ICANN Board Rationales for the Approval of the Launch of the New gTLD Program

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ICANN Board Rationales

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I. WHY NEW gTLDs ARE BEING INTRODUCED

New gTLDs are being introduced because the community has asked for them. The launch of the new generic top-level domain (gTLD) program will allow for more innovation, choice and change to the Internet's addressing system, now constrained by only 22 gTLDs. In a world with over 2 billion Internet users – and growing – diversity, choice and competition are key to the continued success and reach of the global network. New gTLDs will bring new protections to consumers (as well as brand holders and others) that do not exist today in the Domain Name System (DNS). Within this safer environment, community and cultural groups are already anticipating how they can bring their groups together in new and innovative ways. Companies and consumers that do not use the Latin alphabet will be brought online in their own scripts and languages. Industries and companies will have the opportunity to explore new ways to reach customers. The years of community work in planning have produced a robust implementation plan, and it is time to see that plan through to fruition.

II. FOLLOWING ICANN'S MISSION AND COMMUNITY DEVELOPED PROCESSES

A. Introduction of new TLDs is a core part of ICANN's Mission

When ICANN was formed in 1998 as a not for profit, multi-stakeholder organization dedicated to coordinating the Internet's addressing system, a purpose was to promote competition in the DNS marketplace, including by developing a process for the introduction of new generic top-level domains while ensuring internet security and stability. The introduction of new top-level domains into the DNS has thus been a fundamental part of ICANN's mission from its inception, and was specified in ICANN's Memorandum of Understanding and Joint Project Agreement with the U.S. Department of Commerce.[1]

ICANN initially created significant competition at the registrar level, which has resulted in enormous benefits for consumers. ICANN's community and Board has now turned its attention to fostering competition in the registry market. ICANN began this process with the "proof of concept" round for the addition of a limited number of new generic Top Level Domains ("gTLDs") in 2000, and then permitted a limited number of additional "sponsored" TLDs in 2004-2005. These additions to the root demonstrated that TLDs could be added without adversely affecting the security and stability of the domain name system. Follow on economic studies indicated that, while benefits accruing from innovation are difficult to predict, that the introduction of new gTLDs will bring benefits in the form of increased competition, choice and new services to Internet users. The

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[1] ICANN's Bylaws articulate that the promotion of competition in the registration of domain names is one of ICANN's core missions. *See* ICANN Bylaws, Article 1, Section 2.6.

studies also stated that taking steps to mitigate the possibility of rights infringement and other forms of malicious conduct would result in maximum net social benefits.

B.   The Community Created a Policy Relating to the Introduction of new gTLDs

After an intensive policy development process, in August 2007, the Generic Names Supporting Organization issued a lengthy report in which it recommended that ICANN expand the number of gTLDs. *See* http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm. Contributing to this policy work were ICANN's Governmental Advisory Committee ("GAC"), At-Large Advisory Committee ("ALAC"), County Code Names Supporting Organization ("ccNSO") and Security and Stability Advisory Committee ("SSAC"). The policy development process culminated with Board approval in June 2008. *See* http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171.

III. COMMUNITY INVOLEMENT WAS KEY IN IMPLEMENTATION PLANNING

Since the June 2008 decision, the community has been hard at work creating, commenting on, and refining the implementation of this policy.

Seven versions of the Applicant Guidebook have been published. Fifty-eight explanatory memoranda have been produced. There have been nearly 50 new gTLD-related public comment sessions, over these documents as well as a variety of excerpts and working group reports. Over 2,400 comments were received through those public comment fora, which have been summarized and analyzed, and considered in revisions to the new gTLD program. Over 1,350 pages of summary and analysis have been produced. The community has also participated in numerous workshops and sessions and open microphone public forums at ICANN meetings, providing additional suggestions for the improvement of the new gTLD program. ICANN has listened to all of these community comments in refining the program that is being approved today.

Nearly every ICANN Supporting Organization and Advisory Committee was represented in targeted community-based working groups or expert teams formed to address implementation issues.   The GNSO and its component stakeholder groups and constituencies participated in all aspects of the implementation work arising out of its policy recommendations. The ccNSO was particularly active on issues relating to internationalized domain names (IDNs) and the treatment of geographical names in the new gTLD program.

ICANN's technical Advisory Committees provided direct input into the implementation work. For example, RSSAC and SSAC provided expert analysis that there is no expected significant impact of new gTLDs on the stability and scalability of the root server system.

ALAC members served on nearly every working group and team, and actively participated in all public comment fora, giving the world's Internet users a voice in implementation discussions.

IV. CONSULTATION WITH THE GAC LEAD TO IMPROVEMENTS

Under the ICANN Bylaws, the GAC has an assurance that the Board will take GAC advice into account. The Board, through an extensive and productive consultation process with the GAC, has considered the GAC's advice on the new gTLD program and resolved nearly all of the areas where there were likely differences between the GAC advice and the Board's positions.

The ICANN Board and the GAC held a landmark face-to-face consultation on 28 February – 1 March 2011 and subsequently exchanged written comments on various aspects of the new gTLD Program. On 15 April 2011, ICANN published a revised Applicant Guidebook, taking into account many compromises with the GAC as well as additional community comment. On 20 May 2011, the GAC and the ICANN Board convened another meeting by telephone, and continued working through the remaining differences between the Board and GAC positions. *See* http://www.icann.org/en/announcements/announcement-22may11-en.htm. On 26 May 2011, the GAC provided its comments on the 15 April 2011 Applicant Guidebook, and the GAC comments were taken into consideration in the production of the 30 May 2011 Applicant Guidebook.

On 19 June 2011, the ICANN Board and GAC engaged in a further consultation over the remaining areas where the Board's approval of the launch of the new gTLD program may not be consistent with GAC advice. At the beginning of the GAC consultation process, there were 12 issues under review by the GAC and the Board, with 80 separate sub-issues. The GAC and the Board have identified mutually acceptable solutions for nearly all of these sub-issues. Despite this great progress and the good faith participation of the GAC and the Board in the consultation process, a few areas remain where the GAC and the Board were not able to reach full agreement. The reasons why these items of GAC advice were not followed are set forth in responses to the GAC such as Board responses to item of GAC Advice.

V. MAJOR IMPLEMENTATION ISSUES HAVE BEEN THOROUGHLY CONSIDERED

The launch of the new gTLDs has involved the careful consideration of many complex issues. Four overarching issues, along with several other major substantive topics have been addressed through the new gTLD implementation work. Detailed rationale papers discussing the approval of the launch of the program as it relates to nine of those topics are included here. These nine topics are:
- Evaluation Process
- Fees
- Geographic Names
- Mitigating Malicious Conduct
- Objection Process
- Root Zone Scaling
- String Similarity and String Contention
- Trademark Protection.

Detailed rationales have already been produced and approved by the Board in support of its decisions relating to two other topics, Cross Ownership, at http://www.icann.org/en/minutes/rationale-cross-ownership-21mar11-en.pdf and Economic Studies, at http://www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf, each approved on 25 January 2011.

VI. CONCLUSION

The launch of the new gTLD program is in fulfillment of a core part of ICANN's Bylaws: the introduction of competition and consumer choice in the DNS. After the ICANN community created a policy recommendation on the expansion of the number of gTLDs, the community and ICANN have worked tirelessly to form an implementation plan. The program approved for launch today is robust and will provide new protections and opportunities within the DNS.

The launch of the new gTLD program does not signal the end of ICANN's or the community's work. Rather, the launch represents the beginning of new opportunities to better shape the further introduction of new gTLDs, based upon experience. After the launch of the first round of new gTLDs, a second application window will only be opened after ICANN completes a series of assessments and refinements – again with the input of the community. The Board looks forward to the continual community input on the further evolution of this program.

The Board relied on all members of the ICANN community for the years of competent and thorough work leading up to the launch of the new gTLD program. Within the implementation phase alone, the community has devoted tens of thousands of hours to this process, and has created a program that reflects the best thought of the community. This decision represents ICANN's continued adherence to its mandate to introduce competition in the DNS, and also represents the culmination of an ICANN community policy recommendation of how this can be achieved.

2. ICANN Board Rationale on the Evaluation Process Associated with the gTLD Program

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I.   Introduction

Through the development of the new gTLD program, one of the areas that required significant focus is a process that allows for the evaluation of applications for new gTLDs. The Board determined that the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.

Following the policy advice of the GNSO, the key goal for the evaluation process was to establish criteria that are as objective and measurable as possible. ICANN worked through the challenge of creating criteria that are measurable, meaningful (i.e., indicative of the applicant's capability and not easily manipulated), and also flexible enough to facilitate a diverse applicant pool. In the end, ICANN has implemented a global, robust, consistent and efficient process that will allow any public or private sector organization to apply to create and operate a new gTLD.

II.   Brief History of ICANN's Analysis of the Evaluation Process Associated with   the gTLD Program

This section sets forth a brief history of the significant actions on the subject of the evaluation process associated with the gTLD program.

- In December 2005, the GNSO commenced a policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to stimulate competition further and for numerous other reasons.

- In August of 2007, the GNSO issued its final report regarding the introduction of new gTLDs.
http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

- At the 2 November 2007 ICANN Board Meeting, the Board considered the GNSO's policy recommendation and passed a resolution requesting that ICANN staff continue working on the implementation analysis for the introduction of the new gTLD program and report back to the Board with a report on implementation issues.
http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm; http://www.icann.org/minutes/resolutions-02nov06.htm#_Toc89933880

- Starting with the November 2007 Board meeting, the Board began to consider issues related to the selection procedure for new gTLDs, including the need for the process to respect the principles of fairness, transparency and non-discrimination.

- On 20 November 2007, the Board discussed the need for a detailed and robust evaluation process, to allow applicants to understand what is expected of them in the process and to provide a roadmap. The process should include discussion of technical criteria, business and financial criteria, and other specifications. ICANN proceeded to work on the first draft of the anticipated request for proposals.
http://www.icann.org/en/minutes/minutes-18dec07.htm

- On 23 October 2008, ICANN posted the Draft Applicant Guidebook, including an outline of the evaluation procedures (incorporating both reviews of the applied-for gTLD string and of the applicant), as well as the intended application questions and scoring criteria. These were continually revised, updated, and posted for comment through successive drafts of the Guidebook.
http://www.icann.org/en/topics/new-gtlds/comments-en.htm

- Between June and September 2009, KPMG conducted a benchmarking study on ICANN's behalf, with the objective of identifying benchmarks based on registry financial and operational data. The KPMG report on Benchmarking of Registry Operations ("KPMG Benchmarking Report") was designed to be used as a reference point during the review of new gTLD applications.

- In February 2010, ICANN published an overview of the KPMG Benchmarking Report. This overview stated that ICANN commissioned the study to gather industry data on registry operations as part of the ongoing implementation of the evaluation criteria and procedures for the new gTLD program.
  http://icann.org/en/topics/new-gtlds/benchmarking-report-15feb10-en.pdf Rationale-all -final-20110609.doc

- On 30 May 2011, ICANN posted the Applicant Guidebook for consideration by the Board. This lays out in full the proposed approach to the evaluation of gTLD applications.

III.   Analysis and Consideration of the Evaluation Process

A. Policy Development Guidance

The GNSO's advice included the following:

- The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.

- All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.

- Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.

- Applicants must be able to demonstrate their financial and organisational operational capability.

- There must be a clear and pre-published application process using objective and measurable criteria.

B. Implementation of Policy Principles

Publication of the Applicant Guidebook has included a process flowchart which maps out the different phases an application must go through, or may encounter, during the evaluation process. There are six major components to the process: (1) Application Submission/Background Screening; (2) Initial Evaluation; (3) Extended Evaluation; (4) Dispute Resolution; (5) String Contention and (6) Transition to Delegation. All applications must pass the Initial Evaluation to be eligible for approval.

The criteria and evaluation processes used in Initial Evaluation are designed to be as objective as possible. With that goal in mind, an important objective of the new TLD process is to diversify the namespace, with different registry business models and target audiences. In some cases, criteria that are objective, but that ignore the differences in business models and target audiences of new registries, will tend to make the process exclusionary. The Board determined that the process must provide for an objective evaluation framework, but also allow for adaptation according to the differing models applicants will present.

The Board set out to create an evaluation process that strikes a correct balance between establishing the business and technical competence of the applicant to operate a registry, while not asking for the detailed sort of information that a venture capitalist may request. ICANN is not seeking to certify business success but instead seeks to encourage innovation while providing certain safeguards for registrants.

Furthermore, new registries must be added in a way that maintains DNS stability and security. Therefore, ICANN has created an evaluation process that

asks several questions so that the applicant can demonstrate an understanding of the technical requirements to operate a registry.

After a gTLD application passes the financial and technical evaluations, the applicant will then be required to successfully complete a series of pre-delegation tests. These pre-delegation tests must be completed successfully within a specified period as a prerequisite for delegation into the root zone.

C. Public Comment

Comments from the community on successive drafts of the evaluation procedures, application questions, and scoring criteria were also considered by the Board. In particular, changes were made to provide greater clarity on the information being sought, and to more clearly distinguish between the minimum requirements and additional scoring levels.

There was feedback from some that the evaluation questions were more complicated or cumbersome than necessary, while others proposed that ICANN should set a higher bar and perform more stringent evaluation, particularly in certain areas such as security. ICANN has sought to consider and incorporate these comments in establishing a balanced approach that results in a rigorous evaluation process in line with ICANN's mission for what is to be the initial gTLD evaluation round. See http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm.

IV. The Board's Analysis of the Evaluation Process Associated with the gTLD Program

A. Who the Board Consulted Regarding the Evaluation Process

- Legal Counsel

- The GNSO stakeholder groups

- ICANN's Governmental Advisory Committee

- The At-Large Advisory Committee

- Various consultants were engaged throughout the process to assist in developing a methodology that would meet the above goals. These included InterIsle, Deloitte, KPMG, Gilbert and Tobin, and others.

- All other Stakeholders and Community members through public comment forums and other methods of participation.

B.   **What Significant Non-Privileged Materials the Board Reviewed**

- Public Comments;
  http://icann.org/en/topics/new-gtlds/comments-analysis-en.htm
- Benchmarking of Registry Operations;
  http://icann.org/en/topics/new-gtlds/benchmarking-report-15feb10-en.pdf

C.   **What Factors the Board Found to Be Significant**

The Board considered a number of factors in its analysis of the evaluation process for the new gTLD program. The Board found the following factors to be significant:

- the principle that the Board should base its decision on solid factual investigation and expert consultation and study;

- the addition of new gTLDs to the root in order to stimulate competition at the registry level;

- the responsibility of ensuring that new gTLDs do not jeopardize the security or stability of the DNS;

- an established set of criteria that are as objective and measurable as possible;

- the selection of independent evaluation panels with sufficient expertise, resources and geographic diversity to review applications for the new gTLD program; and

- an evaluation and selection procedure for new gTLD registries that respects the principles of fairness, transparency and non-discrimination.

V. The Board's Reasons for Concluding the Evaluation Process was Appropriate for the gTLD Program

- The evaluation process allows for any public or private sector organization to apply to create and operate a new gTLD. However, the process is not like simply registering or buying a second-level domain. ICANN has developed an application process designed to evaluate and select candidates capable of running a registry. Any successful applicant will need to meet the published operational and technical criteria in order to ensure a preservation of internet stability and interoperability.

- ICANN's main goal for the evaluation process was to establish criteria that are as objective and measurable as possible while providing flexibility to address a wide range of business models. Following the policy advice, evaluating the public comments, and addressing concerns raised in discussions with the community, the Board decided on the proposed structure and procedures of the evaluation process to meet the goals established for the program.

3. ICANN Board Rationale on Fees Associated With the gTLD Program

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I.   Introduction

The launch of the new gTLD program is anticipated to result in improvements to consumer choice and competition in the DNS. However, there are important cost implications, both to ICANN as a corporate entity and to gTLD applicants who participate in the program. It is ICANN's policy, developed through its bottom-up, multi-stakeholder process, that the application fees associated with new gTLD applications should be designed to ensure that adequate resources exist to cover the total cost of administering the new gTLD process. http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf.

On 2 October 2009, the Board defined the directive approving the community's policy recommendations for the implementation of the new gTLD policy. That policy included that the implementation program should be fully self-funding. The Board has taken great care to estimate the costs with an eye toward ICANN's previous experience in TLD rounds, the best professional advice, and a detailed and thorough review of expected program costs. The new gTLD program requires a robust evaluation process to achieve its goals. This process has identifiable costs. The new gTLD implementation should be revenue neutral and existing ICANN activities regarding technical coordination of names, numbers and other identifiers should not cross-subsidize the new program. See http://icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf

II.   Brief History of ICANN's Analysis of Fees Associated with the gTLD Program

This section sets forth a brief history of the significant Board consideration on the subject of fees associated with the gTLD program.

- In December 2005 – September 2007, the GNSO conducted a rigorous policy development process to determine whether (and the

circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to stimulate competition further and for numerous other reasons and that evaluation fees should remain cost neutral to ICANN.   The GNSO's Implementation Guideline B stated: "Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process."

- At the 2 November 2007 ICANN Board Meeting, the Board considered the GNSO's policy recommendation and passed a resolution requesting that ICANN staff continue working on the implementation analysis for the introduction of the new gTLD program and report back to the Board with a report on implementation issues. http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm; http://www.icann.org/minutes/resolutions-02nov06.htm#_Toc89933880

- On 2 November 2007, the Board reviewed the ICANN Board or Committee Submission No. 2007-54 entitled Policy Development Process for the Delegation of New gTLDs. The submission discussed application fees and stated, "[a]pplication fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants." http://www.icann.org/en/minutes/minutes-18dec07.htm.

- On 23 October 2008, ICANN published the initial draft version of the gTLD Applicant Guidebook, including an evaluation fee of USD 185,000 and an annual registry fee of USD 75,000. http://www.icann.org/en/topics/new-gtlds/comments-en.htm

- At the 12 February 2009 Board Meeting, the ICANN Board discussed the new version of the Applicant Guidebook ("AGB"). The Board determined that the application fee should remain at the proposed fee of USD 185,000 but the annual minimum registry fee should be

reduced to USD 25,000, with a transaction fee at 25 cents per transaction. Analysis was conducted and budgets were provided to support the USD 185,000 fee. The decrease in of the registry fee to USD 25,000 was based on a level of effort to support registries. http://www.icann.org/en/minutes/minutes-12feb09.htm

- On 6 March 2009, the Board reviewed ICANN Board Submission No. 2009-03-06-05 entitled Update on new gTLDs. The submission analyzed recent public comments and detailed how ICANN incorporated those comments and changes into the fee structure. It also pointed out that the annual registry fee was reduced to a baseline of USD 25,000 plus a per transaction fee of 25 cents once the registry has registered 50,000 names. Also, the submission highlighted a refund structure for the USD 185,000 evaluation fee, with a minimum 20% refund to all unsuccessful applicants, and higher percentages to applicants who withdraw earlier in the process.

- On 25 June, ICANN Published the New gTLD Program Explanatory Memorandum – New gTLD Budget which broke down the cost components of the USD 185,000 application fee. http://www.icann.org/en/topics/new-gtlds/new-gtld-budget-28may10-en.pdf

- On 30 May 2011, ICANN posted a new version of the Applicant Guidebook, taking into account public comment and additional comments from the GAC. http://icann.org/en/topics/new-gtlds/comments-7-en.htm

III.   Major Principles Considered by the Board

A.   Important Financial Considerations

The ICANN Board identified several financial considerations it deemed to be important in evaluating and deciding on a fee structure for the new gTLD program. On 23 October 2008, ICANN published an explanatory memorandum

describing its cost considerations and identified three themes which shaped the fee structure: (1) care and conservatism; (2) up-front payment/incremental consideration; and (3) fee levels and accessibility. See http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf.

1. Care and Conservatism

ICANN coordinates unique identifiers for the Internet, and particularly important for this context, directly contracts with generic top level domain registries, and cooperates with country code registries around the world in the interest of security, resiliency and stability of the DNS. There are more than 170,000,000 second-level domain registrations that provide for a richness of communication, education and commerce, and this web is reaching ever more people around the world. ICANN's system of contracts, enforcement and fees that supports this system, particularly for the 105,000,000 registrations in gTLDs, must not be put at risk. Therefore, the new gTLD must be fully self funding.

The principle of care and conservatism means that each element of the application process must stand up to scrutiny indicating that it will yield a result consistent with the community-developed policy. A robust evaluation process, including detailed reviews of the applied-for TLD string, the applying entity, the technical and financial plans, and the proposed registry services, is in place so that the security and stability of the DNS are not jeopardized. While the Board thoughtfully considered process and cost throughout the process design, cost-minimization is not the overriding objective. Rather, process fidelity is given priority.

2. Up-Front Payment/Incremental Consideration

ICANN will collect the entire application fee at the time an application is submitted. This avoids a situation where the applicant gets part way through the application process, then may not have the resources to continue. It also assures that all costs are covered. However, if the applicant elects to withdraw its application during the process, ICANN will refund a prorated amount of the fees to the applicant.

A uniform evaluation fee for all applicants provides cost certainty with respect to ICANN fees for all applicants. Further, it ensures there is no direct cost penalty to the applicant for going through a more complex application (except, when necessary, fees paid directly to a provider). A single fee, with graduated refunds, and with provider payments (e.g. dispute resolution providers) made directly to the provider where these costs are incurred seems to offer the right balance of certainty and fairness to all applicants.

3. Fee Levels and Accessibility

Members of the GNSO community recognized that new gTLD registry applicants would likely come forward with a variety of business plans and models appropriate to their own specific communities, and there was a commitment that the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency, and non-discrimination.

Some community members expressed concern that financial requirements and fees might discourage applications from developing nations, or indigenous and minority peoples, who may have different sets of financial opportunities or capabilities relative to more highly developed regions of the world. The Board addressed these concerns with their "Application Support" program (which is discussed more in depth below).

B. Important Assumptions

In the explanatory memorandum on cost considerations published on 23 October 2008, ICANN identified the three assumptions on which it would rely in determining the fee structure for the program: (1) estimating methodology; (2) expected quantity of applications; and (3) the new gTLD program will be ongoing.

1. Estimating Methodology

Estimators for the various costs associated with the application evaluation strove to use a maximum-likelihood basis to estimate the costs. A detailed

approach was taken to get the best possible estimates. The evaluation process was divided into 6 phases, 24 major steps and 75 separate tasks. Twenty-seven separate possible outcomes were identified in the application process, probabilities were identified for reaching each of these states, and cost estimates were applied for each state. Estimates at this detailed level are likely to yield more accurate estimates than overview summary estimates.

Further, whenever possible, sensitivity analysis was applied to cost estimates. This means asking questions such as "How much would the total processing cost be if all applications went through the most complex path? Or "How much would the total processing cost be if all applications went through the simplest path?" Sensitivity analysis also helps to explore and understand the range of outcomes, and key decision points in the cost estimation mode.

2.   Expected Quantity of Applications

While ICANN has asked constituents and experts, there is no sure way to estimate with certainty the number of new TLD applications that will be received. ICANN has based its estimates on an assumption of 500 applications in the first round. This volume assumption is based on several sources, including a report from a consulting economist, public estimates on the web, oral comments at public meetings and off-the-record comments by industry participants. While the volume assumption of 500 applications is consistent with many data points, there is no feasible way to make a certain prediction.

If there are substantially fewer than 500 applications, the financial risk is that ICANN would not recoup historical program development costs or fixed costs in the first round, and that higher fixed costs would drive the per unit application costs to be higher than forecast. Still, the total risk of a much smaller-than-anticipated round would be relatively low, since the number of applications would be low.

If there are substantially more than 500 applications, the risk is that application processing costs would again be higher than anticipated, as ICANN would need to bring in more outside resources to process applications in a timely

fashion, driving the variable processing costs higher. In this case, ICANN would be able to pay for these higher expected costs with greater-than-expected recovery of fixed cost components (historical program development and other fixed costs), thus at least ameliorating this element of risk.

3.   The New gTLD Program Will Be Ongoing

ICANN's goal is to launch subsequent gTLD application rounds as quickly as possible. The exact timing will be based on experiences gained and changes required after this round is completed. The goal is for the next application round to begin within one year of the close of the application submission period for the initial round.

It is reasonable to expect that various fees may be lower in subsequent application rounds, as ICANN processes are honed, and uncertainty is reduced.

C.   Cost Elements Determined by the Board

1.   Application Fee

The Board determined the application fee to be in the amount of USD 185,000. The application fee has been segregated into three main components: (a) Development Costs, (b) Risk Costs, and (c) Application Processing (see www.icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf). The breakdown of each component is as follows (rounded):

Development Costs:	USD 27,000
Risk Costs:	USD 60,000
Application Processing:	USD 98,000
Application Fee:	USD 185,000

The application fee was also extrapolated and further analyzed under several assumptions including receiving 500 applications (see

www.icann.org/en/topics/new-gtlds/explanatory-memo-new-gtld-program-budget-22oct10-en.pdf).

a. Development Costs

These costs have two components:

i) Development costs which are the activities necessary to progress the implementation of the gTLD policy recommendations. This includes resolving open concerns, developing and completing the AGB, managing communication with the Internet community, designing and developing the processes and systems necessary to process applications in accordance with the final Guidebook, and undertaking the activities that have been deemed high risk or would require additional time to complete.

The costs associated with the Development Phase have been funded through normal ICANN budgetary process and the associated costs have been highlighted in ICANN's annual Operating Plan and Budget Documents

ii) Deployment costs which are the incremental steps necessary to complete the implementation of the application evaluation processes and system. Such costs require timing certainty and include the global communication campaign, on-boarding of evaluation panels, hiring of additional staff, payment of certain software licenses, and so on.

b. Risk Costs

These represent harder to predict costs and cover a number of risks that could occur during the program. Examples of such costs include variations between estimates and actual costs incurred or receiving a significantly low or high number of applications. ICANN engaged outside experts to assist with developing a risk framework and determining a quantifiable figure for the program.

c. Application Processing

Application Processing represents those costs necessary to accept and process new gTLD applications, conduct contract execution activities, and conduct pre-delegation checks of approved applicants prior to delegation into the root zone. Application processing costs consist of a variable and fixed costs.

Variable costs are those that vary depending on the number of applications that require a given task to be completed. Whereas fixed costs are necessary to manage the program and are not associated with an individual application.

The application fee is payable in the form of a USD 5,000 deposit submitted at the time the user requests application slots within the TLD Application System ("TAS"), and a payment of USD 180,000 submitted with the full application. See http://icann.org/en/topics/new-gtlds/intro-clean-12nov10-en.pdf.

2. Annual Registry Fee

ICANN's Board has determined to place the Annual Registry Fee at a baseline of USD 25,000 plus a variable fee based on transaction volume where the TLD exceeds a defined transaction volume.

3. Refunds

In certain cases, refunds of a portion of the evaluation fee may be available for applications that are withdrawn before the evaluation process is complete. An applicant may request a refund at any time until it has executed a registry agreement with ICANN. The amount of the refund will depend on the point in the process at which the withdrawal is requested. Any applicant that has not been successful is eligible for, at a minimum, a 20% refund of the evaluation fee if it withdraws its application.

According to the AGB, the breakdown of possible refund scenarios is as follows:

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Within 21 calendar days of a GAC Early Warning	80%	USD 148,000
After posting of applications until posting of Initial Evaluations results	70%	USD 130,000
After posting Initial Evaluation Results	35%	USD 65,000
After the applicant has completed Dispute Resolution, Extended Evaluation, or String Contention Resolution(s)	20%	USD 37,000
After the applicant has registered into a registry agreement with ICANN		None

4.   Application Support (JAS WG Charter)

As mentioned above, some community members expressed concerned that the financial requirements and fees might discourage applications from developing nations, or indigenous or minority peoples, who may have different financial opportunities. The Board addressed these concerns with their "Application Support" program, and recognized the importance of an inclusion in the new gTLD program by resolving that stakeholders work to "develop a sustainable approach to providing support to applicants requiring assistance in applying for and operating new gTLDs." See http://www.icann.org/en/minutes/resolutions-12mar10-en.htm#20.

In direct response to this Board resolution, the GNSO Council proposed a Joint SO/AC Working Group ("JAS WG"), composed by members of ICANN's Supporting Organizations ("SOs") and Advisory Committees ("ACs"), to look into applicant support for new gTLDs. See https://st.icann.org/so-ac-new-gtld-wg/index.cgi.

IV.   The Board's Analysis of Fees

A.   Why the Board Addressed Fees

- ICANN's mission statement and one of its founding principles is to promote user choice and competition. ICANN has created significant competition at the registrar level that has resulted in enormous benefits for consumers. To date, ICANN has not created meaningful competition at the registry level. Based upon the report and recommendation from the GNSO to introduce new gTLDs, the Board decided to proceed with the new gTLD program.

- While the primary implications of the new gTLD program relate to possible improvements in choice and competition as a result of new domain names, there are also important cost implications, both to the ICANN corporate entity and to gTLD applicants. The Board initially determined that the application fees associated with new gTLD applications should be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process**.**

- Both the Board and members of the community have commented on the application fee structure for the new gTLD program. From those comments the Board has determined that the new gTLD implementation should be fully self-funding and revenue neutral, and that existing ICANN activities regarding technical coordination of names, numbers, and other identifiers should not cross-subsidize the new program.

B.   Who the Board Consulted Regarding Fees

- Legal Counsel

- The GNSO

- ICANN's Supporting Organizations

- The ALAC

- The GAC

- Other ICANN Advisory Committees

- All other Stakeholders and Community members through public comment forums and other methods of participation.

C.   Public Comments Considered by the Board

Over 1200 pages of feedback, from more than 300 entities, have been received since the first Draft AGB was published. The Board has analyzed and considered these comments in the context of the GNSO policy recommendations.. The Board received many comments on the fee structure, both the annual registry fee and application evaluation fee. Regarding the annual registry fee, the Board received comments stating that the annual minimum and percentage fee for registries was perceived by some to be too high.

Furthermore, the Board incorporated many suggestions from public comments pursuant to its JAS WG Application Support Program. http://forum.icann.org/lists/soac-newgtldapsup-wg.

D.   What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of fees. The Board found the following factors to be significant:

- The principle that the Board should base its decision on solid factual investigation and expert consultation and study;

- The addition of new gTLDs to the root in order to stimulate competition at the registry level;

- That the new gTLD implementation should be fully self funding and revenue neutral; and

- That existing ICANN activities regarding technical coordination of names, numbers, and other identifiers should not cross-subsidize the new program.

- That any revenue received in excess of costs be used in a manner consistent with community input.

- Evaluation fees will be re-evaluated after the first round and adjusted.

V.   The Board's Reasons for Deciding the Proposed Fee Structure is Appropriate

While the primary implications of this new policy relate to possible improvements in choice and competition as a result of new domain names, there are also important cost implications, both to ICANN as a corporate entity and to gTLD applicants with regard to the implementation of the policy through the acceptance and processing of applications as set out in the policy adopted by the community and accepted by the Board.

After evaluating public comments, addressing initial concerns and carefully evaluating the twenty-seven separate possible outcomes that were identified in the application process, the Board decided on the proposed fee structure to ensure that the new gTLD implementation would be fully self-funding and revenue neutral.

4. ICANN Board Rationale on Geographic Names Associated with the gTLD Program

4. ICANN Board Rationale on Geographic Names Associated with the gTLD Program

I.   Introduction

Through the development of the new gTLD program, one of the areas of interest to governments and other parties was the treatment of country/territory names and other geographic names. This area has been the subject of stakeholder input and discussion throughout the implementation process.

This memorandum focuses on the Board's consideration of the provisions for geographic names in the new gTLD program. The memorandum summarizes the Board's consideration of the issue, and the Board's rationale for implementing the new gTLD program containing the adopted measures on geographic names.

II.   Brief History of ICANN's Consideration of Geographic Names Associated with The New gTLD Program

This section sets forth a brief history of significant actions on the subject of geographic names associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for other reasons.

- On 28 March 2007, the GAC adopted principles to govern the introduction of new gTLDs (the "GAC Principles"). Sections 2.2 and 2.7 of the GAC Principles address geographic names issues at the top and second level.
  - 2.2 ICANN should avoid country, territory, or place names, and country, territory, or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.
  - 2.7 Applicant registries for new gTLDs should pledge to: a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of

governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD, and b) ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.
http://gac.icann.org/system/files/gTLD_principles_0.pdf

- On 23 May 2007, the GNSO Reserved Names Working Group issued its final report. Recommendation 20 of the report stated that: (1) there should be no geographical reserved names; and (2) governments should protect their interests in certain names by raising objections on community grounds.
http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm

- On 8 August 2007, the GNSO issued its final report regarding the introduction of new gTLDs. Recommendation 20 of the report intended to provide protections for geographical names, stating that an application for a new gTLD should be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be targeted.
http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

- On 26 June 2008, the Board approved the GNSO's Recommendations for the introduction of new gTLDs and directed staff to develop an implementation plan.
http://www.icann.org/en/minutes/resolutions-26jun08.htm

- On 24 October 2008, ICANN published Version 1 of the new gTLD Applicant Guidebook ("Version 1"), which incorporated various concepts set forth in the GAC Principles. Version 1 required applications involving geographic names to be accompanied by documents of support or non-objection from the relevant government authority. Geographic names included country and territory names, sub-national names on the ISO 3166-2 list, city names (if the applicant was intending to leverage the city name), and names of continents and regions included on a UN-maintained

list. http://www.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf

- The 24 October 2008 posting also included an explanatory memorandum on the topic of geographical names, describing the various considerations used in arriving at the proposed approach. http://www.icann.org/en/topics/new-gtlds/geographic-names-22oct08-en.pdf

- On 28 December 2008, the ccNSO commented on Version 1. The ccNSO stated that (1) the restriction of protections for country/territory names to the 6 official United Nations languages needed to be amended to translation in any language; and (2) All country names and territory names should be ccTLDs – not gTLDs and should not be allowed until the IDN ccPDP process concluded. http://forum.icann.org/lists/gtld-evaluation/msg00015.html

- On 12 February 2009, the Board met to discuss: (1) proposed changes to Version 1; and (2) the implementation of policy recommendations given by the GAC and GNSO. http://www.icann.org/en/minutes/minutes-12feb09.htm

- On 18 February 2009, ICANN published an analysis of public comments received http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf

- Also on 18 February 2009, ICANN published Version 2 of the new gTLD Applicant Guidebook ("Version 2"), which clarified the definition of geographic names set forth in Version 1. In addition, Version 2 expanded protection for country and territory names involving meaningful representations in any language, and augmented requirements for documentation of support or non-objection from relevant governments and public authorities. http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-18feb09-en.pdf; http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm

- On 6 March 2009, the Board resolved that it was generally in agreement with Version 2 as it related to geographic names, but directed staff to revise the relevant portions of Version 2 to provide greater specificity on the scope of protection at the top level for the

names of countries and territories listed in the ISO 3166-1 standard. The Board also directed ICANN staff to send a letter to the GAC by 17 March 2009 identifying implementation issues that have been identified in association with the GAC's advice, in order to continue communications with the GAC to find a mutually acceptable solution.
http://www.icann.org/en/minutes/resolutions-06mar09.htm

- On 17 March 2009, Paul Twomey delivered a letter to Janis Karklins that: (1) outlined the Board's 6 March 2009 resolution; (2) stated that ICANN's treatment of geographic names provided a workable compromise between the GAC Principles and GNSO policy recommendations; and (3) sought advice to resolve implementation issues regarding the protection of geographic names at the second level. http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf

- On 9 April 2009, the ccNSO commented on Version 2. The ccNSO reiterated that all country and territory names are ccTLDs – not gTLDs.
http://forum.icann.org/lists/2gtld-guide/pdfc3uGsuV7CG.pdf

- On 24 April 2009, Janis Karklins delivered a letter to Paul Twomey stating that: (1) countries should not have to use objection process and should instead wait for the IDN ccTLD PDP to delegate country names; (2) the names contained on three lists be reserved at the second level at no cost for the government; and (3) ICANN should notify registries and request the suspension of any name if the government notifies ICANN that there was a misuse of a second level domain name.
http://www.icann.org/correspondence/karklins-to-twomey-24apr09.pdf

- On 29 May 2009, Janis Karklins delivered a letter to Paul Twomey. The letter that stated that: (1) the proposed changes to Version 2 in relation to geographic names at the second level were acceptable to the GNSO; and (2) the GNSO and the GAC were not in agreement with regard to other issues relating to Geographic names at the top level. http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf

- On 31 May, 2009, ICANN published an analysis of the public comments received concerning draft version 2 of the Applicant Guidebook.
http://www.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf

- On 26 June 2009, the Board discussed proposed changes to the geographic names section of the Applicant Guidebook. These proposed changes were intended to provide greater specificity on the scope of protection at the top level for the names of countries and territories and greater specificity in the support requirements for continent or region names. The changes also provided additional guidance to applicants for determining the relevant government or public authority for the purpose of obtaining the required documentation.
http://www.icann.org/en/minutes/resolutions-26jun09.htm

- On 18 August 2009, Janis Karklins delivered a letter to Peter Dengate Thrush that stated that (1) strings that were a meaningful representation or abbreviation of a country name or territory name should not be allowed in the gTLD space; and (2) government or public authority should be able to initiate the redelegation process in limited circumstances.
http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf

- On 22 September 2009, Peter Dengate-Thrush delivered a letter to Janis Karklins, responding to GAC comments on draft version 2 of the Applicant Guidebook and describing the rationale for the proposed treatment of country names, as well as the Board's general intention to provide clear rules for applicants where possible with reference to lists.
http://www.icann.org/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf

- On 04 October 2009, ICANN published Version 3 of the new gTLD Applicant Guidebook ("Version 3").
 http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-04oct09-en.pdf

- On 21 November 2009, ccNSO delivered a letter to the Board, raising concerns about the treatment of country and territory

names. ccNSO also submitted these comments via public comments. http://www.icann.org/correspondence/disspain-to-dengate-thrush-21nov09-en.pdf

- On 15 February 2010, ICANN published an analysis of the public comments received. http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf

- On 12 March 2010, the Board resolved that ICANN should consider whether the Registry Restrictions Dispute Resolution Procedure or a similar post-delegation dispute resolution procedure could be implemented for use by government supported TLD operators where the government withdraws its support of the TLD. http://www.icann.org/en/minutes/resolutions-12mar10-en.htm

- On 31 May 2010, ICANN published Version 4 of the new gTLD Applicant Guidebook ("Version 4"). Version 4 excluded country and territory names from the first gTLD application round, continuing with the existing definition of country and territory names in Version 3. http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm

- On 23 September 2010, Heather Dryden delivered a letter to Peter Dengate Thrush that stated that that Version 4 still did not take fully into consideration GAC's concerns regarding the definition of country/territory names. http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf

- On 25 September 2010, the Board met in Trondheim, Norway and decided: (1) not to include translations of the ISO 3166-1 sub-national place names in the Applicant Guidebook, and (2) to augment the definition of Continent or UN Regions in the Applicant Guidebook to include UNESCO's regional classification list. At the same meeting, the Board resolved that ICANN staff should determine if the directions indicated by the Board regarding geographical names and other issues are consistent with GAC comments, and recommend any appropriate further action in light of GAC's comments. http://icann.org/en/minutes/resolutions-25sep10-en.htm

- On 28 October, 2010, the Board discussed the scope, timing and logistics of a consultation needed with GAC regarding remaining geographic names issues in the new gTLD program. The Board agreed that staff should provide a paper on geographic names to GAC. http://www.icann.org/en/minutes/prelim-report-28oct10-en.htm

- On 12 November 2010, ICANN posted the proposed final version of the Applicant Guidebook (the "Proposed Final Guidebook"). http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf

- On 23 February 2011, the GAC released its Indicative Scorecard on New gTLD Outstanding Issues. This scorecard included advice from the GAC on the topics of Post-Delegation Disputes and Use of Geographic Names. http://gac.icann.org/system/files/20110223_Scorecard_GAC_outstanding_issues_20110223.pdf

- On 28 February – 1 March 2011, the Board met with GAC representatives at a meeting in Brussels to discuss the issues raised by the GAC.

- On 4 March 2011, the Board published its notes on the GAC Indicative Scorecard. The Board provided an indication of whether each component of the GAC's advice was consistent (fully or partially) or inconsistent with the Board's position on each of the issues. http://gac.icann.org/system/files/2011-03-04-ICANN-Board-Notes-Actionable-GAC-Scorecard.pdf

- On 12 April 2011, the GAC published comments on the Board's response to the GAC Scorecard. http://gac.icann.org/system/files/20110412_GAC_comments_on_the_Board_response_to_the_GAC_scorecard_0.pdf

- On 15 April 2011, ICANN posted a discussion draft of the Applicant Guidebook (the "Discussion Draft Guidebook"). This version expanded the definition of country names to include "a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization" as well as providing clarification to applicants that in the event of a dispute between a

government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, ICANN will comply with a legally binding order from a court in the jurisdiction of the government or public authority that has given support to an application.
http://www.icann.org/en/topics/new-gtlds/draft-rfp-redline-15apr11-en.pdf

- On 26 May 2011, the GAC provided comments on the 15 April 2011 Discussion Draft.
http://gac.icann.org/system/files/GAC%20Comments%20on%20the%20new%20gTLDs%20-%2026%20May%202011.pdf

- On 30 May 2011, ICANN posted another version of the Applicant Guidebook, taking into account public comment and the additional comment from the GAC. This version includes some clarifications but no significant changes from the 15 April 2011 Discussion Draft.
http://icann.org/en/topics/new-gtlds/comments-7-en.htm

III.   The Board's Analysis of Geographic Names Associated with the gTLD Program

A.   Brief Introduction to Geographic Names

This section sets forth an overview of the treatment of geographic names in the Applicant Guidebook.

- Section 2.2.1.4 provides the following guidance for applications involving geographic names.

  o Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names.

  o Certain types of applied-for strings are considered geographical names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities. These include:

> ➤ An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard;

> ➤ An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name;

> ➤ An application for any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard; and

> ➤ An application for a string which represents a continent or UN region appearing on the "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" list.

- o Applications for strings that are country or territory names will not be approved, as they are not available under the new gTLD program in this application round.

- o The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds, under which applications may be rejected based on objections showing substantial opposition from the targeted community.

- Section 2.3.1 of the Draft Discussion Guidebook provides additional guidance:

  - o If an application has been identified as a geographic name requiring government support, but the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the initial evaluation period, the applicant will have additional time to obtain and submit this information in the extended evaluation period.

B.   Why the Board Addressed Geographic Names

- The treatment of geographic names in the new gTLD space was an area of significant concern to many stakeholders.

- The Board received extensive advice from the GAC regarding the protection of geographic names.

- The GNSO, in its policy development work, balanced a number of stakeholder considerations in the formation of advice on the treatment of geographic names.

- The Board recognized that government stakeholders have important interests in protecting certain geographic names.

- The Board wished to create an appropriate balance between the interests of governments in protecting certain geographic names, and the multiple uses possible for various types of names in the namespace.

C.   Who the Board Consulted

- Legal Counsel

- The GNSO

- The GAC

- The ALAC

- The ccNSO

- The SSAC

- All other Stakeholders and Community members through public comment forum and other methods of participation.

D.   What Significant Non-Privileged Materials the Board Reviewed

- **Communications from GAC**

- o On 28 March 2007, GAC adopted the GAC Principles
  http://gac.icann.org/system/files/gTLD_principles_0.pdf

- o On 31 October 2007, GAC issued a communiqué
  http://gac.icann.org/communiques/gac-2007-
  communique-30

- o On 26 June 2008, GAC expressed concern to Board and
  GNSO that the GNSO proposals do not include provisions
  reflecting GAC Principles regarding new gTLDs
  http://www.icann.org/en/minutes/resolutions-
  26jun08.htm

- o On 8 September 2008, Paul Twomey participated in a
  conference call with the GAC to discuss treatment of GAC
  Principles

- o On 2 October 2008, Paul Twomey delivered a letter to
  Janis Karklins
  http://www.icann.org/en/correspondence/twomey-to-
  karklins-02oct08.pdf

- o On 8 November 2008: GAC issued a communiqué
  http://gac.icann.org/communiques/gac-2008-
  communique-33

- o On 4 March 2009, GAC issued a communiqué
  http://gac.icann.org/communiques/gac-2009-
  communique-34

- o On 17 March 2009, Paul Twomey delivered a letter to
  Janis Karklins
  http://www.icann.org/correspondence/twomey-to-
  karklins-17mar09-en.pdf

- o On 24 April 2009, Janis Karklins delivered a letter to Paul
  Twomey
  http://www.icann.org/correspondence/karklins-to-
  twomey-24apr09.pdf

- On 29 May 2009, Janis Karklins delivered a letter to Paul Twomey http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf

- On 24 June 2009, GAC issued a communiqué http://gac.icann.org/communiques/gac-2010-communique-38

- On 18 August 2009, Janis Karklins delivered a letter to Peter Dengate http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf

- On 22 September 2009, Peter Dengate-Thrush delivered a letter to Janis Karklins http://www.icann.org/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf

- On 10 March 2010, Janis Karklins delivered a letter to Peter Dengate-Thrush http://www.icann.org/correspondence/karklins-to-dengate-thrush-10mar10-en.pdf

- On 23 September 2010, Heather Dryden delivered a letter to Peter Dengate-Thrush http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf

  On 23 February 2011, the GAC delivered its Indicative Scorecard on New gTLD Outstanding Issues http://gac.icann.org/system/files/20110223_Scorecard_GAC_outstanding_issues_20110223.pdf

- **GNSO Policy Recommendations**

  - On 23 May 2007, GNSO Reserved Names Working Group issued its final report

http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm

- o On 8 August 2007, GNSO issued its final report regarding the introduction of new gTLDs http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

- **ccNSO Comments**

  - o On 28 December 2008, ccNSO commented on Version 1 http://forum.icann.org/lists/gtld-evaluation/msg00015.html

  - o On 9 April 2009, ccNSO commented on Version 2 http://forum.icann.org/lists/2gtld-guide/pdfc3uGsuV7CG.pdf

  - o On 6 July 2009, ccNSO commented on an excerpt from Version 3 http://forum.icann.org/lists/e-gtld-evaluation/msg00006.html

  - o On 21 November 2009, ccNSO commented on Version 3 again http://www.icann.org/correspondence/disspain-to-dengate-thrush-21nov09-en.pdf

- **Public Comments**

  - o Comments from the community http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm

E.   What Concerns the Community Raised

- There is a need for clarification of the geographic names process in the Application Guidebook.

- The new gTLDs should respect the sensitivity regarding terms with national, cultural, geographic and religious significance.

- The enumerated grounds for objection might not provide sufficient grounds to safeguard the interest of national, local and municipal governments in the preservation of geographic names that apply to them.

- Delegation and registration of country and territory names is a matter of national sovereignty.

- There is concern over the fees involved in the dispute resolution process, particularly for governments.

- There is concern over perceived inconsistencies with the GNSO policy recommendations.

F.   What Factors the Board Found to Be Significant

- The balance of retaining certainty for applicants and demonstrating flexibility in finding solutions;

- The goals of providing greater clarity for applicants and appropriate safeguards for governments and the broad community;

- The goal of providing greater protections for country and territory names, and greater specificity in the support requirements for the other geographic names;

- The goal of respecting the relevant government or public authority's sovereign rights and interests;

- The risk of causing confusion for potential applicants and others in the user community; and

- The risk of possible misuse of a country or territory name or the misappropriation of a community label.

G.   The Board's Reasons For the Proposed Approach to Geographic Names

- ICANN's Core Values include introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

- The Board has accepted GAC advice to require government approval in the case of applications for certain geographic names.

- The Board intended to create a predictable, repeatable process for the evaluation of gTLD applications. Thus, to the extent possible, geographic names are defined with respect to pre-existing lists.

- The Board recognized that the community objection process recommended by the GNSO to address misappropriation of a community label would be an additional avenue available to governments to pursue a case where a name was not protected by reference to a list.The Board discussed this topic extensively with the GAC. As a result of the consultation on this and other topics, the Applicant Guidebook was revised to incorporate an Early Warning process which governments could use to flag concerns about a gTLD application at an early stage of the process. These procedures could also help address any concerns from governments about geographic names not already protected in the process.

- The Board also confirmed that the GAC has the ability to provide GAC Advice on New gTLDs concerning any application. Thus, governments would not be required to file objections and participate in the dispute resolution process, but rather, may raise their concerns via the GAC. This process could be used, for example, for governments to object to an application for a string considered by a government to be a geographic name.

- The formal objection and dispute resolution process does remain available to governments as an additional form of protection. Limited funding support from ICANN for objection filing fees and dispute resolution costs is available to governments.

- The Board adopted GAC recommendations for protections of geographic names in second-level registrations.

5. ICANN Board Rationale on the Risk of Increased Malicious Conduct Associated with the New gTLD Program

5. ICANN Board Rationale on the Risk of Increased Malicious Conduct Associated with the New gTLD Program

I.   Introduction

Through the development of the new gTLD program and the numerous opportunities for public comment and receipt of community input on the new gTLD program, one of the issues that emerged as a commonly-raised concern was the potential for an increased risk of instances of malicious conduct associated with the introduction of New gTLDs. ICANN committed to (and remains committed to) addressing this issue. The Affirmation of Commitments of the United States Department of Commerce and ICANN includes the following provision:

> ICANN will ensure that as it contemplates expanding
> the top-level domain space, the various issues that are
> involved (including competition, consumer protection,
> security, stability and resiliency, malicious abuse
> issues, sovereignty concerns, and rights protection)
> will be adequately addressed prior to implementation.

http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm. These issues were not newly identified in the Affirmation of Commitments. From the outset, ICANN has sought to address these issues as it has prepared to implement the new gTLD program, and has mechanisms and processes designed to address this concern.

This memorandum focuses on the Board's consideration of the risk of a potential increase in malicious conduct associated with the introduction of new gTLDs. The memorandum summarizes: the Board's consideration of the issue, measures approved to mitigate instances of malicious conduct, and the Board's rationale for implementing the new gTLD program while adopting and implementing measures to mitigate that risk.

II.   History of the Board's Consideration of Malicious Conduct

This section contains a brief history of significant actions taken by the ICANN Board to mitigate the potential for malicious conduct associated with the new gTLD program.

- On 26 June 2008, the Board adopted the Generic Names Supporting Organization's ("GNSO") policy recommendations for the introduction of new gTLDs, and directed ICANN staff to continue to develop a detailed implementation plan. See Board Resolution at http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171; see Board Meeting Transcript at https://par.icann.org/files/paris/ParisBoardMeeting_26June08.txt

- On 16 May 2009, the Board participated in a workshop on issues related to the new gTLD program, including the security and stability of the Internet generally and the potential risk of malicious conduct in particular.Rationale-all -final-20110609.doc

- On 20 June 2009, the Board participated in another workshop on issues related to the new gTLD program, including the risk of malicious conduct on the Internet.

- On 26 June 2009, the Board resolved that new gTLDs be prohibited from using Domain Name System ("DNS") redirection and synthesized DNS responses; directed ICANN staff to amend the draft Applicant Guidebook accordingly; and further directed ICANN staff to educate the community about the harms associated with DNS redirection and synthesized DNS responses and how to stop them. See Board Resolution at https://icann.org/en/minutes/resolutions-26jun09.htm; see Board Meeting Transcript at http://syd.icann.org/files/meetings/sydney2009/transcript-board-meeting-26jun09-en.txt

- During its study of malicious conduct, ICANN staff solicited and received comments from multiple outside sources, including the Anti Phishing Working Group (APWG), Registry Internet Safety Group (RISG), the Security and Stability Advisory Committee (SSAC), Computer Emergency Response Teams (CERTs) and members of the banking/financial and Internet security communities. These parties described several potential malicious conduct issues and encouraged ICANN to consider ways these might be addressed or mitigated in new gTLD registry agreements.

- On 1 October 2009, ICANN announced the launch of the Expedited Registry Security Request ("ERSR") process. ICANN intends that

gTLD registries will use the ERSR process for security incidents that require immediate action by the registry in order to avoid adverse effects upon DNS stability or security. The ERSR, a web-based submission procedure, reflects the result of a collaborative effort between ICANN and existing gTLD registries to develop a process for quick action in cases where gTLD registries: (1) inform ICANN of a present or imminent security threat to their TLD and/or the DNS; and (2) request a contractual waiver for actions they may take or already have taken to mitigate or eliminate the threat. http://www.icann.org/en/announcements/announcement-01oct09-en.htm

- On 3 October 2009, ICANN published an Explanatory Memorandum on Mitigating Malicious Conduct, part of a series of documents published by ICANN to assist the global Internet community in understanding the development of the new gTLD program and the requirements and processes presented in the Applicant Guidebook. https://icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-04oct09-en.pdf

- On 24 November 2009, ICANN announced that it was soliciting members for two new temporary expert advisory groups to study issues related to the risk of malicious conduct: (1) the establishment of a high security TLD designation; and (2) centralized zone access. https://icann.org/en/announcements/announcement-03dec09-en.htm

- On 3 December 2009, ICANN announced that it had formed the High Security Zone Advisory Group and the Centralized Zone File Access Advisory Group. http://www.icann.org/en/announcements/announcement-03dec09-en.htm

- On 22 February 2010, ICANN published papers by the High Security Zone Advisory Committee and the Central File Access Advisory Committee and solicited public comments. As the result of the latter paper, a uniform method of accessing registry data is now incorporated into the Guidebook. http://www.icann.org/en/announcements/announcement-22feb10-en.htm

- On 28 May 2010, ICANN published an Updated Explanatory Memorandum of Mitigating Malicious Conduct. The paper described specific malicious conduct mitigation measures that were recommended by recognized experts in this area that were subsequently incorporated into the Applicant Guidebook. http://www.icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-memo-update-28may10-en.pdf

- On 16 June 2010, ICANN solicited comments on the High Security Zone Advisory Committee's Policy Development Snapshot #2. http://www.icann.org/en/topics/new-gtlds/hstld-program-snapshot-2-16jun10-en.pdf

- On 22 September 2010, ICANN published a Request for Information on the proposed High Security Zone program and requested that all submissions be made by 23 November 2010.

- On 23 September 2010, the GAC outlined to the Board its concerns and recommendations for the new gTLD program and its comments on version 4 of the Draft Applicant Guidebook. http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf

- On 24-25 September 2010, the Board participated in another workshop on issues related to the new gTLD program, including discussions on background screening, orphan glue records, and the High-Security Top-Level Domain (HSTLD) concept. http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.8

- On 12 November 2010, ICANN published a second Updated Explanatory Memorandum of Mitigating Malicious Conduct. https://icann.org/en/topics/new-gtlds/explanatory-memo-mitigating-malicious-conduct-12nov10-en.pdf. This memo noted ICANN's adoption of the Zone File Access Advisory Group's Strategy Proposal for a recommendation to create a mechanism to support the centralization of access to zone-file records. This centralized approach is intended to streamline the access and approval process and standardize the format methodology for zone file consumers (e.g. anti-abuse and trademark protection organizations, researchers, academia, etc.). The Centralized Zone Data Access Provider pilot program was deployed for testing in June 2011 and a

production version program is anticipated to be deployed before any new gTLDs are delegated in the root. Rationale-all -final-20110609.doc

- On 9 December 2010, the GAC provided ICANN with a list of issues it considered to be "outstanding" and requiring further consideration, including consumer protection/the risk of malicious conduct.
http://gac.icann.org/system/files/Cartagena_Communique.pdf

- On 10 December 2010, the Board resolved that ICANN had addressed the issue of the risk of increased malicious conduct in new gTLDs by adopting and implementing various measures, including centralized zone file access. The Board further stated that these solutions reflected the negotiated position of the ICANN community, but that ICANN would continue to take into account public comment and the advice of the GAC.
See Board Resolution at https://icann.org/en/minutes/resolutions-10dec10-en.htm; see Board Meeting Minutes at https://icann.org/en/minutes/minutes-10dec10-en.htm

- On 21 February 2011, ICANN published a briefing paper on issues the GAC had identified as "outstanding" in September 2010, including certain issues related to the risk of increased malicious conduct.
http://www.icann.org/en/announcements/announcement-6-21feb11-en.htm

- On 28 February 2011 and 1 March 2011, the GAC and the Board conferred about remaining outstanding issues related to the new gTLD program, including certain issues related to the risk of increased malicious conduct.
http://www.icann.org/en/announcements/announcement-23feb11-en.htm

- On 4 March 2011, the Board published its comments on the GAC Scorecard.
http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-04mar11-en.pdf

- On 15 April 2011, ICANN posted a discussion draft of the Applicant Guidebook (the "Discussion Draft Guidebook").

http://www.icann.org/en/topics/new-gtlds/draft-rfp-redline-15apr11-en.pdf

- On 26 May 2011, the GAC provided comments on the 15 April 2011 Discussion Draft. http://gac.icann.org/system/files/GAC%20Comments%20on%20the%20new%20gTLDs%20-%2026%20May%202011.pdf

- The GAC-Board discussions resulted in additional forms of background checks and requirements for new registries to cooperate with law enforcement.

- On 30 May 2011, ICANN posted another version of the Applicant Guidebook, taking into account public comment and the additional comment from the GAC. http://icann.org/en/topics/new-gtlds/comments-7-en.htm

III.   **The Board's Analysis of the Risk of Increased Malicious Conduct Associated with the New gTLD Program**

A.   **Why the Board is Addressing This Issue Now**

- ICANN's mission statement and one of its founding principles is to promote competition. The expansion of TLDs will allow for more innovation and choice in the Internet's addressing system. The ICANN Board seeks to implement the new gTLD program together with measures designed to mitigate the risk of increased malicious conduct on the Internet.

- ICANN committed to the U.S. Department of Commerce that it would address the risk of malicious conduct in new gTLDs prior to implementing the program.

- The ICANN Board is committed to making decisions based on solid factual investigation and expert analysis.

B.   **Who the Board Consulted**

- The GNSO

- The GAC

- The At-Large Community and ALAC

- The ICANN Implementation Recommendation Team ("IRT")

- The Anti-Phishing Working Group
  http://www.antiphishing.org/

- The Registry Internet Safety Group
  http://registrysafety.org/website/

- The ICANN Security and Stability Advisory Committee
  http://www.icann.org/en/committees/security/

- Computer Emergency Response Teams ("CERTs")
  See, e.g., http://www.us-cert.gov/

- The ICANN Zone File Access Advisory Group
  http://www.icann.org/en/topics/new-gtlds/zone-file-access-en.htm

- The ICANN High Security Zone TLD Advisory Group
  http://www.icann.org/en/topics/new-gtlds/hstld-program-en.htm

- The Registration Abuse Policies Working Group
  https://st.icann.org/reg-abuse-wg/

- The Registrar Stakeholder Group
  http://www.icannregistrars.org/

- The Registries Stakeholder Group
  http://www.gtldregistries.org/

- Members of the banking and financial community, including the BITS Fraud Reduction Program, the American Bankers Association, the Financial Services Information Sharing and Analysis Center ("FS-ISAC"), and the Financial Services Technology Consortium ("FSTC") See, e.g., www.icann.org/en/correspondence/bell-to-beckstrom-11aug09-en.pdf; and http://www.icann.org/en/correspondence/evanoff-to-beckstrom-13nov09-en.pdf

- Members of the Internet security community, including the Worldwide Forum of Incident Response and Security Teams ("FIRST"), which consists of computer and network emergency response teams from 180 corporations, government bodies,

universities and other institutions spread across the Americas, Asia, Europe, and Oceania; as well as various law enforcement agencies

- Other stakeholders and members of the community

- Legal counsel

C.   What Significant Non-Privileged Materials the Board Reviewed

- Reports and Comments from Committees and Stakeholders

    o   Centralized Zone File Access:

        ➢   18 February 2010 gTLD Zone File Access in the Presence of Large Numbers of TLDs: Concept Paper https://icann.org/en/topics/new-gtlds/zfa-concept-paper-18feb10-en.pdf

        ➢   12 May 2010 gTLD Zone File Access For the Future: Strategy Proposal http://www.icann.org/en/topics/new-gtlds/zfa-strategy-paper-12may10-en.pdf

    o   Wild Card Resource Records:

        ➢   10 November 2006 ICANN Security and Stability Advisory Committee Paper: Why TLDs Should Not Use Wild Card Resource Records http://www.icann.org/en/committees/security/sac015.htm

    o   Phishing Attacks:

        ➢   26 May 2008 ICANN Security and Stability Advisory Committee Paper: Registrar Impersonation Phishing Attacks http://www.atlarge.icann.org/files/atlarge/ssac-registrar-impersonation-24jun08.pdf

        ➢   17 June 2009 Anti-Phishing Working Group Paper https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/potential_for_malicious_conduct:

20090619162304-0-
3550/original/DRAFT%20Potential%20malicious%20us
e%20issues%2020090617.pdf

- o DNS Response Modification:

  - ➢ 20 June 2008 ICANN Security and Stability Advisory
    Committee Paper: DNS Response Modification
    https://par.icann.org/files/paris/PiscitelloNXDOMAIN.
    pdf

- o Centralized Malicious Conduct Point of Contact:

  - ➢ 25 February 2009 ICANN Security and Stability
    Advisory Committee Paper: Registrar Abuse Point of
    Contact
    http://www.icann.org/en/committees/security/sac03
    8.pdf

- o High Security Zone:

  - ➢ 18 November 2009 A Model for High Security Zone
    Verification Program: Draft Concept Paper
    https://icann.org/en/topics/new-gtlds/high-security-
    zone-verification-04oct09-en.pdf

  - ➢ 17 February 2010 High Security Zone TLD: Draft
    Program Development Snapshot
    https://icann.org/en/topics/new-gtlds/hstld-program-
    snapshot-18feb10-en.pdf

  - ➢ 13 April 2010 High Security TLD: Draft Program
    Development Snapshot
    https://st.icann.org/hstld-
    advisory/index.cgi?hstld_program_development_sna
    pshot_1

  - ➢ 16 June 2010 High Security Zone TLD: Draft Program
    Development Snapshot
    http://www.icann.org/en/topics/new-gtlds/hstld-
    program-snapshot-2-16jun10-en.pdf

- o Redirection and Synthesized Responses:

- ➢ 10 June 2001 ICANN Security and Stability Advisory Committee Paper: Recommendation to Prohibit Use of Redirection and Synthesized Responses (*i.e.*, Wildcarding) by New TLDs http://www.icann.org/en/committees/security/sac041.pdf

  - o Thick vs. Thin WHOIS:

    - ➢ 30 May 2009 ICANN Explanatory Memorandum on Thick vs. Thin WHOIS for New gTLDs http://www.icann.org/en/topics/new-gtlds/thick-thin-whois-30may09-en.pdf

  - o Trademark Protection:

    - ➢ 29 May 2009 Implementation Recommendation Team Final Draft Report to ICANN Board http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf

    - ➢ <u>See</u> the Board Rationale Memorandum on Trademark Protection for a more detailed summary of non-privileged materials the Board reviewed on this topic.

  - o Malicious Conduct Generally:

    - ➢ 15 April 2009 ICANN Plan for Enhancing Internet Security, Stability and Resiliency http://www.icann.org/en/topics/ssr/ssr-draft-plan-16may09-en.pdf

    - ➢ 19 May 2009 Registry Internet Safety Group's Paper: Potential for Malicious Conduct in New TLDs https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/potential_for_malicious_conduct:20090519220555-0-2071/original/RISG_Statement_on_New_TLDs-20090519.pdf

    - ➢ 19 August 2009 ICANN Security and Stability Advisory Committee Paper: Measures to Protect Domain

Registration Services Against Exploitation or Misuse
http://www.icann.org/en/committees/security/sac04
0.pdf

➢ 3 October 2009 ICANN's Explanatory Memorandum
on Mitigating Malicious Conduct
https://icann.org/en/topics/new-gtlds/mitigating-
malicious-conduct-04oct09-en.pdf

➢ 30 November 2009 Online Trust Alliance's Comments
on the New gTLD Program
http://www.icann.org/en/correspondence/spiezle-to-
pritz-30nov09-en.pdf

➢ 28 May 2010 ICANN's Updated Memorandum on
Mitigating Malicious Conduct
http://www.icann.org/en/topics/new-
gtlds/mitigating-malicious-conduct-memo-update-
28may10-en.pdf

➢ 29 May 2010 Registration Abuse Policies Working
Group Final Report
http://www.gnso.icann.org/issues/rap/rap-wg-final-
report-29may10-en.pdf

➢ 13 September 2010 ICANN's Updated Plan for
Enhancing Internet Security, Stability and Resiliency
http://icann.org/en/topics/ssr/ssr-draft-plan-fy11-
13sep10-en.pdf

➢ 12 November 2010 ICANN's Second Updated
Memorandum on Mitigating Malicious Conduct
https://icann.org/en/topics/new-gtlds/explanatory-
memo-mitigating-malicious-conduct-12nov10-en.pdf

➢ 21 February 2011 ICANN briefing paper on issues the
GAC had identified as "outstanding" in September
2010, including certain issues related to the risk of
increased malicious conduct
http://www.icann.org/en/announcements/announce
ment-6-21feb11-en.htm

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- Comments from the Community

D.   What Concerns the Community Raised

- There was concern expressed that the new gTLD program will lead to an expansion of crime on the Internet, including look-alike domains, drop catching, domain tasting, domain hijacking, malware distribution, identity theft and miscellaneous deceptive practices.

- Wrongdoers may apply to operate registries.

- Wrongdoers may exploit technical weaknesses in the Internet, including automated registration services.

- End user confusion about new gTLDs may lead to increased fraud. For example, end users may be confused about TLDs whose mere names raise expectations of security.

- Certain new gTLDs may not comply with some national laws.

- There is a need for an enhanced control framework for TLDs with intrinsic potential for abuse, including those involving e-service transactions requiring a high confidence infrastructure (such as electronic financial services or electronic voting) and those involving critical assets (such as energy infrastructures or medical services).

- There is a need for better and more efficient identification of domain name resellers.

- There is a need to ensure the integrity and utility of registry information.

- The new gTLD program should safeguard the privacy of personal and confidential information.

- New gTLDs may adversely affect trademark owners.

- ICANN and others should better enforce provisions in agreements with registries and registrars.

- ICANN should impose new requirements on TLD operators.

- There is a need for systemic processes to combat abuse on the Internet.

E.   What Steps the Board Resolved to Take to Mitigate Malicious Conduct

The Board believes the following measures will greatly help to mitigate the risk of increasing malicious conduct arising from new gTLDs. ICANN has incorporated the majority of these measures in the current version of the Applicant Guidebook and/or the registry agreement, and its efforts to implement the remaining measures are ongoing.
http://www.icann.org/en/topics/new-gtlds/dag-en.htm

- Required vetting of registry operators: The application process includes standardized, thorough background and reference checks for companies and individuals (key officers) to mitigate the risk that known felons, members of criminal organizations or those with histories of bad business operations (including cybersquatting) will become involved in registry operations or gain ownership or proxy control of registries.

- Required demonstrations of plans for Domain Name System Security Extensions ("DNSSEC") deployment: DNSSEC is designed to protect the Internet from most attacks, including DNS cache poisoning. It is a set of extensions to the DNS which provide: (1) origin authentication of DNS data; (2) data integrity; and (3) authenticated denial of existence.

- Prohibition on wildcarding: The prohibition on wildcarding bans DNS redirection and synthesized DNS responses to reduce the risk of DNS redirection to a malicious site.

- Required removal of orphan glue records: Removal of orphan glue records destroys potential name server "safe havens" that abusers can use to support criminal domain registrations. Registry operators will be required to remove orphan glue records when presented with evidence in written form that such records are present in connection with malicious conduct.

- Mandatory thick WHOIS records: Registry Operators must maintain and provide public access to registration data using a thick WHOIS data model. Thick WHOIS will help mitigate malicious conduct and

trademark abuse by ensuring greater accessibility and improved stability of records.

- Centralization of zone file access: Central coordination of zone file data will allow the anti-abuse community to efficiently obtain updates on new domains as they are created within each zone, and to reduce the time necessary to take corrective action within TLDs experiencing malicious activity. The program is designed to reduce differences in and complexities of contractual agreements, standardize approaches and improve security and access methods.

- Mandatory documentation of registry level abuse contacts and procedures: Registry operators will provide a single abuse point of contact for all domains within the TLD who is responsible for addressing and providing timely responses to abuse complaints received from recognized parties, such as registries, registrars, law enforcement organizations and recognized members of the anti-abuse community. Registries also must provide a description of their policies to combat abuse.

- Required participation in the Expedited Registry Security Request ("ERSR") process: ICANN developed the ERSR process in consultation with registries, registrars and security experts, based on lessons learned in responding to the Conficker worm, to provide a process for registries to inform ICANN of a present or imminent "security situation" involving a gTLD and to request a contractual waiver for actions the registry might take or has taken to mitigate or eliminate the security concerns. "Security situation" means: (1) malicious activity involving the DNS of a scale and severity that threatens the systematic security, stability and resiliency of the DNS; (2) potential or actual unauthorized disclosure, alteration, insertion or destruction of registry data, or the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards; or (3) potential or actual undesired consequences that may cause or threaten to cause a temporary or long-term failure of one or more of the critical functions of a gTLD registry as defined in ICANN's gTLD Registry Continuity Plan.

- Framework for High Security Zones Verification: The concept of a voluntary verification program is a mechanism for TLDs that desire

to distinguish themselves as secure and trusted, by meeting additional requirements for establishing the accuracy of controls for the registry, registrar and registrant processing, as well as periodic independent audits. A draft framework was created by the HSTLD working group.. The working group's Final Report may be used to inform further work. ICANN will support independent efforts toward developing voluntary high-security TLD designations, which may be available to gTLD applicants wishing to pursue such designations.

F.   What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of the potential for malicious conduct associated with the new gTLD program. The Board found the following factors to be significant:

- the principle that the Board should base Policy on solid factual investigation and expert analysis;

- whether new gTLDs would promote consumer welfare;

- certain measures intended to mitigate the risk of malicious conduct may raise implementation costs for new gTLD registries;

- the creation of new TLDs may provide an opportunity for ICANN to improve the quality of domain name registration and domain resolution services in a manner that limits opportunities for malicious conduct;

- most abuse takes place in larger registries because that is where abusive behavior "pays back,"; a more diverse gTLD landscape makes attacks less lucrative and effective;

- the risk of increasing exposure to litigation; and

- the lack of reported problems concerning increased criminal activity associated with ICANN's previous introductions of new TLDs.

IV. The Board's Reasons for Proceeding with the New gTLD Program While Implementing Measures to Mitigate the Risk of Malicious Conduct

- Modest additions to the root have demonstrated that additional TLDs can be added without adversely affecting the security and stability of the domain name system.

- ICANN's "default" position should be for creating more competition as opposed to having rules that restrict the ability of Internet stakeholders to innovate. New gTLDs offer new and innovative opportunities to Internet stakeholders.

- Most abuse takes place in larger registries. A more diverse gTLD landscape makes attacks less lucrative and effective.

- New gTLD users might rely on search functions rather than typing a URL in an environment with many TLDs, lessening the effectiveness of forms of cyber-squatting.

- Brand owners might more easily create consumer awareness around their brands as a top-level name, reducing the effectiveness of phishing and other abuses.

- ICANN has worked with the community to address concerns relating to potential malicious conduct in the new gTLD space. New and ongoing work on these issues in the policy development arena may provide additional safeguards recommended as a result of the bottom-up process, and ICANN will continue to support these efforts.

- Data protection is best accomplished by data protection tools, including audits, contractual penalties such as contract termination, punitive damages, and costs of enforcement, as well as strong enforcement of rules.

- The measures adopted by ICANN, including centralized zone file access, and other mechanisms, address the principal concerns raised by stakeholders about the potential for proliferation of malicious conduct in the new gTLD space. A combination of verified security measures and the implementation of DNSSEC will

allow users to find and use more trusted DNS environments within the TLD market.

- Revised applicant procedures and agreements reflecting the measures to mitigate the risk of malicious conduct will permit ICANN to address certain risks of abuse contractually and also will permit ICANN to refer abuses to appropriate authorities. ICANN can amend contracts and the applicant guidebook to address harms that may arise as a direct or indirect result of the new gTLD program.

6. ICANN Board Rationale on Objection Process Associated with the New gTLD Program

6. ICANN Board Rationale on Objection Process Associated with the New gTLD Program

I.   Introduction

Recommendation 12 of the Generic Names Supporting Organization (GNSO) Final Report on the Introduction of New gTLDs (http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm), and approved by the Board in June 2008 (http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171) states that, "[D]ispute resolution and challenge processes must be established prior to the start of the process." Further, Implementation Guideline H, also set forth by the GNSO, states "External dispute providers will give decisions on objections."

Based on the GNSO Policy and implementation planning, it was determined that four of the GNSO recommendations should serve as a basis for an objection process managed by external providers. Those include the following:

(i)   Recommendation 2 "Strings must not be confusingly similar to an existing top-level domain or a Reserved Name" (String Confusion Objection);

(ii)   Recommendation 3 "Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law" (Legal Rights Objection);

(iii)   Recommendation 6 "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law" (Limited Public Interest Objection); and

(iv)   Recommendation 20 "An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted" (Community Objection).

Thus, a process allowing third parties to object to applications for new gTLDs on each the four grounds stated above was developed.[2]

Subsequent to the development and refinement of the original Objection Procedures based on the GNSO recommendations and set out in Module 3 of the Applicant Guidebook (*see* http://www.icann.org/en/topics/new-gtlds/objection-procedures-clean-30may11-en.pdf) a separate process has been established for the GAC. That process is also set out in Module 3 of the Applicant Guidebook. In short, there is now a formal process for the GAC to provide advice in relation to the approval of an application.

II.   History of the Development of the Objection Processes and Procedures Associated with the New gTLD Program

This section sets forth a history of significant actions taken on the subject of the objection process associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for numerous other reasons.

- In August 2007, the GNSO issued its final report regarding the introduction of new gTLDs. Recommendation 12 of the report ("Recommendation 12") states that "[d]ispute resolution and challenge processes . . . must be established prior to the start of the process" and Implementation Guideline H states that "External dispute providers will give decisions on objections." http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

- In December 2007, ICANN posted a call for expressions of Interest from potential Dispute Resolution Service Providers (DSRP) for the new gTLD Program. http://www.icann.org/en/announcements/announcement-21dec07.htm

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[2] The International Centre for Dispute Resolution (ICDR) has agreed to administer disputes brought pursuant to String Confusion Objections. The Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO) has agreed to administer disputes brought pursuant to Legal Rights Objections. The International Center of Expertise of the International Chamber of Commerce (ICC) has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

- Throughout 2008, external dispute resolution service providers were evaluated and selected. As noted above in footnote 1, the ICDR will administer disputes brought pursuant to String Confusion Objections, WIPO will administer disputes brought pursuant to Legal Rights Objections and the ICC will administer disputes brought pursuant to Limited Public Interest and Community Objections.

- Also throughout 2008, ICANN conducted public consultations, as well as thorough and global research to help define the standing requirements and standards to be used by dispute resolution panels to resolve the disputes on the various Objection grounds.

- In October 2008, ICANN published draft version 1 of the Applicant Guidebook, including Module 3, which laid out the Dispute Resolution Procedures. At that same time, ICANN posted a paper for community discussion entitled "Morality and Public Order Objection Considerations in New gTLDs," which summarized the implementation work that had been accomplished in response to Recommendation 6 (now called Limited Public Interest Objection). http://www.icann.org/en/topics/new-gtlds/morality-public-order-draft-29oct08-en.pdf

- In February 2009, the Board discussed who would have standing to object to an applied-for string on the basis of morality and public order. There was a sense that an objection-based dispute resolution process was the appropriate method for addressing possible disputes. There was also a sense that any injured party would have standing to object. Limiting standing to governments or other official bodies might not address the potential harm. http://www.icann.org/en/minutes/minutes-12feb09.htm

- Also in February 2009, with the second draft version of the Applicant Guidebook, ICANN posted the separate "New gTLD Dispute Resolution Procedure". http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedure-18feb09-en.pdf

- Also in February 2009, ICANN posted a paper for community discussion entitled "Description of Independent Objector for the New gTLD Dispute Resolution Process," which explored the potential benefits of

allowing an "Independent Objector" to object within the dispute resolution process.
http://www.icann.org/en/topics/new-gtlds/independent-objector-18feb09-en.pdf

- In May 2009, along with revised excerpts of the Applicant Guidebook, ICANN posted a paper for community discussion entitled "Standards for Morality and Public Order Research," which summarized the research relating to the development of standards for morality and public order (now Limited Public Interest) objections.
http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf

- In May 2010, ICANN posted a paper entitled "'Quick Look' Procedure for Morality and Public Order Objections," which summarized a procedure requested by community members by which morality and public order objections could be dismissed if they are determined to be "manifestly unfounded and/or an abuse of the right to object."
http://www.icann.org/en/topics/new-gtlds/morality-public-order-quick-look-28may10-en.pdf

- In August 2010, Heather Dryden, Chair of the GAC, delivered a letter to Peter Dengate Thrush, Chairman of the Board, requesting that the proposed procedure for morality and public order objections be replaced with an alternative mechanism.
http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf

- Also in August 2010, the Board considered Submission No. 2010-08-05-15, which discussed the feedback received by the GAC with regard to the proposed procedure for morality and public order objections.
http://www.icann.org/en/minutes/board-briefing-materials-2-05aug10-en.pdf

- In September 2010, the cross-stakeholder group known as the New gTLD Recommendation 6 Cross-Community Working Group ("Rec6 CWG") published a report on the Implementation of the Recommendation (the "Rec6 CWG report"). The report provided guidance to the Board with regard to procedures for addressing culturally objectionable and/or sensitive strings, while protecting internationally recognized freedom of expression rights. This report

was posted for public comment. *See* link at
http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm

- Also in September 2010, the Board met in Trondheim, Norway and stated that they would "accept the [Rec6 CWG] recommendations that are not inconsistent with the existing process, as this can be achieved before the opening of the first gTLD application round, and [would] work to resolve any inconsistencies." At the same meeting, the Board agreed that it had "ultimate responsibility for the new gTLD program … however, [that it wished] to rely on the determination of experts on these issues."
http://www.icann.org/en/minutes/resolutions-25sep10-en.htm

- In October 2010, the Board again discussed the Rec6 CWG report, indicating that several of the working group recommendations could be included in the Guidebook for public discussion and that the working group recommendations should be discussed publicly at ICANN's upcoming meeting in Cartagena.
http://www.icann.org/en/minutes/resolutions-28oct10-en.htm

- In November 2010, ICANN posted the proposed final version of the Applicant Guidebook (the "Proposed Final Guidebook"), which adopted several of the recommendations set forth in the Rec6 CWG report.
http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf

- Also in November 2010, ICANN posted an explanatory memorandum entitled "'Limited Public Interest Objection," which described the recommendations set forth in the Rec6 CWG report, ICANN's responses to those recommendations and ICANN's rationale for its responses.
http://www.icann.org/en/topics/new-gtlds/explanatory-memo-morality-public-order-12nov10-en.pdf

- In December 2010 in Cartagena, Columbia, the Board had two separate sessions with the Rec6 CWG to help achieve further understanding of the working group's positions.

- On 23 February the GAC issued the "GAC indicative scorecard on new gTLD issues listed in the GAC Cartagena Communique" ("Scorecard")

identifying the Objection Process as one of twelve areas for discussion. http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf

- On 28 February and 1 March 2011, the Board and the GAC had a two-day consultation in Brussels, Belgium to discuss the issued raised in the Scorecard, including the suggestion that the GAC should not be subject to the Objection Procedures for Limited Public Interest Objections. Instead, a process was discussed by which the GAC could provide public policy advice on individual gTLD applications directly to the Board

- On 12 April 2011, the GAC issued "GAC comments on the ICANN's Board's response to the GAC Scorecard" that also addressed the Objection Procedures. http://www.icann.org/en/topics/new-gtlds/gac-comments-board-response-gac-scorecard-12apr11-en.pdf

- On April 15 2011, ICANN posted the April 2011 Discussion Draft of the Applicant Guidebook, containing a new "GAC Advice" section detailing the procedure by which the GAC could provide advice to the Board concerning gTLD applications. http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-redline-15apr11-en.pdf

- Also on 15 April 2011, ICANN posted an Explanatory Memorandum entitled 'GAC and Government Objections; Handling of Sensitive Strings; Early Warning" to describe details of the new procedures. http://www.icann.org/en/topics/new-gtlds/gac-objections-sensitive-strings-15apr11-en.pdf

- Also on 15 April 2011, ICANN posted "Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response" discussing its response to the GAC's concerns on the Objection Process. http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-clean-15apr11-en.pdf

- On 20 May the Board and GAC had further consultations that included discussion on the Objection Process. http://www.icann.org/en/topics/new-gtlds/transcript-board-gac-20may11-en.pdf

- On 30 May, ICANN posted the current version of the Applicant Guidebook with additional refinements to the Objection Process as it relates to the GAC. http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm

- On 19 June 2011, the Board and the GAC had additional consultations.

III.   The Board's Analysis of the Objection Process Associated with the New gTLD Program

A.   Brief Introduction to the Objection Process

1.   Brief Overview of the Objection Process for all except the GAC.

- The new gTLD process is an objection-based process, in which parties with standing may file with an identified independent dispute resolution provider a formal objection to an application on certain enumerated grounds (see footnote 1 for list of providers). The grounds for filing a formal objection to an application are:

  o the gTLD string is confusingly similar to an existing TLD or another applied-for gTLD string in the same round of applications ("String Confusion Objection")

  o the gTLD string infringes the existing legal rights of the objector ("Legal Rights Objection")

  o the gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law ("Limited Public Interest Objection")

  o there is substantial opposition to the application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted ("Community Objection").

  http://www.icann.org/en/topics/new-gtlds/draft-rfp-redline-15apr11-en.pdf

- If the objectors have standing, their objections will be considered by a panel of qualified experts, that will issue a Determination.

- Specific standards under which each of the four types of objections will be evaluated are set forth in detail in Module 3 of the current Applicant Guidebook.

- There will be objection fees (fixed for String Confusion and Community Objections and hourly for Limited Public Interest and Community Objections) that will be refundable to the prevailing party.

2. Brief Overview of the GAC Advice Process.

- The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

- For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period

- Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

- ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.

- The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

B. **Why the Board Addressed the Objection Process as it has**

- The GNSO Policy Recommendations called for the creation of a dispute resolution or objection process in the new gTLD program.

- The GNSO also provided implementation guidelines suggesting that external dispute resolution providers should be utilized.

- A fully established objection process, with uniform standing requirements and standards available to the dispute resolution service providers, ensures that a reasonably objective process is in place. It further ensures that experts in dispute resolution make any determinations on the disputes after considering all of the evidence.

- A fully established dispute resolution process provides parties with a cost-effective alternative to initiating action in court, if there is a valid objection.

- The GAC advised the Board that it was not amendable to utilizing the standard Objection Process established for the new gTLD program. Accordingly, the Board worked closely with the GAC to develop a mutually acceptable "objection" mechanism, in the form of GAC Advice.

C.   **Who the Board Consulted**

- Legal Counsel

- International arbitration experts

- Judges from various international tribunals such as the International Court of Justice

- Attorneys who practice in front of international tribunals such as the International Court of Justice

- The GNSO

- The GAC

- The ALAC

- The ccNSO

- The SSAC

- All other Stakeholders and Community Members

D. Significant Non-Privileged Materials the Board Reviewed

- GAC Principles Regarding New gTLDs.
  http://gac.icann.org/system/files/gTLD_principles_0.pdf

- GNSO "Final Report – Introduction of new generic top-level domains." http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

- Report on Implementation of GNSO New GTLD Recommendation #6. *See* link to Report from http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm

- All materials related to the Board/GAC consultation. *See* http://www.icann.org/en/topics/new-gtlds/related-en.htm

- All relevant GAC letters and Communiques. *See* http://www.icann.org/en/correspondence/ and http://gac.icann.org/communiques.

- Applicant Guidebook, related explanatory memoranda, other related documents and related comment summaries and analyses:

  o Each version of the Applicant Guidebook, including all ICANN created explanatory memoranda and the specific proposals for trademark protections, along with numerous pages of public comment summaries and analysis related to the Objection Procedure*s*. *See* (i) http://www.icann.org/en/topics/new-gtlds/comments-en.htm; (ii) http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm#expmem; (iii) http://www.icann.org/en/topics/new-gtlds/comments-e-en.htm; (iv) http://www.icann.org/en/topics/new-gtlds/comments-3-en.htm; (v) http://www.icann.org/en/topics/new-gtlds/gnso-consultations-reports-en.htm; (vi) http://www.icann.org/en/announcements/announcement-4-15feb10-en.htm; (vii) http://www.icann.org/en/topics/new-gtlds/summaries-4-en.htm; (viii) http://www.icann.org/en/topics/new-gtlds/comments-5-en.htm; (ix)

http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm; (x) http://www.icann.org/en/topics/new-gtlds/dag-en.htm; (xi) http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm; and (xii) http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm

E.   Significant Concerns the Community Raised

- What will be done if there is an application for a highly objectionable name, but there are no objectors within the process?

- There is a need for clarification on what type of string would be considered to be "contrary to generally accepted legal norms relating to morality and public order . . . recognized under international principles of law."

- Are the standards set out for each objection appropriate?

- How will fees be determined?

- Will ICANN fund certain stakeholders' objections?

- Should it be a dispute process rather than a mere objection process?

- Are the independent dispute resolution providers the rights ones to handle the specific objections?

- Neither Governments nor the GAC should be required to utilize the Objection Procedures.

F.   Factors the Board Found to Be Significant

- The Dispute Resolution Process is designed to protect certain interests and rights, those interests identified by the GNSO in their policy recommendations that were approved by the ICANN Board.

- The Dispute Resolution Process will be more cost effective and efficient than judicial proceedings. Fees will be paid directly to the dispute resolution providers.

- The Dispute Resolution Process should be independent as possible so that the applicants, the community and ICANN have the benefit of neutral expert opinion.

- It is critical to address risk to the established processes and to ICANN by providing a path for considering controversial applications that might otherwise result in litigation or attacks to the process or to the ICANN model.

- Governments have a particular interest in having an unencumbered process to provide advice to the Board without having to utilize the formal independent objection process.

G. **The Board's Reasons for Supporting the Two-pronged Objection Process Established for the New gTLD Program**

- The Dispute Resolution Process complies with the policy guidance provided by the GNSO.

- The Dispute Resolution Process provides a clear, predictable path for objections and objectors.

- The Dispute Resolution Process provides clear standards that will lead to predictable, consistent results.

- The Dispute Resolution Process provides for an independent analysis of a dispute.

- The Dispute Resolution Process provides a bright line between public comment and a formal objection process so parties understand the manner in which a challenge to a particular application should be brought (a lesson learned from previous rounds).

- The Dispute Resolution Process appropriately limits the role for the Board.

- The Dispute Resolution Process limits involvement to those who truly have a valid objection.

- The Dispute Resolution Process provides for a more efficient and cost effective approach to dispute resolution than judicial proceedings.

- The Dispute Resolution Process, which provide for an "Independent Objector" to object is an important step to achieving the goal of independence and ensuring the objectionable strings are challenged.

- The GAC Advice process provides an avenue for the GAC to provide public policy advice to the Board on individual applications in a relatively timely fashion and consistent manner.

- The GAC Advice process was developed after close consultations with the GAC and provides a prescribed manner and time frame in which the Board will be able to consider GAC advice with respect to a particular string or applicant.

7. ICANN Board Rationale on Root Zone Scaling in the New gTLD Program

7. ICANN Board Rationale on Root Zone Scaling in the New gTLD Program

I.   Introduction

When ICANN was formed in 1998 as a not for profit, multi-stakeholder organization dedicated to coordinating the Internet's addressing system, its primary purpose was to promote competition in the domain name system ("DNS") marketplace while ensuring internet security and stability. ICANN's Bylaws and other foundational documents articulate that the promotion of competition in the registration of domain names is one of ICANN's core missions. See ICANN Bylaws, Article 1, Section 2.6.

One part of this mission is fostering competition by allowing additional Top Level Domains ("TLDs") to be created. ICANN began this process with the "proof of concept" round for a limited number of new gTLDs in 2000, and then permitted a limited number of additional "sponsored" TLDs in 2004-2005. These additions to the root demonstrated that TLDs could be added without adversely affecting the security and stability of the domain name system.

After an extensive policy development process, in August 2007, the GNSO issued a lengthy report in which it recommended that ICANN permit a significant expansion in the number of new gTLDs. The report recognized that the introduction of new gTLDs would require the expansion of the top-level DNS zone in the DNS hierarchy known as the DNS root zone ("root zone"). This expansion of the root zone, along with ICANN's recent and concurrent implementation of other changes to the root of the DNS, caused some members of the community to ask ICANN to review how the expansion of the root zone could impact root zone stability. http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm.

Between 2004 and 2010, the root of the DNS underwent significant changes, both in content as well as support infrastructure. These changes included the addition of Internationalized Domain Names ("IDNs") to the root, the deployment of IPv6 and implementation of Domain Name System Security

Extensions ("DNSSEC"). The broad scope of these changes was unprecedented. Now with new gTLDs on the horizon, further substantive changes in the root of the DNS are expected.

In response to comments from members of the community, ICANN commissioned a number of studies to address the capacity and scaling of the root server system with the goal of ensuring the stable and secure addition of new gTLDs. The studies improved ICANN's understanding of the scalability of the root zone as it pertains to new gTLDs, and they reinforced confidence in the technical capability and stability of the root zone at the projected expansion rates. The studies also helped to inform and improve ICANN's approach to monitoring the scalability and stability of the root zone.

II.   Brief History of ICANN's Consideration of Root Zone Scaling Associated with the New gTLD Program

This section sets forth a brief history of significant Board actions on the subject of root zone scaling associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for numerous other reasons.

- At the 2 November 2007 ICANN Board Meeting, the Board considered the GNSO's policy recommendation and passed a resolution requesting that ICANN staff continue working on the implementation analysis for the introduction of the new gTLD program and report back to the Board with a report on implementation issues. http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm; http://www.icann.org/minutes/resolutions-02nov06.htm#_Toc89933880

- On 6 February 2008, ICANN published a paper entitled <u>DNS Stability: The Effect of New Generic Top Level Domains on the Internet Domain Name System</u> which addressed TLD Strings, technical stability and the capacity of the root zone.
  http://www.icann.org/en/topics/dns-stability-draft-paper-06feb08.pdf

- On 6 February 2008, in response to ICANN's publication of the paper entitled <u>DNS Stability: The Effect of New Generic Top Level Domains in the Internet Domain System</u>, the Board requested public comments and community feedback regarding technical issues relevant to the addition of new gTLDs. The Board also requested guidance on how best to facilitate transparency in implementing the recommendations of the paper.
  http://www.icann.org/en/announcements/announcement-06feb08.htm

- In February 2009, the Board resolved that the Security and Stability Advisory Committee ("SSAC") and the DNS Root Server System Advisory Committee ("RSSAC") should jointly conduct a study analyzing the aggregate impact of the proposed implementation of various changes to the root zone and any potential effects on the security and stability within the DNS root server system. These changes include the still-recent addition of IPv6 access to the root servers, the planned addition of IDNs at the root level, signing the root zone with DNSSEC, and the provisioning of new country code IDN TLDs and new gTLDs.

- On 7 September 2009, the Root Zone Scaling Team ("RSST") released its study entitled <u>Scaling the Root</u>.
  http://www.icann.org/en/committees/dns-root/root-scaling-study-report-31aug09-en.pdf

- On 17 September 2009, the DNS Operations Analysis and Research Center ("DNS-OARC") released the "L" Root Study entitled <u>Root Zone Augmentation and Impact Analysis</u>.

http://www.icann.org/en/topics/ssr/root-zone-augementation-analysis-17sep09-en.pdf

- On 29 September 2009, the Netherlands Organization for Applied Scientific Research ("TNO") released a report directed by the RSST to develop a quantitative model of the DNS Root Server System to analyze the impact of the addition of new gTLDs, IDN TLDs, IPv6 and DNSSEC. That study is entitled Root Scaling Study: Description of the DNS Root Scaling Model. http://www.icann.org/en/committees/dns-root/root-scaling-model-description-29sep09-en.pdf

- On 14 October 2009, the Chair of the Internet Architecture Board ("IAB"), Olaf Kolkman, sent a letter to ICANN's Board in response to the publication of the RSST Study. He stated that the report's recommendations were accurate and that security, stability and resiliency are the most important properties of the system and they need to continue to be monitored and safeguarded by ICANN. http://www.icann.org/en/correspondence/kolkman-to-ceo-board-14oct09-en.pdf

- On 3 March 2010, ICANN released its Draft Delegation Rate Scenarios for New gTLDs, laying out the plan for limiting delegation rates and outlining expected demand for new gTLDs based on: (1) current participation in the new gTLD process; (2) brand and famous mark holders; and (3) regional, national and other geographic regions that are not currently participating. http://www.icann.org/en/announcements/announcement-03mar10-en.htm

- On 25 September 2010, the Board adopted a resolution approving a model and a rationale for the maximum rate of applications. It set the number at 1,000 applications per year. The Board noted that the initial survey of the root server operator's ability to support growth was successful and directed ICANN staff to revisit that estimate on a regular basis. The Board directed ICANN to consult with root zone operators

to define, monitor and publish data on root zone stability.
http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.3

- On 6 October 2010, ICANN released its Delegation Rate Scenarios for New gTLDs, laying out in final form the plan for limiting delegation rates for new gTLDs.

- On 5 November 2010, the ICANN Board received a letter from the Chair of ICANN's Board Risk Committee, Bruce Tonkin, stating that the Risk Committee is seeking advice from RSSAC on the capability of the root server system to support the planned introduction of new gTLDs in 2011/2012.
http://www.icann.org/en/correspondence/tonkin-to-murai-05nov10-en.pdf

- On 25 November 2010, the ICANN Board received a letter from the Chair of RSSAC, Jun Murai, stating that the recent successful implementation of DNSSEC in the root zone was a good example of how to proceed with new capabilities. He further stated that in the case of the proposed gradual expansion of no more than 1,000 new gTLD entries per year for the next several years, the RSSAC expected the system to remain stable and robust.
http://www.icann.org/en/correspondence/murai-to-board-25nov10-en.pdf

- On 10 December 2010, the Board indicated that the overarching issue of root zone scaling had been addressed through expert consultation and study. The studies indicate that rate-limited addition of TLDs can be implemented without any expected impact on the stability of the root zone system. The Board also agreed to implement communications and monitoring systems to oversee the new gTLD program.
http://www.icann.org/en/minutes/minutes-10dec10-en.htm

III.   Major Root Zone Scaling Studies Commissioned by the Board

On 3 February 2009, the ICANN Board unanimously directed the RSSAC and SSAC to jointly study "the impact to security and stability within the DNS root server system of [the IPv6, IDN TLDs, DNSSEC and new gTLDs] proposed implementations." The Board resolution stated that the joint studies should: (1) address the implications of the initial implementation of these changes occurring during a compressed time period; (2) address the capacity and scaling of the root server system to address a wide range of technical challenges and operational demands that might emerge as part of the implementation of proposed changes; and (3) ensure that the process for establishing the study terms, design and implementation will address technical and operational concerns regarding expanding the DNS root zone. http://www.icann.org/en/minutes/minutes-03feb09.htm.

In response to the Board's 3 February 2009 Resolution, ICANN commissioned two studies. The "L" Root Study focused on the impact of the scaling of the root on one server. The RSST Study modeled the processes in the root management system and analyzed the results of scaling the system.

The studies made important observations about possible limits to the root system, including limits to the pace of scaling and limitations other than purely technical, e.g. in processing TLD applications through ICANN, NTIA and VeriSign. Neither study found meaningful technical limitations in system scaling. The RSST Study recommended ongoing system modeling and monitoring, and encouraged improved communication with ICANN staff on gTLD forecasts and plans. To follow up on the RSST Study, the TNO put together a modeling contribution in conjunction with the RSST Study to transform the information and findings in the RSST Study into a quantitative model and simulation software.

A.   The "L" Root Study

The DNS-OARC released the "L" Root Study on 17 September 2009. The DNS-OARC conducted the study pursuant to a contract with ICANN. The study focused specifically on the impact of adding IPv6, DNSSEC and new TLDs to a laboratory simulation of the "L" Root Server. See

http://www.icann.org/en/topics/ssr/root-zone-augementation-analysis-17sep09-en.pdf.

The DNS-OARC performed a number of simulations and measurements with BIND and NSD server software and varying zone sizes to better understand how the new gTLD program changes may affect the performance of, and resource requirements for, the root DNS server infrastructure. The analysis looked at five key areas that would have an impact on operations: (1) zone size; (2) name server reload and restart times; (3) DNS response latency; (4) inter-nameserver bandwidth utilization; and (5) potential increases in Transmission Control Protocol usage.

The "L" Root Study concluded that at least that one root server could easily handle both the deployment of the new technologies as well as the new gTLD program.

B.   The RSST Study

The RSST released their study on 7 September 2009. It undertook to determine if, how, and to what extent "scaling the root" will affect the management and operation of the root system. The RSST Study considered the "L" Root Study as part of its input and outsourced the development of a simulation of root management processes and conducted interviews with root server operators, IANA staff, VeriSign, NTIA and others. The RSST Study reviewed the impact on the root servers, and on the provisioning systems that lead up to the root zone being propagated to the root servers. See http://www.icann.org/en/topics/ssr/root-zone-augementation-analysis-17sep09-en.pdf.

The study provided qualitative and quantitative models of the root system that show how the root zone's different parts are related and how the root zone responds to changes in the parameters that define its environment. The RSST Study's conclusions assume that the estimate of less than 1,000 new gTLDs being added to the root zone per year is accurate. The study also assumes that other parameters relating to the management of the DNS root will not be substantively

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altered. With these assumptions in mind, the RSST Study concluded that normal operational upgrade cycles and resource allocations will be sufficient to ensure that scaling the root, both in terms of new technologies as well as new content, will have no significant impact on the stability of the root system.

The principal results of the study are qualitative and quantitative models. These models enable the static simulation of popular "what-if" scenarios—*e.g.*, "what would happen if the size of the root zone increased by three orders of magnitude (assuming that everything in the system remained as it is today)?"— but also a far more useful dynamic analysis of the way in which the system responds and adapts to changes in the DNS environment over time. The analysis allows the community to anticipate the consequences of scaling the root, identify and recognize "early warning signs" of system stress, and plan ahead for any mitigating steps that may be necessary to keep the system running smoothly if and when signs of stress appear. The RSST Study also recommended that the Board call on ICANN's staff to take on a monitoring role in collaboration with other system partners as an element of the new gTLD program rollout.

C.   The TNO Report

To follow up on the RSST Study, the TNO put together a modeling contribution in conjunction with the RSST Study to transform the information and findings in the RSST Study into a quantitative model and simulation software. The TNO Report was able to simulate several cases for the purpose of model validation and to illustrate typical use of the simulation model. More specifically, this study was directed by the RSST to apply quantitative modeling expertise to develop a quantitative model of the DNS Root Server System to analyze ways it responds to the addition of new gTLDs, IDN TLDs, IPv6 and DNSSEC. The TNO suggested that the model be fine-tuned as the new gTLD program is implemented, and that the model be used as a tool by ICANN in order to give ICANN more accurate boundaries for the scalability of the root. See http://www.icann.org/en/committees/dns-root/root-scaling-model-description-29sep09-en.pdf.

IV.   The Board's Analysis of Root Zone Scaling

A.   **Why the Board Commissioned Studies on Root Zone Scaling**

- ICANN's mission statement and one of its founding principles is to promote user choice and competition. ICANN has created significant competition at the registrar level that has resulted in enormous benefits for consumers. To date, ICANN has not created meaningful competition at the registry level. Based upon the report and recommendation from the GNSO to introduce new gTLDs, the Board decided to proceed with the new gTLD program.

- Both the Board and members of the community have commented that the introduction of new gTLDs would require the expansion of the root zone and could impact root zone stability. To address these comments, on 3 February 2009, the Board adopted a resolution approving the SSAC/RSSAC Stability Studies which led to the commissioning of the "L" Root Study and RSST Study.

B.   **Who the Board Consult Regarding Root Zone Scaling**

- Legal Counsel

- The GNSO

- The GAC

- DNS-OARC

- The SSAC

- The RSSAC

- The TNO

- All other Stakeholders and Community members through public comment forum and other methods of participation.

C.   What Significant Non-Privileged Materials the Board Reviewed

In evaluating the issue of root zone scaling, the ICANN Board reviewed various materials to determine the stability of the root zone: (1) Deployment Experience; (2) Studies and Models; and (3) Public Comments.

1.   Deployment Experience

In order to determine the stability of the root zone with the implementation of the new gTLD program, the Board closely evaluated the impact of the significant changes that had already been implemented or were in the process of being implemented into the root zone. Since February 2008, there have been significant additions to the root zone with the adoption and implementation of IDNs, IPv6 and DNSSEC. In fact, during the period between July 2004 when the first IPv6 addresses were added to the root zone for TLD name servers, until July 2010 when the root was DNSSEC-signed and Delegation Signer Records were inserted, the root DNS service continued with no reported or publicly visible degradation of service. The Board evaluated the impact of each individual addition to the root zone to date, and determined that the addition of IPv6 to the root system, IDN TLDs and the deployment of DNSSEC had no significant harmful effects that were observed by or reported to ICANN's Board. Below is a timeline of the various additions to the root zone since July 2004:

Date	Technology	Event
July 2004	IPv6	First IPv6 addresses added to the root zone for top-level domains (KR and JP).
November 2005	DNSSEC	First top-level domain (.SE) signed.
June 2007	DNSSEC	IANA DNSSEC-signed root test bed made available.

August 2007	IDNs	Test IDN top-level domains added to the root.
February 2008	IPv6, gTLDs	First IPv6 addresses added for root servers (A, F, J, K, L and M). A limit of a maximum of less than 1,000 new gTLDs per year is derived from estimates of gTLD processing times.
January 2010	DNSSEC	Deliberately Unvalidatable Root Zone (DURZ) published on first root server ("L").
May 2010	IDNs, DNSSEC	First production IDNs added to the root (for Egypt, Saudi Arabia and United Arab Emirates). DURZ deployed on all 13 root servers.
June 2010	DNSSEC	First DS records are published in the root zone (for .UK and .BR).
July 2010	DNSSEC	Root is DNSSEC-signed and the root trust anchor is published.

http://icann.org/en/topics/new-gtlds/summary-of-impact-root-zone-scaling-06oct10-en.pdf

The deployment of new technologies continues without any significant impact to root zone stability. Deployment of IPv6 in the root, which began in 2004, caused no significant harmful effects. Insertion of IDNs into the root in 2007 similarly was a non-event from the perspective of stability of the DNS, and deployment of DNSSEC in the root starting in January 2010 resulted in no observable or reported negative consequences. The empirical data drawn from the deployment of these new technologies can be used to validate the observations. Furthermore, the Board looked at this data, and the continued stability of the root zone throughout the implementation of these programs, as a demonstration that the introduction of the new gTLD program at the proposed max rate of 1,000 applications per year would similarly not impact the stability of the root zone.

2.   Studies and Models

As previously mentioned, the ICANN Board commissioned two studies in order to analyze any impact the new gTLD program might have on the root zone. Both of these studies took a different approach to evaluate the possible impact the new gTLD program might have on root zone stability. Along with the TNO Report, the studies concluded that if the proposed new gTLD program is implemented pursuant to the adopted model of a maximum of 1,000 applications per year, the program will have no significant impact on the stability of the root system.

3.   Public Comments and the Board's Response

Throughout the Board's analysis of the new gTLD program, in particular with respect to its possible impact to root zone stability, the Board considered public comments made by individuals both in public comment forums and in direct response to the release of the two root zone stability studies. The universe of comments pertaining to root zone scaling is still available. See http://forum.icann.org/lists/scaling/index.html.

The ICANN Board's responses to those comments made in response to the RSST Study were published for the public. See http://icann.org/en/committees/dns-root/summary-analysis-root-scaling-study-tor-04oct09-en.pdf.

D.   What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of root zone scaling. The Board found the following factors to be significant:

- the principle that the Board should base its decision on solid factual investigation and expert consultation and study;
- the addition of new gTLDs to the root in order to stimulate competition at the registry level;
- the stable and secure addition of addition of new gTLDs to the DNS;

- the continued security, stability and resiliency of the root zone; and
- the continued monitoring of the root zone system.

V.   The Board's Reasons for Concluding the Introduction of New gTLDs Will Not Harm the Root Zone

The overarching issue of root zone scaling has been addressed through conversations with the public, expert consultation and expert analysis of the impact of the new gTLD program. These studies, consultations and interactions with the community facilitated the Board's study of the possible impacts the introduction of new gTLDs may have on root zone stability. The Board concluded that the additional gTLDs may be delegated without any significant impact on the stability of the root zone system.

The Board will continue to closely monitor the stability of the root zone and will call on its staff to take on a monitoring regime along with other system partners as an element of the new gTLD program roll-out. Furthermore, the Board will ensure that ICANN staff and system partners establish effective communication channels with root zone operators and RSSAC to ensure a timely response to any changes in the root zone environment.

8. ICANN Board Rationale on String Similarity and String Contention Associated with the gTLD Program

8. ICANN Board Rationale on String Similarity and String Contention Associated with the gTLD Program

I.   Introduction

Through the development of the new gTLD program, the Board has given consideration to issues of potential user confusion resulting from the delegation of many similar TLD strings, as well as to creating procedures for resolving contention cases (i.e., where there is more than one qualified applicant for a TLD).

The foundational policy guidance for the program contains the principle that strings likely to cause user confusion should be avoided. Additionally, policy guidance recommended that there should be a preference for community applications in contention situations.

This memorandum focuses on the Board's review of these issues in implementing these principles in the new gTLD program. The memorandum summarizes the Board's consideration of these issues, and the Board's rationale for implementing the new gTLD program with the provisions on string contention and string similarity.

II.   Brief History of ICANN's Analysis of String Similarity and String Contention Associated With the gTLD Program

This section sets forth a brief history of significant actions on the subject of string contention associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for other reasons.

- In February 2007, Bruce Tonkin sent an email to the GNSO Council, describing the type of contention resolution methods under discussion for the gTLD process, including self-resolution, among the parties, third-party mediation, a bidding process, auctions, and testing for community affiliations.

http://forum.icann.org/lists/gtld-council/msg00358.html;
http://forum.icann.org/lists/gtld-council/msg00359.html

- In March 2007, the Governmental Advisory Committee issued its GAC Principles regarding New gTLDs. This included: 2.4: In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains, no two letter gTLDs should be introduced.
  http://gac.icann.org/system/files/gTLD_principles_0.pdf

- In August 2007, the GNSO issued its final report regarding the introduction of new gTLDs, including Recommendation 2, which stated that "strings must not be confusingly similar to an existing top-level domain or a Reserved Name."
  http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

- The GNSO's Final Report also included Implementation Guideline F, which stated: If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe; ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and; iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

- In March 2008, ICANN reported on preliminary work with SWORD to develop a potential algorithm that could help to automate the process for assessing similarity among proposed and existing TLD strings. http://www.icann.org/en/minutes/prelim-report-27mar08.htm

- On 26 June 2008, the Board adopted the Generic Names Supporting Organization's ("GNSO") policy recommendations for the introduction of new gTLDs, and directed ICANN staff to continue to develop a detailed implementation plan.
  See Board Resolution at
  http://www.icann.org/en/minutes/resolutions-

26jun08.htm#_Toc76113171; see Board Meeting Transcript at
https://par.icann.org/files/paris/ParisBoardMeeting_26June08.txt

- In August 2008, ICANN considered the use of auctions as a tie-breaking mechanism within the new gTLD process.
https://www.icann.org/en/topics/new-gtlds/program-updates-2008.htm

- Also in August 2008, ICANN posted a paper for community discussion, entitled "The Economic Case for Auctions," which explores the potential benefits of auctions as a tie-breaking mechanism. https://www.icann.org/en/topics/economic-case-auctions-08aug08-en.pdf

- Also in August 2008, ICANN considered the use of a string similarity algorithm to help automate the process for assessing similarity among the proposed and existing TLD strings. SWORD completed a beta algorithm and reviewed several test cases with ICANN staff to refine the parameters and discuss how the algorithm could be successfully integrated as a tool to help implement the GNSO's recommendation that new gTLD strings should not result in user confusion.
https://www.icann.org/en/topics/new-gtlds/program-updates-2008.htm;
http://www.icann.org/en/announcements/announcement-08aug08-en.htm

- In October 2008, the Board passed a resolution, authorizing the CEO, COO and/or General Counsel of ICANN to enter into an agreement for algorithm related services with SWORD.
https://www.icann.org/en/minutes/prelim-report-01oct08.htm

- On 24 October 2008, ICANN published Version 1 of the new gTLD Applicant Guidebook ("Version 1"), as well as an explanatory memorandum, "Resolving String Contention,",
http://www.icann.org/en/topics/new-gtlds/string-contention-22oct08-en.pdf, describing the reasons for the contention procedures found in the draft Guidebook. The Guidebook included a preliminary establishment of contention sets based on similarity between strings, opportunities for applicants to self-resolve such contention, a comparative evaluation process, and an objective

mechanism as a last resort.
http://www.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf

- These procedures have been continually revised, updated, and posted for comment through successive drafts of the Guidebook. In February 2009, auctions were identified as an objective mechanism of last resort for resolving string contention, included in an updated memorandum, http://www.icann.org/en/topics/new-gtlds/string-contention-18feb09-en.pdf, and beginning in draft version 2 of the Guidebook. http://www.icann.org/en/topics/new-gtlds/draft-string-contention-clean-18feb09-en.pdf

- Comments on successive drafts of the Guidebook expressed a desire for greater clarity around the standards to be used for comparative evaluation, including requests for examples of applications that would and would not meet the threshold. In response to these comments, ICANN developed detailed explanatory notes for each of the scoring criteria to give additional guidance to applicants. These were included beginning in draft version 3 of the Guidebook.
http://www.icann.org/en/topics/new-gtlds/draft-string-contention-clean-04oct09-en.pdf

- In May 2010, ICANN issued draft version 4 of the Guidebook. The comparative evaluation was renamed the Community Priority Evaluation, to more accurately convey the purpose and nature of the evaluation (i.e., not comparing applicants to one another but comparing each against a common set of criteria). Version 4 also included definitions for terms used in the explanatory notes as well as clarifications and expanded guidance in several areas.
http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm

- In June 2010, the GNSO Council and the Registries Stakeholder Group requested that exceptions be granted from findings of confusing similarity. The reason for granting an exception would be that a string pair that was found to be confusingly similar constituted a case of "non-detrimental confusion."
http://gnso.icann.org/mailing-lists/archives/council/msg09379.html;
http://forum.icann.org/lists/string-similarity-

amendment/msg00002.html;
http://www.icann.org/en/minutes/board-briefing-materials-1-25sep10-en.pdf

- In September 2010, the Board discussed the subject of string similarity and resolved to encourage policy development as needed to consider any exceptions from findings of confusing similarity. http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.4

- On 30 May 2011, ICANN posted the Applicant Guidebook for consideration by the Board. http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm

III.   The Board's Analysis of String Similarity and String Contention

A.   Brief Introduction to String Similarity and String Contention

1. String Similarity

This section sets forth an overview of the string similarity determination:

- What is the Concern over String Similarity?

  o The Board determined that delegating highly similar TLDs in the new gTLD program created the threat of detrimental user confusion.

- How Is It Determined that String Similarity Exists?

  o The preliminary similarity review will be conducted by a panel of String Similarity Examiners, who will use the following standard to test for whether string confusion exists:

    String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

- The examination will be informed by human judgment assisted by criteria and an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs. http://icann.sword-group.com/algorithm/

- What Happens Once the Determination is Made that String Similarity Exists?

  - In the simple case in which an applied-for TLD string is identical to an existing TLD, the application system will not allow the application to be submitted.

  - An application that fails the string confusion review and is found too similar to an existing TLD string will not pass the Initial Evaluation stage of the evaluation process, and no further reviews will be available.

  - An application that passes the string similarity review in the Initial Evaluation is still subject to challenge regarding string similarity in the current application round. That process requires that a specific string similarity objection be filed by an objector having the standing to make such an objection. Such category of objection is not limited to visual similarity. Rather, confusion based on any type of similarity may be claimed by an objector, visual, phonetic, and semantic similarity.

  - An application that passes the string similarity review and is not subject to a string confusion objection would proceed to the next relevant stage of the process.

2. String Contention

This section sets forth an overview of the string contention process:

- What is String Contention?

  - String contention is said to occur when the strings of two or more applications are identical or found to be so similar that delegation of both will create a threat of user confusion.

- What Components Are Involved in the String Contention Process?

- o Identifying gTLD strings that are likely to deceive or cause user confusion in relation to either existing TLDs or reserved names or applied-for gTLDs; and

- o Resolving the string contention.

- How is a Contention Set Identified?

  - o In the initial evaluation of an applied for gTLD, a string similarity panel, using the procedures described above, will determine whether two or more applications for gTLDs are in direct string contention. The applications that are determined to be in direct string contention will be marked for later resolution of the contention and proceed to the subsequent process steps. Applications that are not part of a contention set can proceed to the next stage of the evaluation process without further action.

    - ➢ Applications are in direct string contention if their proposed strings are identical or so similar that string confusion would occur if both were to be delegated as TLDs. The determination is based on human judgment assisted by an algorithmic test performed on applications.

    - ➢ Two applications are in indirect string contention if they are both in direct string contention with a third application, but not with each other.

  - o During the objection process, an applicant may file a string confusion objection to assert string confusion. If the objection is upheld by the panel adjudicating the objection, the applications will be deemed to be in a direct string contention and the relevant contention sets will be modified accordingly.

  - o The final contention sets are established once the extended evaluation and objection process have been concluded, because some applications may be excluded in those steps.

- How is a Contention Set Resolved?

- ○ Voluntary settlements or agreements can occur between applications that result in the withdrawal of one or more applications. These can occur at any stage of the process, once ICANN has posted the applications received.   However, material changes to an application may require a re-evaluation.

- ○ Community priority evaluation can be used only if at least one of the applications involved is community-based and has expressed a preference for community priority evaluation. A panel will receive and score the community-based applications against the established criteria for: (1) community establishment; (2) nexus between the proposed string and community; (3) dedicated registration policies; and (4) community endorsement. If one application is a "clear winner" (i.e., meets the community priority criteria), the application proceeds to the next step and its direct contenders are eliminated. If there is no "clear winner," the contention set will be resolved through negotiation between the parties or auction. It may occur that more than one application meets the community priority criteria, in which case time will be allowed for resolving the remaining contention by either applicant withdrawing, otherwise an auction between those applicants will resolve the contention.

- ○ A community application that prevails in a community priority evaluation eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria. Arriving at the best outcome in a contention situation requires careful balancing of several variables, and this is the reason that a number of factors are included in the analysis.

- ○ Auction is available as a last resort mechanism for resolving string contention when (1) contending applicants successfully complete all evaluations; (2) contending applicants elect not to use community priority evaluation, were not eligible for community priority evaluation, or

community priority evaluation did not provide a "clear winner"; and (3) contending applications have not resolved the contention among themselves.

B.   Why The Board Addressed String Similarity and String Contention

- The new gTLD program will increase the number of domain names available, implying a risk that "confusingly" similar strings will appear.

- It is in the interests of consumer confidence and security to protect against the threat of user confusion and to avoid increasing opportunities for bad faith entities who wish to defraud users.

- Measures should be in place to protect internet users from the potential harm in delegating confusingly similar strings in the new gTLD program.

- The Board wants to create greater certainty in the domain name marketplace by crafting a fair and practical approach on how to identify and how best to resolve contention sets.

- The Board adopted the GNSO policy recommendations, including the implementation guideline implying that a community-based TLD application could be given a priority in cases of contention.

C.   Who the Board Consulted

- Legal Counsel

- The GNSO

- The GAC

- The ALAC

- The ccNSO

- The SSAC

- All other Stakeholders and Community members through public comment forum and other methods of participation.

D.   What Significant Non-Privileged Materials the Board Reviewed

- **GNSO Policy Recommendations**

  o Recommendation 2: Strings must not be confusingly similar to an existing top-level domain or a Reserved Name http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

  o Implementation Guideline F: If there is contention for strings, applicants may:

  i) resolve contention between them within a pre-established timeframe

  ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and

  iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

- **GAC Principles**

  o Recommendation 2.4: In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains, no two letter gTLDs should be introduced http://gac.icann.org/system/files/gTLD_principles_0.pdf

- **Comments from the Community**

  o http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm

E. **What Concerns the Community Raised**

- There is a need for clarification on the definition of "confusing similarity."

- There are questions about the definitions for "standard" vs. "community-based" TLD types.

- There is a need for objective procedures and criteria for the community priority evaluation.

- A special form of resolution should be considered for a contention set involving two community-based applicants of equal strength, so that such a contention set is not required to go to auction.

- There is concern over using the auction process (and the receipt of auction proceeds) as a means to resolve contention for TLDs.

- There is concern that the string similarity algorithm only accounts for visual similarity, and does not accurately gauge the human reaction of confusion.

- Proceeds from auctions may be used for the benefit of the DNS and be spent through creation of a foundation that includes oversight by the community.

F. What Factors the Board Found to Be Significant

- There should be a consistent and predictable model for the resolution of contention among applicants for gTLD strings;

- The process should be kept as straightforward as possible to avoid unnecessary risks;

- There is potential harm in confusingly similar TLD strings that extends not only to the interests of existing TLD operators, but also to Internet users; and

- The protections set forth in the current string similarity process will safeguard both user and operator interests;

IV. The Board's Reasons for Supporting the String Contention Process Contemplated in the new gTLD Program

- The Algorithm is a tool to aid the string similarity analysis.

  o The algorithm will be a consistent and predicable tool to inform the string confusion element of the new gTLD program. The algorithm will provide guidance to applicants and evaluators;

  o The role of the algorithm is primarily indicative; it is intended to provide informational data to the panel of examiners and expedite their review.

- o The algorithm, user guidelines, and additional background information are available to applicants for testing and informational purposes

- Human judgment will be the determining factor in the final decisions regarding confusing similarity for all proposed strings.

- Contending applicants should be given the opportunity to settle contention among themselves – this will result in innovative and economic solutions.

- The community priority evaluation stage of the string contention process features sufficient criteria to: (a) validate the designation given to community-based applications; and (b) assess a preference for community-based applications in a contention set. Both the GNSO Final Report and GAC Principles encourage the special consideration of applications that are supported by communities. http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm; http://gac.icann.org/system/files/gTLD_principles_0.pdf

  - The GAC Principle that two-letter TLDs should not be delegated to avoid confusion with ccTLDs was adopted.

  - There are advantages to an auction as a resolution mechanism of last resort.

    - o It is an objective test; other means are subjective and might give unfair results, are unpredictable, and might be subject to abuses.

    - o It assures the round will finish in a timely way.

    - o It is thought than few auctions will actually occur. A negotiated settlement will be a lower-cost solution for the parties than an auction. The availability of auctions will encourage parties to settle. Even if there are proceeds from auctions, these will be expended in a process that includes independent oversight.

    - o Ascending clock auctions typically employ an "activity rule," where a bidder needs to have been "in" at early prices in the auction in order to continue to stay "in" at later prices. This is useful because in an ascending clock auction, bidders are

informed of the number of contending applications that have remained "in" after each round, but not their identities. With the specified activity rule, this demand information has real significance, as a competitor who has exited the auction cannot later re-enter.

o   The auctioneer in ascending clock auctions has the ability to pace the speed at which prices increase. This facet has greatest importance if related items are auctioned simultaneously, as their prices can then be paced to increase together in relation to the level of demand. This has the advantage of providing bidders with information about the level of demand for other new gTLDs—and hence the value of a new gTLD—while the auction is still in progress.

9. ICANN Board Rationale On Trademark Protection in the New gTLD Program

9. ICANN Board Rationale On Trademark Protection in the New gTLD Program

I.   Introduction

One of ICANN's core values is "[i]ntroducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest." http://www.icann.org/en/general/bylaws.htm. In furtherance of this core value, ICANN is committed to ensuring that the concerns of all community members, including trademark holders, are considered and addressed to the extent practicable before launching the new generic top level domain ("gTLD") program.

ICANN has long recognized the importance of ensuring that the introduction of new gTLDs is conducted consistently with the protection of the rights of trademark holders, communities and other rights holders from abusive registration and infringement. In each previous expansion to the domain name system ("DNS"), the protection of legal rights of third parties was a feature of the application and evaluation process. For the new gTLD Program, ICANN has sought input from numerous stakeholders, including trademark holders, trademark lawyers, businesses, other constituencies and governments, to devise a multi-layered approach to protecting the rights of third parties. The approach includes a pre-delegation dispute resolution process for protecting existing legal rights at the top level. Also included in this approach are numerous rights protection mechanisms at the second level such as: (i) the establishment of a trademark clearinghouse to support both sunrise and trademark claims processes, a trademark post-delegation dispute resolution procedure (PDDRP), the Uniform Rapid Suspension System (URS) and the requirement for registries to maintain a thick Whois database. Of course, also available to all is the existing, long-standing and tested Uniform Domain Name Dispute Resolution Policy (UDRP).

II.   History of the Board's Consideration of Trademark Protection

This section contains a brief history of significant actions taken to address trademark protection in the new gTLD program.

- On 1 February 2007, the Generic Names Supporting Organization ("GNSO") Council approved a request to form a Working Group on

Protecting the Rights of Others.
http://gnso.icann.org/meetings/minutes-gnso-01feb07.html

- On 15 March 2007, the GNSO Council ratified a Statement of Work for the newly-formed GNSO Working Group on Protecting the Rights of Others. http://gnso.icann.org/meetings/minutes-gnso-15mar07.html

- On 26 June 2007, the GNSO Working Group on Protecting the Rights of Others published its Final Report. gnso.icann.org/drafts/pro-wg-final-report-26jun07.pdf

- On 8 August 2008, the GNSO issues its "Final Report – Introduction of New Generic Top-Level Domains," including a recommendation that "Strings must not infringe the existing legal rights of others". http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

- On 21 December 2007, ICANN requested "expressions of interest from potential dispute resolution service providers for the new gTLD program." http://www.icann.org/en/topics/drsp-call-for-expressions-of-interest.pdf

- On 26 June 2008, the Board adopted the GNSO's Policy recommendations for the introduction of new gTLDs. See Board Resolution at http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171; see Board Meeting Transcript at https://par.icann.org/files/paris/ParisBoardMeeting_26June08.txt

- On 22 October 2008, ICANN published an Explanatory Memorandum on Protection of Rights of Others in New gTLDs and solicited comments. http://www.icann.org/en/topics/new-gtlds/protection-rights-22oct08-en.pdf

- After receiving significant community input, on 6 March 2009, the Board recognized trademark protection in the new gTLD program as an issue requiring additional input and analysis, the resolution of which would benefit the new gTLD program. The Board requested that the GNSO's Intellectual Property Constituency convene an Implementation Recommendation Team ("IRT") to solicit input,

analyze the issue, and prepare draft and final reports.
http://www.icann.org/en/minutes/resolutions-06mar09.htm#07

- On 24 April 2009, the IRT published its Preliminary Report for public comment.
http://www.icann.org/en/topics/new-gtlds/irt-draft-report-trademark-protection-24apr09-en.pdf; see public comments at http://forum.icann.org/lists/irt-draft-report/

- On 16 May 2009, the Board participated in a workshop on issues related to the new gTLD program, including trademark protections in particular.

- On 29 May 2009, the IRT published its Final Report and an "Open Letter from the IRT Introducing our Work." ICANN and the IRT recognized that a significant intersection exists in between strategies to facilitate trademark protection and strategies to mitigate the risk of increased malicious conduct on the Internet.
http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf

- On 20 June 2009, the Board participated in another workshop on issues related to the new gTLD program, including trademark protection.

- On 21 June 2009, the IRT presented its Final Report to the ICANN Board at the ICANN Sydney Open Meeting and provided briefings to the GNSO, interested constituencies and others.
http://syd.icann.org/full-sched

- On 26 June 2009, the Board acknowledged and thanked the IRT for its "intensive engagement" and its "detailed and articulate proposals."
http://www.icann.org/en/minutes/resolutions-26jun09.htm

- Also on 26 June 2009, the Board acknowledged that ICANN staff had posted material on the new Draft Applicant Guidebook for public comment; thanked the community; and requested that all further comments be submitted by the close of the comment period on 20 July 2009. The Board also requested that the ICANN staff prepare a comprehensive set of implementation documents before the Board's meeting on 30 October 2009. See Board

Resolution at https://icann.org/en/minutes/resolutions-26jun09.htm; see Board Meeting Transcript at http://syd.icann.org/files/meetings/sydney2009/transcript-board-meeting-26jun09-en.txt

- On 12 September 2009, the Board continued its discussion about trademark protection in new gTLDs at a Board Retreat.

- On 12 October 2009, the Board sent a letter to the GNSO, requesting that it review trademark protection policy for the new gTLD program as described in the Draft Applicant Guidebook and accompanying memoranda, including the proposals for a Trademark Clearinghouse and a Uniform Rapid Suspension System. http://www.gnso.icann.org/correspondence/beckstrom-to-gnso-council-12oct09-en.pdf

- On 28 October 2009, the GNSO adopted a resolution creating the Special Trademarks Issues review team ("STI"), which included representatives from each stakeholder group, the At-Large community, nominating committee appointees, and the Governmental Advisory Committee ("GAC"). http://gnso.icann.org/resolutions/#200910

- On 30 October 2009, the Board issued a resolution encouraging additional comments on the Draft Applicant Guidebook and new gTLD program.
  See Board Resolution at https://icann.org/en/minutes/resolutions-30oct09-en.htm; see Board Meeting Transcript at https://icann.org/en/minutes/index-2009.htm

- On 11 December 2009, the STI published its Report.
  See link to Report in http://gnso.icann.org/resolutions/#200912

- On 18 December 2009, the GNSO unanimously approved the recommendations contained in the STI's report. http://gnso.icann.org/resolutions/#200912

- On 15 February 2010, ICANN published for public comment proposals for trademark protection in the new gTLD program, including the Trademark Clearinghouse, a Uniform Rapid Suspension System, and a post-delegation dispute resolution procedure.

http://www.icann.org/en/announcements/announcement-4-15feb10-en.htm

- On 10 March 2010, the GAC outlined to the Board some concerns and recommendations for the new gTLD program and its comments on version 3 of the Draft Applicant Guidebook. http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-10mar10-en.pdf

- On 12 March 2010, the Board acknowledged the community recommendations for trademark protections in the new gTLD program, including the development of a Trademark Clearinghouse and a Uniform Rapid Suspension System; resolved that the proposals for both be incorporated into version 4 of the Draft Applicant Guidebook; and directed ICANN staff to review any additional comments and develop final versions of the proposals for inclusion in the Draft Applicant Guidebook. http://www.icann.org/en/minutes/resolutions-12mar10-en.htm

- Also on 12 March 2010, the Board approved the concept of a post-delegation dispute resolution procedure; and directed ICANN staff to review any additional comments and synthesize them, as appropriate, into a final draft procedure, and include the procedure in version 4 of the Draft Applicant Guidebook. http://www.icann.org/en/minutes/resolutions-12mar10-en.htm

- On 28 May 2010, in response to further comments from the community, ICANN published for public comment revised proposals for the Trademark Clearinghouse, Uniform Rapid Suspension System, and a post-delegation dispute resolution procedure. http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm

- On 5 August 2010, the Board responded to the GAC's comments on version 3 of the Draft Applicant Guidebook and described the steps it took to protect trademarks in version 4 of the Draft Applicant Guidebook. http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-05aug10-en.pdf

- On 23 September 2010, the GAC outlined to the Board its concerns and recommendations for the new gTLD program and its comments on version 4 of the Draft Applicant Guidebook.

http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf

- On 24-25 September 2010, the Board participated in another workshop on issues related to the new gTLD program, including trademark protections and passed some resolutions specifically addressing trademark protections.
http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.6

- On 12 November 2010, ICANN posted for public comment version 5 of the Draft Applicant Guidebook, incorporating a number of protections for the rights of others, and a series of papers explaining certain aspects of the current proposals for the Trademark Clearinghouse, the Uniform Rapid Suspension System and related comments and analysis.
http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf

- On 10 December 2010, the Board resolved that ICANN had addressed the issue of trademark protection in new gTLDs by adopting and implementing various measures, including the establishment of a Trademark Clearinghouse, the Uniform Rapid Suspension System and the Post-Delegation Dispute Resolution Procedure. The Board further stated that these solutions reflected the negotiated position of the ICANN community, but that ICANN would continue to take into account public comment and the advice of the GAC.
See Board Resolution at https://icann.org/en/minutes/resolutions-10dec10-en.htm; see Board Meeting Minutes at https://icann.org/en/minutes/minutes-10dec10-en.htm

- On 21 February 2011, ICANN published numerous briefing papers on the trademark issues the GAC had identified as "outstanding" in September 2010.
http://www.icann.org/en/announcements/announcement-6-21feb11-en.htm

- On 23 February 2011, the GAC issued it "Indicative Scorecard" which included 30 specific recommendations relating to trademark protections on which it intended to consult with the.

http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf

- On 28 February 2011 and 1 March 2011, the GAC and the Board participated in a special two-day consultation to address the remaining outstanding issues related to the new gTLD program, including certain issues related to trademark protection. http://www.icann.org/en/announcements/announcement-23feb11-en.htm

- On 4 March 2011, the Board published its comments on the GAC Scorecard. http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-04mar11-en.pdf

- On 15 April 2011, ICANN published an Explanatory Memorandum on Trademark Protection in the new gTLD program. http://www.icann.org/en/topics/new-gtlds/trademark-protection-claims-use-15apr11-en.pdf

- Also on 15 April 2011, ICANN posted for comment version 6 of the Draft Applicant Guidebook, incorporating additional protections for the rights of others. http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm

- Also on 15 April 2011, ICANN issued "Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response" http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-clean-15apr11-en.pdf

- On 19 April 2011, the GAC issued "Remaining points of difference between the ICANN Board and the Governmental Advisory Committee on New gTLD Rights Protection Mechanisms" http://gac.icann.org/system/files/20110419-GAC_comments_on_NewgTLD_Rights_Protection.pdf

- On 26 May 2011, the GAC issued "GAC comments on the Applicant Guidebook (April 15th, 2011 version)" http://www.icann.org/en/topics/new-gtlds/gac-comments-new-gtlds-26may11-en.pdf

- On 30 May 2011, ICANN posted the current version of the Applicant Guidebook.
  http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm

III.   The Board's Analysis of Trademark Protection in the New gTLD Program

A.   Why the Board is Addressing This Issue Now

- ICANN's mission statement and one of its founding principles is to promote competition. The expansion of gTLDs will allow for more innovation and choice in the Internet's addressing system. The ICANN Board seeks to implement the new gTLD program together with measures designed to protect the rights of others on the Internet.
  http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm

- The Board endorsed GNSO policy recommendation states that gTLD strings should not infringe the rights of others. The Board took that recommendation as an emphasis on the need to protect intellectual property rights.

- ICANN committed to the Internet community and governments, including the U.S. Department of Commerce that it would address trademark protection in new gTLDs prior to implementing the program.

- The ICANN Board is committed to making decisions based on solid factual investigation and expert analysis.

B.   Who the Board Consulted

- The GNSO
  http://gnso.icann.org/

- The GAC
  http://gac.icann.org/

- The ICANN Implementation Recommendation Team ("IRT")
  https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20090407232008-0-9336/original/IRT-Directory.pdf

- The GNSO's Special Trademark Issues Working Team ("STI")

- The At-Large Advisory Committee ("ALAC")
  http://www.icann.org/en/committees/alac/

- All other stakeholders and members of the community

- Legal counsel

C.   What Significant Non-Privileged Materials the Board Reviewed

- In addition to all public comments received on all versions of the Applicant Guidebook, as well as all relevant GAC Communiqués (*see* http://gac.icann.org/communiques), the ICANN Board reviewed the following reports from Stakeholders:

    o 1 June 2007 GNSO Working Group on Protecting the Rights of Others' Final Report
       http://www.gnso.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf

    o 8 August 2007 GNSO Final Report – Introduction of New Generic Top Level Domains.
       http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

    o 24 April 2009 IRT Draft Report and Public Comment Summary
       http://forum.icann.org/lists/irt-draft-report/pdfuyqR57X82f.pdf

    o 24 April 2009 IRT Preliminary Report, and public comment thereon
       http://www.icann.org/en/topics/new-gtlds/irt-draft-report-trademark-protection-24apr09-en.pdf; see public comments at http://forum.icann.org/lists/irt-draft-report/

    o 29 May 2009 IRT Final Report
       http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf

    o 29 May 2009 Implementation Recommendation Team Final Draft Report to ICANN Board

http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf

- o 4 October 2009 ICANN Comment and Analysis on IRT Report: Post-Delegation Dispute Mechanism and Other Topics http://www.icann.org/en/topics/new-gtlds/summary-analysis-irt-final-report-04oct09-en.pdf

- o 11 December 2009, STI Report
  See link to Report in
  http://gnso.icann.org/resolutions/#200912

- o 12 December 2009 letter from the members of the former IRT to ICANN unanimously supporting the work of the STI process and recommendations concerning a trademark clearinghouse and a mandatory Uniform Rapid Suspension system http://www.icann.org/en/correspondence/irt-group-to-dengate-thrush-15dec09-en.pdf

- o 23 February 2011 GAC "Indicative Scorecard" http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf

- o 19 April 2011 GAC issued "Remaining points of difference between the ICANN Board and the Governmental Advisory Committee on New gTLD Rights Protection Mechanisms" http://gac.icann.org/system/files/20110419-GAC_comments_on_NewgTLD_Rights_Protection.pdf

- o 26 May 2011, the GAC issued "GAC comments on the Applicant Guidebook (April 15th, 2011 version)" http://www.icann.org/en/topics/new-gtlds/gac-comments-new-gtlds-26may11-en.pdf

- ICANN prepared materials

  - o Each version of the Applicant Guidebook, including all ICANN created explanatory memoranda and the specific proposals for trademark protections, along with hundreds of pages of public comment summaries and analysis related to trademark protections.
    (i) http://www.icann.org/en/topics/new-gtlds/comments-

en.htm; (ii) http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm#expmem; (iii) http://www.icann.org/en/topics/new-gtlds/comments-e-en.htm; (iv) http://www.icann.org/en/topics/new-gtlds/comments-3-en.htm; (v) http://www.icann.org/en/topics/new-gtlds/gnso-consultations-reports-en.htm; (vi) http://www.icann.org/en/announcements/announcement-4-15feb10-en.htm; (vii) http://www.icann.org/en/topics/new-gtlds/summaries-4-en.htm; (viii) http://www.icann.org/en/topics/new-gtlds/comments-5-en.htm; (ix) http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm; (x) http://www.icann.org/en/topics/new-gtlds/dag-en.htm; (xi) http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm; and (xii) http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm

D.   What Concerns the Community Raised

- There is a need for adequate protection of intellectual property rights in new and existing gTLDs.

- If the introduction of new gTLDs leads to increased malicious conduct on the Internet, then trademark owners may pay a disproportionate percentage of costs associated with enforcing standards of behavior.

- Defensive domain name registrations in new gTLDs generate substantial costs for trademark owners.

- Registry behavior may cause or materially contribute to trademark abuse, whether through a TLD or through domain name registrations in the TLD.

- Legal rights that a party seeks to protect through Rights Protection Mechanisms should be capable of being authenticated, at least if the authenticity of such rights is challenged.

- Administrative dispute resolution procedures provide trademark owners with relatively swift and inexpensive alternatives to arbitration and litigation.

- Recurring sanctions may not be a sufficient remedy for wrongful conduct; suspension and termination may be necessary remedies.

- Policies developed to prevent and remedy trademark abuses in the DNS are expected to build upon the framework of existing intellectual property laws to minimize burdens on trademark owners and contribute to the orderly functioning of the DNS.

- The introduction of new gTLDs may lead to consumer confusion if one trademark owner registers its mark in one gTLD while another registers an identical or similar mark in another gTLD. To the extent that Internet users are unable (or become unaccustomed) to associate one mark with a specific business origin, the distinctive character of the mark will be diluted.

E.   **What Steps ICANN Has Taken or Is Taking to Protect the Rights of Others in New gTLDs**

The Board believes the following measures will significantly help to protect the rights of others on the Internet. ICANN has incorporated the majority of these measures into the current version of the Applicant Guidebook and the registry agreement, and its efforts to implement the remaining measures are ongoing:

- Pre-delegation objection procedures.

- Mandatory publication by new gTLDs of policy statements on rights protection mechanisms, including measures that discourage registration of domain names that infringe intellectual property rights, reservation of specific names to prevent inappropriate name registrations, minimization of abusive registrations, compliance with applicable trademark and anti-cyber squatting legislation, protections for famous name and trademark owners and other measures.

- Mandatory maintenance of thick Whois records to ensure greater accessibility and improved stability of records.

- The establishment of a Trademark Clearinghouse as a central repository for rights information, creating efficiencies for trademark holders, registries, and registrars

- The requirement for all new registries to offer <u>both</u> a Trademarks Claims service and a Sunrise period.

- Post-delegation dispute resolution procedures that allow rights holders to address infringing activity by a registry operator that may be taking place after delegation.

- Implementation of the Uniform Rapid Suspension System that provides a streamline, lower-cost mechanism to suspend infringing names

- The continued application of the Uniform Domain Name Dispute Resolution Policy on all new gTLDs.

F.   What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of trademark protection in the new gTLD program. The Board found the following factors to be significant:

- The GNSO's Working Group on Protecting the Rights of Others was not able to reach consensus on "best practices" for Rights Protection Mechanisms;

- While economic studies revealed that there will be both benefits and cost to trademark holders associated with new gTLDs, no determination could be made that the costs outweigh the benefits.

- New gTLDs would promote consumer welfare.

- The availability and efficacy of dispute resolution mechanisms and appropriately-designed modifications of ICANN procedures for protecting intellectual property.

- The need for dispute resolution mechanisms to be comprehensive enough to expand with the addition of new gTLDs.

- The need to balance the protection of trademark rights with the practical interests of compliant registry operators to minimize operational burdens and the legitimate expectations of good faith domain name registrants.

- The risk of increasing exposure of participants to litigation.

- The lack of reported problems with ICANN's previous introductions of new TLDs.

IV. The Board's Reasons for Proceeding to Launch the New gTLD Program While Implementing Measures to Protect Trademarks and Other Rights

- ICANN's "default" position should be for creating more competition as opposed to having rules that restrict the ability of Internet stakeholders to innovate.

- New gTLDs offer new and innovative opportunities to Internet stakeholders.

- Brand owners might more easily create consumer awareness around their brands as a top-level name, reducing the effectiveness of phishing and other abuses.

- Revised applicant procedures and agreements reflecting the measures to mitigate the risk of malicious conduct will permit ICANN to address certain risks of abuse contractually and also will permit ICANN to refer abuses to appropriate authorities. ICANN can amend contracts and the applicant guidebook to address harms that may arise as a direct or indirect result of the new gTLD program.

- ICANN has addressed the principal concerns raised by stakeholders about the potential for proliferation of malicious conduct in the new gTLD space by implementing measures to mitigate that risk, including centralized zone file access, a high security TLD designation and other mechanisms. A combination of verified security measures and the implementation of DNSSEC will allow users to find and use more trusted DNS environments within the TLD market.

- ICANN has addressed the principal concerns raised by stakeholders about the protection of trademarks in the new gTLD space by

implementing other measures to enhance protections for trademarks and other rights, including pre-delegation dispute resolution procedures, a trademark clearinghouse, and post-delegation dispute resolution procedures.

- To the extent that there are costs to trademark owners or others, ICANN has worked with the community to address those concerns, and ICANN pledges to continue that effort.