5 – 2.1 Foster and Coordinate a Healthy, Secure, Stable, and Resilient Identifier Ecosystem

In FY18, we intend to do the following to foster and coordinate a healthy, secure, stable, and resilient identifier ecosystem:

1. Deliver services to the ICANN Community according to service level targets.
2. Monitor and manage service delivery against targets, identify opportunities for improvement and efficiency.
3. Standardize methodology, processes and tools for managing action request and Implement process improvements for increased operational efficiency and customer satisfaction.
4. Implement system enhancements for increased operational efficiency and effectiveness.
5. Implementation and Deployment of enhancements to User Interface for the Protocol Parameter requests.
6. Modernization and enhancements of the IANA website.
7. Root Zone customer API for operators that manage portfolios of many domains.
8. Continue to lead and support Registration Data Services (WHOIS) activities to promote trust and confidence in the Internet for all stakeholders.

We will measure our success in achieving this goal by:

- ⦿ % of Service Level Targets met for delivery of services across multiple departments including but not limited to IANA Services, GDD Operations, and Global Customer Support departments

### Portfolios

#### 2.1.1 – PTI Operations<sup>1</sup>

Description: Operational responsibilities for maintaining registries for protocol parameters, IP numbers, Autonomous System Numbers, and root zone changes. Maintenance of relationship with Internet Engineering Task Force, Internet Architecture Board, five Regional Internet Registries, and TLD operators

#### 2.1.2 – PTI Technical System Enhancements<sup>2</sup>

Description: Software enhancements, tool development, and other discrete projects to improve delivery of the IANA Services

#### 2.1.3 – Action Request Register Management

Description: Implementation of processes and tools to track the receipt, consideration, response, and closure of request made to ICANN’s Board, CEO or Organization. Requests to include items from Supporting Organizations, Advisory Committees, Review Teams, and others.

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<sup>1</sup> This portfolio is a part of PTI’s FY18 plans, which have been consulted on [\(Appendix B\)](#), published for [Public Comment](#), adopted by the [PTI Board](#).

<sup>2</sup> This portfolio is a part of PTI’s FY18 plans, which have been consulted on [\(Appendix B\)](#), published for [Public Comment](#), adopted by the [PTI Board](#).

#### 2.1.4 – Global Domains Division Operations

Description: Projects related to the service implementation and ongoing delivery of services to contracted parties by the GDD. This includes reviewing and improving the way services are delivered.

#### 2.1.5 – Global Customer Support

Description: Projects related to the development, implementation and ongoing operations of the ICANN Customer Service Center. This includes support, engagement and advocacy for the global registrant community.

#### 2.1.6 – Product Management

Description: Projects and ongoing activities in support of the New gTLD Program, including technical development work for service platforms.

#### 2.1.7 – Registration Data Services (WHOIS)

Description: Projects related to Registration Data Services (WHOIS) activities and efforts aimed at promoting trust and confidence in the Internet for all stakeholders.

Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
<b>2.1.1 PTI Operations</b>	<b>21.7</b>	<b>3.8</b>	<b>0.5</b>	<b>1.6</b>	<b>0.4</b>	<b>0.0</b>	<b>6.3</b>
<b>2.1.2 PTI Technical System Enhancements</b>	<b>1.5</b>	<b>0.4</b>	<b>0.0</b>	<b>0.1</b>	<b>0.0</b>	<b>0.0</b>	<b>0.4</b>
<b>2.1.3 Action Request Register Management</b>	<b>0.1</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>2.1.4 Global Domains Division Operations</b>	<b>25.6</b>	<b>4.8</b>	<b>0.7</b>	<b>2.3</b>	<b>0.3</b>	<b>0.0</b>	<b>8.1</b>
<b>2.1.5 Global Customer Support</b>	<b>12.7</b>	<b>1.3</b>	<b>0.1</b>	<b>0.0</b>	<b>0.2</b>	<b>0.0</b>	<b>1.6</b>
<b>2.1.6 Product Management</b>	<b>9.0</b>	<b>1.8</b>	<b>0.0</b>	<b>0.4</b>	<b>0.2</b>	<b>0.0</b>	<b>2.4</b>
<b>2.1.7 Registration Data Services (WHOIS)</b>	<b>0.3</b>	<b>0.1</b>	<b>0.0</b>	<b>0.2</b>	<b>0.0</b>	<b>0.0</b>	<b>0.2</b>
<b>Total</b>	<b>70.8</b>	<b>\$12.2</b>	<b>\$1.4</b>	<b>\$4.6</b>	<b>\$0.9</b>	<b>\$0.1</b>	<b>\$19.1</b>

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## 7.6 – 2.2 Proactively Plan for Changes in the Use of Unique Identifiers and Develop Technology Roadmaps to Help Guide ICANN Activities

In FY18, we will continue focusing on the activities that work towards proactively planning for changes in the use of unique identifiers and developing technology roadmaps to help guide ICANN activities:

1. Complete implementation of first year of technology roadmaps.
2. Publish at least two more white papers on identifier technology.
3. Demonstrate growth in ratios in developing regions.

We will measure our success in achieving this goal by:

- ⦿ An Identifier Technologies Health Index, which will measure ICANN's contribution to the health of identifiers in both the ICANN and broader Internet communities.

### Portfolios

#### 2.2.1 – Identifier Evolution

Description: Track and support the evolution of the Internet's system of unique identifiers through venues such as the [IETF](#), [DNS-OARC](#), [W3C](#), the [RIRs](#), and other relevant bodies.

#### 2.2.2 – Technical Reputation

Description: Measure ICANN's technical reputation across diverse communities and use this to help ICANN develop and improve to grow satisfaction with its performance.

#### 2.2.3 – Security, Stability, and Resiliency of Internet Identifiers

Description: Work to observe, assess and improve the security, stability, and resiliency (SSR) of the Internet's Identifier systems in close collaboration with other ICANN departments and the wider community. This will be achieved through a range of activities including risk awareness and preparedness, measurement and analysis of identifier system behaviors or performance, and cooperative outreach that emphasizes coordination, capability building, and knowledge transfer.

Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
<b>2.2.1 Identifier Evolution</b>	<b>3.9</b>	<b>1.0</b>	<b>0.3</b>	<b>0.3</b>	<b>1.0</b>	<b>0.1</b>	<b>2.7</b>
<b>2.2.2 Technical Reputation</b>	<b>-</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>2.2.3 Security, Stability, and Resiliency of Internet Identifiers</b>	<b>6.7</b>	<b>2.0</b>	<b>0.3</b>	<b>0.4</b>	<b>0.5</b>	<b>0.1</b>	<b>3.3</b>
<b>Total</b>	<b>10.6</b>	<b>\$3.0</b>	<b>\$0.6</b>	<b>\$0.7</b>	<b>\$1.5</b>	<b>\$0.1</b>	<b>\$6.0</b>

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## 7.7 – 2.3 Support the Evolution of Domain Name Marketplace to be Robust, Stable and Trusted

In FY18, we will continue to support the development of a robust, stable and trusted domain marketplace by:

1. Ongoing development and monitoring of the Domain Name Marketplace Health Index.
2. Improving customer satisfaction by reducing survey gap by at least 10% year over year.
3. Showing stable healthy year over year growth in the domain name industry.

We will measure our success in achieving this goal by:

- ⦿ Publishing a twice yearly Domain Name Marketplace Health Indicators Report

### Portfolios

#### 2.3.1 – GDD Technical Services

Description: Projects to enhance systems, services and technical subject matter expertise related to a safe, secure, and reliable operation of the DNS.

#### 2.3.2 – Internationalized Domain Names

Description: Support the introduction and universal acceptance and adoption of Internationalized Domain Names (IDNs).

#### 2.3.3 – New gTLD Program

Description: Projects and ongoing activities in support of the New gTLD Program. Activities include:

- ⦿ Program Operations to support new gTLD contracting, as well as before delegation operations including Pre-Delegation Testing, Registry On-boarding and Transition to Delegation.
- ⦿ Operate and support Trademark Clearinghouse to enable New gTLD launch processes.
- ⦿ Project to capture FY17 cost allocations from ICANN to New gTLD Program budget.

#### 2.3.4 – Outreach and Relationship Management with Existing and New Registry and Registrar Community Members

Description: Create outreach and engagement strategies for registry and registrar operators to promote and cultivate a positive and constructive relationship among ICANN Organization, registries, registrars and other participants in the domain name industry value chain. Activities include having dedicated account managers, conducting workshops, webinars, and inter-sessional meetings, and attending ICANN meetings.

#### 2.3.5 – Domain Name Registrants

Description: Domain Name Services ongoing operations and Industry Engagement.

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### 2.3.6 –Subsequent Procedures for New gTLDs

Description: Projects related to (1) tracking and reporting on the community’s work to prepare for subsequent procedures for new gTLDs; (2) planning for and implementation of any Board-adopted review or policy recommendations on subsequent procedures.

### 2.3.7 – Universal Acceptance

Description: ICANN support to the Internet community to enable all protocol valid domains - including ccTLDs, gTLDs, and IDNs - to work in applications regardless of the age or script. This work is intended to support the goals of user choice, user confidence, and competition.

### 2.3.8 – Registry Services

Description: Projects related to managing the contracts, defining new services, and building a strong relationship with current and future registry operators.

### 2.3.9 – Registrar Services

Description: Projects related to managing the contracts, defining new services, and building a strong relationship with current and future registrar operators.

### 2.3.10 – Registrant Services

Description: Projects related to defining activities to better inform, educate, service and support registrants while staying within ICANN’s restated mission.



Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
2.3.1 GDD Technical Services	3.4	0.8	0.0	0.3	0.0	0.1	1.1
2.3.2 Internationalized Domain Names	2.3	0.4	0.1	0.6	0.0	0.0	1.2
2.3.3 New gTLD Program	4.0	3.4	0.7	5.1	0.7	0.0	9.8
2.3.4 Outreach and Relationship Management with existing and new Registry and Registrar Community members	-	0.0	0.0	0.0	0.0	0.0	0.0
2.3.5 Domain Name Registrants	6.5	1.1	0.3	0.1	0.1	0.0	1.6
2.3.6 Subsequent Procedures for New gTLDs	2.3	0.4	0.0	0.2	0.0	0.0	0.5
2.3.7 Universal Acceptance	-	0.0	0.0	1.4	0.0	0.0	1.4
2.3.8 Registry Services	10.4	1.8	0.1	0.4	0.0	0.0	2.2
2.3.9 Registrar Services	8.9	1.4	0.0	0.7	0.0	0.0	2.2
2.3.10 Registrant Services	2.1	0.3	0.0	0.2	0.0	0.0	0.6
<b>Total</b>	<b>39.7</b>	<b>\$9.5</b>	<b>\$1.3</b>	<b>\$8.9</b>	<b>\$0.8</b>	<b>\$0.1</b>	<b>\$20.6</b>

## 7.8 – 3.1 Ensure ICANN’s Long-Term Financial Accountability, Stability and Sustainability

In FY18, we will focus on the following activities that work towards ICANN’s long-term financial accountability, stability and sustainability:

1. Achieve the foundation for Key Success Factors (outcome) supported by adequate system advancement in place.
2. Continue to improve and achieve elevated target performance levels as per roadmap.
3. Modify roadmap as needed.

We will measure our success in achieving this goal by:

- Financial accountability, stability and sustainability indices (composite index of ratios and metrics) including but not limited to:
  - Actual to budget Reserve Fund balance and utilization, and financial performance metrics
  - Internal control performance indicators
  - % project completion indices (with emphasis on major projects)
  - % comparisons of actual to target succession plan readiness
  - % comparisons of actual to target enterprise risk management roadmap achievements

- On-time delivery index of the ICANN Planning process (includes: ICANN Five-Year Strategic Plan for FY16-FY20, Five-Year Operating Plan, Fiscal-Year Operating Plan and Budget, achievements and progress reporting)

## Portfolios

### 3.1.1 – Strategic and Operating Planning

Description: Review of the Five-Year Strategic and Operating Plan Implementation, and the development of FY19 Operating Plan and Budget.

### 3.1.2 – Finance and Procurement

Description: All finance and procurement activities for the entire organization, in all locations. Includes the following functions: accounting (including accounts payable and billing), reporting and analysis, planning, tax, audit, procurement (purchase order processing, approval), sourcing.

### 3.1.3 – Enterprise Risk Management

Description: Continue the focus on planning, assessing risk, evaluating mitigation, monitoring and progress reporting to minimize the effects of risks to the organization.

### 3.1.4 – Security Operations

Description: Further development of ICANN’s Security Operations roadmap for effective internal security. Key aspects include identifying, understanding and treating the security risks within our environment, and minimizing the likelihood of a risk impacting the ICANN team and work.

Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
<b>3.1.1 Strategic and Operating Planning</b>	<b>6.5</b>	<b>1.2</b>	<b>0.2</b>	<b>0.6</b>	<b>0.0</b>	<b>0.0</b>	<b>2.1</b>
<b>3.1.2 Finance and Procurement</b>	<b>17.9</b>	<b>2.7</b>	<b>0.1</b>	<b>0.3</b>	<b>1.4</b>	<b>0.0</b>	<b>4.4</b>
<b>3.1.3 Enterprise Risk Management</b>	<b>1.3</b>	<b>0.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.6</b>
<b>3.1.4 Security Operations</b>	<b>4.2</b>	<b>0.8</b>	<b>0.3</b>	<b>0.9</b>	<b>0.1</b>	<b>0.0</b>	<b>2.0</b>
<b>Total</b>	<b>29.9</b>	<b>\$5.2</b>	<b>\$0.6</b>	<b>\$1.8</b>	<b>\$1.6</b>	<b>\$0.0</b>	<b>\$9.1</b>



## 7.9 – 3.2 Ensure Structured Coordination of ICANN’s Technical Resources

In FY18, we will focus on the following activities that work towards ensuring structured coordination of ICANN’s technical resources:

1. Drive IT Services uptime for Tier 1 towards 99.99% availability.
2. Measure and compare metric for the IANA Services against baseline for year over year improvement.
3. Report on metric for on-time, on-budget IT projects delivery, driving to improvement year over year on performance.

We will measure our success in achieving this goal by:

- ⦿ % of global IT infrastructure uptime (scaling from 99.9% in FY 2016 to 99.999% in 2020 for ICANN Community engagement and information web services)

### Portfolios

#### 3.2.1 – Cybersecurity Hardening and Control

Description: All on-going infrastructure projects and services to maintain adequate performance of the systems supporting all ICANN operations.

#### 3.2.2 – IT Infrastructure and Service Scaling

Description: Work towards a top-tier global IT infrastructure performing at 99.999% uptime and have ICANN recognized by the global community as having technical excellence and thought leadership.

#### 3.2.3 – Root Systems Operations

Description: Facilitating the continued evolution of the root server system to ensure its ongoing security, stability, and resiliency as DNS technology and operations change over time: maintenance of relationships with the Root Server Operators, RSSAC, and related stakeholders.

Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
<b>3.2.1 Cybersecurity Hardening and Control</b>	<b>2.1</b>	<b>0.2</b>	<b>0.0</b>	<b>0.6</b>	<b>0.1</b>	<b>0.1</b>	<b>1.1</b>
<b>3.2.2 IT Infrastructure and Service Scaling</b>	<b>53.7</b>	<b>9.3</b>	<b>0.3</b>	<b>1.5</b>	<b>5.8</b>	<b>2.3</b>	<b>19.2</b>
<b>3.2.3 Root Systems Operations</b>	<b>6.1</b>	<b>1.1</b>	<b>0.3</b>	<b>0.4</b>	<b>0.3</b>	<b>0.3</b>	<b>2.5</b>
<b>Total</b>	<b>61.9</b>	<b>\$10.7</b>	<b>\$0.6</b>	<b>\$2.5</b>	<b>\$6.2</b>	<b>\$2.7</b>	<b>\$22.8</b>

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## 7.10 – 3.3 Develop a Globally Diverse Culture of Knowledge and Expertise Available to ICANN’s Board, Organization, and Stakeholders

In FY18, we will focus on one core activity to work towards developing a globally diverse culture of knowledge and expertise available to ICANN’s Board, Organization and stakeholders.

1. Identify gaps and continue to improve.
2. Advance on applying systems to refine measurements.
3. Collaborate with stakeholders on progress evaluation and improvements.

We will measure our success in achieving this goal by:

- ⦿ % of achievement in comparison to best practice benchmark metrics of global diverse culture, and knowledge levels of Board, Organization and stakeholders
- ⦿ % of completion - actual to target implementation milestones of global development programs to advance the knowledge and expertise of Organization, Board and stakeholders

### Portfolios

#### 3.3.1 – People Management

Description: Establishing and developing the right mix of skills to accomplish critical business needs at both leadership and Organization level. Work includes focuses on areas including talent acquisition, leadership development, team effectiveness, learning and skill development, and organizational change management.

#### 3.3.2 – ICANN Technical University

Description: Providing a mechanism to improve the technical understanding of the technology ICANN coordinates.

#### 3.3.3 – Organizational Assessment and Continuous Improvement

Description: Integration between ICANN’s organizational planning, assessment, reporting, and improvement activities. Guidance to advance organizational, technological and operational excellence.

#### 3.3.4 – Board Operations

Description: Provide Organization support to the ICANN and PTI Boards of Directors.

#### 3.3.5 – Global Operations

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Description: Various programs and projects to support the globalization of operations functions, such as HR and Finance.

Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
<b>3.3.1 People Management</b>	<b>10.7</b>	<b>1.9</b>	<b>0.1</b>	<b>0.4</b>	<b>0.1</b>	<b>0.0</b>	<b>2.6</b>
<b>3.3.2 ICANN Technical University</b>	<b>-</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>3.3.3 Organizational Assessment and Continuous Improvement</b>	<b>3.7</b>	<b>0.7</b>	<b>0.0</b>	<b>0.3</b>	<b>0.1</b>	<b>0.0</b>	<b>1.2</b>
<b>3.3.4 Board Operations</b>	<b>2.5</b>	<b>0.3</b>	<b>0.0</b>	<b>0.2</b>	<b>0.0</b>	<b>0.0</b>	<b>0.6</b>
<b>3.3.5 Global Operations</b>	<b>17.0</b>	<b>3.3</b>	<b>0.5</b>	<b>0.7</b>	<b>5.6</b>	<b>0.3</b>	<b>10.3</b>
<b>Total</b>	<b>34.0</b>	<b>\$6.3</b>	<b>\$0.7</b>	<b>\$1.6</b>	<b>\$5.8</b>	<b>\$0.3</b>	<b>\$14.6</b>

## 7.11 – 4.1 Encourage Engagement with the Existing Internet Governance Ecosystem at National, Regional and International Levels

In FY18, we will focus on the following activities that work towards encouraging engagement with the existing Internet Governance (IG) Ecosystem at national, regional and international levels:

1. Complete third year review and revisions of strategy as necessary based up FY17 work.
2. Evolution of global and regional work plans if necessary to reflect outcome of strategy review and revision.

We will measure our success in achieving this goal by:

- ⊙ A trended composite index measuring interactions between ICANN and national governments, regional governmental entities, and Intergovernmental organizations, and international organizations

### Portfolios

#### 4.1.1 – Coordination of ICANN Participation in Internet Governance

Description: This portfolio includes those projects that coordinate ICANN’s support for and participation in the Internet Governance Ecosystem as well as collaboration with other entities in the ecosystem on projects and initiatives of shared interest.

Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
4.1.1 Coordination of ICANN Participation in Internet Governance	1.1	0.3	0.0	0.0	0.2	0.0	0.6
<b>Total</b>	<b>1.1</b>	<b>\$0.3</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.2</b>	<b>\$0.0</b>	<b>\$0.6</b>



## 7.12 – 4.2 Clarify the Role of Governments in ICANN and Work with them to Strengthen their Commitment to Supporting the Global Internet Ecosystem

In FY18, we will focus on the following activities that work towards clarifying the role of governments in ICANN and work with them to strengthen their commitment to supporting the global Internet ecosystem:

1. Third year review of strategy and implementation of any changes developed through review and revision brought forward to FY17.
2. Revise global and regional work plans to reflect outcome of strategy review.
3. Two informational and technical skills workshops for regional GAC members as part of demand driven engagement.

We will measure our success in achieving this goal by:

- ⦿ Increase # of GAC members attending ICANN public meetings, reported by region

### Portfolios

#### 4.2.1 – Support GAC Engagement

Description: This portfolio includes those projects supporting the activities of the Governmental Advisory Committee and those that facilitate outreach to increase participation in the work of the GAC.

#### 4.2.2 – Engagement with Governments and Intergovernmental Organizations

Description: This portfolio includes those projects supporting and coordinating outreach and engagement with governments and IGOs nationally, regionally and internationally to increase governments knowledge of and participation in the global Internet Governance ecosystem.

Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
<b>4.2.1 Support GAC Engagement</b>	<b>0.6</b>	<b>0.2</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.2</b>
<b>4.2.2 Engagement with Governments and Intergovernmental Organizations</b>	<b>6.3</b>	<b>1.6</b>	<b>0.2</b>	<b>0.5</b>	<b>0.1</b>	<b>0.0</b>	<b>2.4</b>
<b>Total</b>	<b>6.9</b>	<b>\$1.8</b>	<b>\$0.2</b>	<b>\$0.5</b>	<b>\$0.1</b>	<b>\$0.0</b>	<b>\$2.6</b>

## 7.13 – 4.3 Participate in the Evolution of a Global, Trusted, Inclusive Multistakeholder Internet Governance Ecosystem that Addresses Internet Issues

In FY18, we will focus on the following activities that work towards participating in the evolution of a global, trusted, inclusive multistakeholder Internet Governance Ecosystem that addresses Internet issues:

1. Third year review of the goals and delivery strategy for those goals with the mission and mandate of ICANN following the IANA Stewardship Transition.
2. Evolution and improvement of global engagement work plan based on completed review.
3. Definition of new measurements for activity if the work of 4.3 is still separate from 4.1 - if so continuation of FY17 projects and work to reflect collaboration with respective Internet organizations.

We will measure our success in achieving this goal by:

- ⦿ Quarterly trend data showing cumulative participation in IG Ecosystem Evolution

### Portfolios

#### 4.3.1 – Support Internet Governance Ecosystem Advancement

Description: The portfolio encompasses the collaborative work within the Internet Governance ecosystem to support evolution of multistakeholder distributed approaches.

Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
<b>4.3.1 Support Internet Governance Ecosystem Advancement</b>	-	0.0	0.0	0.0	0.1	0.0	0.1
<b>Total</b>	-	\$0.0	\$0.0	\$0.0	\$0.1	\$0.0	\$0.1

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## 7.14 – 4.4 Promote Role Clarity and Establish Mechanisms to Increase Trust within the Ecosystem Rooted in the Public Interest

In FY18, we will focus on the following activities that work towards promoting role clarity and establish mechanisms to increase trust within the ecosystem rooted in the public interest:

1. Implement Overall Satisfaction Survey (based on the feedback Contractual Compliance requests from reporters and contracted parties at the closure of a complaint) and report the results and outcomes.
2. Implement ongoing measurement, benchmarking and reporting.
3. Assess current practices in light of the changing environment and adjust as needed.
4. Integrate safeguard role within ICANN organization and the community.
5. Develop safeguard strategic outreach plan and execute.
6. Develop a report on the role of safeguards in the DNS market place, including successes and areas for improvement.

We will measure our success in achieving this goal by:

- ⦿ % of Contractual Compliance service level targets that are met
- ⦿ Ensure that the safeguards role becomes an important part of the ICANN organization’s portfolio of responsibilities and is fully integrated and active within the ICANN Community

### Portfolios

#### 4.4.1 – Contractual Compliance Functions

Description: Day-to-day activities to ensure compliance by registrars and registries with their contractual obligations to ICANN and to report back to the community.

#### 4.4.2 – Contractual Compliance Initiatives and Improvements

Description: This portfolio comprises a series of projects focused on the continuous improvement of contractual compliance operations and systems. Work includes addressing contractual compliance interpretation issues and working with the ICANN stakeholders to define relevant metrics to improve transparency and reporting of contractual compliance.

#### 4.4.3 – Contractual Compliance and Safeguards

Description: Projects relating to: (1) outreach to ICANN stakeholders regarding contractual compliance; (2) development of an analytic and nuanced approach to complex contractual compliance issues; and (3) cooperation and coordination on consumer safeguards that are beyond the scope of pure contract compliance

Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
4.4.1 Contractual Compliance Functions	26.3	3.1	0.2	1.1	0.1	0.0	4.5
4.4.2 Contractual Compliance Initiatives and Improvements	0.7	0.1	0.0	0.0	0.0	0.0	0.1
4.4.3 Contractual Compliance and Safeguards	2.0	0.8	0.1	0.0	0.0	0.0	0.9
<b>Total</b>	<b>29.0</b>	<b>\$4.0</b>	<b>\$0.3</b>	<b>\$1.1</b>	<b>\$0.1</b>	<b>\$0.0</b>	<b>\$5.5</b>

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## 7.15 – 5.1 Act as a Steward of the Public Interest

In FY18, we will focus on the following activities that work towards acting as a steward of the public interest:

1. Measure and baseline the % of actions by ICANN in decision making and how rationales are including the public interest assessments as part of decision making.

We will measure our success in achieving this goal by:

- ⦿ # of ICANN decisions and advice (Board, Organization and stakeholders) that are rationalized based on common consensus-based definitions and understandings of public interest within ICANN's remit

### Portfolios

#### 5.1.1 – Legal Advisory Function

Description: Provide legal advice to all functions at ICANN.

#### 5.1.2 – Public Interest Decision Making

Description: Collaborative work with Community, Board, and Organization to work towards developing a consensus-based framework on understanding public interest within ICANN's remit, how to reflect public interest considerations in decision making across ICANN, and provide operational impact across all groups.

#### 5.1.3 – Legal Internal Support

Description: Provide legal support to all functions at ICANN.

#### 5.1.4 – Support ICANN Board

Description: Provide Organization support to the ICANN and PTI Boards of Directors.

Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
5.1.1 Legal Advisory Function	2.6	0.8	0.0	0.0	0.0	0.0	0.8
5.1.2 Public Interest Decision Making	-	0.0	0.0	0.0	0.0	0.0	0.0
5.1.3 Legal Internal Support	7.0	1.9	0.1	2.1	0.1	0.0	4.1
5.1.4 Support ICANN Board	8.7	1.7	1.0	1.2	0.2	0.0	4.1
<b>Total</b>	<b>18.2</b>	<b>\$4.4</b>	<b>\$1.1</b>	<b>\$3.3</b>	<b>\$0.3</b>	<b>\$0.0</b>	<b>\$9.1</b>

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## 7.16 – 5.2 Promote Ethics, Transparency and Accountability Across the ICANN Community

In FY18, we will focus on the following activities that work towards promoting ethics, transparency and accountability across the ICANN Community:

1. Meet increased metrics developed in FY16-FY17 and show increase in acceptance and impact of Accountability and Ethical Framework.
2. Reviews Streamlining and Recalibration work in consultation with the community.
3. Coordinate the operationalization of the output of Cross Community Working Group on Accountability.
4. Implementation of the recommendations from the first Review on Competition, Consumer Choice and Trust in new gTLDs.
5. Conclude the second Specific Review on Security, Stability and Resiliency of the DNS; begin planning for implementation.
6. Conclude the second Specific Review on Registration Directory Service; begin planning for implementation.
7. Conclude the third Specific Review on Accountability and Transparency; begin planning for implementation.
8. Conclude Organizational Reviews of ASO and NomCom, start Reviews of RSSAC, SSAC and ccNSO and begin planning for implementation. Continue implementation of GNSO Review and At-Large Review.
9. Evolve Operating Standards for Reviews as a well-understood and accepted guide for conducting reviews.

We will measure our success in achieving this goal by:

- ⦿ Public interest framework index (for example, ICANN’s Documentary Information Disclosure Policy and correspondence posted on time, compliance with the conflict of interest policy and compliance with the Board Code of Conduct):
  - ⦿ Develop a framework for increasing trust in ICANN’s fulfillment of its commitments through efficient and effective Reviews:
  - ⦿ Broad and diverse participation in ICANN Reviews
  - ⦿ Community engagement in using ICANN Reviews to drive continuous improvement in accountability, transparency and organizational effectiveness (such as community participation in public comments pertaining to Reviews and other forms of engagement)
  - ⦿ Transparent and timely reporting mechanisms on the progress of each review
- ⦿ Effective and timely support of the work of the Cross-Community Working Group on Enhancing Accountability (CCWG-Accountability WS2) to enable their timely development of consensus recommendations

### Portfolios

5.2.1 – [Specific Reviews](#) (Bylaws Article 4, Section 4.6)

Description: In reference to Bylaws Article 4, Section 4.6 - Conduct mandated, regularly scheduled reviews of ICANN commitments and ICANN entities to support effectiveness and ongoing improvement in ICANN’s accountability and governance structures. Support effective community engagement and Board assessment and development of plans to maximize improvements to each entity and benefits to ICANN as a whole. Integrate outcomes into strategic planning efforts.

### 5.2.2 – [Organizational Reviews](#)

Description: Conduct regularly scheduled reviews of ICANN entities to support their effectiveness and ongoing improvement. Support effective community engagement and development of plans to maximize improvements to each entity and benefits to ICANN as a whole. This includes:

- ⦿ Manage processes to conduct all Organizational Reviews according to the ICANN Bylaws.
- ⦿ Facilitate community engagement and participation in the review process, including input on the feasibility and usefulness of recommendations.
- ⦿ Support Board assessment of recommendations produced by independent examiners.
- ⦿ Oversee timely and effective implementation of Board-approved recommendations and coordinate a predictable schedule of consistent implementation updates and measures of progress.

### 5.2.3 – Conflicts of Interest and Organizational Ethics

Description: Support compliance with ICANN's conflict of interest and organizational ethics policy and framework.

### 5.2.4 – Accountability and Transparency Mechanisms

Description: Support compliance with ICANN's Accountability and Transparency Mechanisms framework.

### 5.2.5 – Strategic Initiatives

Description: Consider and formulate Institutional Confidence Index (long-range) while assembling and refining Accountability-related KPIs, in line with the Accountability Framework proposed by One World Trust (short-range). Finalized metrics will have benchmarks and targets.

### 5.2.6 – Enhancing ICANN Accountability – WS2

Description: The CCWG-Accountability is able to produce recommendations that provide assurance that ICANN is accountable in the absence of its historical contractual relationship with the U.S. Government.

Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
<b>5.2.1 Specific Reviews</b>	<b>6.4</b>	<b>1.0</b>	<b>0.8</b>	<b>0.7</b>	<b>0.0</b>	<b>0.0</b>	<b>2.6</b>
<b>5.2.2 Organizational Reviews</b>	<b>3.1</b>	<b>0.5</b>	<b>0.1</b>	<b>0.4</b>	<b>0.0</b>	<b>0.0</b>	<b>1.0</b>
<b>5.2.3 Conflicts of Interest and Organizational Ethics</b>	<b>0.4</b>	<b>0.1</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.1</b>
<b>5.2.4 Accountability and Transparency Mechanisms</b>	<b>3.1</b>	<b>1.0</b>	<b>0.1</b>	<b>0.3</b>	<b>0.1</b>	<b>0.0</b>	<b>1.4</b>
<b>5.2.5 Strategic Initiatives</b>	<b>1.4</b>	<b>0.3</b>	<b>0.0</b>	<b>0.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.8</b>
<b>5.2.6 Enhancing ICANN Accountability - WS2</b>	<b>4.3</b>	<b>0.9</b>	<b>0.2</b>	<b>2.0</b>	<b>0.0</b>	<b>0.0</b>	<b>3.1</b>
<b>Total</b>	<b>18.6</b>	<b>\$3.8</b>	<b>\$1.2</b>	<b>\$3.8</b>	<b>\$0.1</b>	<b>\$0.0</b>	<b>\$8.9</b>



## 7.17 – 5.3 Empower Current and New Stakeholders to Fully Participate in ICANN Activities

In FY18, we will continue to build upon the previous years’ work that empowers current and new stakeholders to fully participate in and advance ICANN activities in the broader ecosystem. This work is achieved through specific and measurable development and public responsibility tools, programs, and collaborations along focus areas that strengthen the multistakeholder model.

1. Continue improvement of increased access, knowledge, and capability of target audiences and consolidation of regional strategies.

We will measure our success in achieving this goal by:

- ⦿ # of stakeholders participating in development and public responsibility programs, tools, and collaborations

### Portfolios

#### 5.3.1 – Supporting Public Interest Initiatives

Description: Public Responsibility activities to broaden and support the multistakeholder model through concrete tools and programs. Work includes initiatives related to strengthening diversity, supporting the public interest and human rights within ICANN’s remit.

#### 5.3.2 – Supporting Stakeholder Participation

Description: Public Responsibility activities to broaden and support the multistakeholder model through concrete tools and programs. Work includes the Fellowship Program, NextGen@ICANN, Newcomer Program, Community Onboarding and Remote Hubs.

#### 5.3.3 – Supporting Education

Description: Public Responsibility activities to broaden and support the multistakeholder model through concrete tools and programs. Work includes supporting and helping to facilitate the Online Learning Platform ICANN Learn, Leadership Program and ICANN History Project.

Portfolios	FTE	Pers	T&M	Prof Svcs	Admin	Capital	Total
<b>5.3.1 Supporting Public Interest Initiatives</b>	<b>2.2</b>	<b>0.3</b>	<b>0.0</b>	<b>0.5</b>	<b>0.1</b>	<b>0.0</b>	<b>0.8</b>
<b>5.3.2 Supporting Stakeholder Participation</b>	<b>4.0</b>	<b>0.4</b>	<b>0.0</b>	<b>0.3</b>	<b>0.1</b>	<b>0.0</b>	<b>0.8</b>
<b>5.3.3 Supporting Education</b>	<b>1.8</b>	<b>0.2</b>	<b>0.1</b>	<b>0.4</b>	<b>0.0</b>	<b>0.0</b>	<b>0.7</b>
<b>Total</b>	<b>8.0</b>	<b>\$0.9</b>	<b>\$0.1</b>	<b>\$1.1</b>	<b>\$0.2</b>	<b>\$0.0</b>	<b>\$2.3</b>

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# Appendix

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## A – FY18 Budget by Project

The FY18 Budget by Portfolio and Project document is linked from the page for this Public Comment proceeding. It can be navigated to by clicking on “Public Comment” in the navigation menu at the top of the front page on [icann.org](http://icann.org).

The document includes the detail of the costs by category as well as full-time equivalent number of allocated Organization to each project. The file is provided in both PDF and Excel formats.

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## B – Registrar Fees

The Registrar fees are to be approved by the Board before submission to voting by the Registrars.

Approximately 2,950 registrars are accredited by ICANN as of 1 June 2017. This relationship is governed by the Registrar Accreditation Agreement (RAA), of which the most recent version was approved in June 2013. The two versions of the agreement currently in use were approved in 2009 and 2013. The RAA is a five-year agreement that provides for the following types of fees:

- ⦿ Application fees
- ⦿ Annual accreditation fees
- ⦿ Variable accreditation fees
- ⦿ Per registrar variable fees
- ⦿ Transaction-based fees

In addition, since 2009, the budget has assumed an Add Grace Period (AGP) excess deletion fee to eliminate domain tasting. The amount for AGP deletion fees was assumed to be zero in past budgets and is also assumed to be zero for the FY18 budget.

Application fees are paid one time by prospective registrars at the time of application. For FY18, the application fees are estimated to be \$140,000 based on a volume of 40 applications and a per application fee of \$3,500 per application.

Annual accreditation fees are fees that all registrars are required to pay annually to maintain accreditation. The fee is \$4,000 per year. Registrars have the option of paying the annual \$4,000 accreditation fee in quarterly installments of \$1,000. For FY18, the annual accreditation fees are estimated at \$6.3 million, based on an average of 2,000 registrars renewing and being newly accredited.

Variable accreditation fees are determined based on the transaction type and volume of each registrar. There are two types of fees associated with the variable accreditation fees:

- ⦿ Per registrar variable fee
- ⦿ Transaction-based fee

Per registrar variable fees are based on a validated concept that ICANN often expends the same quantum of effort in providing services to a registrar regardless of size. However, provided that the registrar is considerably smaller in size and in activity, some registrars will continue to be eligible for “forgiveness” of two-thirds of the standard per-registrar variable fee. To be eligible for forgiveness, the registrar must have: (1) less than 350,000 gTLD names under its management; and (2) no more than 200 attempted adds per successful net add in any TLD. Forgiveness will be granted each quarter to all registrars that qualify.

The amount per registrar is calculated each quarter by dividing \$950,000 (one-fourth of \$3.8 million) equally among all registrars that have at least been accredited for one full quarter or have made at least one transaction, taking into consideration the forgiveness factor.

In addition, a discount of 10 percent is granted to all registrars operating under the 2009 and 2013 RAA.

Transaction based fees are assessed on each annual increment of an add, renew or a transfer transaction that has survived a related add or auto-renew grace period. This fee will be billed at \$0.18 per transaction for registrars operating under the 2009 or 2013 RAA (resulting from a \$0.20 base fee, discounted by 10 percent to \$0.18).

Add-grace period excess deletion fees are assessed on each domain name deleted, in excess of the threshold, during an add-grace period. The threshold is the larger of 50 or 10 percent of total adds, per month, per TLD. The rate per excess deletion is \$0.20.

Below is a summary of the estimated Registrar fees for FY18 by fee type.

In Millions, US dollars	FY 18 Best Estimate	FY17 Forecast	+Incr./ -Decr.	%	FY18 Estimates	
					High	Low
<b>Existing TLDs</b>						
Application Fees	0.2	3.0	(2.8)	-93%	0.2	0.2
Accreditation Fees	10.5	10.3	0.2	2%	10.5	10.5
Per-Registrar Variable Fees	3.4	3.4	-	0%	3.4	3.4
Transaction Fees	36.9	33.0	3.9	12%	38.7	36.7
<b>Total Registrar Revenue</b>	<b>\$51.0</b>	<b>\$49.7</b>	<b>\$1.4</b>	<b>3%</b>	<b>\$52.8</b>	<b>\$50.8</b>

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## C – ICANN Bylaws excerpts – Caretaker budget Annex E and F

### Annex E: Caretaker ICANN Budget Principles

#### 1. Principles

The caretaker ICANN budget (the "**Caretaker ICANN Budget**") is defined as an annual operating plan and budget that is established by the CFO in accordance with the following principles (the "**Caretaker ICANN Budget Principles**"):

- a. It is based on then-current ICANN operations;
- b. It allows ICANN to "take good care" and not expose itself to additional enterprise risk(s) as a result of the rejection of an ICANN Budget by the EC pursuant to the Bylaws;
- c. It allows ICANN to react to emergency situations in a fashion that preserves the continuation of its operations;
- d. It allows ICANN to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law);
- e. It enables ICANN to avoid waste of its resources during the rejection period (i.e., the period between when an ICANN Budget is rejected by the EC pursuant to the Bylaws and when an ICANN Budget becomes effective in accordance with the Bylaws) or immediately thereafter, by being able to continue activities during the rejection period that would otherwise need to be restarted at a materially incremental cost; and
- f. Notwithstanding any other principle listed above, it prevents ICANN from initiating activities that remains subject to community consideration (or for which that community consideration has not concluded) with respect to the applicable ICANN Budget, including without limitation, preventing implementation of any expenditure or undertaking any action that was the subject of the ICANN Budget that was rejected by the EC that triggered the need for the Caretaker ICANN Budget.

#### 2. Examples

Below is a non-exhaustive list of examples, to assist with the interpretation of the Caretaker ICANN Budget Principles, of what a Caretaker ICANN Budget would logically include:

- i. the functioning of the EC, the Decisional Participants, and any Supporting Organizations or Advisory Committees that are not Decisional Participants;

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- ii. the functioning of all redress mechanisms, including without limitation the office of the Ombudsman, the IRP, and mediation;
  - iii. employment of Organization (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors) across all locations, including all related compensation, benefits, social security, pension, and other employment costs;
  - iv. hiring Organization (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors) in the normal course of business;
  - v. necessary or time-sensitive travel costs for Organization (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors) or vendors as needed in the normal course of business;
  - vi. operating all existing ICANN offices, and continuing to assume obligations relative to rent, utilities, maintenance, and similar matters;
  - vii. contracting with vendors as needed in the normal course of business;
  - viii. conducting ICANN meetings and ICANN intercessional meetings previously contemplated; and
  - ix. participating in engagement activities in furtherance of the approved Strategic Plan.
- b. Below is a non-limitative list of examples, to assist with the interpretation of the Caretaker ICANN Budget Principles, of what a Caretaker ICANN Budget would logically exclude:
- i. hiring Organization (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors) or entering into new agreements in relation to activities that are the subject of the rejection of the ICANN Budget by the EC pursuant to the Bylaws, unless excluding these actions would violate any of the Caretaker ICANN Budget Principles;
  - ii. in the normal course of business, travel not deemed indispensable during the rejection period, unless the lack of travel would violate any of the Caretaker ICANN Budget Principles;

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- iii. entering into new agreements in relation to opening or operating new ICANN locations/offices, unless the lack of commitment would violate any of the Caretaker ICANN Budget Principles;
  - iv. entering into new agreements with governments (or their affiliates), unless the lack of commitment would violate any of the Caretaker ICANN Budget Principles; and
  - v. the proposed expenditure that was the basis for the rejection by the EC that triggered the need for the Caretaker ICANN Budget.

## Annex F: Caretaker IANA Budget Principles

### 1. Principles

The caretaker IANA Budget (the "**Caretaker IANA Budget**") is defined as an annual operating plan and budget that is established by the CFO in accordance with the following principles (the "**Caretaker IANA Budget Principles**"):

- a. It is based on then-current operations of the IANA functions;
- b. It allows ICANN, in its responsibility to fund the operations of the IANA functions, to "take good care" and not expose itself to additional enterprise risk(s) as a result of the rejection of an IANA Budget by the EC pursuant to the Bylaws;
- c. It allows ICANN, in its responsibility to fund the operations of the IANA functions, to react to emergency situations in a fashion that preserves the continuation of its operations;
- d. It allows ICANN, in its responsibility to fund the operations of the IANA functions, to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law);
- e. It allows ICANN, in its responsibility to fund the operations of the IANA functions, to avoid waste of its resources during the rejection period (i.e., the period between when an IANA Budget is rejected by the EC pursuant to the Bylaws and when an IANA Budget becomes effective in accordance with the Bylaws) or immediately thereafter, by being able to continue activities during the rejection period that would have otherwise need to be restarted at an incremental cost; and
- f. Notwithstanding any other principle listed above, it prevents ICANN, in its responsibility to fund the operations of the IANA functions, from initiating activities that remain subject to community consideration (or for which that community consultation has not concluded) with respect to the applicable IANA Budget, including without limitation, preventing implementation of any expenditure or undertaking any action that was the subject of the IANA Budget that was rejected by the EC that triggered the need for the Caretaker IANA Budget.

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## 2. Examples

a. Below is a non-exhaustive list of examples, to assist with the interpretation of the Caretaker IANA Budget Principles, of what a Caretaker IANA Budget would logically include:

- i. employment of Organization (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) across all locations, including all related compensation, benefits, social security, pension, and other employment costs;
- ii. hiring Organization (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) in the normal course of business;
- iii. necessary or time-sensitive travel costs for Organization (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) or vendors as needed in the normal course of business;
- iv. operating all existing offices used in the performance of the IANA functions, and continuing to assume obligations relative to rent, utilities, maintenance, and similar matters;
- v. contracting with vendors as needed in the normal course of business;
- vi. participating in meetings and conferences previously contemplated;
- vii. participating in engagement activities with ICANN's Customer Standing Committee or the customers of the IANA functions;
- viii. fulfilling obligations (including financial obligations under agreements and memoranda of understanding to which ICANN or its affiliates is a party that relate to the IANA functions; and
- ix. participating in engagement activities in furtherance of the approved Strategic Plan.

b. Below is a non-limitative list of examples, to assist with the interpretation of the Caretaker IANA Budget Principles, of what a Caretaker IANA Budget would logically exclude:



- 
- i. hiring Organization (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) or entering into new agreements in relation to activities that are the subject of the rejection of the IANA Budget by the EC pursuant to the Bylaws, unless excluding these actions would violate any of the Caretaker IANA Budget Principles;
  - ii. in the normal course of business, travel not deemed indispensable during the rejection period, unless the lack of travel would violate any of the Caretaker IANA Budget Principles;
  - iii. entering into new agreements in relation to opening or operating new locations/offices where the IANA functions shall be performed, unless the lack of commitment would violate any of the Caretaker IANA Budget Principles;
  - iv. entering into new agreements with governments (or their affiliates), unless the lack of commitment would violate any of the Caretaker IANA Budget Principles; and
  - v. the proposed expenditure that was the basis for the rejection by the EC that triggered the need for the Caretaker IANA Budget.



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## Staff Report of Public Comment Proceeding

### ICANN's Draft FY18 Operating Plan and Budget, and Five-Year Operating Plan Update

**Publication Date:** 2 June 2017

**Prepared By:** Becky Nash

Public Comment Proceeding	
Open Date:	8 March 2017
Close Date:	28 April 2017
Staff Report Due Date:	26 May 2017 (Original) 01 June 2017 (Extended)

Important Information Links
<a href="#">Announcement</a>
<a href="#">Public Comment Proceeding</a>
<a href="#">View Comments Submitted</a>

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#### Section I: General Overview and Next Steps

ICANN's strategic plan for Fiscal Years 2016-2020 was developed through a community-led process and adopted by ICANN's Board in October 2014. The strategic plan underpins ICANN's Five-Year Operating Plan, which was developed with community input and includes strategic goals with corresponding key performance indicators, dependencies, five-year phasing, and list of portfolios; and a five-year financial model. The initial FY16-20 Five-Year Operating Plan was adopted in April 2016. It is updated each year to reflect what has been achieved and to refine planning for future years. The Five-Year Operating Plan is accompanied by a Fiscal-Year Operating Plan & Budget for the coming fiscal year.

ICANN published the FY18 draft update to its Five-Year Operating Plan, along with the draft FY18 Operating Plan & Budget on 8 March 2017. The documents were supported by a budget breakdown by both project and portfolio. These documents were presented at the ICANN 58 meeting in Copenhagen at the start of a 52-day public comment period. Revised documents were published on 13 March 2017. A supporting document with details of the 15 projects with the largest budgets was also published on 27 March 2017.

During the public comment period, ICANN provided responses to clarifying questions from the community. The questions and responses were posted to the public comment forum 12 April 2017.

Comments were received from 15 community groups and two individuals. The comments were segmented by 15 themes and totaled 134 specific comments.

Following the public comment period, ICANN Organization held calls and engaged in direct email communication with the community to improve understanding of the comments. The communication involved both ICANN Organization and Board Members. Three public calls were held with groups and individuals. These calls and emails helped ICANN Organization develop better responses and identify changes to make to the draft plans.

The updated Five-Year Operating Plan and FY18 Operating Plan and Budget will be presented to the ICANN Board for adoption at a Board meeting in June 2017.

ICANN uses the comments and other feedback provided on the draft planning documents each year to identify areas of strength and areas where improvements are needed. The comments are used to identify

specific changes to the planning process the following year. This is a part of ICANN’s commitment to continuous improvement.

**Section II: Contributors**

*At the time this report was prepared, a total of seventeen (17) 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:**

<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>
GAC Underserved Regions Working Group	Pua Hunter	USR WG
Registries Stakeholder Group	Paul Diaz	RySG
Registries Stakeholder Group and Registrar Stakeholder Group	Paul Diaz	RySG- RrSG
Registrar Stakeholder Group	Tobias Sattler	RrSG
CCWG Accountability – WS2	Nathalie Vergnolle on behalf of Mathieu Weill, Thomas Rickert and Leon Sanchez	CCWG – WS2
Governmental Advisory Committee	Olof Nordling on behalf of Thomas Schneider	GAC
Country Code Names Supporting Organization – Strategic and Operational Planning Working Group	Giovanni Seppia	ccNSO SOP WG
Generic Names Supporting Organization - Council	Nathalie Peregrine on behalf of James Bladel	GNSO
Country Code Names Supporting Organization - Council	Katrina Sasaki	ccNSO
Business Constituency	Steve DelBianco	BC
Registries Stakeholder Group	Paul Diaz	RySG
Internet Service Providers and Connectivity Providers	Chantelle Doerksen on Behalf of ISPCP	ISPCP
Intellectual Property Constituency	Lori Schulman	IPC
RDS PDP Working Group	Chuck Gomes	RDS PDP WG
At Large Advisory Committee	Alan Greenberg	ALAC

**Individuals:**

<b>Name</b>	<b>Affiliation (if provided)</b>	<b>Initials</b>
Edward Morris	Personal Capacity	
Liu Yue	Personal Capacity	

**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).*

To gain a better understanding of the comments submitted, and to help community members reading this report, comments were segmented thematically rather than by group or individual. The comment themes are listed below in alphabetical order. The analysis section provides a high-level assessment of the observations, questions, and requests. Responses to individual comments are provided in the tables at the end of this report.

The specific comments and ICANN's responses will also be published as an Excel spreadsheet, to enable structured analysis by the community.

- Budget Development Process and Document Contents / Structure
- Community Outreach / Engagement / Programs
- Community Travel Support / Funding
- Contractual Compliance
- Empowered Community / Caretaker Budget
- Funding
- GDD Operations and gTLDs
- Headcount / Staffing
- IANA Stewardship and Accountability
- IT Projects
- KPI Definition and Structure
- Policy Development
- Reserve Fund
- Strategic / Operating Priorities
- Other / General

#### 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.*

##### **Budget Development Process and Document Contents/Structure**

A total of 13 comments were submitted on this topic by four groups and one individual. Several comments pertained to recommendations that would improve ease of readability and clarity for the community. Some changes will be made to the FY18 Operating Plan and Budget to address these comments.

##### **Community Outreach / Engagement / Programs**

There were 12 comments submitted on this topic. These comments varied in scope, some expressing a need for more outreach in specific areas or regions, and others indicating a need for more explanation of resources allocated to outreach.

##### **Community Travel Support / Funding**

Seven comments by six different groups were submitted with a general theme of funding for community travel.

### **Contractual Compliance**

One comment on contractual compliance was submitted by IPC. This comment will result in a change to the Top 15 Projects supporting document. This is further explained in the complete response below.

### **Empowered Community/Caretaker Budget**

There were four comments from two groups and one individual on the topic of Empowered Community and Caretaker Budget generally expressing a need for additional information on the approach to the Caretaker Budget.

### **Funding**

Eight comments were submitted by four groups on various aspects of the funding topic. These comments generally pertained to a need for more information about growth projections and addressing financial stability.

### **GDD Operations and gTLDs**

Seven comments were submitted and categorized under this theme. Some comments recommended market research in different regions, and others sought more explanation of GDD funding.

### **Headcount / Staffing**

A total of 13 comments were submitted by four groups and one individual that pertained to headcount and/or staffing. These comments were primarily indicating a need for further explanation and rationale for increases in headcount and personnel expenses.

### **IANA Stewardship and Accountability**

Three comments from two groups were submitted on this topic.

### **IT Projects**

Six comments were submitted by three groups on various components of IT Projects and related expenses.

### **KPI Definition and Structure**

Twenty-six comments were submitted on this topic. Twenty-five of these comments were submitted by ccNSO SOP and were primarily seeking more detail on KPI metrics and definitions for several organizational goals.

### **Policy Development**

Three comments were submitted by two groups and one individual expressing a greater need for resources dedicated to policy development.

#### **Reserve Fund**

Three comments were submitted expressing concern about the reserve fund and plans to replenish the reserves.

#### **Strategic / Operating Priorities**

Three comments were submitted indicating a need for more information on specific portfolios and organizational structure.

#### **Other / General**

There was a total of 25 comments that were categorized as 'other' or 'general'. Comments in this category pertained to contingency, financial management, ICANN Board, internal controls, Ombudsman and open data initiative. There were also general comments providing positive feedback on document structure and public comment process, explanations of the public comments submitted, and recommendations for structural or editorial improvements.

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## Budget Development Process and Document Contents/Structure

Ref #	Question / Comment	ICANN Response
10	While the draft Budget proposal is detailed, the BC will appreciate a one to two-page Executive Summary (ES) that gives a summary of the preceding year budget performance with respect to future projections. The ES will serve to provide high-level overview of the content of the proposal, which may be embellished with a few analytical graphs that reflect trends over a 3 to 5-year period.	<p>Thank you. We agree that an Executive Summary of the Operating Plan and Budget is useful and we are incorporating such a summary into the Operating Plan and Budget document.</p> <p><b>Description of change needed:</b></p> <p>An Executive Summary Document will be inserted into the OP&amp;B document and separately published</p>
21	6) 3.3 Table (page 16): On the term KMF; it would be better to specify the ISO reference.	<p>KMF stands for Key Management Facility. This does not refer to an ISO 3-letter country code.</p> <p><b>Description of change needed:</b></p> <p>The acronym KMF will be spelled out as Key Management Facility (KMF)</p>

Ref #	Question / Comment	ICANN Response
33	<p>The ICANN FY18 Operating Plan and Budget narrative flow still needs refining. While certain goals are well designed and defined, others seem to overlap. Many of them are also explained by using jargon and expressions that require any reader to spend considerable time finding the correct meaning before being able to provide any feedback. We understand that the ICANN Finance department is collecting information on the basis of financial data, and we have already had the opportunity to meet with the various department heads to have a better overview of the way these departments are structuring their activities. However, we reiterate the importance of having internal guidelines for collecting information that are consistent from both a content (qualitative and quantitative) and style perspective.</p>	<p>We agree that more work is needed in this area.</p> <p>We intend to present draft plans for FY19 that provide more narrative. The changes we intend to make include a distinction between the work associated with the Organization’s daily operations, and work focused on preparing to meet future challenges.</p> <p>Part of this will be delivered through changes to the structure of Operating Plan documents, to make them more accessible to the community. Another component will be achieved by implementing internal changes to the planning process.</p>
34	<p>Future Plans should be much more accessible to any first-time reader, especially in light of the ICANN Objectives to act as a steward for public interest, to further globalise its structure, and to strive for operational excellence. For instance, the Plan does not have any complete explanation of the various ‘indexes’ that are regularly mentioned within. The Plan should be the business card of such excellence.</p>	<p>We agree that the planning documents should be more accessible to any reader. Some of the complexity in the documents reflects the complexity in the ICANN Community, which is diverse.</p> <p>We are developing an approach that is intended to simplify the documents and present a narrative, without hiding the detail we have been providing in recent years.</p>
40	<p>As in past years’ comments, we would once again like to highlight the need to include timeframes for the various activities to be developed within the Plan, and not only on the online Dashboard.</p>	<p>We agree that this can be useful information to provide when the timeframe of the activity mentioned helps the understanding of such activity. There is also a risk to mislead readers when indicating timelines for activities that are not defined by timeframes, or for which the timeframes are subject to several external factors. The effect of such exercise would impair transparency rather than increase it. The indication of timelines should</p>

Ref #	Question / Comment	ICANN Response
		therefore be reserved to cases where it increases the understanding of the activity described.
84	<ul style="list-style-type: none"> <li>• The GNSO Council notes that many of our comments<sup>1</sup> filed in response to the Draft FY17 Operating Plan and Budget were not adopted in the Final budget, and that some of these concerns persist in the Draft FY18 budget. This raises broader questions about how ICANN reviews comments received and, if appropriate, responds to the commenter or amends the draft budget. Given the greater involvement of the Empowered Community in the review of FY18 and future budgets, we reiterate our call for greater transparency in the process of finalizing the draft budget. In particular, ICANN should consider publishing a detailed analysis of comments received, along with a rationale for those not incorporated in to the Final Budget.</li> </ul>	<p>Staff agrees that providing more information in the published documents might enhance transparency and accountability to the public interest as well as enable the community to perform its new responsibilities under the new Bylaws. Following the conclusion of the public comment period, ICANN held calls with the community to improve its understanding of the comments received. These calls helped ICANN develop better responses and identify changes to make to the draft plans. The Response to Public Comment report provides a detailed analysis of comments received, along with a rationale for those not incorporated in to the Final Budget. ICANN uses the comments and other feedback provided on its draft planning documents each year to identify areas of strength and areas that could be enhanced. These are used to identify specific changes to the next year’s planning process.</p> <p>In the past 3 years, ICANN has organized the public comment responses by associated a response with every comment submitted. While the responses all attempt to address the comments, the responses may do so by providing additional information as requested, or providing indications of future plans that address the comments received, or providing the rationale as to why a recommended action is not taken.</p>

Ref #	Question / Comment	ICANN Response
85	<ul style="list-style-type: none"> <li>In regards to the chart displayed on page 10 of the draft FY18 budget showing expenses of FY17 Forecast and FY18 Draft Budget by Function, it might be helpful to also provide a second chart that summarizes the current fiscal year forecast and following fiscal year draft budget at the Goal level (on a page 11) and if possible by the Portfolio further down in the draft budget where the portfolios are detailed by Goal.</li> </ul>	<p>We understand that it may be helpful to have the FY17 Forecast and FY18 Draft Budget at the Goal level and by Portfolio. We publish the FY18 Draft Budget by Project, Goal level and Portfolio. Staff will consider incorporating this change in future Operating Plan and Budget documents.</p>
91	<p>1. With the new community powers comes responsibility, yet it is difficult to meet that responsibility when working sessions on the budget conflict with mandatory sessions of governing components of the Empowered Community. During the past two ICANN meetings, working sessions sponsored by Finance on the budget have been scheduled at the same time as working sessions or formal meetings of the GNSO Council. This needs to change.</p> <p>I recognize the difficulty with scheduling at ICANN meetings. This aforementioned problem should not be insurmountable. One simple rule: budget related sessions should not be scheduled in opposition to meetings of the governing bodies of any component of the Empowered Community. Period. With the power to reject the budget comes the responsibility of contributing to and participating in all phases of the budget making process. That can't be done when budget working sessions are scheduled opposite mandatory working sessions of the governing organs of the Empowered Community. We can, need and I trust will to do better in the future.</p>	<p>Thank you for your comment. Staff recognizes the difficulty with scheduling budget sessions at ICANN meetings and we will try to avoid conflicts in scheduling noted. Staff will evaluate the process for the FY19 Operating Plan and Budget meetings</p>

Ref #	Question / Comment	ICANN Response
92	<p>2. I would like to commend the Finance team on the dramatically increased amount of information it now provides the community. I find the budget fascinating and greatly appreciate the level of granularity provided. It alone justifies the amount of time and money I spent earning my M.B.A. Well, almost. :)</p> <p>Many community members, sadly, don't have a graduate degree in business or finance. Might I suggest, with some trepidation, that we organize a session at the autumn meeting, conducted by Finance alone or in conjunction with the community, focused on how to read the budget. Budget 101, if you will. As part of the session it might be valuable to ask the community members present what information not currently provided by Finance they would find valuable to have included in future budget and operating plan templates. This session, unlike those provided regularly by Finance, would focus on budget presentation rather than on budget planning or content. Simply put, a community with the power to reject the budget needs the tools to understand the budget holistically. Too many community members don't have that ability right now, don't understand or are unable to parse through the great amount of information Finance makes available to us. We need to give them the tools they need.</p>	<p>Staff agrees that the recommendation to organize sessions conducted by Finance and/or in conjunction with the community, on how to read the budget at ICANN would be valuable to ICANN and the community. This would enhance engagement and transparency. Staff will consider incorporating this change in the FY19 Operating Plan and Budget process.</p>

Ref #	Question / Comment	ICANN Response
93	<p>3. On a related point, one piece of information that is not readily available in a straightforward manner, and should be, is an approximation of the levels of financial support provided directly to the various units at ICANN and to the individual Supporting Organizations and Advisory Groups. We need to have this information included in the FY19 budget proposal and beyond.</p> <p>Stepping away from the nomenclature associated with the multi-stakeholder model, what Finance is providing the community in its budget proposals is no more than internal financial management plans. That’s good because it allows us a bit of freedom in how the budget proposals are constructed.</p> <p>I appreciate the choices Finance has made in how they report proposed budgets. Portfolios are interesting reporting vehicles because they similarly are quite informative and completely lack needed detail. They tell us generally where the money is being spent but lacks the specific detail as to exactly who is spending it and where. When ICANN had more of a traditional governance structure that perhaps was all that was needed. With the Empowered Community we need more. The following is recommended:</p> <p>a. In each year’s budget and operating plan a staff line flow chart should be included, along with titles and text indicating areas of financial responsibility;</p> <p>b. There should be budget lines for every operating unit in ICANN, aligning with the aforementioned flow chart As a</p>	<p>The Organization will evaluate the feasibility of expanding the use of providing an approximation of the levels of financial support provided directly to the various units at ICANN and to the individual Supporting Organizations and Advisory Groups, in the ICANN FY19 budget development process. This will be considered without compromising the ability to produce useful information and engage adequately with the community. The Organization will also evaluate the impact on resource requirements associated with this increased analysis.</p>

Ref #	Question / Comment	ICANN Response
	<p>member of a constituent part of the Empowered Community I need to know the yearly budgetary responsibility that can be attributed to departments headed by certain senior managers; for example, how much budgetary authority can be attributed to Legal or GDD – current reporting hints at various levels of authority (for example, the Executive Group chart on page 10 of the FY 18 proposal regarding headcount) but it is not specific enough, particularly with regards dollar amounts);</p> <p>c. Separate lines attributing expenditures made by ICANN for or on behalf of each Supporting Organization and Advisory Committee should be included in the FY19 report and beyond. It is important for the community to understand the amount of money being spent by ICANN on the GNSO, ALAC, CCNSO, GAC, SSSAC, RSSAC and the ASO.</p> <p>I understand that it may be difficult to attribute specific expenditures to each SO/AC. In fact, I've already been told this by some members of the Finance Department. Let's not kid ourselves, though: businesses routinely have to separate overhead and other forms of general expenditure, attribute them to specific divisions and use these figures for internal financial planning. We need to do the same.</p> <p>All of this is about accountability. The Empowered Community has many powers, including that of spilling the Board or individual Board members. Implicit in these powers is the ability to persuade the Board to dismiss ICANN's CEO, CFO or any member of senior staff; the Board itself being at risk of dismissal if poor performance by staff is seen to be</p>	

Ref #	Question / Comment	ICANN Response
	<p>tolerated by the Board. The community needs precise budgetary numbers attributable to operating units or senior managers to truly evaluate their performance and hence the performance of the CEO and of the Board themselves.</p> <p>In a similar vein, accurate reporting of SO/AC financial support and expenditure is essential for the community to “police” itself. In the absence of hard data, stories and rumors abound about extravagances and improper expenditures by various SOs and ACs. This does not contribute to healthy intra-community interaction. Accurate data for expenditures attributed, if possible down to the Support Group and Constituency level in the GNSO, for example, would be a great assist in helping us to establish a baseline understanding of community costs and better enable us in the community to accurately assess the potential for better fiscal self-discipline by various components of the community.</p>	
94	4. To help non finance experts to access the reports provided by Finance, a glossary defining various technical terms should be produced at the end of the document.	Staff agrees that various technical terms should be defined when used in the document. All the terms used in the Operating Plan and Budget have been defined. Staff will evaluate the process for providing a glossary defining various technical terms should be produced at the end of the document and will determine if this can be incorporated in the FY19 Operating Plan and Budget process.



Ref #	Question / Comment	ICANN Response
95	5. Finance should make a detailed analysis of all comments received during the public comment process along with notes explaining the disposition of the concerns raised. This has been requested in the past but is needed now more than ever given that an objection in a public comment to the preliminary budget proposal, one that is not rectified in the final approved budget, is a prerequisite for an SO/AC to have the right to reject the budget in whole.	Following the conclusion of the public comment period, ICANN held calls with the community to improve its understanding of the comments received and to improve the quality of the response prepared. See also response to the comment #84.
115	General: Whilst the transparency and comparability between FY forecasts for the current and following year is now becoming an accepted approach, there is still further work to be done to facilitate that level of comparison at the portfolio level.	The Organization will evaluate the feasibility of preparing a comparison of the FY17 Forecast vs. the FY18 Budget at the portfolio level in the ICANN FY19 budget development process, without compromising the ability to produce useful information and engage adequately with the community. The Organization will also evaluate the impact on resource requirements associated with this increased analysis.

**Community Outreach / Engagement / Programs**

Ref #	Question / Comment	ICANN Response
2	<p>The ALAC are satisfied with the inclusion of the ALAC and Regional At-Large Organization (RALO) Development Sessions and the Cross Regional Outreach Pilot Program (CROPP) in the ICANN core budget. We are also satisfied with the inclusion of the Captioning Pilot Project in the ICANN core budget. The use of captioning needs to be expanded due to the increasing ICANN activities that have the participation of people from diverse linguistic backgrounds and accessibility levels.</p>	<p>ICANN staff and community members are pleased with the results of initial piloting of the live captioning capability in FY16 and FY17. Additional resources core policy budget resources have been identified for FY18 to determine if the capability can be effectively coordinated with the overall scribing and interpretation capabilities of ICANN Organization. Results of those further tests in FY18 will inform the resources that may be able to be made available in FY19.</p>
4	<p>We are disappointed that the Document Development Pilot Project (DDPP) is not included in the FY18 budget. The DDPP was a clear success for a large part of the ICANN community and deserves further funding in FY18. We also believe that it should be expanded to help train community members in the development of policy advice statements.</p>	<p>The DDPP pilot in FY17 was made up of two areas of experimentation. The first - direct community facilitation, research and drafting support, was of limited duration and experience during that period. A few communities experienced initially positive results from that part of the pilot program and, thus, the Board has authorized specific resources from the Additional Budget Request program to provide another several months of pilot testing in FY18 to assess the potential long-term viability of that capability. It must be emphasized and understood that a permanent long-term program of this type of community support has the potential to include more than 10 community groups and, as such, presents resource, managerial and operational challenges because it would effectively mean adding the capability of ICANN staff support to the Stakeholder, Constituency and RALO levels of the ICANN Organization. That potential expansion of support is not insubstantial and must be thoroughly considered and vetted before a lasting Organizational commitment can be made in this area. Implementation of this type of activity into the core ICANN Policy Development Support budget cannot be assumed or expected in future years.</p>

Ref #	Question / Comment	ICANN Response
		<p>The results of the document primer program - the second area of experimentation in FY17 - have been less encouraging and that part of the program will not be continued in FY18. Instead, Additional Budget Request Resources are being targeted in FY18 to focus on a variety of community training and education pilot activities requested by various community groups. Depending on the success of those efforts, resources may be able to be considered for further "primer" pilot efforts in FY19.</p>

Ref #	Question / Comment	ICANN Response
43	<p>In general, the support for underserved regions and developing countries has improved. The following two initiatives in particular ought to be highlighted: the transfer of the Community Travel Support from a pilot special request category to a 'core' position within the ICANN budget, and the increased (governmental) engagement with regards additional trainers/workshops in underserved regions and developing economies, to improve law enforcement capacity building.</p> <p>The Plan represents further progress in the conceptualisation and refinement of major objectives and portfolios. Particularly laudable is the effort to develop objective-specific data series, collect and attempt to assess them, and then use customer satisfaction surveys in the name of further enhancement of the quality of services to the community. However, the Plan's narrative flow seems to go lost between objectives and respective portfolios.</p> <p>For instance, 'Strategic Goal 1.1 Further Globalize and Regionalize ICANN Functions' implies, as a prime portfolio, 'Raising Stakeholder Awareness of ICANN Worldwide', which should clearly fall under 'Strategic Goal 1.2 Bring ICANN to the world by creating a balanced and proactive approach to regional engagement with stakeholders', as well as,</p> <p>in part, 'Strategic Goal 4.1 Encourage Engagement with the Existing Internet Governance Ecosystem at National, Regional and Global Levels'.</p> <p>Such a misconception or confusion among the goals means KPIs that can hardly be used to gauge any progress. '# of remote participation session hours and number of remote participants at ICANN meetings' and '% of Sessions with live interpretation at ICANN meetings' are unlikely to qualify as credible KPIs, as they do not appear illustrative of</p>	<p>Strategic goals 1.1 and 1.2 cover different aspects of engagement. This divergence is illustrated by the correlating department goals for each strategic goal.</p> <p>The department goals for GSE currently supporting strategic goal 1.1 are: 1. Actively solicit input into ICANN's processes and 2. Foster stakeholder confidence in ICANN's mission. Critical success factors for these goals include areas around ensuring and enabling engagement both to and from Stakeholders via content delivery, language services, and enhanced targeted outreach mechanisms; as well as enhancing current and potential stakeholder knowledge and confidence with regard to ICANN's mission through ongoing collaboration, engagement, and trainings.</p> <p>The department goals for GSE currently supporting strategic goal 1.2 are: 1. Understand and plan for stakeholder needs, 2. Enhance capacity development efforts with stakeholders through engagement with new and existing stakeholders, and 3. Ensure diversity in engagement with stakeholders. These goals include critical success factors that revolve around enhancing capacity building services, service delivery via new and robust engagement models to ensure that Stakeholders are receiving the right services at the right time, in the right places for their specific needs.</p> <p>The review of the delivery of services for the community from ICANN offices was a mapping exercise geared toward a better understanding of which services were delivered from which offices to which stakeholders. The review of GSE activities against the re-stated ICANN mission was a separate effort, to look back at GSE activities</p>

Ref #	Question / Comment	ICANN Response
	<p>ICANN's exercise of its functions. Perhaps, broken down by categories of stakeholders, the number of queries/requests to ICANN and its regional hubs, and the number of responses/actions taken in response thereto might be a better KPI in that regard.</p> <p>This, in part, is accurately captured in the expected outcome for FY 2017, outlined in '1.Completed review of ICANN regional offices and delivery of services to the community', but seems to be compromised (or narrowed) by the overall emphasis on communication and engagement strategies, which suggests that is their top, if not sole, priority.</p> <p>Furthermore, a similar confusion arises when examining the role of regional offices and engagement hubs in supporting ICANN globalisation, while ex officio they should rather be focusing on regionalisation efforts. In addition, it is unclear what the difference is between the intent to complete a review of ICANN regional offices and delivery of services to the community in 2017 and to complete an organisation-wide review of engagement activities against the ICANN mission.</p> <p>For most of the metrics, neither EoY 2017 projected values, nor EoY 2018 target values are stated. Without them, it is impossible to either assess the 2018 ambitions (versus costs), or to evaluate results compared to activities/expenses at the end of FY18.</p>	<p>under the text of the ICANN mission as of 1 October 2016 to best prepare and categorize the scope of activities within the parameters of the ICANN Mission.</p>

Ref #	Question / Comment	ICANN Response
86	<ul style="list-style-type: none"> <li>Projected growth in resources allocated for global engagement, ranked third largest by function, continues to raise questions about the value proposition of these expenditures. If ICANN measures the success of this initiative in terms of "...show(ing) a balanced and regional approach to global engagement" and "stakeholder participation<sup>2</sup> in ICANN by region," then we request that Staff provide details demonstrating that progress towards these goals is justified by the continued spend (funding and FTE headcount). For example, are the large quantity of regional stakeholder engagement events and sponsorships at internet related functions still required? And if so, what tangible and meaningful outcomes are derived other than just measuring the quantity of those events as it pertains to ICANN's mission such as policy development around the generic names space?</li> </ul>	<p>Funding for Global Stakeholder Engagement did not increase in FY18 but was reduced. Headcount within GSE was reduced due to transfer of positions to other ICANN functions. Following the review of our service delivery metrics from our mapping exercises in FY17, and gauging needs from ICANN's regions, GSE had requested additional positions for FY18 to support technical engagement in EMEA, a position in Istanbul to support local stakeholder engagement, and administrative support in the Nairobi and Montevideo offices.</p> <p>GSE has analyzed the delivery of services from ICANN offices and regions to the community, and conducted a mapping exercise to identify gaps in participation from stakeholder groups in ICANN policy work. The GSE regional team is focused on publishing the tangible and meaningful outcomes of its work. A key aspect of engagement at ICANN is that GSE's work is largely demand-driven by requests from stakeholder groups in the regions. Regional Organizations request ICANN to participate in engagement events, such as regional and national Internet Governance Forum events, cross-sector initiatives such as Smart Africa and others. The current goal around measurement in FY18 is to measure this demand, the impacts of our efforts, and continuing to measure the Stakeholder Journey both as it exists today, and how it may exist in the future.</p>

Ref #	Question / Comment	ICANN Response
103	<p>1. To achieve the first Strategic Objectives initialed in section 7 of the Proposal, there is an increase in the FTEs in the plan. But we found that there was a decrease on the numbers in the Sigapore Office in the executive-team-reports-march-2017-public.pdf, campared with a continuous increase in NA area. So, what would ICANN do to improve the current situation? Chinese community and other commnities in AP rigion need more people and pore oppertunities on the local engagement support from ICANN. And we also need your clearer purpose and more acts.</p>	<p>This comment is noted. ICANN continues to evaluate the staffing needs in its regional offices.</p>
105	<p>3. Please increase budget on the capacity building, Universal Acceptance outreach, Technical egagement in the AP rigion especially in China, since there are huge users and high finance contribution to ICANN.</p>	<p>The suggestion to increase funds for capacity building, Universal Acceptance outreach and technical engagement is noted. These areas should be considered separately. Universal Acceptance is covered within the Global Domains Division, but outreach and engagement with the community is supported by ICANN's community-facing teams, such as Global Stakeholder Engagement, Government Engagement and other ICANN functions. ICANN's capacity development functions are being examined to understand ways to improve delivery to stakeholders in their regions. The Global Stakeholder Engagement team had several programs related to technical engagement listed in opportunities for FY18. The team wants to provide more support for capacity development and technical engagement in the future.</p>
117	<p>Regional Outreach program The ISPCP considers that the Regional Outreach Program remains a vital initiative that can greatly assist in growing the ICANN community and offers full support for budget allocation to support that cause.</p>	<p>The comment is welcomed and regional outreach is a priority for ICANN. The emphasis of regional outreach is to identify and encourage more stakeholders to contribute to ICANN's policy work.</p>

Ref #	Question / Comment	ICANN Response
118	<p>Document Support Program</p> <p>The Pilot Program introduced in last quarter of FY16 and subject to an ongoing trial during 2017 proved to be an valuable asset, not only for the ISPCP, but also for other ICANN groups. We note that this is not included in the budget as as ongoing program for 2018 despite the success achieved and question why that is, particularly given the current level of activity and the resource required within the community to keep pace. We beleive there is the potential for an extended trial to take place during FY18 and offer full support for budget to be allocated to that program, with a view to securing permanenet support within the next fiscal year.</p>	<p>The DDPP pilot in FY17 was made up of two areas of experimentation. The first - direct community facilitation, research and drafting support, was of limited duration and experience during that period. A few communities experienced initially positive results from that part of the pilot program and, thus, the Board has authorized specific resources from the Additional Budget Request program to provide another several months of pilot testing in FY18 to assess the potential long-term viability of that capability. It must be emphasized and understood that a permanent long-term program of this type of community support has the potential to include more than 10 community groups and, as such, presents resource, managerial and operational challenges because it would effectively mean adding the capability of a ICANN staff support to the Stakeholder, Constituency and RALO levels of the ICANN Organization. That potential expansion of support is not insubstantial and must be thoroughly considered and vetted before a lasting Organizational commitment can be made in this area. Implementation of this type of activity into the core ICANN Policy Development Support budget cannot be assumed or expected in future years.</p> <p>The results of the document primer program - the second area of experimentation in FY17 - have been less encouraging and that part of the program will not be continued in FY18. Instead, Additional Budget Request Resources are being targeted in FY18 to focus on a variety of community training and education pilot activities requested by various community groups. Depending on the success of those efforts, resources may be able to be considered for further "primer" pilot efforts in FY19.</p>



Ref #	Question / Comment	ICANN Response
120	<p>The Registrar Stakeholder Group (RrSG) submits this public comment to request that ICANN staff reconsider its position not to fund the Document Development and Drafting Pilot Program (the Program) in FY18.</p> <p>The RrSG supports the statements made by the RySG in its public comment, specifically that “the community benefited from the Program since it achieved its goals of evolving and further globalizing ICANN (by improving policy development and governance processes, structures and meetings to be more accountable, inclusive, efficient, effective and responsive); advanced organizational, technological and operational excellence (by helping develop a globally diverse culture of knowledge and expertise available to ICANN’s Board, staff and stakeholders); promoted ICANN’s role and multi-stakeholder approach (by empowering current and new stakeholders to fully participate in ICANN activities.); and developing and implementing a global public interest framework bounded by ICANN’s mission.”</p> <p>As an ICANN community member, the RrSG would benefit greatly from the Program for the same reasons as the RySG. In addition, the RrSG is working hard to improve the diversity of its membership, provide better engagement opportunities for its members, and to more fully participate in the bottom-up, multi-stakeholder model that is ICANN. The Program will enable the RrSG to facilitate greater engagement by its members, allowing members who may be less familiar with the totality of ICANN policy work to substantively engage in policy development.</p> <p>The RrSG appreciates the opportunity to comment on this issue. It</p>	<p>The DDPP pilot in FY17 was made up of two areas of experimentation. The first - direct community facilitation, research and drafting support, was of limited duration and experience during that period. A few communities experienced initially positive results from that part of the pilot program and, thus, the Board has authorized specific resources from the Additional Budget Request program to provide another several months of pilot testing in FY18 to assess the potential long-term viability of that capability. It must be emphasized and understood that a permanent long-term program of this type of community support has the potential to include more than 10 community groups and, as such, presents resource, managerial and operational challenges because it would effectively mean adding the capability of a ICANN staff support to the Stakeholder, Constituency and RALO levels of the ICANN Organization. That potential expansion of support is not insubstantial and must be thoroughly considered and vetted before a lasting Organizational commitment can be made in this area. Implementation of this type of activity into the core ICANN Policy Development Support budget cannot be assumed or expected in future years.</p> <p>The results of the document primer program - the second area of experimentation in FY17 - have been less encouraging and that part of the program will not be continued in FY18. Instead, Additional Budget Request Resources are being targeted in FY18 to focus on a variety of community training and education pilot activities requested by various community groups. Depending on the success of those efforts, resources may be able to be considered for further "primer" pilot efforts in FY19.</p>

Ref #	Question / Comment	ICANN Response
	<p>recognizes there are many competing demands for ICANN's limited resources. But programs like this one support the bottom-up, multi-stakeholder model and ICANN's efforts to increase the diversity of participation in the community. The entire community would benefit from this funding.</p>	

Ref #	Question / Comment	ICANN Response
121	<p>On behalf of the gTLD Registries Stakeholder Group (RySG), I am writing to ask ICANN staff to reconsider its current position on the Document Development and Drafting Pilot Program (the Program). It is our understanding that the Program will not be renewed in the FY18 Budget. As we articulated in our FY18 Community Request application (attached), the RySG believes that the pilot Program was a clear success and deserves further funding in FY18.</p> <p>It's regrettable that few ICANN constituent groups availed themselves of the pilot Program. The RySG's experience was superb, and should serve as a "proof of concept" that justifies continuing the Program in FY18. Our Document Development and Drafting Research Assistant, Wim Degezelle, made a significant contribution in his role of drafting comments to complex public comments. His ability to research a topic, communicate with those in the RySG who may have some more in-depth knowledge of the issues/topics at hand, and then prepare and present salient observations and suggested comments has been of incredible benefit to the RySG. Wim's role facilitated participation by RySG members who don't use English as their first language, and better enabled engagement by smaller (or new) registry operators who have limited bandwidth, resources and/or knowledge that restrict their participation in issues that may have a direct impact on their operations. In fact, we saw a notable increase in participation by volunteers to partner (or even take a lead role) in developing and/or contributing to critical issues requiring formal comments by the RySG.</p> <p>We would argue that the ICANN community also benefitted from the pilot Program since the RySG's public comments were made available to anyone who may be impacted by a particular issue, thus</p>	<p>The DDPP pilot in FY17 was made up of two areas of experimentation. The first - direct community facilitation, research and drafting support, was of limited duration and experience during that period. A few communities experienced initially positive results from that part of the pilot program and, thus, the Board has authorized specific resources from the Additional Budget Request program to provide another several months of pilot testing in FY18 to assess the potential long-term viability of that capability. It must be emphasized and understood that a permanent long-term program of this type of community support has the potential to include more than 10 community groups and, as such, presents resource, managerial and operational challenges because it would effectively mean adding the capability of a ICANN staff support to the Stakeholder, Constituency and RALO levels of the ICANN Organization. That potential expansion of support is not insubstantial and must be thoroughly considered and vetted before a lasting Organizational commitment can be made in this area. Implementation of this type of activity into the core ICANN Policy Development Support budget cannot be assumed or expected in future years.</p> <p>The results of the document primer program - the second area of experimentation in FY17 - have been less encouraging and that part of the program will not be continued in FY18. Instead, Additional Budget Request Resources are being targeted in FY18 to focus on a variety of community training and education pilot activities requested by various community groups. Depending on the success of those efforts, resources may be able to be considered for further "primer" pilot efforts in FY19.</p>

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	<p>contributing to the multi-stakeholder model. As such, the community benefited from the Program since it achieved its goals of evolving and further globalizing ICANN (by improving policy development and governance processes, structures and meetings to be more accountable, inclusive, efficient, effective and responsive); advanced organizational, technological and operational excellence (by helping develop a globally diverse culture of knowledge and expertise available to ICANN’s Board, staff and stakeholders); promoted ICANN’s role and multi-stakeholder approach (by empowering current and new stakeholders to fully participate in ICANN activities.); and developing and implementing a global public interest framework bounded by ICANN’s mission.</p> <p>The RySG appreciates that there are many competing demands for ICANN’s relatively limited resources. We strongly believe, however, that the Program deserves funding in FY18. It has delivered results by providing demonstrable outputs of benefit to the RySG and the rest of the community. In fact, other constituent groups are aware of the RySG’s excellent experience with the Program and planned to seek their own Assistant in FY18. Not including the Program in FY18 risks undermining ICANN’s own goals which mirror the Program’s. That clearly is not in anyone’s interests.</p>	

Ref #	Question / Comment	ICANN Response
125	<p>Document Development: We refer you to our previous comment (<a href="http://mm.icann.org/pipermail/comments-fy18-budget-08mar17/attachments/20170330/8e8238e7/RySGcommentonDocumentDevelopmentandDraftingProgram-0001.pdf">http://mm.icann.org/pipermail/comments-fy18-budget-08mar17/attachments/20170330/8e8238e7/RySGcommentonDocumentDevelopmentandDraftingProgram-0001.pdf</a>) and request relating to the Registry Stakeholder Group Document Development and Drafting Pilot Program.</p>	<p>The DDPP pilot in FY17 was made up of two areas of experimentation. The first - direct community facilitation, research and drafting support, was of limited duration and experience during that period. A few communities experienced initially positive results from that part of the pilot program and, thus, the Board has authorized specific resources from the Additional Budget Request program to provide another several months of pilot testing in FY18 to assess the potential long-term viability of that capability. It must be emphasized and understood that a permanent long-term program of this type of community support has the potential to include more than 10 community groups and, as such, presents resource, managerial and operational challenges because it would effectively mean adding the capability of a ICANN staff support to the Stakeholder, Constituency and RALO levels of the ICANN Organization. That potential expansion of support is not insubstantial and must be thoroughly considered and vetted before a lasting Organizational commitment can be made in this area. Implementation of this type of activity into the core ICANN Policy Development Support budget cannot be assumed or expected in future years.</p> <p>The results of the document primer program - the second area of experimentation in FY17 - have been less encouraging and that part of the program will not be continued in FY18. Instead, Additional Budget Request Resources are being targeted in FY18 to focus on a variety of community training and education pilot activities requested by various community groups. Depending on the success of those efforts, resources may be able to be considered for further "primer" pilot efforts in FY19.</p>

Ref #	Question / Comment	ICANN Response
133	<p>On behalf of the gTLD Registries Stakeholder Group (RySG), I am writing to ask ICANN staff to reconsider its current position on the Document Development and Drafting Pilot Program (the Program). It is our understanding that the Program will not be renewed in the FY18 Budget. As we articulated in our FY18 Community Request application (attached), the RySG believes that the pilot Program was a clear success and deserves further funding in FY18.</p> <p>It's regrettable that few ICANN constituent groups availed themselves of the pilot Program. The RySG's experience was superb, and should serve as a "proof of concept" that justifies continuing the Program in FY18. Our Document Development and Drafting Research Assistant, Wim Degezelle, made a significant contribution in his role of drafting comments to complex public comments. His ability to research a topic, communicate with those in the RySG who may have some more in-depth knowledge of the issues/topics at hand, and then prepare and present salient observations and suggested comments has been of incredible benefit to the RySG. Wim's role facilitated participation by RySG members who don't use English as their first language, and better enabled engagement by smaller (or new) registry operators who have limited bandwidth, resources and/or knowledge that restrict their participation in issues that may have a direct impact on their operations. In fact, we saw a notable increase in participation by volunteers to partner (or even take a lead role) in developing and/or contributing to critical issues requiring formal comments by the RySG. We would argue that the ICANN community also benefitted from the pilot Program since the RySG's public comments were made available to anyone who may be impacted by a particular issue, thus contributing to the multi-stakeholder model. As such, the community benefited from the Program since it achieved its goals of evolving and</p>	<p>The DDPP pilot in FY17 was made up of two areas of experimentation. The first - direct community facilitation, research and drafting support, was of limited duration and experience during that period. A few communities experienced initially positive results from that part of the pilot program and, thus, the Board has authorized specific resources from the Additional Budget Request program to provide another several months of pilot testing in FY18 to assess the potential long-term viability of that capability. It must be emphasized and understood that a permanent long-term program of this type of community support has the potential to include more than 10 community groups and, as such, presents resource, managerial and operational challenges because it would effectively mean adding the capability of a ICANN staff support to the Stakeholder, Constituency and RALO levels of the ICANN Organization. That potential expansion of support is not insubstantial and must be thoroughly considered and vetted before a lasting Organizational commitment can be made in this area. Implementation of this type of activity into the core ICANN Policy Development Support budget cannot be assumed or expected in future years.</p> <p>The results of the document primer program - the second area of experimentation in FY17 - have been less encouraging and that part of the program will not be continued in FY18. Instead, Additional Budget Request Resources are being targeted in FY18 to focus on a variety of community training and education pilot activities requested by various community groups. Depending on the success of those efforts, resources may be able to be considered for further "primer" pilot efforts in FY19.</p>

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	<p>further globalizing ICANN (by improving policy development and governance processes, structures and meetings to be more accountable, inclusive, efficient, effective and responsive); advanced organizational, technological and operational excellence (by helping develop a globally diverse culture of knowledge and expertise available to ICANN’s Board, staff and stakeholders); promoted ICANN’s role and multi-stakeholder approach (by empowering current and new stakeholders to fully participate in ICANN activities.); and developing and implementing a global public interest framework bounded by ICANN’s mission.</p> <p>The RySG appreciates that there are many competing demands for ICANN’s relatively limited resources. We strongly believe, however, that the Program deserves funding in FY18. It has delivered results by providing demonstrable outputs of benefit to the RySG and the rest of the community. In fact, other constituent groups are aware of the RySG’s excellent experience with the Program and planned to seek their own Assistant in FY18. Not including the Program in FY18 risks undermining ICANN’s own goals which mirror the Program’s. That clearly is not in anyone’s interests.</p>	

Community Travel Support / Funding

Ref #	Question / Comment	ICANN Response
7	<p>The ALAC has met with the GAC for many years, and have always talked about more substantive collaboration and the possibility of exchanging Liaisons. However until recently, such collaboration has not actually occurred. The ALAC and GAC are now more effective in addressing issues of joint concern (such as potential harms from specific sensitive gTLDs). Current GAC leadership was very supportive of establishing an ALAC Liaison to the GAC, ensuring a regular bi-directional flow of information and ensuring that both groups are aware of each other's hot issues. As of June 2016, this liaison has now been put in place (roughly equivalent to a similar GNSO Liaison to the GAC). To ensure that the Liaison can fulfill his/her mandate, it is essential that the Liaison can attend all ICANN meetings and participate in GAC activities.</p> <p>Currently the ALAC has travel support for its Liaisons to the GNSO and ccNSO. Fortunately at the moment, the Liaison to the ccNSO also has travel funding as an ALAC member, so we have been able to reallocate the ccNSO Liaison travel slot to the GAC Liaison. However such a fortuitous spare travel slot cannot be guaranteed and is not expected to be available for much longer. The ALAC requests one additional ICANN meeting travel slot (airfare, hotel and per diem) to for its Liaison to the GAC.</p>	<p>The ICANN Organization response to Ref # 8 below, should also be consulted by readers as an introduction to this text response.</p> <p>** Pending a broader community consultation anticipated on this matter in FY18, it would seem appropriate to provide the ALAC with the opportunity to support the travel of its GAC liaison to the three ICANN public meetings in FY18. The current travel guidelines did not contemplate community travel support for all liaisons between and among all the different ICANN SOs and ACs and expansion of these slots in recent years has been subject to pilot efforts to demonstrate that the relationship has value and can be productively managed. The ALAC should consider these factors in evaluating whether this pilot effort has longer term value for the community. This pilot allocation is for FY18 only and further allocations will be dependent on future strategic examination of Community Travel support by the community and ICANN Organization. If the slot is not needed during any particular public meeting it cannot be carried-forward to a future meeting.</p> <p><b>Description of change needed:</b></p> <p>One slot (\$3,333 x3 =\$10,000) will be added to the final Operating Plan and Budget.</p>



Ref #	Question / Comment	ICANN Response
8	<p>The ongoing At-Large Review has identified the need to those At-Large workers who are active participants in At-Large and other ICANN policy activities to attend ICANN meetings. Having such active workers attend ICANN meetings will not only enhance At-Large discussions at its meetings, but will benefit the other ICANN activities they are involved in as well. The ALAC strongly supports such an initiative. The Review Final Report has not yet been delivered (it is due within several days), but it is expected that the proposed method to fund such travel will not be implementable (based on extensive ALAC and At-Large review of the proposed methodology).</p> <p>The ALAC requests that additional travel support slots to ICANN meetings be allocated to At- Large active contributors. The ALAC would establish criteria to be met and ALAC Leadership would ensure that such support is only provided if other sources of funding are not available. This request is very comparable to the FY18 GNSO request (FY18-22) for four Working Group Chairs which has just been approved.</p> <p>Unlike participants in many other parts of ICANN, At-Large participants are volunteers in the true sense of the word. Virtually none of these contributors are employed in activities related to ICANN or the domain name industry. None are paid to attend ICANN meetings. Many have to take unpaid time off from work or use vacations to attend meetings.</p> <p>The ALAC further notes that its travel funding has been close to uniform since mid-2009 (the last meeting of FY09). At that point</p>	<p>Although extensive investments have been made to remote participation capabilities over the last several years, ICANN Organization recognizes the tremendous value provided to the Organization and the community by its volunteer leaders and contributing participants at face-to-face public meetings.</p> <p>A few years ago, ICANN Organization recognized that individual community requests to increase permanent travel support levels at ICANN public meetings were important and strategic enough to require consideration as part of the overall Operating Plan and Budget. The primary driver of this need for process is the recognition that a continuously growing community might necessitate increased travel support. Over the past several years several communities have experimented with increased levels of funding piloted through the Additional Budget Request process. In a number of those cases, having been proven, increased support was identified for coverage in the core ICANN Organization budget annual.</p> <p>The long term sustainability of Community Travel support requires a strategic examination by the entire community and ICANN Organization will seek to proceed with a direct community consultation in FY18 to examine and assess the best strategic approach to examine the purpose, value and resources needed to continue to support the community in its face-to-face deliberations at ICANN Public Meetings.</p> <p>Traditionally, the ICANN Organization has allocated a certain number of seats for each community and that allocation has been based on publicly-produced travel guidelines. For the most part, but not consistently, ICANN has ceded responsibility for how particular community allocations</p>

Ref #	Question / Comment	ICANN Response
	<p>At-Large was funded for its 15 ALAC members plus two regional leaders per Regional At-Large Organization (RALO) for a total of 25 travel slots. In FY14, it was increased to 27 to cover the liaisons to the GNSO and ccNSO if they were not otherwise funded.</p> <p>During this same FY10-FY16 period, the number of funded GNSO travel slots has gone from 23 to 49 (for ICANN56). Since the GNSO did not tend to use all of its travel slots in the early years, the average funded number of GNSO travelers per meeting has increased from 17 in FY10 to slightly under 48 in FY16.</p> <p>The ALAC requests as a pilot program for FY18, five additional travel slots per ICANN meeting, to be allocated to demonstrably active contributors.</p>	<p>should be disbursed to each community itself to decide - with staff then following through on the administrative efforts to arrange, book and record the travel requested.</p> <p>As a number of community requests for travel-slot-expansion have revealed over the past couple of years (e.g., particularly the ALAC, ccNSO, and GAC this year), those travel guidelines have not been updated since FY14. The passage of time and other circumstances require a re-examination of those allocations for tactical, strategic and community balance needs. There are several strategic questions that need to be addressed in such an inquiry - inter alia, what is the purpose of community travel support; how much support is appropriate across the community; are all communities similarly-situated from a participant/need/engagement perspective? These and other questions may be explored as these discussions move forward.</p> <p>**In the meantime, pending the broader community consultation on this matter in FY18, it would seem appropriate to provide the ALAC with the opportunity to establish pilot criteria that it would use to identify "active" contributors who might benefit from public meeting travel support. Two contributors slots per public meeting will be provided in FY18 to experiment in this manner. This pilot allocation is for FY18 only and further allocations will be dependent on future strategic examination of Community Travel support by the community and ICANN Organization. Slots not used during any particular public meeting could not be carried-forward to a future meeting.</p>

Ref #	Question / Comment	ICANN Response
15	<p>Per Additional Budget Request (ABR) and in order to ensure that all its officers attend all ICANN Meetings, BC proposes travel support for its fourth officer, the Commercial Stakeholder Group Liaison.</p> <p>In addition, we request that travel support be provided to one BC delegate from a developing country to speak on:</p> <ul style="list-style-type: none"> <li>i. Internet public policy matters on designated business workshops at the IGF2017; and</li> <li>ii. At the CSTD Working Group on Enhanced Cooperation, on Public Policy matters pertaining to the Internet.</li> </ul> <p>On this point, we recommend that ICANN explain in future ABR notices that budget requests for outreach events should be submitted as separate requests FOR EACH EVENT. We note that such advisory would encourage clarity in request submissions.</p>	<p>The ICANN Organization response to Ref # 8 above, should also be consulted by readers of this response.</p> <p>Travel support was originally extended to the BC leadership in FY13 and in recent years (FY15 and FY16) the BC has benefited from travel support pilots and the ability to experiment with travel support to conduct outreach and engagement activities. During this time, other community travel allocations have remained level without any increases. For FY18, the limited flexibility being provided to the BC through the Additional Budget Request Process cannot be further expanded as requested here. ICANN Organization hopes that the BC will actively participate in any community consultation that it plans to seek to initiate in FY18 so that some additional planning clarity may be provided to the business community.</p> <p>The BC comments about the management of the Additional Budget request process (and the guidance provided therein) are most welcomed. Staff will work to incorporate the appropriate guidance in future years as the Additional Budget Request Process continues to be administered.</p> <p><b>Description of change needed:</b></p> <p>Two slots (\$3,333 X 3 X 2 = \$20,000) will be added to the final Operating Plan and Budget.</p>

Ref #	Question / Comment	ICANN Response
31	<p>Request to increase number of ccNSO traveling slots</p> <p>While ccTLDs receive benefits from ICANN, ICANN also receives benefits from ccTLDs<sup>6</sup>. The table in the report of the financial working group to the ccNSO council<sup>7</sup> illustrates the “value exchange model” and includes the financial information provided by ICANN.</p> <p>After careful consideration the ccNSO Council is of the view that the current number of ccNSO travel funding slots (12) is no longer sufficient to meet the goals for which the travel funding was created. Since 2008 to date, the ccNSO has expanded from 82 to 161 members. With the increased number, diversity, active participation, in particularly to the face-to-face meetings, has become an issue at various levels (at working group level, in terms of presenting and sharing information at meetings, and at the ccNSO council level). By definition, the distribution of ccTLDs across socio-economic measures or Internet usage tends to correlate with the distribution of countries across these standards. Due to the travel costs and time and duration of the meetings, active participation in the ccNSO – including the ccNSO Council has become increasingly challenging for “smaller” ccTLD managers, in particular from the underserved regions.</p> <p>The ccNSO Council is aware that the ccNSO and ICANN have both subscribed to and support the “2013 value exchange model” and the ccNSO still does this. As part of that model the current travel support is considered directly in support of the ccTLD community and considered specific. However, the ccNSO Council is also</p>	<p>The ICANN Organization response to Ref # 8 above, should also be consulted by readers as an introduction to this text response.</p> <p>** The issues raised by the ccNSO request are excellent issue points to be addressed in the type of community consultation that ICANN Organization expects to seek in FY18. Pending the broader community consultation on this matter in FY18, it would seem appropriate to provide the ccNSO with the opportunity to expand its FY18 travel allocation by a total of 5 traveler slots per public meeting. These slots would be for FY18 only and further allocations will be dependent on future strategic examination of Community Travel support by the community and ICANN Organization. Travel slots not used during any particular public meeting cannot be carried-forward to a future meeting.</p> <p><b>Description of change needed:</b></p> <p>Five slots (\$3,333 X 3 X 5 = \$50,000) will be added to the final Operating Plan and Budget.</p>

Ref #	Question / Comment	ICANN Response
	<p>aware that new and other groups in the ICANN environment need to be brought into the ICANN environment and their active participation needs to be sustained. In case of the ccTLDs, this needs to be done through more active participation, more “boots on the ground” for the multi- stakeholder model, effectively benefitting the Internet eco-system as a whole. The ccNSO Council therefore seeks an increase in the number of ccNSO traveling slots by 14 slots, bringing the total number of ccNSO traveling slots to 26:</p> <p>a) to ensure travel funding for the ccNSO Council chair and two vice chairs, for each of the ICANN meetings. If the chair or a vice chair does not use the allocated funding, the slot shall be allocated to the broader ccTLD community. 3 slots</p> <p>b) to ensure travel funding for each of the 3 NomCom appointed councillors to attend ICANN public meetings. If a councillor chooses not to take the allocated funding, the slot shall be allocated to the broader ccTLD community. 3 slots</p> <p>c) to ensure travel funding for each ccNSO councillor from each region to attend ICANN public meetings. If a councillor chooses not to take the allocated funding, the slot shall be allocated to the broader ccTLD community. 12 slots</p> <p>d) to ensure travel funding for the ccNSO appointed liaisons to ALAC and GNSO. If either or both liaisons choose not to take the allocated funding, the slot shall be allocated to the broader ccTLD community. 2 slots</p>	

Ref #	Question / Comment	ICANN Response
	<p>e) to increase the number of selected broader ccTLD community members that will receive funding in order to advance the work of ICANN; to provide support for those who might not be able to afford to attend ICANN meetings otherwise; and to broaden participation in ICANN's processes. 6 slots</p> <p>The ccNSO Council is aware that the requested increase is relatively large and a phased approach could be warranted. However, the ccNSO Council trusts that the above changes will be incorporated in the ICANN's annual travel funding budget by FY 2020. The ccNSO Council also trusts that the increase will be considered a global value category in terms of the agreed value exchange model, thereby not resulting in an increase of an expected voluntary contribution from the ccTLD community.</p> <p>**See supporting information in original document submitted</p>	

Ref #	Question / Comment	ICANN Response
82	<p>On behalf the Governmental Advisory Committee (GAC), I am writing to seek continued support in ICANN’s Budget in FY18 and also thereafter for forty (40) funded GAC travelers per ICANN Meeting, as granted for FY17. As prescribed in the GAC Travel Support Rules, see <a href="https://gacweb.icann.org/display/gacweb/Travel+Support">https://gacweb.icann.org/display/gacweb/Travel+Support</a> , GAC travel support is provided to those needing it most – 35 travel slots go to GAC Representatives for developing countries and small island states, and 5 travel slots go to certain pre-approved Observers, i.e. IGOs representing such countries. The Membership of the GAC is currently at 171 Members and 35 Observers (IGOs) and continues to increase, with new Members typically falling into the categories that do qualify for GAC Travel Support in line with these rules. It would therefore be justified to increase the number of supported GAC travelers in a proportionate manner, and at the very least keep this number at the FY17 level.</p>	<p>The ICANN Organization response to Ref # 8 above, should also be consulted by readers of this response.</p> <p>** The issues raised by this GAC request (and those in previous fiscal years) merit further community consultation that ICANN Organization plans to seek in FY18. Pending the broader community consultation on this matter intended in FY18, it would seem appropriate to provide the GAC with the same level of support it has been allocated in FY17 - 40 travel slots. Once again, these slots will be for this fiscal year (FY18) only and further allocations will be dependent on future strategic examination of Community Travel support by the community and ICANN Organization. Travel slots not used during any particular public meeting cannot be carried-forward to a future meeting.</p> <p><b>Description of change needed:</b></p> <p>Ten slots (\$3,333 X 3 X 10 = \$100,000) will be added to the final Operating Plan and Budget.</p>
124	<p>Travel Support: We refer you to our previous comment (<a href="http://mm.icann.org/pipermail/comments-fy18-budget-08mar17/attachments/20170404/975d9c79/RySG-RrSGrequestfortravelstupporttoGDDSummit2018-0001.pdf">http://mm.icann.org/pipermail/comments-fy18-budget-08mar17/attachments/20170404/975d9c79/RySG-RrSGrequestfortravelstupporttoGDDSummit2018-0001.pdf</a>) and request relating to the Registry (and Registrar) Stakeholder Group travel support funding relating to ICANN’s GDD summit.</p>	<p>In previous fiscal years, the GDD team has been able to support a small number of summit attendees on an ad hoc basis. For FY18, the Organization will formally set aside resources to support 4 summit attendees. Support will consist of economy airfare and hotel night stays for the duration of the summit. Support is for FY18 only and supported attendees must be from a developing or underserved region.</p>

Ref #	Question / Comment	ICANN Response
134	<p>On behalf the gTLD Registries Stakeholder Group (RySG) and Registrar Stakeholder Group (RrSG), we are writing to seek support in ICANN’s FY18 Budget for ten (10) funded travel to the next GDD Summit; 5 for the RySG and 5 for the RrSG. As previously noted, we thought travel support was included in GDD’s budget for the annual contracted party Summit, and did not appreciate that this request needed to be part of the special budget request process (deadline was 15 February 2017). While the GDD team has made some limited resources available for this year’s Summit in Madrid (9-11 May 2017), we will need more support for the 2018 Summit – especially given the pressure to hold it in the Asia Pacific region (or at least not in Europe again). Given that this is the major “engagement” between contracted parties and ICANN org each year, we earnestly request these travel slots. Likewise, a lack of support necessarily means that members from traditionally under-represented regions – in particular Asia Pacific – won’t be able to attend the 2018 Summit.</p>	<p>The RySG was correct in its initial assumption that any support for attendees traveling to the GDD Summit is not subject to the Additional Budget Request process. The GDD Summit is a contracted party activity and is not viewed as part of the broader community travel support more closely connected to policy development work by the multi-stakeholder community. As the RySG notes, in previous fiscal years the GDD team has been able to support a small number of summit attendees on an ad hoc basis. For FY18, the Organization can formally set aside resources to support four (4) summit attendees, two (2) from Rr SG, and two (2) from Ry SG. Support will consist of economy airfare and hotel night stays for the duration of the summit. Support is for FY18 only and supported attendees must be from a developing or underserved region.</p> <p><b>Description of change needed:</b></p> <p>Four slots (4 x \$4,000 = \$16,000) will be added to the final Operating Plan and Budget.</p>



## Contractual Compliance

Ref #	Question / Comment	ICANN Response
112	<p>F. Top 15 Funded Projects</p> <p>The IPC has reviewed the top 15 funded projects according the FY18 budget and agrees that that they align with ICANN’s strategic plan. IPC notes that Compliance project (Project No. 152052) is ranked 10th and is encouraged by ICANN’s efforts to ensure accountability, reliability and predictability when it comes to contract compliance as private contracts form the foundation of ICANN’s business model and the administration of the domain name system generally. The scope of the projects reads, to capture staff efforts to address and resolve non-compliance issues by using the informal and formal contractual compliance process. This activity covers complaints submitted to ICANN and internal efforts identified through monitoring. This is funded at \$2.4m. <sup>(5)</sup> However, the total compliance budget appears to be funded at \$5.5m ( ) a slight increase over last year’s proposed budget of \$5.4m. The IPC requests clarification as to actual proposed expenditures on this mission critical function. It would appear that a disproportionate amount of funding will be spent on review rather than to employ resources for contract interpretation and enforcement. Auditing and metrics are important but even more important is ICANN’s investment in the actual interpretation of its contracts and commitment to enforcement. This is accomplished through staff engagement with entities that are deemed out of compliance with contract terms and the efforts to steer the entities back into compliance or out of the contract. Further, the IPC continues to stress the importance of transparency in the ICANN compliance process so that we may have levels of predictability and reliability</p>	<p>ICANN is committed to enforcing the contracts and on-going effort to address contract interpretation, continued improvement for transparency and reporting.</p> <p>The Contractual Compliance project on the top 15 baseline projects list covers the core compliance function which includes addressing contract interpretation, engaging with entities and contracted parties and enforcement of the contractual obligations.</p> <p>ICANN will review and clarify the scope of the project in the document and on-going reporting. Thank you for the comment.</p> <p><b>Description of change needed:</b></p> <p>The project description will be refined in the final list of Top 15 Projects.</p>

Ref #	Question / Comment	ICANN Response
	<p>when matters are escalated. ICANN would be well served to consider developing easily accessible resources that explain contract compliance outcomes. The IPC has noted these issues in prior comments relating to ICANN budget practices. (7)</p> <p>5 See FY18 Draft Budget – Top 15 Baseline Projects  <a href="https://www.icann.org/en/system/files/files/proposed-opplan-budget-top15-projects-fy18-13mar17-en.pdf">https://www.icann.org/en/system/files/files/proposed-opplan-budget-top15-projects-fy18-13mar17-en.pdf</a></p> <p>6 See FY18 Draft Budget, 7.14 – 4.4 Promote Role Clarity and Establish Mechanisms to Increase Trust within the Ecosystem Rooted in the Public Interest, pages 50-51</p> <p>7 <a href="https://ipc.memberclicks.net/assets/ipc-position-papers/2016/2016_04april_30%20ipc%20comment%20on%20fy%2017%20budget%20and%20five%20year%20operating%20plan.docx.pdf">https://ipc.memberclicks.net/assets/ipc-position-papers/2016/2016_04april_30%20ipc%20comment%20on%20fy%2017%20budget%20and%20five%20year%20operating%20plan.docx.pdf</a></p>	

**Empowered Community / Caretaker Budget**

Ref #	Question / Comment	ICANN Response
41	Last but not least, we would appreciate to receive clarification on how ICANN intends to meet the need of separation between the Operating Plan and Budget in light of the possible rejection actions within the revised Bylaws framework.	The new community rejection powers under ICANN's Bylaws are defined as the ICANN Budget in section 22.4 (a) (v) and includes both the annual Operating Plan and the annual Budget. The Operating plan as defined in section 22.5 (a) (v) corresponds to the Five Year Operating Plan. If a rejection action would occur on either the annual Operating Plan and Budget, or on the Five Year Operating Plan / Strategic Plan, it would be relevant in our views to evaluate the potential impacts of changes resulting from such rejection action on the planning documents that were not the subject of the rejection, and evaluate potential relevant changes to these documents. The process and timing for such exercise has not been determined to date.
54	The assumptions under section 3.7 regarding the Caretaker Budget seem to be consistent. Considering the concerns the group has raised with regards the increase in headcount, this could be a particular topic for the Caretaker Budget future approach.	The assumptions listed in Section 3.7 cover the approached used to develop the Caretaker Budget. As it relates to headcount, the FY18 Caretaker budget suspends the publication of any new position for hire. We would welcome discussion on this assumption for future approaches for the Caretaker Budget.
98	3. I approve of the approach taken in this Proposal to the Caretaker Budget.	Thank you for your comment.

Ref #	Question / Comment	ICANN Response
110	<p>D. The Caretaker Budget</p> <p>One of the new additions to the ICANN operating plan is “the Caretaker Budget.” This is the contingency budget upon which ICANN will operate if the Empowered Community rejects an ICANN budget. (3) The basis for the budget will be the budget as the ICANN Board would have approved it, less new positions, less 10% travel/meeting and professional service fees and less the expenses that trigger the veto. These expenses would be new expenses and not ongoing/legacy expenses. The IPC questions whether the budget that would have been approved is an appropriate baseline. It may be prudent to continue with an extension of the current year’s budget with all expenditures flat until a budget agreement is reached between the Board and the Empowered Community. Even if the IPC were to support the “would be approved” budget as the baseline, we do not support cutting any travel expenses related to face-to-face meetings to resolve any budget issues. This 10% travel reduction seems like a “stick” to punish the community rather than a conservative spending measure in a time of budget crisis. IPC would only support such a travel cut if there were a carve-out for constituency travel for ICANN sponsored meetings. IPC supports continuing legacy expenses that are obligated by ICANN through contracts.</p> <p>3 FY18 Budget, Section 3.6, page 19</p>	<p>As outlined in Section 3.6, in the event that the community rejection power is exercised, the Board shall adopt a temporary budget called “Caretaker IANA Budget” and “Caretaker ICANN Budget”, which shall be effective until such time as an IANA and ICANN budgets, respectively, are adopted by the Board of Directors and not rejected by the Empowered Community. ICANN took a pragmatic approach to define the ICANN caretaker budget incorporating the principals outlined in Appendix C. One of the principles identified indicates that it allows ICANN to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law). Due to the fact that new contracts and obligations may be in effect in the latest year, it is prudent to develop the Caretaker Budget based on more up to date assumptions incorporating any new information as it relates to new contracts and obligations that may not have been in existence at the time of the adoption of the current year Operating Plan and Budget.</p> <p>With respect to travel costs reduction of 10%, this reduction is suggested to apply to all ICANN related travel, of the ICANN Organization and constituent travel alike. During the community discussions that led to the creation of the concept of a "caretaker" budget, the spirit of reducing expenses during the caretaker period was to create an incentive for timely resolution of the budget rejection, affecting uniformly everyone involved. Carving out from this provision certain meetings or certain travelers would become impractical.</p>

## Funding

Ref #	Question / Comment	ICANN Response
19	4) 3.2 Funding (page 12 – last row 3rd column): Where Funding implies revenue, it may be necessary for consistency and clarity sake for revenue to be mentioned in the sentence as a bracket after Funding such as “Portion of application fees recognized in Funding (revenue) ratably...”	<p>In order to provide clarity that the wording Funding implies Revenue, we have provided a footnote on the diagram in Section 2 on page 8 reflecting the structure of the budget data. We hope that this notation will provide consistency and clarity on this point.</p> <p><b>Description of change needed:</b></p> <p>A footnote on the diagram in Section 2 on page 8 reflecting the structure of the budget data will be included in the final Operating Plan and Budget.</p>
37	As a matter of fact, we would recommend ICANN stick to the TLD low rate growth estimates’ TLD, rather than to the best estimates.	<p>In principle, the projected transaction volumes are intended to be neither optimistic nor pessimistic, but rather, as realistic as possible, given various available data inputs. When choices need to be made on various options of funding assumptions, ICANN chooses a conservative approach.</p> <p><b>Description of change needed:</b></p> <p>Projections to be reviewed and updated as necessary based on latest data.</p>
51	We have some concerns regarding funding in the area of nTLDs. Having seen the growth estimate of 29.9% under ‘New TLDs - Transaction Fees’ (and the 60% growth rate under ‘High Estimate’), we would like some feedback about the analysis upon which those assumptions are based.	<p>Many factors are considered in the projection of transaction volumes and resulting fees, including trends from historical data, recent marketplace developments, and input from industry participants (provided both directly and via public statements/documents). ICANN evaluates and utilizes those various perspectives in developing estimates on future funding.</p>

Ref #	Question / Comment	ICANN Response
		<p><b>Description of change needed:</b></p> <p>Projections to be reviewed and updated as necessary based on latest data.</p>
52	<p>Legacy TLD growth on slide 11 has a best estimate of 2.3%. This shows quite an optimistic view since .com &amp; .net – as the biggest drivers within the legacy TLDs – only grew by 1.7% last year (see Verisign report from the end of 2016). The low estimate growth of 1.5% seems to be closer to the current scenario and, therefore, more prudent. <a href="https://www.verisign.com/en_US/domain-names/dnib/index.xhtml#home">https://www.verisign.com/en_US/domain-names/dnib/index.xhtml#home</a></p> <p>Despite the aforementioned issues, the funding section of the Plan, including calculations, appears consistent and sound.</p>	<p>In principle, the projected transaction volumes are intended to be neither optimistic nor pessimistic, but rather, as realistic as possible, given various available data inputs. Our highest-confidence estimates, or “best estimates”, are used in the draft budget, with the inclusion of “low” and “high” estimates as guidance for potential variance.</p> <p><b>Description of change needed:</b></p> <p>Projections to be reviewed and updated as necessary based on latest data.</p>
61	<p>3.1 Ensure ICANN’s Long-Term Financial Accountability, Stability and Sustainability</p> <p>How will the organisation be sustainable in light of the saturation of traditional markets in Europe and America and low investment in developing markets in Asia, Latin America, and the global South?</p>	<p>ICANN operating costs are managed closely and are planned not to exceed forecast funding.</p>
76	<p>3.1 Ensure ICANN’s Long-Term Financial Accountability, Stability and Sustainability</p> <p>How will the organisation be sustainable in light of the saturation of traditional markets in Europe and America and low investment in developing markets in Asia, Latin America, and the global South?</p>	<p>ICANN operating costs are managed closely and are planned not to exceed forecast funding.</p>

Ref #	Question / Comment	ICANN Response
88	<ul style="list-style-type: none"> <li>• FY18 Projections for new gTLD transaction fees (sec. 3.2 "Funding") show a best estimate of approximately 30% growth in funding derived from transaction fees associated with registrations in new gTLDs. Given that this level of growth is also established as the "low estimate," we strongly encourage ICANN Finance staff to consult with GNSO contracted parties (and in particular, gTLD registry operators) to ensure that this assumption is supported by their growth projections for the corresponding time frame.</li> </ul>	<p>Many factors are considered in the projection of transaction volumes and resulting fees, including trends from historical data, recent marketplace developments, and input from industry participants (provided both directly and via public statements/documents). ICANN evaluates and utilizes those various perspectives in developing estimates on future funding.</p> <p>In addition, the assumptions used for the low/best/high estimates were presented and discussed during the budget ad hoc working group meetings held in Hyderabad and Copenhagen</p>

Ref #	Question / Comment	ICANN Response
111	<p data-bbox="237 277 600 305">E. Assumptions about Growth</p> <p data-bbox="237 358 1087 591">ICANN’s budget is traditionally calculated based on predicting revenue and then building the budget. The growth predictions are conservative and based on algorithms tied to gTLD performance. <sup>(4)</sup> However, as noted above, ICANN’s spending outpaced its revenues due to the IANA Transition and accountability measures. This created the reserve fund crisis.</p> <p data-bbox="237 607 1087 922">Consultations with finance department staff have revealed that new gTLD revenue is expected to be flat. This is a natural consequence of a maturing program. Further, there is the assumption that the reserve funds will not be replaced at the rate that they were depleted as this could cripple ICANN’s daily operations. Flat revenues from key programs and the need to replace the reserves at a prudent pace would suggest that planning for x% growth based on x% revenue may not be the correct assumption for building the budget moving forward.</p> <p data-bbox="237 976 1062 1127">The IPC supports budget assumptions that account for a greater margin between projected revenue and expenses that would allow ICANN more flexibility in meeting its governance responsibilities and adequately funding its operating reserves.</p> <p data-bbox="237 1180 1062 1252"><sup>4</sup> Budget assumption information discussed at ICANN58 Community Budget Meeting</p>	<p data-bbox="1121 277 1919 386">The actual projected growth rates for New gTLD and Legacy gTLD funding are detailed in page 13. overall, ICANN forecasts a slight increase in year-over-year funding levels in the range of 5.1%.</p> <p data-bbox="1121 402 1944 753">ICANN’s expenses result from the activities that are required to fulfill ICANN’s mission as developed through the community-defined and board approved strategic and operating plans, whereas its funding is driven by the DNS marketplace evolution and the contractual fee structure. The drivers for funding and expenses are therefore not correlated. The only circumstance under which ICANN compares funding and expenses is to ensure, in a fiduciary responsible manner, that expenses do not exceed funding, unless highly exceptional and unavoidable circumstances arise.</p>



## GDD Operations and gTLDs

Ref #	Question / Comment	ICANN Response
25	1) 5.2 New gTLD Program – Multiyear View: On Auction (net of expenses); why is there nothing recorded when gTLD auction took place?	Although the auction proceeds are reported as part of the New gTLD Program for financial reporting purposes, they are not considered part of the multi-year New gTLD Program financials. The table in section 5.2 New gTLD Program - Multiyear View is intended to reflect only the funding from the application fees collected. The table will be updated to remove the row referring to Auction Proceeds. ICANN does not Budget for Auction Proceeds and the FY18 Budget does not include any estimate for Auction Proceeds. The amount of actual funding from Auction proceeds is reported in the FY17 Forecast in Section 6 - Total ICANN Overview on page 26. The total funding for the FY17 Forecast for New gTLD Program (including Auction Proceeds) of \$154.1 is made up of \$135 million for FY17 Auction Proceeds and \$19.1M for the New gTLD Program Funding.
83	We, the co-chairs (Alice Munyua and Pua Hunter) of the GAC Underserved Regions Working Group (USR WG), would like to commend ICANN for commissioning studies of the Domain Names Marketplace for underserved regions with the first one being assessing the state of the DNS sector in Africa. This study is consistent with the GAC USR WG work plan and we would like to urge ICANN board to commission similar studies in other regions; Asia Pacific, Latin America, Caribbean and the Middle East.	The DNS Marketplace Studies pioneered by the LAC, Africa and Middle East and Adjoining Countries Regions have been well received. The CCT Review Team noted similar support for these studies. A DNS Marketplace Study for the Asia Pacific region has not been budgeted for FY18, therefore if one is to be done it should be prioritized and funded for FY19.

Ref #	Question / Comment	ICANN Response
101	<p>6. Conversely, Registrant services appear to be underfunded at the \$600,000 level. While Registry and Registrar services are funded at approximately 4 times the level of Registrant services, it is important to remember that it is Registrants who fund much of the entire ICANN organization, through fees paid ICANN through the Registers and Registrars. There is an urgent need for educational activities geared to Registrants, particularly those related to rights protection mechanisms. ICANN has been very active in educating trademark owners as to their rights under the applicable RPM measures yet derelict in not doing the same for Registrants. The 93.7% rate of potential Registrant abandonment of their registration attempt after receiving a TMCH Notice is very disturbing to me and likely represents a misunderstanding, in part, on the part of the potential Registrants as to the relative weight and status of the Notice. ICANN needs to "better inform, educate, service and support registrants" (per Portfolio 2.3.10) as to their rights and obligations pertaining to all rights protection mechanisms.</p>	<p>The registrant services work anticipated in FY18 is Projects related to defining activities to better inform, educate, service and support registrants while staying within ICANN's restated mission. The budgeted funds are to support the work in defining these activities, and implementing some of them. Unlike registrant services, which is still in its infancy, the registry and registrar services are well defined services. As registrant activities are better defined, appropriate resources and funding will be budgeted to support the implementation of the activities.</p>
104	<p>2. For the goal 2.3 Support the Evolution of the Domain Name Marketplace to be Robust, Stable and Trusted, I strongly suggest that ICANN should launch a DNS market research on AP region with cooperation with local partner, especially after your finishing some similar reports on other regions. Since AP region is the fast growing market and about half of New gTLD registrations occurred in China, Chinese community and other local partner hope that ICANN start the research as soon as possible with finance support.</p>	<p>Thank you for your comment and suggestion, which has been noted.</p>

Ref #	Question / Comment	ICANN Response
119	<p>I submit these comments in my capacity as Chair of the Next Generation gTLD RDS to Replace Whois PDP Working Group (RDS PDP WG).</p> <p>In communications among WG members over the last few weeks and especially over the last several days, the possibility of the WG needing independent legal expertise in early FY18 regarding the European Global Data Protection Requirements as well as Privacy and Data Protection Requirements in other regions of the world has become increasingly pronounced. Ideally it would be best if the details could be scoped out in these comments but that is not possible because the comment period ends today and because the need is just now becoming particularly evident.</p> <p>Therefore, I would like to request that the following be done in the next 2 to 3 weeks by ICANN staff in cooperation with the leadership of the RDS PDP WG:</p> <ol style="list-style-type: none"> <li>1. Define the scope of the legal advice needed as best as possible.</li> <li>2. Confirm whether the Draft FY18 Operating Plan &amp; Budget contains sufficient funds to cover the need.</li> <li>3. If additional funds are determined to be needed, modify the Draft Budget to address the need.</li> </ol>	<p>As alluded to in the comment, the Policy Development Support Team is already working on this matter - even seeing what resources can be applied in FY17 to address the issues raised in these comments. To the extent resources are determined to be expected to be needed in FY18, plans will be made to cover the activity as necessary. The three-step process outlined by Mr. Gomes mirrors internal deliberations that have been used by the Policy Development Support Team in past years to ensure that necessary PDP resources are available to support the important work of GNSO PDP Working Groups.</p> <p>See also Ref # 96 above.</p> <p><b>Description of change needed:</b></p> <p>ICANN staff will consult with GNSO-VP to determine result of research on legal research needed and what can be front-loaded in FY18.</p>

Ref #	Question / Comment	ICANN Response
123	<p>GDRP: We note that there appears to be no specific provision for support to deal with GDRP and request that this be identified (if it exists) or, failing that, efforts must be made to ensure that there are adequate funds to cover an independent analysis of the GDRP requirements and how contracted parties will comply without violating their agreements with ICANN.</p>	<p>We assume that this question relates to EU General Data Protection Regulation (GDPR) and thank you for the question. Any expenses associated with supporting ICANN GDPR related requirements would be covered from available professional services general funds. ICANN continues to monitor various relevant legislation related to data protection, and assessing their potential impact on ICANN contracted parties.</p>
128	<p>Portfolio 2.1.1 – 2.1.7: GDD &amp; Related Activities  The ICANN GDD is projected to spend US\$19m (including approx. US\$7m on PTI). At approximately 14% of budget (approx. 9% excluding PTI), is this area adequately and proportionality resourced? The RySG depends on an effective and well-funded GDD and we are concerned to ensure that this area of ICANN’s work is fully and appropriately resourced.</p>	<p>GDD is well resourced to meet its FY18 commitments in the operating plan and budget. Additional ICANN resources support GDD in delivering its services to the contracted parties. For example, all the IT development expenses used to develop tools for GDD are in the IT department, similarly all the legal resources needed are accounted for in the legal department and so on.</p>

## Headcount / Staffing

Ref#	Question / Comment	ICANN Response
13	Reflecting on the projected increase in headcount in FY18 of 55.6 FTEs, what is the justification for the anticipated sharp increase of 16%?	The five strategic objectives with the 16 strategic goals define the work of the ICANN Organization in FY18. To meet these strategic objectives an increase in headcount is proposed.
22	7) 3.4 Risk and Opportunities: On "Expenses" as "Opportunities" wrt "Ability to reduce headcount growth as a result of optimization of resources"; the question is how can this opportunity be optimized?	The comment in Section 3.4 Risks and Opportunities on the Opportunity for Expenses is addressing the fact that the ICANN Organization is careful in its assessment of workload and we are conscious of our headcount numbers and growth. ICANN Organization continues to look for ways to perform work more efficiently, identify pockets of capacity in the Organization, prioritize work to decide if it still meets our strategic plan and is necessary, ensure we have the right balance of employees.
24	1) 3.5 Unfunded Potential FY18 Activities: What is the usual justification for additional headcount for Meetings line item while much of the work is outsourced (wrt Travel FCM)?	The activities of the Meetings Team are separate from services provided by ICANN's Travel Support Team, or their vendors such as FCM. The Meetings team activities include selection of cities, venues, contracting, on-site support, for all meetings organized by ICANN (ICANN Meetings, Board workshops, intercessional meetings, etc.). The additional headcount being requested for the Meetings Team is to provide on-site support for the additional F2F meetings being requested by existing and newly formed Review Teams, and to support the SO/AC schedule planning group in the development of ICANN Meeting schedules, and production of individual cross-constituency sessions.
36	The continuous growth in headcount – without adequate rationale – is one of our main concerns, especially considering current industry trends, with the legacy TLDs market not enjoying the high growth rates of the past.	ICANN's funding and expenses are driven in large part by the TLD marketplace, including the new gTLDs that have recently been added as a result of the New gTLD Program. Several factors, however, impact both the scale of ICANN activities, and the community's

Ref#	Question / Comment	ICANN Response
		<p>expectations of ICANN. These factors include, but are not limited to: (i) contracting for and the delegation of the approximately 1,200 new gTLDs; (ii) the approximately 1,500 new registrar accreditation agreements that ICANN has entered; and (iii) the post-transition period without US Government oversight over the IANA functions.</p> <p>The headcount growth through FY17 (current year, starting 1 July 2016) and FY18 (next year, ending 30 June 2018) is 67 people (full time equivalent or "FTE") over 24 months. As of the date of publication of this report, approximately 30 people have been hired out of the total 67 headcount increase. This growth supports activities due to increasing demands driven by:</p> <p>(i) the support to an expanding gTLD space: requiring more policy implementation resources, engagement with a larger number of registries/registrars, and new oversight processes for the IANA Functions. Separately, monitoring and enforcing the compliance of a larger number of contracted parties also adds to an increasing workload. The headcount growth during the period resulting from these various activities is approximately 20 FTE.</p> <p>(ii) increasing community led activities and required support: increasing policy development processes, increasing number of reviews to be carried out, new community structures resulting from the IANA stewardship transition, increasing membership in many community Organizations, increasing number of cross community working groups, with multistakeholder support (policy development, reviews, and other supporting activities.). Approximately 13 FTE have been added across these activities during the period.</p> <p>(iii) technical expertise/engagement has grown during the period (7 FTEs) in response to expanding security, stability and resiliency</p>

Ref#	Question / Comment	ICANN Response
		<p>engagement requirements.</p> <p>(iv) In support of the increasing activities and demands, the Organization's support and governance functions (Finance, Human Resources, Legal, Information Technology, Security Operations, Board Operations, Enterprise Risk Management, Communications) have expanded by approximately 26 FTE during the period, scaling to the demand while continuously improving business excellence.</p> <p>Engagement activities, while dealing with a changing environment during the period, have been optimized to operate with a stable amount of resources.</p> <p>We are conscious of our headcount numbers and growth and continue to look for ways to perform work more efficiently, identify pockets of capacity in the Organization, prioritize work to decide if it still meets our strategic plan and is necessary, ensure we have the right balance of employees versus third party providers, etc.</p> <p>As the number of registries and registrars is stabilizing and ICANN continues to increase its operational excellence and effectiveness, it is expected that the Organization's resource will also stabilize. The ICANN Organization and Board have initiated a process to prioritize activities carried out by the Organization to allow ICANN to stabilize its resources, and ensure that expenses remain below funding in the long term, while continuing to deliver on its mission. The ICANN Organization, Board and Community will be fully engaged in a collaborative interaction as part of the planning process, to appropriately prioritize the activities of the Organization.</p>

Ref#	Question / Comment	ICANN Response
44	<p>As in previous feedback, we would like to express great concern for the continued growth in headcount that remains unexplained in a proper and long-term structured way. Equally, we are puzzled to see personnel costs increasing by 15%, while travel expenses declined by - 2 %. Normally travel costs should rise with the number of personnel. We would like to know the rationale behind this.</p> <p>Basic administration principles call for a more conservative approach to hiring expenses in view of a decrease in funding, which is not in evidence when looking at ICANN’s Financial Overview.</p>	<p>The five strategic objectives with the 16 strategic goals define the work of the ICANN Organization in FY18. To meet these strategic objectives an increase in headcount is proposed. With regards to travel, travel is not required for all members of the ICANN Organization to do their work. Additionally, the ICANN Organization has worked to reduce travel costs through new vendor contracts, as well as exploring alternative remote working tools.</p>
45	<p>With reference to the headcount in the table on slide 10, DNS, GDD, and IANA top functions are grouped into one area. This does not make sense, since they encompass different tasks. A breakdown would be appreciated to better understand the distribution of expenses.</p>	<p>DNS headcount for FY18 is 28 FTE vs 27 FTE for FY17. GDD headcount for FY18 is 53 FTE vs 46 FTE for FY17. IANA headcount for FY18 is 18 FTE vs 15 FTE for FY17.</p> <p><b>Description of change needed:</b></p> <p>The areas will be reported separately in the final Operating Plan and Budget.</p>
46	<p>It would be interesting to know if the reason behind the increase in the headcount is due to an increase in the current workload, and the projects planned in certain divisions. We are looking to receive more detailed clarification on the following issues:</p> <ul style="list-style-type: none"> <li>-As the new gTLD programme has been completely rolled out, why an increase in headcount is necessary.</li> <li>-The same questions have been raised with regards the GDD and DNS division increase; Concerning the ‘Operations’ headcount, it seems to be static, but costs have risen by 17%.</li> <li>-At present, the management of requests within the GDD division is moving from one person to another. The internal coordination within the division clearly has room for improvement. We believe that the</li> </ul>	<p>ICANN acknowledges the comment relative to levels of headcount. See response to comment #36</p>



Ref#	Question / Comment	ICANN Response
	further increase in headcount is going to worsen this situation rather than improve it.	
47	At the same time, an increase in the headcount for the IANA and the IT department might be desirable. However, as a matter of transparency and openness towards their community, it would be useful to know the long-term plans of these departments.	Public Technical Identifiers (PTI) will be preparing a four-year strategic plan during this fiscal year. The Engineering & Information Technology (E&IT) department is in the process of reevaluating their Organizational structure to ensure that we still mirror the business we support. This may result in additional headcount. We will continue to rely on an IT offshore service provider to provide a flexible technical resource pool.
48	The group is interested to understand the rationale behind the latest position: 'New gTLD Allocations & Corporate (includes attrition)'. It is important for us to understand why the headcount declines to zero in FY 2018 when the headcount is already zero in FY 2017.	This position has a negative headcount to account for estimated attrition in FY18 which is not accounted for in each department. FY17 figures are zero because this data set is the FY17 Forecast and the headcount attrition is accounted for in each department.
49	Furthermore, we would like to emphasise that the personnel costs per employee seem to be quite high. This also applies to new hires. For instance, the increase in the headcount for GDD, DNS, and IANA is expected to be 26 (AVG Hdct), which translates to a cost of \$6.3 m. This means that the average payslip per employee is around \$240k, which seems quite high. The same reasoning applies to the PTI budget (5.8 million personnel costs for 22.6 FTE = over 250k USD per FTE compared to the personnel costs of ICANN as a whole, 6.1 (slide 26) which accounts for 69,5 million USD for 413,8 FTEs or 168k USD per FTE).	Personnel costs are not only salary costs. Costs for items such as insurances for health care, disability coverage, pensions and other benefits are included in personnel costs.

Ref#	Question / Comment	ICANN Response
99	<p>4. Personnel costs and headcounts are a bit confusing to me and average salaries seem to be overly generous. I'm confused about how a 15% increase in total headcount correlates with a 2% decrease in travel and meetings. Is ICANN consciously saving on travel by hiring more people in various locations? If so, a chart showing where ICANN's employees are based, by function, along with corresponding costs attributable to each location would be helpful.</p> <p>With personnel expenses of \$69,500,000 and a FTE headcount of 413.3 it would appear that the average compensation package, including all employees at ICANN, is \$167,955 per year per person. That said, I suspect the salary structure at ICANN may be top heavy. For example, the ICANN 2015 IRS form 990 filing indicates that the top 20 salaried employees at ICANN had total net compensation packages averaging in excess of \$427,000.</p> <p>It would be useful for Finance to produce data, at least in aggregate form, allowing the community to know ICANN's general compensation structure, perhaps average salaries by quadrant and location, for example. Again, this has to do with accountability and with the need of the community to understand specific components of the budget before approving it. Compensation is one such component.</p>	<p>Personnel costs are not only salary costs. Costs for items such as insurances for health care, disability coverage, pensions and other benefits are included in personnel costs. With regards to travel, travel is not required for all members of the ICANN Organization to do their work. Additionally, the ICANN Organization has worked to reduce travel costs through new vendor contracts, as well as exploring alternative remote working tools. Information on staff by location is available on the ICANN dashboard (include link?). Personnel costs at the granular level by function and location is not available at this time. ICANN's basic remuneration practices is available at <a href="https://www.icann.Organization/en/system/files/files/remuneration-practices-fy17-01jan17-en.pdf">https://www.icann.Organization/en/system/files/files/remuneration-practices-fy17-01jan17-en.pdf</a>.</p>

Ref#	Question / Comment	ICANN Response
116	<p>Headcount:</p> <p>Within the ISPCP there continues to be concern over the continued growth in headcount, often without a clear explanation or consideration of longer term planning. The ISPCP questions whether that growth is sustainable and proposes that ICANN should look to produce and share a longer term vision for the structure of the organisation before additional positions are created. The increasing level of personal costs is difficult to justify without that level of understanding.</p>	<p>ICANN acknowledges the comment relative to levels of headcount. See response to comment #36</p> <p><b>Description of change needed:</b></p> <p>The rationale for headcount increases will be provided in the final Operating Plan and Budget</p>
126	<p>3.1 Financial Overview</p> <p>Average headcount is projected to grow significantly from 358.2 (FY17) to 413.8 (FY18). It is of concern to the RySG that average headcount is still being added to in this substantial way. The RySG notes the addition of 10 staff to DNS / GDD / IANA, apparently in direct support of contracted party related work. However, the overarching need to continue to add more staff overall is not well-explained and neither is there any specific demonstration of any program or activity to improve the efficiency of use of human resources and hence to reduce the average headcount.</p>	<p>ICANN acknowledges the comment relative to levels of headcount. See response to comment #36</p>

## IANA Stewardship and Accountability

Ref #	Question / Comment	ICANN Response
3	<p>The ALAC support the request made by the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) to extend the budget for the Work Stream 2 in FY18 to help the CCWG complete its mandate. However, the ALAC request that the CCWG carefully monitors its progress to ensure that no further extension is required.</p>	<p>In its Draft FY18 Operating Plan and Budget, no budget was allocated to CCWG-Accountability Work Stream 2, as the original plan was to complete the work within FY17.</p> <p>ICANN understands that the community needs more time to complete the very complex task at hand with Work Stream 2, and acknowledges that the project has underspent during FY17. ICANN subsequently agrees to carry over the projected unused funds from FY17 into FY18, with the understanding that the total spend will remain within the total original budget envelope allocated for this effort last year. As a reminder, these expenses are funded from the Reserve Fund.</p> <p><b>Description of change needed:</b> The projected unused funds for CCWG-Accountability Work Stream 2 will be included in the FY18 Budget.</p>
5	<p>The ALAC notice that the cost of the Root Zone Maintainer Agreement (RZMA) increased by 33.33% compared to the figure in FY17. The increase may be due to the FY18 figure representing the cost of a full calendar year, whereas the FY17 figure only represented the cost of nine month. However, in the FY18 figure, the monthly cost exceeds \$25,000 USD and this is not explained or specified.</p>	<p>The 33% increase is due, as stated in the question, to the FY18 figure representing a full calendar year whereas the FY17 figure only represented the cost of nine months. FY18 expenses exceed \$25K a month due to the addition of \$100K in capital costs for incremental development to support additional functionality of the Root Zone.</p>

Ref #	Question / Comment	ICANN Response
81	<p>Request to continue funding the CCWG-Accountability -WS2 for FY18.</p> <p>The CCWG-Accountability Work Stream 1 (WS1) final report Recommendation 12 mandated that there be a WS2 to follow WS1 in order to complete work on a number of topics:</p> <p>“The CCWG-Accountability Work Stream 2 is focused on addressing those accountability topics for which a timeline for developing solutions may extend beyond the IANA Stewardship Transition. As part of Work Stream 2, the CCWG-Accountability proposes that further enhancements be made to a number of designated mechanisms:</p> <ul style="list-style-type: none"> <li>• Considering improvements to ICANN’s standards for diversity at all levels.</li> <li>• Staff accountability.</li> <li>• Supporting Organizations and Advisory Committee accountability.</li> <li>• Improving ICANN’s transparency with a focus on: <ul style="list-style-type: none"> <li>o Enhancements to ICANN’s existing Documentary Information Disclosure Policy (DIDP).</li> <li>o Transparency of ICANN’s interactions with governments.</li> <li>o Improvements to the existing whistleblower policy.</li> <li>o Transparency of Board deliberations.</li> </ul> </li> <li>• Developing and clarifying a Framework of Interpretation for ICANN’s Human Rights commitment and proposed Draft Bylaw.</li> <li>• Addressing jurisdiction-related questions, namely: “Can ICANN’s accountability be enhanced depending on the laws applicable to its actions?” The CCWG- Accountability anticipates focusing on the question of applicable law for contracts and dispute settlements.</li> <li>• Considering enhancements to the Ombudsman’s role and function.”</li> </ul> <p>Implementation of the WS1 recommendations into the ICANN</p>	<p>In its Draft FY18 Operating Plan and Budget, no budget was allocated to CCWG-Accountability Work Stream 2, as the original plan was to complete the work within FY17.</p> <p>ICANN understands that the community needs more time to complete the very complex task at hand with Work Stream 2, and acknowledges that the project has underspent during FY17. Based on the revised timing of the project, the ICANN PCST team has worked with the CCWG co-chairs and the ICANN budget owners to develop a FY18 Budget with the understanding that the total spend on the project will remain within the total original budget envelope allocated for this effort last year. As a reminder, these funds are funded from the reserve fund. The FY18 Budget estimate being included is \$ 3,097,000 based on a detailed analysis of the community driven activities and the ICANN support required to extend the project.</p> <p>This FY18 Budget will be included in the FY18 Operating Plan and Budget that will be presented to the ICANN Board for approval in June 2017.</p> <p><b>Description of change needed:</b></p> <p>The projected unused funds for CCWG-Accountability Work Stream 2 will be included in the final Operating Plan and Budget.</p>

Ref #	Question / Comment	ICANN Response
	<p>Bylaws revealed that there were two additional topics, Cooperative Engagement Process (CEP) and Guidelines for Good Faith Removal of a Director, which would have to be undertaken in WS2 for a total of 9 topics (WS2 requirements can be found in section 27.1 of the ICANN Bylaws).</p> <p>The CCWG-Accountability officially launched WS2 in July 2016 as part of the Transition budget and created individual sub-groups to address each of the WS2 topics, with an overall intent to finalize recommendations within a year, i.e. by June 2017.</p> <p>By the beginning of 2017, it had become clear that the CCWG-Accountability-WS2 would not be able to successfully complete all of its work by June 2017. The reasons for this include:</p> <ul style="list-style-type: none"> <li>• Completing the Transition and volunteer exhaustion – WS2 depended for the most part on the same volunteers as for WS1 and a number of these were still heavily involved in the oversight of the implementation of WS1 to ensure a successful transition on September 30th. Additionally, all volunteers needed to recharge after completing WS1 and the transition and for all intents and purposes the work on WS2 topics only began in earnest in the fall of 2016.</li> <li>• Complexity of the topics – Once the sub-groups began working in earnest on their topics some of these revealed themselves to be significantly more complex than originally anticipated for topics such as Diversity, Human Rights and Jurisdiction.</li> <li>• New working method – WS1 was essentially a plenary activity for the most part with plenary meetings on a weekly basis for more than a year. Given the topics for WS2 were well delineated it was agreed that it would be most effective to have individual groups for each of the topics prepare recommendations for the plenary to review.</li> </ul>	

Ref #	Question / Comment	ICANN Response
	<p>Although most of the participants were part of WS1 this new working method required adjustments by working group members, and during the ensuing transition work did not progress as quickly as hoped for. This working method also implied that as each topic was completed it would be put out for public consultation.</p> <ul style="list-style-type: none"> <li>• WS2 and the reality of public consultations – In line with the new working method the objective of having individual public consultations on sub-group recommendations was twofold – first it would provide the community with smaller documents on which public comments were sought vs aggregating 9 distinct topics into a single massive document such as the WS1 recommendations. Secondly it was hoped that this would speed up the overall process as topic recommendations could be finalized individually vs waiting to complete all of them simultaneously and risking re-opening certain recommendations which would have been completed earlier in the process. Overall this approach seems to have worked but the reality is that having a sub-group produce a draft set of recommendations on a given topic, getting these approved by the plenary, posting these for a 6 week public comment, summarizing, analyzing and responding to comments is a 4 to 6 month undertaking per topic minimum. As such the CCWG-Accountability-WS2 published for public comments its first set of draft recommendations on improving ICANN’s transparency on 21 February 2017. It is expected that at least six of the nine WS2 topics will have published draft recommendations for public consultation by ICANN 59. <p>The CCWG-Accountability-WS2 at its Face to Face meeting at ICANN 58 in Copenhagen considered this and concluded that:  “..... the CCWG discussed how to best finalize its work reports by the sub teams will be put to public comment and approved by the CCWG as they get ready, there will be a final public comment period only to</p> </li> </ul>	

Ref #	Question / Comment	ICANN Response
	<p>ask for comments on inconsistencies between the various individual reports. CCWG will reach out to the chartering organizations to recommend the same staggered approach to them. groups made progress, yet it is certain the group will not finish its work by June this year and extend its work beyond the end of the fiscal</p> <p>year 2017. A discussion on carrying forward resources to the next fiscal year has been initiated, but it is expected that the CCWG will stay within the budget initially proposed.”</p> <p>The CCWG-Accountability-WS2 has completed its first public consultation on its draft recommendations on improving ICANN’s transparency, currently has two additional sets of recommendations open for public consultation (Good Faith Guidelines and SOAC Accountability) and expects to publish the draft recommendations for the Human Rights Framework of Interpretation in early May. Several other topics are progressing well and it is expected that these will produce draft recommendations for public consultation in the coming months. Based on this the CCWG-Accountability, including its 270 members and participants, feels that it should complete its work by the end of FY18.</p> <p>As such the CCWG-Accountability is requesting that it be funded to continue its activities though the end of FY18 when it expects to have concluded its work. It is estimated that this extension including the Transition costs for FY17 would still be within the total original budget envelope allocated for the Transition.</p>	



## IT Projects

Ref #	Question / Comment	ICANN Response
6	<p>In the planned capital projects for FY18 (page 16), \$300,000 USD is allocated to the ICANN and At-Large website platforms enhancement. Upon investigation with ICANN staff, we now understand that this is a consolidation of other current expenses and is for a small support team to support the "Ruby on Rails" web development tool that is used for the main ICANN website and part of the At-Large website. We suggest that such expense not be labeled as if it were an expense requested by or for the benefit of a particular part of ICANN when it is only an internal IT decision to rationalize expenses.</p>	<p>This line item will be renamed to "Internal ICANN projects to ensure that ICANN.Organization and Atlarge.Organization websites remain up-to-date and relevant"</p> <p><b>Description of change needed:</b></p> <p>The line item will be renamed "Internal ICANN projects".</p>
17	<p>2) 3.1 Financial Overview (page 10) – Table (The Line items should be numbered for ease of reference): Technical Functions and IT appear related. However, IT has 47 more personnel than Technical function line and the roles are not contained in the DNS, GDD and IANA operations budget line, the question is, what roles are covered by IT?</p>	<p>IT functions include the operation of our data infrastructure (servers, network etc.), technical support for ICANN meetings, user support and development/maintenance of software services</p>
20	<p>5) 3.3 Table (page 16): On Computer Software and Equipment Description; What form of maintenance is planned for Salesforce when it is yet to be fully implemented as funds are earmarked for "Development &amp; Testing" under Computer Software another separate line item.</p>	<p>These funds cover two areas. 1) ongoing support for the existing Salesforce implementation including the GSE portal, and 2) support in FY18 for the new system after it goes live.</p>
23	<p>8) 3.5 Unfunded Potential FY18 Activities: When was the last IT Audit carried out in ICANN?</p>	<p>A full audit of IT procedures was performed in 2013. Follow-up reviews were performed in 2015 and again in 2017.</p>

Ref #	Question / Comment	ICANN Response
26	1) 3.2.2 IT Infrastructure and Service Scaling: Is this to be an outsourced facility or an ICANN facility?	Yes, this is an outsourced facility. All ICANN data centers are outsourced in order to maintain a cost-effective solution while ensuring the necessary resilience & to meet our defined service levels.
131	Portfolio 3.2.2: IT Infrastructure and Service Scaling Work towards a top-tier global IT infrastructure performing at 99.999% uptime and have ICANN recognized by the global community as having technical excellence and thought leadership will cost US\$18.2m. What is the rationalization for this 5 9's figure and related expenditure? Is it this a necessary level of performance for the tasks provided? Therefore, is this expenditure too high?	In its role in maintaining the security, stability & resilience of the Internet we believed that ICANN needs to be a leader, hence this goal. It should be realized that the 5 9's figure applies only to Tier 1 services that directly impact the community and not all services.

## KPI Definition and Structure

Ref #	Question / Comment	ICANN Response
35	<p>The overall KPIs are still weak for many objectives. Certain metrics are not clear and/or make little sense regarding the objectives they should be measuring.</p>	<p>The work performed by the ICANN Board, Community and Organization is uncommon and we have had to develop rather than copy our measures of value.</p> <p>The Organization continued to review and refine KPIs after the publication of the draft Operating Plan and after adoption by the Board. We are currently working on a systematic review of a selection of KPIs, which will be published on the KPI Dashboard in August. These updated KPIs will provide a better measure of the value delivered to the community. We will also publish them in a way that will allow viewers to interact with the published data and download the underlying data.</p> <p>Additional KPIs will be reviewed, updated, and published over the rest of FY18.</p>

Ref #	Question / Comment	ICANN Response
55	<p>1.1 Further Globalize and Regionalize ICANN Functions</p> <p>We recommend that the metrics used to measure the success of this strategic goal include the success of the implementation of the activities mentioned as action items. For example, a possible metric might be the specification of the number of recommendations per region that need to result from the examination of ICANN’s regional offices in support of ICANN globalisation, and ensuring the implementation of a certain number of them within a specific timeframe. Having as metric the number of remote participation session hours, the number of remote participants in ICANN meetings, and % of sessions with live interpretation, does not provide a full picture of the success of the activities mentioned as efforts towards globalising and regionalising ICANN functions.</p> <p>When looking at the portfolios, it is refreshing to see the amount of detail included in the description of how the 1.1.3 Language Services will be implemented, which includes specific action items and activities. We strongly recommend that 1.1.1 and 1.1.2 include the same level of detail, in order to understand the projects and activities that are going to be developed regarding those goals, especially 1.1.1, which includes the second highest budget allocation in this section (\$4 million).</p>	<p>GSE is consistently and regularly working on KPIs and metrics at both the broad department level, and the regional level to best measure not only activities carried out, but also the impact of those activities. There are new methodologies for measurement being put into place on an ongoing basis to ensure that we are able to capture the relevant data in order to form a measurable, robust, and repeatable metric of success.</p>

Ref #	Question / Comment	ICANN Response
56	<p>1.2 Bring ICANN to the World</p> <p>We would encourage ICANN to specify the number of global/regional engagement activities needed to show a balanced and proactive approach to regional engagement per region. We would also like to receive more details on these engagement activities. The expected stakeholder participation per region at ICANN should be clearly stated. As it is now, this does not serve as a metric of success, since there is no specific goal to be achieved. More details on Stakeholder Participation per region at ICANN meetings, to show a balanced approach to regional engagement, would be appreciated.</p> <p>As for stakeholder engagement, can the metrics used to measure the effectiveness of the hubs be clearly defined and monetised? With regard to Key Performance Indicators, please consider including capacity building webinars (themes, number of participants, % of live interpretation) and the events organised in the regions (GSE executive team).</p> <p>We recommend that any work plan involve the regional stakeholders and key actors, such as registry and registrar organisations.</p> <p>We believe that ICANN’s regional initiatives (i.e. LAC region and African region initiatives) should be included as part of the activities aimed at bringing ICANN to the world. The work of the different regional ICANN VPs should be included here, as an integral part of this effort, and their work should be reflected in the metrics.</p>	<p>Currently on the dashboard we do show a comparison of “number of activities” by Stakeholder group. However, this number is not necessarily representative of a balanced and proactive approach to regional engagement. We are considering ways to report, audience sizes, number of events, type of events, and the stakeholder outreach that occurred at the events in order to get a broader understanding of our outreach efforts. As the online dashboards mature in both substance and technology, we will be able to show this data in an interactive way. These KPIs will continue to be researched and new data points and metrics will be rolled out as they become available.</p> <p>Currently our reporting methodology includes a plan to publish engagement reports related to events the team is attending and participating in. Likewise, we are looking into methods to measure how outreach carries over into policy work, and hope to be able to report on that during FY18.</p>

Ref #	Question / Comment	ICANN Response
57	<p>1.3 Evolve Policy Development and Governance Processes</p> <p>Activity 3, mentioned in this section referring to remote participation from emerging regions, is also mentioned as an activity in Strategic Goal 1.2. Please make sure that the different departments are coordinated and do not duplicate efforts.</p> <p>We would like to receive some clarification regarding the action to 'Support one or more At-Large General Assemblies'. The metrics mentioned as a means of measuring success in achieving this goal are very ambiguous. More specifically:</p> <ul style="list-style-type: none"> <li>· Please clarify the meaning of representation and participation (of what and whom) in policy development governance processes;</li> <li>· Please provide an explanation of what Quantity of Activity Index and Productivity Index mean;</li> <li>· Please outline the expected results (goals) when using the Quantity of Activity Index and Productivity Index;</li> <li>· Quantity of Activity index vs Quantity of Activity and Productivity index: please explain in detail the key differences between these two, as it seems like doubling metrics.</li> </ul> <p>We would like to have more detail on the activities encompassed in 1.3.1 'Support Policy Development, Policy Related and Advisory Activities', which contribute to almost 74% of the total budget allocated to this Strategic Goal. The very vague description available does not provide enough information to understand how the budget will be spent.</p>	<p>This comment offers an excellent point about potential duplication of efforts. The Implementation of the strategic goals and their relative "KPIs" are intended to be cross-functional among the ICANN Organization teams. While some activities may appear to be overlapping, the ICANN Community Engagement and Policy Development Support teams coordinate their efforts with a special leadership/coordination group that meets monthly to discuss operational and strategic issues.</p> <p>At-Large General Assemblies are part of a multi-year strategy for the At-Large community and are held every five years. During intervening years, the different RALOs each hold one regional assembly to coordinate work and feed their activities and planning into the longer General Assembly cycle.</p> <p>The activities encompassing portfolio 1.3.1 include all the direct, facilitative, administrative and secretariat functions of the Policy Development Support staff at ICANN. The resources include staff travel and meeting expenses for all the ICANN communities, staff compensation, additional or supplemental professional services as needed for specific areas of work and other support and administrative expenses.</p> <p>Further information about the execution of the representation and participation, Quantity of Activity and Productivity index and the differences between the two can be found here - <a href="https://www.icann.Organization/progress">https://www.icann.Organization/progress</a>. The Policy Development Support Team is developing more detailed explanations of its work in this area and plans to expand its community wiki space to contain this information. Further collaboration with the community will be needed</p>

Ref #	Question / Comment	ICANN Response
		to help develop specific metrics and survey tools to help measure community satisfaction with this part of the strategic plan implementation.
58	<p>2.1 Foster and Coordinate a Healthy, Secure, Stable, and Resilient Identifier Ecosystem</p> <p>Please specify what the current service level targets are, or provide a reference for where to find them, mentioned in point 1 of the activities for this Strategic Goal.</p> <p>What is the % of Service Level goals that should be met for the delivery of services across multiple departments?</p>	<p>The service level targets are documented in the agreements between ICANN and the IETF, between ICANN and the RIRs and in the Naming Function Contract between ICANN and PTI. Those agreements can be found on the following website:</p> <p><a href="https://pti.icann.Organization/agreements">https://pti.icann.Organization/agreements</a></p>
59	<p>2.2 Proactively plan for changes</p> <p>Please provide information about (or a reference for) what the Identifier Technologies Health Index is, to facilitate a better understanding of the goal.</p>	<p>The Identifier Technologies Health Indicators (ITHI) initiative kicked-off at ICANN55 in Marrakech. The goal of ITHI is to develop metrics to measure the health of the Internet's unique identifier system that ICANN helps coordinate. As soon as those metrics are defined, the ICANN Organization (specifically, ICANN's Office of the CTO) will measure and track them over a substantive period of time to see the evolution of the "State of the Identifier Technology." Measuring the health of Internet identifiers helps fulfill ICANN's mission of ensuring that those identifier systems remain secure and stable. More information about the project is available at <a href="https://www.icann.Organization/ithi">https://www.icann.Organization/ithi</a>.</p>

Ref #	Question / Comment	ICANN Response
60	<p>2.3. Support the evolution of the domain name marketplace Please provide a description of (or a reference for) the Domain Name Marketplace Health Index. We do not believe that ICANN can measure the achievement of such a goal by simply 'publishing a twice yearly Domain Name Marketplace Health Indicators Report'. Publishing the results is only the way to show the results, but not to meet an established goal.</p>	<p>The goal of the Domain Name Marketplace Indicators effort is to evaluate wider marketplace trends focusing on (i) robust competition, (ii) consumer trust, and (iii) non-technical stability, using discrete, measurable criteria. ICANN staff are currently working with a community Advisory Panel to evaluate and identify measurable factors to serve as key performance indicators for the domain name marketplace. Information on the work being done can be obtained via the project's community Wiki at <a href="https://community.icann.Org/organization/display/projgtdmarkthealth/gTLD+Marketplace+Health+Index">https://community.icann.Org/organization/display/projgtdmarkthealth/gTLD+Marketplace+Health+Index</a>. ICANN's aim is to efficiently and cost-effectively collect and analyze data underlying these selected metrics, so that ICANN can continually measure and report to the community on the global marketplace. ICANN's staff and community will be able to use the resulting metrics to identify areas where ICANN should focus its work—be it through additional outreach, education, policy work, contractual changes, or other means.</p>
62	<p>3.2 Ensure Structured Coordination of ICANN's Technical Resources The only measure of success is that linked to availability/uptime. It would also be good to have a measure linked to the improvement in services and IT project delivery. This would also enable reporting against the intended status at the end of FY17. A 99.999% availability rate instead of the current 99.9% may be desirable. 99.9% is approximately 9 hours' interruption per year. 99.999% is 5 minutes' interruption per year. The underlying services are websites and other non-critical services (not the DNS), so the gap may be very costly. At the very least, this improvement should be targeted at some of the underlying services, though not necessarily all of them.</p>	<p>The Engineering &amp; Information Technology (E&amp;IT) team is working on a KPI dashboard that will include additional metrics on the E&amp;IT processes including delivery of projects. Expect to see something in FY18.</p>



Ref #	Question / Comment	ICANN Response
63	<p>3.3 Develop a globally diverse culture of knowledge and expertise, available to ICANN's Board, staff, and stakeholders</p> <p>KPI linked to % of achievement, but what % is considered a success, and where has the 'best practice benchmark metrics of global diverse culture' been defined? Is it simply where a person is from and how long they have been engaged that is used to measure diverse culture and knowledge?</p> <p>The KPIs remain quite vague, and unrelated to the interesting metrics provided on the Dashboard. If ICANN is serious about improving diversity, it should set targets for diversity within its staff and senior leadership. This could involve setting a maximum level of representation of a single region (such as 30%) in each category, and/or gender balance targets (note that this discussion is ongoing within the Diversity subgroup of WS2, but this does not prevent ICANN from being proactive).</p> <p>ICANN has indicated that it has been conducting an organisation-wide EFQM assessment. This is a very welcome development. ICANN should disclose a summary of the results, and indicate how the proposed FY18 plan addresses its conclusions.</p> <p>In addition, an EFQM assessment would provide a good metric for a KPI: what range of scores or awards is ICANN aiming for in FY18?</p>	<p>This KPI is about more than just diversity within the ICANN Community, Board, and staff. It is also about expertise. The Organization continued reviewing and refining this KPI after publishing the draft Operating Plan. The review and development schedule will continue after adoption by the Board. We will publish the updated KPI on the Dashboard in August. We believe the updated KPI is a better measure of the value delivered through the various training and development activities the Organization provides for the Board, staff and other stakeholders, while showing supporting diversity metrics. We will publish it on version 3 of the KPI Dashboard, which will be interactive and allow viewers to download the underlying data.</p>
64	<p>4.1 Encourage engagement with the existing Internet governance ecosystem at national, regional, and global Levels</p> <p>This section should be refined by clarifying the engagement strategy. Simply looking at an index does not create the possibility of assessing if ICANN's performance is meeting its standards or not. We would encourage ICANN to clarify whether its priorities for stakeholder engagement are to deepen relationships with stakeholders (% of 'Low' should decrease in the Dashboard data) or</p>	<p>The priority for this metric is to maintain and deepen engagement and relationships between ICANN and specific entities within the IG governance ecosystem. The priority is to consistently move stakeholders from low to higher levels of engagement. The graphs to represent this metric are being redesigned in the Dashboard version to be released in July. It is hoped that those charts will be easier to understand - both for what the priority is and whether we are successfully delivering against the metric.</p>

Ref #	Question / Comment	ICANN Response
	expand outreach (# of stakeholders qualified should increase by N%).	<p><b>Description of change needed:</b> Change will be in the dashboard description and new charts being developed.</p>
65	4.2 Clarify the role of governments in ICANN and work with them to strengthen their commitment to supporting the global Internet ecosystem. The measure of this is the increased # of GAC members attending ICANN public meetings, but the KPI Dashboard reflects GAC membership and participation. Success factor should be rewritten to reflect what is being reported.	The success factor will be revised to indicate not just increases in GAC membership but also in participation are being measured. In addition, we are planning for external expertise in our FY18 EFQM Assessment, with an application for recognition from EFQM in FY19.
66	<p>4.3 Participate in the evolution of a global, trusted, inclusive multistakeholder Internet governance ecosystem that addresses internet issues</p> <p>Even for this goal, the chosen metric is very weak and assumes the knowledge of what ICANN means when it refers to 'IG Ecosystem Evolution'. Is it linked to Internet governance content or its organisational structure?</p> <p>Furthermore, we fail to understand how such a sub-goal can be achieved, as it seems that there is no headcount and/or budget allocated to it.</p>	<p>The intent for this metric to be linked to Internet governance content; not Organizational structure. We will review the language of the metric to clarify the intent. In addition, we have reviewed the alignment of projects to portfolio so that there is a funded project supporting the portfolio.</p> <p><b>Description of change needed:</b> Change will be in the dashboard description and new charts being developed</p>

Ref #	Question / Comment	ICANN Response
67	<p>4.4 Promote role clarity and establish mechanisms to increase trust within the ecosystem, rooted in the public interest</p> <p>We would appreciate receiving more details on the goal to 'Assess current practices in light of the changing environment and adjust as needed'. The action as presented is too vague to be evaluated.</p> <p>'Ensuring that the safeguards role becomes an important part of the ICANN's organization portfolio' cannot be seen as a metric of any kind.</p> <p>Despite its headline containing the word 'clarity', the entire section lacks the clarity needed to provide adequate feedback.</p>	<p>ICANN Contractual Compliance continues to receive suggestions from community members to bring more clarity and transparency to the complaint processing and resolution and to bring more granularity of data to the reports published on ICANN.Orgанизation. The goal was noted to support the efforts to review, assess and implement the appropriate solution. ICANN reports on the actions taken in the contractual compliance annual report.</p> <p>As for the goal on safeguards role, the measures are 1) identifying, hiring and on-boarding consumer safeguards director; 2) engage with community and publish a report providing inventory of existing safeguards, identifying topics for community discussion, and informing the community of the role and activities.</p>
68	<p>5.1 Act as a Steward for public interest</p> <p>Acting as a steward for public interest should be one of ICANN's most relevant objectives. However, the way the work around this objective is presented in the FY18 Operating Plan and Budget is one of the most poorly conceived of the entire Plan. The metric associated with the objective is very confused. It also seems to imply that a percentage of ICANN decisions might not be 'rationalised based on common consensus-based definitions'.</p>	<p>This objective of the Organization has been part of the Operating Plan and Budget for multiple years and continues to evolve. As this objective matures, the Organization will evaluate the KPIs and will continue to try to identify additional metrics.</p>

Ref #	Question / Comment	ICANN Response
69	<p>5.2 Promote ethics, transparency and accountability across the ICANN community</p> <p>The heading for this strategic goal in the Draft FY18 Op Plan, and on the KPI Dashboard, is 'Promote Ethics, Transparency and Accountability Across the ICANN Community' but in the Five Year Operating Plan Update the heading is 'Develop and Implement a Global Public Interest Framework Bounded by ICANN's Mission'.</p> <p>The current metrics are informative, but could be greatly improved as they do not provide any view of the performance of the implementation. One suggestion would be to track the % of recommendations which have been implemented within 1 year/2 years/3 years of the adoption of the report.</p> <p>With reference to the Accountability and Transparency Mechanisms, the current metrics are mostly focused on timely responses and compliance with processes. We would also recommend the inclusion of the number of requests received over time through the different channels (DIDP, whistleblower, Ombudsman, Reconsideration, IRP, Community Powers, and Litigations) and their associated success rates. This would provide a view of how contentious the relationship with the community is. Once tracked over time, it might also provide interesting insights about how/where to improve the system. This section of the Plan would also strongly benefit from a community satisfaction survey programme rating, among other things, ICANN's accountability and transparency year on year.</p>	<p>The correct heading for the Strategic Goal 5.2 is 'Promote Ethics, Transparency and Accountability Across the ICANN Community' - the inadvertent cut/paste error will be fixed.</p> <p>In response to the additional comments, see below the questions and then our responses.</p> <ul style="list-style-type: none"> <li>- "One suggestion would be to track the % of recommendations which have been implemented within 1 year/2 years/3 years of the adoption of the report." – this is a useful suggestion and ICANN Organization will confirm its feasibility based on data available for prior implementations.</li> <li>- "With reference to the Accountability and Transparency Mechanisms, the current metrics are mostly focused on timely responses and compliance with processes. We would also recommend the inclusion of the number of requests received over time through the different channels (DIDP, whistleblower, Ombudsman, Reconsideration, IRP, Community Powers, and Litigations) and their associated success rates." Some of this information will be included in the Transparency Report and can be added into the dashboard, after some enhancements are made. The definition of "associated success rates" may require further discussion and definition.</li> <li>- "This section of the Plan would also strongly benefit from a community satisfaction survey program rating, among other things, ICANN's accountability and transparency year on year." While ICANN Organization acknowledges the usefulness of a community satisfaction survey, we also recognize that the establishment of a meaningful survey will take some time, particularly because perception measures are inherently inexact, and the value is in measuring the difference between the baseline and the following years.</li> </ul>

Ref #	Question / Comment	ICANN Response
		<p><b>Description of change needed:</b> The heading to "Promote Ethics, Transparency and Accountability Across the ICANN Community" will be corrected in the final Operating Plan and Budget.</p>
70	<p>5.3 Empower current and new stakeholders to fully participate in ICANN activities</p> <p>There is a need for clarity on the Public Interest Initiatives that ICANN plans to support and their expected outcomes. Currently this appears vague.</p> <p>The presence of satisfaction rates in the KPI is very welcome. It provides a very useful addition to the other metrics, which are volume measurements. Adding return rates (people who return to ICANN or take leadership positions one year after the courses) would provide an even better view of the relevance of these courses.</p>	<p>Under Objective 5.3., FY18 support for community-led initiatives that further and/or relate to the broader public interest within ICANN's remit include:</p> <ul style="list-style-type: none"> <li>• Public interest discussion groups <ul style="list-style-type: none"> <li>o Expected outcome: Community establishes framework and approach for how to apply the concept of the public interest within ICANN's remit. Increased stakeholder diversity and participation in these discussions are key elements. These efforts directly relate to and are in support of portfolio 5.1.2 –Public Interest Decision Making.</li> </ul> </li> <li>• Human rights discussions <ul style="list-style-type: none"> <li>o Expected outcome: WS2 on Human Rights calls for the ICANN Organization to carry out an internal Human Rights Impact Assessment. The assessment would produce actionable recommendations to improve the impacts of the ICANN Organization conducting daily business operations. The scope would be limited to the ICANN Organization, not the community or its policy-making processes.</li> </ul> </li> <li>• Diversity discussion groups <ul style="list-style-type: none"> <li>o Expected outcome: Series of community-wide surveys on all elements of diversity identified by the WS2 Diversity subgroup, aimed at informing ongoing discussions on matters related to diversity across</li> </ul> </li> </ul>

Ref #	Question / Comment	ICANN Response
		<p>ICANN.</p> <p>The Organization continued reviewing and refining KPIs after publishing the draft Operating Plan. The review and development schedule will continue after adoption by the Board. We will publish the updated KPI on the Dashboard in August. We believe the updated KPI is a better measure of the value delivered through public interest related activities. We will publish it on version 3 of the KPI Dashboard, which will be interactive and allow viewers to download the underlying data.</p>
71	<p>1.4 Bring ICANN to the World</p> <p>As for stakeholder engagement, can the metrics used to measure the effectiveness of the hubs be clearly defined and monetised? With regard to Key Performance Indicators, please consider including capacity building webinars (themes, number of participants, % of live interpretation) and the events organised in the regions (GSE executive team).</p>	<p>At the start of FY18, GSE will be publishing work plans for each of the regions, including goals and metrics that are being measured in each of the regions. Webinar participation will be included as a part of this, as well as other capacity building activities that GSE, as a team, is responsible for. Additionally, the work plans will include the community regional strategy objectives for the upcoming Fiscal Year, as well as the ongoing work of the regional engagement teams.</p>
72	<p>1.5 Evolve Policy Development and Governance Processes</p> <p>Regarding the action to 'Support one or more At-Large General Assemblies'.</p> <ul style="list-style-type: none"> <li>• Please clarify the meaning of representation and participation (of what and whom) in policy development governance processes;</li> <li>• Please provide an explanation of what Quantity of Activity Index and Productivity Index mean;</li> <li>• Please outline the expected results (goals) when using the Quantity of Activity Index and Productivity Index;</li> <li>• Quantity of Activity index vs Quantity of Activity and Productivity</li> </ul>	<p>This comment offers an excellent point about potential duplication of efforts. The Implementation of the strategic goals and their relative "KPIs" are intended to be cross-functional among the ICANN Organization teams. While some activities may appear to be overlapping, the ICANN Community Engagement and Policy Development Support teams coordinate their efforts with a special leadership/coordination group that meets monthly to discuss operational and strategic issues.</p> <p>At-Large General Assemblies are part of a multi-year strategy for the At-Large community and are held every five years. During intervening</p>

Ref #	Question / Comment	ICANN Response
	<p>index: please explain in detail the key differences between these two, as it seems like doubling metrics.</p> <p>We would like to have more detail on the activities encompassed in 1.3.1 'Support Policy Development, Policy Related and Advisory Activities', which contribute to almost 74% of the total budget allocated to this Strategic Goal.</p>	<p>years, the different RALOs each hold one regional assembly to coordinate work and feed their activities and planning into the longer General Assembly cycle.</p> <p>The activities encompassing portfolio 1.3.1 include all the direct, facilitative, administrative and secretariat functions of the Policy Development Support staff at ICANN. The resources include staff travel and meeting expenses for all the ICANN communities, staff compensation, additional or supplemental professional services as needed for specific areas of work and other support and administrative expenses.</p> <p>Further information about the execution of the representation and participation, Quantity of Activity and Productivity index and the differences between the two can be found here - <a href="https://www.icann.Organization/progress">https://www.icann.Organization/progress</a>. The Policy Development Support Team is developing more detailed explanations of its work in this area and plans to expand its community wiki space to contain this information. Further collaboration with the community will be needed to help develop specific metrics and survey tools to help measure community satisfaction with this part of the strategic plan implementation.</p>
73	<p>2.3 Foster and Coordinate a Healthy, Secure, Stable, and Resilient Identifier Ecosystem</p> <p>Please specify what the current service level targets are, or provide a reference for where to find them, mentioned in point 1 of the activities for this Strategic Goal.</p> <p>What is the % of Service Level goals that should be met for the delivery of services across multiple departments?</p>	<p>A monthly updated snapshot of this can be found on <a href="https://www.icann.Organization/progress">https://www.icann.Organization/progress</a> under Goal 2.1. This represents an aggregate of SLTs covering IANA operations, GDD operations, customer service, and the New gTLD Program.</p>

Ref #	Question / Comment	ICANN Response
74	<p>2.4 Proactively plan for changes Please provide information about (or a reference for) what the Identifier Technologies Health Index is, to facilitate a better understanding of the goal.</p>	<p>The Identifier Technologies Health Indicators (ITHI) initiative kicked-off at ICANN55 in Marrakech. The goal of ITHI is to develop metrics to measure the health of the Internet's unique identifier system that ICANN helps coordinate. As soon as those metrics are defined, the ICANN Organization (specifically, ICANN's Office of the CTO) will measure and track them over a substantive period of time to see the evolution of the "State of the Identifier Technology." Measuring the health of Internet identifiers helps fulfill ICANN's mission of ensuring that those identifier systems remain secure and stable. More information about the project is available at <a href="https://www.icann.Organization/ithi">https://www.icann.Organization/ithi</a>.</p>
75	<p>2.3. Support the evolution of the domain name marketplace. Please provide a description of (or a reference for) the Domain Name Marketplace Health Index.</p>	<p>The goal of the Domain Name Marketplace Indicators effort is to evaluate wider marketplace trends focusing on (i) robust competition, (ii) consumer trust, and (iii) non-technical stability, using discrete, measurable criteria. ICANN staff are currently working with a community Advisory Panel to evaluate and identify measurable factors to serve as key performance indicators for the domain name marketplace. Information on the work being done can be obtained via the project's community Wiki at <a href="https://community.icann.Organization/display/projgtdmarkthealth/gTLD+Marketplace+Health+Index">https://community.icann.Organization/display/projgtdmarkthealth/gTLD+Marketplace+Health+Index</a>. ICANN's aim is to efficiently and cost-effectively collect and analyze data underlying these selected metrics, so that ICANN can continually measure and report to the community on the global marketplace. ICANN's staff and community will be able to use the resulting metrics to identify areas where ICANN should focus its work—be it through additional outreach, education, policy work, contractual changes, or other means.</p>



Ref #	Question / Comment	ICANN Response
77	<p>3.3 Develop a globally diverse culture of knowledge and expertise, available to ICANN's Board, staff, and stakeholders</p> <p>KPI linked to % of achievement, but what % is considered a success, and where has the 'best practice benchmark metrics of global diverse culture' been defined? Is it simply where a person is from and how long they have been engaged that is used to measure diverse culture and knowledge?</p> <p>An EFQM assessment would provide a good metric for a KPI: what range of scores or awards is ICANN aiming for in FY18?</p>	<p>This is an area where we have continued to review and refine the way we measure success. We will be publishing an updated Dashboard with significantly improved measure of success in August.</p>
78	<p>4.1 Encourage engagement with the existing Internet governance ecosystem at national, regional, and global Levels</p> <p>We would encourage ICANN to clarify whether its priorities for stakeholder engagement are to deepen relationships with stakeholders (% of 'Low' should decrease in the Dashboard data) or expand outreach (# of stakeholders qualified should increase by N%).</p>	<p>The priority for this metric is to maintain and deepen engagement and relationships between ICANN and specific entities within the IG governance ecosystem. The priority is to consistently move stakeholders from low to higher levels of engagement. The graphs to represent this metric are being redesigned in the Dashboard version to be released in July. It is hoped that those charts will be easier to understand - both for what the priority is and whether we are successfully delivering against the metric.</p> <p><b>Description of change needed:</b> Change will be in the dashboard description and new charts being developed</p>

Ref #	Question / Comment	ICANN Response
79	<p>4.3 Participate in the evolution of a global, trusted, inclusive multistakeholder Internet governance ecosystem that addresses internet issues</p> <p>Even for this goal, the chosen metric is very weak and assumes the knowledge of what ICANN means when it refers to 'IG Ecosystem Evolution'. Is it linked to Internet governance content or its organisational structure?</p>	<p>The intent for this metric to be linked to Internet governance content; not Organizational structure. We will review the language of the metric to clarify the intent. In addition, we have reviewed the alignment of projects to portfolio so that there is a funded project supporting the portfolio.</p> <p><b>Description of change needed:</b> Change will be in the dashboard description and new charts being developed.</p>
80	<p>4.4 Promote role clarity and establish mechanisms to increase trust within the ecosystem, rooted in the public interest</p> <p>We would appreciate receiving more details on the goal to 'Assess current practices in light of the changing environment and adjust as needed'. The action as presented is too vague to be evaluated.</p>	<p>ICANN Contractual Compliance continues to receive suggestions from community members to bring more clarity and transparency to the complaint processing and resolution and to bring more granularity of data to the reports published on ICANN.Organization. The goal was noted to support the efforts to review, assess and implement the appropriate solution. ICANN reports on the actions taken in the compliance annual report.</p> <p>The Organization continues to review and refine the KPIs. An update is scheduled for August which will be interactive and allow viewers to download the underlying data. The updated KPI will provide improved clarity and measure of the value delivered through Contractual Compliance.</p>
100	<p>5. Global engagement appears to once again to be generously funded yet the KPI's are lacking. What are we getting for this money? What are the deliverables. It's fairly easy to see the expense, what is not so clear to see are the goals, benefits and desired results.</p>	<p>See response to the GNSO and ccNSO SOP comments regarding KPIs, goals and benefits of engagement, but please note that the Organization continued revising, reviewing, and refining KPIs after publishing the draft Operating Plan. GSE will be continuously reviewing, improving, and updating our KPIs throughout FY18. We intend to identify and present better measures of the value delivered through GSE activities. We will be finalizing, and publishing work plans and new measures at the start of the Fiscal Year, additionally as the KPI dashboards mature further we will be publishing our metrics on</p>

Ref #	Question / Comment	ICANN Response
		subsequent versions of the KPI Dashboard (version 3 and beyond). These dashboards will be interactive and allow users to download underlying data.

## Policy Development

Ref #	Question / Comment	ICANN Response
87	<p>• The GNSO Council notes with concern that the FY18 budget, as in prior years, places a lower priority on resources supporting Policy Development versus other initiatives and programs. In this context, priority is measured by total budget allocation, YoY growth projections, and FTE headcount. We reiterate our position from last year that supporting policy development and the technical coordination of the Domain Name System are enumerated in ICANN's Mission and Bylaws.<sup>3</sup> The GNSO Council believes that scarcity of Policy Staff and other resources are a challenge to its ability to meet its objectives. And that as an organization, ICANN is particularly vulnerable to Staff turnover and the loss of institutional knowledge in this area.</p>	<p>Staffing for the GNSO community is planned to continue at generally previous levels for FY18 with a couple of professional service positions converting to full time staff. ICANN senior staff work with the Executive and HR teams to engage in succession planning efforts, staff retention and resourcing not only within the Policy Development Support Team but across all ICANN departments. ICANN Organization is mindful of the critical core Organizational work supported by the Policy Development Support Team. When necessary the Policy Development Support Team has the ability to bring on professional support services to supplement full time staff on issues of particular expertise that are needed by PDP and other working groups.</p> <p>See also Ref# 96 below.</p>
96	<p>As to the FY18 Budget and Operating Plan:</p> <p>1. By my calculation the GNSO, and member components, account for approximately 98.2% of ICANN's income. Yet year after year, support for core operations, policymaking and research at the GNSO is level funded or worse. This year is no different, although the portfolio centered reporting structure makes it difficult to give specific numbers.</p> <p>ICANN can best be described as a mid sized international non-profit corporation. Our policy development, based principally within the GNSO, although extensive for an organization of</p>	<p>Not clear what are the specific circumstance of the "rejected" request areas mentioned in this comment. Each year every ICANN Organization department is called upon to plan for the activities in the coming year. ICANN Organization recognizes that this is a challenge, as the yearly issues and "hot topics" can change between the budget planning process period and the actual time that resources are needed. Annually, the Policy Development Support team has a specific amount of resources categorized as PDP support set aside in anticipation of these eventualities.</p> <p>The Policy Development Support function is well-managed and in generally is able to match available resources with necessary activities. Through its internal coordination and collaboration with the Finance Team, the Policy</p>

Ref #	Question / Comment	ICANN Response
	<p>this size, is actually quite inexpensive as policy work is largely the province of volunteers. On occasion, though, as the CCWG on Accountability illustrated, outside expertise needs to be retained on a paid basis to support the Working Groups so they can deliver the type of professional outcome this organization and community needs and deserves.</p> <p>Recognizing this, a request was made for the following expenditure (page 18 of Proposal) in this budget cycle:</p> <p>--</p> <p>Additional FY18 funding for special professional services assistance in support of certain ccNSO and/or GNSO PDPs currently underway. This may take the form of some special advice, expertise or data needed to advise the PDP group in its formulation of a policy proposal to the Board.</p> <p>--</p> <p>The budgeted amount requested was \$100,000. This out of a total ICANN budget of \$142,800,000. This request was rejected. I find that unconscionable and would ask staff and the Board to reconsider this decision. I feel very strongly about this line item proposal. It is needed. Unless bound by my Support Group to support this budget, I would be inclined to favor rejecting the entire budget when it comes back to the GNSO Council if this amount is not restored to the budget prior its final adoption.</p> <p>The amount may be small but the principle is not. Close to \$70 million is being budgeted by ICANN for personnel, over \$27 million for professional services, yet \$100,000 can not be found</p>	<p>Development Support Team ensures that needed support and research are available when needed. For example, presently in FY17, the staff is coordinating to make available the necessary capability to conduct unexpected legal research for a GNSO PDP Working Group (see RDS PDP WG referenced in Ref # 119 below) that had not been specifically expected.</p> <p>Additionally, the Policy Development Support Team has the capability, in any budget year, to make special requests when it appears budgeted funds may be exceeded or require re-allocation. For FY18, the ICANN Finance and Operations teams are in the process of finalizing the design of a consistent Organization-wide process that will enable ICANN staff teams to submit specific detailed documentation for additional budget requests during the year if additional support becomes necessary.</p> <p>Recognizing that FY18 may be a particularly challenging resource year, an additional \$50,000 has been identified to address potential situations where PDP special advice or particular expertise may be needed. The Finance and Policy Teams will coordinate every quarter in FY18 to determine what the resource needs may be for the following quarter.</p> <p><b>Description of change needed:</b></p> <p>\$50,000 will be added to the final Operating Plan and Budget.</p>

Ref #	Question / Comment	ICANN Response
	<p>to provide professional expertise, as needed, for the PDP's staffed by hundreds of hard working volunteers? Policy development is a CORE function at ICANN and this request is essential to improving policy output. There are times when a PDP needs to reach out externally to obtain expertise not readily available within the group: the ability to purchase a study, a professional opinion or other related expertise is essential at times like these. To reject this small but needed expenditure that supports ICANN's CORE function simply is bad policy at a bad time. PDP's must be given the ability to obtain outside expertise, on a paid basis, as needed. The amount requested is a small amount, but it relates directly to the quality of policy output and with four major GNSO PDP's in current operation this CORE request needs to be prioritized and approved. Now.</p>	
127	<p>Portfolio 1.3.1: Policy Development, Policy-Related and Advisory Activities  ICANN is projected to spend US\$6.7m on the support of policy development activities. This represents approximately 5% of ICANN's funding. On what basis is that proportion determined? The RySG believes that the adequate and comprehensive funding for this area is critical because policy development is one of ICANN's core and most important functions.</p>	<p>For an explanation of where resources for Portfolio 1.3.1 are targeted, see Ref # 57 above. ICANN Organization does not otherwise budget its resources based on proportional percentages. Perhaps it should. This area should be a topic for future organization strategic discussions.</p>

## Reserve Fund

Ref #	Question / Comment	ICANN Response
11	<p>The BC notes that Reserve is less than 50% of 12-month operating cost, which is not in compliance with standard corporate practices and ICANN's Funding Policy (it would be good to have a reference to this policy). As such, BC recommends that bringing Reserve Fund to tolerable level of 100% of preceding 12- month operating cost should be prioritized in FY18. In addition, Auction proceeds should be reserved pending community decision on how to use those funds. The auction proceeds should not be available for operating costs.</p>	<p>ICANN's investment policy indicates that it should maintain a Reserve Fund equivalent to 1 year (12 months) of operating expenses. The Reserve Fund is currently below that level.</p> <p>A reference to ICANN's Reserve Fund policy will be added in the final Operating Plan and Budget.</p> <p><b>Description of change needed:</b></p> <p>A reference to ICANN's policy will be added in the final Operating Plan and Budget.</p>
109	<p>C. The Reserves</p> <p>The IPC appreciates the ICANN's organization's recognition of our concerns regarding the state of ICANN's reserve fund as expressed in the GNSO open meeting in Helsinki and in our comments regarding the FY17 Operating Plan and Budget. Currently, IANA Transition Project Costs are reimbursed even 6 months for the preceding 6 months. (1)</p> <p>Now that the IANA Transition has occurred, it is imperative that ICANN demonstrate to the world that it is fiscally responsible and adheres to best business practices including prudent budget oversight. This includes adhering to nonprofit industry standards regarding reserve funds. The current standard suggests that reserves should be in sufficient amounts to cover 90- 110% of a single operational year. This is considered a benchmark of good</p>	<p>The ICANN Board has identified fiscal responsibility as a top FY18 priority and specifically identified the reserves as a top concern. The Organization agrees that best practice for non-profits is to have sufficient reserves to cover 90- 110% of a single operational year and that this is a benchmark of good nonprofit governance. There is a Board working group tasked with developing a plan for replenishment of the ICANN Reserves. Staff will monitor the outcome of the working groups in hopes of incorporating any decision into the FY19 Operating Plan and Budget process.</p> <p>See also response to comment #11.</p>

Ref #	Question / Comment	ICANN Response
	<p>nonprofit governance and the IPC is pleased to see that ICANN operations and the Board are taking the matter seriously. IPC notes that the ICANN Board identified fiscal responsibility as a top FY18 priority during an open meeting at ICANN58 and specifically identified the reserves as a top concern.</p> <p>The FY18 Budget projects the Reserve Fund at \$57m by June 30, 2017 and \$53m by June 30, 2018.(2) This is not encouraging as there is a decrease of \$4m rather than a flattening or increase. IPC is concerned that there is no a published plan for replenishment. As the IPC learned at ICANN58, there is a Board working group tasked with developing a plan. We urge the Board to make this a top priority and to publish the plan as soon as possible but no later than ICANN59. This will enable the community to have adequate time to review the plan prior to the development and approval of the FY19 budge as it is too late to have impact on the FY18 Budget.</p> <p>1 FY18 Budget Section 6.3, page 28 2 FYI 18 Budget Section 6.3, page 28</p>	
122	<p>Balanced Budget: The RySG is pleased to see that the proposed expenses do not exceed the projected revenue as has been the case in some prior years. However, we also note that ICANN reserves are not sufficient to cover the ICANN Board’s target of 1 year of operating expenses. Accordingly, please confirm that the 1 year target is no longer in place. However, if it or a replacement target is remains in place, the RySG proposes that ICANN budgets for an operating surplus such that ICANN is able to replenish the</p>	<p>As the number of registries and registrars is stabilizing and ICANN continues to increase its operational excellence and effectiveness, it is expected that the Organization's resource would also stabilizes and ICANN will continue engaging with the community to appropriately prioritize the activities of the Organization in support of its mission.</p>



Ref #	Question / Comment	ICANN Response
	reserves and make concrete progress towards the Board's one year or now current target for reserve funds.	

**Strategic / Operating Priorities**

Ref #	Question / Comment	ICANN Response
39	It would be interesting to understand how the approach of the new CEO has impacted and will impact the current five-year Plan, taking into account that certain priorities have shifted and that has been reflected in ICANN's organisational structure.	An updated process is being developed. We intend to present details of an updated and integrated approach that addresses both strategic and operational planning at ICANN60, in October and November 2017. This will include improvements to the Five-Year Operating Plan document, as required in the updated Bylaws, and consequent changes to the fiscal year Operating Plan and Budget.
129	Portfolio 3.3.5: Global Operations Is \$10.2M for Global Operations a cost-effective expense? The RySG suggests that this may be an area where cost benefit analysis would be a good idea. More budget detail is needed.	The primary expenses in Portfolio 3.3.5 are for rent and facilities costs for ICANN's Hub and Engagement Centers as well personnel and other costs for the Office of the CEO.

Ref #	Question / Comment	ICANN Response
130	<p>Portfolio 2.2.1 – 2.2.3: Proactively Plan for Changes in the Use of Unique Identifiers</p> <p>It is proposed to spend US\$6m on 10 people working on Identifier Evolution, Technical Reputation and Observing, Assessing and Improving internet identifier SSR. This figure seems particularly high. Does it need to be or could it be managed more tightly? The RySG would appreciate more complete and clear rationalisation for the purpose and quantum of this expenditure.</p>	<p>Ensuring the stable and secure operation of the Internet's unique identifier systems is core to ICANN's remit. The ability to do this requires ICANN, both the Organization and the community, to be aware not only of existing threats, risks and opportunities but to also be forward looking to how changes in Identifier technology may impact the identifier system's secure and stable operation both in the negative or positive sense. The ICANN Organization receives many requests for better understanding and more data driven analysis of matters related to its mission. Meeting these requests requires dedicating the necessary talent and resources to that purpose.</p> <p>To the question of whether there may be more cost-effective manners to this, this is always a concern in operating any function. The ICANN Organization makes every effort to operate in a cost effective and efficient manner in all areas, including in this one. There are regular reviews of ICANN's security, stability and resiliency (SSR) work, with one such community-based review ongoing at this moment (see <a href="https://community.icann.Org/organization/display/SSR/SSR2+Review">https://community.icann.Org/organization/display/SSR/SSR2+Review</a> for details). Much of the work undertaken by the ICANN Organization related to SSR comes from the previous review and we expect that current review will allow the ICANN Organization to once again ensure that the work we are doing meets the requirements of the mission.</p>

Other / General

Ref #	Question / Comment	ICANN Response
1	<p>The At-Large Advisory Committee (ALAC) thank the ICANN Chief Financial Officer and his team for the improvements in clarity made in the 2018 Fiscal Year (FY18) Operating Plan and Budget.</p>	<p>Thank you for this feedback.</p>
9	<p>The BC is pleased to provide comments on the Draft ICANN FY18 Budget Proposal. It notes the incorporation of the FY18 Public Technical Identifier (PTI) Budget, which was approved in January 2017 by the PTI Board.</p> <p>The BC commends the ICANN Budget management team for continuous improvement in the provision of comprehensive and granular budget details of its expected action plans. It also notes the quarterly financial reporting as a good management practice.</p>	<p>Thank you for this feedback.</p>
12	<p>A major priority of the BC is to make the collection and publication of data a priority, and that the Board and CEO commit to expeditiously providing the public with unfettered, routine access to raw, unfiltered data related to ICANN’s mission<sup>1</sup>. This includes access to compliance data that help address abuse issues. Having looked carefully at the Budget proposal, it is not clear where the Open Data Initiative (ODI) would be funded though David Conrad in his presentation to BC in Copenhagen indicated that \$200,000 have been earmarked for the project. While we seek clarity on this; the BC requests that this initiative be reflected as a budget line item (in line with the principle of transparency) and should be properly funded to meet stakeholders’ expectations.</p> <p><sup>1</sup> See Letter from the CSG to Göran Marby, Steve Crocker and the ICANN Board</p>	<p>The expenses for the Open Data Initiative are located in portfolio 2.2.1, Identifier Evolution, in the FY18 budget: please see page seven of <a href="https://www.icann.Organization/en/system/files/files/proposed-opplan-budget-portfolio-project-fy18-08mar17-en.pdf">https://www.icann.Organization/en/system/files/files/proposed-opplan-budget-portfolio-project-fy18-08mar17-en.pdf</a> . There is already a specific line item in the budget (as part of the Identifier Evolution portfolio) for project ID 160556, FY18 Ongoing Open Data Pilot, funded for \$400,000 as shown in that budget document: \$200,000 for administrative expenses and \$200,000 for personnel expenses. We believe this amount of funding to be adequate and appropriate for the pilot of the Open Data Initiative for FY18. The \$200,000 for administrative expenses is designated for software license fees and/or software development: we expect a combination of commercial software and custom integration will be necessary to make the various data sets available (whether by API, file transfer, or other means). Regarding the personnel expenses, most of one engineer's time will be dedicated to Open Data in FY18. In addition, we are also engaging a</p>

Ref #	Question / Comment	ICANN Response
	<p>&lt;<a href="https://www.icann.org/en/system/files/correspondence/csg-to-marby-et-al-05jan17-en.pdf">https://www.icann.org/en/system/files/correspondence/csg-to-marby-et-al-05jan17-en.pdf</a>&gt; Note that we are seeking access to datasets – that is, raw data, measurements or analytics that offer insight into the operation of the identifier system – personally identifiable information and business proprietary information should be excluded.</p>	<p>consultant part time to assist with the effort, specifically to help with inventorying data sets, and developing requirements for and evaluating software.</p>
14	<p>BC supports the immediate establishment of an internal Control Audit function in ICANN to ensure the existence and effectiveness of internal controls across ICANN. It thinks this is long overdue.</p>	<p>The Internal Control Audit will be a new department and is currently on the unfunded list of the draft budget. The plan is that if and when funds become available, this function will be started. However, it is on the top of the unfunded list with high priority.</p>
16	<p>Furthermore, the BC would like more clarity provided on the following observations:            1) 3.1 Financial Overview (page 9): "ICANN Ops excludes Depreciation and Bad Debt of ~\$8m". What is the nature of the bad debt?</p>	<p>The \$8M expense is related to depreciation of fixed assets. On the basis of the historical trend of uncollectible receivables, accounting standards require companies to create a "reserve for bad debt" to cover for the potential loss associated with uncollected receivables. ICANN complies with this standard practice. Based on the current level of this reserve and the historical trend of uncollectible receivables, the level of bad debt on reserve is sufficient and therefore no increase in the reserve for bad debt is budgeted for in FY18.</p>
18	<p>3) 3.1 Financial Overview (page 10) – Ombudsman: What constitutes increase in Ombudsman budget over FY17 with the same head count?</p>	<p>The activities of the Ombudsman’s Office in FY18 includes additional budget allocation in light of the changes to the Ombudsman’s role set forth in the recently adopted Bylaws relating to Reconsideration Requests. It is anticipated that the Ombudsman might utilize legal and other services that previously the Ombudsman’s role did not call for.</p>

Ref #	Question / Comment	ICANN Response
27	1) 3.3.2 ICANN Technical University: There is no project under ICANN Technical University; why is it still part of ICANN portfolios as it has remained like this over the years?	A structured project is planned for the ICANN Technical University program in FY18. This is an inexpensive activity and the planned costs fall below \$100,000 that is the level of granularity for the budget. This gives the impression that no activity is planned. But we will continue our speaking programs and integrate with other work intended to improve staff's knowledge using a structured syllabus.
28	1) 4.3.1 Support Internet Governance Ecosystem Advancement: There is no funding allocation. Though not ICANN major remit but as minor and quite relevant, why is there nothing here?	<p>We have reviewed the alignment of the FY18 projects to the FY18 portfolios - to ensure that there is a funded project under this portfolio.</p> <p><b>Description of change needed:</b></p> <p>The alignment of projects to portfolios has been reviewed and adjusted.</p>
29	1) 7.14: Replace FY17 with FY18	<p>We will revise section 7:14 of the Operating Plan and Budget to replace FY17 with FY18.</p> <p><b>Description of change needed:</b></p> <p>FY17 will be replaced with FY18 in the final Operating Plan and Budget.</p>
30	Finally to enhance readability and to comply with standard practice, all acronyms should be defined before they are used for the first time in any ICANN document.	<p>We agree with this feedback. We will review the documents and define all acronyms the first time they are mentioned in a document.</p> <p><b>Description of change needed:</b></p> <p>Acronyms will be spelled out the first time they appear in the final Operating Plan and Budget and a glossary will be included in the appendix.</p>

Ref #	Question / Comment	ICANN Response
32	<p>We are grateful for the opportunity to comment on the ICANN FY18 Operating Plan and Budget. We would like to acknowledge once again the improvements made in the plan's presentation and structure compared to previous years, and we appreciate that many of the working group's comments have been taken on board over the past few years. We also believe that the Dashboard is a major improvement, which could help the community to measure ICANN's progress against its objectives and various projects.</p> <p>At the same time, we would respectfully like to highlight the following issues:</p>	<p>Thank you for this feedback.</p>
38	<p>The provisions for the contingency fund should be more carefully formulated.</p>	<p>The description below will be inserted in the document to help understanding.</p> <p>As a matter of precision, ICANN does not have a contingency fund. A contingency budget line is included every year in the total operating expenses. This contingency line effectively represents an amount of budgeted expenses unallocated to specific activities or departments. There are no funds accumulated or dispersed as a result of the contingency existing. Assessing the predictability of funding and expenses is a subjective exercise. The funding results from market forces which are challenging to identify and furthermore quantify. More importantly, ICANN's funding is not predictable, as it is dependent on the DNS marketplace, thus subjecting the Organization to being fully exposed to negative variations.</p> <p>In addition, as ICANN has continuously developed its operating plan and budget earlier and earlier, the accuracy of both the scope of activities and the precision of estimates is increasingly challenging, and the contingency allows us to fund activities that may not have been foreseen or that have been estimated at lower costs than reality.</p>

Ref #	Question / Comment	ICANN Response
		<p>Separately, the contingency is designed to allow for contingent expenses, such as litigation or litigation prevention costs, which are unpredictable and can be significant. For the reasons above, a contingency item in budgets is a best practice and a necessity.</p>
42	<p>This paper is divided into two sections, the first one presenting the general comments and the feedback on the financial overview, the second one with the feedback by objective. It is also complemented by an Annex which includes only the list of points to be clarified by ICANN. It is worth to highlight that the working group expects ICANN both to provide extra information on the points listed in the Annex and to address the considerations contained in this paper.</p>	<p>Responses will be/have been provided on each note in the paper and annex. Please see responses to each point in this staff report.</p> <p><b>Description of change needed:</b></p> <p>A description will be inserted in the final Operating Plan and Budget to help understanding.</p>
50	<p>Last but not least, we recommend optimising the expenditure for professional services, as this represents almost half the amount spent on personnel.</p>	<p>The ICANN Organization is careful in its use of professional services. Professional services Organizations are primarily engaged when we have a temporary need for a particular expertise. When we have a longer term need for expertise we create staff roles, as this is more cost effective. In other cases, we develop partnerships with outsourcing organizations that can provide us with a large pool of skilled workers at competitive rates. One example of this approach is our partnership with an IT outsourcing provider, Zensar.</p>



Ref #	Question / Comment	ICANN Response
53	<p>The table on page 18 shows rejected projects. This includes refusal of additional legal resources in non-US locations (see extract from chart below). The table on page 18 shows rejected projects. This includes refusal of additional legal resources in non-US locations (see extract from chart below).</p> <p>Considering the upcoming GDPR (General Data Protection Regulation) in Europe, we would foresee, and strongly recommend, budgeting for additional legal resources with knowledge of the European jurisdiction in 2018.</p>	<p>Note that this additional personnel expense might still be considered during FY18 if it becomes essential. However, as various types of non-U.S. related issues might arise throughout the fiscal year, using outside counsel with expertise in specific jurisdictions where individual issues might arise could be more efficient and cost-effective at the outset than adding one or more full time employees. If such outside legal advice is required, the costs will be covered as general legal expenses.</p>
89	<p>Thank you for the opportunity to comment on ICANN's FY18 Operating Plan and budget. Although a member of the GNSO Council, Chair of the NCSG Finance Committee and the NCSG Treasurer these comments are made solely in my personal capacity and do not necessarily reflect the views of these groups or any other group I may be associated with, either at ICANN or elsewhere.</p>	<p>Thank you for taking the time to review these budget and planning documents in your personal capacity. Your points have been considered and responses have been provided in this staff report.</p>
90	<p>First, I'd like to thank Xavier, Becky, Taryn and Jessica for their extraordinary receptiveness to community input during this year of new beginnings. It could not have been easy to adapt standing processes to meet the requirements of the new Bylaws. In retrospect, I believe that those of us in the community should have given more consideration to times and dates involved in the entire budget process, including those set by external bodies, in creating the requirements of §22.4 and §22.5 in the new ICANN bylaws. I'd like to offer my personal apology to the Finance Team in my role in the CCWG for not reaching out to you and perhaps being able to create more flexibility in the process as we rushed to complete the transition. My compliments to Finance in doing their best to both meet community concerns and as well as their new</p>	<p>Thank you for the positive comment on the efforts made by the Planning team to meet the planning requirements of the new Bylaws.</p>

Ref #	Question / Comment	ICANN Response
	regulatory requirements this year. It was a good first effort and much appreciated.	
97	2. Similarly I strongly support the unfunded request of \$300,000 for legal support in non-US locations. I appreciate this effort to bring into ICANN expertise that is not only needed but is well overdue. Only 1/3 of the world operates under the Common Law system largely prevalent in the United States and other Anglophone nations. As a multinational corporation with global interests it is reasonable to allow ICANN Legal to retain legal expertise in non U.S. locations as a matter of due course, rather than forgo that expertise now conceivably resulting in potentially larger expenses down the line as legal concerns and problems expand due to lack of initial concern, attention or understanding.	Note that this additional personnel expense might still be considered during FY18 if it becomes essential. However, as various types of non-U.S. related issues might arise throughout the fiscal year, using outside counsel with expertise in specific jurisdictions where individual issues might arise could be more efficient and cost-effective at the outset than adding one or more full time employees. If such outside legal advice is required, the costs will be covered as general legal expenses.
106	The GNSO Intellectual Property Constituency ("IPC") hereby submits its comments regarding ICANN's Draft FY18 Operating Plan and Budget ("FY18 Budget") presented to the community in March 2017. The IPC recognizes that the role of community input into the budget takes on greater importance for FY18 as ICANN's Empowered Community may reject a budget under ICANN's new by-laws effective October 1, 2016. The IPC has engaged in budget briefings in Hyderabad and Copenhagen as well as community calls that have been hosted by ICANN's finance department. The IPC recognizes and appreciates the finance department's continued efforts to improve the presentation and understanding of ICANN's complex budget. After consideration of the FY18 Budget and the assumptions upon which it is built, the IPC is pleased to submit the following comments.	Thank you for your participation throughout the year. Your points have been considered and responses have been provided in this staff report.

Ref #	Question / Comment	ICANN Response
107	<p data-bbox="264 241 905 266">B. A Financial Reality Check/Time for Fiscal Prudence</p> <p data-bbox="264 323 1016 553">The costs of the IANA Transition have placed a severe financial burden on ICANN. Extraordinary fees associated with operationalizing Post Transition IANA (PTI) and reforming ICANN's overall governance and accountability mechanisms accelerated budget pressures and undermined long term planning.</p> <p data-bbox="264 610 1058 1045">At the same time, ICANN was receiving increased revenue from the New gTLD program which included application fees and auction proceeds. Revenue from new gTLDs increased ICANN's revenue significantly while IANA was draining ICANN's reserves. This created imbalance from an operational perspective as fees from the new gTLD auctions were put in a special fund that could not be allocated to operational expenses or the IANA transition. The disposition of the auction fees is still under review and the time now is for a financial reality check for ICANN. In this vein, IPC supports moderate financial growth, replenishment of the reserves at a reasonable rate and prudent planning for the future.</p>	<p data-bbox="1089 241 1948 310">It is ICANN's intention that its operations should be funded from annual operating funding.</p> <p data-bbox="1089 323 1913 431">Exceptionally, unexpected or large costs arise and need to be funded from reserves. This has occurred for the IANA stewardship transition project, as indicated in this comment.</p> <p data-bbox="1089 444 1927 594">A number of auctions of last resort have happened, leading ICANN to collect proceeds. Such proceeds are fully segregated from ICANN's Operating and Reserve Funds, and are the subject of a community-led process to define their future use.</p> <p data-bbox="1089 607 1856 675">ICANN welcomes the IPC's comment in favor of fiscal prudence, moderate growth and replenishment of reserves.</p> <p data-bbox="1089 688 1486 712">See also answer to comment #11</p>

Ref #	Question / Comment	ICANN Response
108	<p>In the spirit of fiscal prudence and shared community responsibility for the budget, the IPC elected not to make a special budget request for FY18. The IPC recognizes the financial challenges that ICANN faces and respects that a new way of thinking will be required to achieve fiscal balance. While some special budgets requests may be necessary, we urge the ICANN organization to consider these requests very carefully and only grant them for extraordinary needs.</p>	<p>Consistent with the Request Principles, the consideration of SO/AC Additional Budget Requests focus on the availability of both financial and staff resources to support the individual and collective requests submitted. Consistent with the Request Principles, each recommendation was prepared for evaluation by the ICANN Board Finance Committee and the full Board. Observers of this year’s Additional Budget Request process will also note an increase in conditional reporting (following project completion) as a feature of certain request allocations. ICANN Organization has found that follow-up reporting is a helpful tool for the Organization and community to assess the value of certain activities – particularly travel support – and can be helpful in showing the value of continuing pilot efforts or converting certain activities to core budget support.</p>

Ref #	Question / Comment	ICANN Response
113	<p>G. Conclusion</p> <p>The IPC has been an active and engaged participant in ICANN’s budget discussions. We welcome the opportunity for continued dialog and improvement of ICANN’s budget processes. The cultural of continuous improvement is even more important as the Empowered Community has the right to reject a proposed ICANN budget. The gravity of the power requires an informed and engaged community at every step of budget development. While the IPC notes the continued improvement and transparency of the budget process, we have ongoing concerns about ICANN’s failure to address to its dwindling operational reserves and challenge some of the assumptions used to build the FY18 Budget considering these concerns.</p> <p>We look forward to hearing the ICANN organization’s response to our questions and comments prior to the Board vote on the budget in June 2017.</p>	<p>The Organization appreciates the comment on the continued improvement and transparency of the budget process. ICANN’s investment policy indicates that it should maintain a Reserve Fund equivalent to 1 year (12 months) of operating expenses. We are currently below that level. The existence of the Reserve Fund directly supports the ability of the Organization to carry out its mission in the long term ensure the stable and secure operation of the Internet’s unique identifier systems. It allows ICANN to face any unforeseen event, or disaster, and continue to carry out its mission. It is a fiduciary requirement for any nonprofit Organization to be able to continue its mission for the public benefit and a Reserve Fund is one of the elements that allow a nonprofit Organization to remain accountable to the public. The ICANN Board has engaged into a reassessment of the Reserve Fund requirement, in the context of its mission in the public benefit.</p>
114	<p>We acknowledge ICANN’s continued outreach and engagement with the community on the development of this plan, as well as the five year operating plan. The ISPCP is closely following and actively participating in this effort and we commend the ICANN CFO and his team for their efforts to continually improve the process.</p>	<p>Thank you for this feedback.</p>

Ref #	Question / Comment	ICANN Response
132	<p>Portfolio 5.1.4: Support ICANN Board</p> <p>The ICANN board is supported with a budget of almost US\$4m per year. How is this expenditure rationalised? Has it been benchmarked against equivalent organisations and, if not, the RySG recommends that it should be. In addition, what is the ICANN Board doing to improve cost-effectiveness and to set such an example of improved efficiency to the ICANN organisation? The RySG recommends that the board targets reduced year on year operating expenditure.</p>	<p>The ICANN Board's expenses are directly related to its broad and complex activities. These activities are in conformance with ICANN's Mission and are set out in the Strategic Plan that was developed and approved by the community. The Board's international and multistakeholder structure, its size and composition, its numerous committees, its oversight role over the ICANN Org's operations, and its fiduciary, financial and legal responsibilities make it distinctly different from most non-profit boards. In addition, the Board's workload is ever-increasing through its engagement with community initiatives. For example, Board members are participating in each of the nine sub-groups of the CCWG-Acct WS2, the four Specific Review Teams and the seven Organizational Review Working Groups. There are also other factors, largely community-driven, that impact when and where the Board does its work.</p> <p>Benchmarking, in general, is a useful practice when comparing like for like. In the case of the ICANN Board, it would definitely be a challenge to identify boards with similar activities and workload to benchmark against. Nevertheless, we will evaluate whether a board benchmarking exercise can be beneficial, whether useful data is available, as well as evaluating the cost and resources required to conduct it.</p>
102	<p>7. Information needs to be provided concerning ICANN's capital management. How does ICANN manage its capital, what ROI does it receive on any short (or long) term investments it makes with its capital holdings? This information also needs to be provided for its reserve funds and any earmarked capital (such as</p>	<p>ICANN manages its investments in compliance with the ICANN Board approved investment policies for both the Reserve Fund and the New gTLD Funds and Auction Proceeds. These investment policies are published on the ICANN website. The ICANN investment policies outline the objectives for each of these types of funds. The performance of the investments are then monitored for compliance with the policy. The Reserve Fund and the New gTLD Fund (including</p>

Ref #	Question / Comment	ICANN Response
	<p>the auction proceeds) currently being managed, in full or in part, by ICANN.</p>	<p>Auction Proceeds) are managed by highly rated investment management institutions. The investment performance and investment balances are reported both internally and externally as part of the Quarterly Stakeholder Call reports, the Quarterly Management Reports and the Annual Independent Audit Report, all published on our website. The detailed investment performance (rates of return) are not currently published. ICANN agrees in principle that such information would help transparency, under the condition that it can be disclosed clearly and understood by the public. Rates or return vary based on investment objectives such as desired degree of risk, time horizon of the funds, level of liquidity, etc. As such, any information published on rates of return needs to be provided with adequate contextual information so that it can be understood by the public. Failure to do so would actually decrease transparency and increase confusion. As a result, ICANN will consider publishing investment performance information in the future, under a framework that allows for education of the public on the contextual information necessary for understanding.</p>

## Implementation Recommendations for SSAC Advice Documents SAC062, SAC063, SAC064, SAC065, SAC070, and SAC073 (08 June 2017)

Advice Item	Description	ICANN Organization Statement of Understanding	ICANN Organization Implementation Recommendation	Background on Issue	Proposed Solution
<p><a href="#">SAC062</a>: SSAC Advisory Concerning the Mitigation of Name Collision Risk (Recommendation 1)</p> <p>7 Nov 2013</p>	<p>ICANN should work with the wider Internet community, including at least the IAB and the IETF, to identify (1) what strings are appropriate to reserve for private namespace use and (2) what type of private namespace use is appropriate (i.e., at the TLD level only or at any additional lower level).</p>	<p><i>SAC062 Recommendation 1 did not go through this phase of the Board Advice pilot process.</i></p>	<p>Implementation is recommended and in progress.</p>	<p>Problem: Domain name strings with documented evidence of broad and significant private usage should be considered for permanent reservation for internal use to reduce security and stability issues, as well as to provide a stable namespace for parties using other strings to migrate to if they do not use fully-qualified domain names (FQDNs).</p> <p>Board Resolution (21 Nov 2013): The ICANN Board passed a resolution that "directs ICANN's President and CEO to have the advice provided in SAC062 evaluated" (see <a href="https://www.icann.org/resources/board-material/resolutions-2013-11-21-en#2.d">https://www.icann.org/resources/board-material/resolutions-2013-11-21-en#2.d</a>).</p>	<p>The Office CTO Research group should continue its work (already in progress) in the IETF dnsop (DNS Operations) Working Group on specifying a process to reserve "special use" names. This effort will update RFC6761, "Special-Use Domain Names."<sup>1</sup> These special-use domain names correspond to the "strings [. . .] appropriate to reserve for private namespace use" in the recommendation from SAC062 that is the focus of this document.</p>

<sup>1</sup> Internet Engineering Task Force. February 2013. "RFC 6761: Special-Use Domain Names." Retrieved from <https://tools.ietf.org/html/rfc6761>



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Advice Item	Description	ICANN Organization Statement of Understanding	ICANN Organization Implementation Recommendation	Background on Issue	Proposed Solution
<p><a href="#">SAC063</a>: SSAC Advisory on DNSSEC Key Rollover in the Root Zone (Recommendation 2)</p> <p>7 Nov 2013</p>	<p>ICANN staff should lead, coordinate, or otherwise encourage the creation of a collaborative, representative testbed for the purpose of analyzing behaviors of various validating resolver implementations, their versions, and their network environments (e.g., middle boxes) that may affect or be affected by a root KSK rollover, such that potential problem areas can be identified, communicated, and addressed.</p>	<p>This recommendation is understood to mean ICANN organization should arrange for a resolver testbed to be created that will allow for the analysis of validating resolvers in a variety of network environments and that the testbed should be open for collaborative use. The ICANN organization further understands the goal of this particular testbed is to identify potential problem areas associated with validating resolvers handling the keyroll such that those problems can be communicated to those responsible for addressing those problems.</p>	<p>Implementation is recommended and in progress.</p>	<p>Problem: DNSSEC validators will be affected by the root KSK rollover project. ICANN should understand how specific validators behave so that any anomalous behavior can be reported to the software’s authors. Understanding validator behavior will also allow root server traffic to be analyzed for signs of distress immediately after the actual rollover event.</p> <p>Board Resolution (21 Nov 2013): “In the instances where ICANN recommends that the advice be accepted, the Board directs ICANN’s President and CEO to have the feasibility and costs of implementing the advice evaluated, and to provide an implementation plan with timelines and high-level milestones for review by the Board, no later than 120 days from the adoption of this resolution” (see <a href="https://www.icann.org/resources/board-material/resolutions-2013-11-21-en#2.e">https://www.icann.org/resources/board-material/resolutions-2013-11-21-en#2.e</a>).</p>	<p>The Office of the CTO (OCTO) Research group should continue its work, already in progress as part of the root KSK rollover project implementation, to set up a resolver testbed to study the behavior of DNSSEC validator behavior under various operational conditions. In order to make the testbed open for collaborative use, additional resources will be necessary and the testbed would need to be migrated from the OCTO lab to the Information Technology (IT) department for production use. IT, working with OCTO, will need to provide cost estimates.</p>

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Advice Item	Description	ICANN Organization Statement of Understanding	ICANN Organization Implementation Recommendation	Background on Issue	Proposed Solution
<p><a href="#">SAC063</a>: SSAC Advisory on DNSSEC Key Rollover in the Root Zone (Recommendation 5)</p> <p>7 Nov 2013</p>	<p>ICANN staff should lead, coordinate, or otherwise encourage the collection of as much information as possible about the impact of a KSK rollover to provide input to planning for future rollovers.</p>	<p>The ICANN organization understands recommendation 5 of SAC063 to indicate staff should collect as much information as possible about the impact of the KSK rollover so that data can be analyzed by DNS experts and made available to the community to facilitate planning for future rollovers.</p> <p>This recommendation is understood to mean that data about the events surrounding the roll of the trust anchor must be collected and should be archived to facilitate planning for future rollovers.</p>	<p>Implementation is recommended and in progress.</p>	<p>Problem: The root zone KSK has never been rolled (changed) before, so it will be a major undertaking with significant opportunity for disruption. SSAC wants ICANN organization and the larger community to learn as much as possible from the undertaking to improve the process when the KSK is rolled again in the future.</p> <p>Board Resolution (21 Nov 2013): “In the instances where ICANN recommends that the advice be accepted, the Board directs ICANN’s President and CEO to have the feasibility and costs of implementing the advice evaluated, and to provide an implementation plan with timelines and high-level milestones for review by the Board, no later than 120 days from the adoption of this resolution” (see <a href="https://www.icann.org/resources/boar-d-material/resolutions-2013-11-21-en#2.e">https://www.icann.org/resources/boar-d-material/resolutions-2013-11-21-en#2.e</a>).</p>	<p>The Office of the CTO (OCTO) Research group and IANA staff have planned and are now implementing the project to roll the root zone’s KSK. The project plan already includes steps to monitor the effects of the rollover. The OCTO Research group is already collecting traffic to multiple root name servers and will continue to do so through the duration of the project. OCTO Research is also gathering and analyzing other relevant data, such as RSSAC002 statistics reported by most root operators. Portions of data collected will be made available.</p> <p>It is recommended that OCTO Research and Public Technical Identifier (PTI) staff write a report at the conclusion of the project documenting experiences, including observations regarding the impact of the rollover, to aid in planning future rollovers.</p>

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Advice Item	Description	ICANN Organization Statement of Understanding	ICANN Organization Implementation Recommendation	Background on Issue	Proposed Solution
<p><a href="#">SAC064</a>: SSAC Advisory on DNS "Search List" Processing (Recommendation 2)</p> <p>13 Feb 2014</p>	<p>The SSAC recommends ICANN staff to work with the DNS community and the IETF to encourage the standardization of search list processing behavior. Such an effort should begin with ICANN staff submitting an Internet-Draft to the IETF, and advocating for its standardization within the IETF process. The effort should update RFC 1535 and other applicable RFCs to address the Findings and Recommendations in this document.</p>	<p>Our understanding of SAC064 R-2 is that the SSAC recommends that ICANN organization work with the DNS community and the IETF to encourage the standardization of search list processing behavior, beginning with the submission of an Internet-Draft to the IETF and advocating for its standardization within the IETF process. Updates to RFC 1535 and other RFCs related to this topic should be included within the Internet-Draft.</p>	<p>While it is certainly possible to write an Internet-Draft encouraging the standardization of search list processing, it is not clear that the existence of such a document would necessarily make a significant impact on client behavior any time soon, if ever. Resources in Office of the CTO (OCTO) Research to undertake IETF work such as writing Internet-Drafts are limited. It is recommended that the OCTO Research team be given the discretion to discuss the feasibility and impact of the suggested document, and prioritize writing it against the other work on its research agenda.</p>	<p>Problem: DNS clients, called stub resolvers, typically implement a "search list", which is a list of domains that are appended to a user's input of a partial domain name to form a fully qualified domain name. Improper search list behavior can cause excessive queries for non-existent names. When these non-existent names are in non-existent TLDs, the queries end up at the root servers. Queries for these non-existent TLDs could eventually conflict or "collide" with a potential new gTLD. SSAC reasons that by improving search list behavior, the number of queries for non-existent TLDs can be reduced, and thus the potential for name collisions also reduced.</p> <p>17 Nov 2014 Board Resolution (17 Nov 2014): "In the instances where ICANN recommends that the advice be accepted, the Board directs ICANN's President and CEO to have the feasibility and costs of implementing the advice evaluated, and to provide an implementation plan with timelines and high-level milestones for review by the Board, no later than 120 days from the adoption of this resolution" (see <a href="https://www.icann.org/resources/boar-d-material/resolutions-2014-11-17-en#1.c">https://www.icann.org/resources/boar-d-material/resolutions-2014-11-17-en#1.c</a>).</p>	<p>The ICANN organization can work with the DNS community and the IETF to develop an Internet Draft that encourages standardization of searchless process behavior. Costs for this solution would include significant interaction with the IETF and DNS community as well as additional staff resources to pursue this standardization.</p>

<p><a href="#">SAC064</a>: SSAC Advisory on DNS "Search List" Processing (Recommendation 3)</p> <p>13 Feb 2014</p>	<p>In the context of mitigating name collisions, ICANN should consider the following steps to address search list processing behavior.</p> <ol style="list-style-type: none"> <li>a. Commission additional research studies to further understand the cause of invalid queries to the root zone and the significance of search list processing as a contributor to those queries.</li> <li>b. Communicate to system administrators that search list behaviors currently implemented in some operating systems will cause collision with names provisioned under the newly delegated top-level domains. Such communication should complement the current ICANN effort in this area with findings and recommendations from this report.</li> </ol>	<p>Our understanding of SAC064 R-3 is that the SSAC recommends that in the context of mitigating name collisions, ICANN should consider the following steps to address search list processing behavior:</p> <ol style="list-style-type: none"> <li>a. ICANN should consider whether to commission additional studies to further understand the cause of invalid queries to the root zone and the significance of search list processing as a contributor to those queries.</li> <li>b. ICANN should communicate to system administrators that search list behaviors currently implemented in some operating systems will cause collision with names delegated as new gTLDs from the 2012 application round for the New gTLD Program.</li> </ol>	<p>Implementation is recommended.</p>	<p>Problem: DNS clients, called stub resolvers, typically implement a “search list”, which is a list of domains that are appended to a user’s input of a partial domain name to form a fully qualified domain name. Improper search list behavior can cause excessive queries for non-existent names. When these non-existent names are in non-existent TLDs, the queries end up at the root servers. Queries for these non-existent TLDs could eventually conflict or “collide” with a potential new gTLD. SSAC suggests a study to determine the causes of queries for non-existent domains to the root zone and, specifically, to understand the extent to which search list processing contributes to those queries. We do know that some existing search list behavior contributes to name collisions, and SSAC suggests that ICANN publicize this behavior and its impact of new gTLDs from the 2012 application round to system administrators.</p> <p>Board Resolution (17 Nov 2014): “In the instances where ICANN recommends that the advice be accepted, the Board directs ICANN’s President and CEO to have the feasibility and costs of implementing the advice evaluated, and to provide an implementation plan with timelines and high-level milestones for review by the Board, no later than 120 days from the adoption of this resolution” (see</p>	<p>There are two parts to the advice and a separate recommendation is provided for addressing each:</p> <ol style="list-style-type: none"> <li>a) It is recommended that the issue of analyzing the causes of queries for non-existent TLDs to the root be referred to the Office of the CTO (OCTO) Research team for further study and to determine the appropriate next steps with the suggested study.</li> <li>b) ICANN can undertake a communications effort to publicize searchless behaviors currently implemented in some operating systems currently implemented in some operating systems will cause collision with names delegated as new gTLDs from the 2012 application round for the New gTLD Program and that no further action with regard to this portion of the advice is warranted.</li> </ol> <p>The Communications department and OCTO would need to work together to develop a plan. Costs associated with the technical portion of this plan would need to be developed by OCTO. Additional resources may be needed to facilitate this project.</p>
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Advice Item	Description	ICANN Organization Statement of Understanding	ICANN Organization Implementation Recommendation	Background on Issue	Proposed Solution
				<a href="https://www.icann.org/resources/board-material/resolutions-2014-11-17-en#1.c">https://www.icann.org/resources/board-material/resolutions-2014-11-17-en#1.c</a> .	

<p><a href="#">SAC065</a>: SSAC Advisory on DDoS Attacks Leveraging DNS Infrastructure (Recommendation 1)</p> <p>18 Feb 2014</p>	<p>ICANN should help facilitate an Internet-wide community effort to reduce the number of open resolvers and networks that allow network spoofing.</p> <p>This effort should involve measurement efforts and outreach and cooperation in relevant technical fora involving network operators worldwide, but will not have an operational component. ICANN should support this effort with adequate staffing and funding. Such a program should cover at least the following topics:</p> <ol style="list-style-type: none"> <li>a. Collect, create, and organize material that will assist in the implementation of recommendations 2-5 below. This would include:             <ol style="list-style-type: none"> <li>i. On an annual basis, publish and widely disseminate a report on the number and extent of open recursive DNS servers.</li> <li>ii. On an annual basis, publish and widely disseminate a report on the extent of networks that allow network spoofing.</li> <li>iii. Create and maintain an information portal with links to educational material, to be complemented by ICANN staff and community</li> </ol> </li> </ol>	<p>Our understanding of SAC065 R-1 is that ICANN should help to facilitate an Internet-wide community effort to reduce the number of open resolvers and networks that allow network spoofing. This initiative, which should involve measurement efforts and outreach, should be supported by ICANN with appropriate staffing and funding to promote the recommendations made in SAC065 Recommendations 2-5.</p>	<p>Implementation is recommended.</p>	<p>Problem: DDoS attacks using DNS infrastructure can use open resolvers and spoofed source addresses. These attacks would be harder to implement if the number of open resolvers was reduced and if more ISPs implemented BCP38 (which would prevent customers of those ISPs to launch attacks using spoofed source addresses). This resolution encourages ICANN to help reduce the number of open resolvers and increase the number of ISPs implementing BCP38.</p> <p>Board Resolution (17 Nov 2014): “In the instances where ICANN recommends that the advice be accepted, the Board directs ICANN's President and CEO to have the feasibility and costs of implementing the advice evaluated, and to provide an implementation plan with timelines and high-level milestones for review by the Board, no later than 120 days from the adoption of this resolution” (see <a href="https://www.icann.org/resources/board-material/resolutions-2014-11-17-en#1.c">https://www.icann.org/resources/board-material/resolutions-2014-11-17-en#1.c</a>).</p>	<p>Upon the creation of an Internet-wide community effort, ICANN should provide measurement and outreach support and allocate appropriate staffing and funding.</p>
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Advice Item	Description	ICANN Organization Statement of Understanding	ICANN Organization Implementation Recommendation	Background on Issue	Proposed Solution
	<p>subject-matter expert contributions.</p> <ul style="list-style-type: none"> <li>iv. Inform how certain products (e.g., CPE devices) can play a significant role in DNS amplification attacks.</li> <li>v. Publish a regular (at least annual) advisory/report on the state-of-the-art-mechanisms to identify or otherwise prevent amplification and reflection attacks, and ensure that such an advisory/report is widely disseminated in the Internet community.</li> <li>vi. Provide an annual report on the work accomplished.</li> </ul> <p>b. Coordinate with the Internet community to popularize and support recommendations 2-5 below. This coordination should include exploration of whether operational requirements regarding open resolvers and the prevention of network spoofing can be incorporated into regulatory compliance frameworks and certification regimes.</p>				

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Advice Item	Description	ICANN Organization Statement of Understanding	ICANN Organization Implementation Recommendation	Background on Issue	Proposed Solution
<p><a href="#">SAC070</a>: Advisory on the Use of Static TLD / Suffix Lists (Recommendation 3)</p> <p>28 May 2015</p>	<p>To close the knowledge gap between registries and popular PSL maintainers, ICANN and the Mozilla Foundation should collaboratively create informational material that can be given to TLD registry operators about the Mozilla PSL.</p>	<p>This recommendation is understood to mean that ICANN, in concert with the Mozilla Foundation, prepare educational materials on the Mozilla PSL covering the meaning of the resource and the impact of the resource.</p>	<p>Further Community consultation is needed before the ICANN organization can make a recommendation on implementation.</p>	<p>Problem: In an effort to identify DNS names that are in public namespace but have been delegated by the registry to be administered by a different entity, such as gov.uk, co.za, etc. Being able to accurately track the boundary of these spaces could be important for security, privacy and usability. A Public Suffix List (PSL) is a file that lists all (or some) of the known public suffixes.</p> <p>Board Resolution (25 June 2015): “In instances where it is recommended that the SSAC advice be accepted, the Board directs the President and CEO, or his designee(s), to evaluate the feasibility and cost of implementing the advice, and provide an implementation plan with timelines and high-level milestones for review by the Board, no later than 120 days from the adoption of this resolution [...] The Board encourages registries, registrars, the Universal Acceptance Initiative, and other entities such as the IETF, to consider the recommendations in SAC070 and work collaboratively to improve the situation with the growing use of Public Suffix Lists” (see <a href="https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#1.c">https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#1.c</a>).</p>	<p>Consult with the Mozilla Foundation and the larger ICANN community as to the desirability of educational materials on the Mozilla PSL.</p> <p>If desirable, then the Office of the CTO would have to consider prioritization into its project load, cost, and other factors.</p>



<p><a href="#">SAC070</a>: Advisory on the Use of Static TLD / Suffix Lists (Recommendation 4a)</p> <p>28 May 2015</p>	<p>The Internet community should standardize the current approach to PSLs. Specifically: Recommendation 4a: ICANN, as part of its initiatives on universal acceptance, should encourage the software development community (including the open source community) to develop and distribute programming and operating system libraries implementing robust (i.e. authenticated, timely, secure, accountable) distribution mechanisms for PSLs. These libraries should be written across all common platforms and operating systems in a way as to ensure consistent and standard interpretation of a given PSL across all platforms.</p>	<p>The ICANN organization understands SAC070 R-4a to mean that ICANN should request that the UASG encourage the development of software resources enabling or enhancing the effective use of the Mozilla PSL, with attention towards software developers. As part of this initiative, ICANN should provide funding for this initiative and monitor whether the UASG's effort is successful. ICANN notes that more specific description of this audience (beyond merely including open source) would further the ability to evaluate the effectiveness of the promotion effort.</p>	<p>Implementation is addressed in <a href="#">UASG007</a>, which recommends that TLDs are validated, where necessary, from authoritative tables.</p>	<p>Problem: Software that processes domain names, such web browsers, sometimes needs to know whether a domain name ends in a “public suffix”, i.e., a domain typically open for registration, such as .com or .co.uk. “Public suffix lists” (PSLs), most notably the one maintained by Mozilla, attempt to list all such public suffix domains. Software uses this list for various purposes, such as quickly validating a TLD without requiring a DNS query, highlighting the public portion of a domain name in a browser’s address bar, or determining if one domain is able to set a cookie for another (which is not allowed if the domains are unrelated, which is the case if they are peers under the same public suffix). There is no standard mechanism for software developers to process the Mozilla PSL, which SSAC asserts makes it less likely that the Mozilla PSL be used correctly and effectively.</p> <p>Board Resolution (25 June 2015): “In instances where it is recommended that the SSAC advice be accepted, the Board directs the President and CEO, or his designee(s), to evaluate the feasibility and cost of implementing the advice, and provide an implementation plan with timelines and high-level milestones for review by the Board, no later than 120 days from the adoption of this resolution [...] The Board encourages registries, registrars, the</p>	<p>The UASG, in their comprehensive Introduction to Universal Acceptance (<a href="#">UASG007</a>), already recommends that TLDs are validated, where necessary, from authoritative tables including <a href="http://www.internic.net/domain/root.zone">http://www.internic.net/domain/root.zone</a> and <a href="http://data.iana.org/TLD/tlds-alpha-by-domain.txt">http://data.iana.org/TLD/tlds-alpha-by-domain.txt</a>. In this same section of the document the UASG also references SAC070.</p> <p>The UASG does not recommend the use of the Mozilla PSL because the UASG does not have confidence that the Mozilla PSL is authoritative. Should it become authoritative the UASG will consider including the Mozilla PSL as a source for validation.</p>
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Advice Item	Description	ICANN Organization Statement of Understanding	ICANN Organization Implementation Recommendation	Background on Issue	Proposed Solution
				<p>Universal Acceptance Initiative, and other entities such as the IETF, to consider the recommendations in SAC070 and work collaboratively to improve the situation with the growing use of Public Suffix Lists.”</p> <p><a href="https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#1.c">https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#1.c</a></p>	

<p><a href="#">SAC070</a>: Advisory on the Use of Static TLD / Suffix Lists (Recommendation 5)</p> <p>28 May 2015</p>	<p>IANA should host a PSL containing information about the domains within the registries with which IANA has direct communication. Such a PSL would be authoritative for those domains. Such a list should include, at a minimum, all TLDs in the IANA root zone.</p>	<p>The ICANN organization understands recommendation 5 of SAC070 as directing IANA staff to host an authoritative PSL containing information about the domains within the registries with which IANA has direct communication. This list should at least include all TLDs in the root zone. This recommendation appears to suggest an action for IANA that is usually the result of direction from the IETF, that is, something like a protocol registry established for a specific purpose. This also seems to recommend the transfer of responsibility of the Mozilla-run PSL to IANA, which seems like an action that is best requested through Mozilla as the current responsible party. If Mozilla wanted to transition the PSL maintenance, operating such a registry would represent a new role for IANA.</p>	<p>Further Community consultation is needed before the ICANN organization can make a recommendation on implementation.</p>	<p>Problem: Software that processes domain names, such web browsers, sometimes needs to know whether a domain name ends in a “public suffix”, i.e., a domain typically open for registration, such as .com or .co.uk. “Public suffix lists” (PSLs), most notably the one maintained by Mozilla, attempt to list all such public suffix domains. Software uses this list for various purposes, such as quickly validating a TLD without requiring a DNS query, highlighting the public portion of a domain name in a browser’s address bar, or determining if one domain is able to set a cookie for another (which is not allowed if the domains are unrelated, which is the case if they are peers under the same public suffix). ICANN is in a position to create a public suffix list that could represent an authoritative list of TLDs and potentially subdomains of those TLDs that are known to be public suffixes.</p> <p>Board Resolution (25 June 2015): “In instances where it is recommended that the SSAC advice be accepted, the Board directs the President and CEO, or his designee(s), to evaluate the feasibility and cost of implementing the advice, and provide an implementation plan with timelines and high-level milestones for review by the Board, no later than 120 days from the adoption of this resolution [...] The Board encourages registries, registrars, the</p>	<p>Community consultation should observe that the Mozilla PSL is already the most widely used PSL and it’s not clear that there is benefit in creating a separate PSL maintained by ICANN focused on TLDs. However, ICANN could still potentially assist in maintaining the Mozilla PSL, since it is fundamentally a registry, which is an area of expertise for ICANN. ICANN should ask the web browser development community if ICANN should assist Mozilla with or assume responsibility for maintaining the Mozilla PSL. ICANN should abide by the consensus of this community if no assistance is desired.</p>
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Advice Item	Description	ICANN Organization Statement of Understanding	ICANN Organization Implementation Recommendation	Background on Issue	Proposed Solution
				Universal Acceptance Initiative, and other entities such as the IETF, to consider the recommendations in SAC070 and work collaboratively to improve the situation with the growing use of Public Suffix Lists” (see <a href="https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#1.c">https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#1.c</a> ).	

<p><a href="#">SAC070</a>: Advisory on the Use of Static TLD / Suffix Lists (Recommendation 6)</p> <p>28 May 2015</p>		<p>The ICANN organization understands recommendation 6 of SAC070 as encouraging those parties working on universal acceptance such as the UASG to explicitly include the use of a PSL and actions related to a PSL as part of their work.</p>	<p>Implementation is addressed in <a href="#">UASG007</a>, which recommends that TLDs are validated, where necessary, from authoritative tables.</p>	<p>Problem: Software that processes domain names sometimes needs to know whether a domain name ends in a “public suffix”, i.e., a domain typically open for registration, such as .com or .co.uk. “Public suffix lists” (PSLs), most notably the one maintained by Mozilla, attempt to list all such public suffix domains. To encourage the correct and effective use of PSLs, the SSAC has requested that ICANN encourage parties working on universal acceptance to explicitly include the use of a PSL as part of their work.</p> <p>Board Resolution (25 June 2015): “In instances where it is recommended that the SSAC advice be accepted, the Board directs the President and CEO, or his designee(s), to evaluate the feasibility and cost of implementing the advice, and provide an implementation plan with timelines and high-level milestones for review by the Board, no later than 120 days from the adoption of this resolution [...] The Board encourages registries, registrars, the Universal Acceptance Initiative, and other entities such as the IETF, to consider the recommendations in SAC070 and work collaboratively to improve the situation with the growing use of Public Suffix Lists” (see <a href="https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#1.c">https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#1.c</a>).</p>	<p>The UASG, in their comprehensive Introduction to Universal Acceptance (<a href="#">UASG007</a>), already recommends that TLDs are validated, where necessary, from authoritative tables including <a href="http://www.internic.net/domain/root.zone">http://www.internic.net/domain/root.zone</a> and <a href="http://data.iana.org/TLD/tlds-alpha-by-domain.txt">http://data.iana.org/TLD/tlds-alpha-by-domain.txt</a>. In this same section of the document the UASG also references SAC070.</p> <p>The UASG does not recommend the use of the Mozilla PSL because the UASG does not have confidence that the Mozilla PSL is authoritative. Should it become authoritative the UASG will consider including the Mozilla PSL as a source for validation.</p>
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<p><a href="#">SAC073</a>: SSAC Comments on Root Zone Key Signing Key Rollover Plan</p> <p>5 Oct 2015</p>	<p>In this Advisory the Security and Stability Advisory Committee (SSAC) addresses the following topics:</p> <ul style="list-style-type: none"> <li>• Terminology and definitions relating to DNSSEC key rollover in the root zone;</li> <li>• Key management in the root zone;</li> <li>• Motivations for root zone KSK rollover;</li> <li>• Risks associated with root zone KSK rollover;</li> <li>• Available mechanisms for root zone KSK rollover;</li> <li>• Quantifying the risk of failed trust anchor update; and</li> <li>• DNS response size considerations.</li> </ul>	<p>SAC073 duplicates the advice sent by the SSAC in SAC063. There is one distinct recommendation in SAC073, which is as follows: To help the broader community to have a higher level of confidence in the anticipated success of this planned activity, and for ICANN Board to discharge its responsibilities with respect to recommendations from the SSAC, the SSAC would like to see the final report respond directly to each of the recommendations in SAC 063, and note in each case how the recommendation has been appropriately addressed in the proposed design, or in those cases where the recommendation is not specifically addressed, the rationale for this design decision.</p>	<p>Implementation of proposed solution(s) is recommended.</p>	<p>Problem: SSAC would like a report indicating how its advice in SAC063 regarding the root KSK rollover project has been followed or, if not, why not.</p>	<p>Office of the CTO Research and Public Technical Identifiers (PTI) staff are jointly responsible for planning and executing the root KSK rollover project and a report as requested in SAC73. They should be tasked with writing the report requests in SAC073 that describes how the recommendations in SAC063 related to this project were addressed.</p>