

Annex 1

Cooperative Engagement Process – Requests for Independent Review

11 April 2013

As specified in Article IV, Section 3 of the ICANN Bylaws, prior to initiating an independent review process, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. It is contemplated that this cooperative engagement process will be initiated prior to the requesting party incurring any costs in the preparation of a request for independent review. Cooperative engagement is expected to be among ICANN and the requesting party, without reference to outside counsel.

The Cooperative Engagement Process is as follows:

1. In the event the requesting party elects to proceed to cooperative engagement prior to filing a request for independent review, the requesting party may invoke the cooperative engagement process by providing written notice to ICANN at [independentreview@icann.org], noting the invocation of the process, identifying the Board action(s) at issue, identifying the provisions of the ICANN Bylaws or Articles of Incorporation that are alleged to be violated, and designating a single point of contact for the resolution of the issue.
2. The requesting party must initiate cooperative engagement within fifteen (15) days of the posting of the minutes of the Board (and the accompanying Board Briefing Materials, if available) that the requesting party's contends demonstrates that the ICANN Board violated its Bylaws or Articles of Incorporation.
3. Within three (3) business days, ICANN shall designate a single executive to serve as the point of contact for the resolution of the issue, and provide notice of the designation to the requestor.
4. Within two (2) business days of ICANN providing notice of its designated representatives, the requestor and ICANN's representatives shall confer by telephone or in person to attempt to resolve the issue and determine if any issues remain for the independent review process, or whether the matter should be brought to the ICANN Board's attention.
5. If the representatives are not able to resolve the issue or agree on a narrowing of issues, or a reference to the ICANN Board, during the first conference, they shall further meet in person at a location mutually agreed to within 7 (seven) calendar days after such initial conference, at which the parties shall attempt to reach a definitive agreement on the resolution of the issue or on the narrowing of issues remaining for the independent review process, or whether the matter should be brought to the ICANN Board's attention.
6. The time schedule and process may be modified as agreed to by both ICANN and the requester, in writing.

If ICANN and the requestor have not agreed to a resolution of issues upon the conclusion of the cooperative engagement process, or if issues remain for a request

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for independent review, the requestor's time to file a request for independent review designated in the Bylaws shall be extended for each day of the cooperative engagement process, but in no event, absent mutual written agreement by the parties, shall the extension be for more than fourteen (14) days.

Pursuant to the Bylaws, if the party requesting the independent review does not participate in good faith in the cooperative engagement process and ICANN is the prevailing party in the independent review proceedings, the IRP panel must award to ICANN all reasonable fees and costs incurred by ICANN in the proceeding, including legal fees. ICANN is expected to participate in the cooperative engagement process in good faith.

Annex 2

Interim Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process (IRP)¹

Adopted 25 October 2018

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These interim procedures (Interim Supplementary Procedures) supplement the International Centre for Dispute Resolution’s international arbitration rules in accordance with the independent review process set forth in Article 4, Section 4.3 of ICANN’s Bylaws. These procedures apply to all independent review process proceedings filed after 1 May 2018.

In drafting these Interim Supplementary Procedures, the IRP Implementation Oversight Team (IOT) applied the following principles: (1) remain as close as possible to the current Supplementary Procedures or the Updated Supplementary Procedures (USP) posted for public comment on 28 November 2016²; (2) to the extent public comments received in response to the USP reflected clear movement away from either the current Supplementary Procedures or the

¹ CONTEXTUAL NOTE: These Interim Supplementary Procedures are intended to supplement the ICDR RULES. Therefore, when the ICDR RULES appropriately address an item, there is no need to re-state that Rule within the Supplemental Procedures. The IOT, through its work, may identify additional places where variance from the ICDR RULES is recommended, and that would result in addition or modification to the Supplemental Procedures.

² See <https://www.icann.org/public-comments/irp-supp-procedures-2016-11-28-en>.

USP, to reflect that movement unless doing so would require significant drafting that should be properly deferred for broader consideration; (3) take no action that would materially expand any part of the Supplementary Procedures that the IOT has not clearly agreed upon, or that represent a significant change from what was posted for comment and would therefore require further public consultation prior to changing the supplemental rules to reflect those expansions or changes.

1. Definitions

In these Interim Supplementary Procedures:

A CLAIMANT is any legal or natural person, group, or entity including, but not limited to the Empowered Community, a Supporting Organization, or an Advisory Committee, that has been materially affected by a Dispute. To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.

COVERED ACTIONS are any actions or failures to act by or within ICANN committed by the Board, individual Directors, Officers, or Staff members that give rise to a DISPUTE.

DISPUTES are defined as:

(A) Claims that COVERED ACTIONS violated ICANN's Articles of Incorporation or Bylaws, including, but not limited to, any action or inaction that:

- 1) exceeded the scope of the Mission;
- 2) resulted from action taken in response to advice or input from any Advisory Committee or Supporting Organization that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;
- 3) resulted from decisions of process-specific expert panels that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;
- 4) resulted from a response to a DIDP (as defined in Section 22.7(d)) request that is claimed to be inconsistent with the Articles of Incorporation or Bylaws; or
- 5) arose from claims involving rights of the EC as set forth in the Articles of Incorporation or Bylaws;

(B) Claims that ICANN, the Board, individual Directors, Officers or Staff members have not enforced ICANN's contractual rights with respect to the IANA Naming Function Contract; and

(C) Claims regarding the Post-Transition IANA entity service complaints by direct customers of the IANA naming functions that are not resolved through mediation.

EMERGENCY PANELIST refers to a single member of the STANDING PANEL designated to adjudicate requests for interim relief or, if a STANDING PANEL is not in place at the time the relevant IRP is initiated, it shall refer to the panelist appointed by the ICDR pursuant to ICDR RULES relating to appointment of panelists for emergency relief (ICDR RULES Article 6).

IANA refers to the Internet Assigned Numbers Authority.

ICDR refers to the International Centre for Dispute Resolution, which has been designated and approved by ICANN's Board of Directors as the IRP Provider (IRPP) under Article 4, Section 4.3 of ICANN's Bylaws.

ICANN refers to the Internet Corporation for Assigned Names and Numbers.

INDEPENDENT REVIEW PROCESS or IRP refers to the procedure that takes place upon the Claimant's filing of a written statement of a DISPUTE with the ICDR.

IRP PANEL refers to the panel of three neutral members appointed to decide the relevant DISPUTE.

IRP PANEL DECISION refers to the final written decision of the IRP PANEL that reflects the reasoned analysis of how the DISPUTE was resolved in compliance with ICANN's Articles and Bylaws.

ICDR RULES refers to the ICDR's International Arbitration rules in effect at the time the relevant request for independent review is submitted.

PROCEDURES OFFICER refers to a single member of the STANDING PANEL designated to adjudicate requests for consolidation, intervention, and/or participation as an *amicus*, or, if a STANDING PANEL is not in place at the time the relevant IRP is initiated, it shall refer to the panelist appointed by the ICDR pursuant to its International Arbitration Rules relating to appointment of panelists for consolidation (ICDR Rules Article 8)

PURPOSES OF THE IRP are to hear and resolve Disputes for the reasons specified in the ICANN Bylaws, Article 4, Section 4.3(a).

STANDING PANEL refers to an omnibus standing panel of at least seven members from which three-member IRP PANELS are selected to hear and resolve DISPUTES consistent with the purposes of the IRP.

2. Scope

The ICDR will apply these Interim Supplementary Procedures, in addition to the ICDR RULES, in all cases submitted to the ICDR in connection with Article 4, Section 4.3 of the ICANN Bylaws after the date these Interim Supplementary Procedures go into effect. In the event there is any inconsistency between these Interim Supplementary Procedures and the ICDR RULES, these Interim Supplementary Procedures will govern. These Interim Supplementary Procedures and any amendment of them shall apply in the form in effect at the time the request for an INDEPENDENT REVIEW is commenced. IRPs commenced prior to the adoption of these Interim Supplementary Procedures shall be governed by the Supplementary Procedures in effect at the time such IRPs were commenced.

In the event that any of these Interim Supplementary Procedures are subsequently amended, the rules surrounding the application of those amendments will be defined therein.

3. Composition of Independent Review Panel

The IRP PANEL will comprise three panelists selected from the STANDING PANEL, unless a STANDING PANEL is not in place when the IRP is initiated. The CLAIMANT and ICANN shall each select one panelist from the STANDING PANEL, and the two panelists selected by the parties will select the third panelist from the STANDING PANEL. A STANDING PANEL member's appointment will not take effect unless and until the STANDING PANEL member signs a Notice of STANDING PANEL Appointment affirming that the member is available to serve and is Independent and Impartial pursuant to the ICDR RULES. In addition to disclosing relationships with parties to the DISPUTE, IRP PANEL members must also disclose the existence of any material relationships with ICANN, and/or an ICANN Supporting Organization or Advisory Committee. In the event that a STANDING PANEL is not in place when the relevant IRP is initiated or is in place but does not have capacity due to other IRP commitments, the CLAIMANT and ICANN shall each select a qualified panelist from outside the STANDING PANEL, and the two panelists selected by the parties shall select the third panelist. In the event that the two party-selected panelists cannot agree on the third panelist, the ICDR RULES shall apply to selection of the third panelist. In the event that a panelist resigns, is incapable of performing the duties of a panelist, or is removed and the position becomes vacant, a substitute arbitrator shall be appointed pursuant to the provisions of this Section [3] of these Interim Supplementary Procedures.

4. Time for Filing³

An INDEPENDENT REVIEW is commenced when CLAIMANT files a written statement of a DISPUTE. A CLAIMANT shall file a written statement of a DISPUTE with the ICDR no more than 120 days after a CLAIMANT becomes aware of the material effect of the action or inaction giving rise to the DISPUTE; provided, however, that a statement of a DISPUTE may not be filed more than twelve (12) months from the date of such action or inaction.

In order for an IRP to be deemed to have been timely filed, all fees must be paid to the ICDR within three business days (as measured by the ICDR) of the filing of the request with the ICDR.

5. Conduct of the Independent Review

It is in the best interests of ICANN and of the ICANN community for IRP matters to be resolved expeditiously and at a reasonably low cost while ensuring fundamental fairness and due process consistent with the PURPOSES OF THE IRP. The IRP PANEL shall consider accessibility, fairness, and efficiency (both as to time and cost) in its conduct of the IRP.

In the event that an EMERGENCY PANELIST has been designated to adjudicate a request for interim relief pursuant to the Bylaws, Article 4, Section 4.3(p), the EMERGENCY PANELIST shall comply with the rules applicable to an IRP PANEL, with such modifications as appropriate.

5A. Nature of IRP Proceedings

The IRP PANEL should conduct its proceedings by electronic means to the extent feasible.

Hearings shall be permitted as set forth in these Interim Supplementary Procedures. Where necessary, the IRP PANEL may conduct hearings via telephone, video conference or similar technologies). The IRP PANEL should conduct its proceedings with the presumption that in-person hearings shall not be permitted. For purposes of these Interim Supplementary Procedures, an “in-person hearing” refers to any IRP proceeding held face-to-face, with participants physically present in the same location. The presumption against in-person hearings may be rebutted only under extraordinary circumstances, where, upon motion by a Party, the IRP PANEL determines that the party seeking an in-person hearing has demonstrated that: (1) an in-

³ The IOT recently sought additional public comment to consider the Time for Filing rule that will be recommended for inclusion in the final set of Supplementary Procedures. In the event that the final Time for Filing procedure allows additional time to file than this interim Supplementary Procedure allows, ICANN committed to the IOT that the final Supplementary Procedures will include transition language that provides potential claimants the benefit of that additional time, so as not to prejudice those potential claimants.

person hearing is necessary for a fair resolution of the claim; (2) an in-person hearing is necessary to further the PURPOSES OF THE IRP; *and* (3) considerations of fairness and furtherance of the PURPOSES OF THE IRP outweigh the time and financial expense of an in-person hearing. In no circumstances shall in-person hearings be permitted for the purpose of introducing new arguments or evidence that could have been previously presented, but were not previously presented, to the IRP PANEL.

All hearings shall be limited to argument only unless the IRP Panel determines that a the party seeking to present witness testimony has demonstrated that such testimony is: (1) necessary for a fair resolution of the claim; (2) necessary to further the PURPOSES OF THE IRP; *and* (3) considerations of fairness and furtherance of the PURPOSES OF THE IRP outweigh the time and financial expense of witness testimony and cross examination.

All evidence, including witness statements, must be submitted in writing 15 days in advance of any hearing.

With due regard to ICANN Bylaws, Article 4, Section 4.3(s), the IRP PANEL retains responsibility for determining the timetable for the IRP proceeding. Any violation of the IRP PANEL's timetable may result in the assessment of costs pursuant to Section 10 of these Interim Supplementary Procedures.

5B. Translation

As required by ICANN Bylaws, Article 4, Section 4.3(l), "All IRP proceedings shall be administered in English as the primary working language, with provision of translation services for CLAIMANTS if needed." Translation may include both translation of written documents/transcripts as well as interpretation of oral proceedings.

The IRP PANEL shall have discretion to determine (i) whether the CLAIMANT has a need for translation services, (ii) what documents and/or hearing that need relates to, and (iii) what language the document, hearing or other matter or event shall be translated into. A CLAIMANT not determined to have a need for translation services must submit all materials in English (with the exception of the request for translation services if the request includes CLAIMANT's certification to the IRP PANEL that submitting the request in English would be unduly burdensome).

In determining whether a CLAIMANT needs translation, the IRP PANEL shall consider the CLAIMANT's proficiency in spoken and written English and, to the extent that the CLAIMANT is represented in the proceedings by an attorney or other agent, that representative's proficiency

in spoken and written English. The IRP PANEL shall only consider requests for translations from/to English and the other five official languages of the United Nations (i.e., Arabic, Chinese, French, Russian, or Spanish).

In determining whether translation of a document, hearing or other matter or event shall be ordered, the IRP PANEL shall consider the CLAIMANT's proficiency in English as well as in the requested other language (from among Arabic, Chinese, French, Russian or Spanish). The IRP PANEL shall confirm that all material portions of the record of the proceeding are available in English.

In considering requests for translation, the IRP PANEL shall consider the materiality of the particular document, hearing or other matter or event requested to be translated, as well as the cost and delay incurred by translation, pursuant to ICDR Article 18 on Translation, and the need to ensure fundamental fairness and due process under ICANN Bylaws, Article 4, Section 4.3(n)(iv).

Unless otherwise ordered by the IRP PANEL, costs of need-based translation (as determined by the IRP PANEL) shall be covered by ICANN as administrative costs and shall be coordinated through ICANN's language services providers. Even with a determination of need-based translation, if ICANN or the CLAIMANT coordinates the translation of any document through its legal representative, such translation shall be considered part of the legal costs and not an administrative cost to be born by ICANN. Additionally, in the event that either the CLAIMANT or ICANN retains a translator for the purpose of translating any document, hearing or other matter or event, and such retention is not pursuant to a determination of need-based translation by the IRP PANEL, the costs of such translation shall not be charged as administrative costs to be covered by ICANN.

6. Written Statements

A CLAIMANT'S written statement of a DISPUTE shall include all claims that give rise to a particular DISPUTE, but such claims may be asserted as independent or alternative claims.

The initial written submissions of the parties shall not exceed 25 pages each in argument, double-spaced and in 12-point font. All necessary and available evidence in support of the CLAIMANT'S claim(s) should be part of the initial written submission. Evidence will not be included when calculating the page limit. The parties may submit expert evidence in writing, and there shall be one right of reply to that expert evidence. The IRP PANEL may request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties.

In addition, the IRP PANEL may grant a request for additional written submissions from any person or entity who is intervening as a CLAIMANT or who is participating as an amicus upon the showing of a compelling basis for such request. In the event the IRP PANEL grants a request for additional written submissions, any such additional written submission shall not exceed 15 pages, double-spaced and in 12-point font.

For any DISPUTE resulting from a decision of a process-specific expert panel that is claimed to be inconsistent with ICANN's Articles of Incorporation or Bylaws, as specified at Bylaw Section 4.3(b)(iii)(A)(3), any person, group or entity that was previously identified as within a contention set with the CLAIMANT regarding the issue under consideration within such expert panel proceeding shall reasonably receive notice from ICANN that the INDEPENDENT REVIEW PROCESS has commenced. ICANN shall undertake reasonable efforts to provide notice by electronic message within two business days (calculated at ICANN's principal place of business) of receiving notification from the ICDR that the IRP has commenced.

7. Consolidation, Intervention and Participation as an *Amicus*

A PROCEDURES OFFICER shall be appointed from the STANDING PANEL to consider any request for consolidation, intervention, and/or participation as an *amicus*. Except as otherwise expressly stated herein, requests for consolidation, intervention, and/or participation as an *amicus* are committed to the reasonable discretion of the PROCEDURES OFFICER. In the event that no STANDING PANEL is in place when a PROCEDURES OFFICER must be selected, a panelist may be appointed by the ICDR pursuant to its INTERNATIONAL ARBITRATION RULES relating to appointment of panelists for consolidation.

In the event that requests for consolidation or intervention are granted, the restrictions on Written Statements set forth in Section 6 shall apply to all CLAIMANTS collectively (for a total of 25 pages exclusive of evidence) and not individually unless otherwise modified by the IRP PANEL in its discretion consistent with the PURPOSES OF THE IRP.

Consolidation

Consolidation of DISPUTES may be appropriate when the PROCEDURES OFFICER concludes that there is a sufficient common nucleus of operative fact among multiple IRPs such that the joint resolution of the DISPUTES would foster a more just and efficient resolution of the DISPUTES than addressing each DISPUTE individually. If DISPUTES are consolidated, each existing DISPUTE shall no longer be subject to further separate consideration. The PROCEDURES OFFICER may in its discretion order briefing to consider the propriety of consolidation of DISPUTES.

Intervention

Any person or entity qualified to be a CLAIMANT pursuant to the standing requirement set forth in the Bylaws may intervene in an IRP with the permission of the PROCEDURES OFFICER, as provided below. This applies whether or not the person, group or entity participated in an underlying proceeding (a process-specific expert panel per ICANN Bylaws, Article 4, Section 4.3(b)(iii)(A)(3)).

Intervention is appropriate to be sought when the prospective participant does not already have a pending related DISPUTE, and the potential claims of the prospective participant stem from a common nucleus of operative facts based on such briefing as the PROCEDURES OFFICER may order in its discretion.

In addition, the Supporting Organization(s) which developed a Consensus Policy involved when a DISPUTE challenges a material provision(s) of an existing Consensus Policy in whole or in part shall have a right to intervene as a CLAIMANT to the extent of such challenge. Supporting Organization rights in this respect shall be exercisable through the chair of the Supporting Organization.

Any person, group or entity who intervenes as a CLAIMANT pursuant to this section will become a CLAIMANT in the existing INDEPENDENT REVIEW PROCESS and have all of the rights and responsibilities of other CLAIMANTS in that matter and be bound by the outcome to the same extent as any other CLAIMANT. All motions to intervene or for consolidation shall be directed to the IRP PANEL within 15 days of the initiation of the INDEPENDENT REVIEW PROCESS. All requests to intervene or for consolidation must contain the same information as a written statement of a DISPUTE and must be accompanied by the appropriate filing fee. The IRP PANEL may accept for review by the PROCEDURES OFFICER any motion to intervene or for consolidation after 15 days in cases where it deems that the PURPOSES OF THE IRP are furthered by accepting such a motion.

Excluding materials exempted from production under Rule 8 (Exchange of Information) below, the IRP PANEL shall direct that all materials related to the DISPUTE be made available to entities that have intervened or had their claim consolidated unless a CLAIMANT or ICANN objects that such disclosure will harm commercial confidentiality, personal data, or trade secrets; in which case the IRP PANEL shall rule on objection and provide such information as is consistent with the PURPOSES OF THE IRP and the appropriate preservation of confidentiality as recognized in Article 4 of the Bylaws.

Participation as an *Amicus Curiae*

Any person, group, or entity that has a material interest relevant to the DISPUTE but does not satisfy the standing requirements for a CLAIMANT set forth in the Bylaws may participate as an *amicus curiae* before an IRP PANEL, subject to the limitations set forth below. Without limitation to the persons, groups, or entities that may have such a material interest, the following persons, groups, or entities shall be deemed to have a material interest relevant to the DISPUTE and, upon request of person, group, or entity seeking to so participate, shall be permitted to participate as an *amicus* before the IRP PANEL:

- i. A person, group or entity that participated in an underlying proceeding (a process-specific expert panel per ICANN Bylaws, Article 4, Section 4.3(b)(iii)(A)(3));
- ii. If the IRP relates to an application arising out of ICANN's New gTLD Program, a person, group or entity that was part of a contention set for the string at issue in the IRP; and
- iii. If the briefings before the IRP PANEL significantly refer to actions taken by a person, group or entity that is external to the DISPUTE, such external person, group or entity.

All requests to participate as an *amicus* must contain the same information as the Written Statement (set out at Section 6), specify the interest of the *amicus curiae*, and must be accompanied by the appropriate filing fee.

If the PROCEDURES OFFICER determines, in his or her discretion, subject to the conditions set forth above, that the proposed *amicus curiae* has a material interest relevant to the DISPUTE, he or she shall allow participation by the *amicus curiae*. Any person participating as an *amicus curiae* may submit to the IRP Panel written briefing(s) on the DISPUTE or on such discrete questions as the IRP PANEL may request briefing, in the discretion of the IRP PANEL and subject to such deadlines, page limits, and other procedural rules as the IRP PANEL may specify in its discretion.⁴ The IRP PANEL shall determine in its discretion what materials related to the DISPUTE to make available to a person participating as an *amicus curiae*.

⁴ During the pendency of these Interim Supplementary Rules, in exercising its discretion in allowing the participation of *amicus curiae* and in then considering the scope of participation from *amicus curiae*, the IRP PANEL shall lean in favor of allowing broad participation of an *amicus curiae* as needed to further the purposes of the IRP set forth at Section 4.3 of the ICANN Bylaws.

8. Exchange of Information

The IRP PANEL shall be guided by considerations of accessibility, fairness, and efficiency (both as to time and cost) in its consideration of requests for exchange of information.

On the motion of either Party and upon finding by the IRP PANEL that such exchange of information is necessary to further the PURPOSES OF THE IRP, the IRP PANEL may order a Party to produce to the other Party, and to the IRP PANEL if the moving Party requests, documents or electronically stored information in the other Party's possession, custody, or control that the Panel determines are reasonably likely to be relevant and material to the resolution of the CLAIMS and/or defenses in the DISPUTE and are not subject to the attorney-client privilege, the work product doctrine or otherwise protected from disclosure by applicable law (including, without limitation, disclosures to competitors of the disclosing person, group or entity, of any competition-sensitive information of any kind). Where such method(s) for exchange of information are allowed, all Parties shall be granted the equivalent rights for exchange of information.

A motion for exchange of documents shall contain a description of the specific documents, classes of documents or other information sought that relate to the subject matter of the Dispute along with an explanation of why such documents or other information are likely to be relevant and material to resolution of the Dispute.

Depositions, interrogatories, and requests for admission will not be permitted.

In the event that a Party submits what the IRP PANEL deems to be an expert opinion, such opinion must be provided in writing and the other Party must have a right of reply to such an opinion with an expert opinion of its own.

9. Summary Dismissal

An IRP PANEL may summarily dismiss any request for INDEPENDENT REVIEW where the Claimant has not demonstrated that it has been materially affected by a DISPUTE. To be materially affected by a DISPUTE, a Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.

An IRP PANEL may also summarily dismiss a request for INDEPENDENT REVIEW that lacks substance or is frivolous or vexatious.

10. Interim Measures of Protection

A Claimant may request interim relief from the IRP PANEL, or if an IRP PANEL is not yet in place, from the STANDING PANEL. Interim relief may include prospective relief, interlocutory relief, or declaratory or injunctive relief, and specifically may include a stay of the challenged ICANN action or decision in order to maintain the status quo until such time as the opinion of the IRP PANEL is considered by ICANN as described in ICANN Bylaws, Article 4, Section 4.3(o)(iv).

An EMERGENCY PANELIST shall be selected from the STANDING PANEL to adjudicate requests for interim relief. In the event that no STANDING PANEL is in place when an EMERGENCY PANELIST must be selected, a panelist may be appointed by the ICDR pursuant to ICDR RULES relating to appointment of panelists for emergency relief. Interim relief may only be provided if the EMERGENCY PANELIST determines that the Claimant has established all of the following factors:

- (i) A harm for which there will be no adequate remedy in the absence of such relief;
- (ii) Either: (A) likelihood of success on the merits; or (B) sufficiently serious questions related to the merits; and
- (iii) A balance of hardships tipping decidedly toward the party seeking relief.

Interim relief may be granted on an ex parte basis in circumstances that the EMERGENCY PANELIST deems exigent, but any Party whose arguments were not considered prior to the granting of such interim relief may submit any opposition to such interim relief, and the EMERGENCY PANELIST must consider such arguments, as soon as reasonably possible. The EMERGENCY PANELIST may modify or terminate the interim relief if the EMERGENCY PANELIST deems it appropriate to do so in light of such further arguments.

11. Standard of Review

Each IRP PANEL shall conduct an objective, de novo examination of the DISPUTE.

- a. With respect to COVERED ACTIONS, the IRP PANEL shall make findings of fact to determine whether the COVERED ACTION constituted an action or inaction that violated ICANN'S Articles or Bylaws.

- b. All DISPUTES shall be decided in compliance with ICANN's Articles and Bylaws, as understood in the context of the norms of applicable law and prior relevant IRP decisions.
- c. For Claims arising out of the Board's exercise of its fiduciary duties, the IRP PANEL shall not replace the Board's reasonable judgment with its own so long as the Board's action or inaction is within the realm of reasonable business judgment.
- d. With respect to claims that ICANN has not enforced its contractual rights with respect to the IANA Naming Function Contract, the standard of review shall be whether there was a material breach of ICANN's obligations under the IANA Naming Function Contract, where the alleged breach has resulted in material harm to the Claimant.
- e. IRPs initiated through the mechanism contemplated at Article 4, Section 4.3(a)(iv) of ICANN's Bylaws shall be subject to a separate standard of review as defined in the IANA Naming Function Contract.

12. IRP PANEL Decisions

IRP PANEL DECISIONS shall be made by a simple majority of the IRP PANEL. If any IRP PANEL member fails to sign the IRP PANEL DECISION, the IRP PANEL member shall endeavor to provide a written statement of the reason for the absence of such signature.

13. Form and Effect of an IRP PANEL DECISION

- a. IRP PANEL DECISIONS shall be made in writing, promptly by the IRP PANEL, based on the documentation, supporting materials and arguments submitted by the parties. IRP PANEL DECISIONS shall be issued in English, and the English version will be authoritative over any translations.
- b. The IRP PANEL DECISION shall specifically designate the prevailing party as to each Claim.
- c. Subject to Article 4, Section 4.3 of ICANN's Bylaws, all IRP PANEL DECISIONS shall be made public, and shall reflect a well-reasoned application of how the DISPUTE was resolved in compliance with ICANN's Articles and Bylaws, as understood in light of prior IRP PANEL DECISIONS decided under

the same (or an equivalent prior) version of the provision of the Articles and Bylaws at issue, and norms of applicable law.

14. Appeal of IRP PANEL Decisions

An IRP PANEL DECISION may be appealed to the full STANDING PANEL sitting en banc within 60 days of the issuance of such decision. The en banc STANDING PANEL will review such appealed IRP PANEL DECISION based on a clear error of judgment or the application of an incorrect legal standard. The en banc STANDING PANEL may also resolve any disputes between panelists on an IRP PANEL or the PROCEDURES OFFICER with respect to consolidation of CLAIMS or intervention.

15. Costs

The IRP PANEL shall fix costs in its IRP PANEL DECISION. Except as otherwise provided in Article 4, Section 4.3(e)(ii) of ICANN's Bylaws, each party to an IRP proceeding shall bear its own legal expenses, except that ICANN shall bear all costs associated with a Community IRP, as defined in Article 4, Section 4.3(d) of ICANN's Bylaws, including the costs of all legal counsel and technical experts.

Except with respect to a Community IRP, the IRP PANEL may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in the event it identifies the losing party's Claim or defense as frivolous or abusive.

Annex 3

BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS | A California Nonprofit Public-Benefit Corporation

Note: this page is an archive of an old version of the bylaws. The current ICANN (Internet Corporation for Assigned Names and Numbers) bylaws are always available at:

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

As amended 7 February 2014

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ARTICLE I: MISSION AND CORE VALUES

Section 1. MISSION

The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN (Internet Corporation for Assigned Names and Numbers)") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN (Internet Corporation for Assigned Names and Numbers):

1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are
 - a. Domain names (forming a system referred to as "DNS (Domain Name System)");
 - b. Internet protocol ("IP (Internet Protocol or Intellectual Property)") addresses and autonomous system ("AS (Autonomous System ("AS") Numbers)") numbers; and
 - c. Protocol (Protocol) port and parameter numbers.
2. Coordinates the operation and evolution of the DNS (Domain Name System) root name server system.
3. Coordinates policy development reasonably and appropriately related to these technical functions.

Section 2. CORE VALUES

In performing its mission, the following core values should guide the decisions and actions of ICANN (Internet Corporation for Assigned Names and

Numbers):

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.
2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN (Internet Corporation for Assigned Names and Numbers)'s activities to those matters within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission requiring or significantly benefiting from global coordination.
3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.
4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.
5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.
6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.
7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.
8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.
9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.
10. Remaining accountable to the Internet community through mechanisms that enhance ICANN (Internet Corporation for Assigned Names and Numbers)'s effectiveness.

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

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN (Internet Corporation for Assigned Names and Numbers) body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

ARTICLE II: POWERS

Section 1. GENERAL POWERS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board. With respect to any matters that would fall within the provisions of Article III, Section 6, the Board may act only by a majority vote of all members of the Board. In all other matters, except as otherwise provided in these Bylaws or by law, the Board may act by majority vote of those present at any annual, regular, or special meeting of the Board. Any references in these Bylaws to a vote of the Board shall mean the vote of only those members present at the meeting where a quorum is present unless otherwise specifically provided in these Bylaws by reference to "all of the members of the Board."

Section 2. RESTRICTIONS

ICANN (Internet Corporation for Assigned Names and Numbers) shall not act as a Domain Name (Domain Name) System Registry or Registrar or Internet Protocol (Protocol) Address Registry in competition with entities affected by

the policies of ICANN (Internet Corporation for Assigned Names and Numbers). Nothing in this Section is intended to prevent ICANN (Internet Corporation for Assigned Names and Numbers) from taking whatever steps are necessary to protect the operational stability of the Internet in the event of financial failure of a Registry or Registrar or other emergency.

Section 3. NON-DISCRIMINATORY TREATMENT

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

ARTICLE III: TRANSPARENCY

Section 1. PURPOSE

ICANN (Internet Corporation for Assigned Names and Numbers) and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

Section 2. WEBSITE

ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain a publicly-accessible Internet World Wide Web site (the "Website"), which may include, among other things, (i) a calendar of scheduled meetings of the Board, Supporting Organizations (Supporting Organizations), and Advisory Committees (Advisory Committees); (ii) a docket of all pending policy development matters, including their schedule and current status; (iii) specific meeting notices and agendas as described below; (iv) information on ICANN (Internet Corporation for Assigned Names and Numbers)'s budget, annual audit, financial contributors and the amount of their contributions, and related matters; (v) information about the availability of accountability mechanisms, including reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (vi) announcements about ICANN (Internet Corporation for Assigned Names and Numbers) activities of interest to significant segments of the ICANN (Internet Corporation for Assigned Names and Numbers) community; (vii) comments received from the community on policies being developed and other matters;

(viii) information about ICANN (Internet Corporation for Assigned Names and Numbers)'s physical meetings and public forums; and (ix) other information of interest to the ICANN (Internet Corporation for Assigned Names and Numbers) community.

Section 3. MANAGER OF PUBLIC PARTICIPATION

There shall be a staff position designated as Manager of Public Participation, or such other title as shall be determined by the President, that shall be responsible, under the direction of the President, for coordinating the various aspects of public participation in ICANN (Internet Corporation for Assigned Names and Numbers), including the Website and various other means of communicating with and receiving input from the general community of Internet users.

Section 4. MEETING NOTICES AND AGENDAS

At least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

Section 5. MINUTES AND PRELIMINARY REPORTS

1. All minutes of meetings of the Board and Supporting Organizations (Supporting Organizations) (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary for posting on the Website.

2. No later than 11:59 p.m. on the second business days after the conclusion of each meeting (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office), any resolutions passed by the Board of Directors at that meeting shall be made publicly available on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the

meeting and voting, are not appropriate for public distribution, shall not be included in the preliminary report made publicly available. The Secretary shall send notice to the Board of Directors and the Chairs of the Supporting Organizations (Supporting Organizations) (as set forth in Articles VIII - X of these Bylaws) and Advisory Committees (Advisory Committees) (as set forth in Article XI of these Bylaws) informing them that the resolutions have been posted.

3. No later than 11:59 p.m. on the seventh business days after the conclusion of each meeting (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office), any actions taken by the Board shall be made publicly available in a preliminary report on the Website, subject to the limitations on disclosure set forth in Section 5.2 above. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure.

4. No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office, then the next immediately following business day), the minutes shall be made publicly available on the Website; provided, however, that any minutes relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.

Section 6. NOTICE AND COMMENT ON POLICY ACTIONS

1. With respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or

third parties, including the imposition of any fees or charges, ICANN (Internet Corporation for Assigned Names and Numbers) shall:

- a. provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;
- b. provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments, prior to any action by the Board; and
- c. in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee (Advisory Committee) and take duly into account any advice timely presented by the Governmental Advisory Committee (Advisory Committee) on its own initiative or at the Board's request.

2. Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be held for discussion of any proposed policies as described in Section 6(1)(b) of this Article, prior to any final Board action.

3. After taking action on any policy subject to this Section, the Board shall publish in the meeting minutes the reasons for any action taken, the vote of each Director voting on the action, and the separate statement of any Director desiring publication of such a statement.

Section 7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN (Internet Corporation for Assigned Names and Numbers) budget, ICANN (Internet Corporation for Assigned Names and Numbers) shall facilitate the translation of final published documents into various appropriate languages.

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 1. PURPOSE

In carrying out its mission as set out in these Bylaws, ICANN (Internet Corporation for Assigned Names and Numbers) should be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in Article I of these Bylaws. The provisions of this Article, creating processes for reconsideration and independent review of ICANN (Internet Corporation for Assigned Names and Numbers) actions and periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'s structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article III and the Board and other selection mechanisms set forth throughout these Bylaws.

Section 2. RECONSIDERATION

1. ICANN (Internet Corporation for Assigned Names and Numbers) shall have in place a process by which any person or entity materially affected by an action of ICANN (Internet Corporation for Assigned Names and Numbers) may request review or reconsideration of that action by the Board.
2. Any person or entity may submit a request for reconsideration or review of an ICANN (Internet Corporation for Assigned Names and Numbers) action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:
 - a. one or more staff actions or inactions that contradict established ICANN (Internet Corporation for Assigned Names and Numbers) policy(ies); or
 - b. one or more actions or inactions of the ICANN (Internet Corporation for Assigned Names and Numbers) Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
 - c. one or more actions or inactions of the ICANN (Internet Corporation for Assigned Names and Numbers) Board that are taken as a result of the Board's reliance on false or inaccurate material information.

3. The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:
 - a. evaluate requests for review or reconsideration;
 - b. summarily dismiss insufficient requests;
 - c. evaluate requests for urgent consideration;
 - d. conduct whatever factual investigation is deemed appropriate;
 - e. request additional written submissions from the affected party, or from other parties;
 - f. make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; and
 - g. make a recommendation to the Board of Directors on the merits of the request, as necessary.
4. ICANN (Internet Corporation for Assigned Names and Numbers) shall absorb the normal administrative costs of the reconsideration process. It reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the party seeking reconsideration, who shall then have the option of withdrawing the request or agreeing to bear such costs.
5. All Reconsideration Requests must be submitted to an e-mail address designated by the Board Governance Committee within fifteen days after:
 - a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that

- instance, the request must be submitted within 15 days from the initial posting of the rationale; or
- b. for requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or
 - c. for requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.
6. To properly initiate a Reconsideration process, all requestors must review and follow the Reconsideration Request form posted on the ICANN (Internet Corporation for Assigned Names and Numbers) website. at [http://www.icann.org/en/groups/board/governance/reconsideration\(/en/groups/board/governance/reconsideration\)](http://www.icann.org/en/groups/board/governance/reconsideration(/en/groups/board/governance/reconsideration)). Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.
7. Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.
8. The Board Governance Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is the same for all of the requestors. Every requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.
9. The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may

summarily dismiss a Reconsideration Request if: (i) the requestor fails to meet the requirements for bringing a Reconsideration Request; (ii) it is frivolous, querulous or vexatious; or (iii) the requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. The Board Governance Committee's summary dismissal of a Reconsideration Request shall be posted on the Website.

10. For all Reconsideration Requests that are not summarily dismissed, the Board Governance Committee shall promptly proceed to review and consideration.
11. The Board Governance Committee may ask the ICANN (Internet Corporation for Assigned Names and Numbers) staff for its views on the matter, which comments shall be made publicly available on the Website.
12. The Board Governance Committee may request additional information or clarifications from the requestor, and may elect to conduct a meeting with the requestor by telephone, email or, if acceptable to the party requesting reconsideration, in person. A requestor may ask for an opportunity to be heard; the Board Governance Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.
13. The Board Governance Committee may also request information relevant to the request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation. Any information collected from third parties shall be provided to the requestor.
14. The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN (Internet Corporation for Assigned Names and Numbers) staff, and by any third party.
15. For all Reconsideration Requests brought regarding staff action or inaction, the Board Governance Committee shall be

delegated the authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required. As the Board Governance Committee deems necessary, it may make recommendation to the Board for consideration and action. The Board Governance Committee's determination on staff action or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.

16. The Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request within thirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final determination or recommendation. The final recommendation shall be posted on ICANN (Internet Corporation for Assigned Names and Numbers)'s website.
17. The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN (Internet Corporation for Assigned Names and Numbers)'s website. The Board's decision on the recommendation is final.
18. If the requestor believes that the Board action or inaction posed for Reconsideration is so urgent that the timing requirements of the Reconsideration process are too long, the requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (calculated at ICANN (Internet Corporation for Assigned Names and Numbers)'s headquarters in Los Angeles, California) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and

must demonstrate a likelihood of success with the Reconsideration Request.

19. The Board Governance Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Governance Committee agrees to consider the matter with urgency, it will cause notice to be provided to the requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Governance Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Request, or as soon thereafter as feasible. If the Board Governance Committee does not agree to consider the matter with urgency, the requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.
20. The Board Governance Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:
 - a. the number and general nature of Reconsideration Requests received, including an identification if the requests were acted upon, summarily dismissed, or remain pending;
 - b. for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration Requests have been pending, and a description of the reasons for any request pending for more than ninety (90) days;
 - c. an explanation of any other mechanisms available to ensure that ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to persons materially affected by its decisions; and
 - d. whether or not, in the Board Governance Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN (Internet Corporation for

Assigned Names and Numbers) decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in Section 2 of this Article (/en/about/governance/bylaws#IV-2), ICANN (Internet Corporation for Assigned Names and Numbers) shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.
2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action.
3. A request for independent review must be filed within thirty days of the posting of the minutes of the Board meeting (and the accompanying Board Briefing Materials, if available) that the requesting party contends demonstrates that ICANN (Internet Corporation for Assigned Names and Numbers) violated its Bylaws or Articles of Incorporation. Consolidated requests may be appropriate when the causal connection between the circumstances of the requests and the harm is the same for each of the requesting parties.
4. Requests for such independent review shall be referred to an Independent Review Process Panel ("IRP Panel"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

- a. did the Board act without conflict of interest in taking its decision?;
 - b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
 - c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?
5. Requests for independent review shall not exceed 25 pages (double-spaced, 12-point font) of argument. ICANN (Internet Corporation for Assigned Names and Numbers)'s response shall not exceed that same length. Parties may submit documentary evidence supporting their positions without limitation. In the event that parties submit expert evidence, such evidence must be provided in writing and there will be a right of reply to the expert evidence.
6. There shall be an omnibus standing panel of between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and work from which each specific IRP Panel shall be selected. The panelists shall serve for terms that are staggered to allow for continued review of the size of the panel and the range of expertise. A Chair of the standing panel shall be appointed for a term not to exceed three years. Individuals holding an official position or office within the ICANN (Internet Corporation for Assigned Names and Numbers) structure are not eligible to serve on the standing panel. In the event that an omnibus standing panel: (i) is not in place when an IRP Panel must be convened for a given proceeding, the IRP proceeding will be considered by a one- or three-member panel comprised in accordance with the rules of the IRP Provider; or (ii) is in place but does not have the requisite diversity of skill and experience needed for a particular proceeding, the IRP Provider shall identify one or more panelists, as required, from outside the omnibus standing panel to augment the panel members for that proceeding.

7. All IRP proceedings shall be administered by an international dispute resolution provider appointed from time to time by ICANN (Internet Corporation for Assigned Names and Numbers) ("the IRP Provider"). The membership of the standing panel shall be coordinated by the IRP Provider subject to approval by ICANN (Internet Corporation for Assigned Names and Numbers).
8. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures, which shall implement and be consistent with this Section 3 (/en/about/governance/bylaws#IV-3).
9. Either party may request that the IRP be considered by a one- or three-member panel; the Chair of the standing panel shall make the final determination of the size of each IRP panel, taking into account the wishes of the parties and the complexity of the issues presented.
10. The IRP Provider shall determine a procedure for assigning members from the standing panel to individual IRP panels.
11. The IRP Panel shall have the authority to:
 - a. summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious;
 - b. request additional written submissions from the party seeking review, the Board, the Supporting Organizations (Supporting Organizations), or from other parties;
 - c. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and
 - d. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP;
 - e. consolidate requests for independent review if the facts and circumstances are sufficiently similar; and
 - f. determine the timing for each proceeding.

12. In order to keep the costs and burdens of independent review as low as possible, the IRP Panel should conduct its proceedings by email and otherwise via the Internet to the maximum extent feasible. Where necessary, the IRP Panel may hold meetings by telephone. In the unlikely event that a telephonic or in-person hearing is convened, the hearing shall be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance.
13. All panel members shall adhere to conflicts-of-interest policy stated in the IRP Provider's operating rules and procedures, as approved by the Board.
14. Prior to initiating a request for independent review, the complainant is urged to enter into a period of cooperative engagement with ICANN (Internet Corporation for Assigned Names and Numbers) for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. The cooperative engagement process is published on ICANN (Internet Corporation for Assigned Names and Numbers).org and is incorporated into this Section 3 of the Bylaws.
15. Upon the filing of a request for an independent review, the parties are urged to participate in a conciliation period for the purpose of narrowing the issues that are stated within the request for independent review. A conciliator will be appointed from the members of the omnibus standing panel by the Chair of that panel. The conciliator shall not be eligible to serve as one of the panelists presiding over that particular IRP. The Chair of the standing panel may deem conciliation unnecessary if cooperative engagement sufficiently narrowed the issues remaining in the independent review.
16. Cooperative engagement and conciliation are both voluntary. However, if the party requesting the independent review does not participate in good faith in the cooperative engagement and the conciliation processes, if applicable, and ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the request for independent review, the IRP Panel must award to ICANN (Internet Corporation for Assigned Names and Numbers) all reasonable fees and costs incurred by ICANN

(Internet Corporation for Assigned Names and Numbers) in the proceeding, including legal fees.

17. All matters discussed during the cooperative engagement and conciliation phases are to remain confidential and not subject to discovery or as evidence for any purpose within the IRP, and are without prejudice to either party.
18. The IRP Panel should strive to issue its written declaration no later than six months after the filing of the request for independent review. The IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP Panel may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.
19. The IRP operating procedures, and all petitions, claims, and declarations, shall be posted on ICANN (Internet Corporation for Assigned Names and Numbers)'s website when they become available.
20. The IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets.
21. Where feasible, the Board shall consider the IRP Panel declaration at the Board's next meeting. The declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value.

Section 4. PERIODIC REVIEW OF ICANN (Internet Corporation for Assigned Names and Numbers) STRUCTURE AND OPERATIONS

1. The Board shall cause a periodic review of the performance and operation of each Supporting Organization (Supporting Organization), each Supporting Organization (Supporting Organization) Council, each

Advisory Committee (Advisory Committee) (other than the Governmental Advisory Committee (Advisory Committee)), and the Nominating Committee by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN (Internet Corporation for Assigned Names and Numbers) structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.

These periodic reviews shall be conducted no less frequently than every five years, based on feasibility as determined by the Board. Each five-year cycle will be computed from the moment of the reception by the Board of the final report of the relevant review Working Group.

The results of such reviews shall be posted on the Website for public review and comment, and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days. The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN (Internet Corporation for Assigned Names and Numbers) being reviewed by a two-thirds vote of all members of the Board.

2. The Governmental Advisory Committee (Advisory Committee) shall provide its own review mechanisms.

ARTICLE V: OMBUDSMAN

Section 1. OFFICE OF OMBUDSMAN

1. There shall be an Office of Ombudsman, to be managed by an Ombudsman and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.

2. The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board.

3. The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.

4. The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN (Internet Corporation for Assigned Names and Numbers) budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and without change in the general ICANN (Internet Corporation for Assigned Names and Numbers) budget recommended by the ICANN (Internet Corporation for Assigned Names and Numbers) President to the Board. Nothing in this Article shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

Section 2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Reconsideration Policy set forth in Section 2 of Article IV or the Independent Review Policy set forth in Section 3 of Article IV have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN (Internet Corporation for Assigned Names and Numbers) community who believe that the ICANN (Internet Corporation for Assigned Names and Numbers) staff, Board or an ICANN (Internet Corporation for Assigned Names and Numbers) constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN (Internet Corporation for Assigned Names and Numbers) staff, the Board, or ICANN (Internet Corporation for Assigned Names and Numbers) constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results.

Section 3. OPERATIONS

The Office of Ombudsman shall:

1. facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN (Internet Corporation

for Assigned Names and Numbers) community (excluding employees and vendors/suppliers of ICANN (Internet Corporation for Assigned Names and Numbers)) may have with specific actions or failures to act by the Board or ICANN (Internet Corporation for Assigned Names and Numbers) staff which have not otherwise become the subject of either the Reconsideration or Independent Review Policies;

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

3. have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN (Internet Corporation for Assigned Names and Numbers) staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN (Internet Corporation for Assigned Names and Numbers));

4. heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN (Internet Corporation for Assigned Names and Numbers) community and online availability;

5. maintain neutrality and independence, and have no bias or personal stake in an outcome; and

6. comply with all ICANN (Internet Corporation for Assigned Names and Numbers) conflicts-of-interest and confidentiality policies.

Section 4. INTERACTION WITH ICANN (Internet Corporation for Assigned Names and Numbers) AND OUTSIDE ENTITIES

1. No ICANN (Internet Corporation for Assigned Names and Numbers) employee, Board member, or other participant in Supporting Organizations (Supporting Organizations) or Advisory Committees (Advisory Committees) shall prevent or impede the Ombudsman's contact with the ICANN (Internet Corporation for Assigned Names and Numbers) community (including employees of ICANN (Internet Corporation for Assigned Names and Numbers)). ICANN (Internet Corporation for Assigned Names and Numbers) employees and Board members shall direct members of the ICANN (Internet Corporation for Assigned Names and Numbers) community who voice problems, concerns, or complaints about ICANN (Internet Corporation for Assigned Names and Numbers) to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

2. ICANN (Internet Corporation for Assigned Names and Numbers) staff and other ICANN (Internet Corporation for Assigned Names and Numbers) participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.

3. Contact with the Ombudsman shall not constitute notice to ICANN (Internet Corporation for Assigned Names and Numbers) of any particular action or cause of action.

4. The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.

5. The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN (Internet Corporation for Assigned Names and Numbers) structure, procedures, processes, or any conduct by the ICANN (Internet Corporation for Assigned Names and Numbers) Board, staff, or constituent bodies.

Section 5. ANNUAL REPORT

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the Website.

ARTICLE VI: BOARD OF DIRECTORS

Section 1. COMPOSITION OF THE BOARD

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

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

1. The Directors shall consist of:

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

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

c. Two voting members selected by the Country-Code Names Supporting Organization (Supporting Organization) according to the provisions of Article IX of these Bylaws. These seats on the

Board of Directors are referred to in these Bylaws as Seat 11 and Seat 12.

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

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

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

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

For purposes of this sub-section 2 of Article VI, Section 2 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("Domicile"), that candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this sub-section 2 of Article VI, Section 2 of the ICANN (Internet Corporation for Assigned Names and Numbers)

Bylaws, a person can only have one "Domicile," which shall be determined by where the candidate has a permanent residence and place of habitation.

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

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

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

Section 3. CRITERIA FOR SELECTION OF DIRECTORS

ICANN (Internet Corporation for Assigned Names and Numbers) Directors shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;

2. Persons with an understanding of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers) decisions on the global Internet community, and committed to the success of ICANN (Internet Corporation for Assigned Names and Numbers);
3. Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this Section;
4. Persons who, in the aggregate, have personal familiarity with the operation of gTLD (generic Top Level Domain) registries and registrars; with ccTLD (Country Code Top Level Domain) registries; with IP (Internet Protocol or Intellectual Property) address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet;
5. Persons who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and
6. Persons who are able to work and communicate in written and spoken English.

Section 4. ADDITIONAL QUALIFICATIONS

1. Notwithstanding anything herein to the contrary, no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director. As used herein, the term "official" means a person (i) who holds an elective governmental office or (ii) who is employed by such government or multinational entity and whose primary function with such government or entity is to develop or influence governmental or public policies.
2. No person who serves in any capacity (including as a liaison) on any Supporting Organization (Supporting Organization) Council shall simultaneously serve as a Director or liaison to the Board. If such a

person accepts a nomination to be considered for selection by the Supporting Organization (Supporting Organization) Council or the At-Large Community to be a Director, the person shall not, following such nomination, participate in any discussion of, or vote by, the Supporting Organization (Supporting Organization) Council or the committee designated by the At-Large Community relating to the selection of Directors by the Council or Community, until the Council or committee(s) designated by the At-Large Community has selected the full complement of Directors it is responsible for selecting. In the event that a person serving in any capacity on a Supporting Organization (Supporting Organization) Council accepts a nomination to be considered for selection as a Director, the constituency group or other group or entity that selected the person may select a replacement for purposes of the Council's selection process. In the event that a person serving in any capacity on the At-Large Advisory Committee (Advisory Committee) accepts a nomination to be considered for selection by the At-Large Community as a Director, the Regional At-Large Organization or other group or entity that selected the person may select a replacement for purposes of the Community's selection process.

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

Section 5. INTERNATIONAL REPRESENTATION

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

determine whether any change is appropriate, taking account of the evolution of the Internet.

Section 6. DIRECTORS' CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN (Internet Corporation for Assigned Names and Numbers). Each Director shall be responsible for disclosing to ICANN (Internet Corporation for Assigned Names and Numbers) any matter that could reasonably be considered to make such Director an "interested director" within the meaning of Section 5233 of the California Nonprofit Public Benefit Corporation Law ("CNPBCL"). In addition, each Director shall disclose to ICANN (Internet Corporation for Assigned Names and Numbers) any relationship or other factor that could reasonably be considered to cause the Director to be considered to be an "interested person" within the meaning of Section 5227 of the CNPBCL. The Board shall adopt policies specifically addressing Director, Officer, and Supporting Organization (Supporting Organization) conflicts of interest. No Director shall vote on any matter in which he or she has a material and direct financial interest that would be affected by the outcome of the vote.

Section 7. DUTIES OF DIRECTORS

Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of ICANN (Internet Corporation for Assigned Names and Numbers) and not as representatives of the entity that selected them, their employers, or any other organizations or constituencies.

Section 8. TERMS OF DIRECTORS

1. The regular term of office of Director Seats 1 through 15 shall begin as follows:

a. The regular terms of Seats 1 through 3 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2003 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2003;

b. The regular terms of Seats 4 through 6 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2004 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2004;

c. The regular terms of Seats 7 and 8 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2005 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2005;

d. The terms of Seats 9 and 12 shall continue until the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2015. The next terms of Seats 9 and 12 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2015 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2015;

e. The terms of Seats 10 and 13 shall continue until the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2013. The next terms of Seats 10 and 13 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2013 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2013; and

f. The terms of Seats 11, 14 and 15 shall continue until the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2014. The next terms of Seats 11, 14 and 15 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2014 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2014.

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

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

4. At least six months before the date specified for the commencement of the term as specified in paragraphs 1.d-f above, any Supporting Organization (Supporting Organization) or the At-Large community entitled to select a Director for a Seat with a term beginning that year shall give the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) written notice of its selection.

5. Subject to the provisions of the Transition Article of these Bylaws, no Director may serve more than three consecutive terms. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. (Note: In the period prior to the beginning of the first regular term of Seat 15 in 2010, Seat 15 was deemed vacant for the purposes of calculation of terms of service.)

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

Section 9. NON-VOTING LIAISONS

1. The non-voting liaisons shall include:

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

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

c. One appointed by the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;

d. One appointed by the Internet Engineering Task Force.

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

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

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

5. The non-voting liaisons shall be entitled to attend Board meetings, participate in Board discussions and deliberations, and have access (under conditions established by the Board) to materials provided to Directors for use in Board discussions, deliberations and meetings, but shall otherwise not have any of the rights and privileges of Directors. Non-voting liaisons shall be entitled (under conditions established by the Board) to use any materials provided to them pursuant to this Section for the purpose of consulting with their respective committee or organization.

Section 10. RESIGNATION OF A DIRECTOR OR NON-VOTING LIAISON

Subject to Section 5226 of the CNPBCL, any Director or non-voting liaison may resign at any time, either by oral tender of resignation at any meeting of the Board (followed by prompt written notice to the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers)) or by giving written notice thereof to the President or the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers). Such resignation shall take effect at the time specified, and, unless otherwise specified, the acceptance

of such resignation shall not be necessary to make it effective. The successor shall be selected pursuant to Section 12 of this Article.

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

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

2. With the exception of the non-voting liaison appointed by the Governmental Advisory Committee (Advisory Committee), any non-voting liaison may be removed, following notice to that liaison and to the organization by which that liaison was selected, by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that liaison following such notice. The Board may request the Governmental Advisory Committee (Advisory Committee) to consider the replacement of the non-voting liaison appointed by that Committee if the Board, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate.

Section 12. VACANCIES

1. A vacancy or vacancies in the Board of Directors shall be deemed to exist in the case of the death, resignation, or removal of any Director; if the authorized number of Directors is increased; or if a Director has been declared of unsound mind by a final order of court or convicted of a felony or incarcerated for more than 90 days as a result of a criminal conviction or has been found by final order or judgment of any court to have breached a duty under Sections 5230 et seq. of the CNPBCL.

Any vacancy occurring on the Board of Directors shall be filled by the Nominating Committee, unless (a) that Director was selected by a Supporting Organization (Supporting Organization), in which case that vacancy shall be filled by that Supporting Organization (Supporting Organization), or (b) that Director was the President, in which case the vacancy shall be filled in accordance with the provisions of Article XIII of these Bylaws. The selecting body shall give written notice to the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) of their appointments to fill vacancies. A Director selected to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been selected and qualified. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.

2. The organizations selecting the non-voting liaisons identified in Section 9 of this Article are responsible for determining the existence of, and filling, any vacancies in those positions. They shall give the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) written notice of their appointments to fill vacancies.

Section 13. ANNUAL MEETINGS

Annual meetings of ICANN (Internet Corporation for Assigned Names and Numbers) shall be held for the purpose of electing Officers and for the transaction of such other business as may come before the meeting. Each annual meeting for ICANN (Internet Corporation for Assigned Names and Numbers) shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers), or any other appropriate place of the Board's time and choosing, provided such annual meeting is held within 14 months of the immediately preceding annual meeting. If the Board determines that it is practical, the annual meeting should be distributed in real-time and archived video and audio formats on the Internet.

Section 14. REGULAR MEETINGS

Regular meetings of the Board shall be held on dates to be determined by the Board. In the absence of other designation, regular meetings shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 15. SPECIAL MEETINGS

Special meetings of the Board may be called by or at the request of one-quarter (1/4) of the members of the Board or by the Chairman of the Board or the President. A call for a special meeting shall be made by the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers). In the absence of designation, special meetings shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 16. NOTICE OF MEETINGS

Notice of time and place of all meetings shall be delivered personally or by telephone or by electronic mail to each Director and non-voting liaison, or sent by first-class mail (air mail for addresses outside the United States) or facsimile, charges prepaid, addressed to each Director and non-voting liaison at the Director's or non-voting liaison's address as it is shown on the records of ICANN (Internet Corporation for Assigned Names and Numbers). In case the notice is mailed, it shall be deposited in the United States mail at least fourteen (14) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or facsimile or electronic mail it shall be delivered personally or by telephone or facsimile or electronic mail at least forty-eight (48) hours before the time of the holding of the meeting. Notwithstanding anything in this Section to the contrary, notice of a meeting need not be given to any Director who signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 17. QUORUM

At all annual, regular, and special meetings of the Board, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, unless otherwise provided herein or by law. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time to another place, time, or date. If the meeting is adjourned for more than twenty-four (24) hours, notice shall be given to those Directors not at the meeting at the time of the adjournment.

Section 18. ACTION BY TELEPHONE MEETING OR BY OTHER COMMUNICATIONS EQUIPMENT

Members of the Board or any Committee of the Board may participate in a meeting of the Board or Committee of the Board through use of (i) conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another or (ii) electronic video screen communication or other communication equipment; provided that (a) all Directors participating in such a meeting can speak to and hear one another, (b) all Directors are provided the means of fully participating in all matters before the Board or Committee of the Board, and (c) ICANN (Internet Corporation for Assigned Names and Numbers) adopts and implements means of verifying that (x) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (y) all actions of, or votes by, the Board or Committee of the Board are taken or cast only by the members of the Board or Committee and not persons who are not members. Participation in a meeting pursuant to this Section constitutes presence in person at such meeting. ICANN (Internet Corporation for Assigned Names and Numbers) shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit members of the Board to participate by telephone.

Section 19. ACTION WITHOUT MEETING

Any action required or permitted to be taken by the Board or a Committee of the Board may be taken without a meeting if all of the Directors entitled to vote thereat shall individually or collectively consent in writing to such action. Such written consent shall have the same force and effect as the unanimous vote of such Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 20. ELECTRONIC MAIL

If permitted under applicable law, communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing. ICANN (Internet Corporation for Assigned Names and Numbers) shall take such steps as it deems appropriate under the circumstances to assure itself that communications by electronic mail are authentic.

Section 21. RIGHTS OF INSPECTION

Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical properties of ICANN (Internet Corporation for Assigned Names and Numbers). ICANN (Internet Corporation for Assigned Names and Numbers) shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 22. COMPENSATION

1. Except for the President of ICANN (Internet Corporation for Assigned Names and Numbers), who serves ex officio as a voting member of the Board, each of the Directors shall be entitled to receive compensation for his/her services as a Director. The President shall receive only his/her compensation for service as President and shall not receive additional compensation for service as a Director.
2. If the Board determines to offer a compensation arrangement to one or more Directors other than the President of ICANN (Internet Corporation for Assigned Names and Numbers) for services to ICANN (Internet Corporation for Assigned Names and Numbers) as Directors, the Board shall follow a process that is calculated to pay an amount for service as a Director that is in its entirety Reasonable Compensation for such service under the standards set forth in §53.4958-4(b) of the Treasury Regulations.
3. As part of the process, the Board shall retain an Independent Valuation Expert to consult with and to advise the Board regarding Director compensation arrangements and to issue to the Board a Reasoned Written Opinion from such expert regarding the ranges of Reasonable Compensation for any such services by a Director. The expert's opinion shall address all relevant factors affecting the level of compensation to be paid a Director, including offices held on the Board, attendance at Board and Committee meetings, the nature of service on the Board and on Board Committees, and appropriate data as to comparability regarding director compensation arrangements for U.S.-based, nonprofit, tax-exempt organizations possessing a global employee base.
4. After having reviewed the expert's written opinion, the Board shall meet with the expert to discuss the expert's opinion and to ask questions of the expert regarding the expert's opinion, the

comparability data obtained and relied upon, and the conclusions reached by the expert.

5. The Board shall adequately document the basis for any determination the Board makes regarding a Director compensation arrangement concurrently with making that determination.

6. In addition to authorizing payment of compensation for services as Directors as set forth in this Section 22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses incurred by any Director and by non-voting liaisons performing their duties as Directors or non-voting liaisons.

7. As used in this Section 22, the following terms shall have the following meanings:

(a) An "Independent Valuation Expert" means a person retained by ICANN (Internet Corporation for Assigned Names and Numbers) to value compensation arrangements that: (i) holds itself out to the public as a compensation consultant; (ii) performs valuations regarding compensation arrangements on a regular basis, with a majority of its compensation consulting services performed for persons other than ICANN (Internet Corporation for Assigned Names and Numbers); (iii) is qualified to make valuations of the type of services involved in any engagement by and for ICANN (Internet Corporation for Assigned Names and Numbers); (iv) issues to ICANN (Internet Corporation for Assigned Names and Numbers) a Reasoned Written Opinion regarding a particular compensation arrangement; and (v) includes in its Reasoned Written Opinion a certification that it meets the requirements set forth in (i) through (iv) of this definition.

(b) A "Reasoned Written Opinion" means a written opinion of a valuation expert who meets the requirements of subparagraph 7(a) (i) through (iv) of this Section. To be reasoned, the opinion must be based upon a full disclosure by ICANN (Internet Corporation for Assigned Names and Numbers) to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing

such compensation arrangement, and the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding the whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.

(c) "Reasonable Compensation" shall have the meaning set forth in §53.4958-4(b)(1)(ii) of the Regulations issued under §4958 of the Code.

Section 23. PRESUMPTION OF ASSENT

A Director present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

ARTICLE VII: NOMINATING COMMITTEE

Section 1. DESCRIPTION

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

Section 2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

1. A non-voting Chair, appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Board;
2. A non-voting Chair-Elect, appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Board as a non-voting advisor;
3. A non-voting liaison appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Root Server System Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;
4. A non-voting liaison appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;
5. A non-voting liaison appointed by the Governmental Advisory Committee (Advisory Committee);
6. Subject to the provisions of the Transition Article of these Bylaws, five voting delegates selected by the At-Large Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;
7. Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization (Supporting Organization), established by Article X of these Bylaws, as follows:
 - a. One delegate from the Registries Stakeholder Group;
 - b. One delegate from the Registrars Stakeholder Group;
 - c. Two delegates from the Business Constituency, one representing small business users and one representing large business users;

- d. One delegate from the Internet Service Providers Constituency;
- e. One delegate from the Intellectual Property Constituency; and
- f. One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.

8. One voting delegate each selected by the following entities:

- a. The Council of the Country Code Names Supporting Organization (Supporting Organization) established by Article IX of these Bylaws;
- b. The Council of the Address Supporting Organization (Supporting Organization) established by Article VIII of these Bylaws; and
- c. The Internet Engineering Task Force.

9. A non-voting Associate Chair, who may be appointed by the Chair, at his or her sole discretion, to serve during all or part of the term of the Chair. The Associate Chair may not be a person who is otherwise a member of the same Nominating Committee. The Associate Chair shall assist the Chair in carrying out the duties of the Chair, but shall not serve, temporarily or otherwise, in the place of the Chair.

Section 3. TERMS

Subject to the provisions of the Transition Article of these Bylaws:

- 1. Each voting delegate shall serve a one-year term. A delegate may serve at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.
- 2. The regular term of each voting delegate shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the

immediately following ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting.

3. Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting.

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

5. Vacancies in the positions of delegate, non-voting liaison, Chair or Chair-Elect shall be filled by the entity entitled to select the delegate, non-voting liaison, Chair or Chair-Elect involved. For any term that the Chair-Elect position is vacant pursuant to paragraph 4 of this Article, or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 2(9) of this Article.

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

Section 4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES

Delegates to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making;
2. Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN (Internet Corporation for Assigned Names and Numbers);
3. Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;
4. Persons who are neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities;
5. Persons with an understanding of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers)'s activities on the broader Internet community who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and
6. Persons who are able to work and communicate in written and spoken English.

Section 5. DIVERSITY

In carrying out its responsibilities to select members of the ICANN (Internet Corporation for Assigned Names and Numbers) Board (and selections to any other ICANN (Internet Corporation for Assigned Names and Numbers) bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the ICANN (Internet Corporation for Assigned Names and Numbers) Board (and such other bodies), and seek to ensure that the persons selected to fill vacancies on the ICANN (Internet Corporation for Assigned Names and Numbers) Board (and each such other body) shall, to the extent feasible and consistent with the other criteria required to be applied by Section 4 of this Article, make selections guided by Core Value 4 in Article I, Section 2 .

Section 6. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.

Section 7. PROCEDURES

The Nominating Committee shall adopt such operating procedures as it deems necessary, which shall be published on the Website.

Section 8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

No person who serves on the Nominating Committee in any capacity shall be eligible for selection by any means to any position on the Board or any other ICANN (Internet Corporation for Assigned Names and Numbers) body having one or more membership positions that the Nominating Committee is responsible for filling, until the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting that coincides with, or is after, the conclusion of that person's service on the Nominating Committee.

Section 9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE

No person who is an employee of or paid consultant to ICANN (Internet Corporation for Assigned Names and Numbers) (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in Section 2 of this Article.

ARTICLE VIII: ADDRESS SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

1. The Address Supporting Organization (Supporting Organization) (ASO (Address Supporting Organization)) shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses.

2. The ASO (Address Supporting Organization) shall be the entity established by the Memorandum of Understanding entered on 21 October 2004 between ICANN (Internet Corporation for Assigned Names and Numbers) and the Number Resource Organization (NRO)

(Number Resource Organization)), an organization of the existing regional Internet registries (RIRs).

Section 2. ADDRESS COUNCIL

1. The ASO (Address Supporting Organization) shall have an Address Council, consisting of the members of the NRO (Number Resource Organization) Number Council.
2. The Address Council shall select Directors to those seats on the Board designated to be filled by the ASO (Address Supporting Organization).

ARTICLE IX: COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

There shall be a policy-development body known as the Country-Code Names Supporting Organization (Supporting Organization) (ccNSO (Country Code Names Supporting Organization)), which shall be responsible for:

1. developing and recommending to the Board global policies relating to country-code top-level domains;
2. Nurturing consensus across the ccNSO (Country Code Names Supporting Organization)'s community, including the name-related activities of ccTLDs; and
3. Coordinating with other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations), committees, and constituencies under ICANN (Internet Corporation for Assigned Names and Numbers).

Policies that apply to ccNSO (Country Code Names Supporting Organization) members by virtue of their membership are only those policies developed according to section 4.10 and 4.11 of this Article. However, the ccNSO (Country Code Names Supporting Organization) may also engage in other activities authorized by its members. Adherence to the results of these

activities will be voluntary and such activities may include: seeking to develop voluntary best practices for ccTLD (Country Code Top Level Domain) managers, assisting in skills building within the global community of ccTLD (Country Code Top Level Domain) managers, and enhancing operational and technical cooperation among ccTLD (Country Code Top Level Domain) managers.

Section 2. ORGANIZATION

The ccNSO (Country Code Names Supporting Organization) shall consist of (i) ccTLD (Country Code Top Level Domain) managers that have agreed in writing to be members of the ccNSO (Country Code Names Supporting Organization) (see Section 4(2) of this Article) and (ii) a ccNSO (Country Code Names Supporting Organization) Council responsible for managing the policy-development process of the ccNSO (Country Code Names Supporting Organization).

Section 3. ccNSO (Country Code Names Supporting Organization) COUNCIL

1. The ccNSO (Country Code Names Supporting Organization) Council shall consist of (a) three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each of ICANN (Internet Corporation for Assigned Names and Numbers)'s Geographic Regions in the manner described in Section 4(7) through (9) of this Article; (b) three ccNSO (Country Code Names Supporting Organization) Council members selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee; (c) liaisons as described in paragraph 2 of this Section; and (iv) observers as described in paragraph 3 of this Section.

2. There shall also be one liaison to the ccNSO (Country Code Names Supporting Organization) Council from each of the following organizations, to the extent they choose to appoint such a liaison: (a) the Governmental Advisory Committee (Advisory Committee); (b) the At-Large Advisory Committee (Advisory Committee); and (c) each of the Regional Organizations described in Section 5 of this Article. These liaisons shall not be members of or entitled to vote on the ccNSO (Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the

ccNSO (Country Code Names Supporting Organization) Council. Appointments of liaisons shall be made by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair, and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

3. The ccNSO (Country Code Names Supporting Organization) Council may agree with the Council of any other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) to exchange observers. Such observers shall not be members of or entitled to vote on the ccNSO (Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO (Country Code Names Supporting Organization) Council. The appointing Council may designate its observer (or revoke or change the designation of its observer) on the ccNSO (Country Code Names Supporting Organization) Council at any time by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

4. Subject to the provisions of the Transition Article of these Bylaws: (a) the regular term of each ccNSO (Country Code Names Supporting Organization) Council member shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting thereafter; (b) the regular terms of the three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region shall be staggered so that one member's term begins in a year divisible by three, a second member's term begins in the first year following a year divisible by three, and the third member's term begins in the second year following a year divisible by

three; and (c) the regular terms of the three ccNSO (Country Code Names Supporting Organization) Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO (Country Code Names Supporting Organization) Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

5. A ccNSO (Country Code Names Supporting Organization) Council member may resign at any time by giving written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

6. ccNSO (Country Code Names Supporting Organization) Council members may be removed for not attending three consecutive meetings of the ccNSO (Country Code Names Supporting Organization) Council without sufficient cause or for grossly inappropriate behavior, both as determined by at least a 66% vote of all of the members of the ccNSO (Country Code Names Supporting Organization) Council.

7. A vacancy on the ccNSO (Country Code Names Supporting Organization) Council shall be deemed to exist in the case of the death, resignation, or removal of any ccNSO (Country Code Names Supporting Organization) Council member. Vacancies in the positions of the three members selected by the Nominating Committee shall be filled for the unexpired term involved by the Nominating Committee giving the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selection, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair. Vacancies in the positions of the ccNSO (Country Code Names Supporting Organization) Council members selected by ccNSO (Country Code Names Supporting Organization) members shall be filled for the unexpired term by the procedure described in Section 4(7) through (9) of this Article.

8. The role of the ccNSO (Country Code Names Supporting Organization) Council is to administer and coordinate the affairs of the ccNSO (Country Code Names Supporting Organization) (including coordinating meetings, including an annual meeting, of ccNSO

(Country Code Names Supporting Organization) members as described in Section 4(6) of this Article) and to manage the development of policy recommendations in accordance with Section 6 of this Article. The ccNSO (Country Code Names Supporting Organization) Council shall also undertake such other roles as the members of the ccNSO (Country Code Names Supporting Organization) shall decide from time to time.

9. The ccNSO (Country Code Names Supporting Organization) Council shall make selections to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO (Country Code Names Supporting Organization) Council then in office. Notification of the ccNSO (Country Code Names Supporting Organization) Council's selections shall be given by the ccNSO (Country Code Names Supporting Organization) Council Chair in writing to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, consistent with Article VI, Sections 8(4) and 12(1).

10. The ccNSO (Country Code Names Supporting Organization) Council shall select from among its members the ccNSO (Country Code Names Supporting Organization) Council Chair and such Vice Chair(s) as it deems appropriate. Selections of the ccNSO (Country Code Names Supporting Organization) Council Chair and Vice Chair(s) shall be by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO (Country Code Names Supporting Organization) Council then in office. The term of office of the ccNSO (Country Code Names Supporting Organization) Council Chair and any Vice Chair(s) shall be as specified by the ccNSO (Country Code Names Supporting Organization) Council at or before the time the selection is made. The ccNSO (Country Code Names Supporting Organization) Council Chair or any Vice Chair(s) may be recalled from office by the same procedure as used for selection.

11. The ccNSO (Country Code Names Supporting Organization) Council, subject to direction by the ccNSO (Country Code Names Supporting Organization) members, shall adopt such rules and procedures for the ccNSO (Country Code Names Supporting Organization) as it deems necessary, provided they are consistent with these Bylaws. Rules for ccNSO (Country Code Names Supporting

Organization) membership and operating procedures adopted by the ccNSO (Country Code Names Supporting Organization) Council shall be published on the Website.

12. Except as provided by paragraphs 9 and 10 of this Section, the ccNSO (Country Code Names Supporting Organization) Council shall act at meetings. The ccNSO (Country Code Names Supporting Organization) Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the discretion of the ccNSO (Country Code Names Supporting Organization) Council, meetings may be held in person or by other means, provided that all ccNSO (Country Code Names Supporting Organization) Council members are permitted to participate by at least one means described in paragraph 14 of this Section. Except where determined by a majority vote of the members of the ccNSO (Country Code Names Supporting Organization) Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO (Country Code Names Supporting Organization) Council meetings should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

13. Notice of time and place (and information about means of participation other than personal attendance) of all meetings of the ccNSO (Country Code Names Supporting Organization) Council shall be provided to each ccNSO (Country Code Names Supporting Organization) Council member, liaison, and observer by e-mail, telephone, facsimile, or a paper notice delivered personally or by postal mail. In case the notice is sent by postal mail, it shall be sent at least 21 days before the day of the meeting. In case the notice is delivered personally or by telephone, facsimile, or e-mail it shall be provided at least seven days before the day of the meeting. At least seven days in advance of each ccNSO (Country Code Names Supporting Organization) Council meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

14. Members of the ccNSO (Country Code Names Supporting Organization) Council may participate in a meeting of the ccNSO (Country Code Names Supporting Organization) Council through

personal attendance or use of electronic communication (such as telephone or video conference), provided that (a) all ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting can speak to and hear one another, (b) all ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting are provided the means of fully participating in all matters before the ccNSO (Country Code Names Supporting Organization) Council, and (c) there is a reasonable means of verifying the identity of ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting and their votes. A majority of the ccNSO (Country Code Names Supporting Organization) Council members (i.e. those entitled to vote) then in office shall constitute a quorum for the transaction of business, and actions by a majority vote of the ccNSO (Country Code Names Supporting Organization) Council members present at any meeting at which there is a quorum shall be actions of the ccNSO (Country Code Names Supporting Organization) Council, unless otherwise provided in these Bylaws. The ccNSO (Country Code Names Supporting Organization) Council shall transmit minutes of its meetings to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following the meeting, and no later than 21 days following the meeting.

Section 4. MEMBERSHIP

1. The ccNSO (Country Code Names Supporting Organization) shall have a membership consisting of ccTLD (Country Code Top Level Domain) managers. Any ccTLD (Country Code Top Level Domain) manager that meets the membership qualifications stated in paragraph 2 of this Section shall be entitled to be members of the ccNSO (Country Code Names Supporting Organization). For purposes of this Article, a ccTLD (Country Code Top Level Domain) manager is the organization or entity responsible for managing an ISO (International Organization for Standardization) 3166 country-code top-level domain and referred to in the IANA (Internet Assigned Numbers Authority) database under the current heading of "Sponsoring Organization", or under any later variant, for that country-code top-level domain.

2. Any ccTLD (Country Code Top Level Domain) manager may become a ccNSO (Country Code Names Supporting Organization) member by submitting an application to a person designated by the ccNSO (Country Code Names Supporting Organization) Council to receive applications. Subject to the provisions of the Transition Article of these Bylaws, the application shall be in writing in a form designated by the ccNSO (Country Code Names Supporting Organization) Council. The application shall include the ccTLD (Country Code Top Level Domain) manager's recognition of the role of the ccNSO (Country Code Names Supporting Organization) within the ICANN (Internet Corporation for Assigned Names and Numbers) structure as well as the ccTLD (Country Code Top Level Domain) manager's agreement, for the duration of its membership in the ccNSO (Country Code Names Supporting Organization), (a) to adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (b) to abide by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 7(3) of this Article. A ccNSO (Country Code Names Supporting Organization) member may resign from membership at any time by giving written notice to a person designated by the ccNSO (Country Code Names Supporting Organization) Council to receive notices of resignation. Upon resignation the ccTLD (Country Code Top Level Domain) manager ceases to agree to (a) adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (b) to abide by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 7(3) of this Article. In the absence of designation by the ccNSO (Country Code Names Supporting Organization) Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, who shall notify the ccNSO (Country Code Names Supporting Organization) Council of receipt of any such applications and notices.

3. Neither membership in the ccNSO (Country Code Names Supporting Organization) nor membership in any Regional Organization described in Section 5 of this Article shall be a condition for access to or registration in the IANA (Internet Assigned Numbers Authority) database. Any individual relationship a ccTLD (Country Code Top Level Domain) manager has with ICANN (Internet Corporation for Assigned Names and Numbers) or the ccTLD (Country Code Top Level Domain) manager's receipt of IANA (Internet Assigned Numbers Authority) services is not in any way contingent upon membership in the ccNSO (Country Code Names Supporting Organization).

4. The Geographic Regions of ccTLDs shall be as described in Article VI, Section 5 of these Bylaws. For purposes of this Article, managers of ccTLDs within a Geographic Region that are members of the ccNSO (Country Code Names Supporting Organization) are referred to as ccNSO (Country Code Names Supporting Organization) members "within" the Geographic Region, regardless of the physical location of the ccTLD (Country Code Top Level Domain) manager. In cases where the Geographic Region of a ccNSO (Country Code Names Supporting Organization) member is unclear, the ccTLD (Country Code Top Level Domain) member should self-select according to procedures adopted by the ccNSO (Country Code Names Supporting Organization) Council.

5. Each ccTLD (Country Code Top Level Domain) manager may designate in writing a person, organization, or entity to represent the ccTLD (Country Code Top Level Domain) manager. In the absence of such a designation, the ccTLD (Country Code Top Level Domain) manager shall be represented by the person, organization, or entity listed as the administrative contact in the IANA (Internet Assigned Numbers Authority) database.

6. There shall be an annual meeting of ccNSO (Country Code Names Supporting Organization) members, which shall be coordinated by the ccNSO (Country Code Names Supporting Organization) Council. Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD (Country Code Top Level Domain) managers that are not members of the ccNSO (Country Code Names Supporting Organization) as well as other non-members of the ccNSO (Country Code Names Supporting Organization) to address the meeting. To the extent practicable, annual meetings of the ccNSO

(Country Code Names Supporting Organization) members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

7. The ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members from each Geographic Region (see Section 3(1)(a) of this Article) shall be selected through nomination, and if necessary election, by the ccNSO (Country Code Names Supporting Organization) members within that Geographic Region. At least 90 days before the end of the regular term of any ccNSO (Country Code Names Supporting Organization)-member-selected member of the ccNSO (Country Code Names Supporting Organization) Council, or upon the occurrence of a vacancy in the seat of such a ccNSO (Country Code Names Supporting Organization) Council member, the ccNSO (Country Code Names Supporting Organization) Council shall establish a nomination and election schedule, which shall be sent to all ccNSO (Country Code Names Supporting Organization) members within the Geographic Region and posted on the Website.

8. Any ccNSO (Country Code Names Supporting Organization) member may nominate an individual to serve as a ccNSO (Country Code Names Supporting Organization) Council member representing the ccNSO (Country Code Names Supporting Organization) member's Geographic Region. Nominations must be seconded by another ccNSO (Country Code Names Supporting Organization) member from the same Geographic Region. By accepting their nomination, individuals nominated to the ccNSO (Country Code Names Supporting Organization) Council agree to support the policies committed to by ccNSO (Country Code Names Supporting Organization) members.

9. If at the close of nominations there are no more candidates nominated (with seconds and acceptances) in a particular Geographic Region than there are seats on the ccNSO (Country Code Names Supporting Organization) Council available for that Geographic Region, then the nominated candidates shall be selected to serve on the ccNSO (Country Code Names Supporting Organization) Council. Otherwise, an election by written ballot (which may be by e-mail) shall be held to select the ccNSO (Country Code Names Supporting

Organization) Council members from among those nominated (with seconds and acceptances), with ccNSO (Country Code Names Supporting Organization) members from the Geographic Region being entitled to vote in the election through their designated representatives. In such an election, a majority of all ccNSO (Country Code Names Supporting Organization) members in the Geographic Region entitled to vote shall constitute a quorum, and the selected candidate must receive the votes of a majority of those cast by ccNSO (Country Code Names Supporting Organization) members within the Geographic Region. The ccNSO (Country Code Names Supporting Organization) Council Chair shall provide the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary prompt written notice of the selection of ccNSO (Country Code Names Supporting Organization) Council members under this paragraph.

10. Subject to clause 4(11), ICANN (Internet Corporation for Assigned Names and Numbers) policies shall apply to ccNSO (Country Code Names Supporting Organization) members by virtue of their membership to the extent, and only to the extent, that the policies (a) only address issues that are within scope of the ccNSO (Country Code Names Supporting Organization) according to Article IX, Section 6 and Annex C; (b) have been developed through the ccPDP as described in Section 6 of this Article, and (c) have been recommended as such by the ccNSO (Country Code Names Supporting Organization) to the Board, and (d) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD (Country Code Top Level Domain) manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN (Internet Corporation for Assigned Names and Numbers) in its activities concerning ccTLDs.

11. A ccNSO (Country Code Names Supporting Organization) member shall not be bound if it provides a declaration to the ccNSO (Country Code Names Supporting Organization) Council stating that (a) implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in paragraph 10 of this Section), and (b) failure to implement the policy would not impair DNS (Domain Name System) operations or interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO (Country Code Names Supporting Organization) Council will provide a response to the ccNSO (Country

Code Names Supporting Organization) member's declaration. If there is a ccNSO (Country Code Names Supporting Organization) Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's agreement with the declaration. If the ccNSO (Country Code Names Supporting Organization) Council disagrees, the ccNSO (Country Code Names Supporting Organization) Council shall review the situation after a six-month period. At the end of that period, the ccNSO (Country Code Names Supporting Organization) Council shall make findings as to (a) whether the ccNSO (Country Code Names Supporting Organization) members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in paragraph 10 of this Section) and (b) whether failure to implement the policy would impair DNS (Domain Name System) operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO (Country Code Names Supporting Organization) Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council.

Section 5. REGIONAL ORGANIZATIONS

The ccNSO (Country Code Names Supporting Organization) Council may designate a Regional Organization for each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region, provided that the Regional Organization is open to full membership by all ccNSO (Country Code Names Supporting Organization) members within the Geographic Region. Decisions to designate or de-designate a Regional Organization shall require a 66% vote of all of the members of the ccNSO (Country Code Names Supporting Organization) Council and shall be subject to review according to procedures established by the Board.

Section 6. ccNSO (Country Code Names Supporting Organization) POLICY-DEVELOPMENT PROCESS AND SCOPE

1. The scope of the ccNSO (Country Code Names Supporting Organization)'s policy-development role shall be as stated in Annex C to these Bylaws; any modifications to the scope shall be recommended to the Board by the ccNSO (Country Code Names Supporting Organization) by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

2. In developing global policies within the scope of the ccNSO (Country Code Names Supporting Organization) and recommending them to the Board, the ccNSO (Country Code Names Supporting Organization) shall follow the ccNSO (Country Code Names Supporting Organization) Policy-Development Process (ccPDP). The ccPDP shall be as stated in Annex B to these Bylaws; modifications shall be recommended to the Board by the ccNSO (Country Code Names Supporting Organization) by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Section 7. STAFF SUPPORT AND FUNDING

1. Upon request of the ccNSO (Country Code Names Supporting Organization) Council, a member of the ICANN (Internet Corporation for Assigned Names and Numbers) staff may be assigned to support the ccNSO (Country Code Names Supporting Organization) and shall be designated as the ccNSO (Country Code Names Supporting Organization) Staff Manager. Alternatively, the ccNSO (Country Code Names Supporting Organization) Council may designate, at ccNSO (Country Code Names Supporting Organization) expense, another person to serve as ccNSO (Country Code Names Supporting Organization) Staff Manager. The work of the ccNSO (Country Code Names Supporting Organization) Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO (Country Code Names Supporting Organization) Council, and may include the duties of ccPDP Issue Manager.

2. Upon request of the ccNSO (Country Code Names Supporting Organization) Council, ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the ccNSO (Country Code Names Supporting Organization) to carry out its responsibilities. Such support shall not include an obligation for ICANN (Internet Corporation for Assigned

Names and Numbers) to fund travel expenses incurred by ccNSO (Country Code Names Supporting Organization) participants for travel to any meeting of the ccNSO (Country Code Names Supporting Organization) or for any other purpose. The ccNSO (Country Code Names Supporting Organization) Council may make provision, at ccNSO (Country Code Names Supporting Organization) expense, for administrative and operational support in addition or as an alternative to support provided by ICANN (Internet Corporation for Assigned Names and Numbers).

3. The ccNSO (Country Code Names Supporting Organization) Council shall establish fees to be paid by ccNSO (Country Code Names Supporting Organization) members to defray ccNSO (Country Code Names Supporting Organization) expenses as described in paragraphs 1 and 2 of this Section, as approved by the ccNSO (Country Code Names Supporting Organization) members.

4. Written notices given to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary under this Article shall be permanently retained, and shall be made available for review by the ccNSO (Country Code Names Supporting Organization) Council on request. The ICANN (Internet Corporation for Assigned Names and Numbers) Secretary shall also maintain the roll of members of the ccNSO (Country Code Names Supporting Organization), which shall include the name of each ccTLD (Country Code Top Level Domain) manager's designated representative, and which shall be posted on the Website.

ARTICLE X: GENERIC NAMES SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

There shall be a policy-development body known as the Generic Names Supporting Organization (Supporting Organization) (GNSO (Generic Names Supporting Organization)), which shall be responsible for developing and recommending to the ICANN (Internet Corporation for Assigned Names and Numbers) Board substantive policies relating to generic top-level domains.

Section 2. ORGANIZATION

The GNSO (Generic Names Supporting Organization) shall consist of:

- (i) A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in Section 5 of this Article;
- (ii) Four Stakeholder Groups organized within Houses as described in Section 5 of this Article;
- (iii) Two Houses within the GNSO (Generic Names Supporting Organization) Council as described in Section 3(8) of this Article; and
- (iv) a GNSO (Generic Names Supporting Organization) Council responsible for managing the policy development process of the GNSO (Generic Names Supporting Organization), as described in Section 3 of this Article.

Except as otherwise defined in these Bylaws, the four Stakeholder Groups and the Constituencies will be responsible for defining their own charters with the approval of their members and of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors.

Section 3. GNSO (Generic Names Supporting Organization) COUNCIL

1. Subject to the provisions of Transition Article XX, Section 5 of these Bylaws and as described in Section 5 of Article X, the GNSO (Generic Names Supporting Organization) Council shall consist of:

- a. three representatives selected from the Registries Stakeholder Group;
- b. three representatives selected from the Registrars Stakeholder Group;
- c. six representatives selected from the Commercial Stakeholder Group;
- d. six representatives selected from the Non-Commercial Stakeholder Group; and

e. three representatives selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee, one of which shall be non-voting, but otherwise entitled to participate on equal footing with other members of the GNSO (Generic Names Supporting Organization) Council including, e.g. the making and seconding of motions and of serving as Chair if elected. One Nominating Committee Appointee voting representative shall be assigned to each House (as described in Section 3(8) of this Article) by the Nominating Committee.

No individual representative may hold more than one seat on the GNSO (Generic Names Supporting Organization) Council at the same time.

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

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

2. Subject to the provisions of the Transition Article XX, and Section 5 of these Bylaws, the regular term of each GNSO (Generic Names Supporting Organization) Council member shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the second ICANN

(Internet Corporation for Assigned Names and Numbers) annual meeting thereafter. The regular term of two representatives selected from Stakeholder Groups with three Council seats shall begin in even-numbered years and the regular term of the other representative selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of three representatives selected from Stakeholder Groups with six Council seats shall begin in even-numbered years and the regular term of the other three representatives selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of one of the three members selected by the Nominating Committee shall begin in even-numbered years and the regular term of the other two of the three members selected by the Nominating Committee shall begin in odd-numbered years. Each GNSO (Generic Names Supporting Organization) Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

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

3. A vacancy on the GNSO (Generic Names Supporting Organization) Council shall be deemed to exist in the case of the death, resignation, or removal of any member. Vacancies shall be filled for the unexpired term by the appropriate Nominating Committee or Stakeholder Group that selected the member holding the position before the vacancy occurred by giving the GNSO (Generic Names Supporting Organization) Secretariat written notice of its selection. Procedures for handling Stakeholder Group-appointed GNSO (Generic Names Supporting Organization) Council member vacancies, resignations, and removals are prescribed in the applicable Stakeholder Group Charter.

A GNSO (Generic Names Supporting Organization) Council member selected by the Nominating Committee may be removed for cause: i) stated by a three-fourths (3/4) vote of all members of the applicable House to which the Nominating Committee appointee is assigned; or ii) stated by a three-fourths (3/4) vote of all members of each House in the case of the non-voting Nominating Committee appointee (see Section 3(8) of this Article). Such removal shall be subject to reversal by the ICANN (Internet Corporation for Assigned Names and Numbers) Board on appeal by the affected GNSO (Generic Names Supporting Organization) Council member.

4. The GNSO (Generic Names Supporting Organization) Council is responsible for managing the policy development process of the GNSO (Generic Names Supporting Organization). It shall adopt such procedures (the "GNSO (Generic Names Supporting Organization) Operating Procedures") as it sees fit to carry out that responsibility, provided that such procedures are approved by a majority vote of each House. The GNSO (Generic Names Supporting Organization) Operating Procedures shall be effective upon the expiration of a twenty-one (21) day public comment period, and shall be subject to Board oversight and review. Until any modifications are recommended by the GNSO (Generic Names Supporting Organization) Council, the applicable procedures shall be as set forth in Section 6 of this Article.

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

6. The GNSO (Generic Names Supporting Organization) shall make selections to fill Seats 13 and 14 on the ICANN (Internet Corporation for Assigned Names and Numbers) Board by written ballot or by action at a meeting. Each of the two voting Houses of the GNSO (Generic Names Supporting Organization), as described in Section 3(8) of this Article, shall make a selection to fill one of two ICANN (Internet Corporation for Assigned Names and Numbers) Board seats, as outlined below; any such selection must have affirmative votes comprising sixty percent (60%) of all the respective voting House members:

- a. the Contracted Party House shall select a representative to fill Seat 13; and

b. the Non-Contracted Party House shall select a representative to fill Seat 14

Election procedures are defined in the GNSO (Generic Names Supporting Organization) Operating Procedures.

Notification of the Board seat selections shall be given by the GNSO (Generic Names Supporting Organization) Chair in writing to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, consistent with Article VI, Sections 8(4) and 12(1).

7. The GNSO (Generic Names Supporting Organization) Council shall select the GNSO (Generic Names Supporting Organization) Chair for a term the GNSO (Generic Names Supporting Organization) Council specifies, but not longer than one year. Each House (as described in Section 3.8 of this Article) shall select a Vice-Chair, who will be a Vice-Chair of the whole of the GNSO (Generic Names Supporting Organization) Council, for a term the GNSO (Generic Names Supporting Organization) Council specifies, but not longer than one year. The procedures for selecting the Chair and any other officers are contained in the GNSO (Generic Names Supporting Organization) Operating Procedures. In the event that the GNSO (Generic Names Supporting Organization) Council has not elected a GNSO (Generic Names Supporting Organization) Chair by the end of the previous Chair's term, the Vice-Chairs will serve as Interim GNSO (Generic Names Supporting Organization) Co-Chairs until a successful election can be held.

8. Except as otherwise required in these Bylaws, for voting purposes, the GNSO (Generic Names Supporting Organization) Council (see Section 3(1) of this Article) shall be organized into a bicameral House structure as described below:

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

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

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

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

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

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

c. Initiate a PDP (Policy Development Process) Not Within Scope: requires an affirmative vote of GNSO (Generic Names Supporting Organization) Supermajority.

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

e. Approve a PDP (Policy Development Process) Team Charter for a PDP (Policy Development Process) Not Within Scope:

requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

f. Changes to an Approved PDP (Policy Development Process) Team Charter: For any PDP (Policy Development Process) Team Charter approved under d. or e. above, the GNSO (Generic Names Supporting Organization) Council may approve an amendment to the Charter through a simple majority vote of each House.

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

h. Approve a PDP (Policy Development Process) Recommendation Without a GNSO (Generic Names Supporting Organization) Supermajority: requires an affirmative vote of a majority of each House and further requires that one GNSO (Generic Names Supporting Organization) Council member representative of at least 3 of the 4 Stakeholder Groups supports the Recommendation.

i. Approve a PDP (Policy Development Process) Recommendation With a GNSO (Generic Names Supporting Organization) Supermajority: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority,

j. Approve a PDP (Policy Development Process) Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN (Internet Corporation for Assigned Names and Numbers) contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO (Generic Names Supporting Organization) Supermajority vote threshold will have to be met or exceeded.

k. Modification of Approved PDP (Policy Development Process) Recommendation: Prior to Final Approval by the ICANN (Internet Corporation for Assigned Names and Numbers) Board, an Approved PDP (Policy Development Process) Recommendation may be modified or amended by the GNSO (Generic Names Supporting Organization) Council with a GNSO (Generic Names Supporting Organization) Supermajority vote.

l. A "GNSO (Generic Names Supporting Organization) Supermajority" shall mean: (a) two-thirds (2/3) of the Council members of each House, or (b) three-fourths (3/4) of one House and a majority of the other House."

Section 4. STAFF SUPPORT AND FUNDING

1. A member of the ICANN (Internet Corporation for Assigned Names and Numbers) staff shall be assigned to support the GNSO (Generic Names Supporting Organization), whose work on substantive matters shall be assigned by the Chair of the GNSO (Generic Names Supporting Organization) Council, and shall be designated as the GNSO (Generic Names Supporting Organization) Staff Manager (Staff Manager).

2. ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the GNSO (Generic Names Supporting Organization) to carry out its responsibilities. Such support shall not include an obligation for ICANN (Internet Corporation for Assigned Names and Numbers) to fund travel expenses incurred by GNSO (Generic Names Supporting Organization) participants for travel to any meeting of the GNSO (Generic Names Supporting Organization) or for any other purpose. ICANN (Internet Corporation for Assigned Names and Numbers) may, at its discretion, fund travel expenses for GNSO (Generic Names Supporting Organization) participants under any travel support procedures or guidelines that it may adopt from time to time.

Section 5. STAKEHOLDER GROUPS

1. The following Stakeholder Groups are hereby recognized as representative of a specific group of one or more Constituencies or interest groups and subject to the provisions of the Transition Article XX, Section 5 of these Bylaws:

a. Registries Stakeholder Group representing all gTLD (generic Top Level Domain) registries under contract to ICANN (Internet Corporation for Assigned Names and Numbers);

b. Registrars Stakeholder Group representing all registrars accredited by and under contract to ICANN (Internet Corporation for Assigned Names and Numbers);

c. Commercial Stakeholder Group representing the full range of large and small commercial entities of the Internet; and

d. Non-Commercial Stakeholder Group representing the full range of non-commercial entities of the Internet.

2. Each Stakeholder Group is assigned a specific number of Council seats in accordance with Section 3(1) of this Article.

3. Each Stakeholder Group identified in paragraph 1 of this Section and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN (Internet Corporation for Assigned Names and Numbers) Board. Recognition is granted by the Board based upon the extent to which, in fact, the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with procedures designed to ensure fairness. Stakeholder Group and Constituency Charters may be reviewed periodically as prescribed by the Board.

4. Any group of individuals or entities may petition the Board for recognition as a new or separate Constituency in the Non-Contracted Parties House. Any such petition shall contain:

a. A detailed explanation of why the addition of such a Constituency will improve the ability of the GNSO (Generic

Names Supporting Organization) to carry out its policy-development responsibilities;

b. A detailed explanation of why the proposed new Constituency adequately represents, on a global basis, the stakeholders it seeks to represent;

c. A recommendation for organizational placement within a particular Stakeholder Group; and

d. A proposed charter that adheres to the principles and procedures contained in these Bylaws.

Any petition for the recognition of a new Constituency and the associated charter shall be posted for public comment.

5. The Board may create new Constituencies as described in Section 5(3) in response to such a petition, or on its own motion, if the Board determines that such action would serve the purposes of ICANN (Internet Corporation for Assigned Names and Numbers). In the event the Board is considering acting on its own motion it shall post a detailed explanation of why such action is necessary or desirable, set a reasonable time for public comment, and not make a final decision on whether to create such new Constituency until after reviewing all comments received. Whenever the Board posts a petition or recommendation for a new Constituency for public comment, the Board shall notify the GNSO (Generic Names Supporting Organization) Council and the appropriate Stakeholder Group affected and shall consider any response to that notification prior to taking action.

Section 6. POLICY DEVELOPMENT PROCESS

The policy-development procedures to be followed by the GNSO (Generic Names Supporting Organization) shall be as stated in Annex A to these Bylaws. These procedures may be supplemented or revised in the manner stated in Section 3(4) of this Article.

ARTICLE XI: ADVISORY COMMITTEES

Section 1. GENERAL

The Board may create one or more Advisory Committees (Advisory Committees) in addition to those set forth in this Article. Advisory Committee (Advisory Committee) membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees (Advisory Committees) shall have no legal authority to act for ICANN (Internet Corporation for Assigned Names and Numbers), but shall report their findings and recommendations to the Board.

Section 2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees (Advisory Committees):

1. Governmental Advisory Committee (Advisory Committee)
 - a. The Governmental Advisory Committee (Advisory Committee) should consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers) as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN (Internet Corporation for Assigned Names and Numbers)'s policies and various laws and international agreements or where they may affect public policy issues.
 - b. Membership in the Governmental Advisory Committee (Advisory Committee) shall be open to all national governments. Membership shall also be open to Distinct Economies as recognized in international fora, and multinational governmental organizations and treaty organizations, on the invitation of the Governmental Advisory Committee (Advisory Committee) through its Chair.
 - c. The Governmental Advisory Committee (Advisory Committee) may adopt its own charter and internal operating principles or procedures to guide its operations, to be published on the Website.
 - d. The chair of the Governmental Advisory Committee (Advisory Committee) shall be elected by the members of the

Governmental Advisory Committee (Advisory Committee) pursuant to procedures adopted by such members.

e. Each member of the Governmental Advisory Committee (Advisory Committee) shall appoint one accredited representative to the Committee. The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization and whose primary function with such government, public authority, or organization is to develop or influence governmental or public policies.

f. The Governmental Advisory Committee (Advisory Committee) shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee.

g. The Governmental Advisory Committee (Advisory Committee) may designate a non-voting liaison to each of the Supporting Organization (Supporting Organization) Councils and Advisory Committees (Advisory Committees), to the extent the Governmental Advisory Committee (Advisory Committee) deems it appropriate and useful to do so.

h. The Board shall notify the Chair of the Governmental Advisory Committee (Advisory Committee) in a timely manner of any proposal raising public policy issues on which it or any of ICANN (Internet Corporation for Assigned Names and Numbers)'s supporting organizations or advisory committees seeks public comment, and shall take duly into account any timely response to that notification prior to taking action.

i. The Governmental Advisory Committee (Advisory Committee) may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.

j. The advice of the Governmental Advisory Committee (Advisory Committee) on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN (Internet Corporation for Assigned Names and Numbers) Board determines to take an action that is not consistent with the Governmental Advisory Committee (Advisory Committee) advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee (Advisory Committee) and the ICANN (Internet Corporation for Assigned Names and Numbers) Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

k. If no such solution can be found, the ICANN (Internet Corporation for Assigned Names and Numbers) Board will state in its final decision the reasons why the Governmental Advisory Committee (Advisory Committee) advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee (Advisory Committee) members with regard to public policy issues falling within their responsibilities.

2. Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee)

a. The role of the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) ("SSAC (Security and Stability Advisory Committee)") is to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:

1. To communicate on security matters with the Internet technical community and the operators and managers of critical DNS (Domain Name System) infrastructure services, to include the root name server operator community, the top-level domain registries and registrars,

the operators of the reverse delegation trees such as in-addr.arpa and ip6.arpa, and others as events and developments dictate. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols related to DNS (Domain Name System) and address allocation and those engaged in operations planning.

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

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

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

5. To make policy recommendations to the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board.

b. The SSAC (Security and Stability Advisory Committee)'s chair and members shall be appointed by the Board. SSAC (Security and Stability Advisory Committee) membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. The chair

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

c. The SSAC (Security and Stability Advisory Committee) shall annually appoint a non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board according to Section 9 of Article VI.

3. Root Server System Advisory Committee (Advisory Committee)

a. The role of the Root Server System Advisory Committee (Advisory Committee) ("RSSAC (Root Server System Advisory Committee)") is to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System. It shall have the following responsibilities:

1. Communicate on matters relating to the operation of the Root Servers (Root Servers) and their multiple instances

with the Internet technical community and the ICANN (Internet Corporation for Assigned Names and Numbers) community. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common practices related to the operation of DNS (Domain Name System) servers.

2. Communicate on matters relating to the administration of the Root Zone (Root Zone) with those who have direct responsibility for that administration. These matters include the processes and procedures for the production of the Root Zone (Root Zone) File.

3. Engage in ongoing threat assessment and risk analysis of the Root Server System and recommend any necessary audit activity to assess the current status of root servers and the root zone.

4. Respond to requests for information or opinions from the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors.

5. Report periodically to the Board on its activities.

6. Make policy recommendations to the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board.

b. The RSSAC (Root Server System Advisory Committee) shall be led by two co-chairs. The RSSAC (Root Server System Advisory Committee)'s chairs and members shall be appointed by the Board.

1. RSSAC (Root Server System Advisory Committee) membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms the members may serve. The RSSAC (Root Server

System Advisory Committee) chairs shall provide recommendations to the Board regarding appointments to the RSSAC (Root Server System Advisory Committee). If the board declines to appoint a person nominated by the RSSAC (Root Server System Advisory Committee) then it will provide the rationale for its decision. The RSSAC (Root Server System Advisory Committee) chairs shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the RSSAC (Root Server System Advisory Committee) is considered for appointment or re-appointment each year. The Board shall also have to power to remove RSSAC (Root Server System Advisory Committee) appointees as recommended by or in consultation with the RSSAC (Root Server System Advisory Committee). (Note: The first term under this paragraph shall commence on 1 July 2013 and end on 31 December 2015, and shall be considered a full term for all purposes. All other full terms under this paragraph shall begin on 1 January of the corresponding year. Prior to 1 July 2013, the RSSAC (Root Server System Advisory Committee) shall be comprised as stated in the Bylaws as amended 16 March 2012, and the RSSAC (Root Server System Advisory Committee) chairs shall recommend the re-appointment of all current RSSAC (Root Server System Advisory Committee) members to full or partial terms as appropriate to implement the provisions of this paragraph.)

2. The RSSAC (Root Server System Advisory Committee) shall recommend the appointment of the chairs to the board following a nomination process that it devises and documents.

c. The RSSAC (Root Server System Advisory Committee) shall annually appoint a non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board according to Section 9 of Article VI.

4. At-Large Advisory Committee (Advisory Committee)

a. The At-Large Advisory Committee (Advisory Committee) (ALAC (At-Large Advisory Committee)) is the primary organizational home within ICANN (Internet Corporation for Assigned Names and Numbers) for individual Internet users. The role of the ALAC (At-Large Advisory Committee) shall be to consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers), insofar as they relate to the interests of individual Internet users. This includes policies created through ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (Supporting Organizations), as well as the many other issues for which community input and advice is appropriate. The ALAC (At-Large Advisory Committee), which plays an important role in ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability mechanisms, also coordinates some of ICANN (Internet Corporation for Assigned Names and Numbers)'s outreach to individual Internet users.

b. The ALAC (At-Large Advisory Committee) shall consist of (i) two members selected by each of the Regional At-Large Organizations ("RALOs") established according to paragraph 4(g) of this Section, and (ii) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to Section 5 of Article VI.

c. Subject to the provisions of the Transition Article of these Bylaws, the regular terms of members of the ALAC (At-Large Advisory Committee) shall be as follows:

1. The term of one member selected by each RALO shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in an even-numbered year.

2. The term of the other member selected by each RALO shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in an odd-numbered year.

3. The terms of three of the members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an odd-numbered year and the terms of the other two members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an even-numbered year.

4. The regular term of each member shall end at the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the term began.

d. The Chair of the ALAC (At-Large Advisory Committee) shall be elected by the members of the ALAC (At-Large Advisory Committee) pursuant to procedures adopted by the Committee.

e. The ALAC (At-Large Advisory Committee) shall, after consultation with each RALO, annually appoint five voting delegates (no two of whom shall be citizens of countries in the same Geographic Region, as defined according to Section 5 of Article VI (/en/general/bylaws.htm#VI-5)) to the Nominating Committee.

f. Subject to the provisions of the Transition Article of these Bylaws, the At-Large Advisory Committee (Advisory Committee) may designate non-voting liaisons to each of the ccNSO (Country Code Names Supporting Organization) Council and the GNSO (Generic Names Supporting Organization) Council.

g. There shall be one RALO for each Geographic Region established according to Section 5 of Article VI. Each RALO shall serve as the main forum and coordination point for public input to ICANN (Internet Corporation for Assigned Names and Numbers) in its Geographic Region and shall be a non-profit organization certified by ICANN (Internet Corporation for Assigned Names and Numbers) according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee (Advisory Committee). An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with ICANN (Internet Corporation for Assigned

Names and Numbers) addressing the respective roles and responsibilities of ICANN (Internet Corporation for Assigned Names and Numbers) and the RALO regarding the process for selecting ALAC (At-Large Advisory Committee) members and requirements of openness, participatory opportunities, transparency, accountability, and diversity in the RALO's structure and procedures, as well as criteria and standards for the RALO's constituent At-Large Structures.

h. Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region that have been certified to meet the requirements of the RALO's Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers) according to paragraph 4(i) of this Section. If so provided by its Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers), a RALO may also include individual Internet users who are citizens or residents of countries within the RALO's Geographic Region.

i. Membership in the At-Large Community

1. The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on recommendations from the ALAC (At-Large Advisory Committee) and shall be stated in the Memorandum of Understanding between ICANN (Internet Corporation for Assigned Names and Numbers) and the RALO for each Geographic Region.
2. The criteria and standards for the certification of At-Large Structures shall be established in such a way that participation by individual Internet users who are citizens or residents of countries within the Geographic Region (as defined in Section 5 of Article VI (/en/general/bylaws.htm#VI-5)) of the RALO will predominate in the operation of each At-Large Structure within the RALO, while not necessarily excluding additional participation, compatible with the interests of the individual Internet users within the region, by others.

3. Each RALO's Memorandum of Understanding shall also include provisions designed to allow, to the greatest extent possible, every individual Internet user who is a citizen of a country within the RALO's Geographic Region to participate in at least one of the RALO's At-Large Structures.
 4. To the extent compatible with these objectives, the criteria and standards should also afford to each RALO the type of structure that best fits the customs and character of its Geographic Region.
 5. Once the criteria and standards have been established as provided in this Clause i, the ALAC (At-Large Advisory Committee), with the advice and participation of the RALO where the applicant is based, shall be responsible for certifying organizations as meeting the criteria and standards for At-Large Structure accreditation.
 6. Decisions to certify or decertify an At-Large Structure shall be made as decided by the ALAC (At-Large Advisory Committee) in its Rules of Procedure, save always that any changes made to the Rules of Procedure in respect of ALS (At-Large Structure) applications shall be subject to review by the RALOs and by the ICANN (Internet Corporation for Assigned Names and Numbers) Board.
 7. Decisions as to whether to accredit, not to accredit, or disaccredit an At-Large Structure shall be subject to review according to procedures established by the Board.
 8. On an ongoing basis, the ALAC (At-Large Advisory Committee) may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.
- j. The ALAC (At-Large Advisory Committee) is also responsible, working in conjunction with the RALOs, for coordinating the following activities:

1. Making a selection by the At-Large Community to fill Seat 15 on the Board. Notification of the At-Large Community's selection shall be given by the ALAC (At-Large Advisory Committee) Chair in writing to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, consistent with Article VI, Sections 8(4) and 12(1).
2. Keeping the community of individual Internet users informed about the significant news from ICANN (Internet Corporation for Assigned Names and Numbers);
3. Distributing (through posting or otherwise) an updated agenda, news about ICANN (Internet Corporation for Assigned Names and Numbers), and information about items in the ICANN (Internet Corporation for Assigned Names and Numbers) policy-development process;
4. Promoting outreach activities in the community of individual Internet users;
5. Developing and maintaining on-going information and education programs, regarding ICANN (Internet Corporation for Assigned Names and Numbers) and its work;
6. Establishing an outreach strategy about ICANN (Internet Corporation for Assigned Names and Numbers) issues in each RALO's Region;
7. Participating in the ICANN (Internet Corporation for Assigned Names and Numbers) policy development processes and providing input and advice that accurately reflects the views of individual Internet users;
8. Making public, and analyzing, ICANN (Internet Corporation for Assigned Names and Numbers)'s proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the region;

9. Offering Internet-based mechanisms that enable discussions among members of At-Large structures; and

10. Establishing mechanisms and processes that enable two-way communication between members of At-Large Structures and those involved in ICANN (Internet Corporation for Assigned Names and Numbers) decision-making, so interested individuals can share their views on pending ICANN (Internet Corporation for Assigned Names and Numbers) issues.

Section 3. PROCEDURES

Each Advisory Committee (Advisory Committee) shall determine its own rules of procedure and quorum requirements.

Section 4. TERM OF OFFICE

The chair and each member of a committee shall serve until his or her successor is appointed, or until such committee is sooner terminated, or until he or she is removed, resigns, or otherwise ceases to qualify as a member of the committee.

Section 5. VACANCIES

Vacancies on any committee shall be filled in the same manner as provided in the case of original appointments.

Section 6. COMPENSATION

Committee members shall receive no compensation for their services as a member of a committee. The Board may, however, authorize the reimbursement of actual and necessary expenses incurred by committee members, including Directors, performing their duties as committee members.

ARTICLE XI-A: OTHER ADVISORY MECHANISMS

Section 1. EXTERNAL EXPERT ADVICE

1. Purpose. The purpose of seeking external expert advice is to allow the policy-development process within ICANN (Internet Corporation for Assigned Names and Numbers) to take advantage of existing expertise that resides in the public or private sector but outside of ICANN (Internet Corporation for Assigned Names and Numbers). In those cases where there are relevant public bodies with expertise, or where access to private expertise could be helpful, the Board and constituent bodies should be encouraged to seek advice from such expert bodies or individuals.

2. Types of Expert Advisory Panels.

a. On its own initiative or at the suggestion of any ICANN (Internet Corporation for Assigned Names and Numbers) body, the Board may appoint, or authorize the President to appoint, Expert Advisory Panels consisting of public or private sector individuals or entities. If the advice sought from such Panels concerns issues of public policy, the provisions of Section 1(3)(b) of this Article shall apply.

b. In addition, in accordance with Section 1(3) of this Article, the Board may refer issues of public policy pertinent to matters within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission to a multinational governmental or treaty organization.

3. Process for Seeking Advice-Public Policy Matters.

a. The Governmental Advisory Committee (Advisory Committee) may at any time recommend that the Board seek advice concerning one or more issues of public policy from an external source, as set out above.

b. In the event that the Board determines, upon such a recommendation or otherwise, that external advice should be sought concerning one or more issues of public policy, the Board shall, as appropriate, consult with the Governmental Advisory Committee (Advisory Committee) regarding the appropriate source from which to seek the advice and the arrangements,

including definition of scope and process, for requesting and obtaining that advice.

c. The Board shall, as appropriate, transmit any request for advice from a multinational governmental or treaty organization, including specific terms of reference, to the Governmental Advisory Committee (Advisory Committee), with the suggestion that the request be transmitted by the Governmental Advisory Committee (Advisory Committee) to the multinational governmental or treaty organization.

4. Process for Seeking and Advice-Other Matters. Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with Section 1(2)(a) of this Article shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed.

5. Receipt of Expert Advice and its Effect. External advice pursuant to this Section shall be provided in written form. Such advice is advisory and not binding, and is intended to augment the information available to the Board or other ICANN (Internet Corporation for Assigned Names and Numbers) body in carrying out its responsibilities.

6. Opportunity to Comment. The Governmental Advisory Committee (Advisory Committee), in addition to the Supporting Organizations (Supporting Organizations) and other Advisory Committees (Advisory Committees), shall have an opportunity to comment upon any external advice received prior to any decision by the Board.

Section 2. TECHNICAL LIAISON GROUP

1. Purpose. The quality of ICANN (Internet Corporation for Assigned Names and Numbers)'s work depends on access to complete and authoritative information concerning the technical standards that underlie ICANN (Internet Corporation for Assigned Names and Numbers)'s activities. ICANN (Internet Corporation for Assigned Names and Numbers)'s relationship to the organizations that produce these standards is therefore particularly important. The Technical Liaison Group (TLG) shall connect the Board with appropriate sources

of technical advice on specific matters pertinent to ICANN (Internet Corporation for Assigned Names and Numbers)'s activities.

2. TLG Organizations. The TLG shall consist of four organizations: the European Telecommunications Standards Institute (ETSI (European Telecommunications Standards Institute)), the International Telecommunications Union's Telecommunication Standardization Sector (ITU (International Telecommunication Union)-T), the World Wide Web Consortium (W3C (World Wide Web Consortium)), and the Internet Architecture Board (IAB (Internet Architecture Board)).

3. Role. The role of the TLG organizations shall be to channel technical information and guidance to the Board and to other ICANN (Internet Corporation for Assigned Names and Numbers) entities. This role has both a responsive component and an active "watchdog" component, which involve the following responsibilities:

a. In response to a request for information, to connect the Board or other ICANN (Internet Corporation for Assigned Names and Numbers) body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN (Internet Corporation for Assigned Names and Numbers) seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.

b. As an ongoing "watchdog" activity, to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope that could affect Board decisions or other ICANN (Internet Corporation for Assigned Names and Numbers) actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission. This component of the TLG role covers circumstances in which ICANN (Internet Corporation for Assigned Names and Numbers) is unaware of a new development, and would therefore otherwise not realize that a question should be asked.

4. TLG Procedures. The TLG shall not have officers or hold meetings, nor shall it provide policy advice to the Board as a committee (although TLG organizations may individually be asked by the Board to do so as the need arises in areas relevant to their individual charters). Neither shall the TLG debate or otherwise coordinate technical issues across the TLG organizations; establish or attempt to establish unified positions; or create or attempt to create additional layers or structures within the TLG for the development of technical standards or for any other purpose.

5. Technical Work with the IETF (Internet Engineering Task Force). The TLG shall have no involvement with the ICANN (Internet Corporation for Assigned Names and Numbers)'s work for the Internet Engineering Task Force (IETF (Internet Engineering Task Force)), Internet Research Task Force, or the Internet Architecture Board (IAB (Internet Architecture Board)), as described in the IETF (Internet Engineering Task Force)-ICANN (Internet Corporation for Assigned Names and Numbers) Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority ratified by the Board on 10 March 2000.

6. Individual Technical Experts. Each TLG organization shall designate two individual technical experts who are familiar with the technical standards issues that are relevant to ICANN (Internet Corporation for Assigned Names and Numbers)'s activities. These 8 experts shall be available as necessary to determine, through an exchange of e-mail messages, where to direct a technical question from ICANN (Internet Corporation for Assigned Names and Numbers) when ICANN (Internet Corporation for Assigned Names and Numbers) does not ask a specific TLG organization directly.

ARTICLE XII: BOARD AND TEMPORARY COMMITTEES

Section 1. BOARD COMMITTEES

The Board may establish one or more committees of the Board, which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate

one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all members of the Board; provided, however, that any Director or Directors which are the subject of the removal action shall not be entitled to vote on such an action or be counted as a member of the Board when calculating the required two-thirds (2/3) vote; and, provided further, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all members of the Board.

Section 2. POWERS OF BOARD COMMITTEES

1. The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:

- a. The filling of vacancies on the Board or on any committee;
- b. The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;
- c. The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
- d. The appointment of committees of the Board or the members thereof;
- e. The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CNPBCL;
- f. The approval of the annual budget required by Article XVI; or
- g. The compensation of any officer described in Article XIII.

2. The Board shall have the power to prescribe the manner in which proceedings of any Committee of the Board shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless these Bylaws, the Board or such committee shall

otherwise provide, the regular and special meetings shall be governed by the provisions of Article VI applicable to meetings and actions of the Board. Each committee shall keep regular minutes of its proceedings and shall report the same to the Board from time to time, as the Board may require.

Section 3. TEMPORARY COMMITTEES

The Board may establish such temporary committees as it sees fit, with membership, duties, and responsibilities as set forth in the resolutions or charters adopted by the Board in establishing such committees.

ARTICLE XIII: OFFICERS

Section 1. OFFICERS

The officers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be a President (who shall serve as Chief Executive Officer), a Secretary, and a Chief Financial Officer. ICANN (Internet Corporation for Assigned Names and Numbers) may also have, at the discretion of the Board, any additional officers that it deems appropriate. Any person, other than the President, may hold more than one office, except that no member of the Board (other than the President) shall simultaneously serve as an officer of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 2. ELECTION OF OFFICERS

The officers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be elected annually by the Board, pursuant to the recommendation of the President or, in the case of the President, of the Chairman of the ICANN (Internet Corporation for Assigned Names and Numbers) Board. Each such officer shall hold his or her office until he or she resigns, is removed, is otherwise disqualified to serve, or his or her successor is elected.

Section 3. REMOVAL OF OFFICERS

Any Officer may be removed, either with or without cause, by a two-thirds (2/3) majority vote of all the members of the Board. Should any vacancy occur in any office as a result of death, resignation, removal, disqualification, or any other cause, the Board may delegate the powers and duties of such

office to any Officer or to any Director until such time as a successor for the office has been elected.

Section 4. PRESIDENT

The President shall be the Chief Executive Officer (CEO) of ICANN (Internet Corporation for Assigned Names and Numbers) in charge of all of its activities and business. All other officers and staff shall report to the President or his or her delegate, unless stated otherwise in these Bylaws. The President shall serve as an ex officio member of the Board, and shall have all the same rights and privileges of any Board member. The President shall be empowered to call special meetings of the Board as set forth herein, and shall discharge all other duties as may be required by these Bylaws and from time to time may be assigned by the Board.

Section 5. SECRETARY

The Secretary shall keep or cause to be kept the minutes of the Board in one or more books provided for that purpose, shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law, and in general shall perform all duties as from time to time may be prescribed by the President or the Board.

Section 6. CHIEF FINANCIAL OFFICER

The Chief Financial Officer ("CFO") shall be the chief financial officer of ICANN (Internet Corporation for Assigned Names and Numbers). If required by the Board, the CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of ICANN (Internet Corporation for Assigned Names and Numbers) and shall keep or cause to be kept, in books belonging to ICANN (Internet Corporation for Assigned Names and Numbers), full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN (Internet Corporation for Assigned Names and Numbers) in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of ICANN (Internet Corporation for Assigned Names and Numbers) as may be ordered by the Board or the President and, whenever requested by them, shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial condition of ICANN (Internet Corporation for Assigned Names and Numbers). The CFO

shall be responsible for ICANN (Internet Corporation for Assigned Names and Numbers)'s financial planning and forecasting and shall assist the President in the preparation of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual budget. The CFO shall coordinate and oversee ICANN (Internet Corporation for Assigned Names and Numbers)'s funding, including any audits or other reviews of ICANN (Internet Corporation for Assigned Names and Numbers) or its Supporting Organizations (Supporting Organizations). The CFO shall be responsible for all other matters relating to the financial operation of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 7. ADDITIONAL OFFICERS

In addition to the officers described above, any additional or assistant officers who are elected or appointed by the Board shall perform such duties as may be assigned to them by the President or the Board.

Section 8. COMPENSATION AND EXPENSES

The compensation of any Officer of ICANN (Internet Corporation for Assigned Names and Numbers) shall be approved by the Board. Expenses incurred in connection with performance of their officer duties may be reimbursed to Officers upon approval of the President (in the case of Officers other than the President), by another Officer designated by the Board (in the case of the President), or the Board.

Section 9. CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall establish a policy requiring a statement from each Officer not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN (Internet Corporation for Assigned Names and Numbers).

ARTICLE XIV: INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

ICANN (Internet Corporation for Assigned Names and Numbers) shall, to maximum extent permitted by the CNPBCL, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason

of the fact that any such person is or was an agent of ICANN (Internet Corporation for Assigned Names and Numbers), provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN (Internet Corporation for Assigned Names and Numbers)'s best interests and not criminal. For purposes of this Article, an "agent" of ICANN (Internet Corporation for Assigned Names and Numbers) includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (Internet Corporation for Assigned Names and Numbers) (including a member of any Supporting Organization (Supporting Organization), any Advisory Committee (Advisory Committee), the Nominating Committee, any other ICANN (Internet Corporation for Assigned Names and Numbers) committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN (Internet Corporation for Assigned Names and Numbers) as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN (Internet Corporation for Assigned Names and Numbers) against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not ICANN (Internet Corporation for Assigned Names and Numbers) would have the power to indemnify the agent against that liability under the provisions of this Article.

ARTICLE XV: GENERAL PROVISIONS

Section 1. CONTRACTS

The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of ICANN (Internet Corporation for Assigned Names and Numbers), and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent, or employee shall have any power or authority to bind ICANN (Internet Corporation for Assigned Names and Numbers) or to render it liable for any debts or obligations.

Section 2. DEPOSITS

All funds of ICANN (Internet Corporation for Assigned Names and Numbers) not otherwise employed shall be deposited from time to time to the credit of ICANN (Internet Corporation for Assigned Names and Numbers) in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

Section 3. CHECKS

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of ICANN (Internet Corporation for Assigned Names and Numbers) shall be signed by such Officer or Officers, agent or agents, of ICANN (Internet Corporation for Assigned Names and Numbers) and in such a manner as shall from time to time be determined by resolution of the Board.

Section 4. LOANS

No loans shall be made by or to ICANN (Internet Corporation for Assigned Names and Numbers) and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances; provided, however, that no loans shall be made by ICANN (Internet Corporation for Assigned Names and Numbers) to its Directors or Officers.

ARTICLE XVI: FISCAL MATTERS

Section 1. ACCOUNTING

The fiscal year end of ICANN (Internet Corporation for Assigned Names and Numbers) shall be determined by the Board.

Section 2. AUDIT

At the end of the fiscal year, the books of ICANN (Internet Corporation for Assigned Names and Numbers) shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

Section 3. ANNUAL REPORT AND ANNUAL STATEMENT

The Board shall publish, at least annually, a report describing its activities, including an audited financial statement and a description of any payments

made by ICANN (Internet Corporation for Assigned Names and Numbers) to Directors (including reimbursements of expenses). ICANN (Internet Corporation for Assigned Names and Numbers) shall cause the annual report and the annual statement of certain transactions as required by the CNPBCL to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of ICANN (Internet Corporation for Assigned Names and Numbers)'s fiscal year.

Section 4. ANNUAL BUDGET

At least forty-five (45) days prior to the commencement of each fiscal year, the President shall prepare and submit to the Board, a proposed annual budget of ICANN (Internet Corporation for Assigned Names and Numbers) for the next fiscal year, which shall be posted on the Website. The proposed budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item. The Board shall adopt an annual budget and shall publish the adopted Budget on the Website.

Section 5. FEES AND CHARGES

The Board may set fees and charges for the services and benefits provided by ICANN (Internet Corporation for Assigned Names and Numbers), with the goal of fully recovering the reasonable costs of the operation of ICANN (Internet Corporation for Assigned Names and Numbers) and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN (Internet Corporation for Assigned Names and Numbers). Such fees and charges shall be fair and equitable, shall be published for public comment prior to adoption, and once adopted shall be published on the Website in a sufficiently detailed manner so as to be readily accessible.

ARTICLE XVII: MEMBERS

ICANN (Internet Corporation for Assigned Names and Numbers) shall not have members, as defined in the California Nonprofit Public Benefit Corporation Law ("CNPBCL"), notwithstanding the use of the term "Member" in these Bylaws, in any ICANN (Internet Corporation for Assigned Names and Numbers) document, or in any action of the ICANN (Internet Corporation for Assigned Names and Numbers) Board or staff.

ARTICLE XVIII: OFFICES AND SEAL

Section 1. OFFICES

The principal office for the transaction of the business of ICANN (Internet Corporation for Assigned Names and Numbers) shall be in the County of Los Angeles, State of California, United States of America. ICANN (Internet Corporation for Assigned Names and Numbers) may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

Section 2. SEAL

The Board may adopt a corporate seal and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE XIX: AMENDMENTS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the Articles of Incorporation or Bylaws of ICANN (Internet Corporation for Assigned Names and Numbers) may be altered, amended, or repealed and new Articles of Incorporation or Bylaws adopted only upon action by a two-thirds (2/3) vote of all members of the Board.

ARTICLE XX: TRANSITION ARTICLE

Section 1. PURPOSE

This Transition Article sets forth the provisions for the transition from the processes and structures defined by the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, as amended and restated on 29 October 1999 and amended through 12 February 2002 (the "Old Bylaws (/en/general/archive-bylaws/bylaws-12feb02.htm)"), to the processes and structures defined by the Bylaws of which this Article is a part (the "New Bylaws (/en/general/bylaws.htm)"). [Explanatory Note (dated 10 December 2009): For Section 5(3) of this Article, reference to the Old Bylaws refers to the Bylaws as amended and restated through to 20 March 2009.]

Section 2. BOARD OF DIRECTORS

1. For the period beginning on the adoption of this Transition Article and ending on the Effective Date and Time of the New Board, as defined in paragraph 5 of this Section 2, the Board of Directors of the Corporation ("Transition Board") shall consist of the members of the Board who would have been Directors under the Old Bylaws immediately after the conclusion of the annual meeting in 2002, except that those At-Large members of the Board under the Old Bylaws who elect to do so by notifying the Secretary of the Board on 15 December 2002 or in writing or by e-mail no later than 23 December 2002 shall also serve as members of the Transition Board. Notwithstanding the provisions of Article VI, Section 12 of the New Bylaws, vacancies on the Transition Board shall not be filled. The Transition Board shall not have liaisons as provided by Article VI, Section 9 of the New Bylaws. The Board Committees existing on the date of adoption of this Transition Article shall continue in existence, subject to any change in Board Committees or their membership that the Transition Board may adopt by resolution.

2. The Transition Board shall elect a Chair and Vice-Chair to serve until the Effective Date and Time of the New Board.

3. The "New Board" is that Board described in Article VI, Section 2(1) of the New Bylaws.

4. Promptly after the adoption of this Transition Article, a Nominating Committee shall be formed including, to the extent feasible, the delegates and liaisons described in Article VII, Section 2 of the New Bylaws, with terms to end at the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2003. The Nominating Committee shall proceed without delay to select Directors to fill Seats 1 through 8 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for those Seats in Article VI, Section 8(1)(a)-(c) of the New Bylaws, and shall give the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of that selection.

5. The Effective Date and Time of the New Board shall be a time, as designated by the Transition Board, during the first regular meeting of ICANN (Internet Corporation for Assigned Names and Numbers) in 2003 that begins not less than seven calendar days after the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary has

received written notice of the selection of Directors to fill at least ten of Seats 1 through 14 on the New Board. As of the Effective Date and Time of the New Board, it shall assume from the Transition Board all the rights, duties, and obligations of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors. Subject to Section 4 of this Article, the Directors (Article VI, Section 2(1)(a)-(d)) and non-voting liaisons (Article VI, Section 9) as to which the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary has received notice of selection shall, along with the President (Article VI, Section 2(1)(e)), be seated upon the Effective Date and Time of the New Board, and thereafter any additional Directors and non-voting liaisons shall be seated upon the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary's receipt of notice of their selection.

6. The New Board shall elect a Chairman and Vice-Chairman as its first order of business. The terms of those Board offices shall expire at the end of the annual meeting in 2003.

7. Committees of the Board in existence as of the Effective Date and Time of the New Board shall continue in existence according to their existing charters, but the terms of all members of those committees shall conclude at the Effective Date and Time of the New Board. Temporary committees in existence as of the Effective Date and Time of the New Board shall continue in existence with their existing charters and membership, subject to any change the New Board may adopt by resolution.

8. In applying the term-limitation provision of Section 8(5) of Article VI, a Director's service on the Board before the Effective Date and Time of the New Board shall count as one term.

Section 3. ADDRESS SUPPORTING ORGANIZATION

The Address Supporting Organization (Supporting Organization) shall continue in operation according to the provisions of the Memorandum of Understanding originally entered on 18 October 1999 (/aso/aso-mou-26aug99.htm) between ICANN (Internet Corporation for Assigned Names and Numbers) and a group of regional Internet registries (RIRs), and amended in October 2000 (/aso/aso-mou-amend1-25sep00.htm), until a replacement Memorandum of Understanding becomes effective. Promptly after the

adoption of this Transition Article, the Address Supporting Organization (Supporting Organization) shall make selections, and give the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of those selections, of:

1. Directors to fill Seats 9 and 10 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for each of those Seats in Article VI, Section 8(1)(d) and (e) of the New Bylaws; and
2. the delegate to the Nominating Committee selected by the Council of the Address Supporting Organization (Supporting Organization), as called for in Article VII, Section 2(8)(f) of the New Bylaws.

With respect to the ICANN (Internet Corporation for Assigned Names and Numbers) Directors that it is entitled to select, and taking into account the need for rapid selection to ensure that the New Board becomes effective as soon as possible, the Address Supporting Organization (Supporting Organization) may select those Directors from among the persons it previously selected as ICANN (Internet Corporation for Assigned Names and Numbers) Directors pursuant to the Old Bylaws. To the extent the Address Supporting Organization (Supporting Organization) does not provide the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice, on or before 31 March 2003, of its selections for Seat 9 and Seat 10, the Address Supporting Organization (Supporting Organization) shall be deemed to have selected for Seat 9 the person it selected as an ICANN (Internet Corporation for Assigned Names and Numbers) Director pursuant to the Old Bylaws for a term beginning in 2001 and for Seat 10 the person it selected as an ICANN (Internet Corporation for Assigned Names and Numbers) Director pursuant to the Old Bylaws for a term beginning in 2002.

Section 4. COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

1. Upon the enrollment of thirty ccTLD (Country Code Top Level Domain) managers (with at least four within each Geographic Region) as members of the ccNSO (Country Code Names Supporting Organization), written notice shall be posted on the Website. As soon as feasible after that notice, the members of the initial ccNSO (Country Code Names Supporting Organization) Council to be selected by the

ccNSO (Country Code Names Supporting Organization) members shall be selected according to the procedures stated in Article IX, Section 4(8) and (9). Upon the completion of that selection process, a written notice that the ccNSO (Country Code Names Supporting Organization) Council has been constituted shall be posted on the Website. Three ccNSO (Country Code Names Supporting Organization) Council members shall be selected by the ccNSO (Country Code Names Supporting Organization) members within each Geographic Region, with one member to serve a term that ends upon the conclusion of the first ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted. (The definition of "ccTLD (Country Code Top Level Domain) manager" stated in Article IX, Section 4(1) and the definitions stated in Article IX, Section 4(4) shall apply within this Section 4 of Article XX.)

2. After the adoption of Article IX of these Bylaws, the Nominating Committee shall select the three members of the ccNSO (Country Code Names Supporting Organization) Council described in Article IX, Section 3(1)(b). In selecting three individuals to serve on the ccNSO (Country Code Names Supporting Organization) Council, the Nominating Committee shall designate one to serve a term that ends upon the conclusion of the first ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted. The three members of the ccNSO (Country Code Names Supporting Organization) Council selected by

the Nominating Committee shall not take their seats before the ccNSO (Country Code Names Supporting Organization) Council is constituted.

3. Upon the ccNSO (Country Code Names Supporting Organization) Council being constituted, the At-Large Advisory Committee (Advisory Committee) and the Governmental Advisory Committee (Advisory Committee) may designate one liaison each to the ccNSO (Country Code Names Supporting Organization) Council, as provided by Article IX, Section 3(2)(a) and (b).

4. Upon the ccNSO (Country Code Names Supporting Organization) Council being constituted, the Council may designate Regional Organizations as provided in Article IX, Section 5. Upon its designation, a Regional Organization may appoint a liaison to the ccNSO (Country Code Names Supporting Organization) Council.

5. Until the ccNSO (Country Code Names Supporting Organization) Council is constituted, Seats 11 and 12 on the New Board shall remain vacant. Promptly after the ccNSO (Country Code Names Supporting Organization) Council is constituted, the ccNSO (Country Code Names Supporting Organization) shall, through the ccNSO (Country Code Names Supporting Organization) Council, make selections of Directors to fill Seats 11 and 12 on the New Board, with terms to conclude upon the commencement of the next regular term specified for each of those Seats in Article VI, Section 8(1)(d) and (f) of the New Bylaws, and shall give the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selections.

6. Until the ccNSO (Country Code Names Supporting Organization) Council is constituted, the delegate to the Nominating Committee established by the New Bylaws designated to be selected by the ccNSO (Country Code Names Supporting Organization) shall be appointed by the Transition Board or New Board, depending on which is in existence at the time any particular appointment is required, after due consultation with members of the ccTLD (Country Code Top Level Domain) community. Upon the ccNSO (Country Code Names Supporting Organization) Council being constituted, the delegate to the Nominating Committee appointed by the Transition Board or New Board according to this Section 4(9) then serving shall remain in office, except that the ccNSO (Country Code Names Supporting Organization) Council may replace that delegate with one of its

choosing within three months after the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting, or in the event of a vacancy. Subsequent appointments of the Nominating Committee delegate described in Article VII, Section 2(8)(c) shall be made by the ccNSO (Country Code Names Supporting Organization) Council.

Section 5. GENERIC NAMES SUPPORTING ORGANIZATION

1. The Generic Names Supporting Organization (Supporting Organization) ("GNSO (Generic Names Supporting Organization)"), upon the adoption of this Transition Article, shall continue its operations; however, it shall be restructured into four new Stakeholder Groups which shall represent, organizationally, the former Constituencies of the GNSO (Generic Names Supporting Organization), subject to ICANN (Internet Corporation for Assigned Names and Numbers) Board approval of each individual Stakeholder Group Charter:

- a. The gTLD (generic Top Level Domain) Registries Constituency shall be assigned to the Registries Stakeholder Group;
- b. The Registrars Constituency shall be assigned to the Registrars Stakeholder Group;
- c. The Business Constituency shall be assigned to the Commercial Stakeholder Group;
- d. The Intellectual Property Constituency shall be assigned to the Commercial Stakeholder Group;
- e. The Internet Services Providers Constituency shall be assigned to the Commercial Stakeholder Group; and
- f. The Non-Commercial Users Constituency shall be assigned to the Non-Commercial Stakeholder Group.

2. Each GNSO (Generic Names Supporting Organization) Constituency described in paragraph 1 of this subsection shall continue

operating substantially as before and no Constituency official, working group, or other activity shall be changed until further action of the Constituency, provided that each GNSO (Generic Names Supporting Organization) Constituency described in paragraph 1 (c-f) shall submit to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary a new or revised Charter inclusive of its operating procedures, adopted according to the Constituency's processes and consistent with these Bylaws Amendments, no later than the ICANN (Internet Corporation for Assigned Names and Numbers) meeting in October 2009, or another date as the Board may designate by resolution.

3. Prior to the commencement of the ICANN (Internet Corporation for Assigned Names and Numbers) meeting in October 2009, or another date the Board may designate by resolution, the GNSO (Generic Names Supporting Organization) Council shall consist of its current Constituency structure and officers as described in Article X, Section 3(1) of the Bylaws (/en/general/archive-bylaws/bylaws-20mar09.htm#X-3.1) (as amended and restated on 29 October 1999 and amended through 20 March 2009 (the "Old Bylaws")). Thereafter, the composition of the GNSO (Generic Names Supporting Organization) Council shall be as provided in these Bylaws, as they may be amended from time to time. All committees, task forces, working groups, drafting committees, and similar groups established by the GNSO (Generic Names Supporting Organization) Council and in existence immediately before the adoption of this Transition Article shall continue in existence with the same charters, membership, and activities, subject to any change by action of the GNSO (Generic Names Supporting Organization) Council or ICANN (Internet Corporation for Assigned Names and Numbers) Board.

4. Beginning with the commencement of the ICANN (Internet Corporation for Assigned Names and Numbers) Meeting in October 2009, or another date the Board may designate by resolution (the "Effective Date of the Transition"), the GNSO (Generic Names Supporting Organization) Council seats shall be assigned as follows:

- a. The three seats currently assigned to the Registry Constituency shall be reassigned as three seats of the Registries Stakeholder Group;

- b. The three seats currently assigned to the Registrar Constituency shall be reassigned as three seats of the Registrars Stakeholder Group;
- c. The three seats currently assigned to each of the Business Constituency, the Intellectual Property Constituency, and the Internet Services Provider Constituency (nine total) shall be decreased to be six seats of the Commercial Stakeholder Group;
- d. The three seats currently assigned to the Non-Commercial Users Constituency shall be increased to be six seats of the Non-Commercial Stakeholder Group;
- e. The three seats currently selected by the Nominating Committee shall be assigned by the Nominating Committee as follows: one voting member to the Contracted Party House, one voting member to the Non-Contracted Party House, and one non-voting member assigned to the GNSO (Generic Names Supporting Organization) Council at large.

Representatives on the GNSO (Generic Names Supporting Organization) Council shall be appointed or elected consistent with the provisions in each applicable Stakeholder Group Charter, approved by the Board, and sufficiently in advance of the October 2009 ICANN (Internet Corporation for Assigned Names and Numbers) Meeting that will permit those representatives to act in their official capacities at the start of said meeting.

5. The GNSO (Generic Names Supporting Organization) Council, as part of its Restructure Implementation Plan, will document: (a) how vacancies, if any, will be handled during the transition period; (b) for each Stakeholder Group, how each assigned Council seat to take effect at the 2009 ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting will be filled, whether through a continuation of an existing term or a new election or appointment; (c) how it plans to address staggered terms such that the new GNSO (Generic Names Supporting Organization) Council preserves as much continuity as reasonably possible; and (d) the effect of Bylaws term limits on each Council member.

6. As soon as practical after the commencement of the ICANN (Internet Corporation for Assigned Names and Numbers) meeting in October 2009, or another date the Board may designate by resolution, the GNSO (Generic Names Supporting Organization) Council shall, in accordance with Article X, Section 3(7) and its GNSO (Generic Names Supporting Organization) Operating Procedures, elect officers and give the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selections.

Section 6. PROTOCOL SUPPORTING ORGANIZATION

The Protocol (Protocol) Supporting Organization (Supporting Organization) referred to in the Old Bylaws (/en/general/archive-bylaws/bylaws-12feb02.htm#VI-C) is discontinued.

Section 7. ADVISORY COMMITTEES AND TECHNICAL LIAISON GROUP

1. Upon the adoption of the New Bylaws, the Governmental Advisory Committee (Advisory Committee) shall continue in operation according to its existing operating principles and practices, until further action of the committee. The Governmental Advisory Committee (Advisory Committee) may designate liaisons to serve with other ICANN (Internet Corporation for Assigned Names and Numbers) bodies as contemplated by the New Bylaws by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary. Promptly upon the adoption of this Transition Article, the Governmental Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2 of the New Bylaws.

2. The organizations designated as members of the Technical Liaison Group under Article XI-A, Section 2(2) of the New Bylaws shall each designate the two individual technical experts described in Article XI-A, Section 2(6) of the New Bylaws, by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary. As soon as feasible, the delegate from the Technical Liaison Group to the Nominating Committee shall be selected according to Article XI-A, Section 2(7) of the New Bylaws.

3. Upon the adoption of the New Bylaws, the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2(4) of the New Bylaws.

4. Upon the adoption of the New Bylaws, the Root Server System Advisory Committee (Advisory Committee) shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Root Server Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2(3) of the New Bylaws.

5. At-Large Advisory Committee (Advisory Committee)

a. There shall exist an Interim At-Large Advisory Committee (Advisory Committee) until such time as ICANN (Internet Corporation for Assigned Names and Numbers) recognizes, through the entry of a Memorandum of Understanding, all of the Regional At-Large Organizations (RALOs) identified in Article XI, Section 2(4) of the New Bylaws. The Interim At-Large Advisory Committee (Advisory Committee) shall be composed of (i) ten individuals (two from each ICANN (Internet Corporation for Assigned Names and Numbers) region) selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Board following nominations by the At-Large Organizing Committee and (ii) five additional individuals (one from each ICANN (Internet Corporation for Assigned Names and Numbers) region) selected by the initial Nominating Committee as soon as feasible in accordance with the principles established in Article VII, Section 5 of the New Bylaws. The initial Nominating Committee

shall designate two of these individuals to serve terms until the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2004 and three of these individuals to serve terms until the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2005.

b. Upon the entry of each RALO into such a Memorandum of Understanding, that entity shall be entitled to select two persons who are citizens and residents of that Region to be members of the At-Large Advisory Committee (Advisory Committee) established by Article XI, Section 2(4) of the New Bylaws. Upon the entity's written notification to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of such selections, those persons shall immediately assume the seats held until that notification by the Interim At-Large Advisory Committee (Advisory Committee) members previously selected by the Board from the RALO's region.

c. Upon the seating of persons selected by all five RALOs, the Interim At-Large Advisory Committee (Advisory Committee) shall become the At-Large Advisory Committee (Advisory Committee), as established by Article XI, Section 2(4) of the New Bylaws. The five individuals selected to the Interim At-Large Advisory Committee (Advisory Committee) by the Nominating Committee shall become members of the At-Large Advisory Committee (Advisory Committee) for the remainder of the terms for which they were selected.

d. Promptly upon its creation, the Interim At-Large Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of the persons selected as its delegates to the Nominating Committee, as set forth in Article VII, Section 2(6) of the New Bylaws.

Section 8. OFFICERS

ICANN (Internet Corporation for Assigned Names and Numbers) officers (as defined in Article XIII of the New Bylaws) shall be elected by the then-existing

Board of ICANN (Internet Corporation for Assigned Names and Numbers) at the annual meeting in 2002 to serve until the annual meeting in 2003.

Section 9. GROUPS APPOINTED BY THE PRESIDENT

Notwithstanding the adoption or effectiveness of the New Bylaws, task forces and other groups appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) President shall continue unchanged in membership, scope, and operation until changes are made by the President.

Section 10. CONTRACTS WITH ICANN (Internet Corporation for Assigned Names and Numbers)

Notwithstanding the adoption or effectiveness of the New Bylaws, all agreements, including employment and consulting agreements, entered by ICANN (Internet Corporation for Assigned Names and Numbers) shall continue in effect according to their terms.

Annex A: GNSO (Generic Names Supporting Organization) Policy Development Process

The following process shall govern the GNSO (Generic Names Supporting Organization) policy development process ("PDP (Policy Development Process)") until such time as modifications are recommended to and approved by the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors ("Board"). The role of the GNSO (Generic Names Supporting Organization) is outlined in Article X of these Bylaws. If the GNSO (Generic Names Supporting Organization) is conducting activities that are not intended to result in a Consensus (Consensus) Policy, the Council may act through other processes.

Section 1. Required Elements of a Policy Development Process

The following elements are required at a minimum to form Consensus (Consensus) Policies as defined within ICANN (Internet Corporation for Assigned Names and Numbers) contracts, and any other policies for which the GNSO (Generic Names Supporting Organization) Council requests application of this Annex A:

- a. Final Issue Report requested by the Board, the GNSO (Generic Names Supporting Organization) Council ("Council") or Advisory Committee (Advisory Committee), which should include at a minimum
 - a) the proposed issue raised for consideration, b) the identity of the party submitting the issue, and c) how that party is affected by the issue;
- b. Formal initiation of the Policy Development Process by the Council;
- c. Formation of a Working Group or other designated work method;
- d. Initial Report produced by a Working Group or other designated work method;
- e. Final Report produced by a Working Group, or other designated work method, and forwarded to the Council for deliberation;
- f. Council approval of PDP (Policy Development Process) Recommendations contained in the Final Report, by the required thresholds;
- g. PDP (Policy Development Process) Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council]; and
- h. Board approval of PDP (Policy Development Process) Recommendations.

Section 2. **Policy Development Process Manual**

The GNSO (Generic Names Supporting Organization) shall maintain a Policy Development Process Manual (PDP (Policy Development Process) Manual) within the operating procedures of the GNSO (Generic Names Supporting Organization) maintained by the GNSO (Generic Names Supporting Organization) Council. The PDP (Policy Development Process) Manual shall contain specific additional guidance on completion of all elements of a PDP (Policy Development Process), including those elements that are not otherwise defined in these Bylaws. The PDP (Policy Development Process) Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Article X, Section 3.6.

Section 3. Requesting an Issue Report

Board Request. The Board may request an Issue Report by instructing the GNSO (Generic Names Supporting Organization) Council ("Council") to begin the process outlined the PDP (Policy Development Process) Manual. In the event the Board makes a request for an Issue Report, the Board should provide a mechanism by which the GNSO (Generic Names Supporting Organization) Council can consult with the Board to provide information on the scope, timing, and priority of the request for an Issue Report.

Council Request. The GNSO (Generic Names Supporting Organization) Council may request an Issue Report by a vote of at least one-fourth (1/4) of the members of the Council of each House or a majority of one House.

Advisory Committee (Advisory Committee) Request. An Advisory Committee (Advisory Committee) may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO (Generic Names Supporting Organization) Council.

Section 4. Creation of an Issue Report

Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a properly supported motion from the GNSO (Generic Names Supporting Organization) Council; or (iii) a properly supported motion from an Advisory Committee (Advisory Committee), the Staff Manager will create a report (a "Preliminary Issue Report"). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report.

The following elements should be considered in the Issue Report:

- a) The proposed issue raised for consideration;
- b) The identity of the party submitting the request for the Issue Report;
- c) How that party is affected by the issue, if known;
- d) Support for the issue to initiate the PDP (Policy Development Process), if known;

e) The opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers)'s mission, policy process and more specifically the role of the GNSO (Generic Names Supporting Organization) as set forth in the Bylaws.

f) The opinion of ICANN (Internet Corporation for Assigned Names and Numbers) Staff as to whether the Council should initiate the PDP (Policy Development Process) on the issue

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the ICANN (Internet Corporation for Assigned Names and Numbers) website for a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Preliminary Issue Report and producing a Final Issue Report based upon the comments received. The Staff Manager should forward the Final Issue Report, along with any summary and analysis of the public comments received, to the Chair of the GNSO (Generic Names Supporting Organization) Council for consideration for initiation of a PDP (Policy Development Process).

Section 5. Initiation of the PDP (Policy Development Process)

The Council may initiate the PDP (Policy Development Process) as follows:

Board Request: If the Board requested an Issue Report, the Council, within the timeframe set forth in the PDP (Policy Development Process) Manual, shall initiate a PDP (Policy Development Process). No vote is required for such action.

GNSO (Generic Names Supporting Organization) Council or Advisory Committee (Advisory Committee) Requests: The Council may only initiate the PDP (Policy Development Process) by a vote of the Council. Initiation of a PDP (Policy Development Process) requires a vote as set forth in Article X, Section 3, paragraph 9(b) and (c) in favor of initiating the PDP (Policy Development Process).

Section 6. **Reports**

An Initial Report should be delivered to the GNSO (Generic Names Supporting Organization) Council and posted for a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), which time may be extended in accordance with the PDP (Policy Development Process) Manual. Following the review of the comments received and, if required, additional deliberations, a Final Report shall be produced for transmission to the Council.

Section 7. **Council Deliberation**

Upon receipt of a Final Report, whether as the result of a working group or otherwise, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP (Policy Development Process) Manual.

The Council approval process is set forth in Article X, Section 3, paragraph 9(d) through (g), as supplemented by the PDP (Policy Development Process) Manual.

Section 8. **Preparation of the Board Report**

If the PDP (Policy Development Process) recommendations contained in the Final Report are approved by the GNSO (Generic Names Supporting Organization) Council, a Recommendations Report shall be approved by the GNSO (Generic Names Supporting Organization) Council for delivery to the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

Section 9. **Board Approval Processes**

The Board will meet to discuss the GNSO (Generic Names Supporting Organization) Council recommendation as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the PDP (Policy Development Process) Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any PDP (Policy Development Process) Recommendations approved by a GNSO (Generic Names Supporting Organization)

Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). If the GNSO (Generic Names Supporting Organization) Council recommendation was approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO (Generic Names Supporting Organization) Supermajority Vote or less than a GNSO (Generic Names Supporting Organization) Supermajority vote is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers) (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO (Generic Names Supporting Organization) Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). For any Supplemental

Recommendation approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

Section 10. **Implementation of Approved Policies**

Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give authorization or direction to ICANN (Internet Corporation for Assigned Names and Numbers) staff to work with the GNSO (Generic Names Supporting Organization) Council to create an implementation plan based upon the implementation recommendations identified in the Final Report, and to implement the policy. The GNSO (Generic Names Supporting Organization) Council may, but is not required to, direct the creation of an implementation review team to assist in implementation of the policy.

Section 11. **Maintenance of Records**

Throughout the PDP (Policy Development Process), from policy suggestion to a final decision by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) will maintain on the Website, a status web page detailing the progress of each PDP (Policy Development Process) issue. Such status page will outline the completed and upcoming steps in the PDP (Policy Development Process) process, and contain links to key resources (e.g. Reports, Comments Fora, WG (Working Group) Discussions, etc.).

Section 12. **Additional Definitions**

"Comment Site", "Comment Forum", "Comments For a" and "Website" refer to one or more websites designated by ICANN (Internet Corporation for Assigned Names and Numbers) on which notifications and comments regarding the PDP (Policy Development Process) will be posted.

"Supermajority Vote" means a vote of more than sixty-six (66) percent of the members present at a meeting of the applicable body, with the exception of the GNSO (Generic Names Supporting Organization) Council.

"Staff Manager" means an ICANN (Internet Corporation for Assigned Names and Numbers) staff person(s) who manages the PDP (Policy Development

Process).

"GNSO (Generic Names Supporting Organization) Supermajority Vote" shall have the meaning set forth in the Bylaws.

Section 13. **Applicability**

The procedures of this Annex A shall be applicable to all requests for Issue Reports and PDPs initiated after 8 December 2011. For all ongoing PDPs initiated prior to 8 December 2011, the Council shall determine the feasibility of transitioning to the procedures set forth in this Annex A for all remaining steps within the PDP (Policy Development Process). If the Council determines that any ongoing PDP (Policy Development Process) cannot be feasibly transitioned to these updated procedures, the PDP (Policy Development Process) shall be concluded according to the procedures set forth in Annex A in force on 7 December 2011.

Annex B: ccNSO (Country Code Names Supporting Organization) Policy-Development Process (ccPDP)

The following process shall govern the ccNSO (Country Code Names Supporting Organization) policy-development process ("PDP (Policy Development Process)").

1. **Request for an Issue Report**

An Issue Report may be requested by any of the following:

- a. *Council*. The ccNSO (Country Code Names Supporting Organization) Council (in this Annex B, the "Council") may call for the creation of an Issue Report by an affirmative vote of at least seven of the members of the Council present at any meeting or voting by e-mail.
- b. *Board*. The ICANN (Internet Corporation for Assigned Names and Numbers) Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.
- c. *Regional Organization*. One or more of the Regional Organizations representing ccTLDs in the ICANN (Internet Corporation for Assigned Names and Numbers) recognized Regions may call for creation of an

Issue Report by requesting the Council to begin the policy-development process.

d. ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee). An ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or an ICANN (Internet Corporation for Assigned Names and Numbers) Advisory Committee (Advisory Committee) may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

e. Members of the ccNSO (Country Code Names Supporting Organization). The members of the ccNSO (Country Code Names Supporting Organization) may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO (Country Code Names Supporting Organization) present at any meeting or voting by e-mail.

Any request for an Issue Report must be in writing and must set out the issue upon which an Issue Report is requested in sufficient detail to enable the Issue Report to be prepared. It shall be open to the Council to request further information or undertake further research or investigation for the purpose of determining whether or not the requested Issue Report should be created.

2. Creation of the Issue Report and Initiation Threshold

Within seven days after an affirmative vote as outlined in Item 1(a) above or the receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (Internet Corporation for Assigned Names and Numbers) (in which case the costs of the Issue Manager shall be borne by ICANN (Internet Corporation for Assigned Names and Numbers)) or such other person or persons selected by the Council (in which case the ccNSO (Country Code Names Supporting Organization) shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the issue;
- c. How that party is affected by the issue;
- d. Support for the issue to initiate the PDP (Policy Development Process);
- e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP (Policy Development Process) for this issue (the "Manager Recommendation"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) policy process and within the scope of the ccNSO (Country Code Names Supporting Organization). In coming to his or her opinion, the General Counsel shall examine whether:

- 1) The issue is within the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission statement;
- 2) Analysis of the relevant factors according to Article IX, Section 6(2) and Annex C affirmatively demonstrates that the issue is within the scope of the ccNSO (Country Code Names Supporting Organization);

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

- 3) Implicates or affects an existing ICANN (Internet Corporation for Assigned Names and Numbers) policy;
- 4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Country Code Names Supporting Organization) (Annex C) shall be within the scope of ICANN (Internet Corporation for Assigned Names and Numbers) and the ccNSO (Country Code Names Supporting Organization).

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO (Country Code Names Supporting Organization) Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Article IX, Section 6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO (Country Code Names Supporting Organization) shall inform the Issue Manager accordingly. General Counsel and the ccNSO (Country Code Names Supporting Organization) Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the ccNSO (Country Code Names Supporting Organization) then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO (Country Code Names Supporting Organization) shall inform General Counsel and the Issue Manager accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should move to initiate the PDP (Policy Development Process) including both the opinion and analysis of General Counsel and Council in the Issues Report.

f. In the event that the Manager Recommendation is in favor of initiating the PDP (Policy Development Process), a proposed time line for conducting each of the stages of PDP (Policy Development Process) outlined herein (PDP (Policy Development Process) Time Line).

g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the ICANN (Internet Corporation for Assigned Names and Numbers) Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue

Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP (Policy Development Process).

3. Initiation of PDP (Policy Development Process)

The Council shall decide whether to initiate the PDP (Policy Development Process) as follows:

- a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP (Policy Development Process). Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.
- b. A vote of ten or more Council members in favor of initiating the PDP (Policy Development Process) shall be required to initiate the PDP (Policy Development Process) provided that the Issue Report states that the issue is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) mission statement and the ccNSO (Country Code Names Supporting Organization) Scope.

4. Decision Whether to Appoint Task Force; Establishment of Time Line

At the meeting of the Council where the PDP (Policy Development Process) has been initiated (or, where the Council employs a vote by e-mail, in that vote) pursuant to Item 3 above, the Council shall decide, by a majority vote of members present at the meeting (or voting by e-mail), whether or not to appoint a task force to address the issue. If the Council votes:

- a. In favor of convening a task force, it shall do so in accordance with Item 7 below.
- b. Against convening a task force, then it shall collect information on the policy issue in accordance with Item 8 below.

The Council shall also, by a majority vote of members present at the meeting or voting by e-mail, approve or amend and approve the PDP (Policy Development Process) Time Lineset out in the Issue Report.

5. Composition and Selection of Task Forces

a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see Article IX, Section 6) to appoint two individuals to participate in the task force (the "Representatives"). Additionally, the Council may appoint up to three advisors (the "Advisors") from outside the ccNSO (Country Code Names Supporting Organization) and, following formal request for GAC (Governmental Advisory Committee) participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee (Advisory Committee) to sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.

b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and expertise, in the subject matter, coupled with the ability to devote a substantial amount of time to the task force's activities.

c. The Council may also pursue other actions that it deems appropriate to assist in the PDP (Policy Development Process), including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager in accordance with the PDP (Policy Development Process) Time Line.

6. Public Notification of Initiation of the PDP (Policy Development Process) and Comment Period

After initiation of the PDP (Policy Development Process), ICANN (Internet Corporation for Assigned Names and Numbers) shall post a notification of such action to the Website and to the other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees). A comment period (in accordance with the PDP (Policy Development Process) Time Line, and ordinarily at least 21 days long) shall be commenced for the issue.

Comments shall be accepted from ccTLD (Country Code Top Level Domain) managers, other Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and from the public. The Issue Manager, or some other designated Council representative shall review the comments and incorporate them into a report (the "Comment Report") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

7. Task Forces

a. *Role of Task Force.* If a task force is created, its role shall be responsible for (i) gathering information documenting the positions of the ccNSO (Country Code Names Supporting Organization) members within the Geographic Regions and other parties and groups; and (ii) otherwise obtaining relevant information that shall enable the Task Force Report to be as complete and informative as possible to facilitate the Council's meaningful and informed deliberation.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Issue Manager, shall develop a charter or terms of reference for the task force (the "Charter") within the time designated in the PDP (Policy Development Process) Time Line. Such Charter shall include:

1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP (Policy Development Process);
2. The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline; and
3. Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice

of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present at a meeting or voting by e-mail. The quorum requirements of Article IX, Section 3(14) shall apply to Council actions under this Item 7(b).

c. Appointment of Task Force Chair. The Issue Manager shall convene the first meeting of the task force within the time designated in the PDP (Policy Development Process) Time Line. At the initial meeting, the task force members shall, among other things, vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force, including compiling the Task Force Report. The chair of a task force need not be a member of the Council.

d. Collection of Information.

1. Regional Organization Statements. The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and may solicit other comments, as each Representative deems appropriate, including the comments of the ccNSO (Country Code Names Supporting Organization) members in that region that are not members of the Regional Organization, regarding the issue under consideration. The position of the Regional Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each, a "Regional Statement") within the time designated in the PDP (Policy Development Process) Time Line. Every Regional Statement shall include at least the following:

- (i) If a Supermajority Vote (as defined by the Regional Organization) was reached, a clear statement of the Regional Organization's position on the issue;

(ii) If a Supermajority Vote was not reached, a clear statement of all positions espoused by the members of the Regional Organization;

(iii) A clear statement of how the Regional Organization arrived at its position(s). Specifically, the statement should detail specific meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;

(iv) A statement of the position on the issue of any ccNSO (Country Code Names Supporting Organization) members that are not members of the Regional Organization;

(v) An analysis of how the issue would affect the Region, including any financial impact on the Region; and

(vi) An analysis of the period of time that would likely be necessary to implement the policy.

2. *Outside Advisors.* The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP (Policy Development Process) Time Line.

e. *Task Force Report.* The chair of the task force, working with the Issue Manager, shall compile the Regional Statements, the Comment Report, and other information or reports, as applicable, into a single document ("Preliminary Task Force Report") and distribute the Preliminary Task Force Report to the full task force within the time designated in the PDP (Policy Development Process) Time Line. The task force shall have a final task force meeting to consider the issues and try and reach a Supermajority Vote. After the final task force meeting, the chair of the task force and the Issue Manager shall create the final task force report (the "Task Force Report") and post it on the

Website and to the other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees). Each Task Force Report must include:

1. A clear statement of any Supermajority Vote (being 66% of the task force) position of the task force on the issue;
2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the time line for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the Regional Organizations that held the position;
3. An analysis of how the issue would affect each Region, including any financial impact on the Region;
4. An analysis of the period of time that would likely be necessary to implement the policy; and
5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience and (ii) potential conflicts of interest.

8. Procedure if No Task Force is Formed

- a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP (Policy Development Process) Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP (Policy Development Process) Time Line.
- b. The Council may, in its discretion, take other steps to assist in the PDP (Policy Development Process), including, for example, appointing a particular individual or organization, to gather information on the issue or scheduling meetings for deliberation or briefing. All such

information shall be submitted to the Issue Manager within the time designated in the PDP (Policy Development Process) Time Line.

c. The Council shall formally request the Chair of the GAC (Governmental Advisory Committee) to offer opinion or advice.

d. The Issue Manager shall take all Regional Statements, the Comment Report, and other information and compile (and post on the Website) an Initial Report within the time designated in the PDP (Policy Development Process) Time Line. Thereafter, the Issue Manager shall, in accordance with Item 9 below, create a Final Report.

9. Comments to the Task Force Report or Initial Report

a. A comment period (in accordance with the PDP (Policy Development Process) Time Line, and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or Initial Report. Comments shall be accepted from ccTLD (Country Code Top Level Domain) managers, other Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and from the public. All comments shall include the author's name, relevant experience, and interest in the issue.

b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue Manager's reasonable discretion, add appropriate comments to the Task Force Report or Initial Report, to prepare the "Final Report". The Issue Manager shall not be obligated to include all comments made during the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.

c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP (Policy Development Process) Time Line.

10. Council Deliberation

a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair shall (i) distribute the Final Report to all Council members; (ii) call for a Council meeting within the time

designated in the PDP (Policy Development Process) Time Line wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC (Governmental Advisory Committee) Chair an invitation to the GAC (Governmental Advisory Committee) to offer opinion or advice. Such meeting may be held in any manner deemed appropriate by the Council, including in person or by conference call. The Issue Manager shall be present at the meeting.

b. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions, or any other means the Council may choose.

c. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as coming from an outside advisor; and (iii) accompanied by a detailed statement of the advisor's (a) qualifications and relevant experience and (b) potential conflicts of interest.

11. Recommendation of the Council

In considering whether to make a recommendation on the issue (a "Council Recommendation"), the Council shall seek to act by consensus. If a minority opposes a consensus position, that minority shall prepare and circulate to the Council a statement explaining its reasons for opposition. If the Council's discussion of the statement does not result in consensus, then a recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council, and shall be conveyed to the Members as the Council's Recommendation. Notwithstanding the foregoing, as outlined below, all viewpoints expressed by Council members during the PDP (Policy Development Process) must be included in the Members Report.

12. Council Report to the Members

In the event that a Council Recommendation is adopted pursuant to Item 11 then the Issue Manager shall, within seven days after the Council meeting, incorporate the Council's Recommendation together with any other viewpoints of the Council members into a Members Report to be approved by

the Council and then to be submitted to the Members (the "Members Report"). The Members Report must contain at least the following:

- a. A clear statement of the Council's recommendation;
- b. The Final Report submitted to the Council; and
- c. A copy of the minutes of the Council's deliberation on the policy issue (see Item 10), including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

13. Members Vote

Following the submission of the Members Report and within the time designated by the PDP (Policy Development Process) Time Line, the ccNSO (Country Code Names Supporting Organization) members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP (Policy Development Process) Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes in the first round of voting, the first round will not be employed and the results of a final, second round of voting, conducted after at least thirty days notice to the ccNSO (Country Code Names Supporting Organization) members, will be employed if at least 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO (Country Code Names Supporting Organization) Recommendation.

14. Board Report

The Issue Manager shall within seven days after a ccNSO (Country Code Names Supporting Organization) Recommendation being made in accordance with Item 13 incorporate the ccNSO (Country Code Names Supporting Organization) Recommendation into a report to be approved by the Council and then to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:

- a. A clear statement of the ccNSO (Country Code Names Supporting Organization) recommendation;
- b. The Final Report submitted to the Council; and
- c. the Members' Report.

15. Board Vote

- a. The Board shall meet to discuss the ccNSO (Country Code Names Supporting Organization) Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.
- b. The Board shall adopt the ccNSO (Country Code Names Supporting Organization) Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or of ICANN (Internet Corporation for Assigned Names and Numbers).
 1. In the event that the Board determines not to act in accordance with the ccNSO (Country Code Names Supporting Organization) Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO (Country Code Names Supporting Organization) Recommendation in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
 2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and

Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "Supplemental Recommendation"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13. In the event that more than 66% of the votes cast by ccNSO (Country Code Names Supporting Organization) Members during the voting period are in favor of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that acceptance of such policy would constitute a breach of the fiduciary duties of the Board to the Company.

4. In the event that the Board does not accept the ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, it shall state its reasons for doing so in its final decision ("Supplemental Board Statement").

5. In the event the Board determines not to accept a ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO (Country Code Names Supporting Organization) shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

16. Implementation of the Policy

Upon adoption by the Board of a ccNSO (Country Code Names Supporting Organization) Recommendation or ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN (Internet Corporation for Assigned Names and Numbers) staff to implement the policy.

17. Maintenance of Records

With respect to each ccPDP for which an Issue Report is requested (see Item 1), ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain on the Website a status web page detailing the progress of each ccPDP, which shall provide a list of relevant dates for the ccPDP and shall also link to the following documents, to the extent they have been prepared pursuant to the ccPDP:

- a. Issue Report;
- b. PDP (Policy Development Process) Time Line;
- c. Comment Report;
- d. Regional Statement(s);
- e. Preliminary Task Force Report;
- f. Task Force Report;
- g. Initial Report;
- h. Final Report;
- i. Members' Report;
- j. Board Report;
- k. Board Statement;
- l. Supplemental Members' Report; and
- m. Supplemental Board Statement.

In addition, ICANN (Internet Corporation for Assigned Names and Numbers) shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

Annex C: The Scope of the ccNSO (Country Code Names Supporting Organization)

This annex describes the scope and the principles and method of analysis to be used in any further development of the scope of the ccNSO (Country Code Names Supporting Organization)'s policy-development role. As provided in Article IX, Section 6(2) of the Bylaws, that scope shall be defined according to the procedures of the ccPDP.

The scope of the ccNSO (Country Code Names Supporting Organization)'s authority and responsibilities must recognize the complex relation between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers/registries with regard to policy issues. This annex shall assist the ccNSO (Country Code Names Supporting Organization), the ccNSO (Country Code Names Supporting Organization) Council, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board and staff in delineating relevant global policy issues.

Policy areas

The ccNSO (Country Code Names Supporting Organization)'s policy role should be based on an analysis of the following functional model of the DNS (Domain Name System):

1. Data is registered/maintained to generate a zone file,
2. A zone file is in turn used in TLD (Top Level Domain) name servers.

Within a TLD (Top Level Domain) two functions have to be performed (these are addressed in greater detail below):

1. Entering data into a database (Data Entry Function) and

2. Maintaining and ensuring upkeep of name-servers for the TLD (Top Level Domain) (Name Server Function).

These two core functions must be performed at the ccTLD (Country Code Top Level Domain) registry level as well as at a higher level (IANA (Internet Assigned Numbers Authority) function and root servers) and at lower levels of the DNS (Domain Name System) hierarchy. This mechanism, as RFC (Request for Comments) 1591 points out, is recursive:

There are no requirements on sub domains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all sub domains shall be allowed to operate their own domain name servers, providing in them whatever information the sub domain manager sees fit (as long as it is true and correct).

The Core Functions

1. Data Entry Function (DEF):

Looking at a more detailed level, the first function (entering and maintaining data in a database) should be fully defined by a naming policy. This naming policy must specify the rules and conditions:

(a) under which data will be collected and entered into a database or data changed (at the TLD (Top Level Domain) level among others, data to reflect a transfer from registrant to registrant or changing registrar) in the database.

(b) for making certain data generally and publicly available (be it, for example, through Whois or nameservers).

2. The Name-Server Function (NSF (National Science Foundation (USA)))

The name-server function involves essential interoperability and stability issues at the heart of the domain name system. The importance of this function extends to nameservers at the ccTLD (Country Code Top Level Domain) level, but also to the root servers (and root-server system) and nameservers at lower levels.

On its own merit and because of interoperability and stability considerations, properly functioning nameservers are of utmost importance to the individual, as well as to the local and the global Internet communities.

With regard to the nameserver function, therefore, policies need to be defined and established. Most parties involved, including the majority of ccTLD (Country Code Top Level Domain) registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC (Request for Comments) 1591.

Respective Roles with Regard to Policy, Responsibilities, and Accountabilities

It is in the interest of ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers to ensure the stable and proper functioning of the domain name system. ICANN (Internet Corporation for Assigned Names and Numbers) and the ccTLD (Country Code Top Level Domain) registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO (Country Code Names Supporting Organization) cannot be established without reaching a common understanding of the allocation of authority between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) registries.

Three roles can be distinguished as to which responsibility must be assigned on any given issue:

- Policy role: i.e. the ability and power to define a policy;
- Executive role: i.e. the ability and power to act upon and implement the policy; and
- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.

Firstly, responsibility presupposes a policy and this delineates the policy role. Depending on the issue that needs to be addressed those who are involved in defining and setting the policy need to be determined and defined. Secondly, this presupposes an executive role defining the power to implement and act within the boundaries of a policy. Finally, as a counter-balance to the executive role, the accountability role needs to be defined and determined.

The information below offers an aid to:

1. delineate and identify specific policy areas;
2. define and determine roles with regard to these specific policy areas.

This annex defines the scope of the ccNSO (Country Code Names Supporting Organization) with regard to developing policies. The scope is limited to the policy role of the ccNSO (Country Code Names Supporting Organization) policy-development process for functions and levels explicitly stated below. It is anticipated that the accuracy of the assignments of policy, executive, and accountability roles shown below will be considered during a scope-definition ccPDP process.

Name Server Function (as to ccTLDs)

Level 1: Root Name Servers

Policy role: IETF (Internet Engineering Task Force), RSSAC (Root Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers))

Executive role: Root Server System Operators

Accountability role: RSSAC (Root Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers)), (US DoC-ICANN (Internet Corporation for Assigned Names and Numbers) MoU (Memorandum of Understanding))

Level 2: ccTLD (Country Code Top Level Domain) Registry Name Servers in respect to interoperability

Policy role: ccNSO (Country Code Names Supporting Organization)

Policy Development Process (ICANN (Internet Corporation for Assigned Names and Numbers)), for best practices a ccNSO (Country Code Names Supporting Organization) process can be organized

Executive role: ccTLD (Country Code Top Level Domain) Manager

Accountability role: part ICANN (Internet Corporation for Assigned Names and Numbers) (IANA (Internet Assigned Numbers Authority)), part Local Internet Community, including local government

Level 3: User's Name Servers

Policy role: ccTLD (Country Code Top Level Domain) Manager, IETF (Internet Engineering Task Force) (RFC (Request for Comments))

Executive role: Registrant (Registrant)

Accountability role: ccTLD (Country Code Top Level Domain) Manager

Data Entry Function (as to ccTLDs)

Level 1: Root Level Registry

Policy role: ccNSO (Country Code Names Supporting Organization)

Policy Development Process (ICANN (Internet Corporation for Assigned Names and Numbers))

Executive role: ICANN (Internet Corporation for Assigned Names and Numbers) (IANA (Internet Assigned Numbers Authority))

Accountability role: ICANN (Internet Corporation for Assigned Names and Numbers) community, ccTLD (Country Code Top Level Domain) Managers, US DoC, (national authorities in some cases)

Level 2: ccTLD (Country Code Top Level Domain) Registry

Policy role: Local Internet Community, including local government, and/or ccTLD (Country Code Top Level Domain) Manager according to local structure

Executive role: ccTLD (Country Code Top Level Domain) Manager

Accountability role: Local Internet Community, including national authorities in some cases

Level 3: Second and Lower Levels

Policy role: Registrant (Registrant)

Executive role: Registrant (Registrant)

Accountability role: Registrant (Registrant), users of lower-level domain names

Annex 4

BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS | A California Nonprofit Public-Benefit Corporation

Note: this page is an archive of an old version of the bylaws. The current ICANN (Internet Corporation for Assigned Names and Numbers) bylaws are always available at:

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

As amended 1 October 2016

ARTICLE 1 MISSION, COMMITMENTS AND CORE VALUES

ARTICLE 2 POWERS

ARTICLE 3 TRANSPARENCY

ARTICLE 4 ACCOUNTABILITY AND REVIEW

ARTICLE 5 OMBUDSMAN

ARTICLE 6 EMPOWERED COMMUNITY

ARTICLE 7 BOARD OF DIRECTORS

ARTICLE 8 NOMINATING COMMITTEE

ARTICLE 9 ADDRESS SUPPORTING ORGANIZATION

ARTICLE 10 COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

ARTICLE 11 GENERIC NAMES SUPPORTING ORGANIZATION

ARTICLE 12 ADVISORY COMMITTEES

ARTICLE 13 OTHER ADVISORY MECHANISMS

ARTICLE 14 BOARD AND TEMPORARY COMMITTEES

ARTICLE 15 OFFICERS

ARTICLE 16 POST-TRANSITION IANA (Internet Assigned Numbers Authority) ENTITY

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ARTICLE 18 IANA (Internet Assigned Numbers Authority) NAMING FUNCTION REVIEWS

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ARTICLE 20 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

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ARTICLE 23 MEMBERS

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ARTICLE 25 AMENDMENTS

ARTICLE 26 SALE OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF ICANN (Internet Corporation for Assigned Names and Numbers)'S ASSETS

ARTICLE 27 TRANSITION ARTICLE

ANNEX A: GNSO (Generic Names Supporting Organization) POLICY DEVELOPMENT PROCESS

ANNEX A-1: GNSO (Generic Names Supporting Organization) EXPEDITED POLICY DEVELOPMENT PROCESS

ANNEX A-2: GNSO (Generic Names Supporting Organization) GUIDANCE PROCESS

ANNEX B: CCNSO POLICY-DEVELOPMENT PROCESS

ANNEX C: THE SCOPE OF THE CCNSO

ANNEX D: EC (Empowered Community) MECHANISM

ANNEX E: CARETAKER ICANN (Internet Corporation for Assigned Names and Numbers) BUDGET PRINCIPLES

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ANNEX G-1

ANNEX G-2

ARTICLE 1 MISSION, COMMITMENTS AND CORE VALUES

Section 1.1. MISSION

(a) The mission of the Internet Corporation for Assigned Names and Numbers ("**ICANN (Internet Corporation for Assigned Names and Numbers)**") is to ensure the stable and secure operation of the Internet's unique identifier systems as described in this Section 1.1(a) (the "**Mission**"). Specifically, ICANN (Internet Corporation for Assigned Names and Numbers):

(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name (Domain Name) System ("**DNS (Domain Name System)**") and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains ("**gTLDs**"). In this role, ICANN (Internet Corporation for Assigned Names and Numbers)'s scope is to coordinate the development and implementation of policies:

- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS (Domain Name System) including, with respect to gTLD (generic Top Level Domain) registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and

- That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.

The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 with respect to gTLD (generic Top Level Domain) registrars and registries shall be deemed to be within ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission.

(ii) Facilitates the coordination of the operation and evolution of the DNS (Domain Name System) root name server system.

(iii) Coordinates the allocation and assignment at the top-most level of Internet Protocol (Protocol) numbers and Autonomous System numbers. In service of its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) (A) provides registration services and open access for global number registries as requested by the Internet Engineering Task Force ("**IETF (Internet Engineering Task Force)**") and the Regional Internet Registries ("**RIRs**") and (B) facilitates the development of global number registry policies by the affected community and other related tasks as agreed with the RIRs.

(iv) Collaborates with other bodies as appropriate to provide registries needed for the functioning of the Internet as specified by Internet protocol standards development organizations. In service of its Mission, ICANN (Internet Corporation for Assigned Names and Numbers)'s scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall not act outside its Mission.

(c) ICANN (Internet Corporation for Assigned Names and Numbers) shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN (Internet Corporation for Assigned Names and Numbers) does not hold any governmentally authorized regulatory authority.

(d) For the avoidance of doubt and notwithstanding the foregoing:

(i) the foregoing prohibitions are not intended to limit ICANN (Internet Corporation for Assigned Names and Numbers)'s authority or ability to adopt or implement policies or procedures that take into account the use of domain names as natural-language identifiers;

(ii) Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through (C) below, and ICANN (Internet Corporation for Assigned Names and Numbers)'s performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (Internet Corporation for Assigned Names and Numbers) (including a request for reconsideration or an independent review process pursuant to Article 4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission or otherwise exceed the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s authority or powers pursuant to these Bylaws ("**Bylaws**") or ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation ("**Articles of Incorporation**"):

(A)

(1) all registry agreements and registrar accreditation agreements between ICANN (Internet Corporation for Assigned Names and Numbers) and registry operators or registrars in force on 1 October 2016 ^[1], including, in each case, any terms or conditions therein that are not contained in the underlying form of registry agreement and registrar accreditation agreement;

(2) any registry agreement or registrar accreditation agreement not encompassed by (1) above to the extent its terms do not vary materially from the form of registry agreement or registrar accreditation agreement that existed on 1 October 2016;

(B) any renewals of agreements described in subsection (A) pursuant to their terms and conditions for renewal; and

(C) ICANN (Internet Corporation for Assigned Names and Numbers)'s Five-Year Strategic Plan and Five-Year Operating Plan (Five-Year

Operating Plan) existing on 10 March 2016.

(iii) Section 1.1(d)(ii) does not limit the ability of a party to any agreement described therein to challenge any provision of such agreement on any other basis, including the other party's interpretation of the provision, in any proceeding or process involving ICANN (Internet Corporation for Assigned Names and Numbers).

(iv) ICANN (Internet Corporation for Assigned Names and Numbers) shall have the ability to negotiate, enter into and enforce agreements, including public interest commitments, with any party in service of its Mission.

Section 1.2. COMMITMENTS AND CORE VALUES

In performing its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) will act in a manner that complies with and reflects ICANN (Internet Corporation for Assigned Names and Numbers)'s Commitments and respects ICANN (Internet Corporation for Assigned Names and Numbers)'s Core Values, each as described below.

(a) COMMITMENTS

In performing its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN (Internet Corporation for Assigned Names and Numbers) commits to do the following (each, a "**Commitment**," and collectively, the "**Commitments**"):

(i) Preserve and enhance the administration of the DNS (Domain Name System) and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS (Domain Name System) and the Internet;

(ii) Maintain the capacity and ability to coordinate the DNS (Domain Name System) at the overall level and work for the maintenance of a

single, interoperable Internet;

(iii) Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN (Internet Corporation for Assigned Names and Numbers)'s activities to matters that are within ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission and require or significantly benefit from global coordination;

(iv) Employ open, transparent and bottom-up, multistakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities. These processes shall (A) seek input from the public, for whose benefit ICANN (Internet Corporation for Assigned Names and Numbers) in all events shall act, (B) promote well-informed decisions based on expert advice, and (C) ensure that those entities most affected can assist in the policy development process;

(v) Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties); and

(vi) Remain accountable to the Internet community through mechanisms defined in these Bylaws that enhance ICANN (Internet Corporation for Assigned Names and Numbers)'s effectiveness.

(b) CORE VALUES

In performing its Mission, the following "**Core Values**" should also guide the decisions and actions of ICANN (Internet Corporation for Assigned Names and Numbers):

(i) To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of, other responsible entities that reflect the interests of affected parties and the roles of bodies internal to ICANN (Internet Corporation for Assigned Names and Numbers) and relevant external expert bodies;

(ii) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;

(iii) Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment in the DNS (Domain Name System) market;

(iv) Introducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process;

(v) Operating with efficiency and excellence, in a fiscally responsible and accountable manner and, where practicable and not inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s other obligations under these Bylaws, at a speed that is responsive to the needs of the global Internet community;

(vi) While remaining rooted in the private sector (including business stakeholders, civil society, the technical community, academia, and end users), recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities;

(vii) Striving to achieve a reasonable balance between the interests of different stakeholders, while also avoiding capture; and

(viii) Subject to the limitations set forth in Section 27.2, within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create, and shall not be interpreted to create, any obligation on ICANN (Internet Corporation for Assigned Names and Numbers) outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate ICANN (Internet Corporation for Assigned Names and Numbers) to enforce its human rights obligations, or the human rights obligations of other parties, against other parties.

(c) The Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN (Internet Corporation for Assigned Names and Numbers)'s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN (Internet Corporation for Assigned Names and Numbers)'s activities. The specific way in which Core Values are applied, individually and collectively, to any given situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. Accordingly, in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission.

ARTICLE 2 POWERS

Section 2.1. GENERAL POWERS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board (as defined in Section 7.1). With respect to any matters that would fall within the provisions of Section 3.6(a)-(c), the Board may act only by a majority vote of all Directors. In all other matters, except as otherwise provided in these Bylaws or by law, the Board may act by majority vote of the Directors present at any annual, regular, or special meeting of the Board. Any references in these Bylaws to a vote of the Board shall mean the vote of only those Directors present at the meeting where a quorum is present unless otherwise specifically provided in these Bylaws by reference to "of all Directors."

Section 2.2. RESTRICTIONS

ICANN (Internet Corporation for Assigned Names and Numbers) shall not act as a Domain Name (Domain Name) System Registry or Registrar or Internet Protocol (Protocol) Address Registry in competition with entities affected by the policies of ICANN (Internet Corporation for Assigned Names and Numbers). Nothing in this Section 2.2 is intended to prevent ICANN (Internet Corporation for Assigned Names and Numbers) from taking whatever steps

are necessary to protect the operational stability of the Internet in the event of financial failure of a Registry or Registrar or other emergency.

Section 2.3. NON-DISCRIMINATORY TREATMENT

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

ARTICLE 3 TRANSPARENCY

Section 3.1. OPEN AND TRANSPARENT

ICANN (Internet Corporation for Assigned Names and Numbers) and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, including implementing procedures to (a) provide advance notice to facilitate stakeholder engagement in policy development decision-making and cross-community deliberations, (b) maintain responsive consultation procedures that provide detailed explanations of the basis for decisions (including how comments have influenced the development of policy considerations), and (c) encourage fact-based policy development work. ICANN (Internet Corporation for Assigned Names and Numbers) shall also implement procedures for the documentation and public disclosure of the rationale for decisions made by the Board and ICANN (Internet Corporation for Assigned Names and Numbers)'s constituent bodies (including the detailed explanations discussed above).

Section 3.2. WEBSITE

ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain a publicly-accessible Internet World Wide Web site (the "**Website**"), which may include, among other things, (a) a calendar of scheduled meetings of the Board, the EC (Empowered Community) (as defined in Section 6.1(a)), Supporting Organizations (Supporting Organizations) (as defined in Section 11.1), and Advisory Committees (Advisory Committees) (as defined in Section 12.1); (b) a docket of all pending policy development matters, including their schedule and current status; (c) specific meeting notices and agendas as described below; (d) information on the ICANN (Internet Corporation for Assigned Names and Numbers) Budget (as defined in

Section 22.4(a)(i)), the IANA (Internet Assigned Numbers Authority) Budget (as defined in Section 22.4(b)(i)), annual audit, financial contributors and the amount of their contributions, and related matters; (e) information about the availability of accountability mechanisms, including reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (f) announcements about ICANN (Internet Corporation for Assigned Names and Numbers) activities of interest to significant segments of the ICANN (Internet Corporation for Assigned Names and Numbers) community; (g) comments received from the community on policies being developed and other matters; (h) information about ICANN (Internet Corporation for Assigned Names and Numbers)'s physical meetings and public forums; and (i) other information of interest to the ICANN (Internet Corporation for Assigned Names and Numbers) community.

Section 3.3. MANAGER OF PUBLIC PARTICIPATION

There shall be a staff position designated as Manager of Public Participation, or such other title as shall be determined by the President, that shall be responsible, under the direction of the President, for coordinating the various aspects of public participation in ICANN (Internet Corporation for Assigned Names and Numbers), including the Website and various other means of communicating with and receiving input from the general community of Internet users.

Section 3.4. MEETING NOTICES AND AGENDAS

At least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

Section 3.5. MINUTES AND PRELIMINARY REPORTS

- a. All minutes of meetings of the Board, the Advisory Committees (Advisory Committees) and Supporting Organizations (Supporting Organizations) (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary ("Secretary") for posting on the Website. All proceedings of the EC (Empowered Community) Administration (as defined in Section 6.3)

and the EC (Empowered Community) shall be provided to the Secretary for posting on the Website.

- b. No later than 11:59 p.m. on the second business day after the conclusion of each meeting (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office), any resolutions passed by the Board at that meeting shall be made publicly available on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the resolutions made publicly available. The Secretary shall send notice to the Board and the Chairs of the Supporting Organizations (Supporting Organizations) (as set forth in Article 9 through Article 11) and Advisory Committees (Advisory Committees) (as set forth in Article 12) informing them that the resolutions have been posted.
- c. No later than 11:59 p.m. on the seventh business days after the conclusion of each meeting (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office), any actions taken by the Board shall be made publicly available in a preliminary report on the Website, subject to the limitations on disclosure set forth in Section 3.5(b) above. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure.
- d. No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office, then the next immediately following business day), the minutes of the Board shall be made publicly available on the Website; provided, however, that any minutes of the Board relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN (Internet Corporation for

Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.

Section 3.6. NOTICE AND COMMENT ON POLICY ACTIONS

(a) With respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN (Internet Corporation for Assigned Names and Numbers) shall:

(i) provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;

(ii) provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments (such comment period to be aligned with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment practices), prior to any action by the Board; and

(iii) in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee (Advisory Committee) ("**GAC (Governmental Advisory Committee)**" or "**Governmental Advisory Committee (Advisory Committee)**") and take duly into account any advice timely presented by the Governmental Advisory Committee (Advisory Committee) on its own initiative or at the Board's request.

(b) Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be held for discussion of any proposed policies as described in Section 3.6(a)(ii), prior to any final Board action.

(c) After taking action on any policy subject to this Section 3.6, the Board shall publish in the meeting minutes the rationale for any resolution adopted by the Board (including the possible material effects, if any, of its decision on the global public interest, including a discussion of the material impacts to the security, stability and resiliency of the DNS (Domain Name System), financial impacts or other issues that were considered by the Board in approving such resolutions), the vote of each Director voting on the resolution, and the separate statement of any Director desiring publication of such a statement.

(d) Where a Board resolution is consistent with GAC (Governmental Advisory Committee) Consensus (Consensus) Advice (as defined in Section 12.2(a) (x)), the Board shall make a determination whether the GAC (Governmental Advisory Committee) Consensus (Consensus) Advice was a material factor in the Board's adoption of such resolution, in which case the Board shall so indicate in such resolution approving the decision (a "**GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution**") and shall cite the applicable GAC (Governmental Advisory Committee) Consensus (Consensus) Advice. To the extent practical, the Board shall ensure that GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolutions only relate to the matters that were the subject of the applicable GAC (Governmental Advisory Committee) Consensus (Consensus) Advice and not matters unrelated to the applicable GAC (Governmental Advisory Committee) Consensus (Consensus) Advice. For the avoidance of doubt: (i) a GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution shall not have the effect of making any other Board resolutions in the same set or series so designated, unless other resolutions are specifically identified as such by the Board; and (ii) a Board resolution approving an action consistent with GAC (Governmental Advisory Committee) Consensus (Consensus) Advice received during a standard engagement process in which input from all Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) has been requested shall not be considered a GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution based solely on that input, unless the GAC (Governmental Advisory Committee) Consensus (Consensus) Advice was a material factor in the Board's adoption of such resolution.

(e) GAC (Governmental Advisory Committee) Carve-out

(i) Where a Board resolution is consistent with GAC (Governmental Advisory Committee) Consensus (Consensus) Advice and the Board has determined that the GAC (Governmental Advisory Committee) Consensus (Consensus) Advice was a material factor in the Board's adoption of such resolution as described in the relevant GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution, the Governmental Advisory Committee (Advisory Committee) shall not participate as a decision-maker in the EC (Empowered Community)'s exercise of its right to challenge the Board's implementation of such GAC (Governmental Advisory Committee) Consensus (Consensus) Advice. In such cases, the Governmental Advisory Committee (Advisory Committee) may participate in the EC (Empowered Community) in an advisory capacity only with respect to the applicable processes described in Annex D, but its views will not count as support or an objection for purposes of the thresholds needed to convene a community forum or exercise any right of the EC (Empowered Community) ("**GAC (Governmental Advisory Committee) Carve-out**"). In the case of a Board Recall Process (as defined in Section 3.3 of Annex D), the GAC (Governmental Advisory Committee) Carve-out shall only apply if an IRP Panel has found that, in implementing GAC (Governmental Advisory Committee) Consensus (Consensus) Advice, the Board acted inconsistently with the Articles of Incorporation or these Bylaws.

(ii) When the GAC (Governmental Advisory Committee) Carve-out applies (A) any petition notice provided in accordance with Annex D or Approval Action Board Notice (as defined in Section 1.2 of Annex D) shall include a statement that cites the specific GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution and the line item or provision that implements such specific GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution ("**GAC (Governmental Advisory Committee) Consensus (Consensus) Statement**"), (B) the Governmental Advisory Committee (Advisory Committee) shall not be eligible to support or object to any petition pursuant to Annex D or Approval Action (as defined in Section 1.1 of Annex D), and (C) any EC (Empowered Community) Decision (as defined in Section 4.1(a) of Annex D) that requires the support of four or more Decisional Participants (as defined in Section 6.1(a)) pursuant to Annex D shall instead require the support of three or more Decisional Participants with no more than one Decisional Participant objecting.

(iii) For the avoidance of doubt, the GAC (Governmental Advisory Committee) Carve-out shall not apply to the exercise of the EC (Empowered Community)'s rights where a material factor in the Board's decision was advice of the Governmental Advisory Committee (Advisory Committee) that was not GAC (Governmental Advisory Committee) Consensus (Consensus) Advice.

Section 3.7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN (Internet Corporation for Assigned Names and Numbers) Budget, ICANN (Internet Corporation for Assigned Names and Numbers) shall facilitate the translation of final published documents into various appropriate languages.

ARTICLE 4 ACCOUNTABILITY AND REVIEW

Section 4.1. PURPOSE

In carrying out its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) shall be accountable to the community for operating in accordance with the Articles of Incorporation and these Bylaws, including the Mission set forth in Article 1 of these Bylaws. This Article 4 creates reconsideration and independent review processes for certain actions as set forth in these Bylaws and procedures for periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'s structure and operations, which are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article 3 and the Board and other selection mechanisms set forth throughout these Bylaws.

Section 4.2. RECONSIDERATION

(a) ICANN (Internet Corporation for Assigned Names and Numbers) shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN (Internet Corporation for Assigned Names and Numbers) Board or Staff may request ("**Requestor**") the review or reconsideration of that action or inaction by the Board. For purposes of these Bylaws, "**Staff**" includes employees and individual long-term paid contractors serving in locations where ICANN (Internet Corporation for Assigned Names

and Numbers) does not have the mechanisms to employ such contractors directly.

(b) The EC (Empowered Community) may file a Reconsideration Request (as defined in Section 4.2(c)) if approved pursuant to Section 4.3 of Annex D ("**Community Reconsideration Request**") and if the matter relates to the exercise of the powers and rights of the EC (Empowered Community) of these Bylaws. The EC (Empowered Community) Administration shall act as the Requestor for such a Community Reconsideration Request and shall act on behalf of the EC (Empowered Community) for such Community Reconsideration Request as directed by the Decisional Participants, as further described in Section 4.3 of Annex D.

(c) A Requestor may submit a request for reconsideration or review of an ICANN (Internet Corporation for Assigned Names and Numbers) action or inaction ("**Reconsideration Request**") to the extent that the Requestor has been adversely affected by:

(i) One or more Board or Staff actions or inactions that contradict ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission, Commitments, Core Values and/or established ICANN (Internet Corporation for Assigned Names and Numbers) policy(ies);

(ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or

(iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.

(d) Notwithstanding any other provision in this Section 4.2, the scope of reconsideration shall exclude the following:

(i) Disputes relating to country code top-level domain ("**ccTLD (Country Code Top Level Domain)**") delegations and re-delegations;

(ii) Disputes relating to Internet numbering resources; and

(iii) Disputes relating to protocol parameters.

(e) The Board has designated the Board Governance Committee to review and consider Reconsideration Requests. The Board Governance Committee shall have the authority to:

(i) Evaluate Reconsideration Requests;

(ii) Summarily dismiss insufficient or frivolous Reconsideration Requests;

(iii) Evaluate Reconsideration Requests for urgent consideration;

(iv) Conduct whatever factual investigation is deemed appropriate;

(v) Request additional written submissions from the affected party, or from other parties; and

(vi) Make a recommendation to the Board on the merits of the Reconsideration Request, if it has not been summarily dismissed.

(f) ICANN (Internet Corporation for Assigned Names and Numbers) shall absorb the normal administrative costs of the Reconsideration Request process. Except with respect to a Community Reconsideration Request, ICANN (Internet Corporation for Assigned Names and Numbers) reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the Requestor, who shall then have the option of withdrawing the request or agreeing to bear such costs.

(g) All Reconsideration Requests must be submitted by the Requestor to an email address designated by the Board Governance Committee:

(i) For Reconsideration Requests that are not Community Reconsideration Requests, such Reconsideration Requests must be submitted:

(A)for requests challenging Board actions, within 30 days after the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 30 days from the initial posting of the rationale;

(B)for requests challenging Staff actions, within 30 days after the date on which the Requestor became aware of, or reasonably should have become aware of, the challenged Staff action; or

(C)for requests challenging either Board or Staff inaction, within 30 days after the date on which the Requestor reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

(ii) For Community Reconsideration Requests, such Community Reconsideration Requests must be submitted in accordance with the timeframe set forth in Section 4.3 of Annex D.

(h) To properly initiate a Reconsideration Request, all Requestors must review, complete and follow the Reconsideration Request form posted on the Website at

<https://www.icann.org/resources/pages/accountability/reconsideration-en>. Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.

(i) Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request, not including exhibits. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

(j) Reconsideration Requests from different Requestors may be considered in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

(k) The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The Board Governance Committee's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Website.

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

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

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

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

(m) The Board Governance Committee may ask ICANN (Internet Corporation for Assigned Names and Numbers) Staff for its views on a Reconsideration Request, which comments shall be made publicly available on the Website.

(n) The Board Governance Committee may request additional information or clarifications from the Requestor, and may elect to conduct a meeting with the Requestor by telephone, email or, if acceptable to the Requestor, in person. A

Requestor may also ask for an opportunity to be heard. The Board Governance Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.

(o) The Board Governance Committee may also request information relevant to the Reconsideration Request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation. Any information collected by ICANN (Internet Corporation for Assigned Names and Numbers) from third parties shall be provided to the Requestor.

(p) The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the Requestor, by the ICANN (Internet Corporation for Assigned Names and Numbers) Staff, and by any third party.

(q) The Board Governance Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within 30 days following its receipt of the Ombudsman's evaluation (or 30 days following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable), unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. In any event, the Board Governance Committee shall endeavor to produce its final recommendation to the Board within 90 days of receipt of the Reconsideration Request. The final recommendation of the Board Governance Committee shall be documented and promptly (i.e., as soon as practicable) posted on the Website and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the Board Governance Committee's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the Board Governance Committee's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor

could have provided when the Requestor initially submitted the Reconsideration Request.

(r) The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board and its rationale shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 45 days of receipt of the Board Governance Committee's recommendation or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on the Website. In any event, the Board's final decision shall be made within 135 days of initial receipt of the Reconsideration Request by the Board Governance Committee. The Board's decision on the recommendation shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3 of these Bylaws. If the Requestor so requests, the Board shall post both a recording and a transcript of the substantive Board discussion from the meeting at which the Board considered the Board Governance Committee's recommendation. All briefing materials supplied to the Board shall be provided to the Requestor. The Board may redact such briefing materials and the recording and transcript on the basis that such information (i) relates to confidential personnel matters, (ii) is covered by attorney-client privilege, work product doctrine or other recognized legal privilege, (iii) is subject to a legal obligation that ICANN (Internet Corporation for Assigned Names and Numbers) maintain its confidentiality, (iv) would disclose trade secrets, or (v) would present a material risk of negative impact to the security, stability or resiliency of the Internet. In the case of any redaction, ICANN (Internet Corporation for Assigned Names and Numbers) will provide the Requestor a written rationale for such redaction. If a Requestor believes that a redaction was improper, the Requestor may use an appropriate accountability mechanism to challenge the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s redaction.

(s) If the Requestor believes that the Board action or inaction for which a Reconsideration Request is submitted is so urgent that the timing requirements of the process set forth in this Section 4.2 are too long, the Requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) of the posting of the resolution at issue. A request for urgent consideration must

include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

(t) The Board Governance Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Governance Committee agrees to consider the matter with urgency, it will cause notice to be provided to the Requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Governance Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Reconsideration Request, or as soon thereafter as feasible. If the Board Governance Committee does not agree to consider the matter with urgency, the Requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.

(u) The Board Governance Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:

(i) the number and general nature of Reconsideration Requests received, including an identification if the Reconsideration Requests were acted upon, summarily dismissed, or remain pending;

(ii) for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration Requests have been pending, and a description of the reasons for any Reconsideration Request pending for more than ninety (90) days;

(iii) an explanation of any other mechanisms available to ensure that ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to persons materially affected by its decisions; and

(iv) whether or not, in the Board Governance Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN (Internet Corporation for Assigned Names and Numbers) decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

Section 4.3. INDEPENDENT REVIEW PROCESS FOR COVERED ACTIONS

(a) In addition to the reconsideration process described in Section 4.2, ICANN (Internet Corporation for Assigned Names and Numbers) shall have a separate process for independent third-party review of Disputes (defined in Section 4.3(b)(iii)) alleged by a Claimant (as defined in Section 4.3(b)(i)) to be within the scope of the Independent Review Process ("IRP"). The IRP is intended to hear and resolve Disputes for the following purposes ("**Purposes of the IRP**"):

(i) Ensure that ICANN (Internet Corporation for Assigned Names and Numbers) does not exceed the scope of its Mission and otherwise complies with its Articles of Incorporation and Bylaws.

(ii) Empower the global Internet community and Claimants to enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable and accessible expert review of Covered Actions (as defined in Section 4.3(b)(i)).

(iii) Ensure that ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to the global Internet community and Claimants.

(iv) Address claims that ICANN (Internet Corporation for Assigned Names and Numbers) has failed to enforce its rights under the IANA (Internet Assigned Numbers Authority) Naming Function Contract (as defined in Section 16.3(a)).

(v) Provide a mechanism by which direct customers of the IANA (Internet Assigned Numbers Authority) naming functions may seek resolution of PTI (as defined in Section 16.1) service complaints that are not resolved through mediation.

(vi) Reduce Disputes by creating precedent to guide and inform the Board, Officers (as defined in Section 15.1), Staff members, Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and the global Internet community in connection with policy development and implementation.

(vii) Secure the accessible, transparent, efficient, consistent, coherent, and just resolution of Disputes.

(viii) Lead to binding, final resolutions consistent with international arbitration norms that are enforceable in any court with proper jurisdiction.

(ix) Provide a mechanism for the resolution of Disputes, as an alternative to legal action in the civil courts of the United States or other jurisdictions.

This Section 4.3 shall be construed, implemented, and administered in a manner consistent with these Purposes of the IRP.

(b) The scope of the IRP is defined with reference to the following terms:

(i) A "**Claimant**" is any legal or natural person, group, or entity including, but not limited to the EC (Empowered Community), a Supporting Organization (Supporting Organization), or an Advisory Committee (Advisory Committee) that has been materially affected by a Dispute. To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.

(A)The EC (Empowered Community) is deemed to be materially affected by all Covered Actions. ICANN (Internet Corporation for Assigned Names and Numbers) shall not assert any defenses of standing or capacity against the EC (Empowered Community) in any forum.

(B)ICANN (Internet Corporation for Assigned Names and Numbers) shall not object to the standing of the EC (Empowered Community), a Supporting Organization (Supporting Organization), or an Advisory Committee (Advisory Committee) to participate in an IRP, to compel an IRP, or to enforce an IRP decision on the basis that it is not a legal person with capacity to sue. No special pleading of a Claimant's capacity or of the legal existence of a person that is a Claimant shall be required in the IRP proceedings. No Claimant shall be allowed to proceed if the IRP Panel (as defined in Section 4.3(g)) concludes based on evidence submitted to it that the Claimant does not fairly or

adequately represent the interests of those on whose behalf the Claimant purports to act.

(ii) "**Covered Actions**" are defined as any actions or failures to act by or within ICANN (Internet Corporation for Assigned Names and Numbers) committed by the Board, individual Directors, Officers, or Staff members that give rise to a Dispute.

(iii) "**Disputes**" are defined as:

(A) Claims that Covered Actions constituted an action or inaction that violated the Articles of Incorporation or Bylaws, including but not limited to any action or inaction that:

(1) exceeded the scope of the Mission;

(2) resulted from action taken in response to advice or input from any Advisory Committee (Advisory Committee) or Supporting Organization (Supporting Organization) that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;

(3) resulted from decisions of process-specific expert panels that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;

(4) resulted from a response to a DIDP (as defined in Section 22.7(d)) request that is claimed to be inconsistent with the Articles of Incorporation or Bylaws; or

(5) arose from claims involving rights of the EC (Empowered Community) as set forth in the Articles of Incorporation or Bylaws.

(B) Claims that ICANN (Internet Corporation for Assigned Names and Numbers), the Board, individual Directors, Officers or Staff members have not enforced ICANN (Internet Corporation for Assigned Names and Numbers)'s contractual rights with respect to the IANA (Internet Assigned Numbers Authority) Naming Function Contract, and

(C) Claims regarding PTI service complaints by direct customers of the IANA (Internet Assigned Numbers Authority) naming functions that are not resolved through mediation.

(c) Notwithstanding any other provision in this Section 4.3, the IRP's scope shall exclude all of the following:

(i) EC (Empowered Community) challenges to the result(s) of a PDP (Policy Development Process), unless the Supporting Organization (Supporting Organization)(s) that approved the PDP (Policy Development Process) supports the EC (Empowered Community) bringing such a challenge;

(ii) Claims relating to ccTLD (Country Code Top Level Domain) delegations and re-delegations;

(iii) Claims relating to Internet numbering resources, and

(iv) Claims relating to protocol parameters.

(d) An IRP shall commence with the Claimant's filing of a written statement of a Dispute (a "**Claim**") with the IRP Provider (described in Section 4.3(m) below). For the EC (Empowered Community) to commence an IRP ("**Community IRP**"), the EC (Empowered Community) shall first comply with the procedures set forth in Section 4.2 of Annex D.

(e) Cooperative Engagement Process

(i) Except for Claims brought by the EC (Empowered Community) in accordance with this Section 4.3 and Section 4.2 of Annex D, prior to the filing of a Claim, the parties are strongly encouraged to participate in a non-binding Cooperative Engagement Process ("**CEP**") for the purpose of attempting to resolve and/or narrow the Dispute. CEPs shall be conducted pursuant to the CEP Rules to be developed with community involvement, adopted by the Board, and as amended from time to time.

(ii) The CEP is voluntary. However, except for Claims brought by the EC (Empowered Community) in accordance with this Section 4.3 and Section 4.2 of Annex D, if the Claimant does not participate in good faith in the CEP and ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the IRP, the IRP Panel shall award to ICANN (Internet Corporation for Assigned Names and Numbers) all reasonable fees and costs incurred by ICANN (Internet

Corporation for Assigned Names and Numbers) in the IRP, including legal fees.

(iii) Either party may terminate the CEP efforts if that party: (A) concludes in good faith that further efforts are unlikely to produce agreement; or (B) requests the inclusion of an independent dispute resolution facilitator ("**IRP Mediator**") after at least one CEP meeting.

(iv) Unless all parties agree on the selection of a particular IRP Mediator, any IRP Mediator appointed shall be selected from the members of the Standing Panel (described in Section 4.3(j) below) by its Chair, but such IRP Mediator shall not thereafter be eligible to serve as a panelist presiding over an IRP on the matter.

(f) ICANN (Internet Corporation for Assigned Names and Numbers) hereby waives any defenses that may be afforded under Section 5141 of the California Corporations Code ("**CCC**") against any Claimant, and shall not object to the standing of any such Claimant to participate in or to compel an IRP, or to enforce an IRP decision on the basis that such Claimant may not otherwise be able to assert that a Covered Action is ultra vires.

(g) Upon the filing of a Claim, an Independent Review Process Panel ("**IRP Panel**", described in Section 4.3(k) below) shall be selected in accordance with the Rules of Procedure (as defined in Section 4.3(n)(i)). Following the selection of an IRP Panel, that IRP Panel shall be charged with hearing and resolving the Dispute, considering the Claim and ICANN (Internet Corporation for Assigned Names and Numbers)'s written response ("**Response**") in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP Panel decisions decided under the same (or an equivalent prior) version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law. If no Response is timely filed by ICANN (Internet Corporation for Assigned Names and Numbers), the IRP Panel may accept the Claim as unopposed and proceed to evaluate and decide the Claim pursuant to the procedures set forth in these Bylaws.

(h) After a Claim is referred to an IRP Panel, the parties are urged to participate in conciliation discussions for the purpose of attempting to narrow the issues that are to be addressed by the IRP Panel.

(i) Each IRP Panel shall conduct an objective, de novo examination of the Dispute.

(i) With respect to Covered Actions, the IRP Panel shall make findings of fact to determine whether the Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws.

(ii) All Disputes shall be decided in compliance with the Articles of Incorporation and Bylaws, as understood in the context of the norms of applicable law and prior relevant IRP decisions.

(iii) For Claims arising out of the Board's exercise of its fiduciary duties, the IRP Panel shall not replace the Board's reasonable judgment with its own so long as the Board's action or inaction is within the realm of reasonable business judgment.

(iv) With respect to claims that ICANN (Internet Corporation for Assigned Names and Numbers) has not enforced its contractual rights with respect to the IANA (Internet Assigned Numbers Authority) Naming Function Contract, the standard of review shall be whether there was a material breach of ICANN (Internet Corporation for Assigned Names and Numbers)'s obligations under the IANA (Internet Assigned Numbers Authority) Naming Function Contract, where the alleged breach has resulted in material harm to the Claimant.

(v) For avoidance of doubt, IRPs initiated through the mechanism contemplated at Section 4.3(a)(iv) above, shall be subject to a separate standard of review as defined in the IANA (Internet Assigned Numbers Authority) Naming Function Contract.

(j) Standing Panel

(i) There shall be an omnibus standing panel of at least seven members (the "**Standing Panel**") each of whom shall possess significant relevant legal expertise in one or more of the following areas: international law, corporate governance, judicial systems, alternative dispute resolution and/or arbitration. Each member of the Standing Panel shall also have knowledge, developed over time, regarding the DNS (Domain Name System) and ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission, work, policies, practices, and procedures. Members of the Standing Panel shall receive at a minimum, training provided by ICANN (Internet Corporation for Assigned Names and Numbers) on the workings and

management of the Internet's unique identifiers and other appropriate training as recommended by the IRP Implementation Oversight Team (described in Section 4.3(n)(i)).

(ii) ICANN (Internet Corporation for Assigned Names and Numbers) shall, in consultation with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), initiate a four-step process to establish the Standing Panel to ensure the availability of a number of IRP panelists that is sufficient to allow for the timely resolution of Disputes consistent with the Purposes of the IRP.

(A) ICANN (Internet Corporation for Assigned Names and Numbers), in consultation with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), shall initiate a tender process for an organization to provide administrative support for the IRP Provider (as defined in Section 4.3(m)), beginning by consulting the "**IRP Implementation Oversight Team**" (described in Section 4.3(n)(i)) on a draft tender document.

(B) ICANN (Internet Corporation for Assigned Names and Numbers) shall issue a call for expressions of interest from potential panelists, and work with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) and the Board to identify and solicit applications from well-qualified candidates, and to conduct an initial review and vetting of applications.

(C) The Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) shall nominate a slate of proposed panel members from the well-qualified candidates identified per the process set forth in Section 4.3(j)(ii)(B).

(D) Final selection shall be subject to Board confirmation, which shall not be unreasonably withheld.

(iii) Appointments to the Standing Panel shall be made for a fixed term of five years with no removal except for specified cause in the nature of corruption, misuse of position, fraud or criminal activity. The recall process shall be developed by the IRP Implementation Oversight Team.

(iv) Reasonable efforts shall be taken to achieve cultural, linguistic, gender, and legal tradition diversity, and diversity by Geographic Region (as defined in Section 7.5).

(k) IRP Panel

(i) A three-member IRP Panel shall be selected from the Standing Panel to hear a specific Dispute.

(ii) The Claimant and ICANN (Internet Corporation for Assigned Names and Numbers) shall each select one panelist from the Standing Panel, and the two panelists selected by the parties will select the third panelist from the Standing Panel. In the event that a Standing Panel is not in place when an IRP Panel must be convened for a given proceeding or is in place but does not have capacity due to other IRP commitments or the requisite diversity of skill and experience needed for a particular IRP proceeding, the Claimant and ICANN (Internet Corporation for Assigned Names and Numbers) shall each select a qualified panelist from outside the Standing Panel and the two panelists selected by the parties shall select the third panelist. In the event that no Standing Panel is in place when an IRP Panel must be convened and the two party-selected panelists cannot agree on the third panelist, the IRP Provider's rules shall apply to selection of the third panelist.

(iii) Assignment from the Standing Panel to IRP Panels shall take into consideration the Standing Panel members' individual experience and expertise in issues related to highly technical, civil society, business, diplomatic, and regulatory skills as needed by each specific proceeding, and such requests from the parties for any particular expertise.

(iv) Upon request of an IRP Panel, the IRP Panel shall have access to independent skilled technical experts at the expense of ICANN (Internet Corporation for Assigned Names and Numbers), although all substantive interactions between the IRP Panel and such experts shall be conducted on the record, except when public disclosure could materially and unduly harm participants, such as by exposing trade secrets or violating rights of personal privacy.

(v) IRP Panel decisions shall be made by a simple majority of the IRP Panel.

(l) All IRP proceedings shall be administered in English as the primary working language, with provision of translation services for Claimants if needed.

(m) IRP Provider

(i) All IRP proceedings shall be administered by a well-respected international dispute resolution provider ("**IRP Provider**"). The IRP Provider shall receive and distribute IRP Claims, Responses, and all other submissions arising from an IRP at the direction of the IRP Panel, and shall function independently from ICANN (Internet Corporation for Assigned Names and Numbers).

(n) Rules of Procedure

(i) An IRP Implementation Oversight Team shall be established in consultation with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) and comprised of members of the global Internet community. The IRP Implementation Oversight Team, and once the Standing Panel is established the IRP Implementation Oversight Team in consultation with the Standing Panel, shall develop clear published rules for the IRP ("**Rules of Procedure**") that conform with international arbitration norms and are streamlined, easy to understand and apply fairly to all parties. Upon request, the IRP Implementation Oversight Team shall have assistance of counsel and other appropriate experts.

(ii) The Rules of Procedure shall be informed by international arbitration norms and consistent with the Purposes of the IRP. Specialized Rules of Procedure may be designed for reviews of PTI service complaints that are asserted by direct customers of the IANA (Internet Assigned Numbers Authority) naming functions and are not resolved through mediation. The Rules of Procedure shall be published and subject to a period of public comment that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), and take effect upon approval by the Board, such approval not to be unreasonably withheld.

(iii) The Standing Panel may recommend amendments to such Rules of Procedure as it deems appropriate to fulfill the Purposes of the IRP, however no such amendment shall be effective without approval by the Board after publication and a period of public comment that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

(iv) The Rules of Procedure are intended to ensure fundamental fairness and due process and shall at a minimum address the following elements:

(A) The time within which a Claim must be filed after a Claimant becomes aware or reasonably should have become aware of the action or inaction giving rise to the Dispute;

(B) Issues relating to joinder, intervention, and consolidation of Claims;

(C) Rules governing written submissions, including the required elements of a Claim, other requirements or limits on content, time for filing, length of statements, number of supplemental statements, if any, permitted evidentiary support (factual and expert), including its length, both in support of a Claimant's Claim and in support of ICANN (Internet Corporation for Assigned Names and Numbers)'s Response;

(D) Availability and limitations on discovery methods;

(E) Whether hearings shall be permitted, and if so what form and structure such hearings would take;

(F) Procedures if ICANN (Internet Corporation for Assigned Names and Numbers) elects not to respond to an IRP; and

(G) The standards and rules governing appeals from IRP Panel decisions, including which IRP Panel decisions may be appealed.

(o) Subject to the requirements of this Section 4.3, each IRP Panel shall have the authority to:

(i) Summarily dismiss Disputes that are brought without standing, lack substance, or are frivolous or vexatious;

(ii) Request additional written submissions from the Claimant or from other parties;

(iii) Declare whether a Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws, declare whether ICANN (Internet Corporation for Assigned Names and Numbers) failed to enforce ICANN (Internet Corporation for Assigned Names and Numbers)'s contractual rights with respect to the IANA (Internet Assigned Numbers Authority) Naming Function Contract or resolve PTI service complaints by direct customers of the IANA (Internet Assigned Numbers Authority) naming functions, as applicable;

(iv) Recommend that ICANN (Internet Corporation for Assigned Names and Numbers) stay any action or decision, or take necessary interim action, until such time as the opinion of the IRP Panel is considered;

(v) Consolidate Disputes if the facts and circumstances are sufficiently similar, and take such other actions as are necessary for the efficient resolution of Disputes;

(vi) Determine the timing for each IRP proceeding; and

(vii) Determine the shifting of IRP costs and expenses consistent with Section 4.3(r).

(p) A Claimant may request interim relief. Interim relief may include prospective relief, interlocutory relief, or declaratory or injunctive relief, and specifically may include a stay of the challenged ICANN (Internet Corporation for Assigned Names and Numbers) action or decision until such time as the opinion of the IRP Panel is considered as described in Section 4.3(o)(iv), in order to maintain the *status quo*. A single member of the Standing Panel ("**Emergency Panelist**") shall be selected to adjudicate requests for interim relief. In the event that no Standing Panel is in place when an Emergency Panelist must be selected, the IRP Provider's rules shall apply to the selection of the Emergency Panelist. Interim relief may only be provided if the Emergency Panelist determines that the Claimant has established all of the following factors:

(i) A harm for which there will be no adequate remedy in the absence of such relief;

(ii) Either: (A) likelihood of success on the merits; or (B) sufficiently serious questions related to the merits; and

(iii) A balance of hardships tipping decidedly toward the party seeking relief.

(q) Conflicts of Interest

(i) Standing Panel members must be independent of ICANN (Internet Corporation for Assigned Names and Numbers) and its Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), and so must adhere to the following criteria:

(A) Upon consideration for the Standing Panel and on an ongoing basis, Panelists shall have an affirmative obligation to disclose any material relationship with ICANN (Internet Corporation for Assigned Names and Numbers), a Supporting Organization (Supporting Organization), an Advisory Committee (Advisory Committee), or any other participant in an IRP proceeding.

(B) Additional independence requirements to be developed by the IRP Implementation Oversight Team, including term limits and restrictions on post-term appointment to other ICANN (Internet Corporation for Assigned Names and Numbers) positions.

(ii) The IRP Provider shall disclose any material relationship with ICANN (Internet Corporation for Assigned Names and Numbers), a Supporting Organization (Supporting Organization), an Advisory Committee (Advisory Committee), or any other participant in an IRP proceeding.

(r) ICANN (Internet Corporation for Assigned Names and Numbers) shall bear all the administrative costs of maintaining the IRP mechanism, including compensation of Standing Panel members. Except as otherwise provided in Section 4.3(e)(ii), each party to an IRP proceeding shall bear its own legal expenses, except that ICANN (Internet Corporation for Assigned Names and Numbers) shall bear all costs associated with a Community IRP, including the costs of all legal counsel and technical experts. Nevertheless, except with respect to a Community IRP, the IRP Panel may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in

the event it identifies the losing party's Claim or defense as frivolous or abusive.

(s) An IRP Panel should complete an IRP proceeding expeditiously, issuing an early scheduling order and its written decision no later than six months after the filing of the Claim, except as otherwise permitted under the Rules of Procedure. The preceding sentence does not provide the basis for a Covered Action.

(t) Each IRP Panel shall make its decision based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its decision shall specifically designate the prevailing party as to each part of a Claim.

(u) All IRP Panel proceedings shall be conducted on the record, and documents filed in connection with IRP Panel proceedings shall be posted on the Website, except for settlement negotiation or other proceedings that could materially and unduly harm participants if conducted publicly. The Rules of Procedure, and all Claims, petitions, and decisions shall promptly be posted on the Website when they become available. Each IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets, but only if such confidentiality does not materially interfere with the transparency of the IRP proceeding.

(v) Subject to this [Section 4.3](#), all IRP decisions shall be written and made public, and shall reflect a well-reasoned application of how the Dispute was resolved in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP decisions decided under the same (or an equivalent prior) version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law.

(w) Subject to any limitations established through the Rules of Procedure, an IRP Panel decision may be appealed to the full Standing Panel sitting en banc within sixty (60) days of issuance of such decision.

(x) The IRP is intended as a final, binding arbitration process.

(i) IRP Panel decisions are binding final decisions to the extent allowed by law unless timely and properly appealed to the en banc Standing Panel. En banc Standing Panel decisions are binding final decisions to the extent allowed by law.

(ii) IRP Panel decisions and decisions of an en banc Standing Panel upon an appeal are intended to be enforceable in any court with jurisdiction over ICANN (Internet Corporation for Assigned Names and Numbers) without a *de novo* review of the decision of the IRP Panel or en banc Standing Panel, as applicable, with respect to factual findings or conclusions of law.

(iii) ICANN (Internet Corporation for Assigned Names and Numbers) intends, agrees, and consents to be bound by all IRP Panel decisions of Disputes of Covered Actions as a final, binding arbitration.

(A) Where feasible, the Board shall consider its response to IRP Panel decisions at the Board's next meeting, and shall affirm or reject compliance with the decision on the public record based on an expressed rationale. The decision of the IRP Panel, or en banc Standing Panel, shall be final regardless of such Board action, to the fullest extent allowed by law.

(B) If an IRP Panel decision in a Community IRP is in favor of the EC (Empowered Community), the Board shall comply within 30 days of such IRP Panel decision.

(C) If the Board rejects an IRP Panel decision without undertaking an appeal to the en banc Standing Panel or rejects an en banc Standing Panel decision upon appeal, the Claimant or the EC (Empowered Community) may seek enforcement in a court of competent jurisdiction. In the case of the EC (Empowered Community), the EC (Empowered Community) Administration may convene as soon as possible following such rejection and consider whether to authorize commencement of such an action.

(iv) By submitting a Claim to the IRP Panel, a Claimant thereby agrees that the IRP decision is intended to be a final, binding arbitration decision with respect to such Claimant. Any Claimant that does not consent to the IRP being a final, binding arbitration may initiate a non-binding IRP if ICANN (Internet Corporation for Assigned Names and Numbers) agrees; provided that such a non-binding IRP decision is not intended to be and shall not be enforceable.

(y) ICANN (Internet Corporation for Assigned Names and Numbers) shall seek to establish means by which community, non-profit Claimants and other

Claimants that would otherwise be excluded from utilizing the IRP process may meaningfully participate in and have access to the IRP process.

Section 4.4. PERIODIC REVIEW OF ICANN (Internet Corporation for Assigned Names and Numbers) STRUCTURE AND OPERATIONS

(a) The Board shall cause a periodic review of the performance and operation of each Supporting Organization (Supporting Organization), each Supporting Organization (Supporting Organization) Council, each Advisory Committee (Advisory Committee) (other than the Governmental Advisory Committee (Advisory Committee)), and the Nominating Committee (as defined in Section 8.1) by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization, council or committee has a continuing purpose in the ICANN (Internet Corporation for Assigned Names and Numbers) structure, (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and (iii) whether that organization, council or committee is accountable to its constituencies, stakeholder groups, organizations and other stakeholders.

These periodic reviews shall be conducted no less frequently than every five years, based on feasibility as determined by the Board. Each five-year cycle will be computed from the moment of the reception by the Board of the final report of the relevant review Working Group.

The results of such reviews shall be posted on the Website for public review and comment, and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days. The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN (Internet Corporation for Assigned Names and Numbers) being reviewed by a two-thirds vote of all Directors, subject to any rights of the EC (Empowered Community) under the Articles of Incorporation and these Bylaws.

(b) The Governmental Advisory Committee (Advisory Committee) shall provide its own review mechanisms.

Section 4.5. ANNUAL REVIEW

ICANN (Internet Corporation for Assigned Names and Numbers) will produce an annual report on the state of the accountability and transparency reviews, which will discuss the status of the implementation of all review processes required by Section 4.6 and the status of ICANN (Internet Corporation for Assigned Names and Numbers)'s implementation of the recommendations set forth in the final reports issued by the review teams to the Board following the conclusion of such review ("**Annual Review Implementation Report**"). The Annual Review Implementation Report will be posted on the Website for public review and comment. Each Annual Review Implementation Report will be considered by the Board and serve as an input to the continuing process of implementing the recommendations from the review teams set forth in the final reports of such review teams required in Section 4.6.

Section 4.6. SPECIFIC REVIEWS

(a) Review Teams and Reports

(i) Review teams will be established for each applicable review, which will include both a limited number of members and an open number of observers. The chairs of the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) participating in the applicable review shall select a group of up to 21 review team members from among the prospective members nominated by the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), balanced for diversity and skill. In addition, the Board may designate one Director or Liaison to serve as a member of the review team. Specific guidance on the selection process is provided within the operating standards developed for the conduct of reviews under this Section 4.6 (the "**Operating Standards**"). The Operating Standards shall be developed through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers). The Operating Standards must be aligned with the following guidelines:

(A) Each Supporting Organization (Supporting Organization) and Advisory Committee (Advisory Committee) participating in the applicable review may nominate up to seven prospective members for the review team;

(B) Any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) nominating at least one, two or three prospective review team members shall be entitled to have those one, two or three nominees selected as members to the review team, so long as the nominees meet any applicable criteria for service on the team; and

(C) If any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) has not nominated at least three prospective review team members, the Chairs of the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) shall be responsible for the determination of whether all 21 SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) member seats shall be filled and, if so, how the seats should be allocated from among those nominated.

(ii) Members and liaisons of review teams shall disclose to ICANN (Internet Corporation for Assigned Names and Numbers) and their applicable review team any conflicts of interest with a specific matter or issue under review in accordance with the most recent Board-approved practices and Operating Standards. The applicable review team may exclude from the discussion of a specific complaint or issue any member deemed by the majority of review team members to have a conflict of interest. Further details on the conflict of interest practices are included in the Operating Standards.

(iii) Review team decision-making practices shall be specified in the Operating Standards, with the expectation that review teams shall try to operate on a consensus basis. In the event a consensus cannot be found among the members of a review team, a majority vote of the members may be taken.

(iv) Review teams may also solicit and select independent experts to render advice as requested by the review team. ICANN (Internet Corporation for Assigned Names and Numbers) shall pay the reasonable fees and expenses of such experts for each review contemplated by this Section 4.6 to the extent such fees and costs are consistent with the budget assigned for such review. Guidelines on how review teams are to work with and consider independent expert advice are specified in the Operating Standards.

(v) Each review team may recommend that the applicable type of review should no longer be conducted or should be amended.

(vi) Confidential Disclosure to Review Teams

(A) To facilitate transparency and openness regarding ICANN (Internet Corporation for Assigned Names and Numbers)'s deliberations and operations, the review teams, or a subset thereof, shall have access to ICANN (Internet Corporation for Assigned Names and Numbers) internal information and documents pursuant to the Confidential Disclosure Framework set forth in the Operating Standards (the "**Confidential Disclosure Framework**"). The Confidential Disclosure Framework must be aligned with the following guidelines:

(1) ICANN (Internet Corporation for Assigned Names and Numbers) must provide a justification for any refusal to reveal requested information. ICANN (Internet Corporation for Assigned Names and Numbers)'s refusal can be appealed to the Ombudsman and/or the ICANN (Internet Corporation for Assigned Names and Numbers) Board for a ruling on the disclosure request.

(2) ICANN (Internet Corporation for Assigned Names and Numbers) may designate certain documents and information as "for review team members only" or for a subset of the review team members based on conflict of interest. ICANN (Internet Corporation for Assigned Names and Numbers)'s designation of documents may also be appealed to the Ombudsman and/or the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

(3) ICANN (Internet Corporation for Assigned Names and Numbers) may require review team members to sign a non-disclosure agreement before accessing documents.

(vii) Reports

(A) Each report of the review team shall describe the degree of consensus or agreement reached by the review team on each recommendation contained in such report. Any member of a review team not in favor of a recommendation of its review team (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such recommendation, which shall be

included in the report of the review team. The review team shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization.

(B) At least one draft report of the review team shall be posted on the Website for public review and comment. The review team must consider the public comments received in response to any posted draft report and shall amend the report as the review team deems appropriate and in the public interest before submitting its final report to the Board. The final report should include an explanation of how public comments were considered as well as a summary of changes made in response to public comments.

(C) Each final report of a review team shall be published for public comment in advance of the Board's consideration. Within six months of receipt of a final report, the Board shall consider such final report and the public comments on the final report, and determine whether to approve the recommendations in the final report. If the Board does not approve any or all of the recommendations, the written rationale supporting the Board's decision shall include an explanation for the decision on each recommendation that was not approved. The Board shall promptly direct implementation of the recommendations that were approved.

(b) Accountability and Transparency Review

(i) The Board shall cause a periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'s execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and are accountable to the Internet community ("**Accountability and Transparency Review**").

(ii) The issues that the review team for the Accountability and Transparency Review (the "**Accountability and Transparency Review Team**") may assess include, but are not limited to, the following:

(A) assessing and improving Board governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which the Board's composition and allocation structure meets ICANN (Internet Corporation for Assigned Names and Numbers)'s present and future needs, and the appeal mechanisms for Board decisions contained in these Bylaws;

(B) assessing the role and effectiveness of the GAC (Governmental Advisory Committee)'s interaction with the Board and with the broader ICANN (Internet Corporation for Assigned Names and Numbers) community, and making recommendations for improvement to ensure effective consideration by ICANN (Internet Corporation for Assigned Names and Numbers) of GAC (Governmental Advisory Committee) input on the public policy aspects of the technical coordination of the DNS (Domain Name System);

(C) assessing and improving the processes by which ICANN (Internet Corporation for Assigned Names and Numbers) receives public input (including adequate explanation of decisions taken and the rationale thereof);

(D) assessing the extent to which ICANN (Internet Corporation for Assigned Names and Numbers)'s decisions are supported and accepted by the Internet community;

(E) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development; and

(F) assessing and improving the Independent Review Process.

(iii) The Accountability and Transparency Review Team shall also assess the extent to which prior Accountability and Transparency Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(iv) The Accountability and Transparency Review Team may recommend to the Board the termination or amendment of other periodic reviews required by this Section 4.6, and may recommend to the Board the creation of additional periodic reviews.

(v) The Accountability and Transparency Review Team should issue its final report within one year of convening its first meeting.

(vi) The Accountability and Transparency Review shall be conducted no less frequently than every five years measured from the date the previous Accountability and Transparency Review Team was convened.

(c) Security (Security – Security, Stability and Resiliency (SSR)), Stability (Security, Stability and Resiliency), and Resiliency (Security Stability & Resiliency (SSR)) Review

(i) The Board shall cause a periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'s execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the systems and processes, both internal and external, that directly affect and/or are affected by the Internet's system of unique identifiers that ICANN (Internet Corporation for Assigned Names and Numbers) coordinates ("**SSR Review**").

(ii) The issues that the review team for the SSR Review ("**SSR Review Team**") may assess are the following:

(A) security, operational stability and resiliency matters, both physical and network, relating to the coordination of the Internet's system of unique identifiers;

(B) conformance with appropriate security contingency planning framework for the Internet's system of unique identifiers; and

(C) maintaining clear and globally interoperable security processes for those portions of the Internet's system of unique identifiers that ICANN (Internet Corporation for Assigned Names and Numbers) coordinates.

(iii) The SSR Review Team shall also assess the extent to which ICANN (Internet Corporation for Assigned Names and Numbers) has successfully implemented its security efforts, the effectiveness of the security efforts to deal with actual and potential challenges and threats to the security and stability of the DNS (Domain Name System), and the extent to which the security efforts are sufficiently robust to meet

future challenges and threats to the security, stability and resiliency of the DNS (Domain Name System), consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission.

(iv) The SSR Review Team shall also assess the extent to which prior SSR Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(v) The SSR Review shall be conducted no less frequently than every five years, measured from the date the previous SSR Review Team was convened.

(d) Competition, Consumer Trust and Consumer Choice Review

(i) ICANN (Internet Corporation for Assigned Names and Numbers) will ensure that it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection prior to, or concurrent with, authorizing an increase in the number of new top-level domains in the root zone of the DNS (Domain Name System) pursuant to an application process initiated on or after the date of these Bylaws ("**New gTLD (generic Top Level Domain) Round**").

(ii) After a New gTLD (generic Top Level Domain) Round has been in operation for one year, the Board shall cause a competition, consumer trust and consumer choice review as specified in this Section 4.6(d) ("**CCT (Competition, Consumer Choice & Consumer Trust) Review**").

(iii) The review team for the CCT (Competition, Consumer Choice & Consumer Trust) Review ("**CCT (Competition, Consumer Choice & Consumer Trust) Review Team**") will examine (A) the extent to which the expansion of gTLDs has promoted competition, consumer trust and consumer choice and (B) the effectiveness of the New gTLD (generic Top Level Domain) Round's application and evaluation process and safeguards put in place to mitigate issues arising from the New gTLD (generic Top Level Domain) Round.

(iv) For each of its recommendations, the CCT (Competition, Consumer Choice & Consumer Trust) Review Team should indicate whether the recommendation, if accepted by the Board, must be implemented before opening subsequent rounds of new generic top-level domain applications periods.

(v) The CCT (Competition, Consumer Choice & Consumer Trust) Review Team shall also assess the extent to which prior CCT (Competition, Consumer Choice & Consumer Trust) Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(e) Registration Directory Service Review

(i) Subject to applicable laws, ICANN (Internet Corporation for Assigned Names and Numbers) shall use commercially reasonable efforts to enforce its policies relating to registration directory services and shall work with Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) to explore structural changes to improve accuracy and access to generic top-level domain registration data, as well as consider safeguards for protecting such data.

(ii) The Board shall cause a periodic review to assess the effectiveness of the then current gTLD (generic Top Level Domain) registry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data ("**Directory Service Review**").

(iii) The review team for the Directory Service Review ("**Directory Service Review Team**") will consider the Organisation for Economic Co-operation and Development ("**OECD (Organization for Economic Co-operation and Development)**") Guidelines on the Protection of Privacy and Transborder Flows of Personal Data as defined by the OECD (Organization for Economic Co-operation and Development) in 1980 and amended in 2013 and as may be amended from time to time.

(iv) The Directory Service Review Team shall assess the extent to which prior Directory Service Review recommendations have been

implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(v) The Directory Service Review shall be conducted no less frequently than every five years, measured from the date the previous Directory Service Review Team was convened, except that the first Directory Service Review to be conducted after 1 October 2016 shall be deemed to be timely if the applicable Directory Service Review Team is convened on or before 31 October 2016.

Section 4.7. COMMUNITY MEDIATION

(a) If the Board refuses or fails to comply with a duly authorized and valid EC (Empowered Community) Decision under these Bylaws, the EC (Empowered Community) Administration representative of any Decisional Participant who supported the exercise by the EC (Empowered Community) of its rights in the applicable EC (Empowered Community) Decision during the applicable decision period may request that the EC (Empowered Community) initiate a mediation process pursuant to this Section 4.7. The Board shall be deemed to have refused or failed to comply with a duly authorized and valid EC (Empowered Community) Decision if the Board has not complied with the EC (Empowered Community) Decision within 30 days of being notified of the relevant EC (Empowered Community) Decision.

(b) If a Mediation Initiation Notice (as defined in Section 4.1(a) of Annex D) is delivered to the Secretary pursuant to and in compliance with Section 4.1(a) of Annex D, as soon as reasonably practicable thereafter, the EC (Empowered Community) Administration shall designate individuals to represent the EC (Empowered Community) in the mediation ("**Mediation Administration**") and the Board shall designate representatives for the mediation ("**Board Mediation Representatives**"). Members of the EC (Empowered Community) Administration and the Board can designate themselves as representatives. ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post the Mediation Initiation Notice on the Website.

(c) There shall be a single mediator who shall be selected by the agreement of the Mediation Administration and Board Mediation Representatives. The Mediation Administration shall propose a slate of at least five potential mediators, and the Board Mediation Representatives shall select a mediator from the slate or request a new slate until a mutually-agreed mediator is

selected. The Board Mediation Representatives may recommend potential mediators for inclusion on the slates selected by the Mediation Administration. The Mediation Administration shall not unreasonably decline to include mediators recommended by the Board Mediation Representatives on proposed slates and the Board Mediation Representatives shall not unreasonably withhold consent to the selection of a mediator on slates proposed by the Mediation Administration.

(d) The mediator shall be a licensed attorney with general knowledge of contract law and general knowledge of the DNS (Domain Name System) and ICANN (Internet Corporation for Assigned Names and Numbers). The mediator may not have any ongoing business relationship with ICANN (Internet Corporation for Assigned Names and Numbers), any Supporting Organization (Supporting Organization) (or constituent thereof), any Advisory Committee (Advisory Committee) (or constituent thereof), the EC (Empowered Community) Administration or the EC (Empowered Community). The mediator must confirm in writing that he or she is not, directly or indirectly, and will not become during the term of the mediation, an employee, partner, executive officer, director, consultant or advisor of ICANN (Internet Corporation for Assigned Names and Numbers), any Supporting Organization (Supporting Organization) (or constituent thereof), any Advisory Committee (Advisory Committee) (or constituent thereof), the EC (Empowered Community) Administration or the EC (Empowered Community).

(e) The mediator shall conduct the mediation in accordance with these Bylaws, the laws of California and the rules and procedures of a well-respected international dispute resolution provider, which may be the IRP Provider. The arbitration will be conducted in the English language consistent with the provisions relevant for mediation under the IRP Rules of Procedure and will occur in Los Angeles County, California, unless another location is mutually-agreed between the Mediation Administration and Board Mediation Representatives.

(f) The Mediation Administration and the Board Mediation Representatives shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute.

(g) ICANN (Internet Corporation for Assigned Names and Numbers) shall bear all costs of the mediator.

(h) If the Mediation Administration and the Board Mediation Representatives have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, the Mediation Administration or the Board Mediation Representatives may terminate the mediation at any time by declaring an impasse.

(i) If a resolution to the dispute is reached by the Mediation Administration and the Board Mediation Representatives, the Mediation Administration and the Board Mediation Representatives shall document such resolution including recommendations ("**Mediation Resolution**" and the date of such resolution, the "**Mediation Resolution Date**"). ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post the Mediation Resolution on the Website (in no event later than 14 days after mediation efforts are completed) and the EC (Empowered Community) Administration shall promptly notify the Decisional Participants of the Mediation Resolution.

(j) The EC (Empowered Community) shall be deemed to have accepted the Mediation Resolution if it has not delivered an EC (Empowered Community) Community IRP Initiation Notice (as defined in Section 4.2(e) of Annex D) pursuant to and in compliance with Section 4.2 of Annex D within eighty (80) days following the Mediation Resolution Date.

ARTICLE 5 OMBUDSMAN

Section 5.1. OFFICE OF OMBUDSMAN

(a) ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain an Office of Ombudsman ("**Office of Ombudsman**"), to be managed by an ombudsman ("**Ombudsman**") and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.

(b) The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board.

(c) The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.

(d) The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN (Internet Corporation for Assigned

Names and Numbers) Budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and without change in the general ICANN (Internet Corporation for Assigned Names and Numbers) Budget recommended by the ICANN (Internet Corporation for Assigned Names and Numbers) President to the Board. Nothing in this Section 5.1 shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

Section 5.2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Independent Review Process set forth in Section 4.3 have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN (Internet Corporation for Assigned Names and Numbers) community who believe that the ICANN (Internet Corporation for Assigned Names and Numbers) staff, Board or an ICANN (Internet Corporation for Assigned Names and Numbers) constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN (Internet Corporation for Assigned Names and Numbers) staff, the Board, or ICANN (Internet Corporation for Assigned Names and Numbers) constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results. With respect to the Reconsideration Request Process set forth in Section 4.2, the Ombudsman shall serve the function expressly provided for in Section 4.2.

Section 5.3. OPERATIONS

The Office of Ombudsman shall:

(a) facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN (Internet Corporation for Assigned Names and Numbers) community (excluding employees and vendors/suppliers of ICANN (Internet Corporation for Assigned Names and Numbers)) may have with specific actions or failures to act by the Board or ICANN (Internet Corporation for Assigned Names and Numbers) staff which have not otherwise become the subject of either a Reconsideration Request or Independent Review Process;

(b) perform the functions set forth in Section 4.2 relating to review and consideration of Reconsideration Requests;

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

(d) have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN (Internet Corporation for Assigned Names and Numbers) staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN (Internet Corporation for Assigned Names and Numbers));

(e) heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN (Internet Corporation for Assigned Names and Numbers) community and online availability;

(f) maintain neutrality and independence, and have no bias or personal stake in an outcome; and

(g) comply with all ICANN (Internet Corporation for Assigned Names and Numbers) conflicts of interest and confidentiality policies.

Section 5.4. INTERACTION WITH ICANN (Internet Corporation for Assigned Names and Numbers) AND OUTSIDE ENTITIES

(a) No ICANN (Internet Corporation for Assigned Names and Numbers) employee, Board member, or other participant in Supporting Organizations (Supporting Organizations) or Advisory Committees (Advisory Committees) shall prevent or impede the Ombudsman's contact with the ICANN (Internet Corporation for Assigned Names and Numbers) community (including

employees of ICANN (Internet Corporation for Assigned Names and Numbers)). ICANN (Internet Corporation for Assigned Names and Numbers) employees and Board members shall direct members of the ICANN (Internet Corporation for Assigned Names and Numbers) community who voice problems, concerns, or complaints about ICANN (Internet Corporation for Assigned Names and Numbers) to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) staff and other ICANN (Internet Corporation for Assigned Names and Numbers) participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.

(c) Contact with the Ombudsman shall not constitute notice to ICANN (Internet Corporation for Assigned Names and Numbers) of any particular action or cause of action.

(d) The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.

(e) The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN (Internet Corporation for Assigned Names and Numbers) structure, procedures, processes, or any conduct by the ICANN (Internet Corporation for Assigned Names and Numbers) Board, staff, or constituent bodies.

Section 5.5. ANNUAL REPORT

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the Website.

ARTICLE 6 EMPOWERED COMMUNITY

Section 6.1. COMPOSITION AND ORGANIZATION OF THE EMPOWERED COMMUNITY

(a) The Empowered Community ("**EC (Empowered Community)**") shall be a nonprofit association formed under the laws of the State of California consisting of the ASO (Address Supporting Organization), the ccNSO (Country Code Names Supporting Organization) (as defined in Section 10.1), the GNSO (Generic Names Supporting Organization) (as defined in Section 11.1), the ALAC (At-Large Advisory Committee) (as defined in Section 12.2(d) (i)) and the GAC (Governmental Advisory Committee) (each a "**Decisional Participant**" or "associate," and collectively, the "**Decisional Participants**").

(b) This Article 6 shall constitute the articles of association of the EC (Empowered Community) and shall be considered the formational "governing document" (as defined in Section 18008 of the CCC) of the EC (Empowered Community), and the terms contained herein and in these Bylaws relating to the EC (Empowered Community) shall be the EC (Empowered Community)'s "governing principles" (as defined in Section 18010 of the CCC), which may only be amended as set forth in Section 25.2 . Where necessary for purposes of interpretation of these Bylaws, an "associate" shall be deemed to be a "member" of the EC (Empowered Community) as defined in Section 18015 of the CCC. Any change in the number and/or identity of Decisional Participants for any reason (including the resignation of any Decisional Participant or the addition of new Decisional Participants as a result of the creation of additional Supporting Organizations (Supporting Organizations) or Advisory Committees (Advisory Committees)), and any corresponding changes in the voting thresholds for exercise of the EC (Empowered Community)'s rights described in Annex D of these Bylaws, will only be effective following the completion of the process for amending Fundamental Bylaws described in Section 25.2 and Annex D. The EC (Empowered Community) may not be dissolved except upon the completion of the process for amending Fundamental Bylaws described in Section 25.2 and Annex D.

(c) The sole purpose of the EC (Empowered Community) is to exercise its rights and perform its obligations under ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation and these Bylaws, and the EC (Empowered Community) shall have no other powers or rights except as expressly provided therein. The EC (Empowered Community) may

only act as provided in these Bylaws. Any act of the EC (Empowered Community) that is not in accordance with these Bylaws shall not be effective.

(d) The EC (Empowered Community) shall not acquire, hold, manage, encumber or transfer any interest in real or personal property, nor have any directors, officers or employees. The EC (Empowered Community) shall not merge with or into another entity nor shall it dissolve, except with the approval of the Board and as part of a Fundamental Bylaw Amendment (as defined in Section 25.2(b)).

(e) Decisional Participants shall not transfer their right to be an associate of the EC (Empowered Community). Any attempted transfer by any Decisional Participant of its right to be an associate of the EC (Empowered Community) shall be void ab initio.

(f) The location and street address of the EC (Empowered Community) shall be the principal office of ICANN (Internet Corporation for Assigned Names and Numbers).

(g) Each Decisional Participant shall, except as otherwise provided in Annex D, adopt procedures for exercising the rights of such Decisional Participant pursuant to the procedures set forth in Annex D, including (i) who can submit a petition to such Decisional Participant, (ii) the process for an individual to submit a petition to such Decisional Participant, including whether a petition must be accompanied by a rationale, (iii) how the Decisional Participant determines whether to accept or reject a petition, (iv) how the Decisional Participant determines whether an issue subject to a petition has been resolved, (v) how the Decisional Participant determines whether to support or object to actions supported by another Decisional Participant, and (vi) the process for the Decisional Participant to notify its constituents of relevant matters.

Section 6.2. POWERS AND ACKNOWLEDGMENTS

(a) Pursuant to and in compliance with the terms and conditions of these Bylaws, the EC (Empowered Community) shall have the powers and rights, as set forth more fully elsewhere in these Bylaws, to:

- (i) Appoint and remove individual Directors (other than the President);
- (ii) Recall the entire Board;

(iii) Reject ICANN (Internet Corporation for Assigned Names and Numbers) Budgets, IANA (Internet Assigned Numbers Authority) Budgets, Operating Plans (as defined in Section 22.5(a)(i)) and Strategic Plans (as defined in Section 22.5(b)(i));

(iv) Reject Standard Bylaw Amendments (as defined in Section 25.1(a));

(v) Approve Fundamental Bylaw Amendments, Articles Amendments (as defined in Section 25.2(b)), and Asset Sales (as defined in Article 26(a));

(vi) Reject PTI Governance Actions (as defined in Section 16.2(d));

(vii) Require the ICANN (Internet Corporation for Assigned Names and Numbers) Board to re-review its rejection of IFR Recommendation Decisions (as defined in Section 18.6(d)), Special IFR Recommendation Decisions (as defined in Section 18.12(e)), SCWG Creation Decisions (as defined in Section 19.1(d)) and SCWG Recommendation Decisions (as defined in Section 19.4(d));

(viii) Initiate a Community Reconsideration Request, mediation or a Community IRP; and

(ix) Take necessary and appropriate action to enforce its powers and rights, including through the community mechanism contained in Annex D or an action filed in a court of competent jurisdiction.

(b) The EC (Empowered Community) may pursue an action in any court with jurisdiction over ICANN (Internet Corporation for Assigned Names and Numbers) to enforce the EC (Empowered Community)'s rights under these Bylaws. ICANN (Internet Corporation for Assigned Names and Numbers) acknowledges the EC (Empowered Community)'s legal personhood and shall not raise the EC (Empowered Community)'s legal personhood as a defense in any proceeding between ICANN (Internet Corporation for Assigned Names and Numbers) and the EC (Empowered Community). ICANN (Internet Corporation for Assigned Names and Numbers) shall not assert as a defense that prior filing or completion of a Reconsideration Request or an IRP Claim was a prerequisite to an action in court regarding the EC (Empowered Community)'s power to appoint or remove an individual Director or recall the

Board (except to the extent an IRP Panel award is applicable pursuant to Section 3.6(e)).

(c) By nominating a Director for designation by the EC (Empowered Community) or exercising the community mechanism contained in Annex D with respect to any rights granted to the EC (Empowered Community) pursuant to these Bylaws, the EC (Empowered Community) and each of its Decisional Participants agrees and consents to the terms of these Bylaws and intends to be legally bound hereby.

Section 6.3. EC (Empowered Community) ADMINISTRATION

(a) The Decisional Participants shall act through their respective chairs or such other persons as may be designated by the Decisional Participants (collectively, such persons are the "**EC (Empowered Community) Administration**"). Each Decisional Participant shall deliver annually a written certification from its chair or co-chairs to the Secretary designating the individual who shall represent the Decisional Participant on the EC (Empowered Community) Administration.

(b) In representing a Decisional Participant on the EC (Empowered Community) Administration, the representative individual shall act solely as directed by the represented Decisional Participant and in accordance with processes developed by such Decisional Participant in accordance with Section 6.1(g).

(c) In representing the EC (Empowered Community) Administration, the individuals serving thereon shall act as required for the EC (Empowered Community) to follow the applicable procedures in Annex D, and to implement EC (Empowered Community) decisions made in accordance with such procedures.

(d) All communications and notices required or permitted to be given under these Bylaws by a Decisional Participant shall be provided by the Decisional Participant's representative on the EC (Empowered Community) Administration. All communications and notices required or permitted to be given under these Bylaws by the EC (Empowered Community) shall be provided by any member of the EC (Empowered Community) Administration. Where a particular Bylaws notice provision does not require notice to the Secretary, the EC (Empowered Community) and the Decisional Participants

shall provide a copy of the notice to the Secretary in accordance with Section 21.5, and ICANN (Internet Corporation for Assigned Names and Numbers) shall post it on the Website.

(e) ICANN (Internet Corporation for Assigned Names and Numbers) shall be entitled to rely on notices from a Decisional Participant's representative or an individual serving on the EC (Empowered Community) Administration delivered in accordance with Section 21.5 as evidence that the actions set forth therein have been approved by or are the actions of the Decisional Participant, the EC (Empowered Community) or the EC (Empowered Community) Administration, as applicable, pursuant to and in compliance with the requirements of these Bylaws (including Annex D) .

(f) No person participating in the EC (Empowered Community), the EC (Empowered Community) Administration or a Decisional Participant shall be liable for any debt, obligation or liability of ICANN (Internet Corporation for Assigned Names and Numbers) or the EC (Empowered Community), other than in the case of a fraudulent act committed by such person.

Section 6.4. CONSENT TO BOARD-INITIATED REMOVAL OF DIRECTOR WITHOUT CAUSE

In the event the EC (Empowered Community) Administration receives from the Secretary a valid notice as described in Section 7.11(a)(i)(B), indicating that the Board has voted to remove a Director without cause pursuant to Section 7.11(a)(i)(B), the EC (Empowered Community) shall without deliberation consent to such removal, and the EC (Empowered Community) Administration shall provide notice to the Secretary of such consent.

ARTICLE 7 BOARD OF DIRECTORS

Section 7.1. COMPOSITION OF THE BOARD

The ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors ("Board") shall consist of sixteen voting directors ("**Directors**"). In addition, four non-voting liaisons ("**Liaisons**") shall be appointed for the purposes set forth in Section 7.9. Only Directors shall be included in determining the existence of quorums, and in establishing the validity of votes taken by the Board.

Section 7.2. DIRECTORS AND THEIR SELECTION; ELECTION OF CHAIR AND VICE-CHAIR

(a) As of the effective date of the amendment and restatement of these Bylaws on 1 October 2016, the EC (Empowered Community) shall be the sole designator of ICANN (Internet Corporation for Assigned Names and Numbers) and shall designate, within the meaning of Section 5220 of the CCC, all Directors except for the President ex officio. The EC (Empowered Community) shall notify promptly the Secretary in writing of the following designations:

(i) Eight Directors nominated by the Nominating Committee to be designated as Directors by the EC (Empowered Community). These seats on the Board are referred to in these Bylaws as Seats 1 through 8.

(ii) Two Directors nominated by the ASO (Address Supporting Organization) to be designated as Directors by the EC (Empowered Community). These seats on the Board are referred to in these Bylaws as Seat 9 and Seat 10.

(iii) Two Directors nominated by the ccNSO (Country Code Names Supporting Organization) to be designated as Directors by the EC (Empowered Community). These seats on the Board are referred to in these Bylaws as Seat 11 and Seat 12.

(iv) Two Directors nominated by the GNSO (Generic Names Supporting Organization) to be designated as Directors by the EC (Empowered Community). These seats on the Board are referred to in these Bylaws as Seat 13 and Seat 14.

(v) One Director nominated by the At-Large Community to be designated as Directors by the EC (Empowered Community). This seat on the Board is referred to in these Bylaws as Seat 15.

In addition to the Directors designated by the EC (Empowered Community), the President shall serve ex officio as a Director. The seat held by the President on the Board is referred to in these Bylaws as Seat 16.

(b) In carrying out its responsibilities to nominate the Directors for Seats 1 through 8 for designation by the EC (Empowered Community), the Nominating Committee shall ensure that the Board is composed of Directors who, in the aggregate, display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 7.3, Section 7.4 and Section 7.5. At no time when it makes its nomination shall the Nominating Committee nominate a Director to fill any vacancy or expired term whose designation would cause the total number of Directors (not including the President) from countries in any one Geographic Region to exceed five; and the Nominating Committee shall ensure when it makes its nominations that the Board includes at least one Director who is from a country in each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region ("**Diversity Calculation**"). For purposes of this Section 7.2(b), if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("**Domicile**"), that candidate may be deemed to be from either country and must select in his or her Statement of Interest the country of citizenship or Domicile that he or she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this Section 7.2(b), a person can only have one Domicile, which shall be determined by where the candidate has a permanent residence and place of habitation.

(c) In carrying out their responsibilities to nominate Directors for Seats 9 through 15 for designation by the EC (Empowered Community), the Supporting Organizations (Supporting Organizations) and the At-Large Community shall seek to ensure that the Board is composed of Directors who, in the aggregate, display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 7.3, Section 7.4 and Section 7.5. The Supporting Organizations (Supporting Organizations) shall ensure that, at any given time, no two Directors nominated by a Supporting Organization (Supporting Organization) are citizens from the same country or of countries located in the same Geographic Region. For purposes of this Section 7.2(c), if any candidate for Director maintains citizenship or Domicile of more than one country, that candidate may be deemed to be from either country and must select in his or her Statement of Interest the country of citizenship or Domicile that he or she wants the Supporting Organization (Supporting Organization) or the At-Large Community, as applicable, to use for nomination purposes. For purposes of this Section 7.2(c), a person can only have one Domicile, which shall be

determined by where the candidate has a permanent residence and place of habitation.

(d) The Board shall annually elect a Chair and a Vice-Chair from among the Directors, not to include the President.

(e) The EC (Empowered Community) shall designate each person nominated as a Director by the Nominating Committee, the ASO (Address Supporting Organization), the ccNSO (Country Code Names Supporting Organization), the GNSO (Generic Names Supporting Organization) and the At-Large Community in accordance with this Section 7.2.

(f) As a condition to sitting on the Board, each Director other than the President ex officio shall sign a pre-service letter pursuant to which such Director:

(i) acknowledges and agrees to the EC (Empowered Community)'s right to remove the Director at any time and for any reason following the processes set forth in these Bylaws;

(ii) acknowledges and agrees that serving as a Director shall not establish any employment or other relationship (whether to ICANN (Internet Corporation for Assigned Names and Numbers), the EC (Empowered Community), any body entitled to nominate a Director, or any of their agents) that provides any due process rights related to termination of service as a Director; and

(iii) conditionally and irrevocably resigns as a Director automatically effective upon communication to the Director or, in the case of Board recall, communication to the Board of a final determination of removal following the processes set forth in these Bylaws.

Section 7.3.CRITERIA FOR NOMINATION OF DIRECTORS

Directors shall be:

(a) Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;

(b) Persons with an understanding of ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers) decisions on the global Internet community, and committed to the success of ICANN (Internet Corporation for Assigned Names and Numbers);

(c) Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this Section 7.3;

(d) Persons who, in the aggregate, have personal familiarity with the operation of gTLD (generic Top Level Domain) registries and registrars; with ccTLD (Country Code Top Level Domain) registries; with IP (Internet Protocol or Intellectual Property) address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet; and

(e) Persons who are able to work and communicate in written and spoken English.

Section 7.4. ADDITIONAL QUALIFICATIONS

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

(b) No person who serves in any capacity (including as a liaison) on any Supporting Organization (Supporting Organization) Council shall simultaneously serve as a Director or Liaison to the Board. If such a person is identified by, or presents themselves to, the Supporting Organization (Supporting Organization) Council or the At-Large Community for consideration for nomination to serve as a Director, the person shall not thereafter participate in any discussion of, or vote by, the Supporting Organization (Supporting Organization) Council or the committee designated by the At-Large Community relating to the nomination of Directors by the Council or At-Large Community, until the Council or committee(s) specified by

the At-Large Community has nominated the full complement of Directors it is responsible for nominating. In the event that a person serving in any capacity on a Supporting Organization (Supporting Organization) Council is considered for nomination to serve as a Director, the constituency group or other group or entity that selected the person may select a replacement for purposes of the Council's nomination process. In the event that a person serving in any capacity on the At-Large Advisory Committee (Advisory Committee) is identified as or accepts a nomination to be considered for nomination by the At-Large Community as a Director, the Regional At-Large Organization or other group or entity that selected the person may select a replacement for purposes of the At-Large Community's nomination process.

(c) Persons serving in any capacity on the Nominating Committee shall be ineligible for nomination or designation to positions on the Board as provided by Section 8.8.

(d) No person who serves on the EC (Empowered Community) Administration while serving in that capacity shall be considered for nomination or designated to the Board, nor serve simultaneously on the EC (Empowered Community) Administration and as a Director or Liaison to the Board.

Section 7.5. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board, the nomination of Directors by the Nominating Committee, each Supporting Organization (Supporting Organization) and the At-Large Community shall comply with all applicable diversity provisions of these Bylaws or of any memorandum of understanding referred to in these Bylaws concerning the Supporting Organization (Supporting Organization). One intent of these diversity provisions is to ensure that at all times each Geographic Region shall have at least one Director, and at all times no Geographic Region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a "**Geographic Region**": (a) Europe; (b) Asia/Australia/Pacific; (c) Latin America/Caribbean islands; (d) Africa; and (e) North America. The specific countries included in each Geographic Region shall be determined by the Board, and this Section 7.5 shall be reviewed by the Board from time to time (and in any event at least once every three years) to determine whether any change is appropriate, taking account of the evolution of the Internet.

Section 7.6. DIRECTORS' CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN (Internet Corporation for Assigned Names and Numbers). Each Director shall be responsible for disclosing to ICANN (Internet Corporation for Assigned Names and Numbers) any matter that could reasonably be considered to make such Director an "interested director" within the meaning of Section 5233 of the CCC. In addition, each Director shall disclose to ICANN (Internet Corporation for Assigned Names and Numbers) any relationship or other factor that could reasonably be considered to cause the Director to be considered to be an "interested person" within the meaning of Section 5227 of the CCC. The Board shall adopt policies specifically addressing Director, Officer, EC (Empowered Community) and Supporting Organization (Supporting Organization) conflicts of interest. No Director shall vote on any matter in which he or she has a material and direct financial interest that would be affected by the outcome of the vote.

Section 7.7. DUTIES OF DIRECTORS

Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of ICANN (Internet Corporation for Assigned Names and Numbers) and not as representatives of the EC (Empowered Community), the Nominating Committee, Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) that nominated them, as applicable, their employers, or any other organizations or constituencies.

Section 7.8. TERMS OF DIRECTORS

(a) The regular term of office of Director Seats 1 through 15 shall begin as follows:

- (i) The regular terms of Seats 1 through 3 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2003;

(ii) The regular terms of Seats 4 through 6 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2004;

(iii) The regular terms of Seats 7 and 8 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2005;

(iv) The terms of Seats 9 and 12 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2015;

(v) The terms of Seats 10 and 13 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2013; and

(vi) The terms of Seats 11, 14 and 15 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2014.

(b) Each Director holding any of Seats 1 through 15, including a Director nominated and designated to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been designated and qualified or until that Director resigns or is removed in accordance with these Bylaws. For the avoidance of doubt, the new governance provisions effective as of the amendment and restatement of these Bylaws on 1 October 2016 shall not have the effect of shortening or terminating the terms of any Directors serving at the time of the amendment and restatement.

(c) At least two months before the commencement of each annual meeting, the Nominating Committee shall give the EC (Empowered Community) Administration (with a copy to the Decisional Participants and Secretary) written notice of its nomination of Directors for seats with terms beginning at the conclusion of the annual meeting, and the EC (Empowered Community) Administration shall promptly provide the Secretary (with a copy to the Decisional Participants) with written notice of the designation of those Directors. All such notices shall be posted promptly to the Website.

(d) At least six months before the date specified for the commencement of the term as specified in Section 7.8(a)(iv) through Section 7.8(a)(vi) above, any

Supporting Organization (Supporting Organization) or the At-Large Community entitled to nominate a Director for a Seat with a term beginning that year shall give the EC (Empowered Community) Administration (with a copy to the Secretary and the Decisional Participants) written notice of its nomination of Directors for seats with terms beginning at the conclusion of the annual meeting, and the EC (Empowered Community) Administration shall promptly provide the Secretary (with a copy to the Decisional Participants) with written notice of the designation of those Directors. All such notices shall be posted promptly to the Website.

(e) No Director may serve more than three consecutive terms. For these purposes, a person designated to fill a vacancy in a term shall not be deemed to have served that term.

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

Section 7.9. NON-VOTING LIAISONS

(a) The non-voting Liaisons shall include:

(i) One appointed by the Governmental Advisory Committee (Advisory Committee);

(ii) One appointed by the Root Server System Advisory Committee (Advisory Committee) established by Section 12.2(c);

(iii) One appointed by the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Section 12.2(b); and

(iv) One appointed by the Internet Engineering Task Force.

(b) The Liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a Liaison shall give the Secretary written notice of its appointment.

(c) Each Liaison may be reappointed, and shall remain in that position until a successor has been appointed or until the Liaison resigns or is removed in accordance with these Bylaws.

(d) The Liaisons shall be entitled to attend Board meetings, participate in Board discussions and deliberations, and have access (under conditions established by the Board) to materials provided to Directors for use in Board discussions, deliberations and meetings, but shall otherwise not have any of the rights and privileges of Directors. Liaisons shall be entitled (under conditions established by the Board) to use any materials provided to them pursuant to this Section 7.9(d) for the purpose of consulting with their respective committee or organization.

Section 7.10. RESIGNATION OF A DIRECTOR OR NON-VOTING LIAISON

Subject to Section 5226 of the CCC, any Director or Liaison may resign at any time by giving written notice thereof to the Chair of the Board, the President, the Secretary, or the Board. Such resignation shall take effect at the time specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.11. REMOVAL OF A DIRECTOR OR NON-VOTING LIAISON

(a) Directors

(i) Any Director designated by the EC (Empowered Community) may be removed without cause:

(A) by the EC (Empowered Community) pursuant to and in compliance with procedures in Section 3.1 or Section 3.2 of Annex D, as applicable, or

(B) following notice to that Director, by a three-fourths (3/4) majority vote of all Directors; provided, however, that (x) each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director; and (y) such removal shall not be effective until the Secretary has provided notice to the EC (Empowered Community)

Administration of the Board's removal vote and the requirements of Section 6.4 have been met.

(ii) The Board may remove any Director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty under Sections 5230 through 5239 of the CCC, and in the case of such removal, the Secretary shall promptly notify the EC (Empowered Community) Administration in writing, with a copy to the body that nominated such Director, and shall promptly post such notification to the Website. The vacancies created by such removal shall be filled in accordance with Section 7.12(a).

(iii) All Directors (other than the President) may be removed at the same time by the EC (Empowered Community) by the EC (Empowered Community) Administration delivering an EC (Empowered Community) Board Recall Notice to the Secretary pursuant to and in compliance with Section 3.3 of Annex D. The vacancies created by such removal shall be filled by the EC (Empowered Community) in accordance with Section 7.12(b).

(b) With the exception of the Liaison appointed by the Governmental Advisory Committee (Advisory Committee), any Liaison may be removed following notice to that Liaison and to the organization which selected that Liaison, by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that Liaison following such notice. The vacancies created by such removal shall be filled in accordance with Section 7.12. The Board may request the Governmental Advisory Committee (Advisory Committee) to consider the replacement of the Governmental Advisory Committee (Advisory Committee) Liaison if the Board, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate.

Section 7.12. VACANCIES

(a) This Section 7.12(a) shall apply to Board vacancies other than those occurring by recall of all Directors (other than the President). A vacancy or vacancies in the Board shall be deemed to exist in the case of the death, resignation, or removal of any Director or Interim Director (as defined in Section 7.12(b)), or if the authorized number of Directors is increased. Vacancies occurring in Seats 1 through 15 shall be filled by the EC (Empowered Community) after nomination as provided in Section 7.2 and

Articles 8 through 12. A vacancy in Seat 16 shall be filled as provided in Article 15. A Director designated by the EC (Empowered Community) to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been designated and qualified. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.

(b) This Section 7.12(b) shall apply to Board vacancies occurring when all Directors (other than the President) are recalled as provided by Section 7.11(a)(iii). Concurrently with delivery of any EC (Empowered Community) Board Recall Notice (as defined in Section 3.3(f) of Annex D), the EC (Empowered Community) Administration shall provide written notice of the EC (Empowered Community)'s designation of individuals to fill such vacancies (each such individual, an "**Interim Director**") to the Decisional Participants and to the Secretary, who shall cause such notice to be promptly posted to the Website. An Interim Director must meet the criteria specified in Section 7.3, Section 7.4 and Section 7.5, as applicable. An Interim Director shall hold office until the EC (Empowered Community) designates the Interim Director's successor in accordance with Section 7.12(a), and the successor's designation shall occur within 120 days of the Interim Director's designation. For avoidance of doubt, persons designated as Interim Directors may be eligible for designation as Directors as well.

(c) The organizations selecting the Liaisons identified in Section 7.9 are responsible for determining the existence of, and filling, any vacancies in those positions. Such organizations shall give the Secretary written notice of their appointments to fill any such vacancies, subject to the requirements set forth in Section 7.4, as applicable.

Section 7.13. ANNUAL MEETINGS

Annual meetings of ICANN (Internet Corporation for Assigned Names and Numbers) shall be held for the purpose of electing Officers and for the transaction of such other business as may come before the meeting. Each annual meeting of ICANN (Internet Corporation for Assigned Names and Numbers) shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers), or any other appropriate place of the Board's time and choosing, provided such annual meeting is held within 14 months of the immediately preceding annual meeting. If the Board determines

that it is practical, the annual meeting should be distributed in real-time and archived video and audio formats on the Internet.

Section 7.14. REGULAR MEETINGS

Regular meetings of the Board shall be held on dates to be determined by the Board. In the absence of other designation, regular meetings shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 7.15. SPECIAL MEETINGS

Special meetings of the Board may be called by or at the request of one-quarter (1/4) of the Directors, by the Chair of the Board or the President. A call for a special meeting shall be made by the Secretary. Special meetings shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers) unless otherwise specified in the notice of the meeting.

Section 7.16. NOTICE OF MEETINGS

Notice of time and place of all meetings shall be delivered personally or by telephone or by electronic mail to each Director and Liaison, or sent by first-class mail (air mail for addresses outside the United States) or facsimile, charges prepaid, addressed to each Director and Liaison at the Director's or Liaison's address as it is shown on the records of ICANN (Internet Corporation for Assigned Names and Numbers). In case the notice is mailed, it shall be deposited in the United States mail at least fourteen (14) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or facsimile or electronic mail it shall be delivered personally or by telephone or facsimile or electronic mail at least forty-eight (48) hours before the time of the holding of the meeting. Notwithstanding anything in this Section 7.16 to the contrary, notice of a meeting need not be given to any Director or Liaison who signed a waiver of notice or a Director who signed a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 7.17. QUORUM

At all annual, regular, and special meetings of the Board, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, unless otherwise provided herein or by law. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time to another place, time or date. If the meeting is adjourned for more than twenty-four (24) hours, notice shall be given to those Directors not at the meeting at the time of the adjournment.

Section 7.18. ACTIONS BY TELEPHONE MEETING OR BY OTHER COMMUNICATIONS EQUIPMENT

Directors and Liaisons may participate in a meeting of the Board or Board Committee (as defined in Section 14.1) through use of (a) conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another or (b) electronic video screen communication or other communication equipment; provided that (i) all Directors participating in such a meeting can speak to and hear one another, (ii) all Directors are provided the means of fully participating in all matters before the Board or Board Committee, and (iii) ICANN (Internet Corporation for Assigned Names and Numbers) adopts and implements means of verifying that (A) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (B) all actions of, or votes by, the Board or Board Committee are taken or cast only by Directors and not persons who are not Directors. Participation in a meeting pursuant to this Section 7.18 constitutes presence in person at such meeting. ICANN (Internet Corporation for Assigned Names and Numbers) shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit Directors and Liaisons to participate by telephone.

Section 7.19. ACTION WITHOUT MEETING

Any action required or permitted to be taken by the Board or a Committee of the Board may be taken without a meeting if all of the Directors entitled to vote thereat shall individually or collectively consent in writing to such action. Such written consent shall have the same force and effect as the unanimous

vote of such Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 7.20. ELECTRONIC MAIL

If permitted by applicable law, communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing. ICANN (Internet Corporation for Assigned Names and Numbers) shall take such steps as it deems appropriate under the circumstances to assure itself that communications by electronic mail are authentic.

Section 7.21. BOARD RIGHTS OF INSPECTION

(a) Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical properties of ICANN (Internet Corporation for Assigned Names and Numbers).

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 7.22. COMPENSATION

(a) Except for the President of ICANN (Internet Corporation for Assigned Names and Numbers), who serves ex officio as a Director, each of the Directors shall be entitled to receive compensation for his or her services as a Director. The President shall receive only his or her compensation for service as President and shall not receive additional compensation for service as a Director.

(b) If the Board determines to offer a compensation arrangement to one or more Directors (other than the President) for services to ICANN (Internet Corporation for Assigned Names and Numbers) as Directors, the Board shall follow the process that is calculated to pay an amount for service as a Director that is not an excess benefit under the standards set forth in Section 4958 of the Internal Revenue Code of 1986, as amended (the "**Code**").

(c) As part of the process, the Board shall retain an Independent Valuation Expert (as defined in Section 7.22(g)(i)) to consult with and to advise the Board regarding Director compensation arrangements and to issue to the

Board a Reasoned Written Opinion (as defined in Section 7.22(g)(ii)) from such expert regarding the ranges of Reasonable Compensation (as defined in Section 7.22(g)(iii)) for any such services by a Director. The expert's opinion shall address all relevant factors affecting the level of compensation to be paid a Director, including offices held on the Board, attendance at Board and Board Committee meetings, the nature of service on the Board and on Board Committees, and appropriate data as to comparability regarding director compensation arrangements for U.S.-based, nonprofit, tax-exempt organizations possessing a global employee base.

(d) After having reviewed the Independent Valuation Expert's Reasoned Written Opinion, the Board shall meet with the expert to discuss the expert's opinion and to ask questions of the expert regarding the expert's opinion, the comparability data obtained and relied upon, and the conclusions reached by the expert.

(e) The Board shall adequately document the basis for any determination the Board makes regarding a Director compensation arrangement concurrently with making that determination.

(f) In addition to authorizing payment of compensation for services as Directors as set forth in this Section 7.22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses incurred by any Director and by Liaisons performing their duties as Directors or Liaisons.

(g) As used in this Section 7.22, the following terms shall have the following meanings:

(i) An "**Independent Valuation Expert**" means a person retained by ICANN (Internet Corporation for Assigned Names and Numbers) to value compensation arrangements that: (A) holds itself out to the public as a compensation consultant; (B) performs valuations regarding compensation arrangements on a regular basis, with a majority of its compensation consulting services performed for persons other than ICANN (Internet Corporation for Assigned Names and Numbers); (C) is qualified to make valuations of the type of services involved in any engagement by and for ICANN (Internet Corporation for Assigned Names and Numbers); (D) issues to ICANN (Internet Corporation for Assigned Names and Numbers) a Reasoned Written Opinion regarding a particular compensation arrangement; and (E) includes in its

Reasoned Written Opinion a certification that it meets the requirements set forth in (A) through (D) of this definition.

(ii) A "**Reasoned Written Opinion**" means a written opinion of a valuation expert who meets the requirements of Section 7.22(g)(i)(A) through (D). To be reasoned, the opinion must be based upon a full disclosure by ICANN (Internet Corporation for Assigned Names and Numbers) to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.

(iii) "**Reasonable Compensation**" shall have the meaning set forth in §53.4958-4(b)(1)(ii) of the Regulations issued under §4958 of the Code.

(h) Each of the Liaisons, with the exception of the Governmental Advisory Committee (Advisory Committee) Liaison, shall be entitled to receive compensation for his or her services as a Liaison. If the Board determines to offer a compensation arrangement to one or more Liaisons, the Board shall approve that arrangement by a required three-fourths (3/4) vote.

Section 7.23. PRESUMPTION OF ASSENT

A Director present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

Section 7.24 INTERIM BOARD

Except in circumstances in which urgent decisions are needed to protect the security, stability or resilience of the DNS (Domain Name System) or to the extent necessary to comply with its fiduciary obligations under applicable law, a Board that consists of a majority or more of Interim Directors (an "**Interim Board**") shall (a) consult with the chairs of the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) before making major decisions and (b) consult through a community forum (in a manner consistent with the process for a Rejection Action Community Forum pursuant to Section 2.3 of Annex D) prior to taking any action that would, if implemented, materially change ICANN (Internet Corporation for Assigned Names and Numbers)'s strategy, policies or management, including replacement of the then-serving President. Interim Directors shall be entitled to compensation as provided in this Article 7.

Section 7.25 COMMUNICATION OF DESIGNATION

Upon its receipt of nominations as provided in Articles 7 through 12, the EC (Empowered Community) Administration, on behalf of the EC (Empowered Community), shall promptly notify the Secretary of the EC (Empowered Community)'s designation of individuals to fill seats on the Board. ICANN (Internet Corporation for Assigned Names and Numbers) shall post all such designations promptly to the Website.

ARTICLE 8 NOMINATING COMMITTEE

Section 8.1. DESCRIPTION

There shall be a Nominating Committee of ICANN (Internet Corporation for Assigned Names and Numbers) ("**Nominating Committee**"), responsible for nominating all Directors except the President and those Directors nominated by Decisional Participants; for nominating two directors of PTI (in accordance with the articles of incorporation and bylaws of PTI); and for such other selections as are set forth in these Bylaws. Notification of the Nominating Committee's Director nominations shall be given by the Nominating Committee Chair in writing to the EC (Empowered Community) Administration, with a copy to the Secretary, and the EC (Empowered Community) shall promptly act on it as provided in Section 7.25. Notification of the Nominating Committee's PTI director nomination shall be given to the Secretary.

Section 8.2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

- (a) A non-voting Chair, appointed by the Board;
- (b) A non-voting Chair-Elect, appointed by the Board as a non-voting advisor;
- (c) A non-voting liaison appointed by the Root Server System Advisory Committee (Advisory Committee) established by Section 12.2(c);
- (d) A non-voting liaison appointed by the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Section 12.2(b);
- (e) A non-voting liaison appointed by the Governmental Advisory Committee (Advisory Committee);
- (f) Five voting delegates selected by the At-Large Advisory Committee (Advisory Committee) established by Section 12.2(d);
- (g) Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization (Supporting Organization) established by Article 11, as follows:
 - (i) One delegate from the Registries Stakeholder Group;
 - (ii) One delegate from the Registrars Stakeholder Group;
 - (iii) Two delegates from the Business Constituency, one representing small business users and one representing large business users;
 - (iv) One delegate from the Internet Service Providers and Connectivity Providers Constituency (as defined in Section 11.5(a)(iii));
 - (v) One delegate from the Intellectual Property Constituency; and
 - (vi) One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.

(h) One voting delegate each selected by the following entities:

(i) The Council of the Country Code Names Supporting Organization (Supporting Organization) established by Section 10.3;

(ii) The Council of the Address Supporting Organization (Supporting Organization) established by Section 9.2; and

(iii) The Internet Engineering Task Force.

(i) A non-voting Associate Chair, who may be appointed by the Chair, at his or her sole discretion, to serve during all or part of the term of the Chair. The Associate Chair may not be a person who is otherwise a member of the same Nominating Committee. The Associate Chair shall assist the Chair in carrying out the duties of the Chair, but shall not serve, temporarily or otherwise, in the place of the Chair.

Section 8.3. TERMS

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

(b) The regular term of each voting delegate shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the immediately following ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting.

(c) Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting.

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

(e) Vacancies in the positions of delegate, non-voting liaison, Chair or Chair-Elect shall be filled by the entity entitled to select the delegate, non-voting liaison, Chair or Chair-Elect involved. For any term that the Chair-Elect position is vacant pursuant to Section 8.3(d), or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 8.2(i).

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

Section 8.4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES

Delegates to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee shall be:

(a) Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making;

(b) Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN (Internet Corporation for Assigned Names and Numbers);

(c) Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;

(d) Persons who are neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities;

(e) Persons with an understanding of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers)'s activities on the broader Internet community who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and

(f) Persons who are able to work and communicate in written and spoken English.

Section 8.5. DIVERSITY

In carrying out its responsibilities to nominate Directors to fill Seats 1 through 8 (and selections to any other ICANN (Internet Corporation for Assigned Names and Numbers) bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the Board (and such other bodies), and seek to ensure that the persons it nominates to serve as Director and selects shall, to the extent feasible and consistent with the other criteria required to be applied by Section 8.4, be guided by Section 1.2(b)(ii).

Section 8.6. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.

Section 8.7. PROCEDURES

The Nominating Committee shall adopt such operating procedures as it deems necessary, which shall be published on the Website.

Section 8.8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

No person who serves on the Nominating Committee in any capacity shall be eligible for nomination by any means to any position on the Board or any other ICANN (Internet Corporation for Assigned Names and Numbers) body having one or more membership positions that the Nominating Committee is responsible for filling, until the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting that coincides with, or is after, the conclusion of that person's service on the Nominating Committee.

Section 8.9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE

No person who is an employee of or paid consultant to ICANN (Internet Corporation for Assigned Names and Numbers) (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in Section 8.2.

ARTICLE 9 ADDRESS SUPPORTING ORGANIZATION

Section 9.1. DESCRIPTION

(a) The Address Supporting Organization (Supporting Organization) ("**Address Supporting Organization (Supporting Organization)**" or "**ASO (Address Supporting Organization)**") shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses.

(b) The ASO (Address Supporting Organization) shall be the entity established by the Memorandum of Understanding entered on 21 October 2004 between ICANN (Internet Corporation for Assigned Names and Numbers) and the Number Resource Organization ("NRO (Number Resource Organization)"), an organization of the existing RIRs.

Section 9.2. ADDRESS COUNCIL

(a) The ASO (Address Supporting Organization) shall have an Address Council, consisting of the members of the NRO (Number Resource Organization) Number Council.

(b) The Address Council shall nominate individuals to fill Seats 9 and 10 on the Board. Notification of the Address Council's nominations shall be given by the Address Council in writing to the EC (Empowered Community) Administration, with a copy to the Secretary, and the EC (Empowered Community) shall promptly act on it as provided in Section 7.25.

ARTICLE 10 COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

Section 10.1. DESCRIPTION

There shall be a policy-development body known as the Country-Code Names Supporting Organization (Supporting Organization) ("**ccNSO**

(Country Code Names Supporting Organization)"), which shall be responsible for:

- (a) developing and recommending to the Board global policies relating to country-code top-level domains;
- (b) Nurturing consensus across the ccNSO (Country Code Names Supporting Organization)'s community, including the name-related activities of ccTLDs;
- (c) Coordinating with other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations), committees, and constituencies under ICANN (Internet Corporation for Assigned Names and Numbers);
- (d) Nominating individuals to fill Seats 11 and 12 on the Board; and
- (e) Other responsibilities of the ccNSO (Country Code Names Supporting Organization) as set forth in these Bylaws.

Policies that apply to ccNSO (Country Code Names Supporting Organization) members by virtue of their membership are only those policies developed according to Section 10.4(j) and Section 10.4(k). However, the ccNSO (Country Code Names Supporting Organization) may also engage in other activities authorized by its members. Adherence to the results of these activities will be voluntary and such activities may include: seeking to develop voluntary best practices for ccTLD (Country Code Top Level Domain) managers, assisting in skills building within the global community of ccTLD (Country Code Top Level Domain) managers, and enhancing operational and technical cooperation among ccTLD (Country Code Top Level Domain) managers.

Section 10.2. ORGANIZATION

The ccNSO (Country Code Names Supporting Organization) shall consist of (a) ccTLD (Country Code Top Level Domain) managers that have agreed in writing to be members of the ccNSO (Country Code Names Supporting Organization) (see Section 10.4(b)) and (b) a ccNSO (Country Code Names Supporting Organization) Council responsible for managing the policy-development process of the ccNSO (Country Code Names Supporting Organization).

Section 10.3. ccNSO (Country Code Names Supporting Organization) COUNCIL

(a) The ccNSO (Country Code Names Supporting Organization) Council shall consist of three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each of ICANN (Internet Corporation for Assigned Names and Numbers)'s Geographic Regions in the manner described in Section 10.4(g) through Section 10.4(i); (ii) three ccNSO (Country Code Names Supporting Organization) Council members selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee; (iii) liaisons as described in Section 10.3(b); and (iv) observers as described in Section 10.3(c).

(b) There shall also be one liaison to the ccNSO (Country Code Names Supporting Organization) Council from each of the following organizations, to the extent they choose to appoint such a liaison: (i) the Governmental Advisory Committee (Advisory Committee); (ii) the At-Large Advisory Committee (Advisory Committee); and (iii) each of the Regional Organizations described in Section 10.5. These liaisons shall not be members of or entitled to vote on the ccNSO (Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO (Country Code Names Supporting Organization) Council. Appointments of liaisons shall be made by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair, and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

(c) The ccNSO (Country Code Names Supporting Organization) Council may agree with the Council of any other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) to exchange observers. Such observers shall not be members of or entitled to vote on the ccNSO (Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO (Country Code Names Supporting Organization) Council. The

appointing Council may designate its observer (or revoke or change the designation of its observer) on the ccNSO (Country Code Names Supporting Organization) Council at any time by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

(d) (i) the regular term of each ccNSO (Country Code Names Supporting Organization) Council member shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting thereafter; (ii) the regular terms of the three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region shall be staggered so that one member's term begins in a year divisible by three, a second member's term begins in the first year following a year divisible by three, and the third member's term begins in the second year following a year divisible by three; and (iii) the regular terms of the three ccNSO (Country Code Names Supporting Organization) Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO (Country Code Names Supporting Organization) Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

(e) A ccNSO (Country Code Names Supporting Organization) Council member may resign at any time by giving written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

(f) ccNSO (Country Code Names Supporting Organization) Council members may be removed for not attending three consecutive meetings of the ccNSO (Country Code Names Supporting Organization) Council without sufficient cause or for grossly inappropriate behavior, both as determined by at least a 66% vote of all of the members of the ccNSO (Country Code Names Supporting Organization) Council.

(g) A vacancy on the ccNSO (Country Code Names Supporting Organization) Council shall be deemed to exist in the case of the death, resignation, or removal of any ccNSO (Country Code Names Supporting Organization) Council member. Vacancies in the positions of the three members selected by the Nominating Committee shall be filled for the unexpired term involved by the Nominating Committee giving the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selection, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair. Vacancies in the positions of the ccNSO (Country Code Names Supporting Organization) Council members selected by ccNSO (Country Code Names Supporting Organization) members shall be filled for the unexpired term by the procedure described in Section 10.4(g) through (i).

(h) The role of the ccNSO (Country Code Names Supporting Organization) Council is to administer and coordinate the affairs of the ccNSO (Country Code Names Supporting Organization) (including coordinating meetings, including an annual meeting, of ccNSO (Country Code Names Supporting Organization) members as described in Section 10.4(f)) and to manage the development of policy recommendations in accordance with Section 10.6(a). The ccNSO (Country Code Names Supporting Organization) Council shall also undertake such other roles as the members of the ccNSO (Country Code Names Supporting Organization) shall decide from time to time.

(i) The ccNSO (Country Code Names Supporting Organization) Council shall nominate individuals to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; any such nomination must have affirmative votes of a majority of all the members of the ccNSO (Country Code Names Supporting Organization) Council then in office. Notification of the ccNSO (Country Code Names Supporting Organization) Council's nominations shall be given by the ccNSO (Country Code Names Supporting Organization) Council Chair in writing to the EC (Empowered Community) Administration, with a copy to the Secretary, and the EC (Empowered Community) shall promptly act on it as provided in Section 7.25.

(j) The ccNSO (Country Code Names Supporting Organization) Council shall select from among its members the ccNSO (Country Code Names Supporting Organization) Council Chair and such Vice Chair(s) as it deems appropriate. Selections of the ccNSO (Country Code Names Supporting Organization) Council Chair and Vice Chair(s) shall be by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all

the members of the ccNSO (Country Code Names Supporting Organization) Council then in office. The term of office of the ccNSO (Country Code Names Supporting Organization) Council Chair and any Vice Chair(s) shall be as specified by the ccNSO (Country Code Names Supporting Organization) Council at or before the time the selection is made. The ccNSO (Country Code Names Supporting Organization) Council Chair or any Vice Chair(s) may be recalled from office by the same procedure as used for selection.

(k) The ccNSO (Country Code Names Supporting Organization) Council, subject to direction by the ccNSO (Country Code Names Supporting Organization) members, shall adopt such rules and procedures for the ccNSO (Country Code Names Supporting Organization) as it deems necessary, provided they are consistent with these Bylaws. Rules for ccNSO (Country Code Names Supporting Organization) membership and operating procedures adopted by the ccNSO (Country Code Names Supporting Organization) Council shall be published on the Website.

(l) Except as provided by Section 10.3(i) and Section 10.3(j), the ccNSO (Country Code Names Supporting Organization) Council shall act at meetings. The ccNSO (Country Code Names Supporting Organization) Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the discretion of the ccNSO (Country Code Names Supporting Organization) Council, meetings may be held in person or by other means, provided that all ccNSO (Country Code Names Supporting Organization) Council members are permitted to participate by at least one means described in Section 10.3(n). Except where determined by a majority vote of the members of the ccNSO (Country Code Names Supporting Organization) Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO (Country Code Names Supporting Organization) Council meetings should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

(m) Notice of time and place (and information about means of participation other than personal attendance) of all meetings of the ccNSO (Country Code Names Supporting Organization) Council shall be provided to each ccNSO (Country Code Names Supporting Organization) Council member, liaison, and observer by e-mail, telephone, facsimile, or a paper notice delivered personally or by postal mail. In case the notice is sent by postal mail, it shall be sent at least 21 days before the day of the meeting. In case the notice is

delivered personally or by telephone, facsimile, or e-mail it shall be provided at least seven days before the day of the meeting. At least seven days in advance of each ccNSO (Country Code Names Supporting Organization) Council meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

(n) Members of the ccNSO (Country Code Names Supporting Organization) Council may participate in a meeting of the ccNSO (Country Code Names Supporting Organization) Council through personal attendance or use of electronic communication (such as telephone or video conference), provided that (i) all ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting can speak to and hear one another, (ii) all ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting are provided the means of fully participating in all matters before the ccNSO (Country Code Names Supporting Organization) Council, and (iii) there is a reasonable means of verifying the identity of ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting and their votes. A majority of the ccNSO (Country Code Names Supporting Organization) Council members (i.e. those entitled to vote) then in office shall constitute a quorum for the transaction of business, and actions by a majority vote of the ccNSO (Country Code Names Supporting Organization) Council members present at any meeting at which there is a quorum shall be actions of the ccNSO (Country Code Names Supporting Organization) Council, unless otherwise provided in these Bylaws. The ccNSO (Country Code Names Supporting Organization) Council shall transmit minutes of its meetings to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following the meeting, and no later than 21 days following the meeting.

Section 10.4. MEMBERSHIP

(a) The ccNSO (Country Code Names Supporting Organization) shall have a membership consisting of ccTLD (Country Code Top Level Domain) managers. Any ccTLD (Country Code Top Level Domain) manager that meets the membership qualifications stated in Section 10.4(b) shall be entitled to be members of the ccNSO (Country Code Names Supporting Organization). For purposes of this Article 10, a ccTLD (Country Code Top Level Domain) manager is the organization or entity responsible for managing an ISO (International Organization for Standardization) 3166 country-code

top-level domain, or under any later variant, for that country-code top-level domain.

(b) Any ccTLD (Country Code Top Level Domain) manager may become a ccNSO (Country Code Names Supporting Organization) member by submitting an application to a person designated by the ccNSO (Country Code Names Supporting Organization) Council to receive applications. The application shall be in writing in a form designated by the ccNSO (Country Code Names Supporting Organization) Council. The application shall include the ccTLD (Country Code Top Level Domain) manager's recognition of the role of the ccNSO (Country Code Names Supporting Organization) within the ICANN (Internet Corporation for Assigned Names and Numbers) structure as well as the ccTLD (Country Code Top Level Domain) manager's agreement, for the duration of its membership in the ccNSO (Country Code Names Supporting Organization), (i) to adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (ii) to abide by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by Section 10.4(j) and Section 10.4(k), and (ii) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 10.7(c). A ccNSO (Country Code Names Supporting Organization) member may resign from membership at any time by giving written notice to a person designated by the ccNSO (Country Code Names Supporting Organization) Council to receive notices of resignation. Upon resignation the ccTLD (Country Code Top Level Domain) manager ceases to agree to (A) adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (B) to abide by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by Section 10.4(j) and Section 10.4(k), and (C) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 10.7(c). In the absence of designation by the ccNSO (Country Code Names Supporting Organization) Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, who shall notify the ccNSO (Country Code Names Supporting Organization) Council of receipt of any such applications and notices.

(c) Neither membership in the ccNSO (Country Code Names Supporting Organization) nor membership in any Regional Organization described in Section 10.5 shall be a condition for access to or registration in the IANA (Internet Assigned Numbers Authority) database. Any individual relationship a ccTLD (Country Code Top Level Domain) manager has with ICANN (Internet Corporation for Assigned Names and Numbers) or the ccTLD (Country Code Top Level Domain) manager's receipt of IANA (Internet Assigned Numbers Authority) services is not in any way contingent upon membership in the ccNSO (Country Code Names Supporting Organization).

(d) The Geographic Regions of ccTLDs shall be as described in Section 7.5. For purposes of this Article 10, managers of ccTLDs within a Geographic Region that are members of the ccNSO (Country Code Names Supporting Organization) are referred to as ccNSO (Country Code Names Supporting Organization) members "within" the Geographic Region, regardless of the physical location of the ccTLD (Country Code Top Level Domain) manager. In cases where the Geographic Region of a ccNSO (Country Code Names Supporting Organization) member is unclear, the ccTLD (Country Code Top Level Domain) member should self-select according to procedures adopted by the ccNSO (Country Code Names Supporting Organization) Council.

(e) Each ccTLD (Country Code Top Level Domain) manager may designate in writing a person, organization, or entity to represent the ccTLD (Country Code Top Level Domain) manager. In the absence of such a designation, the ccTLD (Country Code Top Level Domain) manager shall be represented by the person, organization, or entity listed as the administrative contact in the IANA (Internet Assigned Numbers Authority) database.

(f) There shall be an annual meeting of ccNSO (Country Code Names Supporting Organization) members, which shall be coordinated by the ccNSO (Country Code Names Supporting Organization) Council. Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD (Country Code Top Level Domain) managers that are not members of the ccNSO (Country Code Names Supporting Organization) as well as other non-members of the ccNSO (Country Code Names Supporting Organization) to address the meeting. To the extent practicable, annual meetings of the ccNSO (Country Code Names Supporting Organization) members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

(g) The ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members from each Geographic Region (see Section 10.3(a)) (i) shall be selected through nomination, and if necessary election, by the ccNSO (Country Code Names Supporting Organization) members within that Geographic Region. At least 90 days before the end of the regular term of any ccNSO (Country Code Names Supporting Organization)-member-selected member of the ccNSO (Country Code Names Supporting Organization) Council, or upon the occurrence of a vacancy in the seat of such a ccNSO (Country Code Names Supporting Organization) Council member, the ccNSO (Country Code Names Supporting Organization) Council shall establish a nomination and election schedule, which shall be sent to all ccNSO (Country Code Names Supporting Organization) members within the Geographic Region and posted on the Website.

(h) Any ccNSO (Country Code Names Supporting Organization) member may nominate an individual to serve as a ccNSO (Country Code Names Supporting Organization) Council member representing the ccNSO (Country Code Names Supporting Organization) member's Geographic Region. Nominations must be seconded by another ccNSO (Country Code Names Supporting Organization) member from the same Geographic Region. By accepting their nomination, individuals nominated to the ccNSO (Country Code Names Supporting Organization) Council agree to support the policies committed to by ccNSO (Country Code Names Supporting Organization) members.

(i) If at the close of nominations there are no more candidates nominated (with seconds and acceptances) in a particular Geographic Region than there are seats on the ccNSO (Country Code Names Supporting Organization) Council available for that Geographic Region, then the nominated candidates shall be selected to serve on the ccNSO (Country Code Names Supporting Organization) Council. Otherwise, an election by written ballot (which may be by e-mail) shall be held to select the ccNSO (Country Code Names Supporting Organization) Council members from among those nominated (with seconds and acceptances), with ccNSO (Country Code Names Supporting Organization) members from the Geographic Region being entitled to vote in the election through their designated representatives. In such an election, a majority of all ccNSO (Country Code Names Supporting Organization) members in the Geographic Region entitled to vote shall constitute a quorum, and the selected candidate must receive the votes of a majority of those cast by ccNSO (Country Code Names Supporting

Organization) members within the Geographic Region. The ccNSO (Country Code Names Supporting Organization) Council Chair shall provide the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary prompt written notice of the selection of ccNSO (Country Code Names Supporting Organization) Council members under this paragraph.

(j) Subject to Section 10.4(k), ICANN (Internet Corporation for Assigned Names and Numbers) policies shall apply to ccNSO (Country Code Names Supporting Organization) members by virtue of their membership to the extent, and only to the extent, that the policies (i) only address issues that are within scope of the ccNSO (Country Code Names Supporting Organization) according to Section 10.6(a) and Annex C; (ii) have been developed through the ccPDP as described in Section 10.6, and (iii) have been recommended as such by the ccNSO (Country Code Names Supporting Organization) to the Board, and (iv) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD (Country Code Top Level Domain) manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN (Internet Corporation for Assigned Names and Numbers) in its activities concerning ccTLDs.

(k) A ccNSO (Country Code Names Supporting Organization) member shall not be bound if it provides a declaration to the ccNSO (Country Code Names Supporting Organization) Council stating that (i) implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j)), and (ii) failure to implement the policy would not impair DNS (Domain Name System) operations or interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO (Country Code Names Supporting Organization) Council will provide a response to the ccNSO (Country Code Names Supporting Organization) member's declaration. If there is a ccNSO (Country Code Names Supporting Organization) Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's agreement with the declaration. If the ccNSO (Country Code Names Supporting Organization) Council disagrees, the ccNSO (Country Code Names Supporting Organization) Council shall review the situation after a six-month period. At the end of that period, the ccNSO (Country Code Names

Supporting Organization) Council shall make findings as to (A) whether the ccNSO (Country Code Names Supporting Organization) members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j)) and (B) whether failure to implement the policy would impair DNS (Domain Name System) operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO (Country Code Names Supporting Organization) Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council.

Section 10.5. REGIONAL ORGANIZATIONS

The ccNSO (Country Code Names Supporting Organization) Council may designate a Regional Organization for each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region, provided that the Regional Organization is open to full membership by all ccNSO (Country Code Names Supporting Organization) members within the Geographic Region. Decisions to designate or de-designate a Regional Organization shall require a 66% vote of all of the members of the ccNSO (Country Code Names Supporting Organization) Council and shall be subject to review according to procedures established by the Board.

Section 10.6. ccNSO (Country Code Names Supporting Organization) POLICY-DEVELOPMENT PROCESS AND SCOPE

(a) The scope of the ccNSO (Country Code Names Supporting Organization)'s policy-development role shall be as stated in Annex C to these Bylaws; any modifications to the scope shall be recommended to the Board by the ccNSO (Country Code Names Supporting Organization) by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

(b) In developing global policies within the scope of the ccNSO (Country Code Names Supporting Organization) and recommending them to the Board, the ccNSO (Country Code Names Supporting Organization) shall follow the ccNSO (Country Code Names Supporting Organization) Policy-Development Process ("**ccPDP**"). The ccPDP shall be as stated in Annex B to these Bylaws; modifications shall be recommended to the Board by the

ccNSO (Country Code Names Supporting Organization) by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Section 10.7. STAFF SUPPORT AND FUNDING

(a) Upon request of the ccNSO (Country Code Names Supporting Organization) Council, a member of the ICANN (Internet Corporation for Assigned Names and Numbers) staff may be assigned to support the ccNSO (Country Code Names Supporting Organization) and shall be designated as the ccNSO (Country Code Names Supporting Organization) Staff Manager. Alternatively, the ccNSO (Country Code Names Supporting Organization) Council may designate, at ccNSO (Country Code Names Supporting Organization) expense, another person to serve as ccNSO (Country Code Names Supporting Organization) Staff Manager. The work of the ccNSO (Country Code Names Supporting Organization) Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO (Country Code Names Supporting Organization) Council, and may include the duties of ccPDP Issue Manager.

(b) Upon request of the ccNSO (Country Code Names Supporting Organization) Council, ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the ccNSO (Country Code Names Supporting Organization) to carry out its responsibilities. Such support shall not include an obligation for ICANN (Internet Corporation for Assigned Names and Numbers) to fund travel expenses incurred by ccNSO (Country Code Names Supporting Organization) participants for travel to any meeting of the ccNSO (Country Code Names Supporting Organization) or for any other purpose. The ccNSO (Country Code Names Supporting Organization) Council may make provision, at ccNSO (Country Code Names Supporting Organization) expense, for administrative and operational support in addition or as an alternative to support provided by ICANN (Internet Corporation for Assigned Names and Numbers).

(c) The ccNSO (Country Code Names Supporting Organization) Council shall establish fees to be paid by ccNSO (Country Code Names Supporting Organization) members to defray ccNSO (Country Code Names Supporting Organization) expenses as described in Section 10.7(a) and Section 10.7(b), as approved by the ccNSO (Country Code Names Supporting Organization) members.

(d) Written notices given to the Secretary under this Article 10 shall be permanently retained, and shall be made available for review by the ccNSO (Country Code Names Supporting Organization) Council on request. The Secretary shall also maintain the roll of members of the ccNSO (Country Code Names Supporting Organization), which shall include the name of each ccTLD (Country Code Top Level Domain) manager's designated representative, and which shall be posted on the Website.

ARTICLE 11 GENERIC NAMES SUPPORTING ORGANIZATION

Section 11.1. DESCRIPTION

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

Section 11.2. ORGANIZATION

The GNSO (Generic Names Supporting Organization) shall consist of:

- (a) A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in Section 11.5;
- (b) Four Stakeholder Groups organized within Houses as described in Section 11.5;
- (c) Two Houses within the GNSO (Generic Names Supporting Organization) Council as described in Section 11.3(h);
- (d) A GNSO (Generic Names Supporting Organization) Council responsible for managing the policy development process of the GNSO (Generic Names Supporting Organization), as described in Section 11.3; and

(e) Except as otherwise defined in these Bylaws, the four Stakeholder Groups and the Constituencies will be responsible for defining their own charters with the approval of their members and of the Board.

Section 11.3. GNSO (Generic Names Supporting Organization) COUNCIL

(a) Subject to Section 11.5, the GNSO (Generic Names Supporting Organization) Council shall consist of:

- (i) three representatives selected from the Registries Stakeholder Group;
- (ii) three representatives selected from the Registrars Stakeholder Group;
- (iii) six representatives selected from the Commercial Stakeholder Group;
- (iv) six representatives selected from the Non-Commercial Stakeholder Group; and
- (v) three representatives selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee, one of which shall be non-voting, but otherwise entitled to participate on equal footing with other members of the GNSO (Generic Names Supporting Organization) Council including, e.g. the making and seconding of motions and of serving as Chair if elected. One Nominating Committee appointee voting representative shall be assigned to each House (as described in Section 11.3(h)) by the Nominating Committee.

No individual representative may hold more than one seat on the GNSO (Generic Names Supporting Organization) Council at the same time.

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

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

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

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

two consecutive terms must remain out of office for one full term prior to serving any subsequent term as Council member. A "special circumstance" is defined in the GNSO (Generic Names Supporting Organization) Operating Procedures.

(c) A vacancy on the GNSO (Generic Names Supporting Organization) Council shall be deemed to exist in the case of the death, resignation, or removal of any member. Vacancies shall be filled for the unexpired term by the appropriate Nominating Committee or Stakeholder Group that selected the member holding the position before the vacancy occurred by giving the GNSO (Generic Names Supporting Organization) Secretariat written notice of its selection. Procedures for handling Stakeholder Group-appointed GNSO (Generic Names Supporting Organization) Council member vacancies, resignations, and removals are prescribed in the applicable Stakeholder Group Charter.

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

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

(e) No more than one officer, director or employee of any particular corporation or other organization (including its subsidiaries and affiliates) shall

serve on the GNSO (Generic Names Supporting Organization) Council at any given time.

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

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

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

Election procedures are defined in the GNSO (Generic Names Supporting Organization) Operating Procedures.

Notification of the Board seat nominations shall be given by the GNSO (Generic Names Supporting Organization) Chair in writing to the EC (Empowered Community) Administration, with a copy to the Secretary, and the EC (Empowered Community) shall promptly act on it as provided in Section 7.25.

(g) The GNSO (Generic Names Supporting Organization) Council shall select the GNSO (Generic Names Supporting Organization) Chair for a term the GNSO (Generic Names Supporting Organization) Council specifies, but not longer than one year. Each House (as described in Section 11.3(h)) shall select a Vice-Chair, who will be a Vice-Chair of the whole of the GNSO (Generic Names Supporting Organization) Council, for a term the GNSO (Generic Names Supporting Organization) Council specifies, but not longer than one year. The procedures for selecting the Chair and any other officers are contained in the GNSO (Generic Names Supporting Organization) Operating Procedures. In the event that the GNSO (Generic Names Supporting Organization) Council has not elected a GNSO (Generic Names Supporting Organization) Chair by the end of the previous Chair's term, the Vice-Chairs will serve as Interim GNSO (Generic Names Supporting Organization) Co-Chairs until a successful election can be held.

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

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

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

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

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

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

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

(iii) Initiate a PDP (Policy Development Process) Not Within Scope: requires an affirmative vote of GNSO (Generic Names Supporting Organization) Supermajority (as defined in Section 11.3(i)(xix)).

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

(v) Approve a PDP (Policy Development Process) Team Charter for a PDP (Policy Development Process) Not Within Scope: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

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

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

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

(ix) Approve a PDP (Policy Development Process) Recommendation With a GNSO (Generic Names Supporting Organization) Supermajority: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority,

(x) Approve a PDP (Policy Development Process) Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN (Internet Corporation for Assigned Names and Numbers) contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO (Generic

Names Supporting Organization) Supermajority vote threshold will have to be met or exceeded.

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

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

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

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

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

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

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

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

(xix) A "**GNSO (Generic Names Supporting Organization) Supermajority**" shall mean: (A) two-thirds (2/3) of the Council

members of each House, or (B) three-fourths (3/4) of the Council members of one House and a majority of the Council members of the other House.

Section 11.4. STAFF SUPPORT AND FUNDING

(a) A member of the ICANN (Internet Corporation for Assigned Names and Numbers) staff shall be assigned to support the GNSO (Generic Names Supporting Organization), whose work on substantive matters shall be assigned by the Chair of the GNSO (Generic Names Supporting Organization) Council, and shall be designated as the GNSO (Generic Names Supporting Organization) Staff Manager ("Staff Manager").

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the GNSO (Generic Names Supporting Organization) to carry out its responsibilities. Such support shall not include an obligation for ICANN (Internet Corporation for Assigned Names and Numbers) to fund travel expenses incurred by GNSO (Generic Names Supporting Organization) participants for travel to any meeting of the GNSO (Generic Names Supporting Organization) or for any other purpose. ICANN (Internet Corporation for Assigned Names and Numbers) may, at its discretion, fund travel expenses for GNSO (Generic Names Supporting Organization) participants under any travel support procedures or guidelines that it may adopt from time to time.

Section 11.5. STAKEHOLDER GROUPS

(a) The following "**Stakeholder Groups**" are hereby recognized as representative of a specific group of one or more "**Constituencies**" or interest groups:

(i) Registries Stakeholder Group representing all gTLD (generic Top Level Domain) registries under contract to ICANN (Internet Corporation for Assigned Names and Numbers);

(ii) Registrars Stakeholder Group representing all registrars accredited by and under contract to ICANN (Internet Corporation for Assigned Names and Numbers);

(iii) Commercial Stakeholder Group representing the full range of large and small commercial entities of the Internet ("**Commercial Stakeholder Group**"), which includes the Business Constituency ("**Business Constituency**"), Intellectual Property Constituency ("**Intellectual Property Constituency**") and the Internet Service Providers and Connectivity Providers Constituency ("**Internet Service Providers and Connectivity Providers Constituency**"); and

(iv) Non-Commercial Stakeholder Group representing the full range of non-commercial entities of the Internet.

(b) Each Stakeholder Group is assigned a specific number of GNSO (Generic Names Supporting Organization) Council seats in accordance with Section 11.3(a).

(c) Each Stakeholder Group identified in Section 11.3(a) and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN (Internet Corporation for Assigned Names and Numbers) Board. Recognition is granted by the Board based upon the extent to which, in fact, the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with procedures designed to ensure fairness. Stakeholder Group and Constituency Charters may be reviewed periodically as prescribed by the Board.

(d) Any group of individuals or entities may petition the Board for recognition as a new or separate Constituency in the Non-Contracted Parties House. Any such petition shall contain:

(i) A detailed explanation of why the addition of such a Constituency will improve the ability of the GNSO (Generic Names Supporting Organization) to carry out its policy-development responsibilities;

(ii) A detailed explanation of why the proposed new Constituency adequately represents, on a global basis, the stakeholders it seeks to represent;

(iii) A recommendation for organizational placement within a particular Stakeholder Group; and

(iv) A proposed charter that adheres to the principles and procedures contained in these Bylaws.

Any petition for the recognition of a new Constituency and the associated charter shall be posted for public comment.

(e) The Board may create new Constituencies as described in [Section 11.5\(c\)](#) in response to such a petition, or on its own motion, if the Board determines that such action would serve the purposes of [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#). In the event the Board is considering acting on its own motion it shall post a detailed explanation of why such action is necessary or desirable, set a reasonable time for public comment, and not make a final decision on whether to create such new Constituency until after reviewing all comments received. Whenever the Board posts a petition or recommendation for a new Constituency for public comment, the Board shall notify the [GNSO \(Generic Names Supporting Organization\)](#) Council and the appropriate Stakeholder Group affected and shall consider any response to that notification prior to taking action.

Section 11.6. POLICY DEVELOPMENT PROCESS

The policy-development procedures to be followed by the [GNSO \(Generic Names Supporting Organization\)](#) shall be as stated in [Annex A](#) to these Bylaws. These procedures may be supplemented or revised in the manner stated in [Section 11.3\(d\)](#).

ARTICLE 12 ADVISORY COMMITTEES

Section 12.1. GENERAL

The Board may create one or more "**[Advisory Committees \(Advisory Committees\)](#)**" in addition to those set forth in this [Article 12](#). [Advisory Committee \(Advisory Committee\)](#) membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. [Advisory Committees \(Advisory Committees\)](#) shall have no legal authority to act for [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#), but shall report their findings and recommendations to the Board.

Section 12.2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees (Advisory Committees):

(a) Governmental Advisory Committee (Advisory Committee)

(i) The Governmental Advisory Committee (Advisory Committee) should consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers) as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN (Internet Corporation for Assigned Names and Numbers)'s policies and various laws and international agreements or where they may affect public policy issues.

(ii) Membership in the Governmental Advisory Committee (Advisory Committee) shall be open to all national governments. Membership shall also be open to Distinct Economies as recognized in international fora, and multinational governmental organizations and treaty organizations, on the invitation of the Governmental Advisory Committee (Advisory Committee) through its Chair.

(iii) The Governmental Advisory Committee (Advisory Committee) may adopt its own charter and internal operating principles or procedures to guide its operations, to be published on the Website.

(iv) The chair of the Governmental Advisory Committee (Advisory Committee) shall be elected by the members of the Governmental Advisory Committee (Advisory Committee) pursuant to procedures adopted by such members.

(v) Each member of the Governmental Advisory Committee (Advisory Committee) shall appoint one accredited representative to the Governmental Advisory Committee (Advisory Committee). The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization and whose primary function with such government, public authority, or organization is to develop or influence governmental or public policies.

(vi) The Governmental Advisory Committee (Advisory Committee) shall annually appoint one Liaison to the Board, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee.

(vii) The Governmental Advisory Committee (Advisory Committee) may designate a non-voting liaison to each of the Supporting Organization (Supporting Organization) Councils and Advisory Committees (Advisory Committees), to the extent the Governmental Advisory Committee (Advisory Committee) deems it appropriate and useful to do so.

(viii) The Board shall notify the Chair of the Governmental Advisory Committee (Advisory Committee) in a timely manner of any proposal raising public policy issues on which it or any of the Supporting Organizations (Supporting Organizations) or Advisory Committees (Advisory Committees) seeks public comment, and shall take duly into account any timely response to that notification prior to taking action.

(ix) The Governmental Advisory Committee (Advisory Committee) may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.

(x) The advice of the Governmental Advisory Committee (Advisory Committee) on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee (Advisory Committee) advice, it shall so inform the Governmental Advisory Committee (Advisory Committee) and state the reasons why it decided not to follow that advice. Any Governmental Advisory Committee (Advisory Committee) advice approved by a full Governmental Advisory Committee (Advisory Committee) consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection ("**GAC (Governmental Advisory Committee) Consensus (Consensus) Advice**"), may only be rejected by a vote of no less than 60% of the Board, and the Governmental Advisory Committee (Advisory Committee) and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The

Governmental Advisory Committee (Advisory Committee) will state whether any advice it gives to the Board is GAC (Governmental Advisory Committee) Consensus (Consensus) Advice.

(xi) If GAC (Governmental Advisory Committee) Consensus (Consensus) Advice is rejected by the Board pursuant to Section 12.2(a)(x) and if no such mutually acceptable solution can be found, the Board will state in its final decision the reasons why the Governmental Advisory Committee (Advisory Committee) advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee (Advisory Committee) members with regard to public policy issues falling within their responsibilities.

(b) Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee)

(i) The role of the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) ("**Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee)**" or "**SSAC (Security and Stability Advisory Committee)**") is to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:

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

(B) To engage in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community accordingly. The SSAC (Security and Stability Advisory Committee) shall recommend any necessary audit activity to assess the current status of DNS (Domain Name System) and address allocation security in relation to identified risks and threats.

(C) To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF (Internet Engineering Task Force), RSSAC (Root Server System Advisory Committee) (as defined in Section 12.2(c)(i)), RIRs, name registries, etc.), to ensure that its advice on security risks, issues, and priorities is properly synchronized with existing standardization, deployment, operational, and coordination activities. The SSAC (Security and Stability Advisory Committee) shall monitor these activities and inform the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on their progress, as appropriate.

(D) To report periodically to the Board on its activities.

(E) To make policy recommendations to the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board.

(ii) The SSAC (Security and Stability Advisory Committee)'s chair and members shall be appointed by the Board. SSAC (Security and Stability Advisory Committee) membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. The chair and members may be re-appointed, and there are no limits to the number of terms the chair or members may serve. The SSAC (Security and Stability Advisory Committee) chair may provide recommendations to the Board regarding appointments to the SSAC (Security and Stability Advisory Committee). The SSAC (Security and Stability Advisory Committee) chair shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the SSAC (Security and Stability Advisory Committee) is considered for appointment or re-appointment each year. The Board shall also have the power to remove SSAC (Security and Stability Advisory Committee) appointees

as recommended by or in consultation with the SSAC (Security and Stability Advisory Committee).

(iii) The SSAC (Security and Stability Advisory Committee) shall annually appoint a Liaison to the Board according to Section 7.9.

(c) Root Server System Advisory Committee (Advisory Committee)

(i) The role of the Root Server System Advisory Committee (Advisory Committee) ("**Root Server System Advisory Committee (Advisory Committee)**") or "**RSSAC (Root Server System Advisory Committee)**") is to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System. It shall have the following responsibilities:

(A) Communicate on matters relating to the operation of the Root Servers (Root Servers) and their multiple instances with the Internet technical community and the ICANN (Internet Corporation for Assigned Names and Numbers) community. The RSSAC (Root Server System Advisory Committee) shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common practices related to the operation of DNS (Domain Name System) servers.

(B) Communicate on matters relating to the administration of the Root Zone (Root Zone) with those who have direct responsibility for that administration. These matters include the processes and procedures for the production of the Root Zone (Root Zone) File.

(C) Engage in ongoing threat assessment and risk analysis of the Root Server System and recommend any necessary audit activity to assess the current status of root servers and the root zone.

(D) Respond to requests for information or opinions from the Board.

(E) Report periodically to the Board on its activities.

(F) Make policy recommendations to the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board.

(ii) The RSSAC (Root Server System Advisory Committee) shall be led by two co-chairs. The RSSAC (Root Server System Advisory Committee)'s chairs and members shall be appointed by the Board.

(A) RSSAC (Root Server System Advisory Committee) membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms the members may serve. The RSSAC (Root Server System Advisory Committee) chairs shall provide recommendations to the Board regarding appointments to the RSSAC (Root Server System Advisory Committee). If the Board declines to appoint a person nominated by the RSSAC (Root Server System Advisory Committee), then it will provide the rationale for its decision. The RSSAC (Root Server System Advisory Committee) chairs shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the RSSAC (Root Server System Advisory Committee) is considered for appointment or re-appointment each year. The Board shall also have the power to remove RSSAC (Root Server System Advisory Committee) appointees as recommended by or in consultation with the RSSAC (Root Server System Advisory Committee).

(B) The RSSAC (Root Server System Advisory Committee) shall recommend the appointment of the chairs to the Board following a nomination process that it devises and documents.

(iii) The RSSAC (Root Server System Advisory Committee) shall annually appoint a Liaison to the Board according to Section 7.9.

(d) At-Large Advisory Committee (Advisory Committee)

(i) The At-Large Advisory Committee (Advisory Committee) ("**At-Large Advisory Committee (Advisory Committee)**" or "**ALAC (At-Large Advisory Committee)**") is the primary organizational home within ICANN (Internet Corporation for Assigned Names and Numbers) for individual Internet users. The role of the ALAC (At-Large Advisory Committee) shall be to consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers), insofar as they relate to the interests of individual Internet users. This

includes policies created through ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (Supporting Organizations), as well as the many other issues for which community input and advice is appropriate. The ALAC (At-Large Advisory Committee), which plays an important role in ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability mechanisms, also coordinates some of ICANN (Internet Corporation for Assigned Names and Numbers)'s outreach to individual Internet users.

(ii) The ALAC (At-Large Advisory Committee) shall consist of (A) two members selected by each of the Regional At-Large Organizations ("RALOs") established according to Section 12.2(d)(vii), and (B) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to Section 7.5.

(iii) The regular terms of members of the ALAC (At-Large Advisory Committee) shall be as follows:

(A) The term of one member selected by each RALO shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in an even-numbered year.

(B) The term of the other member selected by each RALO shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in an odd-numbered year.

(C) The terms of three of the members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an odd-numbered year and the terms of the other two members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an even-numbered year.

(D) The regular term of each member shall end at the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the term began.

(iv) The Chair of the ALAC (At-Large Advisory Committee) shall be elected by the members of the ALAC (At-Large Advisory Committee)

pursuant to procedures adopted by the ALAC (At-Large Advisory Committee).

(v) The ALAC (At-Large Advisory Committee) shall, after consultation with each RALO, annually appoint five voting delegates (no two of whom shall be citizens of countries in the same Geographic Region) to the Nominating Committee.

(vi) The At-Large Advisory Committee (Advisory Committee) may designate non-voting liaisons to each of the ccNSO (Country Code Names Supporting Organization) Council and the GNSO (Generic Names Supporting Organization) Council.

(vii) There shall be one RALO for each Geographic Region established according to Section 7.5. Each RALO shall serve as the main forum and coordination point for public input to ICANN (Internet Corporation for Assigned Names and Numbers) in its Geographic Region and shall be a non-profit organization certified by ICANN (Internet Corporation for Assigned Names and Numbers) according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee (Advisory Committee). An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers) addressing the respective roles and responsibilities of ICANN (Internet Corporation for Assigned Names and Numbers) and the RALO regarding the process for selecting ALAC (At-Large Advisory Committee) members and requirements of openness, participatory opportunities, transparency, accountability, and diversity in the RALO's structure and procedures, as well as criteria and standards for the RALO's constituent At-Large Structures ("**At-Large Structures**").

(viii) Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region that have been certified to meet the requirements of the RALO's Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers) according to Section 12.2(d)(ix). If so provided by its Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers), a RALO may also include individual Internet users who are citizens or residents of countries within the RALO's Geographic Region.

(ix) Membership in the At-Large Community

(A) The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on recommendations from the ALAC (At-Large Advisory Committee) and shall be stated in the Memorandum of Understanding between ICANN (Internet Corporation for Assigned Names and Numbers) and the RALO for each Geographic Region.

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

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

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

(E) Once the criteria and standards have been established as provided in this Section 12.2(d)(ix), the ALAC (At-Large Advisory Committee), with the advice and participation of the RALO where the applicant is based, shall be responsible for certifying organizations as meeting the criteria and standards for At-Large Structure accreditation.

(F) Decisions to certify or decertify an At-Large Structure shall be made as decided by the ALAC (At-Large Advisory Committee) in its rules of procedure, save always that any changes made to the rules of procedure in respect of an At-Large Structure applications shall be subject to review by the RALOs and by the Board.

(G) Decisions as to whether to accredit, not to accredit, or disaccredit an At-Large Structure shall be subject to review according to

procedures established by the Board.

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

(x) The ALAC (At-Large Advisory Committee) is also responsible, working in conjunction with the RALOs, for coordinating the following activities:

(A) Nominating individuals to fill Seat 15 on the Board. Notification of the At-Large Community's nomination shall be given by the ALAC (At-Large Advisory Committee) Chair in writing to the EC (Empowered Community) Administration, with a copy to the Secretary, and the EC (Empowered Community) shall promptly act on it as provided in Section 7.25.

(B) Keeping the community of individual Internet users informed about the significant news from ICANN (Internet Corporation for Assigned Names and Numbers);

(C) Distributing (through posting or otherwise) an updated agenda, news about ICANN (Internet Corporation for Assigned Names and Numbers), and information about items in the ICANN (Internet Corporation for Assigned Names and Numbers) policy-development process;

(D) Promoting outreach activities in the community of individual Internet users;

(E) Developing and maintaining on-going information and education programs, regarding ICANN (Internet Corporation for Assigned Names and Numbers) and its work;

(F) Establishing an outreach strategy about ICANN (Internet Corporation for Assigned Names and Numbers) issues in each RALO's Geographic Region;

(G) Participating in the ICANN (Internet Corporation for Assigned Names and Numbers) policy development processes and providing

input and advice that accurately reflects the views of individual Internet users;

(H) Making public, and analyzing, ICANN (Internet Corporation for Assigned Names and Numbers)'s proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the region;

(I) Offering Internet-based mechanisms that enable discussions among members of At-Large Structures; and

(xi) Establishing mechanisms and processes that enable two-way communication between members of At-Large Structures and those involved in ICANN (Internet Corporation for Assigned Names and Numbers) decision-making, so interested individuals can share their views on pending ICANN (Internet Corporation for Assigned Names and Numbers) issues.

Section 12.3. PROCEDURES

Each Advisory Committee (Advisory Committee) shall determine its own rules of procedure and quorum requirements; provided that each Advisory Committee (Advisory Committee) shall ensure that the advice provided to the Board by such Advisory Committee (Advisory Committee) is communicated in a clear and unambiguous written statement, including the rationale for such advice. The Board will respond in a timely manner to formal advice from all Advisory Committees (Advisory Committees) explaining what action it took and the rationale for doing so.

Section 12.4. TERM OF OFFICE

The chair and each member of an Advisory Committee (Advisory Committee) shall serve until his or her successor is appointed, or until such Advisory Committee (Advisory Committee) is sooner terminated, or until he or she is removed, resigns, or otherwise ceases to qualify as a member of the Advisory Committee (Advisory Committee).

Section 12.5. VACANCIES

Vacancies on any Advisory Committee (Advisory Committee) shall be filled in the same manner as provided in the case of original appointments.

Section 12.6. COMPENSATION

Advisory Committee (Advisory Committee) members shall receive no compensation for their services as a member of such Advisory Committee (Advisory Committee). The Board may, however, authorize the reimbursement of actual and necessary expenses incurred by Advisory Committee (Advisory Committee) members, including Directors, performing their duties as Advisory Committee (Advisory Committee) members.

ARTICLE 13 OTHER ADVISORY MECHANISMS

Section 13.1. EXTERNAL EXPERT ADVICE

(a) Purpose. The purpose of seeking external expert advice is to allow the policy-development process within ICANN (Internet Corporation for Assigned Names and Numbers) to take advantage of existing expertise that resides in the public or private sector but outside of ICANN (Internet Corporation for Assigned Names and Numbers). In those cases where there are relevant public bodies with expertise, or where access to private expertise could be helpful, the Board and constituent bodies should be encouraged to seek advice from such expert bodies or individuals.

(b) Types of Expert Advisory Panels

(i) On its own initiative or at the suggestion of any ICANN (Internet Corporation for Assigned Names and Numbers) body, the Board may appoint, or authorize the President to appoint, Expert Advisory Panels consisting of public or private sector individuals or entities. If the advice sought from such Panels concerns issues of public policy, the provisions of Section 13.1(c) shall apply.

(ii) In addition, in accordance with Section 13.1(c), the Board may refer issues of public policy pertinent to matters within ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission to a multinational governmental or treaty organization.

(c) Process for Seeking Advice: Public Policy Matters

(i) The Governmental Advisory Committee (Advisory Committee) may at any time recommend that the Board seek advice concerning one or

more issues of public policy from an external source, as set out above.

(ii) In the event that the Board determines, upon such a recommendation or otherwise, that external advice should be sought concerning one or more issues of public policy, the Board shall, as appropriate, consult with the Governmental Advisory Committee (Advisory Committee) regarding the appropriate source from which to seek the advice and the arrangements, including definition of scope and process, for requesting and obtaining that advice.

(iii) The Board shall, as appropriate, transmit any request for advice from a multinational governmental or treaty organization, including specific terms of reference, to the Governmental Advisory Committee (Advisory Committee), with the suggestion that the request be transmitted by the Governmental Advisory Committee (Advisory Committee) to the multinational governmental or treaty organization.

(d) **Process for Seeking and Advice: Other Matters.** Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with Section 13.1(b)(i) shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed.

(e) **Receipt of Expert Advice and its Effect.** External advice pursuant to this Section 13.1 shall be provided in written form. Such advice is advisory and not binding, and is intended to augment the information available to the Board or other ICANN (Internet Corporation for Assigned Names and Numbers) body in carrying out its responsibilities.

(f) **Opportunity to Comment.** The Governmental Advisory Committee (Advisory Committee), in addition to the Supporting Organizations (Supporting Organizations) and other Advisory Committees (Advisory Committees), shall have an opportunity to comment upon any external advice received prior to any decision by the Board.

Section 13.2. TECHNICAL LIAISON GROUP

(a) **Purpose.** The quality of ICANN (Internet Corporation for Assigned Names and Numbers)'s work depends on access to complete and authoritative information concerning the technical standards that underlie ICANN (Internet Corporation for Assigned Names and Numbers)'s activities. ICANN (Internet

Corporation for Assigned Names and Numbers)'s relationship to the organizations that produce these standards is therefore particularly important. The Technical Liaison Group ("**TLG**") shall connect the Board with appropriate sources of technical advice on specific matters pertinent to ICANN (Internet Corporation for Assigned Names and Numbers)'s activities.

(b) TLG Organizations. The TLG shall consist of four organizations: the European Telecommunications Standards Institute (ETSI (European Telecommunications Standards Institute)), the International Telecommunications Union's Telecommunication Standardization Sector (ITU (International Telecommunication Union)-T), the World Wide Web Consortium (W3C (World Wide Web Consortium)), and the Internet Architecture Board ("**IAB (Internet Architecture Board)**").

(c) Role. The role of the TLG organizations shall be to channel technical information and guidance to the Board and to other ICANN (Internet Corporation for Assigned Names and Numbers) entities. This role has both a responsive component and an active "watchdog" component, which involve the following responsibilities:

(i) In response to a request for information, to connect the Board or other ICANN (Internet Corporation for Assigned Names and Numbers) body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN (Internet Corporation for Assigned Names and Numbers) seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.

(ii) As an ongoing "watchdog" activity, to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope that could affect Board decisions or other ICANN (Internet Corporation for Assigned Names and Numbers) actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission. This component of the TLG role covers circumstances in which ICANN (Internet Corporation for Assigned Names and Numbers) is unaware of a new development, and would therefore otherwise not realize that a question should be asked.

(d) TLG Procedures. The TLG shall not have officers or hold meetings, nor shall it provide policy advice to the Board as a committee (although TLG organizations may individually be asked by the Board to do so as the need arises in areas relevant to their individual charters). Neither shall the TLG debate or otherwise coordinate technical issues across the TLG organizations; establish or attempt to establish unified positions; or create or attempt to create additional layers or structures within the TLG for the development of technical standards or for any other purpose.

(e) Technical Work with the IETF (Internet Engineering Task Force). The TLG shall have no involvement with ICANN (Internet Corporation for Assigned Names and Numbers)'s work for the Internet Engineering Task Force (IETF (Internet Engineering Task Force)), Internet Research Task Force, or the Internet Architecture Board (IAB (Internet Architecture Board)), as described in the IETF (Internet Engineering Task Force)-ICANN (Internet Corporation for Assigned Names and Numbers) Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority ratified by the Board on 10 March 2000 and any supplemental agreements thereto.

(f) Individual Technical Experts. Each TLG organization shall designate two individual technical experts who are familiar with the technical standards issues that are relevant to ICANN (Internet Corporation for Assigned Names and Numbers)'s activities. These 8 experts shall be available as necessary to determine, through an exchange of e-mail messages, where to direct a technical question from ICANN (Internet Corporation for Assigned Names and Numbers) when ICANN (Internet Corporation for Assigned Names and Numbers) does not ask a specific TLG organization directly.

ARTICLE 14 BOARD AND TEMPORARY COMMITTEES

Section 14.1. BOARD COMMITTEES

The Board may establish one or more committees of the Board (each, a "**Board Committee**"), which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board; provided, that a Liaison may be appointed as a liaison to a Committee of the Board consistent with their non-voting capacity. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who

may replace any absent member at any meeting of the committee.

Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all Directors; provided, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all Directors.

Section 14.2. POWERS OF BOARD COMMITTEES

(a) The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:

- (i) The filling of vacancies on the Board or on any committee;
- (ii) The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;
- (iii) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
- (iv) The appointment of committees of the Board or the members thereof;
- (v) The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CCC;
- (vi) The approval of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget or IANA (Internet Assigned Numbers Authority) Budget required by Section 22.4 or the Operating Plan or Strategic Plan required by Section 22.5; or
- (vii) The compensation of any Officer described in Article 15.

(b) The Board shall have the power to prescribe the manner in which proceedings of any Committee of the Board shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless these Bylaws, the Board or such committee shall otherwise provide, the regular and special meetings of committees shall be governed by the provisions of Article 7 applicable to meetings and actions of the Board. Each committee shall keep regular minutes of its proceedings and shall report the same to the Board from time to time, as the Board may require.

Section 14.3. TEMPORARY COMMITTEES

The Board may establish such temporary committees as it sees fit, with membership, duties, and responsibilities as set forth in the resolutions or charters adopted by the Board in establishing such committees.

ARTICLE 15 OFFICERS

Section 15.1. OFFICERS

The officers of ICANN (Internet Corporation for Assigned Names and Numbers) (each, an "**Officer**") shall be a President (who shall serve as Chief Executive Officer), a Secretary, and a Chief Financial Officer. ICANN (Internet Corporation for Assigned Names and Numbers) may also have, at the discretion of the Board, any additional officers that it deems appropriate. Any person, other than the President, may hold more than one office, except that no member of the Board (other than the President) shall simultaneously serve as an officer of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 15.2. ELECTION OF OFFICERS

The officers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be elected annually by the Board, pursuant to the recommendation of the President or, in the case of the President, of the Chair of the Board. Each such officer shall hold his or her office until he or she resigns, is removed, is otherwise disqualified to serve, or his or her successor is elected.

Section 15.3. REMOVAL OF OFFICERS

Any Officer may be removed, either with or without cause, by a two-thirds (2/3) majority vote of all Directors. Should any vacancy occur in any office as a result of death, resignation, removal, disqualification, or any other cause, the Board may delegate the powers and duties of such office to any Officer or to any Director until such time as a successor for the office has been elected.

Section 15.4. PRESIDENT

The President shall be the Chief Executive Officer (CEO) of ICANN (Internet Corporation for Assigned Names and Numbers) in charge of all of its activities

and business. All other officers and staff shall report to the President or his or her delegate, unless stated otherwise in these Bylaws. The President shall serve as an ex officio Director, and shall have all the same rights and privileges of any Director. The President shall be empowered to call special meetings of the Board as set forth herein, and shall discharge all other duties as may be required by these Bylaws and from time to time may be assigned by the Board.

Section 15.5. SECRETARY

The Secretary shall keep or cause to be kept the minutes of the Board in one or more books provided for that purpose, shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law, and in general shall perform all duties as from time to time may be prescribed by the President or the Board.

Section 15.6. CHIEF FINANCIAL OFFICER

The Chief Financial Officer ("**CFO**") shall be the chief financial officer of ICANN (Internet Corporation for Assigned Names and Numbers). If required by the Board, the CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of ICANN (Internet Corporation for Assigned Names and Numbers) and shall keep or cause to be kept, in books belonging to ICANN (Internet Corporation for Assigned Names and Numbers), full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN (Internet Corporation for Assigned Names and Numbers) in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of ICANN (Internet Corporation for Assigned Names and Numbers) as may be ordered by the Board or the President and, whenever requested by them, shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial condition of ICANN (Internet Corporation for Assigned Names and Numbers). The CFO shall be responsible for ICANN (Internet Corporation for Assigned Names and Numbers)'s financial planning and forecasting and shall assist the President in the preparation of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget, the IANA (Internet Assigned Numbers Authority) Budget and Operating Plan. The CFO shall coordinate and oversee ICANN (Internet Corporation for Assigned Names and Numbers)'s funding, including any audits or other reviews of ICANN (Internet Corporation for Assigned

Names and Numbers) or its Supporting Organizations (Supporting Organizations). The CFO shall be responsible for all other matters relating to the financial operation of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 15.7. ADDITIONAL OFFICERS

In addition to the officers described above, any additional or assistant officers who are elected or appointed by the Board shall perform such duties as may be assigned to them by the President or the Board.

Section 15.8. COMPENSATION AND EXPENSES

The compensation of any Officer of ICANN (Internet Corporation for Assigned Names and Numbers) shall be approved by the Board. Expenses incurred in connection with performance of their officer duties may be reimbursed to Officers upon approval of the President (in the case of Officers other than the President), by another Officer designated by the Board (in the case of the President), or the Board.

Section 15.9. CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall establish a policy requiring a statement from each Officer not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN (Internet Corporation for Assigned Names and Numbers).

ARTICLE 16 POST-TRANSITION IANA (Internet Assigned Numbers Authority) ENTITY

Section 16.1. DESCRIPTION

ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain as a separate legal entity a California nonprofit public benefit corporation (["PTI"]) for the purpose of providing IANA (Internet Assigned Numbers Authority) services, including providing IANA (Internet Assigned Numbers Authority) naming function services pursuant to the IANA (Internet Assigned Numbers Authority) Naming Function Contract, as well as other services as determined by ICANN (Internet Corporation for Assigned Names and Numbers) in coordination with the direct and indirect customers of the

IANA (Internet Assigned Numbers Authority) functions. ICANN (Internet Corporation for Assigned Names and Numbers) shall at all times be the sole member of PTI as that term is defined in Section 5056 of the CCC ("**Member**"). For the purposes of these Bylaws, the "IANA (Internet Assigned Numbers Authority) naming function" does not include the Internet Protocol (Protocol) numbers and Autonomous System numbers services (as contemplated by Section 1.1(a)(iii)), the protocol ports and parameters services and the root zone maintainer function.

Section 16.2. PTI Governance

(a) ICANN (Internet Corporation for Assigned Names and Numbers), in its capacity as the sole Member of PTI, shall elect the directors of PTI in accordance with the articles of incorporation and bylaws of PTI and have all other powers of a sole Member under the CCC except as otherwise provided in these Bylaws.

(b) No amendment or modification of the articles of incorporation of PTI shall be effective unless approved by the EC (Empowered Community) (pursuant to the procedures applicable to Articles Amendments described in Section 25.2, as if such Article Amendment referenced therein refers to an amendment of PTI's articles of incorporation).

(c) ICANN (Internet Corporation for Assigned Names and Numbers) shall not amend or modify the bylaws of PTI in a manner that would effect any of the matters set forth in clauses (i) through (xiv) below (a "**PTI Bylaw Amendment**") if such PTI Bylaw Amendment has been rejected by the EC (Empowered Community) pursuant to the procedures described in Section 16.2(e):

(i) any change to the corporate form of PTI to an entity that is not a California nonprofit public benefit corporation organized under the CCC or any successor statute;

(ii) any change in the corporate mission of PTI that is materially inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission as set forth in these Bylaws;

(iii) any change to the status of PTI as a corporation with members;

(iv) any change in the rights of ICANN (Internet Corporation for Assigned Names and Numbers) as the sole Member of PTI, including voting, classes of membership, rights, privileges, preferences, restrictions and conditions;

(v) any change that would grant rights to any person or entity (other than ICANN (Internet Corporation for Assigned Names and Numbers)) with respect to PTI as designators or otherwise to: (A) elect or designate directors of PTI; or (B) approve any amendments to the articles of incorporation or bylaws of PTI;

(vi) any change in the number of directors of the board of directors of PTI (the "**PTI Board**");

(vii) any changes in the allocation of directors on the PTI Board between independent directors and employees of ICANN (Internet Corporation for Assigned Names and Numbers) or employees of PTI or to the definition of "independent" (as used in PTI's bylaws) for purposes of determining whether a director of PTI is independent;

(viii) the creation of any committee of the PTI Board with the power to exercise the authority of the PTI Board;

(ix) any change in the procedures for nominating independent PTI directors;

(x) the creation of classes of PTI directors or PTI directors with different terms or voting rights;

(xi) any change in PTI Board quorum requirements or voting requirements;

(xii) any change to the powers and responsibilities of the PTI Board or the PTI officers;

(xiii) any change to the rights to exculpation and indemnification that is adverse to the exculpated or indemnified party, including with respect to advancement of expenses and insurance, provided to directors, officers, employees or other agents of PTI; or

(xiv) any change to the requirements to amend the articles of incorporation or bylaws of PTI.

(d) ICANN (Internet Corporation for Assigned Names and Numbers) shall not take any of the following actions (together with the PTI Bylaw Amendments, "**PTI Governance Actions**") if such PTI Governance Action has been rejected by the EC (Empowered Community) pursuant to the procedures described in Section 16.2(e).

(i) Any resignation by ICANN (Internet Corporation for Assigned Names and Numbers) as sole Member of PTI or any transfer, disposition, cession, expulsion, suspension or termination by ICANN (Internet Corporation for Assigned Names and Numbers) of its membership in PTI or any transfer, disposition, cession, expulsion, suspension or termination by ICANN (Internet Corporation for Assigned Names and Numbers) of any right arising from its membership in PTI.

(ii) Any sale, transfer or other disposition of PTI's assets, other than (A) in the ordinary course of PTI's business, (B) in connection with an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process (as defined in Section 19.1(a)) that has been approved in accordance with Article 19 or (C) the disposition of obsolete, damaged, redundant or unused assets.

(iii) Any merger, consolidation, sale or reorganization of PTI.

(iv) Any dissolution, liquidation or winding-up of the business and affairs of PTI or the commencement of any other voluntary bankruptcy proceeding of PTI.

(e) Promptly after the Board approves a PTI Governance Action (a "**PTI Governance Action Approval**"), the Secretary shall provide a notice of the Board's decision to the EC (Empowered Community) Administration and the Decisional Participants ("**Board Notice**"), which Board Notice shall enclose a copy of the PTI Governance Action that is the subject of the PTI Governance Action Approval. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly

commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) A PTI Governance Action shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice (as defined in Section 2.2(c)(i) of Annex D) is not timely delivered by the Rejection Action Petitioning Decisional Participant (as defined in Section 2.2(c)(i) of Annex D) to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice (as defined in Section 2.2(c)(ii) of Annex D) is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Period (as defined in Section 2.2(b) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition (as defined in Section 2.2(d)(i) of Annex D) is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period (as defined in Section 2.2(d)(i) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; and

(C)(1) An EC (Empowered Community) Rejection Notice (as defined in Section 2.4(b) of Annex D) is not timely delivered by the EC

(Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period (as defined in Section 2.4(a) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(ii) A PTI Governance Action that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(iii) Following receipt of an EC (Empowered Community) Rejection Notice relating to a PTI Governance Action, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the PTI Governance Action in determining whether or not to develop a new PTI Governance Action and the substance of such new PTI Governance Action, which shall be subject to the procedures of this Section 16.2.

Section 16.3. IANA (Internet Assigned Numbers Authority) NAMING FUNCTION CONTRACT

(a) On or prior to 1 October 2016, ICANN (Internet Corporation for Assigned Names and Numbers) shall enter into a contract with PTI for the performance of the IANA (Internet Assigned Numbers Authority) naming function (as it may be amended or modified, the "**IANA (Internet Assigned Numbers Authority) Naming Function Contract**") and a related statement of work (the "**IANA (Internet Assigned Numbers Authority) Naming Function SOW**"). Except as to implement any modification, waiver or amendment to the IANA (Internet Assigned Numbers Authority) Naming Function Contract or IANA (Internet Assigned Numbers Authority) Naming Function SOW related

to an IFR Recommendation or Special IFR Recommendation approved pursuant to [Section 18.6](#) or an SCWG Recommendation approved pursuant to [Section 19.4](#) (which, for the avoidance of doubt, shall not be subject to this [Section 16.3\(a\)](#)), ICANN (Internet Corporation for Assigned Names and Numbers) shall not agree to modify, amend or waive any Material Terms (as defined below) of the IANA (Internet Assigned Numbers Authority) Naming Function Contract or the IANA (Internet Assigned Numbers Authority) Naming Function SOW if a majority of each of the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) Councils reject the proposed modification, amendment or waiver. The following are the "**Material Terms**" of the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW:

- (i) The parties to the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW;
- (ii) The initial term and renewal provisions of the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW;
- (iii) The manner in which the IANA (Internet Assigned Numbers Authority) Naming Function Contract or IANA (Internet Assigned Numbers Authority) Naming Function SOW may be terminated;
- (iv) The mechanisms that are available to enforce the IANA (Internet Assigned Numbers Authority) Naming Function Contract or IANA (Internet Assigned Numbers Authority) Naming Function SOW;
- (v) The role and responsibilities of the CSC (as defined in [Section 17.1](#)), escalation mechanisms and/or the IFR (as defined in [Section 18.1](#));
- (vi) The IANA (Internet Assigned Numbers Authority) Naming Function Contract's provisions requiring that fees charged by PTI be based on direct costs and resources incurred by PTI;
- (vii) The IANA (Internet Assigned Numbers Authority) Naming Function Contract's prohibition against subcontracting;

(viii) The availability of the IRP as a point of escalation for claims of PTI's failure to meet defined service level expectations;

(ix) The IANA (Internet Assigned Numbers Authority) Naming Function Contract's audit requirements; and

(x) The requirements related to ICANN (Internet Corporation for Assigned Names and Numbers) funding of PTI.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall enforce its rights under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and the IANA (Internet Assigned Numbers Authority) Naming Function SOW.

ARTICLE 17 CUSTOMER STANDING COMMITTEE

Section 17.1. DESCRIPTION

ICANN (Internet Corporation for Assigned Names and Numbers) shall establish a Customer Standing Committee ("**CSC**") to monitor PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW.

The mission of the CSC is to ensure continued satisfactory performance of the IANA (Internet Assigned Numbers Authority) naming function for the direct customers of the naming services. The direct customers of the naming services are top-level domain registry operators as well as root server operators and other non-root zone functions.

The CSC will achieve this mission through regular monitoring of the performance of the IANA (Internet Assigned Numbers Authority) naming function against the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW and through mechanisms to engage with PTI to remedy identified areas of concern.

The CSC is not authorized to initiate a change in PTI through a Special IFR (as defined in Section 18.1), but may escalate a failure to correct an identified deficiency to the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization), which might then decide to

take further action using consultation and escalation processes, which may include a Special IFR. The ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) may address matters escalated by the CSC, pursuant to their operating rules and procedures.

Section 17.2. COMPOSITION, APPOINTMENT, TERM AND REMOVAL

(a) The CSC shall consist of:

(i) Two individuals representing gTLD (generic Top Level Domain) registry operators appointed by the Registries Stakeholder Group;

(ii) Two individuals representing ccTLD (Country Code Top Level Domain) registry operators appointed by the ccNSO (Country Code Names Supporting Organization); and

(iii) One individual liaison appointed by PTI,

each appointed in accordance with the rules and procedures of the appointing organization; provided that such individuals should have direct experience and knowledge of the IANA (Internet Assigned Numbers Authority) naming function.

(b) If so determined by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization), the CSC may, but is not required to, include one additional member: an individual representing top-level domain registry operators that are not considered a ccTLD (Country Code Top Level Domain) or gTLD (generic Top Level Domain), who shall be appointed by the ccNSO (Country Code Names Supporting Organization) and the GNSO (Generic Names Supporting Organization). Such representative shall be required to submit a letter of support from the registry operator it represents.

(c) Each of the following organizations may also appoint one liaison to the CSC in accordance with the rules and procedures of the appointing organization: (i) GNSO (Generic Names Supporting Organization) (from the Registrars Stakeholder Group or the Non-Contracted Parties House), (ii) ALAC (At-Large Advisory Committee), (iii) either the NRO (Number Resource

Organization) or ASO (Address Supporting Organization) (as determined by the ASO (Address Supporting Organization)), (iv) GAC (Governmental Advisory Committee), (v) RSSAC (Root Server System Advisory Committee), (vi) SSAC (Security and Stability Advisory Committee) and (vii) any other Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) established under these Bylaws.

(d) The GNSO (Generic Names Supporting Organization) and ccNSO (Country Code Names Supporting Organization) shall approve the initial proposed members and liaisons of the CSC, and thereafter, the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) shall approve each annual slate of members and liaisons being recommended for a new term.

(e) The CSC members and liaisons shall select from among the CSC members who will serve as the CSC's liaison to the IFRT (as defined in Section 18.1) and any Separation Cross-Community Working Group ("**SCWG**").

(f) Any CSC member or liaison may be removed and replaced at any time and for any reason or no reason by the organization that appointed such member or liaison.

(g) In addition, the Chair of the CSC may recommend that a CSC member or liaison be removed by the organization that appointed such member or liaison, upon any of the following: (i) (A) for not attending without sufficient cause a minimum of nine CSC meetings in a one-year period (or at least 75% of all CSC meetings in a one-year period if less than nine meetings were held in such one-year period) or (B) if such member or liaison has been absent for more than two consecutive meetings without sufficient cause; or (ii) for grossly inappropriate behavior.

(h) A vacancy on the CSC shall be deemed to exist in the event of the death, resignation or removal of any CSC member or liaison. Vacancies shall be filled by the organization(s) that appointed such CSC member or liaison. The appointing organization(s) shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the Chair of the CSC. The organization(s) responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 17.3.CSC CHARTER; PERIODIC REVIEW

(a) The CSC shall act in accordance with its charter (the "**CSC Charter**").

(b) The effectiveness of the CSC shall be reviewed two years after the first meeting of the CSC; and then every three years thereafter. The method of review will be determined by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) and the findings of the review will be published on the Website.

(c) The CSC Charter shall be reviewed by a committee of representatives from the ccNSO (Country Code Names Supporting Organization) and the Registries Stakeholder Group selected by such organizations. This review shall commence one year after the first meeting of the CSC. Thereafter, the CSC Charter shall be reviewed by such committee of representatives from the ccNSO (Country Code Names Supporting Organization) and the Registries Stakeholder Group selected by such organizations at the request of the CSC, ccNSO (Country Code Names Supporting Organization), GNSO (Generic Names Supporting Organization), the Board and/or the PTI Board and/or by an IFRT in connection with an IFR.

(d) Amendments to the CSC Charter shall not be effective unless ratified by the vote of a simple majority of each of the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) Councils pursuant to each such organizations' procedures. Prior to any action by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization), any recommended changes to the CSC Charter shall be subject to a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers). Notwithstanding the foregoing, to the extent any provision of an amendment to the CSC Charter conflicts with the terms of the Bylaws, the terms of the Bylaws shall control.

Section 17.4. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the CSC to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the CSC.

ARTICLE 18 IANA (Internet Assigned Numbers Authority) NAMING FUNCTION REVIEWS

Section 18.1. IANA (Internet Assigned Numbers Authority) NAMING FUNCTION REVIEW

The Board, or an appropriate committee thereof, shall cause periodic and/or special reviews (each such review, an "**IFR**") of PTI's performance of the IANA (Internet Assigned Numbers Authority) naming function against the contractual requirements set forth in the IANA (Internet Assigned Numbers Authority) Naming Function Contract and the IANA (Internet Assigned Numbers Authority) Naming Function SOW to be carried out by an IANA (Internet Assigned Numbers Authority) Function Review Team ("IFRT") established in accordance with Article 18, as follows:

(a) Regularly scheduled periodic IFRs, to be conducted pursuant to Section 18.2 below ("**Periodic IFRs**"); and

(b) IFRs that are not Periodic IFRs, to be conducted pursuant to Section 18.12 below ("**Special IFRs**").

Section 18.2. FREQUENCY OF PERIODIC IFRS

(a) The first Periodic IFR shall be convened no later than [1 October 2018].

(b) Periodic IFRs after the first Periodic IFR shall be convened no less frequently than every five years, measured from the date the previous IFRT for a Periodic IFR was convened.

(c) In the event a Special IFR is ongoing at the time a Periodic IFR is required to be convened under this Section 18.2, the Board shall cause the convening of the Periodic IFR to be delayed if such delay is approved by the vote of (i) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO (Country Code Names Supporting Organization) Council's members) and (ii) a GNSO (Generic Names Supporting Organization) Supermajority. Any decision by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) to delay a Periodic IFR must identify the period of

delay, which should generally not exceed 12 months after the completion of the Special IFR.

Section 18.3. IFR RESPONSIBILITIES

For each Periodic IFR, the IFRT shall:

(a) Review and evaluate the performance of PTI against the requirements set forth in the IANA (Internet Assigned Numbers Authority) Naming Function Contract in relation to the needs of its direct customers and the expectations of the broader ICANN (Internet Corporation for Assigned Names and Numbers) community, and determine whether to make any recommendations with respect to PTI's performance;

(b) Review and evaluate the performance of PTI against the requirements set forth in the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW;

(c) Review the IANA (Internet Assigned Numbers Authority) Naming Function SOW and determine whether to recommend any amendments to the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW to account for the needs of the direct customers of the naming services and/or the community at large;

(d) Review and evaluate the openness and transparency procedures of PTI and any oversight structures for PTI's performance, including reporting requirements and budget transparency;

(e) Review and evaluate the performance and effectiveness of the EC (Empowered Community) with respect to actions taken by the EC (Empowered Community), if any, pursuant to Section 16.2, Section 18.6, Section 18.12, Section 19.1, Section 19.4, Section 22.4(b) and Annex D;

(f) Review and evaluate the performance of the IANA (Internet Assigned Numbers Authority) naming function according to established service level expectations during the IFR period being reviewed and compared to the immediately preceding Periodic IFR period;

(g) Review and evaluate whether there are any systemic issues that are impacting PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW;

(h) Initiate public comment periods and other processes for community input on PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW (such public comment periods shall comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers));

(i) Consider input from the CSC and the community on PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW;

(j) Identify process or other areas for improvement in the performance of the IANA (Internet Assigned Numbers Authority) naming function under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW and the performance of the CSC and the EC (Empowered Community) as it relates to oversight of PTI; and

(k) Consider and assess any changes implemented since the immediately preceding IFR and their implications for the performance of PTI under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW.

Section 18.4. IFR REQUIRED INPUTS

In conducting an IFR, the IFRT shall review and analyze the following information:

(a) Reports provided by PTI pursuant to the IANA (Internet Assigned Numbers Authority) Naming Function Contract and/or IANA (Internet Assigned Numbers Authority) Naming Function SOW during the IFR period being reviewed, any portion of which may be redacted pursuant to the Confidential Disclosure Framework set forth in the Operating Standards in accordance with Section 4.6(a)(vi);

(b) Reports provided by the CSC in accordance with the CSC Charter during the IFR period being reviewed;

(c) Community inputs through public consultation procedures as reasonably determined by the IFRT, including, among other things, public comment periods, input provided at in-person sessions during ICANN (Internet Corporation for Assigned Names and Numbers) meetings, responses to public surveys related to PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW, and public inputs during meetings of the IFRT;

(d) Recommendations for technical, process and/or other improvements relating to the mandate of the IFR provided by the CSC or the community; and

(e) Results of any site visit conducted by the IFRT, which shall be conducted in consultation with ICANN (Internet Corporation for Assigned Names and Numbers) (i) upon reasonable notice, (ii) in a manner so as to not affect PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract or the IANA (Internet Assigned Numbers Authority) Naming Function SOW and (iii) pursuant to procedures and requirements reasonably developed by ICANN (Internet Corporation for Assigned Names and Numbers) and reasonably acceptable to the IFRT. Any such site visit shall be limited to matters reasonably related to the IFRT's responsibilities pursuant to Section 18.3.

Section 18.5. IFR RESULTS AND RECOMMENDATIONS

(a) The results of the IFR are not limited and could include a variety of recommendations or no recommendation; provided, however, that any recommendations must directly relate to the matters discussed in Section 18.3 and comply with this Section 18.5.

(b) Any IFRT recommendations should identify improvements that are supported by data and associated analysis about existing deficiencies and how they could be addressed. Each recommendation of the IFRT shall include proposed remedial procedures and describe how those procedures are expected to address such issues. The IFRT's report shall also propose timelines for implementing the IFRT's recommendations. The IFRT shall

attempt to prioritize each of its recommendations and provide a rationale for such prioritization.

(c) In any case where a recommendation of an IFRT focuses on a service specific to gTLD (generic Top Level Domain) registry operators, no such recommendation shall be made by the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the Registries Stakeholder Group. In any case where a recommendation of an IFRT focuses on a service specific to ccTLD (Country Code Top Level Domain) registry operators, no such recommendation shall be made by the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the ccNSO (Country Code Names Supporting Organization).

(d) Notwithstanding anything herein to the contrary, the IFRT shall not have the authority to review or make recommendations relating to policy or contracting issues that are not included in the IANA (Internet Assigned Numbers Authority) Naming Function Contract or the IANA (Internet Assigned Numbers Authority) Naming Function SOW, including, without limitation, policy development, adoption processes or contract enforcement measures between contracted registries and ICANN (Internet Corporation for Assigned Names and Numbers).

Section 18.6.Recommendations to Amend the IANA (Internet Assigned Numbers Authority) Naming Function contract, iana naming function SOW or CSC charter

(a) The IFRT may recommend, among other things to the extent reasonably related to the IFR responsibilities set forth in Section 18.3, amendments to the IANA (Internet Assigned Numbers Authority) Naming Function Contract, IANA (Internet Assigned Numbers Authority) Naming Function SOW and/or the CSC Charter. The IFRT shall, at a minimum, take the following steps before an amendment to either the IANA (Internet Assigned Numbers Authority) Naming Function Contract, IANA (Internet Assigned Numbers Authority) Naming Function SOW or CSC Charter is proposed:

- (i) Consult with the Board (such consultation to be conducted in parallel with other processes set forth in this Section 18.6(a)) and PTI;
- (ii) Consult with the CSC;

(iii) Conduct a public input session for ccTLD (Country Code Top Level Domain) and gTLD (generic Top Level Domain) registry operators; and

(iv) Seek public comment on the amendments that are under consideration by the IFRT through a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

(b) A recommendation of an IFRT for a Periodic IFR that would amend the IANA (Internet Assigned Numbers Authority) Naming Function Contract or IANA (Internet Assigned Numbers Authority) Naming Function SOW shall only become effective if, with respect to each such recommendation (each, an "**IFR Recommendation**"), each of the following occurs:

(i) The IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO (Country Code Names Supporting Organization) Council's members) and (B) a GNSO (Generic Names Supporting Organization) Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), the Board has approved the IFR Recommendation; and

(iii) The EC (Empowered Community) has not rejected the Board's approval of the IFR Recommendation pursuant to and in compliance with Section 18.6(d).

(c) If the Board (x) rejects an IFR Recommendation that was approved by the ccNSO (Country Code Names Supporting Organization) Council and GNSO (Generic Names Supporting Organization) Council pursuant to Section 18.6(b)(i) or (y) does not resolve to either accept or reject an IFR Recommendation within 45 days of the later of (1) the date that the condition in Section 18.6(b)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 18.6(b)(ii), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the

Decisional Participants, which Board Notice shall enclose a copy of the applicable IFR Recommendation. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(i) ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a Rejection Action Community Forum (as defined in Section 2.3(a) of Annex D), which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC (Empowered Community) Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants (as defined in Section 2.2(d), (i) of Annex D) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the IFR Recommendation or approve the IFR Recommendation (either, a "**Post-Forum IFR Recommendation Decision**").

(A) If the Board resolves to approve the IFR Recommendation, such IFR Recommendation will be subject to Section 18.6(d).

(B) For the avoidance of doubt, the Board shall not be obligated to change its decision on the IFR Recommendation as a result of the Rejection Action Community Forum.

(C) The Board's Post-Forum IFR Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an IFR Recommendation (an "**IFR Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the IFR Recommendation that is the subject of the IFR Recommendation Decision. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An IFR Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such IFR Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such IFR Recommendation Decision; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC

(Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such IFR Recommendation Decision.

(ii) An IFR Recommendation Decision that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(e) For the avoidance of doubt, Section 18.6(d) shall not apply when the Board acts in a manner that is consistent with an IFR Recommendation unless such IFR Recommendation relates to an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process as described in Article 19.

(f) Timelines for implementing any amendments to the IANA (Internet Assigned Numbers Authority) Naming Function Contract or IANA (Internet Assigned Numbers Authority) Naming Function SOW shall be reasonably agreed between the IFRT, ICANN (Internet Corporation for Assigned Names and Numbers) and PTI.

(g) A recommendation of an IFRT that would amend the CSC Charter shall only become effective if approved pursuant to Section 17.3(d).

Section 18.7. COMPOSITION OF IFR TEAMS

Each IFRT shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(a) Two representatives appointed by the ccNSO (Country Code Names Supporting Organization) from its ccTLD (Country Code Top Level Domain) registry operator representatives;

(b) One non-ccNSO (Country Code Names Supporting Organization) ccTLD (Country Code Top Level Domain) representative who is associated with a ccTLD (Country Code Top Level Domain) registry operator that is not a representative of the ccNSO (Country Code Names Supporting Organization), appointed by the ccNSO (Country Code Names Supporting Organization); it is strongly recommended that the ccNSO (Country Code

Names Supporting Organization) consult with the regional ccTLD (Country Code Top Level Domain) organizations (i.e., AfTLD, APTLD (Council of the Asia Pacific country code Top Level Domains), LACTLD (Latin American and Caribbean ccTLDs), and CENTR (Council of European National Top level domain Registries)) in making its appointment;

(c) Two representatives appointed by the Registries Stakeholder Group;

(d) One representative appointed by the Registrars Stakeholder Group;

(e) One representative appointed by the Commercial Stakeholder Group;

(f) One representative appointed by the Non-Commercial Stakeholder Group;

(g) One representative appointed by the GAC (Governmental Advisory Committee);

(h) One representative appointed by the SSAC (Security and Stability Advisory Committee);

(i) One representative appointed by the RSSAC (Root Server System Advisory Committee);

(j) One representative appointed by the ALAC (At-Large Advisory Committee);

(k) One liaison appointed by the CSC;

(l) One liaison who may be appointed by the ASO (Address Supporting Organization); and

(m) One liaison who may be appointed by the IAB (Internet Architecture Board).

(n) The IFRT shall also include an unlimited number of non-member, non-liaison participants.

(o) The IFRT shall not be a standing body. A new IFRT shall be constituted for each IFR and the IFRT shall automatically dissolve following the end of the process for approving such IFRT's IFR Recommendations pursuant to Section 18.6.

Section 18.8. MEMBERSHIP; ELECTION OF CO-CHAIRS, AND LIAISONS

(a) All candidates for appointment to the IFRT as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison to the IFRT, which shall state: (i) why the candidate is interested in becoming involved in the IFRT, (ii) what particular skills the candidate would bring to the IFRT, (iii) the candidate's knowledge of the IANA (Internet Assigned Numbers Authority) functions, (iv) the candidate's understanding of the purpose of the IFRT, and (v) that the candidate understands the time necessary to participate in the IFR process and can commit to the role.

(b) Members, liaisons and participants of the IFRT shall disclose to ICANN (Internet Corporation for Assigned Names and Numbers) and the IFRT any conflicts of interest with a specific complaint or issue under review. The IFRT may exclude from the discussion of a specific complaint or issue any member deemed by the majority of IFRT members to have a conflict of interest. The co-chairs of the IFRT shall record any such conflict of interest in the minutes of the IFRT.

(c) To the extent reasonably possible, the appointing organizations for the IFRT members and liaisons shall work together to achieve an IFRT that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the IFRT should include members from each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region, and the ccNSO (Country Code Names Supporting Organization) and Registries Stakeholder Group shall not appoint multiple members who are citizens of countries from the same ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region.

(d) The IFRT shall be led by two co-chairs: one appointed by the GNSO (Generic Names Supporting Organization) from one of the members appointed pursuant to clauses (c)-(f) of Section 18.7 and one appointed by the ccNSO (Country Code Names Supporting Organization) from one of the members appointed pursuant to clauses (a)-(b) of Section 18.7.

(e) The PTI Board shall select a PTI staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and PTI. The Board shall select an ICANN (Internet Corporation for Assigned Names

and Numbers) staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and ICANN (Internet Corporation for Assigned Names and Numbers).

(f) Liaisons to the IFRT are not members of or entitled to vote on any matters before the IFRT, but otherwise are entitled to participate on equal footing with members of the IFRT.

(g) Other participants are entitled to participate in the IFRT, but are not entitled to vote.

(h) Removal and Replacement of IFRT Members and Liaisons

(i) The IFRT members and liaisons may be removed from the IFRT by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the IFRT.

(ii) A vacancy on the IFRT shall be deemed to exist in the event of the death, resignation or removal of any IFRT member or liaison. Vacancies shall be filled by the organization that appointed such IFRT member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the IFRT co-chairs. The organization responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 18.9. MEETINGS

(a) All actions of the IFRT shall be taken by consensus of the IFRT, which is where a small minority may disagree, but most agree. If consensus cannot be reached with respect to a particular issue, actions by the majority of all of the members of the IFRT shall be the action of the IFRT.

(b) Any members of the IFRT not in favor of an action (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such action, which shall be included in the IFRT minutes and/or report, as applicable.

(c) IFRT meetings, deliberations and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.

(d) The IFRT shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following each IFRT meeting. Recordings and transcripts of meetings, as well as mailing lists, shall also be posted to the Website.

Section 18.10. COMMUNITY REVIEWS AND REPORTS

(a) The IFRT shall seek community input as to the issues relevant to the IFR through one or more public comment periods that shall comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers) and through discussions during ICANN (Internet Corporation for Assigned Names and Numbers)'s public meetings in developing and finalizing its recommendations and any report.

(b) The IFRT shall provide a draft report of its findings and recommendations to the community for public comment. The public comment period is required to comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

(c) After completion of the IFR, the IFRT shall submit its final report containing its findings and recommendations to the Board. ICANN (Internet Corporation for Assigned Names and Numbers) shall thereafter promptly post the IFRT's final report on the Website.

Section 18.11. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for each IFRT to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the IFRT.

Section 18.12. SPECIAL IFRS

(a) A Special IFR may be initiated outside of the cycle for the Periodic IFRs to address any deficiency, problem or other issue that has adversely affected

PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW (a "PTI Performance Issue"), following the satisfaction of each of the following conditions:

(i) The Remedial Action Procedures of the CSC set forth in the IANA (Internet Assigned Numbers Authority) Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such procedures shall have been reviewed by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) according to each organization's respective operating procedures;

(ii) The IANA (Internet Assigned Numbers Authority) Problem Resolution Process set forth in the IANA (Internet Assigned Numbers Authority) Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such process shall have been reviewed by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) according to each organization's respective operating procedures;

(iii) The ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) shall have considered the outcomes of the processes set forth in the preceding clauses (i) and (ii) and shall have conducted meaningful consultation with the other Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) with respect to the PTI Performance Issue and whether or not to initiate a Special IFR; and

(iv) After a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), if a public comment period is requested by the ccNSO (Country Code Names Supporting Organization) and the GNSO (Generic Names Supporting Organization), a Special IFR shall have been approved by the vote of (A) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or if such procedures do not

define a supermajority, two-thirds (2/3) of the Council members) and (B) a GNSO (Generic Names Supporting Organization) Supermajority.

(b) Each Special IFR shall be conducted by an IFRT and shall follow the same procedures and requirements applicable to Periodic IFRs as set forth in this Section 18, except that:

(i) The scope of the Special IFR and the related inputs that are required to be reviewed by the IFRT shall be focused primarily on the PTI Performance Issue, its implications for overall IANA (Internet Assigned Numbers Authority) naming function performance by PTI and how to resolve the PTI Performance Issue;

(ii) The IFRT shall review and analyze the information that is relevant to the scope of the Special IFR; and

(iii) Each recommendation of the IFRT relating to the Special IFR, including but not limited to any recommendation to initiate an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process, must be related to remediating the PTI Performance Issue or other issue with PTI's performance that is related to the IFRT responsibilities set forth in Section 18.3, shall include proposed remedial procedures and describe how those procedures are expected to address the PTI Performance Issue or other relevant issue with PTI's performance.

(c) A recommendation of an IFRT for a Special IFR shall only become effective if, with respect to each such recommendation (each, a "**Special IFR Recommendation**"), each of the following occurs:

(i) The Special IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO (Country Code Names Supporting Organization) Council's members) and (B) a GNSO (Generic Names Supporting Organization) Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), the Board has approved the Special IFR Recommendation; and

(iii) The EC (Empowered Community) has not rejected the Board's approval of the Special IFR Recommendation pursuant to and in compliance with Section 18.12(e).

(d) If the Board (x) rejects a Special IFR Recommendation that was approved by the ccNSO (Country Code Names Supporting Organization) Council and GNSO (Generic Names Supporting Organization) Council pursuant to Section 18.12(c)(i) or (y) does not resolve to either accept or reject a Special IFR Recommendation within 45 days of the later of (1) the date that the condition in Section 18.12(c)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 18.12(c)(ii), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable Special IFR Recommendation. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(i) ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC (Empowered Community) Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the Special IFR Recommendation or approve the Special IFR Recommendation (either, a **"Post-Forum Special IFR Recommendation Decision"**).

(A) If the Board resolves to approve the Special IFR Recommendation, such Special IFR Recommendation will be subject to Section 18.6(d).

(B) For the avoidance of doubt, the Board shall not be obligated to change its decision on the Special IFR Recommendation as a result of the Rejection Action Community Forum.

(C) The Board's Post-Forum Special IFR Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(e) Promptly after the Board approves a Special IFR Recommendation (a **"Special IFR Recommendation Decision"**), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Special IFR Recommendation that is the subject of the Special IFR Recommendation Decision. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) A Special IFR Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the

Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such Special IFR Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Special IFR Recommendation Decision; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Special IFR Recommendation Decision.

(ii) A Special IFR Recommendation Decision that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(f) For the avoidance of doubt, Section 18.12(e) shall not apply when the Board acts in a manner that is consistent with a Special IFR Recommendation unless such Special IFR Recommendation relates to an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process as described in Article 19.

Section 18.13. PROPOSED SEPARATION PROCESS

The IFRT conducting either a Special IFR or Periodic IFR may, upon conclusion of a Special IFR or Periodic IFR, as applicable, determine that an IANA (Internet Assigned Numbers Authority) Naming Function Separation

Process is necessary and, if so, it shall recommend the creation of an SCWG pursuant to Article 19.

ARTICLE 19 IANA (Internet Assigned Numbers Authority) NAMING FUNCTION SEPARATION PROCESS

Section 19.1. ESTABLISHING AN SCWG

(a) An "**IANA (Internet Assigned Numbers Authority) Naming Function Separation Process**" is the process initiated in accordance with this Article 19 pursuant to which PTI may cease to perform the IANA (Internet Assigned Numbers Authority) naming function including, without limitation, the initiation of a request for proposal to select an operator to perform the IANA (Internet Assigned Numbers Authority) naming function instead of PTI ("**IANA (Internet Assigned Numbers Authority) Naming Function RFP**"), the selection of an IANA (Internet Assigned Numbers Authority) naming function operator other than PTI, termination or non-renewal of the IANA (Internet Assigned Numbers Authority) Naming Function Contract, and/or divestiture, or other reorganization of PTI by ICANN (Internet Corporation for Assigned Names and Numbers).

(b) The Board shall establish an SCWG if each of the following occurs:

(i) The IFRT conducting either a Special IFR or Periodic IFR, upon conclusion of a Special IFR or Periodic IFR, as applicable, has recommended that an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process is necessary and has recommended the creation of an SCWG (an "**SCWG Creation Recommendation**");

(ii) The SCWG Creation Recommendation has been approved by the vote of (A) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO (Country Code Names Supporting Organization) Council's members) and (B) a GNSO (Generic Names Supporting Organization) Supermajority;

(iii) After a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), the Board has approved the SCWG Creation Recommendation. A determination by the Board to not approve an SCWG Creation Recommendation, where such creation has been approved by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) Councils pursuant to Section 19.1(b)(ii), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same consultation procedures set forth in Section 9 of Annex A of these Bylaws that relate to Board rejection of a PDP (Policy Development Process) recommendation that is supported by a GNSO (Generic Names Supporting Organization) Supermajority; and

(iv) The EC (Empowered Community) has not rejected the Board's approval of the SCWG Creation Recommendation pursuant to and in compliance with Section 19.1(d).

(c) If the Board (x) rejects an SCWG Creation Recommendation that was approved by the ccNSO (Country Code Names Supporting Organization) Council and GNSO (Generic Names Supporting Organization) Council pursuant to Section 19.1(b)(ii) or (y) does not resolve to either accept or reject an SCWG Creation Recommendation within 45 days of the later of (1) the date that the condition in Section 19.1(b)(ii) is satisfied or (2) the expiration of the public comment period contemplated by Section 19.1(b)(iii), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable SCWG Creation Recommendation. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(i) ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall

be treated as the Rejection Action Supported Petition, (B) the EC (Empowered Community) Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the SCWG Creation Recommendation or approve the SCWG Creation Recommendation (either, a "**Post-Forum SCWG Creation Recommendation Decision**").

(A) If the Board resolves to approve the SCWG Creation Recommendation, such SCWG Creation Recommendation will be subject to Section 19.1(d).

(B) For the avoidance of doubt, the Board shall not be obligated to change its decision on the SCWG Creation Recommendation as a result of the Rejection Action Community Forum.

(C) The Board's Post-Forum SCWG Creation Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an SCWG Creation Recommendation (an "**SCWG Creation Decision**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the SCWG Creation Decision. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An SCWG Creation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such SCWG Creation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such SCWG Creation Decision; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such SCWG Creation Decision.

(ii) An SCWG Creation Decision that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

Section 19.2. SCWG RESPONSIBILITIES

The responsibilities of the SCWG shall be as follows:

(a) The SCWG shall determine how to resolve the PTI Performance Issue(s) which the IFRT that conducted the Special IFR or Periodic IFR, as applicable, identified as triggering formation of this SCWG.

(b) If the SCWG recommends the issuance of an IANA (Internet Assigned Numbers Authority) Naming Function RFP, the SCWG shall:

(i) Develop IANA (Internet Assigned Numbers Authority) Naming Function RFP guidelines and requirements for the performance of the IANA (Internet Assigned Numbers Authority) naming function, in a manner consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s publicly available procurement guidelines (as in effect immediately prior to the formation of the SCWG); and

(ii) Solicit input from ICANN (Internet Corporation for Assigned Names and Numbers) as well as the global Internet community (through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers)) on requirements to plan and participate in the IANA (Internet Assigned Numbers Authority) Naming Function RFP process.

(c) If an SCWG Recommendation (as defined in Section 19.4(b)) to issue the IANA (Internet Assigned Numbers Authority) Naming Function RFP is approved pursuant to Section 19.4(b) and the EC (Empowered Community) does not reject the relevant SCWG Recommendation Decision pursuant to Section 19.4(d), the SCWG, in consultation with ICANN (Internet Corporation for Assigned Names and Numbers), shall:

(i) Issue the IANA (Internet Assigned Numbers Authority) Naming Function RFP;

(ii) Review responses from interested candidates to the IANA (Internet Assigned Numbers Authority) Naming Function RFP, which may be received from PTI and/or any other entity or person; and

(iii) Recommend the entity that ICANN (Internet Corporation for Assigned Names and Numbers) should contract with to perform the IANA (Internet Assigned Numbers Authority) naming function.

(d) If the SCWG recommends an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process other than the issuance of an IANA (Internet Assigned Numbers Authority) Naming Function RFP, the SCWG shall develop recommendations to be followed with respect to that process and its implementation consistent with the terms of this Article 19. The SCWG shall monitor and manage the implementation of such IANA (Internet Assigned Numbers Authority) Naming Function Separation Process.

Section 19.3. COMMUNITY REVIEWS AND REPORTS

(a) The SCWG shall seek community input through one or more public comment periods (such public comment period shall comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers)) and may recommend discussions during ICANN (Internet Corporation for Assigned Names and Numbers)'s public meetings in developing and finalizing its recommendations and any report.

(b) The SCWG shall provide a draft report of its findings and recommendations to the community after convening of the SCWG, which such draft report will be posted for public comment on the Website. The SCWG may post additional drafts of its report for public comment until it has reached its final report.

(c) After completion of its review, the SCWG shall submit its final report containing its findings and recommendations to the Board. ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post the SCWG's final report on the Website.

Section 19.4. SCWG RECOMMENDATIONS

(a) The recommendations of the SCWG are not limited and could include a variety of recommendations or a recommendation that no action is required; provided, however, that any recommendations must directly relate to the matters discussed in Section 19.2 and comply with this Section 19.4.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall not implement an SCWG recommendation (including an SCWG recommendation to issue an IANA (Internet Assigned Numbers Authority) Naming Function RFP) unless, with respect to each such recommendation (each, an "**SCWG Recommendation**"), each of the following occurs:

(i) The SCWG Recommendation has been approved by the vote of (A) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO (Country Code Names Supporting Organization) Council's members) and (B) a GNSO (Generic Names Supporting Organization) Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), the Board has approved the SCWG Recommendation. A determination by the Board to not approve an SCWG Recommendation, where such SCWG Recommendation has been approved by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) Councils pursuant to Section 19.4(b)(i), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same consultation procedures set forth in Section 9 of Annex A of these Bylaws that relate to Board rejection of a PDP (Policy Development Process) recommendation that is supported by a GNSO (Generic Names Supporting Organization) Supermajority; and

(iii) The EC (Empowered Community) has not rejected the Board's approval of the SCWG Recommendation pursuant to and in compliance with Section 19.4(d).

(c) If the Board (x) rejects an SCWG Recommendation that was approved by the ccNSO (Country Code Names Supporting Organization) Council and GNSO (Generic Names Supporting Organization) Council pursuant to Section 19.4(b)(i) or (y) does not resolve to either accept or reject an SCWG Recommendation within 45 days of the later of (1) the date that the condition in Section 19.4(b)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 19.4(b)(ii), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable SCWG Recommendation. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly

following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(i) ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC (Empowered Community) Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the SCWG Recommendation or approve the SCWG Recommendation (either, a "**Post-Forum SCWG Recommendation Decision**").

(A) If the Board resolves to approve the SCWG Recommendation, such SCWG Recommendation will be subject to Section 19.4(d).

(B) For the avoidance of doubt, the Board shall not be obligated to change its decision on the SCWG Recommendation as a result of the Rejection Action Community Forum.

(C) The Board's Post-Forum SCWG Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an SCWG Recommendation (an "**SCWG Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the SCWG Recommendation that is the subject of the SCWG Recommendation

Decision. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An SCWG Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such SCWG Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such SCWG Recommendation Decision; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such SCWG Recommendation Decision.

(ii) An SCWG Recommendation Decision that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(e) ICANN (Internet Corporation for Assigned Names and Numbers) shall absorb the costs relating to recommendations made by the SCWG, including, without limitation, costs related to the process of selecting or potentially selecting a new operator for the IANA (Internet Assigned Numbers Authority) naming function and the operating costs of the successor operator that are necessary for the successor operator's performance of the IANA (Internet Assigned Numbers Authority) naming function as ICANN (Internet Corporation for Assigned Names and Numbers)'s independent contractor. ICANN (Internet Corporation for Assigned Names and Numbers) shall not be authorized to raise fees from any TLD (Top Level Domain) registry operators to cover the costs associated with implementation of any SCWG Recommendations that specifically relate to the transition to a successor operator. For avoidance of doubt, this restriction shall not apply to collecting appropriate fees necessary to maintain the ongoing performance of the IANA (Internet Assigned Numbers Authority) naming function, including those relating to the operating costs of the successor operator.

(f) In the event that (i) an SCWG Recommendation that selects an entity (other than PTI) as a new operator of the IANA (Internet Assigned Numbers Authority) naming function is approved pursuant to Section 19.4(b) and (ii) the EC (Empowered Community) does not reject the relevant SCWG Recommendation Decision pursuant to Section 19.4(d), ICANN (Internet Corporation for Assigned Names and Numbers) shall enter into a contract with the new operator on substantially the same terms recommended by the SCWG and approved as part of such SCWG Recommendation.

(g) As promptly as practical following an SCWG Recommendation Decision becoming final in accordance with this Section 19.4, ICANN (Internet Corporation for Assigned Names and Numbers) shall take all steps reasonably necessary to effect such SCWG Recommendation Decision as soon as practicable.

Section 19.5. SCWG COMPOSITION

(a) Each SCWG shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(i) Two representatives appointed by the ccNSO (Country Code Names Supporting Organization) from its ccTLD (Country Code Top Level Domain) registry operator representatives;

(ii) One non-ccNSO (Country Code Names Supporting Organization) ccTLD (Country Code Top Level Domain) representative who is associated with a ccTLD (Country Code Top Level Domain) registry operator that is not a representative of the ccNSO (Country Code Names Supporting Organization), appointed by the ccNSO (Country Code Names Supporting Organization); it is strongly recommended that the ccNSO (Country Code Names Supporting Organization) consult with the regional ccTLD (Country Code Top Level Domain) organizations (i.e., AfTLD, APTLD (Council of the Asia Pacific country code Top Level Domains), LACTLD (Latin American and Caribbean ccTLDs) and CENTR (Council of European National Top level domain Registries)) in making its appointment;

(iii) Three representatives appointed by the Registries Stakeholder Group;

(iv) One representative appointed by the Registrars Stakeholder Group;

(v) One representative appointed by the Commercial Stakeholder Group;

(vi) One representative appointed by the Non-Commercial Stakeholder Group;

(vii) One representative appointed by the GAC (Governmental Advisory Committee);

(viii) One representative appointed by the SSAC (Security and Stability Advisory Committee);

(ix) One representative appointed by the RSSAC (Root Server System Advisory Committee);

(x) One representative appointed by the ALAC (At-Large Advisory Committee);

(xi) One liaison appointed by the CSC;

(xii) One liaison appointed by the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the SCWG, who shall be named in the IFRT's recommendation to convene the Special IFR;

(xiii) One liaison who may be appointed by the ASO (Address Supporting Organization);

(xiv) One liaison who may be appointed by the IAB (Internet Architecture Board); and

(xv) One liaison who may be appointed by the Board.

(xvi) The SCWG may also include an unlimited number of non-member, non-liaison participants.

(b) All candidates for appointment to the SCWG as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison, which shall state (i) why the candidate is interested in becoming involved in the SCWG, (ii) what particular skills the candidate would bring to the SCWG, (iii) the candidate's knowledge of the IANA (Internet Assigned Numbers Authority) naming function, (iv) the candidate's understanding of the purpose of the SCWG, and (v) that the candidate understands the time necessary to participate in the SCWG process and can commit to the role.

(c) Members and liaisons of the SCWG shall disclose to ICANN (Internet Corporation for Assigned Names and Numbers) and the SCWG any conflicts of interest with a specific complaint or issue under review. The SCWG may exclude from the discussion of a specific complaint or issue any member, liaison or participant deemed by the majority of SCWG members to have a conflict of interest. The co-chairs of the SCWG shall record any such conflict of interest in the minutes of the SCWG.

(d) To the extent reasonably possible, the appointing organizations for SCWG members and liaisons shall work together to:

(i) achieve an SCWG that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the SCWG should include members from each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region, and the ccNSO (Country Code Names Supporting Organization) and Registries Stakeholder Group shall not appoint multiple members who are citizens of countries from the same ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region;

(ii) ensure that the SCWG is comprised of individuals who are different from those individuals who comprised the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the SCWG, other than the liaison to the IFRT appointed by the CSC; and

(iii) seek to appoint as representatives of the SCWG as many individuals as practicable with experience managing or participating in RFP processes.

(e) ICANN (Internet Corporation for Assigned Names and Numbers) shall select an ICANN (Internet Corporation for Assigned Names and Numbers) staff member and a PTI staff member to serve as points of contact to facilitate formal lines of communication between the SCWG and ICANN (Internet Corporation for Assigned Names and Numbers) and the SCWG and PTI. Communications between the SCWG and the ICANN (Internet Corporation for Assigned Names and Numbers) and PTI points of contact shall be communicated by the SCWG co-chairs.

(f) The SCWG shall not be a standing body. Each SCWG shall be constituted when and as required under these Bylaws and shall dissolve following the end of the process for approving such SCWG's SCWG Recommendations pursuant to Section 19.4(d).

Section 19.6. ELECTION OF CO-CHAIRS AND LIAISONS

(a) The SCWG shall be led by two co-chairs: one appointed by the GNSO (Generic Names Supporting Organization) from one of the members appointed pursuant to clauses (iii)-(vi) of Section 19.5(a) and one appointed by the ccNSO (Country Code Names Supporting Organization) from one of the members appointed pursuant to clauses (i)-(ii) of Section 19.5(a).

(b) Liaisons to the SCWG shall not be members of or entitled to vote on any matters before the SCWG, but otherwise shall be entitled to participate on equal footing with SCWG members.

(c) Removal and Replacement of SCWG Members and Liaisons

(i) The SCWG members and liaisons may be removed from the SCWG by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the SCWG.

(ii) A vacancy on the SCWG shall be deemed to exist in the event of the death, resignation or removal of any SCWG member or liaison. Vacancies shall be filled by the organization that appointed such SCWG member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the SCWG co-chairs. The organization responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 19.7. MEETINGS

(a) The SCWG shall act by consensus, which is where a small minority may disagree, but most agree.

(b) Any members of the SCWG not in favor of an action may record a minority dissent to such action, which shall be included in the SCWG minutes and/or report, as applicable.

(c) SCWG meetings and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.

(d) The SCWG shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable

following each SCWG meeting, and no later than five business days following the meeting.

(e) Except as otherwise provided in these Bylaws, the SCWG shall follow the guidelines and procedures applicable to ICANN (Internet Corporation for Assigned Names and Numbers) Cross Community Working Groups that will be publicly available and may be amended from time to time.

Section 19.8. ADMINISTRATIVE SUPPORT

ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the SCWG to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the SCWG.

Section 19.9. CONFLICTING PROVISIONS

In the event any SCWG Recommendation that is approved in accordance with this Article 19 requires ICANN (Internet Corporation for Assigned Names and Numbers) to take any action that is inconsistent with a provision of the Bylaws (including any action taken in implementing such SCWG Recommendation), the requirements of such provision of these Bylaws shall not apply to the extent of that inconsistency.

ARTICLE 20 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

Section 20.1. INDEMNIFICATION GENERALLY

ICANN (Internet Corporation for Assigned Names and Numbers) shall, to the maximum extent permitted by the CCC, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN (Internet Corporation for Assigned Names and Numbers), provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN (Internet Corporation for Assigned Names and Numbers)'s best interests and not criminal. For purposes of this Article 20, an "agent" of ICANN (Internet Corporation for Assigned Names and Numbers) includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (Internet

Corporation for Assigned Names and Numbers) (including a member of the EC (Empowered Community), the EC (Empowered Community) Administration, any Supporting Organization (Supporting Organization), any Advisory Committee (Advisory Committee), the Nominating Committee, any other ICANN (Internet Corporation for Assigned Names and Numbers) committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN (Internet Corporation for Assigned Names and Numbers) as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN (Internet Corporation for Assigned Names and Numbers) against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not ICANN (Internet Corporation for Assigned Names and Numbers) would have the power to indemnify the agent against that liability under the provisions of this Article 20.

Section 20.2. INDEMNIFICATION WITH RESPECT TO DIRECTOR REMOVAL

If a Director initiates any proceeding in connection with his or her removal or recall pursuant to the Bylaws, to which a person who is a member of the leadership council (or equivalent body) of a Decisional Participant or representative of a Decisional Participant in the EC (Empowered Community) Administration is a party or is threatened to be made a party (as a party or witness) (a "**Director Removal Proceeding**"), ICANN (Internet Corporation for Assigned Names and Numbers) shall, to the maximum extent permitted by the CCC, indemnify any such person, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by such person in connection with such Director Removal Proceeding, for actions taken by such person in his or her representative capacity within his or her Decisional Participant pursuant to the processes and procedures set forth in these Bylaws, provided that all such actions were taken by such person in good faith and in a manner that such person reasonably believed to be in ICANN (Internet Corporation for Assigned Names and Numbers)'s best interests and not criminal. The actual and reasonable legal fees of a single firm of counsel and other expenses actually and reasonably incurred by such person in defending against a Director Removal Proceeding shall be paid by ICANN (Internet Corporation for Assigned Names and Numbers) in advance of the final disposition of such Director Removal Proceeding, provided, however, that such expenses shall be advanced only upon delivery to the

Secretary of an undertaking (which shall be in writing and in a form provided by the Secretary) by such person to repay the amount of such expenses if it shall ultimately be determined that such person is not entitled to be indemnified by ICANN (Internet Corporation for Assigned Names and Numbers). ICANN (Internet Corporation for Assigned Names and Numbers) shall not be obligated to indemnify such person against any settlement of a Director Removal Proceeding, unless such settlement is approved in advance by the Board in its reasonable discretion. Notwithstanding Section 20.1, the indemnification provided in this Section 20.2 shall be ICANN (Internet Corporation for Assigned Names and Numbers)'s sole indemnification obligation with respect to the subject matter set forth in this Section 20.2.

ARTICLE 21 GENERAL PROVISIONS

Section 21.1. CONTRACTS

The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of ICANN (Internet Corporation for Assigned Names and Numbers), and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent, or employee shall have any power or authority to bind ICANN (Internet Corporation for Assigned Names and Numbers) or to render it liable for any debts or obligations.

Section 21.2. DEPOSITS

All funds of ICANN (Internet Corporation for Assigned Names and Numbers) not otherwise employed shall be deposited from time to time to the credit of ICANN (Internet Corporation for Assigned Names and Numbers) in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

Section 21.3. CHECKS

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of ICANN (Internet Corporation for Assigned Names and Numbers) shall be signed by such Officer or Officers, agent or agents, of ICANN (Internet Corporation for

Assigned Names and Numbers) and in such a manner as shall from time to time be determined by resolution of the Board.

Section 21.4. LOANS

No loans shall be made by or to ICANN (Internet Corporation for Assigned Names and Numbers) and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances; provided, however, that no loans shall be made by ICANN (Internet Corporation for Assigned Names and Numbers) to its Directors or Officers.

Section 21.5. NOTICES

All notices to be given to the EC (Empowered Community) Administration, the Decisional Participants, or the Secretary pursuant to any provision of these Bylaws shall be given either (a) in writing at the address of the appropriate party as set forth below or (b) via electronic mail as provided below, unless that party has given a notice of change of postal or email address, as provided in this Section 21.5. Any change in the contact information for notice below will be given by the party within 30 days of such change. Any notice required by these Bylaws will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via electronic mail, upon confirmation of receipt by the recipient's email server, provided that such notice via electronic mail shall be followed by a copy sent by regular postal mail service within three days. In the event other means of notice become practically achievable, such as notice via a secure website, the EC (Empowered Community) Administration, the Decisional Participants, and ICANN (Internet Corporation for Assigned Names and Numbers) will work together to implement such notice means.

If to ICANN (Internet Corporation for Assigned Names and Numbers), addressed to:

Internet Corporation for Assigned Names and Numbers

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094-2536

USA

Email: []

Attention: Secretary

If to a Decisional Participant or the EC (Empowered Community) Administration, addressed to the contact information available at [insert Website reference].

ARTICLE 22 FISCAL AND STRATEGIC MATTERS, INSPECTION AND INDEPENDENT INVESTIGATION

Section 22.1. ACCOUNTING

The fiscal year end of ICANN (Internet Corporation for Assigned Names and Numbers) shall be determined by the Board.

Section 22.2. AUDIT

At the end of the fiscal year, the books of ICANN (Internet Corporation for Assigned Names and Numbers) shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

Section 22.3. ANNUAL REPORT AND ANNUAL STATEMENT

The Board shall publish, at least annually, a report describing its activities, including an audited financial statement, a description of any payments made by ICANN (Internet Corporation for Assigned Names and Numbers) to Directors (including reimbursements of expenses) and a description of ICANN (Internet Corporation for Assigned Names and Numbers)'s progress towards the obligations imposed under the Bylaws as revised on 1 October 2016 and the Operating Plan and Strategic Plan. ICANN (Internet Corporation for Assigned Names and Numbers) shall cause the annual report and the annual statement of certain transactions as required by the CCC to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of ICANN (Internet Corporation for Assigned Names and Numbers)'s fiscal year.

Section 22.4. BUDGETS

(a) ICANN (Internet Corporation for Assigned Names and Numbers) Budget

(i) In furtherance of its Commitment to transparent and accountable budgeting processes, at least forty-five (45) days prior to the commencement of each fiscal year, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall prepare and submit to the Board a proposed annual operating plan and budget of ICANN (Internet Corporation for Assigned Names and Numbers) for the next fiscal year (the "**ICANN (Internet Corporation for Assigned Names and Numbers) Budget**"), which shall be posted on the Website. The ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item.

(ii) Prior to approval of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall consult with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) during the ICANN (Internet Corporation for Assigned Names and Numbers) Budget development process, and comply with the requirements of this Section 22.4(a).

(iii) Prior to approval of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget by the Board, a draft of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to post a revised draft of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget and may direct ICANN (Internet Corporation for Assigned Names and Numbers) Staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(v) Promptly after the Board approves an ICANN (Internet Corporation for Assigned Names and Numbers) Budget (an "**ICANN (Internet Corporation for Assigned Names and Numbers) Budget**"),

Approval"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget that is the subject of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the ICANN (Internet Corporation for Assigned Names and Numbers) Budget that is the subject of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date (as defined in Section 2.2(a) of Annex D) relating to such ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval and the effectiveness of such ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC

(Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the ICANN (Internet Corporation for Assigned Names and Numbers) Budget that is the subject of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval and the effectiveness of such ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the ICANN (Internet Corporation for Assigned Names and Numbers) Budget that is the subject of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval and the effectiveness of such ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(vii) An ICANN (Internet Corporation for Assigned Names and Numbers) Budget that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC (Empowered Community) Rejection Notice relating to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community)

Administration as to why the EC (Empowered Community) has chosen to reject the ICANN (Internet Corporation for Assigned Names and Numbers) Budget in determining the substance of such new ICANN (Internet Corporation for Assigned Names and Numbers) Budget, which shall be subject to the procedures of this Section 22.4(a).

(ix) If an ICANN (Internet Corporation for Assigned Names and Numbers) Budget has not come into full force and effect pursuant to this Section 22.4(a) on or prior to the first date of any fiscal year of ICANN (Internet Corporation for Assigned Names and Numbers), the Board shall adopt a temporary budget in accordance with Annex E hereto ("**Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget**"), which Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall be effective until such time as an ICANN (Internet Corporation for Assigned Names and Numbers) Budget has been effectively approved by the Board and not rejected by the EC (Empowered Community) pursuant to this Section 22.4(a).

(b) IANA (Internet Assigned Numbers Authority) Budget

(i) At least 45 days prior to the commencement of each fiscal year, ICANN (Internet Corporation for Assigned Names and Numbers) shall prepare and submit to the Board a proposed annual operating plan and budget of PTI and the IANA (Internet Assigned Numbers Authority) department, which budget shall include itemization of the direct costs for ICANN (Internet Corporation for Assigned Names and Numbers)'s IANA (Internet Assigned Numbers Authority) department, all costs for PTI, direct costs for shared resources between ICANN (Internet Corporation for Assigned Names and Numbers) and PTI and support functions provided by ICANN (Internet Corporation for Assigned Names and Numbers) to PTI and ICANN (Internet Corporation for Assigned Names and Numbers)'s IANA (Internet Assigned Numbers Authority) department for the next fiscal year (the "**IANA (Internet Assigned Numbers Authority) Budget**"), which shall be posted on the Website. Separately and in addition to the general ICANN (Internet Corporation for Assigned Names and Numbers) planning process, ICANN (Internet Corporation for Assigned Names and Numbers) shall require PTI to prepare and submit to the PTI Board a proposed annual operating plan and budget for PTI's performance of the IANA (Internet

Assigned Numbers Authority) functions for the next fiscal year ("**PTI Budget**"). ICANN (Internet Corporation for Assigned Names and Numbers) shall require PTI to consult with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), as well as the Registries Stakeholder Group, the IAB (Internet Architecture Board) and RIRs, during the PTI Budget development process, and shall seek public comment on the draft PTI Budget prior to approval of the PTI Budget by PTI. ICANN (Internet Corporation for Assigned Names and Numbers) shall require PTI to submit the PTI Budget to ICANN (Internet Corporation for Assigned Names and Numbers) as an input prior to and for the purpose of being included in the proposed Operating Plan (as defined in Section 22.5(a)) and ICANN (Internet Corporation for Assigned Names and Numbers) Budget.

(ii) Prior to approval of the IANA (Internet Assigned Numbers Authority) Budget by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall consult with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), as well as the Registries Stakeholder Group, IAB (Internet Architecture Board) and RIRs, during the IANA (Internet Assigned Numbers Authority) Budget development process, and comply with the requirements of this Section 22.4(b).

(iii) Prior to approval of the IANA (Internet Assigned Numbers Authority) Budget by the Board, a draft of the IANA (Internet Assigned Numbers Authority) Budget shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to post a revised draft of the IANA (Internet Assigned Numbers Authority) Budget and may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(v) Promptly after the Board approves an IANA (Internet Assigned Numbers Authority) Budget (an "**IANA (Internet Assigned Numbers Authority) Budget Approval**"), the Secretary shall provide a Board

Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the IANA (Internet Assigned Numbers Authority) Budget that is the subject of the IANA (Internet Assigned Numbers Authority) Budget Approval. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An IANA (Internet Assigned Numbers Authority) Budget shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the IANA (Internet Assigned Numbers Authority) Budget that is the subject of the IANA (Internet Assigned Numbers Authority) Budget Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such IANA (Internet Assigned Numbers Authority) Budget Approval and the effectiveness of such IANA (Internet Assigned Numbers Authority) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the IANA (Internet Assigned Numbers Authority) Budget that is the subject of the IANA (Internet Assigned Numbers Authority) Budget Approval shall be in full force and effect as of the date immediately following the

expiration of the Rejection Action Petition Support Period relating to such IANA (Internet Assigned Numbers Authority) Budget Approval and the effectiveness of such IANA (Internet Assigned Numbers Authority) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the IANA (Internet Assigned Numbers Authority) Budget that is the subject of the IANA (Internet Assigned Numbers Authority) Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such IANA (Internet Assigned Numbers Authority) Budget Approval and the effectiveness of such IANA (Internet Assigned Numbers Authority) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(vii) An IANA (Internet Assigned Numbers Authority) Budget that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC (Empowered Community) Rejection Notice relating to an IANA (Internet Assigned Numbers Authority) Budget, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the IANA (Internet Assigned Numbers Authority) Budget in determining the substance of such new IANA (Internet Assigned Numbers Authority) Budget, which shall be subject to the procedures of this Section 22.4(b).

(ix) If an IANA (Internet Assigned Numbers Authority) Budget has not come into full force and effect pursuant to this Section 22.4(b) on or prior to the first date of any fiscal year of ICANN (Internet Corporation

for Assigned Names and Numbers), the Board shall adopt a temporary budget in accordance with Annex F hereto ("**Caretaker IANA (Internet Assigned Numbers Authority) Budget**"), which Caretaker IANA (Internet Assigned Numbers Authority) Budget shall be effective until such time as an IANA (Internet Assigned Numbers Authority) Budget has been effectively approved by the Board and not rejected by the EC (Empowered Community) pursuant to this Section 22.4(b).

(c) If an IANA (Internet Assigned Numbers Authority) Budget does not receive an EC (Empowered Community) Rejection Notice but an ICANN (Internet Corporation for Assigned Names and Numbers) Budget receives an EC (Empowered Community) Rejection Notice, any subsequent revised ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall not alter the expenditures allocated for the IANA (Internet Assigned Numbers Authority) Budget.

(d) If an ICANN (Internet Corporation for Assigned Names and Numbers) Budget does not receive an EC (Empowered Community) Rejection Notice but an IANA (Internet Assigned Numbers Authority) Budget receives an EC (Empowered Community) Rejection Notice, any subsequent revised IANA (Internet Assigned Numbers Authority) Budget shall, once approved, be deemed to automatically modify the ICANN (Internet Corporation for Assigned Names and Numbers) Budget in a manner determined by the Board without any further right of the EC (Empowered Community) to reject the ICANN (Internet Corporation for Assigned Names and Numbers) Budget.

(e) Under all circumstances, the Board will have the ability to make out-of-budget funding decisions for unforeseen expenses necessary to maintaining ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission or to fulfilling ICANN (Internet Corporation for Assigned Names and Numbers)'s pre-existing legal obligations and protecting ICANN (Internet Corporation for Assigned Names and Numbers) from harm or waste.

(f) To maintain ongoing operational excellence and financial stability of the IANA (Internet Assigned Numbers Authority) functions (so long as they are performed by ICANN (Internet Corporation for Assigned Names and Numbers) or pursuant to contract with ICANN (Internet Corporation for Assigned Names and Numbers)) and PTI, ICANN (Internet Corporation for Assigned Names and Numbers) shall be required to plan for and allocate funds to ICANN (Internet Corporation for Assigned Names and Numbers)'s performance of the IANA (Internet Assigned Numbers Authority) functions

and to PTI, as applicable, that are sufficient to cover future expenses and contingencies to ensure that the performance of those IANA (Internet Assigned Numbers Authority) functions and PTI in the future are not interrupted due to lack of funding.

(g) The ICANN (Internet Corporation for Assigned Names and Numbers) Budget and the IANA (Internet Assigned Numbers Authority) Budget shall be published on the Website.

Section 22.5. PLANS

(a) Operating Plan

(i) At least 45 days prior to the commencement of each fiscal year, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall prepare and submit to the Board a proposed operating plan of ICANN (Internet Corporation for Assigned Names and Numbers) for the next five fiscal years (the "**Operating Plan**"), which shall be posted on the Website.

(ii) Prior to approval of the Operating Plan by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall consult with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) during the Operating Plan development process, and comply with the requirements of this Section 22.5(a).

(iii) Prior to approval of the Operating Plan by the Board, a draft of the Operating Plan shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to post a revised draft of the Operating Plan and may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(v) Promptly after the Board approves an Operating Plan (an "**Operating Plan Approval**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Operating Plan that is the subject of the Operating Plan Approval. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An Operating Plan shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Operating Plan Approval and the effectiveness of such Operating

Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(vii) An Operating Plan that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC (Empowered Community) Rejection Notice relating to an Operating Plan, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the Operating Plan in determining the substance of such new Operating Plan, which shall be subject to the procedures of this Section 22.5(a).

(b) Strategic Plan

(i) At least 45 days prior to the commencement of each five fiscal year period, with the first such period covering fiscal years 2021 through 2025, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall prepare and submit to the Board a proposed strategic plan of ICANN (Internet Corporation for Assigned Names and Numbers) for the next five fiscal years (the "**Strategic Plan**"), which shall be posted on the Website.

(ii) Prior to approval of the Strategic Plan by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall consult with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) during the Strategic Plan development process, and comply with the requirements of this Section 22.5(b).

(iii) Prior to approval of the Strategic Plan by the Board, a draft of the Strategic Plan shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to submit a revised draft of the Strategic Plan and may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(v) Promptly after the Board approves a Strategic Plan (a "**Strategic Plan Approval**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Strategic Plan that is the subject of the Strategic Plan Approval. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) A Strategic Plan shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC

(Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(vii) A Strategic Plan that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC (Empowered Community) Rejection Notice relating to a Strategic Plan, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the Strategic Plan in determining the substance of such new Strategic Plan, which shall be subject to the procedures of this Section 22.5(b).

Section 22.6. FEES AND CHARGES

The Board may set fees and charges for the services and benefits provided by ICANN (Internet Corporation for Assigned Names and Numbers), with the goal of fully recovering the reasonable costs of the operation of ICANN (Internet Corporation for Assigned Names and Numbers) and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN (Internet Corporation for Assigned Names and Numbers). Such fees and charges shall be fair and equitable, shall be published for public comment prior to adoption, and once adopted shall be published on the Website in a sufficiently detailed manner so as to be readily accessible.

Section 22.7. INSPECTION

(a) A Decisional Participant (the "**Inspecting Decisional Participant**") may request to inspect the accounting books and records of ICANN (Internet Corporation for Assigned Names and Numbers), as interpreted pursuant to the provisions of Section 6333 of the CCC, and the minutes of the Board or any Board Committee for a purpose reasonably related to such Inspecting Decisional Participant's interest as a Decisional Participant in the EC (Empowered Community). The Inspecting Decisional Participant shall make such a request by providing written notice from the chair of the Inspecting Decisional Participant to the Secretary stating the nature of the documents the Inspecting Decisional Participant seeks to inspect ("**Inspection Request**"). Any Inspection Request must be limited to the accounting books and records of ICANN (Internet Corporation for Assigned Names and Numbers) relevant to the operation of ICANN (Internet Corporation for Assigned Names and Numbers) as a whole, and shall not extend to the underlying sources of such accounting books or records or to documents only relevant to a small or isolated aspect of ICANN (Internet Corporation for

Assigned Names and Numbers)'s operations or that relate to the minutiae of ICANN (Internet Corporation for Assigned Names and Numbers)'s financial records or details of its management and administration (the "**Permitted Scope**"). Unless ICANN (Internet Corporation for Assigned Names and Numbers) declines such request (as provided below), ICANN (Internet Corporation for Assigned Names and Numbers) shall make the records requested under an Inspection Request available for inspection by such Inspecting Decisional Participant within 30 days of the date the Inspection Request is received by the Secretary or as soon as reasonably practicable thereafter. All materials and information made available by ICANN (Internet Corporation for Assigned Names and Numbers) for inspection pursuant to an Inspection Request may only be used by the Inspecting Decisional Participant for purposes reasonably related to such Inspecting Decisional Participant's interest as a Decisional Participant in the EC (Empowered Community). ICANN (Internet Corporation for Assigned Names and Numbers) shall post all Inspection Requests to the Website.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) may decline an Inspection Request on the basis that such Inspection Request (i) is motivated by a Decisional Participant's financial, commercial or political interests, or those of one or more of its constituents, (ii) relates to documents that are not reasonably related to the purpose specified in the Inspection Request or the Inspecting Decisional Participant's interest as a Decisional Participant in the EC (Empowered Community), (iii) requests identical records provided in a prior request of such Decisional Participant, (iv) is not within the Permitted Scope, (v) relates to personnel records, (vi) relates to documents or communications covered by attorney-client privilege, work product doctrine or other legal privilege or (vii) relates to documents or communications that ICANN (Internet Corporation for Assigned Names and Numbers) may not make available under applicable law because such documents or communications contain confidential information that ICANN (Internet Corporation for Assigned Names and Numbers) is required to protect. If an Inspection Request is overly broad, ICANN (Internet Corporation for Assigned Names and Numbers) may request a revised Inspection Request from the Inspecting Decisional Participant.

(c) Any such inspections shall be conducted at the times and locations reasonably determined by ICANN (Internet Corporation for Assigned Names and Numbers) and shall not be conducted in a manner that unreasonably interferes with ICANN (Internet Corporation for Assigned Names and Numbers)'s operations. All such inspections shall be subject to reasonable

procedures established by ICANN (Internet Corporation for Assigned Names and Numbers), including, without limitation, the number of individuals authorized to conduct any such inspection on behalf of the Inspecting Decisional Participant. ICANN (Internet Corporation for Assigned Names and Numbers) may require the inspectors to sign a non-disclosure agreement. The Inspecting Decisional Participant may, at its own cost, copy or otherwise reproduce or make a record of materials inspected. ICANN (Internet Corporation for Assigned Names and Numbers) may redact or determine not to provide requested materials on the same basis that such information is of a category or type described in Section 22.7(b), in which case ICANN (Internet Corporation for Assigned Names and Numbers) will provide the Inspecting Decisional Participant a written rationale for such redactions or determination.

(d) The inspection rights provided to the Decisional Participants pursuant to this Section 22.7 are granted to the Decisional Participants and are not granted or available to any other person or entity. Notwithstanding the foregoing, nothing in this Section 22.7 shall be construed as limiting the accessibility of ICANN (Internet Corporation for Assigned Names and Numbers)'s document information disclosure policy ("**DIDP**").

(e) If the Inspecting Decisional Participant believes that ICANN (Internet Corporation for Assigned Names and Numbers) has violated the provisions of this Section 22.7, the Inspecting Decisional Participant may seek one or more of the following remedies: (i) appeal such matter to the Ombudsman and/or the Board for a ruling on the matter, (ii) initiate the Reconsideration Request process in accordance with Section 4.2, (iii) initiate the Independent Review Process in accordance with Section 4.3, or (iv) petition the EC (Empowered Community) to initiate (A) a Community IRP pursuant to Section 4.2 of Annex D or (B) a Board Recall Process pursuant to Section 3.3 of Annex D. Any determination by the Ombudsman is not binding on ICANN (Internet Corporation for Assigned Names and Numbers) staff, but may be submitted by the Inspecting Decisional Participant when appealing to the Board for a determination, if necessary.

Section 22.8. INDEPENDENT INVESTIGATION

If three or more Decisional Participants deliver to the Secretary a joint written certification from the respective chairs of each such Decisional Participant that the constituents of such Decisional Participants have, pursuant to the internal procedures of such Decisional Participants, determined that there is a credible allegation that ICANN (Internet Corporation for Assigned Names and

Numbers) has committed fraud or that there has been a gross mismanagement of ICANN (Internet Corporation for Assigned Names and Numbers)'s resources, ICANN (Internet Corporation for Assigned Names and Numbers) shall retain a third-party, independent firm to investigate such alleged fraudulent activity or gross mismanagement. ICANN (Internet Corporation for Assigned Names and Numbers) shall post all such certifications to the Website. The independent firm shall issue a report to the Board. The Board shall consider the recommendations and findings set forth in such report. Such report shall be posted on the Website, which may be in a redacted form as determined by the Board, in order to preserve attorney-client privilege, work product doctrine or other legal privilege or where such information is confidential, in which case ICANN (Internet Corporation for Assigned Names and Numbers) will provide the Decisional Participants that submitted the certification a written rationale for such redactions.

ARTICLE 23 MEMBERS

ICANN (Internet Corporation for Assigned Names and Numbers) shall not have members, as contemplated by Section 5310 of the CCC, notwithstanding the use of the term "member" in these Bylaws, in any ICANN (Internet Corporation for Assigned Names and Numbers) document, or in any action of the Board or staff. For the avoidance of doubt, the EC (Empowered Community) is not a member of ICANN (Internet Corporation for Assigned Names and Numbers).

ARTICLE 24 OFFICES AND SEAL

Section 24.1. OFFICES

The principal office for the transaction of the business of ICANN (Internet Corporation for Assigned Names and Numbers) shall be in the County of Los Angeles, State of California, United States of America. ICANN (Internet Corporation for Assigned Names and Numbers) may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

Section 24.2. SEAL

The Board may adopt a corporate seal and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE 25 AMENDMENTS

Section 25.1. AMENDMENTS TO THE STANDARD BYLAWS

(a) Except as otherwise provided in the Articles of Incorporation or these Bylaws, these Bylaws may be altered, amended, or repealed and new Bylaws adopted only upon approval by a two-thirds vote of all Directors and in compliance with the terms of this Section 25.1 (a "**Standard Bylaw Amendment**").

(b) Prior to approval of a Standard Bylaw Amendment by the Board, a draft of the Standard Bylaw Amendment shall be posted on the Website and shall be subject to public comment in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(c) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to post a revised draft of the Standard Bylaw Amendment and may conduct one or more additional public comment periods in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(d) Within seven days after the Board's approval of a Standard Bylaw Amendment ("**Standard Bylaw Amendment Approval**"), the Secretary shall (i) provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall contain the form of the approved amendment and the Board's rationale for adopting such amendment, and (ii) post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website. The steps contemplated in Article 2 of Annex D shall then be followed.

(e) A Standard Bylaw Amendment shall become effective upon the earliest to occur of the following:

(i) (A) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC

(Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the 30th day following the Rejection Action Board Notification Date relating to such Standard Bylaw Amendment Approval and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(ii) (A) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Standard Bylaw Amendment and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; or

(iii) (A) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Standard Bylaw Amendment and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(f) If an EC (Empowered Community) Rejection Notice is timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and compliance with Section 2.4 of Annex D, the Standard Bylaw Amendment contained in the Board Notice shall be deemed to have been rejected by the EC (Empowered Community). A Standard Bylaw Amendment that has been rejected by the EC (Empowered Community) shall be null and void and shall not become part of these Bylaws, notwithstanding its approval by the Board.

(g) The Secretary shall promptly inform the Board of the receipt and substance of any Rejection Action Petition, Rejection Action Supported Petition or EC (Empowered Community) Rejection Notice delivered by the Rejection Action Petitioning Decisional Participant or the EC (Empowered Community) Administration, as applicable, to the Secretary hereunder.

(h) Following receipt of an EC (Empowered Community) Rejection Notice pertaining to a Standard Bylaw Amendment, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the Standard Bylaw Amendment in determining whether or not to develop a new Standard Bylaw Amendment and the substance of such new Standard Bylaw Amendment, which shall be subject to the procedures of this Section 25.1.

Section 25.2. AMENDMENTS TO THE FUNDAMENTAL BYLAWS AND ARTICLES OF INCORPORATION

(a) Article 1; Sections 4.2, 4.3 and 4.7; Article 6; Sections 7.1 through 7.5, inclusive, and Sections 7.8, 7.11, 7.12, 7.17, 7.24 and 7.25; those portions of Sections 8.1, 9.2(b), 10.3(i), 11.3(f) and 12.2(d)(x)(A) relating to the provision to the EC (Empowered Community) of nominations of Directors by the nominating body, Articles 16, 17, 18 and 19, Sections 22.4, 22.5, 22.7 and 22.8, Article 26, Section 27.1; Annexes D, E and F; and this Article 25 are each a "**Fundamental Bylaw**" and, collectively, are the "**Fundamental Bylaws**".

(b) Notwithstanding any other provision of these Bylaws, a Fundamental Bylaw or the Articles of Incorporation may be altered, amended, or repealed (a "**Fundamental Bylaw Amendment**" or an "**Articles Amendment**"), only upon approval by a three-fourths vote of all Directors and the approval of the EC (Empowered Community) as set forth in this Section 25.2.

(c) Prior to approval of a Fundamental Bylaw Amendment, or an Articles Amendment by the Board, a draft of the Fundamental Bylaw Amendment or Articles Amendment, as applicable, shall be posted on the Website and shall be subject to public comment in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(d) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to submit a revised draft of the Fundamental Bylaw Amendment or Articles Amendment, as applicable, and may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to conduct one or more additional public comment periods in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(e) Within seven days after the Board's approval of a Fundamental Bylaw Amendment or Articles Amendment, as applicable, the Secretary shall (i) provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall contain the form of the approved amendment and (ii) post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website. The steps contemplated in Article 1 of Annex D shall then be followed.

(f) If the EC (Empowered Community) Administration timely delivers an EC (Empowered Community) Approval Notice (as defined in Section 1.4(b) of Annex D), the Fundamental Bylaw Amendment or Articles Amendment, as applicable, set forth in the Board Notice shall be deemed approved by the EC (Empowered Community), and, as applicable, (i) such Fundamental Bylaw Amendment shall be in full force and effect as part of these Bylaws as of the date immediately following the Secretary's receipt of the EC (Empowered Community) Approval Notice; or (ii) the Secretary shall cause such Articles Amendment promptly to be certified by the appropriate officers of ICANN (Internet Corporation for Assigned Names and Numbers) and filed with the California Secretary of State. In the event of such approval, neither the Fundamental Bylaw Amendment nor the Articles Amendment shall be subject to any further review or approval of the EC (Empowered Community). The Secretary shall promptly inform the Board of the receipt of an EC (Empowered Community) Approval Notice.

(g) If an EC (Empowered Community) Approval Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary, the Fundamental Bylaw Amendment or Articles Amendment, as applicable, set forth in the Board Notice shall be deemed not approved by the EC (Empowered Community), shall be null and void, and, notwithstanding its approval by the Board, the Fundamental Bylaw Amendment shall not be part of these Bylaws and the Articles Amendment shall not be filed with the Secretary of State.

(h) If a Fundamental Bylaw Amendment or Articles Amendment, as applicable, is not approved by the EC (Empowered Community), ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the concerns raised by the EC (Empowered Community) in determining whether or not to develop a new Fundamental Bylaws Amendment or Articles Amendment, as applicable, and the substance thereof, which shall be subject to the procedures of this Section 25.2.

Section 25.3. AMENDMENTS RESULTING FROM A POLICY DEVELOPMENT PROCESS

The Board shall not combine an amendment of these Bylaws that was the result of a policy development process of a Supporting Organization (Supporting Organization) (a "**PDP (Policy Development Process) Amendment**") with any other amendment. The Board shall indicate in the applicable Board Notice whether such amendment is a PDP (Policy Development Process) Amendment.

Section 25.4. OTHER AMENDMENTS

For the avoidance of doubt, these Bylaws can only be amended as set forth in this Article 25. Neither the EC (Empowered Community), the Decisional Participants, the Supporting Organizations (Supporting Organizations), the Advisory Committees (Advisory Committees) nor any other entity or person shall have the power to directly propose amendments to these Bylaws.

ARTICLE 26 SALE OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF ICANN (Internet Corporation for Assigned Names and Numbers)'S ASSETS

(a) ICANN (Internet Corporation for Assigned Names and Numbers) may consummate a transaction or series of transactions that would result in the sale or disposition of all or substantially all of ICANN (Internet Corporation for Assigned Names and Numbers)'s assets (an "**Asset Sale**") only upon approval by a three-fourths vote of all Directors and the approval of the EC (Empowered Community) as set forth in this Article 26.

(b) Prior to approval of an Asset Sale by the Board, a draft of the definitive Asset Sale agreement (an "**Asset Sale Agreement**"), shall be posted on the Website and shall be subject to public comment in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(c) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to submit a revised draft of the Asset Sale Agreement, as applicable, and may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to conduct one or more additional public comment periods in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(d) Within seven days after the Board's approval of an Asset Sale the Secretary shall (i) provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall contain the form of the Asset Sale Agreement and (ii) post the Board Notice on the Website. The steps contemplated in Article 1 of Annex D shall then be followed.

(e) If the EC (Empowered Community) Administration timely delivers an EC (Empowered Community) Approval Notice for the Asset Sale pursuant to and in compliance with the procedures and requirements of Section 1.4(b) of Annex D, the Asset Sale set forth in the Board Notice shall be deemed approved by the EC (Empowered Community), and the Asset Sale may be consummated by ICANN (Internet Corporation for Assigned Names and Numbers), but only under the terms set forth in the Asset Sale Agreement. In the event of such approval, the Asset Sale shall not be subject to any further review or approval of the EC (Empowered Community). The Secretary shall promptly inform the Board of the receipt of an EC (Empowered Community) Approval Notice.

(f) If an EC (Empowered Community) Approval Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary, the Asset Sale set forth in the Board Notice shall be deemed not approved by the EC (Empowered Community), shall be null and void, and, notwithstanding its approval by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) shall not consummate the Asset Sale.

(g) If an Asset Sale is not approved by the EC (Empowered Community), ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the concerns raised by the EC (Empowered Community) in determining whether or not to consider a new Asset Sale, and the substance thereof, which shall be subject to the procedures of this Article 26.

ARTICLE 27 TRANSITION ARTICLE

Section 27.1. WORK STREAM 2

(a) The Cross-Community Working Group on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability ("CCWG-Accountability") was established pursuant to a charter dated 3 November 2014 ("**CCWG-Accountability Charter**"). The CCWG-Accountability Charter was subsequently adopted by the GNSO (Generic Names Supporting Organization), ALAC (At-Large Advisory Committee), ccNSO (Country Code Names Supporting Organization), GAC (Governmental Advisory Committee), ASO (Address Supporting Organization) and SSAC (Security and Stability Advisory Committee) ("**CCWG Chartering Organizations**"). The CCWG-Accountability Charter as in effect on 3 November 2014 shall remain in effect throughout Work Stream 2 (as defined therein).

(b) The CCWG-Accountability recommended in its Supplemental Final Proposal on Work Stream 1 Recommendations to the Board, dated 23 February 2016 ("**CCWG-Accountability Final Report**") that the below matters be reviewed and developed following the adoption date of these Bylaws ("**Work Stream 2 Matters**"), in each case, to the extent set forth in the CCWG-Accountability Final Report:

(i) Improvements to ICANN (Internet Corporation for Assigned Names and Numbers)'s standards for diversity at all levels;

(ii) ICANN (Internet Corporation for Assigned Names and Numbers) staff accountability;

(iii) Supporting Organization (Supporting Organization) and Advisory Committee (Advisory Committee) accountability, including but not limited to improved processes for accountability, transparency, and participation that are helpful to prevent capture;

(iv) Improvements to ICANN (Internet Corporation for Assigned Names and Numbers)'s transparency, focusing on enhancements to ICANN (Internet Corporation for Assigned Names and Numbers)'s existing DIDP, transparency of ICANN (Internet Corporation for Assigned Names and Numbers)'s interactions with governments, improvements to ICANN (Internet Corporation for Assigned Names and Numbers)'s whistleblower policy and transparency of Board deliberations;

(v) Developing and clarifying the FOI-HR (as defined in Section 27.2);

(vi) Addressing jurisdiction-related questions, including how choice of jurisdiction and applicable laws for dispute settlement impact ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability;

(vii) Considering enhancements to the Ombudsman's role and function;

(viii) Guidelines for standards of conduct presumed to be in good faith associated with exercising removal of individual Directors; and

(ix) Reviewing the CEP (as set forth in Section 4.3).

(c) As provided in the CCWG-Accountability Charter and the Board's 2014.10.16.16 resolution, the Board shall consider consensus-based recommendations from the CCWG-Accountability on Work Stream 2 Matters ("**Work Stream 2 Recommendations**") with the same process and criteria it committed to using to consider the CCWG-Accountability recommendations in the CCWG-Accountability Final Report ("**Work Stream 1 Recommendations**"). For the avoidance of doubt, that process and criteria includes:

(i) All Work Stream 2 Recommendations must further the following principles:

(A) Support and enhance the multistakeholder model;

(B) Maintain the security, stability and resiliency of the DNS (Domain Name System);

(C) Meet the needs and expectations of the global customers and partners of the IANA (Internet Assigned Numbers Authority) services;

(D) Maintain the openness of the Internet; and

(E) Not result in ICANN (Internet Corporation for Assigned Names and Numbers) becoming a government-led or an inter-governmental organization.

(ii) If the Board determines, by a vote of a two-thirds majority of the Board, that it is not in the global public interest to implement a Work Stream 2 Recommendation, it must initiate a dialogue with the CCWG-Accountability.

(iii) The Board shall provide detailed rationale to accompany the initiation of dialogue. The Board and the CCWG-Accountability shall mutually agree upon the method (e.g., by teleconference, email or otherwise) by which the dialogue will occur. Discussions shall be held in good faith and in a timely and efficient manner in an effort to find a mutually acceptable solution.

(iv) The CCWG-Accountability shall have an opportunity to address the Board's concerns and report back to the Board on further deliberations regarding the Board's concerns. The CCWG-Accountability shall discuss the Board's concerns within 30 days of the Board's initiation of the dialogue.

If a Work Stream 2 Recommendation is modified by the CCWG-Accountability, the CCWG-Accountability shall submit the modified Work Stream 2 Recommendation to the Board for further consideration along with detailed rationale on how the modification addresses the concerns raised by the Board.

(v) If, after the CCWG-Accountability modifies a Work Stream 2 Recommendation, the Board still believes it is not in the global public interest to implement the Work Stream 2 Recommendation, the Board may, by a vote of a two-thirds majority of the Board, send the matter back to the CCWG-Accountability for further consideration. The Board

shall provide detailed rationale to accompany its action. If the Board determines not to accept a modified version of a Work Stream 2 Recommendation, unless required by its fiduciary obligations, the Board shall not establish an alternative solution on the issue addressed by the Work Stream 2 Recommendation until such time as the CCWG-Accountability and the Board reach agreement.

(d) ICANN (Internet Corporation for Assigned Names and Numbers) shall provide adequate support for work on Work Stream 2 Matters, within budgeting processes and limitations reasonably acceptable to the CCWG-Accountability.

(e) The Work Stream 2 Matters specifically referenced in Section 27.1(b) shall be the only matters subject to this Section 27.1 and any other accountability enhancements should be developed through ICANN (Internet Corporation for Assigned Names and Numbers)'s other procedures.

(f) The outcomes of each Work Stream 2 Matter are not limited and could include a variety of recommendations or no recommendation; provided, however, that any resulting recommendations must directly relate to the matters discussed in Section 27.1(b).

Section 27.2. HUMAN RIGHTS

(a) The Core Value set forth in Section 1.2(b)(viii) shall have no force or effect unless and until a framework of interpretation for human rights ("**FOI-HR**") is (i) approved for submission to the Board by the CCWG-Accountability as a consensus recommendation in Work Stream 2, with the CCWG Chartering Organizations having the role described in the CCWG-Accountability Charter, and (ii) approved by the Board, in each case, using the same process and criteria as for Work Stream 1 Recommendations.

(b) No person or entity shall be entitled to invoke the reconsideration process provided in Section 4.2, or the independent review process provided in Section 4.3, based solely on the inclusion of the Core Value set forth in Section 1.2(b)(viii) (i) until after the FOI-HR contemplated by Section 27.2(a), is in place or (ii) for actions of ICANN (Internet Corporation for Assigned Names and Numbers) or the Board that occurred prior to the effectiveness of the FOI-HR.

Section 27.3. EXISTING GROUPS AND TASK FORCES

Notwithstanding the adoption or effectiveness of these Bylaws, task forces and other groups in existence prior to the date of these Bylaws shall continue unchanged in membership, scope, and operation unless and until changes are made by ICANN (Internet Corporation for Assigned Names and Numbers) in compliance with the Bylaws.

Section 27.4. CONTRACTS WITH ICANN (Internet Corporation for Assigned Names and Numbers)

Notwithstanding the adoption or effectiveness of these Bylaws, all agreements, including employment and consulting agreements, entered into by ICANN (Internet Corporation for Assigned Names and Numbers) shall continue in effect according to their terms.

Annex A: GNSO (Generic Names Supporting Organization) Policy Development Process

The following process shall govern the GNSO (Generic Names Supporting Organization) policy development process ("**PDP (Policy Development Process)**") until such time as modifications are recommended to and approved by the Board. The role of the GNSO (Generic Names Supporting Organization) is outlined in Article 11 of these Bylaws. If the GNSO (Generic Names Supporting Organization) is conducting activities that are not intended to result in a Consensus (Consensus) Policy, the Council may act through other processes.

Section 1. **Required Elements of a Policy Development Process**

The following elements are required at a minimum to form Consensus (Consensus) Policies as defined within ICANN (Internet Corporation for Assigned Names and Numbers) contracts, and any other policies for which the GNSO (Generic Names Supporting Organization) Council requests application of this Annex A:

- a. Final Issue Report requested by the Board, the GNSO (Generic Names Supporting Organization) Council ("Council") or Advisory Committee (Advisory Committee), which should include at a minimum
 - a) the proposed issue raised for consideration,
 - b) the identity of the

- party submitting the issue, and c) how that party is affected by the issue;
- b. Formal initiation of the Policy Development Process by the Council;
 - c. Formation of a Working Group or other designated work method;
 - d. Initial Report produced by a Working Group or other designated work method;
 - e. Final Report produced by a Working Group, or other designated work method, and forwarded to the Council for deliberation;
 - f. Council approval of PDP (Policy Development Process) Recommendations contained in the Final Report, by the required thresholds;
 - g. PDP (Policy Development Process) Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council; and
 - h. Board approval of PDP (Policy Development Process) Recommendations.

Section 2. **Policy Development Process Manual**

The GNSO (Generic Names Supporting Organization) shall maintain a Policy Development Process Manual ("**PDP (Policy Development Process) Manual**") within the operating procedures of the GNSO (Generic Names Supporting Organization) maintained by the GNSO (Generic Names Supporting Organization) Council. The PDP (Policy Development Process) Manual shall contain specific additional guidance on completion of all elements of a PDP (Policy Development Process), including those elements that are not otherwise defined in these Bylaws. The PDP (Policy Development Process) Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d).

Section 3. **Requesting an Issue Report**

Board Request. The Board may request an Issue Report by instructing the GNSO (Generic Names Supporting Organization) Council ("Council") to begin the process outlined the PDP (Policy Development Process) Manual. In the

event the Board makes a request for an Issue Report, the Board should provide a mechanism by which the GNSO (Generic Names Supporting Organization) Council can consult with the Board to provide information on the scope, timing, and priority of the request for an Issue Report.

Council Request. The GNSO (Generic Names Supporting Organization) Council may request an Issue Report by a vote of at least one-fourth (1/4) of the members of the Council of each House or a majority of one House.

Advisory Committee (Advisory Committee) Request. An Advisory Committee (Advisory Committee) may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO (Generic Names Supporting Organization) Council.

Section 4. **Creation of an Issue Report**

Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a properly supported motion from the GNSO (Generic Names Supporting Organization) Council; or (iii) a properly supported motion from an Advisory Committee (Advisory Committee), the Staff Manager will create a report (a "**Preliminary Issue Report**"). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report.

The following elements should be considered in the Issue Report:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the request for the Issue Report;
- c. How that party is affected by the issue, if known;
- d. Support for the issue to initiate the PDP (Policy Development Process), if known;
- e. The opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the Mission, policy process and more specifically

the role of the GNSO (Generic Names Supporting Organization) as set forth in the Bylaws.

- f. The opinion of ICANN (Internet Corporation for Assigned Names and Numbers) Staff as to whether the Council should initiate the PDP (Policy Development Process) on the issue.

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the Website for a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Preliminary Issue Report and producing a Final Issue Report based upon the comments received. The Staff Manager should forward the Final Issue Report, along with any summary and analysis of the public comments received, to the Chair of the GNSO (Generic Names Supporting Organization) Council for consideration for initiation of a PDP (Policy Development Process).

Section 5. **Initiation of the PDP (Policy Development Process)**

The Council may initiate the PDP (Policy Development Process) as follows:

Board Request: If the Board requested an Issue Report, the Council, within the timeframe set forth in the PDP (Policy Development Process) Manual, shall initiate a PDP (Policy Development Process). No vote is required for such action.

GNSO (Generic Names Supporting Organization) Council or Advisory Committee (Advisory Committee) Requests: The Council may only initiate the PDP (Policy Development Process) by a vote of the Council. Initiation of a PDP (Policy Development Process) requires a vote as set forth in Section 11.3(i)(ii) and Section 11.3(i)(iii) in favor of initiating the PDP (Policy Development Process).

Section 6. **Reports**

An Initial Report should be delivered to the GNSO (Generic Names Supporting Organization) Council and posted for a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), which time

may be extended in accordance with the PDP (Policy Development Process) Manual. Following the review of the comments received and, if required, additional deliberations, a Final Report shall be produced for transmission to the Council.

Section 7. Council Deliberation

Upon receipt of a Final Report, whether as the result of a working group or otherwise, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP (Policy Development Process) Manual.

The Council approval process is set forth in Section 11.3(i)(iv) through Section 11.3(vii), as supplemented by the PDP (Policy Development Process) Manual.

Section 8. Preparation of the Board Report

If the PDP (Policy Development Process) recommendations contained in the Final Report are approved by the GNSO (Generic Names Supporting Organization) Council, a Recommendations Report shall be approved by the GNSO (Generic Names Supporting Organization) Council for delivery to the Board.

Section 9. Board Approval Processes

The Board will meet to discuss the GNSO (Generic Names Supporting Organization) Council recommendation as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the PDP (Policy Development Process) Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any PDP (Policy Development Process) Recommendations approved by a GNSO (Generic Names Supporting Organization) Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). If the GNSO (Generic Names Supporting Organization) Council recommendation was

approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

- b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO (Generic Names Supporting Organization) Supermajority Vote or less than a GNSO (Generic Names Supporting Organization) Supermajority vote is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers) (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "**Board Statement**"); and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "**Supplemental Recommendation**") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO (Generic Names Supporting Organization) Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). For any Supplemental Recommendation approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

Section 10. **Implementation of Approved Policies**

Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give authorization or direction to ICANN (Internet Corporation for Assigned Names and Numbers) staff to work with the GNSO (Generic Names Supporting Organization) Council to create an implementation plan based upon the implementation recommendations identified in the Final Report, and to implement the policy. The GNSO (Generic Names Supporting Organization) Council may, but is not required to, direct the creation of an implementation review team to assist in implementation of the policy.

Section 11. **Maintenance of Records**

Throughout the PDP (Policy Development Process), from policy suggestion to a final decision by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) will maintain on the Website, a status web page detailing the progress of each PDP (Policy Development Process) issue. Such status page will outline the completed and upcoming steps in the PDP (Policy Development Process) process, and contain links to key resources (e.g. Reports, Comments Fora, WG (Working Group) Discussions, etc.).

Section 12. **Additional Definitions**

"Comment Site", "Comment Forum", "Comments For a" and "Website" refer to one or more websites designated by ICANN (Internet Corporation for Assigned Names and Numbers) on which notifications and comments regarding the PDP (Policy Development Process) will be posted.

"Supermajority Vote" means a vote of more than sixty-six (66) percent of the members present at a meeting of the applicable body, with the exception of the GNSO (Generic Names Supporting Organization) Council.

"Staff Manager" means an ICANN (Internet Corporation for Assigned Names and Numbers) staff person(s) who manages the PDP (Policy Development Process).

"GNSO (Generic Names Supporting Organization) Supermajority Vote" shall have the meaning set forth in the Bylaws.

Section 13. **Applicability**

The procedures of this Annex A shall be applicable to all requests for Issue Reports and PDPs initiated after 8 December 2011. For all ongoing PDPs initiated prior to 8 December 2011, the Council shall determine the feasibility of transitioning to the procedures set forth in this Annex A for all remaining steps within the PDP (Policy Development Process). If the Council determines that any ongoing PDP (Policy Development Process) cannot be feasibly transitioned to these updated procedures, the PDP (Policy Development Process) shall be concluded according to the procedures set forth in Annex A in force on 7 December 2011.

Annex A-1: GNSO (Generic Names Supporting Organization) Expedited Policy Development Process

The following process shall govern the specific instances where the GNSO (Generic Names Supporting Organization) Council invokes the GNSO (Generic Names Supporting Organization) Expedited Policy Development Process ("EPDP"). The GNSO (Generic Names Supporting Organization) Council may invoke the EPDP in the following limited circumstances: (1) to address a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO (Generic Names Supporting Organization) policy recommendation by the Board or the implementation of such an adopted recommendation; or (2) to create new or additional recommendations for a specific policy issue that had been substantially scoped previously such that extensive, pertinent background information already exists, e.g. (a) in an Issue Report for a possible PDP (Policy Development Process) that was not initiated; (b) as part of a previous PDP (Policy Development Process) that was not completed; or (c) through other projects such as a GGP. The following process shall be in place until such time as modifications are recommended to and approved by the Board. Where a conflict arises in relation to an EPDP between the PDP (Policy Development Process) Manual (see Annex 2 of the GNSO (Generic Names Supporting Organization) Operating Procedures) and the procedures described in this Annex A-1, the provisions of this Annex A-1 shall prevail.

The role of the GNSO (Generic Names Supporting Organization) is outlined in Article 11 of these Bylaws. Provided the Council believes and documents via Council vote that the above-listed criteria are met, an EPDP may be initiated to recommend an amendment to an existing Consensus (Consensus) Policy; however, in all cases where the GNSO (Generic Names Supporting Organization) is conducting policy-making activities that do not

meet the above criteria as documented in a Council vote, the Council should act through a Policy Development Process (see Annex A).

Section 1. Required Elements of a GNSO (Generic Names Supporting Organization) Expedited Policy Development Process

The following elements are required at a minimum to develop expedited GNSO (Generic Names Supporting Organization) policy recommendations, including recommendations that could result in amendments to an existing Consensus (Consensus) Policy, as part of a GNSO (Generic Names Supporting Organization) Expedited Policy Development Process:

- a. Formal initiation of the GNSO (Generic Names Supporting Organization) Expedited Policy Development Process by the GNSO (Generic Names Supporting Organization) Council, including an EPDP scoping document;
- b. Formation of an EPDP Team or other designated work method;
- c. Initial Report produced by an EPDP Team or other designated work method;
- d. Final EPDP Policy Recommendation(s) Report produced by an EPDP Team, or other designated work method, and forwarded to the Council for deliberation;
- e. GNSO (Generic Names Supporting Organization) Council approval of EPDP Policy Recommendations contained in the Final EPDP Policy Recommendation(s) Report, by the required thresholds;
- f. EPDP Recommendations and Final EPDP Recommendation(s) Report forwarded to the Board through a Recommendations Report approved by the Council; and
- g. Board approval of EPDP Recommendation(s).

Section 2. Expedited Policy Development Process Manual

The GNSO (Generic Names Supporting Organization) shall include a specific section(s) on the EPDP process as part of its maintenance of the GNSO (Generic Names Supporting Organization) Policy Development Process Manual (PDP (Policy Development Process) Manual), described in Annex 5 of the GNSO (Generic Names Supporting Organization) Operating

Procedures. The EPDP Manual shall contain specific additional guidance on completion of all elements of an EPDP, including those elements that are not otherwise defined in these Bylaws. The E PDP (Policy Development Process) Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d) .

Section 3. **Initiation of the EPDP**

The Council may initiate an EPDP as follows:

The Council may only initiate the EPDP by a vote of the Council. Initiation of an EPDP requires an affirmative Supermajority vote of the Council (as defined in Section 11.3(i)(xii) of these Bylaws) in favor of initiating the EPDP.

The request to initiate an EPDP must be accompanied by an EPDP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG (Stakeholder Group) / C;
2. Origin of issue (e.g. previously completed PDP (Policy Development Process));
3. Scope of the effort (detailed description of the issue or question that the EPDP is expected to address);
4. Description of how this issue meets the criteria for an EPDP, i.e. how the EPDP will address either: (1) a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO (Generic Names Supporting Organization) policy recommendation by the Board or the implementation of such an adopted recommendation, or (2) new or additional policy recommendations on a specific GNSO (Generic Names Supporting Organization) policy issue that had been scoped previously as part of a PDP (Policy Development Process) that was not completed or other similar effort, including relevant supporting information in either case;
5. If not provided as part of item 4, the opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel as to whether the issue proposed for consideration is properly within the

scope of the Mission, policy process and more specifically the role of the GNSO (Generic Names Supporting Organization);

6. Proposed EPDP mechanism (e.g. WG (Working Group), DT (Drafting Team), individual volunteers);
7. Method of operation, if different from GNSO (Generic Names Supporting Organization) Working Group Guidelines;
8. Decision-making methodology for EPDP mechanism, if different from GNSO (Generic Names Supporting Organization) Working Group Guidelines;
9. Target completion date.

Section 4. **Council Deliberation**

Upon receipt of an EPDP Final Recommendation(s) Report, whether as the result of an EPDP Team or otherwise, the Council chair will (i) distribute the Final EPDP Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP (Policy Development Process) Manual.

Approval of EPDP Recommendation(s) requires an affirmative vote of the Council meeting the thresholds set forth in Section 11.3(i)(xiv) and (xv), as supplemented by the PDP (Policy Development Process) Manual.

Section 5. **Preparation of the Board Report**

If the EPDP Recommendation(s) contained in the Final EPDP Recommendation(s) Report are approved by the GNSO (Generic Names Supporting Organization) Council, a Recommendation(s) Report shall be approved by the GNSO (Generic Names Supporting Organization) Council for delivery to the Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the EPDP recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Recommendations Report from the Staff Manager. Board deliberation on the EPDP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any EPDP Recommendations approved by a GNSO (Generic Names Supporting Organization) Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). If the GNSO (Generic Names Supporting Organization) Council recommendation was approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).
- b. In the event that the Board determines, in accordance with paragraph a above, that the proposed EPDP Recommendations are not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers) (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO (Generic Names Supporting Organization) Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). For any Supplemental Recommendation approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the

Board shall be sufficient to determine that the guidance in the Supplemental Recommendation is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

Section 7. **Implementation of Approved Policies**

Upon a final decision of the Board adopting the EPDP recommendations, the Board shall, as appropriate, give authorization or direction to ICANN (Internet Corporation for Assigned Names and Numbers) staff to implement the EPDP Recommendations. If deemed necessary, the Board shall direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to work with the GNSO (Generic Names Supporting Organization) Council to create a guidance implementation plan, based upon the guidance recommendations identified in the Final EPDP Recommendation(s) Report.

Section 8. **Maintenance of Records**

Throughout the EPDP, from initiation to a final decision by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) will maintain on the Website, a status web page detailing the progress of each EPDP issue. Such status page will outline the completed and upcoming steps in the EPDP process, and contain links to key resources (e.g. Reports, Comments Fora, EPDP Discussions, etc.).

Section 9. **Applicability**

The procedures of this Annex A-1 shall be applicable from 28 September 2015 onwards.

Annex A-2: GNSO (Generic Names Supporting Organization) Guidance Process

The following process shall govern the GNSO (Generic Names Supporting Organization) guidance process ("**GGP**") until such time as modifications are recommended to and approved by the Board . The role of the GNSO (Generic Names Supporting Organization) is outlined in Article 11 of these Bylaws. If the GNSO (Generic Names Supporting Organization) is conducting activities that are intended to result in a Consensus (Consensus) Policy, the Council should act through a Policy Development Process (see Annex A).

Section 1. **Required Elements of a GNSO (Generic Names Supporting Organization) Guidance Process**

The following elements are required at a minimum to develop GNSO (Generic Names Supporting Organization) guidance:

1. Formal initiation of the GNSO (Generic Names Supporting Organization) Guidance Process by the Council, including a GGP scoping document;
2. Identification of the types of expertise needed on the GGP Team;
3. Recruiting and formation of a GGP Team or other designated work method;
4. Proposed GNSO (Generic Names Supporting Organization) Guidance Recommendation(s) Report produced by a GGP Team or other designated work method;
5. Final GNSO (Generic Names Supporting Organization) Guidance Recommendation(s) Report produced by a GGP Team, or other designated work method, and forwarded to the Council for deliberation;
6. Council approval of GGP Recommendations contained in the Final Recommendation(s) Report, by the required thresholds;
7. GGP Recommendations and Final Recommendation(s) Report shall be forwarded to the Board through a Recommendations Report approved by the Council; and
8. Board approval of GGP Recommendation(s).

Section 2. **GNSO (Generic Names Supporting Organization) Guidance Process Manual**

The GNSO (Generic Names Supporting Organization) shall maintain a GNSO (Generic Names Supporting Organization) Guidance Process (GGP Manual) within the operating procedures of the GNSO (Generic Names Supporting Organization) maintained by the GNSO (Generic Names Supporting Organization) Council. The GGP Manual shall contain specific additional guidance on completion of all elements of a GGP, including those elements that are not otherwise defined in these Bylaws. The GGP Manual and any

amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at [Section 11.3\(d\)](#).

Section 3. **Initiation of the GGP**

The Council may initiate a GGP as follows:

The Council may only initiate the GGP by a vote of the Council or at the formal request of the [ICANN \(Internet Corporation for Assigned Names and Numbers\) Board](#). Initiation of a GGP requires a vote as set forth in [Section 11.3\(i\)\(xvi\)](#) in favor of initiating the GGP. In the case of a GGP requested by the Board, a GGP will automatically be initiated unless the [GNSO \(Generic Names Supporting Organization\) Council](#) votes against the initiation of a GGP as set forth in [Section 11.3\(i\)\(xvii\)](#).

The request to initiate a GGP must be accompanied by a GGP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / [SG \(Stakeholder Group\)](#) / C
2. Origin of issue (e.g., board request)
3. Scope of the effort (detailed description of the issue or question that the GGP is expected to address)
4. Proposed GGP mechanism (e.g. [WG \(Working Group\)](#), [DT \(Drafting Team\)](#), individual volunteers)
5. Method of operation, if different from [GNSO \(Generic Names Supporting Organization\) Working Group Guidelines](#)
6. Decision-making methodology for GGP mechanism, if different from [GNSO \(Generic Names Supporting Organization\) Working Group Guidelines](#)
7. Desired completion date and rationale

In the event the Board makes a request for a GGP, the Board should provide a mechanism by which the [GNSO \(Generic Names Supporting Organization\) Council](#) can consult with the Board to provide information on the scope, timing, and priority of the request for a GGP.

Section 4. **Council Deliberation**

Upon receipt of a Final Recommendation(s) Report, whether as the result of a GGP Team or otherwise, the Council chair will (i) distribute the Final Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the GGP Manual.

The Council approval process is set forth in Section 11.3(xviii) as supplemented by the GGP Manual.

Section 5. **Preparation of the Board Report**

If the GGP recommendations contained in the Final Recommendation(s) Report are approved by the GNSO (Generic Names Supporting Organization) Council, a Recommendations Report shall be approved by the GNSO (Generic Names Supporting Organization) Council for delivery to the Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the GNSO (Generic Names Supporting Organization) Guidance recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the GGP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any GGP Recommendations approved by a GNSO (Generic Names Supporting Organization) Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such guidance is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).
- b. In the event that the Board determines, in accordance with paragraph a above, that the proposed GNSO (Generic Names Supporting Organization) Guidance recommendation(s) adopted by a GNSO (Generic Names Supporting Organization) Supermajority Vote is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers) (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council

(the "Board Statement"); and (ii) submit the Board Statement to the Council.

- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO (Generic Names Supporting Organization) Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

Section 7. Implementation of Approved GNSO (Generic Names Supporting Organization) Guidance

Upon a final decision of the Board adopting the guidance, the Board shall, as appropriate, give authorization or direction to ICANN (Internet Corporation for Assigned Names and Numbers) staff to implement the GNSO (Generic Names Supporting Organization) Guidance. If deemed necessary, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) Staff to work with the GNSO (Generic Names Supporting Organization) Council to create a guidance implementation plan, if deemed necessary, based upon the guidance recommendations identified in the Final Recommendation(s) Report.

Section 8. Maintenance of Records

Throughout the GGP, from initiation to a final decision by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) will maintain on the Website, a status web page detailing the progress of each GGP issue. Such status page will outline the completed and upcoming steps in the GGP process, and contain links to key resources (e.g. Reports, Comments Fora, GGP Discussions, etc.).

Section 9. Additional Definitions

"**Comment Site**", "**Comment Forum**", "**Comments Fora**" and "**Website**" refer to one or more websites designated by ICANN (Internet Corporation for Assigned Names and Numbers) on which notifications and comments regarding the GGP will be posted.

"**GGP Staff Manager**" means an ICANN (Internet Corporation for Assigned Names and Numbers) staff person(s) who manages the GGP.

Annex B: ccNSO (Country Code Names Supporting Organization) Policy-Development Process (ccPDP)

The following process shall govern the ccNSO (Country Code Names Supporting Organization) policy-development process ("**PDP (Policy Development Process)**").

1. Request for an Issue Report

An Issue Report may be requested by any of the following:

- a. *Council*. The ccNSO (Country Code Names Supporting Organization) Council (in this Annex B, the "**Council**") may call for the creation of an Issue Report by an affirmative vote of at least seven of the members of the Council present at any meeting or voting by e-mail.
- b. *Board*. The Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.
- c. *Regional Organization*. One or more of the Regional Organizations representing ccTLDs in the ICANN (Internet Corporation for Assigned Names and Numbers) recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- d. *ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee)*. An ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or an ICANN (Internet Corporation for Assigned Names and Numbers) Advisory Committee (Advisory Committee) may call for

creation of an Issue Report by requesting the Council to begin the policy-development process.

- e. *Members of the ccNSO (Country Code Names Supporting Organization)*. The members of the ccNSO (Country Code Names Supporting Organization) may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO (Country Code Names Supporting Organization) present at any meeting or voting by e-mail.

Any request for an Issue Report must be in writing and must set out the issue upon which an Issue Report is requested in sufficient detail to enable the Issue Report to be prepared. It shall be open to the Council to request further information or undertake further research or investigation for the purpose of determining whether or not the requested Issue Report should be created.

2. Creation of the Issue Report and Initiation Threshold

Within seven days after an affirmative vote as outlined in Item 1(a) above or the receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (Internet Corporation for Assigned Names and Numbers) (in which case the costs of the Issue Manager shall be borne by ICANN (Internet Corporation for Assigned Names and Numbers)) or such other person or persons selected by the Council (in which case the ccNSO (Country Code Names Supporting Organization) shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the issue;
- c. How that party is affected by the issue;
- d. Support for the issue to initiate the PDP (Policy Development Process);

e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP (Policy Development Process) for this issue (the "**Manager Recommendation**"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) policy process and within the scope of the ccNSO (Country Code Names Supporting Organization). In coming to his or her opinion, the General Counsel shall examine whether:

- 1) The issue is within the scope of the Mission;
- 2) Analysis of the relevant factors according to Section 10.6(b) and Annex C affirmatively demonstrates that the issue is within the scope of the ccNSO (Country Code Names Supporting Organization);

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

- 3) Implicates or affects an existing ICANN (Internet Corporation for Assigned Names and Numbers) policy;
- 4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Country Code Names Supporting Organization) (Annex C) shall be within the scope of ICANN (Internet Corporation for Assigned Names and Numbers) and the ccNSO (Country Code Names Supporting Organization).

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO (Country Code Names Supporting Organization) Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Section 10.6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO (Country Code Names Supporting Organization) shall inform the Issue Manager accordingly. General Counsel and the

ccNSO (Country Code Names Supporting Organization) Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the ccNSO (Country Code Names Supporting Organization) then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO (Country Code Names Supporting Organization) shall inform General Counsel and the Issue Manager accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should move to initiate the PDP (Policy Development Process) including both the opinion and analysis of General Counsel and Council in the Issues Report.

- f. In the event that the Manager Recommendation is in favor of initiating the PDP (Policy Development Process), a proposed time line for conducting each of the stages of PDP (Policy Development Process) outlined herein ("**PDP (Policy Development Process) Time Line**").
- g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP (Policy Development Process).

3. Initiation of PDP (Policy Development Process)

The Council shall decide whether to initiate the PDP (Policy Development Process) as follows:

- a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP (Policy Development Process). Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.
- b. A vote of ten or more Council members in favor of initiating the PDP (Policy Development Process) shall be required to initiate the PDP

(Policy Development Process) provided that the Issue Report states that the issue is properly within the scope of the Mission and the ccNSO (Country Code Names Supporting Organization) Scope.

4. Decision Whether to Appoint Task Force; Establishment of Time Line

At the meeting of the Council where the PDP (Policy Development Process) has been initiated (or, where the Council employs a vote by e-mail, in that vote) pursuant to Item 3 above, the Council shall decide, by a majority vote of members present at the meeting (or voting by e-mail), whether or not to appoint a task force to address the issue. If the Council votes:

- a. In favor of convening a task force, it shall do so in accordance with Item 7 below.
- b. Against convening a task force, then it shall collect information on the policy issue in accordance with Item 8 below.

The Council shall also, by a majority vote of members present at the meeting or voting by e-mail, approve or amend and approve the PDP (Policy Development Process) Time Line set out in the Issue Report.

5. Composition and Selection of Task Forces

- a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see Section 10.5) to appoint two individuals to participate in the task force (the "**Representatives**"). Additionally, the Council may appoint up to three advisors (the "**Advisors**") from outside the ccNSO (Country Code Names Supporting Organization) and, following formal request for GAC (Governmental Advisory Committee) participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee (Advisory Committee) to sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.
- b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and expertise, in the subject matter,

coupled with the ability to devote a substantial amount of time to the task force's activities.

- c. The Council may also pursue other actions that it deems appropriate to assist in the PDP (Policy Development Process), including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager in accordance with the PDP (Policy Development Process) Time Line.

6. Public Notification of Initiation of the PDP (Policy Development Process) and Comment Period

After initiation of the PDP (Policy Development Process), ICANN (Internet Corporation for Assigned Names and Numbers) shall post a notification of such action to the Website and to the other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees). A comment period (in accordance with the PDP (Policy Development Process) Time Line, and ordinarily at least 21 days long) shall be commenced for the issue. Comments shall be accepted from ccTLD (Country Code Top Level Domain) managers, other Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and from the public. The Issue Manager, or some other designated Council representative shall review the comments and incorporate them into a report (the "**Comment Report**") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

7. Task Forces

a. *Role of Task Force.* If a task force is created, its role shall be responsible for (i) gathering information documenting the positions of the ccNSO (Country Code Names Supporting Organization) members within the Geographic Regions and other parties and groups; and (ii) otherwise obtaining relevant information that shall enable the Task Force Report to be as complete and informative as possible to facilitate the Council's meaningful and informed deliberation.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and comprehensively

as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Issue Manager, shall develop a charter or terms of reference for the task force (the "**Charter**") within the time designated in the PDP (Policy Development Process) Time Line. Such Charter shall include:

1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP (Policy Development Process);
2. The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline; and
3. Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present at a meeting or voting by e-mail. The quorum requirements of Section 10.3(n) shall apply to Council actions under this Item 7(b).

c. *Appointment of Task Force Chair.* The Issue Manager shall convene the first meeting of the task force within the time designated in the PDP (Policy Development Process) Time Line. At the initial meeting, the task force members shall, among other things, vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force, including compiling the Task Force Report. The chair of a task force need not be a member of the Council.

d. *Collection of Information.*

1. *Regional Organization Statements.* The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and may solicit other comments, as each Representative deems appropriate, including the comments of the ccNSO (Country Code Names Supporting Organization) members in that region that

are not members of the Regional Organization, regarding the issue under consideration. The position of the Regional Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each, a "**Regional Statement**") within the time designated in the PDP (Policy Development Process) Time Line. Every Regional Statement shall include at least the following:

(i) If a Supermajority Vote (as defined by the Regional Organization) was reached, a clear statement of the Regional Organization's position on the issue;

(ii) If a Supermajority Vote was not reached, a clear statement of all positions espoused by the members of the Regional Organization;

(iii) A clear statement of how the Regional Organization arrived at its position(s). Specifically, the statement should detail specific meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;

(iv) A statement of the position on the issue of any ccNSO (Country Code Names Supporting Organization) members that are not members of the Regional Organization;

(v) An analysis of how the issue would affect the Region, including any financial impact on the Region; and

(vi) An analysis of the period of time that would likely be necessary to implement the policy.

2. Outside Advisors. The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP (Policy Development Process) Time Line.

e. Task Force Report. The chair of the task force, working with the Issue Manager, shall compile the Regional Statements, the Comment Report, and other information or reports, as applicable, into a single document

("Preliminary Task Force Report") and distribute the Preliminary Task Force Report to the full task force within the time designated in the PDP (Policy Development Process) Time Line. The task force shall have a final task force meeting to consider the issues and try and reach a Supermajority Vote. After the final task force meeting, the chair of the task force and the Issue Manager shall create the final task force report (the "**Task Force Report**") and post it on the Website and to the other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees). Each Task Force Report must include:

1. A clear statement of any Supermajority Vote (being 66% of the task force) position of the task force on the issue;
2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the time line for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the Regional Organizations that held the position;
3. An analysis of how the issue would affect each Region, including any financial impact on the Region;
4. An analysis of the period of time that would likely be necessary to implement the policy; and
5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience and (ii) potential conflicts of interest.

8. Procedure if No Task Force is Formed

- a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP (Policy Development Process) Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP (Policy Development Process) Time Line.
- b. The Council may, in its discretion, take other steps to assist in the PDP (Policy Development Process), including, for example, appointing a particular individual or organization, to gather information on the issue

or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager within the time designated in the PDP (Policy Development Process) Time Line.

- c. The Council shall formally request the Chair of the GAC (Governmental Advisory Committee) to offer opinion or advice.
- d. The Issue Manager shall take all Regional Statements, the Comment Report, and other information and compile (and post on the Website) an Initial Report within the time designated in the PDP (Policy Development Process) Time Line. Thereafter, the Issue Manager shall, in accordance with Item 9 below, create a Final Report.

9. Comments to the Task Force Report or Initial Report

- a. A comment period (in accordance with the PDP (Policy Development Process) Time Line, and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or Initial Report. Comments shall be accepted from ccTLD (Country Code Top Level Domain) managers, other Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and from the public. All comments shall include the author's name, relevant experience, and interest in the issue.
- b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue Manager's reasonable discretion, add appropriate comments to the Task Force Report or Initial Report, to prepare the "**Final Report**". The Issue Manager shall not be obligated to include all comments made during the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.
- c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP (Policy Development Process) Time Line.

10. Council Deliberation

- a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair shall (i) distribute the Final Report to all Council members; (ii) call for a Council meeting within the time designated in the PDP (Policy Development Process) Time Line

wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC (Governmental Advisory Committee) Chair an invitation to the GAC (Governmental Advisory Committee) to offer opinion or advice. Such meeting may be held in any manner deemed appropriate by the Council, including in person or by conference call. The Issue Manager shall be present at the meeting.

- b. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions, or any other means the Council may choose.
- c. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as coming from an outside advisor; and (iii) accompanied by a detailed statement of the advisor's (a) qualifications and relevant experience and (b) potential conflicts of interest.

11. Recommendation of the Council

In considering whether to make a recommendation on the issue (a "**Council Recommendation**"), the Council shall seek to act by consensus. If a minority opposes a consensus position, that minority shall prepare and circulate to the Council a statement explaining its reasons for opposition. If the Council's discussion of the statement does not result in consensus, then a recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council, and shall be conveyed to the Members as the Council's Recommendation. Notwithstanding the foregoing, as outlined below, all viewpoints expressed by Council members during the PDP (Policy Development Process) must be included in the Members Report.

12. Council Report to the Members

In the event that a Council Recommendation is adopted pursuant to Item 11 then the Issue Manager shall, within seven days after the Council meeting, incorporate the Council's Recommendation together with any other viewpoints of the Council members into a Members Report to be approved by the Council and then to be submitted to the Members (the "**Members Report**"). The Members Report must contain at least the following:

- a. A clear statement of the Council's recommendation;
- b. The Final Report submitted to the Council; and
- c. A copy of the minutes of the Council's deliberation on the policy issue (see Item 10), including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

13. Members Vote

Following the submission of the Members Report and within the time designated by the PDP (Policy Development Process) Time Line, the ccNSO (Country Code Names Supporting Organization) members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP (Policy Development Process) Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes in the first round of voting, the first round will not be employed and the results of a final, second round of voting, conducted after at least thirty days notice to the ccNSO (Country Code Names Supporting Organization) members, will be employed if at least 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO (Country Code Names Supporting Organization) Recommendation.

14. Board Report

The Issue Manager shall within seven days after a ccNSO (Country Code Names Supporting Organization) Recommendation being made in accordance with Item 13 incorporate the ccNSO (Country Code Names Supporting Organization) Recommendation into a report to be approved by the Council and then to be submitted to the Board (the "**Board Report**"). The Board Report must contain at least the following:

- a. A clear statement of the ccNSO (Country Code Names Supporting Organization) recommendation;
- b. The Final Report submitted to the Council; and
- c. the Members' Report.

15. Board Vote

- a. The Board shall meet to discuss the ccNSO (Country Code Names Supporting Organization) Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.
- b. The Board shall adopt the ccNSO (Country Code Names Supporting Organization) Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or of ICANN (Internet Corporation for Assigned Names and Numbers).
 1. In the event that the Board determines not to act in accordance with the ccNSO (Country Code Names Supporting Organization) Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO (Country Code Names Supporting Organization) Recommendation in a report to the Council (the "**Board Statement**"); and (ii) submit the Board Statement to the Council.
 2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.
 3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "**Supplemental Recommendation**"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the

Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13 . In the event that more than 66% of the votes cast by ccNSO (Country Code Names Supporting Organization) Members during the voting period are in favor of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that acceptance of such policy would constitute a breach of the fiduciary duties of the Board to the Company.

4. In the event that the Board does not accept the ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, it shall state its reasons for doing so in its final decision ("**Supplemental Board Statement**").
5. In the event the Board determines not to accept a ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO (Country Code Names Supporting Organization) shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

16. Implementation of the Policy

Upon adoption by the Board of a ccNSO (Country Code Names Supporting Organization) Recommendation or ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN (Internet Corporation for Assigned Names and Numbers) staff to implement the policy.

17. Maintenance of Records

With respect to each ccPDP for which an Issue Report is requested (see Item 1), ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain on the Website a status web page detailing the progress of each ccPDP, which shall provide a list of relevant dates for the ccPDP and shall also link to the following documents, to the extent they have been prepared pursuant to the ccPDP:

- a. Issue Report;
- b. PDP (Policy Development Process) Time Line;
- c. Comment Report;
- d. Regional Statement(s);
- e. Preliminary Task Force Report;
- f. Task Force Report;
- g. Initial Report;
- h. Final Report;
- i. Members' Report;
- j. Board Report;
- k. Board Statement;
- l. Supplemental Members' Report; and
- m. Supplemental Board Statement.

In addition, ICANN (Internet Corporation for Assigned Names and Numbers) shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

Annex C: The Scope of the ccNSO (Country Code Names Supporting Organization)

This annex describes the scope and the principles and method of analysis to be used in any further development of the scope of the ccNSO (Country Code Names Supporting Organization)'s policy-development role. As provided in Section 10.6(b) of the Bylaws, that scope shall be defined according to the procedures of the ccPDP.

The scope of the ccNSO (Country Code Names Supporting Organization)'s authority and responsibilities must recognize the complex relation between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers/registries with regard to policy issues. This annex shall assist the ccNSO (Country Code Names Supporting

Organization), the ccNSO (Country Code Names Supporting Organization) Council, and the Board and staff in delineating relevant global policy issues.

Policy areas

The ccNSO (Country Code Names Supporting Organization)'s policy role should be based on an analysis of the following functional model of the DNS (Domain Name System):

1. Data is registered/maintained to generate a zone file,
2. A zone file is in turn used in TLD (Top Level Domain) name servers.

Within a TLD (Top Level Domain) two functions have to be performed (these are addressed in greater detail below):

1. Entering data into a database ("**Data Entry Function**") and
2. Maintaining and ensuring upkeep of name-servers for the TLD (Top Level Domain) ("**Name Server Function**").

These two core functions must be performed at the ccTLD (Country Code Top Level Domain) registry level as well as at a higher level (IANA (Internet Assigned Numbers Authority) function and root servers) and at lower levels of the DNS (Domain Name System) hierarchy. This mechanism, as RFC (Request for Comments) 1591 points out, is recursive:

There are no requirements on sub domains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all sub domains shall be allowed to operate their own domain name servers, providing in them whatever information the sub domain manager sees fit (as long as it is true and correct).

The Core Functions

1. Data Entry Function (DEF):

Looking at a more detailed level, the first function (entering and maintaining data in a database) should be fully defined by a naming policy. This naming policy must specify the rules and conditions:

- a. under which data will be collected and entered into a database or data changed (at the TLD (Top Level Domain) level among others, data to reflect a transfer from registrant to registrant or changing registrar) in the database.
- b. for making certain data generally and publicly available (be it, for example, through Whois or nameservers).

2. The Name-Server Function (NSF (National Science Foundation (USA)))

The name-server function involves essential interoperability and stability issues at the heart of the domain name system. The importance of this function extends to nameservers at the ccTLD (Country Code Top Level Domain) level, but also to the root servers (and root-server system) and nameservers at lower levels.

On its own merit and because of interoperability and stability considerations, properly functioning nameservers are of utmost importance to the individual, as well as to the local and the global Internet communities.

With regard to the nameserver function, therefore, policies need to be defined and established. Most parties involved, including the majority of ccTLD (Country Code Top Level Domain) registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC (Request for Comments) 1591.

Respective Roles with Regard to Policy, Responsibilities, and Accountabilities

It is in the interest of ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers to ensure the stable and proper functioning of the domain name system. ICANN (Internet Corporation for Assigned Names and Numbers) and the ccTLD (Country Code Top Level Domain) registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO (Country Code Names Supporting Organization) cannot be established without reaching a common understanding of the allocation of authority between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) registries.

Three roles can be distinguished as to which responsibility must be assigned on any given issue:

- Policy role: i.e. the ability and power to define a policy;
- Executive role: i.e. the ability and power to act upon and implement the policy; and
- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.

Firstly, responsibility presupposes a policy and this delineates the policy role. Depending on the issue that needs to be addressed those who are involved in defining and setting the policy need to be determined and defined.

Secondly, this presupposes an executive role defining the power to implement and act within the boundaries of a policy. Finally, as a counter-balance to the executive role, the accountability role needs to be defined and determined.

The information below offers an aid to:

1. delineate and identify specific policy areas;
2. define and determine roles with regard to these specific policy areas.

This annex defines the scope of the ccNSO (Country Code Names Supporting Organization) with regard to developing policies. The scope is limited to the policy role of the ccNSO (Country Code Names Supporting Organization) policy-development process for functions and levels explicitly stated below. It is anticipated that the accuracy of the assignments of policy, executive, and accountability roles shown below will be considered during a scope-definition ccPDP process.

Name Server Function (as to ccTLDs)

Level 1: Root Name Servers

Policy role: IETF (Internet Engineering Task Force), RSSAC (Root Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers))

Executive role: Root Server System Operators

Accountability role: RSSAC (Root Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers))

Level 2: ccTLD (Country Code Top Level Domain) Registry Name Servers in respect to interoperability

Policy role: ccNSO (Country Code Names Supporting Organization) Policy Development Process (ICANN (Internet Corporation for Assigned Names and Numbers)), for best practices a ccNSO (Country Code Names Supporting Organization) process can be organized

Executive role: ccTLD (Country Code Top Level Domain) Manager

Accountability role: part ICANN (Internet Corporation for Assigned Names and Numbers) (IANA (Internet Assigned Numbers Authority)), part Local Internet Community, including local government

Level 3: User's Name Servers

Policy role: ccTLD (Country Code Top Level Domain) Manager, IETF (Internet Engineering Task Force) (RFC (Request for Comments))

Executive role: Registrant (Registrant)

Accountability role: ccTLD (Country Code Top Level Domain) Manager

Data Entry Function (as to ccTLDs)

Level 1: Root Level Registry

Policy role: ccNSO (Country Code Names Supporting Organization) Policy Development Process (ICANN (Internet Corporation for Assigned Names and Numbers))

Executive role: ICANN (Internet Corporation for Assigned Names and Numbers) (IANA (Internet Assigned Numbers Authority))

Accountability role: ICANN (Internet Corporation for Assigned Names and Numbers) community, ccTLD (Country Code Top Level Domain) Managers, (national authorities in some cases)

Level 2: ccTLD (Country Code Top Level Domain) Registry

Policy role: Local Internet Community, including local government, and/or ccTLD (Country Code Top Level Domain) Manager according to local structure

Executive role: ccTLD (Country Code Top Level Domain) Manager

Accountability role: Local Internet Community, including national authorities in some cases

Level 3: Second and Lower Levels

Policy role: Registrant (Registrant)

Executive role: Registrant (Registrant)

Accountability role: Registrant (Registrant), users of lower-level domain names

ANNEX D: EC (Empowered Community) MECHANISM

ARTICLE 1 PROCEDURE FOR EXERCISE OF EC (Empowered Community)'S RIGHTS TO APPROVE APPROVAL ACTIONS

Section 1.1. APPROVAL ACTIONS

The processes set forth in this Article 1 shall govern the escalation procedures for the EC (Empowered Community)'s exercise of its right to approve the following (each, an "**Approval Action**") under the Bylaws:

- a. Fundamental Bylaw Amendments, as contemplated by Section 25.2 of the Bylaws;
- b. Articles Amendments, as contemplated by Section 25.2 of the Bylaws;
and
- c. Asset Sales, as contemplated by Article 26 of the Bylaws.

Section 1.2. APPROVAL PROCESS

Following the delivery of a Board Notice for an Approval Action ("**Approval Action Board Notice**") by the Secretary to the EC (Empowered Community) Administration and the Decisional Participants (which delivery date shall be referred to herein as the "**Approval Action Board Notification Date**"), the Decisional Participants shall thereafter promptly inform their constituents of the delivery of the Approval Action Board Notice. Any Approval Action Board Notice relating to a Fundamental Bylaw Amendment or Articles Amendment shall include a statement, if applicable, that the Fundamental Bylaw Amendment or Articles Amendment, as applicable, is based solely on the outcome of a PDP (Policy Development Process), citing the specific PDP (Policy Development Process) and the provision in the Fundamental Bylaw Amendment or Articles Amendment subject to the Approval Action Board Notice that implements such PDP (Policy Development Process) (as applicable, a "**PDP (Policy Development Process) Fundamental Bylaw Statement**" or "**PDP (Policy Development Process) Articles Statement**") and the name of the Supporting Organization (Supporting Organization) that is a Decisional Participant that undertook the PDP (Policy Development Process) relating to the Fundamental Bylaw Amendment or Articles Amendment, as applicable (as applicable, the "**Fundamental Bylaw**

Amendment PDP (Policy Development Process) Decisional Participant" or "Articles Amendment PDP (Policy Development Process) Decisional Participant"). The process set forth in this Section 1.2 of this Annex D as it relates to a particular Approval Action is referred to herein as the **"Approval Process."**

Section 1.3. APPROVAL ACTION COMMUNITY FORUM

- a. ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Approval Action (an **"Approval Action Community Forum"**).
- b. If the EC (Empowered Community) Administration requests a publicly-available conference call by providing a notice to the Secretary, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Approval Action Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.
- c. The Approval Action Community Forum shall be convened and concluded during the period beginning upon the Approval Action Board Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the Approval Action Board Notification Date (**"Approval Action Community Forum Period"**). If the EC (Empowered Community) Administration requests that the Approval Action Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the Approval Action Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the EC (Empowered Community) Administration. If the Approval Action Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names

and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the Approval Action Board Notification Date, the Approval Action Community Forum Period for the Approval Action shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

- d. The Approval Action Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects, and/or, only if the Approval Action Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the Approval Action Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of such Approval Action Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.
- e. The EC (Empowered Community) Administration shall manage and moderate the Approval Action Community Forum in a fair and neutral manner.
- f. ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Approval Action prior to the convening of and during the Approval Action Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).
- g. ICANN (Internet Corporation for Assigned Names and Numbers) staff and Directors representing the Board are expected to attend the

Approval Action Community Forum in order to address any questions or concerns regarding the Approval Action.

- h. For the avoidance of doubt, the Approval Action Community Forum is not a decisional body.
- i. During the Approval Action Community Forum Period, an additional one or two Community Forums may be held at the discretion of the Board or the EC (Empowered Community) Administration. If the Board decides to hold an additional one or two Approval Action Community Forums, it shall provide a rationale for such decision, which rationale ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.
- j. ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Approval Action Community Forum and shall promptly post on the Website a public record of the Approval Action Community Forum as well as all written submissions of ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Approval Action Community Forum.

Section 1.4. DECISION WHETHER TO APPROVE AN APPROVAL ACTION

(a) Following the expiration of the Approval Action Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Approval Action Community Forum Period (such period, the "**Approval Action Decision Period**"), with respect to each Approval Action, each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Approval Action, (ii) objects to such Approval Action or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Approval Action), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to the expiration of the Approval Action Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community)

Administration of its support or objection following the expiration of the Approval Action Decision Period).

(b) The EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Approval Action Decision Period, deliver a written notice ("**EC (Empowered Community) Approval Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Article 1 of this Annex D, the EC (Empowered Community) has approved the Approval Action if:

(i) The Approval Action does not relate to a Fundamental Bylaw Amendment or Articles Amendment and is (A) supported by three or more Decisional Participants and (B) not objected to by more than one Decisional Participant;

(ii) The Approval Action relates to a Fundamental Bylaw Amendment and is (A) supported by three or more Decisional Participants (including the Fundamental Bylaw Amendment PDP (Policy Development Process) Decisional Participant if the Board Notice included a PDP (Policy Development Process) Fundamental Bylaw Statement) and (B) not objected to by more than one Decisional Participant; or

(iii) The Approval Action relates to an Articles Amendment and is (A) supported by three or more Decisional Participants (including the Articles Amendment PDP (Policy Development Process) Decisional Participant if the Board Notice included a PDP (Policy Development Process) Articles Statement) and (B) not objected to by more than one Decisional Participant.

(c) If the Approval Action does not obtain the support required by Section 1.4(b)(i), (ii) or (iii) of this Annex D, as applicable, the Approval Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Approval Action Decision Period, deliver to the Secretary a notice certifying that the Approval Process has been terminated with respect to the Approval Action ("**Approval Process Termination Notice**").

(d) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Approval Action Board Notice, (ii) EC (Empowered Community) Approval Notice, (iii) Approval Process Termination

Notice, (iv) written explanation provided by the EC (Empowered Community) Administration related to any of the foregoing, and (v) other notices the Secretary receives under this Article 1.

ARTICLE 2 PROCEDURE FOR EXERCISE OF EC (Empowered Community)'S RIGHTS TO REJECT SPECIFIED ACTIONS

Section 2.1. Rejection Actions

The processes set forth in this Article 2 shall govern the escalation procedures for the EC (Empowered Community)'s exercise of its right to reject the following (each, a "**Rejection Action**") under the Bylaws:

- a. PTI Governance Actions, as contemplated by Section 16.2(d) of the Bylaws;
- b. IFR Recommendation Decisions, as contemplated by Section 18.6(d) of the Bylaws;
- c. Special IFR Recommendation Decisions, as contemplated by Section 18.12(e) of the Bylaws;
- d. SCWG Creation Decisions, as contemplated by Section 19.1(d) of the Bylaws;
- e. SCWG Recommendation Decisions, as contemplated by Section 19.4(d) of the Bylaws;
- f. ICANN (Internet Corporation for Assigned Names and Numbers) Budgets, as contemplated by Section 22.4(a)(v) of the Bylaws;
- g. IANA (Internet Assigned Numbers Authority) Budgets, as contemplated by Section 22.4(b)(v) of the Bylaws;
- h. Operating Plans, as contemplated by Section 22.5(a)(v) of the Bylaws;
- i. Strategic Plans, as contemplated by Section 22.5(b)(v) of the Bylaws;
and
- j. Standard Bylaw Amendments, as contemplated by Section 25.1(e) of the Bylaws.

Section 2.2. PETITION PROCESS FOR SPECIFIED ACTIONS

(a) Following the delivery of a Board Notice for a Rejection Action ("**Rejection Action Board Notice**") by the Secretary to the EC (Empowered Community) Administration and Decisional Participants (which delivery date shall be referred to herein as the "**Rejection Action Board Notification Date**"), the Decisional Participants shall thereafter promptly inform their constituents of the delivery of the Rejection Action Board Notice. The process set forth in this Section 2.2 of this Annex D as it relates to a particular Rejection Action is referred to herein as the "**Rejection Process**."

(b) During the period beginning on the Rejection Action Board Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the date that is the 21st day after the Rejection Action Board Notification Date (as it relates to a particular Rejection Action, the "**Rejection Action Petition Period**"), subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant, seeking to reject the Rejection Action and initiate the Rejection Process (a "**Rejection Action Petition**").

(c) A Decisional Participant that has received a Rejection Action Petition shall either accept or reject such Rejection Action Petition; provided that a Decisional Participant may only accept such Rejection Action Petition if it was received by such Decisional Participant during the Rejection Action Petition Period.

(i) If, in accordance with the requirements of Section 2.2(c) of this Annex D, a Decisional Participant accepts a Rejection Action Petition during the Rejection Action Petition Period, the Decisional Participant shall promptly provide to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary written notice ("**Rejection Action Petition Notice**") of such acceptance (such Decisional Participant, the "**Rejection Action Petitioning Decisional Participant**"), and ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post such Rejection Action Petition Notice on the Website. The Rejection Action Petition Notice shall also include:

(A) the rationale upon which rejection of the Rejection Action is sought. Where the Rejection Action Petition Notice relates to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget, an IANA (Internet Assigned Numbers Authority) Budget, an Operating

Plan or a Strategic Plan, the Rejection Action Petition Notice shall not be valid and shall not be accepted by the EC (Empowered Community) Administration unless the rationale set forth in the Rejection Action Petition Notice is based on one or more significant issues that were specifically raised in the applicable public comment period(s) relating to perceived inconsistencies with the Mission, purpose and role set forth in ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation and Bylaws, the global public interest, the needs of ICANN (Internet Corporation for Assigned Names and Numbers)'s stakeholders, financial stability, or other matter of concern to the community; and

(B) where the Rejection Action Petition Notice relates to a Standard Bylaw Amendment, a statement, if applicable, that the Standard Bylaw Amendment is based solely on the outcome of a PDP (Policy Development Process), citing the specific PDP (Policy Development Process) and the provision in the Standard Bylaw Amendment subject to the Board Notice that implements such PDP (Policy Development Process) ("**PDP (Policy Development Process) Standard Bylaw Statement**") and the name of the Supporting Organization (Supporting Organization) that is a Decisional Participant that undertook the PDP (Policy Development Process) relating to the Standard Bylaw Amendment ("**Standard Bylaw Amendment PDP (Policy Development Process) Decisional Participant**").

The Rejection Process shall thereafter continue pursuant to Section 2.2(d) of this Annex D.

(ii) If the EC (Empowered Community) Administration has not received a Rejection Action Petition Notice pursuant to Section 2.2(c)(i) of this Annex D during the Rejection Action Petition Period, the Rejection Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Period, deliver to the Secretary a notice certifying that the Rejection Process has been terminated with respect to the Rejection Action contained in the Approval Notice ("**Rejection Process Termination Notice**"). ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post such Rejection Process Termination Notice on the Website.

(d) Following the delivery of a Rejection Action Petition Notice to the EC (Empowered Community) Administration pursuant to Section 2.2(c)(i) of this Annex D, the Rejection Action Petitioning Decisional Participant shall contact the EC (Empowered Community) Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Rejection Action Petition. The Rejection Action Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website.

(i) If the Rejection Action Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Rejection Action Supporting Decisional Participant**") during the period beginning upon the expiration of the Rejection Action Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 7th day after the expiration of the Rejection Action Petition Period (the "**Rejection Action Petition Support Period**"), the Rejection Action Petitioning Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary ("Rejection Action Supported Petition") within twenty-four (24) hours of receiving the support of at least one Rejection Action Supporting Decisional Participant, and ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post such Rejection Action Supported Petition on the Website. Each Rejection Action Supporting Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Rejection Action Petition, and ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post each such notice on the Website. Such Rejection Action Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Rejection Action Petitioning Decisional Participant who shall act as a liaison with respect to the Rejection Action Supported Petition;

(C) a statement as to whether or not the Rejection Action Petitioning Decisional Participant and/or the Rejection Action Supporting Decisional Participant requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the Rejection Action Community Forum (as defined in Section 2.3 of this Annex D) for the community to discuss the Rejection Action Supported Petition;

(D) a statement as to whether the Rejection Action Petitioning Decisional Participant and the Rejection Action Supporting Decisional Participant have determined to hold the Rejection Action Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, taking into account the limitation on holding such a Rejection Action Community Forum when the Rejection Action Supported Petition relates to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget or IANA (Internet Assigned Numbers Authority) Budget as described in Section 2.3(c) of this Annex D; and

(E) a PDP (Policy Development Process) Standard Bylaw Statement, if applicable.

The Rejection Process shall thereafter continue for such Rejection Action Supported Petition pursuant to Section 2.3 of this Annex D. The foregoing process may result in more than one Rejection Action Supported Petition relating to the same Rejection Action.

(ii) The Rejection Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Support Period, deliver to the Secretary a Rejection Process Termination Notice, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website, if:

(A) no Rejection Action Petitioning Decisional Participant is able to obtain the support of at least one other Decisional Participant for its Rejection Action Petition during the Rejection Action Petition Support Period; or

(B) where the Rejection Action Supported Petition includes a PDP (Policy Development Process) Standard Bylaw Statement, the

Standard Bylaw Amendment PDP (Policy Development Process)
Decisional Participant is not (x) the Rejection Action Petitioning
Decisional Participant or (y) one of the Rejection Action Supporting
Decisional Participants.

Section 2.3. REJECTION ACTION COMMUNITY FORUM

- a. If the EC (Empowered Community) Administration receives a Rejection Action Supported Petition under Section 2.2(d) of this Annex D during the Rejection Action Petition Support Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Rejection Action Supported Petition ("**Rejection Action Community Forum**"). If the EC (Empowered Community) Administration receives more than one Rejection Action Supported Petition relating to the same Rejection Action, all such Rejection Action Supported Petitions shall be discussed at the same Rejection Action Community Forum.
- b. If a publicly-available conference call has been requested in a Rejection Action Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Rejection Action Community Forum relating to that Rejection Action Supported Petition, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website. If a conference call has been requested in relation to more than one Rejection Action Supported Petition relating to the same Rejection Action, all such Rejection Action Supported Petitions shall be discussed during the same conference call.
- c. The Rejection Action Community Forum shall be convened and concluded during the period beginning upon the expiration of the Rejection Action Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period ("**Rejection Action Community Forum Period**") unless all Rejection

Action Supported Petitions relating to the same Rejection Action requested that the Rejection Action Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the Rejection Action Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting (except as otherwise provided below with respect to a Rejection Action Supported Petition relating to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget or IANA (Internet Assigned Numbers Authority) Budget) on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Rejection Action Petitioning Decisional Participant(s) and the Rejection Action Supporting Decisional Participant(s). If the Rejection Action Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period, the Rejection Action Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting. Notwithstanding the foregoing and notwithstanding any statement in the Rejection Action Supported Petition, a Rejection Action Community Forum to discuss a Rejection Action Supported Petition relating to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget or IANA (Internet Assigned Numbers Authority) Budget may only be held at a scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting if such Rejection Action Community Forum occurs during the Rejection Action Community Forum Period, without any extension of such Rejection Action Community Forum Period.

- d. The Rejection Action Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects, and/or, only if the Rejection Action Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-

to-face meetings. If the Rejection Action Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of such Rejection Action Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

- e. The EC (Empowered Community) Administration shall manage and moderate the Rejection Action Community Forum in a fair and neutral manner.
- f. ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Rejection Action Supported Petition prior to the convening of and during the Rejection Action Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).
- g. ICANN (Internet Corporation for Assigned Names and Numbers) staff (including the CFO when the Rejection Action Supported Petition relates to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget, IANA (Internet Assigned Numbers Authority) Budget or Operating Plan) and Directors representing the Board are expected to attend the Rejection Action Community Forum in order to address the concerns raised in the Rejection Action Supported Petition.
- h. If the Rejection Action Petitioning Decisional Participant and each of the Rejection Action Supporting Decisional Participants for an applicable Rejection Action Supported Petition agree before, during or after the Rejection Action Community Forum that the issue raised in such Rejection Action Supported Petition has been resolved, such Rejection Action Supported Petition shall be deemed withdrawn and the Rejection Process with respect to such Rejection Action Supported Petition will be terminated. If all Rejection Action Supported Petitions

relating to a Rejection Action are withdrawn, the Rejection Process will automatically be terminated. If a Rejection Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Rejection Action Supported Petition, deliver to the Secretary a Rejection Process Termination Notice. For the avoidance of doubt, the Rejection Action Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Rejection Action Petitioning Decisional Participant and the Rejection Action Supporting Decisional Participant(s).

- i. During the Rejection Action Community Forum Period, an additional one or two Rejection Action Community Forums may be held at the discretion of a Rejection Action Petitioning Decisional Participant and a related Rejection Action Supporting Decisional Participant, or the EC (Empowered Community) Administration.
- j. ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Rejection Action Community Forum and shall promptly post on the Website a public record of the Rejection Action Community Forum as well as all written submissions of ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Rejection Action Community Forum.

Section 2.4. DECISION WHETHER TO REJECT A REJECTION ACTION

(a) Following the expiration of the Rejection Action Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Rejection Action Community Forum Period (such period, the "**Rejection Action Decision Period**"), with respect to each Rejection Action Supported Petition, each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Rejection Action Supported Petition and has determined to reject the Rejection Action, (ii) objects to such Rejection Action Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Rejection Action Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for

ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to expiration of the Rejection Action Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Rejection Action Decision Period).

(b) The EC (Empowered Community) Administration, within twenty-four (24) hours of the expiration of the Rejection Action Decision Period, shall promptly deliver a written notice ("**EC (Empowered Community) Rejection Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Article 2 of Annex D, the EC (Empowered Community) has resolved to reject the Rejection Action if (after accounting for any adjustments to the below as required by the GAC (Governmental Advisory Committee) Carve-out pursuant to Section 3.6(e) of the Bylaws if the Rejection Action Supported Petition included a GAC (Governmental Advisory Committee) Consensus (Consensus) Statement):

(i) A Rejection Action Supported Petition relating to a Rejection Action other than a Standard Bylaw Amendment is (A) supported by four or more Decisional Participants and (B) not objected to by more than one Decisional Participant; or

(ii) A Rejection Action Supported Petition relating to a Standard Bylaw Amendment that is (A) supported by three or more Decisional Participants (including the Standard Bylaw Amendment PDP (Policy Development Process) Decisional Participant if the Rejection Action Supported Petition included a PDP (Policy Development Process) Standard Bylaw Statement) and (B) not objected to by more than one Decisional Participant.

(c) If no Rejection Action Supported Petition obtains the support required by Section 2.4(b)(i) or (ii) of this Annex D, as applicable, the Rejection Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Decision Period, deliver to the Secretary a Rejection Process Termination Notice.

(d) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Rejection Action Board Notice, (ii) Rejection Action Petition, (iii) Rejection Action Petition Notice, (iv) Rejection Action Supported Petition, (v) EC (Empowered Community) Rejection Notice and the written explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the Rejection Action, (vi) Rejection Process Termination Notice, and (vii) other notices the Secretary receives under this Article 2.

ARTICLE 3 PROCEDURE FOR EXERCISE OF EC (Empowered Community)'S RIGHTS TO REMOVE DIRECTORS AND RECALL THE BOARD

Section 3.1. NOMINATING COMMITTEE DIRECTOR REMOVAL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant seeking to remove a Director holding Seats 1 through 8 and initiate the Nominating Committee Director Removal Process ("**Nominating Committee Director Removal Petition**"). Each Nominating Committee Director Removal Petition shall set forth the rationale upon which such individual seeks to remove such Director. The process set forth in this Section 3.1 of Annex D is referred to herein as the "**Nominating Committee Director Removal Process**."

(b) During the period beginning on the date that the Decisional Participant received the Nominating Committee Director Removal Petition (such date of receipt, the "**Nominating Committee Director Removal Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the date that is the 21st day after the Nominating Committee Director Removal Petition Date (as it relates to a particular Director, the "**Nominating Committee Director Removal Petition Period**"), the Decisional Participant that has received a Nominating Committee Director Removal Petition ("**Nominating Committee Director Removal Petitioned Decisional Participant**") shall either accept or reject such Nominating Committee Director Removal Petition; provided that a Nominating Committee Director Removal Petitioned Decisional Participant shall not accept a Nominating Committee Director Removal Petition if, during the same term, the Director who is the subject of such Nominating Committee Director Removal Petition had previously been subject to a Nominating Committee Director Removal

Petition that led to a Nominating Committee Director Removal Community Forum (as discussed in Section 3.1(e) of this Annex D).

(c) During the Nominating Committee Director Removal Petition Period, the Nominating Committee Director Removal Petitioned Decisional Participant shall invite the Director subject to the Nominating Committee Director Removal Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) to a dialogue with the individual(s) bringing the Nominating Committee Director Removal Petition and the Nominating Committee Director Removal Petitioned Decisional Participant's representative on the EC (Empowered Community) Administration. The Nominating Committee Director Removal Petition may not be accepted unless this invitation has been extended upon reasonable notice and accommodation to the affected Director's availability. If the invitation is accepted by either the Director who is the subject of the Nominating Committee Director Removal Petition or the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director), the Nominating Committee Director Removal Petitioned Decisional Participant shall not accept the Nominating Committee Director Removal Petition until the dialogue has occurred or there have been reasonable efforts to have the dialogue.

(i) If, in accordance with Section 3.1(b) of this Annex D, a Nominating Committee Director Removal Petitioned Decisional Participant accepts a Nominating Committee Director Removal Petition during the Nominating Committee Director Removal Petition Period (such Decisional Participant, the "**Nominating Committee Director Removal Petitioning Decisional Participant**"), the Nominating Committee Director Removal Petitioning Decisional Participant shall, within twenty-four (24) hours of its acceptance of the Nominating Committee Director Removal Petition, provide written notice ("**Nominating Committee Director Removal Petition Notice**") of such acceptance to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary. The Nominating Committee Director Removal Petition Notice shall include the rationale upon which removal of the affected Director is sought. The Nominating Committee Director Removal Process shall thereafter continue pursuant to Section 3.1(d) of this Annex D.

(ii) If the EC (Empowered Community) Administration has not received a Nominating Committee Director Removal Petition Notice pursuant to Section 3.1(c)(i) of this Annex D during the Nominating Committee Director Removal Petition Period, the Nominating Committee Director Removal Process shall automatically be terminated with respect to the applicable Nominating Committee Director Removal Petition and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Petition Period, deliver to the Secretary a notice certifying that the Nominating Committee Director Removal Process has been terminated with respect to the applicable Nominating Committee Director Removal Petition ("**Nominating Committee Director Removal Process Termination Notice**").

(d) Following the delivery of a Nominating Committee Director Removal Petition Notice to the EC (Empowered Community) Administration by a Nominating Committee Director Removal Petitioning Decisional Participant pursuant to Section 3.1(c)(i) of this Annex D, the Nominating Committee Director Removal Petitioning Decisional Participant shall contact the EC (Empowered Community) Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Nominating Committee Director Removal Petition. The Nominating Committee Director Removal Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website.

(i) If the Nominating Committee Director Removal Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Nominating Committee Director Removal Supporting Decisional Participant**") during the period beginning upon the expiration of the Nominating Committee Director Removal Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 7th day after the expiration of the Nominating Committee Director Removal Petition Period (the "**Nominating Committee Director Removal Petition Support Period**"), the Nominating Committee Director Removal Petitioning Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary ("**Nominating Committee Director**").

Removal Supported Petition") within twenty-four (24) hours of receiving the support of at least one Nominating Committee Director Removal Supporting Decisional Participant. Each Nominating Committee Director Removal Supporting Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Nominating Committee Director Removal Petition. Such Nominating Committee Director Removal Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Nominating Committee Director Removal Petitioning Decisional Participant who shall act as a liaison with respect to the Nominating Committee Director Removal Supported Petition;

(C) a statement as to whether or not the Nominating Committee Director Removal Petitioning Decisional Participant and/or the Nominating Committee Director Removal Supporting Decisional Participant requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the Nominating Committee Director Removal Community Forum (as defined in Section 3.1(e) of this Annex D) for the community to discuss the Nominating Committee Director Removal Supported Petition; and

(D) a statement as to whether the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant have determined to hold the Nominating Committee Director Removal Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

The Nominating Committee Director Removal Process shall thereafter continue for such Nominating Committee Director Removal Petition pursuant to Section 3.1(e) of this Annex D.

(ii) The Nominating Committee Director Removal Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of

the Nominating Committee Director Removal Petition Support Period, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice if the Nominating Committee Director Removal Petitioning Decisional Participant is unable to obtain the support of at least one other Decisional Participant for its Nominating Committee Director Removal Petition during the Nominating Committee Director Removal Petition Support Period.

(e) If the EC (Empowered Community) Administration receives a Nominating Committee Director Removal Supported Petition under Section 3.1(d) of this Annex D during the Nominating Committee Director Removal Petition Support Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Nominating Committee Director Removal Supported Petition ("**Nominating Committee Director Removal Community Forum**").

(i) If a publicly-available conference call has been requested in a Nominating Committee Director Removal Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Nominating Committee Director Removal Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Director who is the subject of the Nominating Committee Director Removal Supported Petition regarding his or her availability.

(ii) The Nominating Committee Director Removal Community Forum shall be convened and concluded during the period beginning upon the expiration of the Nominating Committee Director Removal Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Petition Support Period ("**Nominating Committee Director Removal Community Forum Period**") unless the Nominating Committee Director Removal Supported Petition requested that the Nominating Committee Director

Removal Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the Nominating Committee Director Removal Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant(s); provided, that, the date and time of any Nominating Committee Director Removal Community Forum shall be determined after consultation with the Director who is the subject of the Nominating Committee Director Removal Supported Petition regarding his or her availability. If the Nominating Committee Director Removal Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Petition Support Period, the Nominating Committee Director Removal Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

(iii) The Nominating Committee Director Removal Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects, and/or, only if the Nominating Committee Director Removal Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the Nominating Committee Director Removal Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of the Nominating Committee Director

Removal Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(iv) The EC (Empowered Community) Administration shall manage and moderate the Nominating Committee Director Removal Community Forum in a fair and neutral manner; provided that no individual from the Nominating Committee Director Removal Petitioning Decisional Participant or the Nominating Committee Director Removal Supporting Decisional Participant, nor the individual who initiated the Nominating Committee Director Removal Petition, shall be permitted to participate in the management or moderation of the Nominating Committee Director Removal Community Forum.

(v) The Director subject to the Nominating Committee Director Removal Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Nominating Committee Director Removal Supported Petition prior to the convening of and during the Nominating Committee Director Removal Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

(vi) The Director who is the subject of the Nominating Committee Director Removal Supported Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) are expected to attend the Nominating Committee Director Removal Community Forum in order to address the issues raised in the Nominating Committee Director Removal Supported Petition.

(vii) If the Nominating Committee Director Removal Petitioning Decisional Participant and each of the Nominating Committee Director Removal Supporting Decisional Participants for an applicable Nominating Committee Director Removal Supported Petition agree before, during or after the Nominating Committee Director Removal Community Forum that the issue raised in such Nominating Committee Director Removal Supported Petition has been resolved, such

Nominating Committee Director Removal Supported Petition shall be deemed withdrawn and the Nominating Committee Director Removal Process with respect to such Nominating Committee Director Removal Supported Petition will be terminated. If a Nominating Committee Director Removal Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Nominating Committee Director Removal Supported Petition, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice. For the avoidance of doubt, the Nominating Committee Director Removal Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant(s).

(viii) During the Nominating Committee Director Removal Community Forum Period, an additional one or two Nominating Committee Director Removal Community Forums may be held at the discretion of a Nominating Committee Director Removal Petitioning Decisional Participant and a related Nominating Committee Director Removal Supporting Decisional Participant, or the EC (Empowered Community) Administration.

(ix) ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Nominating Committee Director Removal Community Forum and shall promptly post on the Website a public record of the Nominating Committee Director Removal Community Forum as well as all written submissions of the Director who is the subject of the Nominating Committee Director Removal Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Nominating Committee Director Removal Community Forum.

(f) Following the expiration of the Nominating Committee Director Removal Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the

expiration of the Nominating Committee Director Removal Community Forum Period (such period, the "**Nominating Committee Director Removal Decision Period**"), each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Nominating Committee Director Removal Supported Petition, (ii) objects to such Nominating Committee Director Removal Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Nominating Committee Director Removal Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to the expiration of the Nominating Committee Director Removal Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Nominating Committee Director Removal Decision Period).

(g) The EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Decision Period, deliver a written notice ("**Nominating Committee Director Removal Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of Section 3.1 of this Annex D, the EC (Empowered Community) has approved of the removal of the Director who is subject to the Nominating Committee Director Removal Process if the Nominating Committee Director Removal Supported Petition is (i) supported by three or more Decisional Participants and (ii) not objected to by more than one Decisional Participant.

(h) Upon the Secretary's receipt of a Nominating Committee Director Removal Notice, the Director subject to such Nominating Committee Director Removal Notice shall be effectively removed from office and shall no longer be a Director and such Director's vacancy shall be filled in accordance with Section 7.12 of the Bylaws.

(i) If the Nominating Committee Director Removal Supported Petition does not obtain the support required by Section 3.1(g) of this Annex D, the Nominating Committee Director Removal Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director

Removal Decision Period, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice. The Director who was subject to the Nominating Committee Director Removal Process shall remain on the Board and not be subject to the Nominating Committee Director Removal Process for the remainder of the Director's current term.

(j) If neither a Nominating Committee Director Removal Notice nor a Nominating Committee Director Removal Process Termination Notice are received by the Secretary prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Community Forum Period, the Nominating Committee Director Removal Process shall automatically terminate and the Director who was subject to the Nominating Committee Director Removal Process shall remain on the Board and shall not be subject to the Nominating Committee Director Removal Process for the remainder of the Director's current term.

(k) Notwithstanding anything in this Section 3.1 to the contrary, if, for any reason, including due to resignation, death or disability, a Director who is the subject of a Nominating Committee Director Removal Process ceases to be a Director, the Nominating Committee Director Removal Process for such Director shall automatically terminate without any further action of ICANN (Internet Corporation for Assigned Names and Numbers) or the EC (Empowered Community) Administration.

(l) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Nominating Committee Director Removal Petition, (ii) Nominating Committee Director Removal Petition Notice, (iii) Nominating Committee Director Removal Supported Petition, (iv) Nominating Committee Director Removal Notice and the written explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to remove the relevant Director, (v) Nominating Committee Director Removal Process Termination Notice, and (vi) other notices the Secretary receives under this Section 3.1.

Section 3.2. SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) DIRECTOR REMOVAL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to the ASO (Address Supporting Organization), ccNSO (Country Code Names Supporting Organization), GNSO (Generic Names Supporting Organization) or At-Large Community (as applicable, the "**Applicable Decisional Participant**") seeking to remove a Director who was nominated by that Supporting Organization (Supporting Organization) or the At-Large Community in accordance with Section 7.2(a) of the Bylaws, and initiate the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition**"). The process set forth in this Section 3.2 of this Annex D is referred to herein as the "**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process**."

(b) During the period beginning on the date that the Applicable Decisional Participant received the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition (such date of receipt, the "**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the date that is the 21st day after the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Date (as it relates to a particular Director, the "**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period**"), the Applicable Decisional Participant shall either accept or reject such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition pursuant to the internal procedures of the Applicable Decisional Participant for the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition; provided that the Applicable Decisional Participant shall not accept an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition if, during the same term, the Director who is the subject of such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition

had previously been subject to an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition that led to an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum (as defined in Section 3.2(d) of this Annex D).

(c) During the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, the Applicable Decisional Participant shall invite the Director subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) to a dialogue with the individual(s) bringing the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition and the Applicable Decisional Participant's representative on the EC (Empowered Community) Administration. The SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition may not be accepted unless this invitation has been extended upon reasonable notice and accommodation to the affected Director's availability. If the invitation is accepted by either the Director who is the subject of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition or the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director), the Applicable Decisional Participant shall not accept the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition until the dialogue has occurred or there have been reasonable efforts to have the dialogue.

(i) If, in accordance with Section 3.2(b), the Applicable Decisional Participant accepts an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition during the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, the Applicable Decisional Participant shall, within twenty-four (24) hours of the Applicable Decisional Participant's acceptance of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition, provide written notice

("SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice") of such acceptance to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary. Such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Applicable Decisional Participant who shall act as a liaison with respect to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice;

(C) a statement as to whether or not the Applicable Decisional Participant requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum (as defined in Section 3.2(d) of this Annex D) for the community to discuss the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition; and

(D) a statement as to whether the Applicable Decisional Participant has determined to hold the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

The SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process shall thereafter continue for such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition pursuant to Section 3.2(d) of this Annex D.

(ii) If the EC (Empowered Community) Administration has not received an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice pursuant to Section 3.2(c)(i) during the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process shall automatically be terminated with respect to the applicable SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, deliver to the Secretary a notice certifying that the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process has been terminated with respect to the applicable SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process Termination Notice**").

(d) If the EC (Empowered Community) Administration receives an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice under Section 3.2(c) of this Annex D during the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested parties may discuss the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum**").

(i) If a publicly-available conference call has been requested in an SO (Supporting Organization)/AC (Advisory Committee; or Administrative

Contact (of a domain registration)) Director Removal Petition Notice, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Director who is the subject of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice regarding his or her availability.

(ii) The SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum shall be convened and concluded during the period beginning upon the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum Period**") unless the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice requested that the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account

any date and/or time requested by the Applicable Decisional Participant; provided, that the date and time of any SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum shall be determined after consultation with the Director who is the subject of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice regarding his or her availability. If the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

(iii) The SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects, and/or, only if the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of the SO (Supporting Organization)/AC (Advisory Committee;

or Administrative Contact (of a domain registration)) Director Removal Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(iv) The EC (Empowered Community) Administration shall manage and moderate the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum in a fair and neutral manner; provided that no individual from the Applicable Decisional Participant, nor the individual who initiated the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition, shall be permitted to participate in the management or moderation of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum.

(v) The Director subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice, ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice prior to the convening of and during the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

(vi) The Director who is the subject of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) are expected to attend the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum in order to address

the issues raised in the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice.

(vii) If the Applicable Decisional Participant agrees before, during or after the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum that the issue raised in such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice has been resolved, such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice shall be deemed withdrawn and the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process with respect to such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice will be terminated. If an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice, deliver to the Secretary an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process Termination Notice. For the avoidance of doubt, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Applicable Decisional Participant.

(viii) During the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum Period, an additional one or two SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forums may be held at the discretion of the Applicable Decisional Participant or the EC (Empowered Community) Administration.

(ix) ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum and shall promptly post on the Website a public record of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum as well as all written submissions of the Director who is the subject of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice, ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum.

(e) Following the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the request of the EC (Empowered Community) Administration, issue a request for comments and recommendations from the community, which shall be delivered to the Secretary for prompt posting on the Website along with a means for comments and recommendations to be submitted to ICANN (Internet Corporation for Assigned Names and Numbers) on behalf of the EC (Empowered Community) Administration. This comment period shall remain open until 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 7th day after the request for comments and recommendations was posted on the Website (the "**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration))** Director Removal Comment Period"). ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website all comments and recommendations received by ICANN (Internet Corporation for Assigned Names and Numbers) during the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Comment Period.

(f) Following the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Comment Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Comment Period (such period, the "**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration))** Director Removal Decision Period"), the Applicable Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether the Applicable Decisional Participant has support for the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice within the Applicable Decisional Participant of a three-quarters majority as determined pursuant to the internal procedures of the Applicable Decisional Participant ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration))** Director Removal Notice"). The Applicable Decisional Participant shall, within twenty-four (24) hours of obtaining such support, deliver the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice to the EC (Empowered Community) Administration, the other Decisional Participants and Secretary, and ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the Applicable Decisional Participant, concurrently post on the Website an explanation provided by the Applicable Decisional Participant as to why the Applicable Decisional Participant has chosen to remove the affected Director. Upon the Secretary's receipt of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice from the EC (Empowered Community) Administration, the Director subject to such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice shall be effectively removed from office and shall no longer be a Director and such Director's vacancy shall be filled in accordance with Section 7.12 of the Bylaws.

(g) If the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice does not obtain the support required by Section 3.2(f) of this Annex D, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process will

automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the failure to obtain such support, deliver to the Secretary an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process Termination Notice. The Director who was subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process shall remain on the Board and shall not be subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process for the remainder of the Director's current term.

(h) If neither an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice nor an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process Termination Notice are received by the Secretary prior to the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Decision Period, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process shall automatically terminate and the Director who was subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process shall remain on the Board and shall not be subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process for the remainder of the Director's current term.

(i) Notwithstanding anything in this Section 3.2 to the contrary, if, for any reason, including due to resignation, death or disability, a Director who is the subject of an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process ceases to be a Director, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process for such Director shall automatically terminate without any further action of ICANN (Internet Corporation for Assigned Names and Numbers) or the EC (Empowered Community) Administration.

(j) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration))

Director Removal Petition, (ii) SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice, (iii) SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice and the written explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to remove the relevant Director, (iv) SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process Termination Notice, and (v) other notices the Secretary receives under this Section 3.2.

Section 3.3. BOARD RECALL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant seeking to remove all Directors (other than the President) at the same time and initiate the Board Recall Process ("**Board Recall Petition**"), provided that a Board Recall Petition cannot be submitted solely on the basis of a matter decided by a Community IRP if (i) such Community IRP was initiated in connection with the Board's implementation of GAC (Governmental Advisory Committee) Consensus (Consensus) Advice and (ii) the EC (Empowered Community) did not prevail in such Community IRP. Each Board Recall Petition shall include a rationale setting forth the reasons why such individual seeks to recall the Board. The process set forth in this Section 3.3 of this Annex D is referred to herein as the "**Board Recall Process**."

(b) A Decisional Participant that has received a Board Recall Petition shall either accept or reject such Board Recall Petition during the period beginning on the date the Decisional Participant received the Board Recall Petition ("**Board Recall Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the date that is the 21st day after the Board Recall Petition Date (the "**Board Recall Petition Period**").

(i) If, in accordance with Section 3.3(b) of this Annex D, a Decisional Participant accepts a Board Recall Petition during the Board Recall Petition Period (such Decisional Participant, the "**Board Recall Petitioning Decisional Participant**"), the Board Recall Petitioning Decisional Participant shall, within twenty-four (24) hours of the expiration of its acceptance of the Board Recall Petition, provide written

notice ("**Board Recall Petition Notice**") of such acceptance to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary. The Board Recall Petition Notice shall include the rationale upon which removal of the Board is sought. The Board Recall Process shall thereafter continue pursuant to Section 3.3(c) of this Annex D.

(ii) If the EC (Empowered Community) Administration has not received a Board Recall Petition Notice pursuant to Section 3.3(b)(i) of this Annex D during the Board Recall Petition Period, the Board Recall Process shall automatically be terminated with respect to the Board Recall Petition and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Petition Period, deliver to the Secretary a notice certifying that the Board Recall Process has been terminated with respect to the Board Recall Petition ("**Board Recall Process Termination Notice**").

(c) Following the delivery of a Board Recall Petition Notice to the EC (Empowered Community) Administration by a Board Recall Petitioning Decisional Participant pursuant to Section 3.3(b)(i) of this Annex D, the Board Recall Petitioning Decisional Participant shall contact the EC (Empowered Community) Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Board Recall Petition. The Board Recall Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website.

(i) If the Board Recall Petitioning Decisional Participant obtains the support of at least two other Decisional Participants (each, a "**Board Recall Supporting Decisional Participant**") during the period beginning upon the expiration of the Board Recall Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 7th day after the expiration of the Board Recall Petition Period (the "**Board Recall Petition Support Period**"), the Board Recall Petitioning Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary ("**Board Recall Supported Petition**") within twenty-four hours of receiving the support of at least two Board Recall Supporting Decisional Participants. Each Board

Recall Supporting Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Board Recall Petition. Such Board Recall Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Board Recall Petitioning Decisional Participant who shall act as a liaison with respect to the Board Recall Supported Petition;

(C) a statement as to whether or not the Board Recall Petitioning Decisional Participant and/or the Board Recall Supporting Decisional Participants requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the Board Recall Community Forum (as defined in Section 3.3(d) of this Annex D) for the community to discuss the Board Recall Supported Petition; and

(D) a statement as to whether the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants have determined to hold the Board Recall Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

The Board Recall Process shall thereafter continue for such Board Recall Supported Petition pursuant to Section 3.3(d) of this Annex D.

(ii) The Board Recall Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Petition Support Period, deliver to the Secretary a Board Recall Process Termination Notice if the Board Recall Petitioning Decisional Participant is unable to obtain the support of at least two other Decisional Participants for its Board Recall Petition during the Board Recall Petition Support Period.

(d) If the EC (Empowered Community) Administration receives a Board Recall Supported Petition under Section 3.3(c) of this Annex D during the Board Recall Petition Support Period, ICANN (Internet Corporation for

Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Board Recall Supported Petition ("**Board Recall Community Forum**").

(i) If a publicly-available conference call has been requested in a Board Recall Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Board Recall Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Board regarding the availability of the Directors.

(ii) The Board Recall Community Forum shall be convened and concluded during the period beginning upon the expiration of the Board Recall Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Board Recall Petition Support Period ("**Board Recall Community Forum Period**") unless the Board Recall Supported Petition requested that the Board Recall Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the Board Recall Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants; provided, that, the date and time of any Board Recall Community Forum shall be determined after consultation with the Board regarding the availability of the Directors. If the Board Recall Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the

Board Recall Petition Support Period, the Board Recall Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

(iii) The Board Recall Community Forum shall have at least one face-to-face meeting and may also be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects. If the Board Recall Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of the Board Recall Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(iv) The EC (Empowered Community) Administration shall manage and moderate the Board Recall Community Forum in a fair and neutral manner; provided that no individual from the Board Recall Petitioning Decisional Participant or a Board Recall Supporting Decisional Participant, nor the individual who initiated the Board Recall Petition, shall be permitted to participate in the management or moderation of the Board Recall Community Forum.

(v) ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Board Recall Supported Petition prior to the convening of and during the Board Recall Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

(vi) ICANN (Internet Corporation for Assigned Names and Numbers) staff and the full Board are expected to attend the Board Recall

Community Forum in order to address the issues raised in the Board Recall Supported Petition.

(vii) If the Board Recall Petitioning Decisional Participant and each of the Board Recall Supporting Decisional Participants for the Board Recall Supported Petition agree before, during or after the Board Recall Community Forum that the issue raised in such Board Recall Supported Petition has been resolved, such Board Recall Supported Petition shall be deemed withdrawn and the Board Recall Process with respect to such Board Recall Supported Petition will be terminated. If a Board Recall Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Board Recall Supported Petition, deliver to the Secretary a Board Recall Process Termination Notice. For the avoidance of doubt, the Board Recall Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants.

(viii) During the Board Recall Community Forum Period, an additional one or two Board Recall Community Forums may be held at the discretion of the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants, or the EC (Empowered Community) Administration.

(ix) ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Board Recall Community Forum and shall promptly post on the Website a public record of the Board Recall Community Forum as well as all written submissions of ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Board Recall Community Forum.

(e) Following the expiration of the Board Recall Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Board Recall Community Forum Period (such period, the "**Board Recall Decision Period**"), each Decisional Participant shall inform the EC (Empowered Community)

Administration in writing as to whether such Decisional Participant (i) supports such Board Recall Supported Petition, (ii) objects to such Board Recall Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Board Recall Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to expiration of the Board Recall Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Board Recall Decision Period).

(f) The EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Decision Period, deliver a written notice ("**EC (Empowered Community) Board Recall Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 3.3 of this Annex D, the EC (Empowered Community) has resolved to remove all Directors (other than the President) if (after accounting for any adjustments to the below as required by the GAC (Governmental Advisory Committee) Carve-out pursuant to Section 3.6(e) of the Bylaws if an IRP Panel found that, in implementing GAC (Governmental Advisory Committee) Consensus (Consensus) Advice, the Board acted inconsistently with the Articles or Bylaws) a Board Recall Supported Petition (i) is supported by four or more Decisional Participants, and (ii) is not objected to by more than one Decisional Participant.

(g) Upon the Secretary's receipt of an EC (Empowered Community) Board Recall Notice, all Directors (other than the President) shall be effectively removed from office and shall no longer be Directors and such vacancies shall be filled in accordance with Section 7.12 of the Bylaws.

(h) If the Board Recall Supported Petition does not obtain the support required by Section 3.3(f) of this Annex D, the Board Recall Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Decision Period, deliver to the Secretary a Board Recall Process Termination Notice. All Directors shall remain on the Board.

(i) If neither an EC (Empowered Community) Board Recall Notice nor a Board Recall Process Termination Notice are received by the Secretary prior to the expiration of the Board Recall Decision Period, the Board Recall Process shall automatically terminate and all Directors shall remain on the Board.

(j) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Board Recall Petition, (ii) Board Recall Petition Notice, (iii) Board Recall Supported Petition, (iv) EC (Empowered Community) Board Recall Notice and the written explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to recall the Board, (v) Board Recall Process Termination Notice, and (vi) other notices the Secretary receives under this Section 3.3.

Article 4 PROCEDURE FOR EXERCISE OF EC (Empowered Community)'S RIGHTS TO INITIATE MEDIATION, A COMMUNITY IRP OR RECONSIDERATION REQUEST

Section 4.1. MEDIATION INITIATION

(a) If the Board refuses or fails to comply with a decision by the EC (Empowered Community) delivered to the Secretary pursuant to an EC (Empowered Community) Approval Notice, EC (Empowered Community) Rejection Notice, Nominating Committee Director Removal Notice, SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice or EC (Empowered Community) Board Recall Notice pursuant to and in compliance with Article 1, Article 2 or Article 3 of this Annex D, or rejects or otherwise does not take action that is consistent with a final IFR Recommendation, Special IFR Recommendation, SCWG Creation Recommendation or SCWG Recommendation, as applicable (each, an "**EC (Empowered Community) Decision**"), the EC (Empowered Community) Administration representative of any Decisional Participant who supported the exercise by the EC (Empowered Community) of its rights in the applicable EC (Empowered Community) Decision during the applicable decision period may request that the EC (Empowered Community) initiate mediation with the Board in relation to that EC (Empowered Community) Decision as contemplated by Section 4.7 of the Bylaws, by delivering a notice to the EC (Empowered Community) Administration, the Decisional Participants and the Secretary requesting the initiation of a mediation ("**Mediation Initiation Notice**"). ICANN (Internet

Corporation for Assigned Names and Numbers) shall promptly post to the Website any Mediation Initiation Notice.

(b) As soon as practicable after receiving a Mediation Initiation Notice, the EC (Empowered Community) Administration and the Secretary shall initiate mediation, which shall proceed in accordance with Section 4.7 of the Bylaws.

Section 4.2. COMMUNITY IRP

(a) After completion of a mediation under Section 4.7 of the Bylaws, the EC (Empowered Community) Administration representative of any Decisional Participant who supported the exercise by the EC (Empowered Community) of its rights in the applicable EC (Empowered Community) Decision during the applicable decision period may request that the EC (Empowered Community) initiate a Community IRP (a "**Community IRP Petitioning Decisional Participant**"), as contemplated by Section 4.3 of the Bylaws, by delivering a notice to the EC (Empowered Community) Administration and the Decisional Participants requesting the initiation of a Community IRP ("**Community IRP Petition**"). The Community IRP Petitioning Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. The process set forth in this Section 4.2 of this Annex D as it relates to a particular Community IRP Petition is referred to herein as the "**Community IRP Initiation Process**."

(b) Following the delivery of a Community IRP Petition to the EC (Empowered Community) Administration by a Community IRP Petitioning Decisional Participant pursuant to Section 4.2(a) of this Annex D (which delivery date shall be referred to herein as the "**Community IRP Notification Date**"), the Community IRP Petitioning Decisional Participant shall contact the EC (Empowered Community) Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Community IRP Petition. The Community IRP Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website.

(i) If the Community IRP Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Community IRP Supporting Decisional Participant**") during the period beginning on the Community IRP Notification Date and ending at 11:59 p.m. (as

calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the Community IRP Notification Date (the "**Community IRP Petition Support Period**"), the Community IRP Petitioning Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary ("**Community IRP Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Community IRP Supporting Decisional Participant. Each Community IRP Supporting Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Community IRP Petition. Such Community IRP Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Community IRP Petitioning Decisional Participant who shall act as a liaison with respect to the Community IRP Supported Petition;

(C) a statement as to whether or not the Community IRP Petitioning Decisional Participant and/or the Community IRP Supporting Decisional Participant requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the Community IRP Community Forum (as defined in Section 4.2(c) of this Annex D) for the community to discuss the Community IRP Supported Petition;

(D) a statement as to whether the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant have determined to hold the Community IRP Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting;

(E) where the Community IRP Supported Petition relates to a Fundamental Bylaw Amendment, a PDP (Policy Development Process) Fundamental Bylaw Statement if applicable and, if so, the name of the Fundamental Bylaw Amendment PDP (Policy Development Process) Decisional Participant;

(F) where the Community IRP Supported Petition relates to an Articles Amendment, a PDP (Policy Development Process) Articles Statement if applicable and, if so, the name of the Articles Amendment PDP (Policy Development Process) Decisional Participant;

(G) where the Community IRP Supported Petition relates to a Standard Bylaw Amendment, a PDP (Policy Development Process) Standard Bylaw Statement if applicable and, if so, the name of the Standard Bylaw Amendment PDP (Policy Development Process) Decisional Participant; and

(H) where the Community IRP Supported Petition relates to a policy recommendation of a cross community working group chartered by more than one Supporting Organization (Supporting Organization) ("**CCWG Policy Recommendation**"), a statement citing the specific CCWG Policy Recommendation and related provision in the Community IRP Supported Petition ("**CCWG Policy Recommendation Statement**"), and, if so, the name of any Supporting Organization (Supporting Organization) that is a Decisional Participant that approved the CCWG Policy Recommendation ("**CCWG Policy Recommendation Decisional Participant**").

The Community IRP Initiation Process shall thereafter continue for such Community IRP Supported Petition pursuant to Section 4.2(c) of this Annex D.

(ii) The Community IRP Initiation Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Community IRP Petition Support Period, deliver to the Secretary a notice certifying that the Community IRP Initiation Process has been terminated with respect to the Community IRP included in the Community IRP Petition ("**Community IRP Termination Notice**") if:

(A) no Community IRP Petitioning Decisional Participant is able to obtain the support of at least one other Decisional Participant for its Community IRP Petition during the Community IRP Petition Support Period;

(B) where the Community IRP Supported Petition includes a PDP (Policy Development Process) Fundamental Bylaw Statement, the

Fundamental Bylaw Amendment PDP (Policy Development Process)

Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants;

(C)where the Community IRP Supported Petition includes a PDP (Policy Development Process) Articles Statement, the Articles Amendment PDP (Policy Development Process) Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants;

(D)where the Community IRP Supported Petition includes a PDP (Policy Development Process) Standard Bylaw Statement, the Standard Bylaw Amendment PDP (Policy Development Process) Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants; or

(E) where the Community IRP Supported Petition includes a CCWG Policy Recommendation Statement, the CCWG Policy Recommendation Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants.

(c) If the EC (Empowered Community) Administration receives a Community IRP Supported Petition under Section 4.2(b) of this Annex D during the Community IRP Petition Support Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested third parties may discuss the Community IRP Supported Petition ("**Community IRP Community Forum**").

(i) If a publicly-available conference call has been requested in a Community IRP Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Community IRP Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(ii) The Community IRP Community Forum shall be convened and concluded during the period beginning on the expiration of the Community IRP Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the expiration of the Community IRP Petition Support Period ("**Community IRP Community Forum Period**") unless the Community IRP Supported Petition requested that the Community IRP Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the Community IRP Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant(s). If the Community IRP Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the expiration of the Community IRP Petition Support Period, the Community IRP Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

(iii) The Community IRP Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects and/or, only if the Community IRP Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the Community IRP Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of such Community IRP Community Forum, which ICANN

(Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(iv) The EC (Empowered Community) Administration shall manage and moderate the Community IRP Community Forum in a fair and neutral manner.

(v) ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Community IRP Supported Petition prior to the convening of and during the Community IRP Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

(vi) ICANN (Internet Corporation for Assigned Names and Numbers) staff and Directors representing the Board are expected to attend the Community IRP Community Forum in order to discuss the Community IRP Supported Petition.

(vii) If the Community IRP Petitioning Decisional Participant and each of the Community IRP Supporting Decisional Participants for the Community IRP Supported Petition agree before, during or after a Community IRP Community Forum that the issue raised in such Community IRP Supported Petition has been resolved, such Community IRP Supported Petition shall be deemed withdrawn and the Community IRP Initiation Process with respect to such Community IRP Supported Petition will be terminated. If a Community IRP Initiation Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Community IRP Supported Petition, deliver to the Secretary a Community IRP Termination Notice. For the avoidance of doubt, the Community IRP Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant(s).

(viii) During the Community IRP Community Forum Period, an additional one or two Community IRP Community Forums may be held at the discretion of a Community IRP Petitioning Decisional Participant and a related Community IRP Supporting Decisional Participant, or the EC (Empowered Community) Administration.

(ix) ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Community IRP Community Forum and shall promptly post on the Website a public record of the Community IRP Community Forum as well as all written submissions of ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Community IRP Community Forum.

(d) Following the expiration of the Community IRP Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Community IRP Community Forum Period (such period, the "**Community IRP Decision Period**"), each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Community IRP Supported Petition, (ii) objects to such Community IRP Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Community IRP Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to the expiration of the Community IRP Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Community IRP Decision Period).

(e) The EC (Empowered Community) Administration, within twenty-four (24) hours of the expiration of the Community IRP Decision Period, shall promptly deliver a written notice ("**EC (Empowered Community) Community IRP Initiation Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 4.2 of this

Annex D, the EC (Empowered Community) has resolved to accept the Community IRP Supported Petition if:

(i) A Community IRP Supported Petition that does not include a PDP (Policy Development Process) Fundamental Bylaw Statement, a PDP (Policy Development Process) Articles Statement, a PDP (Policy Development Process) Standard Bylaw Statement or a CCWG Policy Recommendation Statement (A) is supported by three or more Decisional Participants, and (B) is not objected to by more than one Decisional Participant;

(ii) A Community IRP Supported Petition that (A) includes a PDP (Policy Development Process) Fundamental Bylaw Statement, (B) is supported by three or more Decisional Participants (including the Fundamental Bylaw Amendment PDP (Policy Development Process) Decisional Participant), and (C) is not objected to by more than one Decisional Participant;

(iii) A Community IRP Supported Petition that (A) includes a PDP (Policy Development Process) Articles Statement, (B) is supported by three or more Decisional Participants (including the Articles Amendment PDP (Policy Development Process) Decisional Participant), and (C) is not objected to by more than one Decisional Participant;

(iv) A Community IRP Supported Petition that (A) includes a PDP (Policy Development Process) Standard Bylaw Statement, (B) is supported by three or more Decisional Participants (including the Standard Bylaw Amendment PDP (Policy Development Process) Decisional Participant), and (C) is not objected to by more than one Decisional Participant; or

(v) A Community IRP Supported Petition that (A) includes a CCWG Policy Recommendation Statement, (B) is supported by three or more Decisional Participants (including the CCWG Policy Recommendation Decisional Participant), and (C) is not objected to by more than one Decisional Participant.

(f) If the Community IRP Supported Petition does not obtain the support required by Section 4.2(e) of this Annex D, the Community IRP Initiation

Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Community IRP Decision Period, deliver to the Secretary a Community IRP Termination Notice.

(g) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Community IRP Petition, (ii) Community IRP Supported Petition, (iii) EC (Empowered Community) Community IRP Initiation Notice, (iv) Community IRP Termination Notice, (v) written explanation provided by the EC (Empowered Community) Administration related to any of the foregoing, and (vi) other notices the Secretary receives under this Section 4.2.

Section 4.3. COMMUNITY RECONSIDERATION REQUEST

(a) Any Decisional Participant may request that the EC (Empowered Community) initiate a Reconsideration Request (a "**Community Reconsideration Petitioning Decisional Participant**"), as contemplated by Section 4.2(b) of the Bylaws, by delivering a notice to the EC (Empowered Community) Administration and the other Decisional Participants, with a copy to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website, requesting the review or reconsideration of an action or inaction of the ICANN (Internet Corporation for Assigned Names and Numbers) Board or staff ("**Community Reconsideration Petition**"). A Community Reconsideration Petition must be delivered within 30 days after the occurrence of any of the conditions set forth in Section 4.2(g)(i)(A), (B) or (C) of the Bylaws. In that instance, the Community Reconsideration Petition must be delivered within 30 days from the initial posting of the rationale. The process set forth in this Section 4.3 of this Annex D as it relates to a particular Community Reconsideration Petition is referred to herein as the "**Community Reconsideration Initiation Process**."

(b) Following the delivery of a Community Reconsideration Petition to the EC (Empowered Community) Administration by a Community Reconsideration Petitioning Decisional Participant pursuant to Section 4.3(a) of this Annex D (which delivery date shall be referred to herein as the "**Community Reconsideration Notification Date**"), the Community Reconsideration Petitioning Decisional Participant shall contact the EC (Empowered Community) Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Community

Reconsideration Petition. The Community Reconsideration Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website.

(i) If the Community Reconsideration Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a **"Community Reconsideration Supporting Decisional Participant"**) during the period beginning on the Community Reconsideration Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the Community Reconsideration Notification Date (the **"Community Reconsideration Petition Support Period"**), the Community Reconsideration Petitioning Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary (**"Community Reconsideration Supported Petition"**) within twenty-four (24) hours of receiving the support of at least one Community Reconsideration Supporting Decisional Participant. Each Community Reconsideration Supporting Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Community Reconsideration Petition. Such Community Reconsideration Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Community Reconsideration Petitioning Decisional Participant who shall act as a liaison with respect to the Community Reconsideration Supported Petition;

(C) a statement as to whether or not the Community Reconsideration Petitioning Decisional Participant and/or the Community Reconsideration Supporting Decisional Participant requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the Community Reconsideration Community Forum (as defined in Section 4.3(c) of this Annex D) for the community to discuss the Community Reconsideration Supported Petition; and

(D) a statement as to whether the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting Decisional Participant have determined to hold the Community Reconsideration Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

The Community Reconsideration Initiation Process shall thereafter continue for such Community Reconsideration Supported Petition pursuant to Section 4.3(c) of this Annex D.

(ii) The Community Reconsideration Initiation Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Petition Support Period, deliver to the Secretary a notice certifying that the Community Reconsideration Initiation Process has been terminated with respect to the Reconsideration Request included in the Community Reconsideration Petition ("**Community Reconsideration Termination Notice**") if the Community Reconsideration Petitioning Decisional Participant is unable to obtain the support of at least one other Decisional Participant for its Community Reconsideration Petition during the Community Reconsideration Petition Support Period.

(c) If the EC (Empowered Community) Administration receives a Community Reconsideration Supported Petition under Section 4.3(b) of this Annex D during the Community Reconsideration Petition Support Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested third parties may discuss the Community Reconsideration Supported Petition ("**Community Reconsideration Community Forum**").

(i) If a publicly-available conference call has been requested in a Community Reconsideration Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Community Reconsideration Community Forum, and inform the Decisional Participants of the date, time and participation

methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(ii) The Community Reconsideration Community Forum shall be convened and concluded during the period beginning on the expiration of the Community Reconsideration Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the expiration of the Community Reconsideration Petition Support Period ("**Community Reconsideration Forum Period**") unless the Community Reconsideration Supported Petition requested that the Community Reconsideration Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the Community Reconsideration Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting Decisional Participant(s). If the Community Reconsideration Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the expiration of the Community Reconsideration Petition Support Period, the Community Reconsideration Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

(iii) The Community Reconsideration Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects and/or, only if the Community Reconsideration Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the

Community Reconsideration Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of such Community Reconsideration Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(iv) The EC (Empowered Community) Administration shall manage and moderate the Community Reconsideration Community Forum in a fair and neutral manner.

(v) ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Community Reconsideration Supported Petition prior to the convening of and during the Community Reconsideration Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

(vi) ICANN (Internet Corporation for Assigned Names and Numbers) staff and Directors representing the Board are expected to attend the Community Reconsideration Community Forum in order to discuss the Community Reconsideration Supported Petition.

(vii) If the Community Reconsideration Petitioning Decisional Participant and each of the Community Reconsideration Supporting Decisional Participants for a Community Reconsideration Supported Petition agree before, during or after the Community Reconsideration Community Forum that the issue raised in such Community Reconsideration Supported Petition has been resolved, such Community Reconsideration Supported Petition shall be deemed withdrawn and the Community Reconsideration Initiation Process with respect to such Community Reconsideration Supported Petition will be terminated. If a Community Reconsideration Initiation Process is terminated, the EC (Empowered Community) Administration shall,

within twenty-four (24) hours of the resolution of the issue raised in the Community Reconsideration Supported Petition, deliver to the Secretary a Community Reconsideration Termination Notice. For the avoidance of doubt, the Community Reconsideration Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting Decisional Participant(s).

(viii) During the Community Reconsideration Community Forum Period, an additional one or two Community Reconsideration Community Forums may be held at the discretion of a Community Reconsideration Petitioning Decisional Participant and a related Community Reconsideration Supporting Decisional Participant, or the EC (Empowered Community) Administration.

(ix) ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Community Reconsideration Community Forum and shall promptly post on the Website a public record of the Community Reconsideration Community Forum as well as all written submissions of ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Community Reconsideration Community Forum.

(d) Following the expiration of the Community Reconsideration Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Community Reconsideration Community Forum Period (such period, the "**Community Reconsideration Decision Period**"), each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Community Reconsideration Supported Petition, (ii) objects to such Community Reconsideration Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Community Reconsideration Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the

Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to the expiration of the Community Reconsideration Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Community Reconsideration Decision Period).

(e) If (i) three or more Decisional Participants support the Community Reconsideration Supported Petition and (ii) no more than one Decisional Participant objects to the Community Reconsideration Supported Petition, then the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Decision Period, deliver a notice to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 4.3 of this Annex D, the EC (Empowered Community) has resolved to accept the Community Reconsideration Supported Petition ("**EC (Empowered Community) Reconsideration Initiation Notice**"). The Reconsideration Request shall then proceed in accordance with Section 4.2 of the Bylaws.

(f) If the Community Reconsideration Supported Petition does not obtain the support required by Section 4.3(e) of this Annex D, the Community Reconsideration Initiation Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Decision Period, deliver to the Secretary a Community Reconsideration Termination Notice.

(g) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Community Reconsideration Petition, (ii) Community Reconsideration Supported Petition, (iii) EC (Empowered Community) Reconsideration Initiation Notice, (iv) Community Reconsideration Termination Notice, (v) written explanation provided by the EC (Empowered Community) Administration related to any of the foregoing, and (vi) other notices the Secretary receives under this Section 4.3.

Annex E: Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles

1. Principles

The caretaker ICANN (Internet Corporation for Assigned Names and Numbers) budget (the "**Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget**") is defined as an annual operating plan and budget that is established by the CFO in accordance with the following principles (the "**Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles**"):

- a. It is based on then-current ICANN (Internet Corporation for Assigned Names and Numbers) operations;
- b. It allows ICANN (Internet Corporation for Assigned Names and Numbers) to "take good care" and not expose itself to additional enterprise risk(s) as a result of the rejection of an ICANN (Internet Corporation for Assigned Names and Numbers) Budget by the EC (Empowered Community) pursuant to the Bylaws;
- c. It allows ICANN (Internet Corporation for Assigned Names and Numbers) to react to emergency situations in a fashion that preserves the continuation of its operations;
- d. It allows ICANN (Internet Corporation for Assigned Names and Numbers) to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law);
- e. It enables ICANN (Internet Corporation for Assigned Names and Numbers) to avoid waste of its resources during the rejection period (i.e., the period between when an ICANN (Internet Corporation for Assigned Names and Numbers) Budget is rejected by the EC (Empowered Community) pursuant to the Bylaws and when an ICANN (Internet Corporation for Assigned Names and Numbers) Budget becomes effective in accordance with the Bylaws) or immediately thereafter, by being able to continue activities during the rejection period that would otherwise need to be restarted at a materially incremental cost; and
- f. Notwithstanding any other principle listed above, it prevents ICANN (Internet Corporation for Assigned Names and Numbers) from initiating activities that remains subject to community consideration (or for which that community consideration has not concluded) with respect to the applicable ICANN (Internet Corporation for Assigned Names and Numbers) Budget, including

without limitation, preventing implementation of any expenditure or undertaking any action that was the subject of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget that was rejected by the EC (Empowered Community) that triggered the need for the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget.

1. Examples

Below is a non-exhaustive list of examples, to assist with the interpretation of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles, of what a Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget would logically include:

- i. the functioning of the EC (Empowered Community), the Decisional Participants, and any Supporting Organizations (Supporting Organizations) or Advisory Committees (Advisory Committees) that are not Decisional Participants;
- ii. the functioning of all redress mechanisms, including without limitation the office of the Ombudsman, the IRP, and mediation;
- iii. employment of staff (i.e., employees and individual long term paid contractors serving in locations where ICANN (Internet Corporation for Assigned Names and Numbers) does not have the mechanisms to employ such contractors) across all locations, including all related compensation, benefits, social security, pension, and other employment costs;
- iv. hiring staff (i.e., employees and individual long term paid contractors serving in locations where ICANN (Internet Corporation for Assigned Names and Numbers) does not have the mechanisms to employ such contractors) in the normal course of business;
- v. necessary or time-sensitive travel costs for staff (i.e., employees and individual long term paid contractors serving in locations where ICANN (Internet Corporation for Assigned Names and Numbers) does not have the mechanisms to employ such contractors) or vendors as needed in the normal course of business;

vi. operating all existing ICANN (Internet Corporation for Assigned Names and Numbers) offices, and continuing to assume obligations relative to rent, utilities, maintenance, and similar matters;

vii. contracting with vendors as needed in the normal course of business;

viii. conducting ICANN (Internet Corporation for Assigned Names and Numbers) meetings and ICANN (Internet Corporation for Assigned Names and Numbers) intercessional meetings previously contemplated; and

ix. participating in engagement activities in furtherance of the approved Strategic Plan.

b. Below is a non-limitative list of examples, to assist with the interpretation of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles, of what a Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget would logically exclude:

i. hiring staff (i.e., employees and individual long term paid contractors serving in locations where ICANN (Internet Corporation for Assigned Names and Numbers) does not have the mechanisms to employ such contractors) or entering into new agreements in relation to activities that are the subject of the rejection of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget by the EC (Empowered Community) pursuant to the Bylaws, unless excluding these actions would violate any of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles;

ii. in the normal course of business, travel not deemed indispensable during the rejection period, unless the lack of travel would violate any of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles;

iii. entering into new agreements in relation to opening or operating new ICANN (Internet Corporation for Assigned Names and Numbers) locations/offices, unless the lack of commitment would violate any of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles;

iv. entering into new agreements with governments (or their affiliates), unless the lack of commitment would violate any of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles; and

v. the proposed expenditure that was the basis for the rejection by the EC (Empowered Community) that triggered the need for the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget.

Annex F: Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles

1. Principles

The caretaker IANA (Internet Assigned Numbers Authority) Budget (the "**Caretaker IANA (Internet Assigned Numbers Authority) Budget**") is defined as an annual operating plan and budget that is established by the CFO in accordance with the following principles (the "**Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles**"):

- a. It is based on then-current operations of the IANA (Internet Assigned Numbers Authority) functions;
- b. It allows ICANN (Internet Corporation for Assigned Names and Numbers), in its responsibility to fund the operations of the IANA (Internet Assigned Numbers Authority) functions, to "take good care" and not expose itself to additional enterprise risk(s) as a result of the rejection of an IANA (Internet Assigned Numbers Authority) Budget by the EC (Empowered Community) pursuant to the Bylaws;
- c. It allows ICANN (Internet Corporation for Assigned Names and Numbers), in its responsibility to fund the operations of the IANA (Internet Assigned Numbers Authority) functions, to react to emergency situations in a fashion that preserves the continuation of its operations;
- d. It allows ICANN (Internet Corporation for Assigned Names and Numbers), in its responsibility to fund the operations of the IANA (Internet Assigned Numbers Authority) functions, to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law);

- e. It allows ICANN (Internet Corporation for Assigned Names and Numbers), in its responsibility to fund the operations of the IANA (Internet Assigned Numbers Authority) functions, to avoid waste of its resources during the rejection period (i.e., the period between when an IANA (Internet Assigned Numbers Authority) Budget is rejected by the EC (Empowered Community) pursuant to the Bylaws and when an IANA (Internet Assigned Numbers Authority) Budget becomes effective in accordance with the Bylaws) or immediately thereafter, by being able to continue activities during the rejection period that would otherwise need to be restarted at an incremental cost; and
- f. Notwithstanding any other principle listed above, it prevents ICANN (Internet Corporation for Assigned Names and Numbers), in its responsibility to fund the operations of the IANA (Internet Assigned Numbers Authority) functions, from initiating activities that remain subject to community consideration (or for which that community consultation has not concluded) with respect to the applicable IANA (Internet Assigned Numbers Authority) Budget, including without limitation, preventing implementation of any expenditure or undertaking any action that was the subject of the IANA (Internet Assigned Numbers Authority) Budget that was rejected by the EC (Empowered Community) that triggered the need for the Caretaker IANA (Internet Assigned Numbers Authority) Budget.

1. Examples

- a. Below is a non-exhaustive list of examples, to assist with the interpretation of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles, of what a Caretaker IANA (Internet Assigned Numbers Authority) Budget would logically include:

- i. employment of staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA (Internet Assigned Numbers Authority) functions does not have the mechanisms to employ such contractors) across all locations, including all related compensation, benefits, social security, pension, and other employment costs;

- ii. hiring staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA (Internet

Assigned Numbers Authority) functions does not have the mechanisms to employ such contractors) in the normal course of business;

iii. necessary or time-sensitive travel costs for staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA (Internet Assigned Numbers Authority) functions does not have the mechanisms to employ such contractors) or vendors as needed in the normal course of business;

iv. operating all existing offices used in the performance of the IANA (Internet Assigned Numbers Authority) functions, and continuing to assume obligations relative to rent, utilities, maintenance, and similar matters;

v. contracting with vendors as needed in the normal course of business;

vi. participating in meetings and conferences previously contemplated;

vii. participating in engagement activities with ICANN (Internet Corporation for Assigned Names and Numbers)'s Customer Standing Committee or the customers of the IANA (Internet Assigned Numbers Authority) functions;

viii. fulfilling obligations (including financial obligations under agreements and memoranda of understanding to which ICANN (Internet Corporation for Assigned Names and Numbers) or its affiliates is a party that relate to the IANA (Internet Assigned Numbers Authority) functions; and

ix. participating in engagement activities in furtherance of the approved Strategic Plan.

b. Below is a non-limitative list of examples, to assist with the interpretation of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles, of what a Caretaker IANA (Internet Assigned Numbers Authority) Budget would logically exclude:

i. hiring staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA (Internet Assigned Numbers Authority) functions does not have the mechanisms to employ such contractors) or entering into new agreements in relation to activities that are the subject of the rejection of the IANA (Internet Assigned Numbers Authority) Budget by the EC (Empowered Community) pursuant to

the Bylaws, unless excluding these actions would violate any of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles;

ii. in the normal course of business, travel not deemed indispensable during the rejection period, unless the lack of travel would violate any of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles;

iii. entering into new agreements in relation to opening or operating new locations/offices where the IANA (Internet Assigned Numbers Authority) functions shall be performed, unless the lack of commitment would violate any of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles;

iv. entering into new agreements with governments (or their affiliates), unless the lack of commitment would violate any of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles; and

v. the proposed expenditure that was the basis for the rejection by the EC (Empowered Community) that triggered the need for the Caretaker IANA (Internet Assigned Numbers Authority) Budget.

ANNEX G-1

The topics, issues, policies, procedures and principles referenced in Section 1.1(a)(i) with respect to gTLD (generic Top Level Domain) registrars are:

- issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet, registrar services, registry services, or the DNS (Domain Name System);
- functional and performance specifications for the provision of registrar services;
- registrar policies reasonably necessary to implement Consensus (Consensus) Policies relating to a gTLD (generic Top Level Domain) registry;
- resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names, but including where such policies take into account use of the domain names); or

- restrictions on cross-ownership of registry operators and registrars or resellers and regulations and restrictions with respect to registrar and registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or reseller are affiliated.

Examples of the above include, without limitation:

- principles for allocation of registered names in a TLD (Top Level Domain) (e.g., first-come/first-served, timely renewal, holding period after expiration);
- prohibitions on warehousing of or speculation in domain names by registries or registrars;
- reservation of registered names in a TLD (Top Level Domain) that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS (Domain Name System) or the Internet (e.g., establishment of reservations of names from registration);
- maintenance of and access to accurate and up-to-date information concerning registered names and name servers;
- procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility among continuing registrars of the registered names sponsored in a TLD (Top Level Domain) by a registrar losing accreditation; and
- the transfer of registration data upon a change in registrar sponsoring one or more registered names.

ANNEX G-2

The topics, issues, policies, procedures and principles referenced in Section 1.1(a)(i) with respect to gTLD (generic Top Level Domain) registries are:

- issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or DNS (Domain Name System);

- functional and performance specifications for the provision of registry services;
- security and stability of the registry database for a TLD (Top Level Domain);
- registry policies reasonably necessary to implement Consensus (Consensus) Policies relating to registry operations or registrars;
- resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
- restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.

Examples of the above include, without limitation:

- principles for allocation of registered names in a TLD (Top Level Domain) (e.g., first-come/first-served, timely renewal, holding period after expiration);
- prohibitions on warehousing of or speculation in domain names by registries or registrars;
- reservation of registered names in the TLD (Top Level Domain) that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS (Domain Name System) or the Internet (e.g., establishment of reservations of names from registration);
- maintenance of and access to accurate and up-to-date information concerning domain name registrations; and
- procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD (Top Level Domain) affected by such a suspension or termination.

[1] When "1 October 2016" is used, that signals that the date that will be used is the effective date of the Bylaws.

Annex 5

**COOPERATIVE ENGAGEMENT AND INDEPENDENT REVIEW PROCESSES
STATUS UPDATE – 20 NOVEMBER 2019**

ACTIVE COOPERATIVE ENGAGEMENT PROCESS (CEP) PROCEEDINGS¹

Request Date	Requestor(s)	Subject Matter(s)
17-Feb-2014	GCCIX, W.L.L.	.GCC
20-Jan-2015	Asia Green IT System Ltd.	.PERSIANGULF
19-Oct-2018	Asia Green IT System Ltd.	.HALAL .ISLAM
18-Nov-2019	Namecheap, Inc.	.ORG and .INFO Registry Agreements renewals

¹ The Cooperative Engagement Process (CEP) is a process voluntarily invoked by a complainant prior to the filing of an Independent Review Process (IRP) for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. (*See* Bylaws, Art. 4 § 4.3(e).) The requesting party may invoke the CEP by providing written notice to ICANN, noting the invocation of the process, identifying the Board action(s) at issue, identifying the provisions of the ICANN Bylaws or Articles of Incorporation that are alleged to be violated, and designating a single point of contact for the resolution of the issue. Further information regarding the CEP is available at: <https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf>.

**COOPERATIVE ENGAGEMENT AND INDEPENDENT REVIEW PROCESSES
STATUS UPDATE – 20 NOVEMBER 2019**

RECENTLY CLOSED COOPERATIVE ENGAGEMENT PROCESS (CEP) PROCEEDINGS

Request Date(s)	Requestor(s)	Subject Matter	IRP Filing Deadline²
2-Oct-2018	Travel Reservations SRL, Minds + Machines Group Limited, Radix FZC, dot Hotel Inc., Fegistry LLC	.HOTEL	18 November 2019

² The CEP process provides that “[i]f ICANN and the requestor have not agreed to a resolution of the issues upon the conclusion of the cooperative engagement process, or if issues remain for a request for independent review, the requestor’s time to file a request for independent review designated in the Bylaws shall be extended for each day of the cooperative engagement process, but in no event, absent mutual written agreement by the parties, shall the extension be for more than fourteen (14) days.” (<https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf>)

**COOPERATIVE ENGAGEMENT AND INDEPENDENT REVIEW PROCESSES
STATUS UPDATE – 20 NOVEMBER 2019**

ACTIVE INDEPENDENT REVIEW PROCESS (IRP) PROCEEDINGS³

Date ICANN Received Notice of IRP	Date IRP Commenced by ICDR	Requestor	Subject Matter	Status
14-Nov-2018	26-Nov-2018	Afilias Domains No. 3 Limited https://www.icann.org/resources/pages/irp-afili-as-v-icann-2018-11-30-en	.WEB	<p><u>Panel Selection:</u> Full Panel confirmed on 20 August 2019.</p> <p><u>Materials:</u> Written submissions, Declaration(s), and Scheduling Order(s) are posted here.</p> <p><u>Hearing(s):</u> Preliminary hearing took place on 2 October 2019.</p>

³ IRP is intended to hear and resolve Disputes for the following purposes: (i) ensure that ICANN does not exceed the scope of its Mission and otherwise complies with its Articles of Incorporation and Bylaws; (ii) empower the global Internet community and Claimants to enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable and accessible expert review of Covered Actions (as defined in § 4.3(b)(i)); (iii) ensure that ICANN is accountable to the global Internet community and Claimants; (iv) address claims that ICANN has failed to enforce its rights under the IANA Naming Function Contract (as defined in Section 16.3(a)); (v) provide a mechanism by which direct customers of the IANA naming functions may seek resolution of PTI (as defined in Section 16.1) service complaints that are not resolved through mediation; (vi) reduce Disputes by creating precedent to guide and inform the Board, Officers (as defined in Section 15.1), Staff members, Supporting Organizations, Advisory Committees, and the global Internet community in connection with policy development and implementation; (vii) secure the accessible, transparent, efficient, consistent, coherent, and just resolution of Disputes; (viii) lead to binding, final resolutions consistent with international arbitration norms that are enforceable in any court with proper jurisdiction; and (ix) provide a mechanism for the resolution of Disputes, as an alternative to legal action in the civil courts of the United States or other jurisdictions. (*See* Bylaws, Art. 4, § 4.3)

**COOPERATIVE ENGAGEMENT AND INDEPENDENT REVIEW PROCESSES
STATUS UPDATE – 20 NOVEMBER 2019**

RECENTLY CLOSED INDEPENDENT REVIEW PROCESS (IRP) PROCEEDINGS

Date ICANN Received Notice of IRP	Date IRP Commenced by ICDR	Requestor	Subject Matter	Date IRP Closed	Date of Board Consideration of IRP Panel's Final Declaration⁴
5-Dec-2014	8-Dec-2014	Gulf Cooperation Council https://www.icann.org/resources/pages/gcc-v-icann-2014-12-06-en	.PERSIANGULF	24-Oct-2016	16-Mar-2017 (See here) 23-Sep-2017 (See here) 15-Mar-2018 (See here) 3-Oct-2018 (See here)
1-Mar-2016	2-Mar-2016	Amazon EU S.à.r.l. https://www.icann.org/resources/pages/irp-amazon-v-icann-2016-03-04-en	.AMAZON	11-Jul-2017	23-Sep-2017 (See here) 29-Oct-2017 (See here)
15-Dec-2016	16-Dec-2016	Asia Green IT Systems Bilgisayar San. ve Tic. Ltd. Sti. https://www.icann.org/resources/pages/irp-agit-v-icann-2015-12-23-en	.ISLAM .HALAL	30-Nov-2017	15-Mar-2018 (See here) 3-Oct-2018 (See here)

⁴ IRP proceedings initiated before 1 October 2016 are subject to the Bylaws in effect before 1 October 2016: Pursuant to Article IV, Section 3.21 of the ICANN Bylaws, “[w]here feasible, the Board shall consider the IRP Panel declaration at the Board’s next meeting. The declarations of the IRP Panel, and the Board’s subsequent action on those declarations, are final and have precedential value.” (<https://www.icann.org/resources/pages/governance/bylaws-en#IV>)

IRP proceedings initiated on or after 1 October 2016 are subject to the Bylaws as of 1 October 2016: IRP proceedings initiated Pursuant to Article 4, § 4.3(x)(iii)(A) of the ICANN Bylaws, “[w]here feasible, the Board shall consider its response to IRP Panel decisions at the Board’s next meeting, and shall affirm or reject compliance with the decision of the public record based on an expressed rationale. The decision by the IRP Panel, or en banc Standing Panel, shall be final regardless of such Board action, to the fullest extent allowed by law. (<https://www.icann.org/resources/pages/governance/bylaws-en/#article4>)

Annex 6

Response to Documentary Information Disclosure Policy Request

To: Mike Rodenbaugh on behalf of GCCIX, WLL

Date: 8 June 2016

Re: Request No. 20160509-1

Thank you for your Request for Information dated 4 May 2016, which was submitted on 9 May 2016 (Request) through the Internet Corporation for Assigned Names and Numbers' (ICANN's) Documentary Information Disclosure Policy (DIDP), on behalf of GCCIX, WLL (GCCIX), and which was received by ICANN on 9 May 2016. We note that because your Request was not submitted through DIDP@icann.org as a standalone DIDP request, the Request will not be published separately. Rather, your Request is set forth verbatim below and this Response will be published as a Request and Response to DIDP Request No. 20160509-1.

Items Requested

Your Request seeks the following:

1. All documents relating or referring to the secret Beijing meetings between GAC and ICANN Board and Staff relating to the .GCC application.
2. All documents relating or referring to any discussion of, and/or showing any reason for, the GAC Advice in the Beijing Communiqué that the .GCC application be rejected.
3. All documents relating or referring to any discussion of, and/or showing any reason for, the Board's acceptance of the GAC Advice in the Beijing Communiqué that the .GCC application be rejected.
4. All documents relating or referring to any discussion of, and/or showing any reason for, the Board's decision to terminate the pending LRO which was fully briefed by the CCASG [Cooperation Council for Arab States of the Gulf] and Applicant.
5. All documents relating or referring to the GAC and/or Board's consideration of the briefing and/or evidence submitted by the CCASG and/or Applicant in the LRO brought by CCASG against Applicant.
6. All documents relating or referring to the Board's consideration of IGO name protection at the top level, including without limitation the purported CCASG acronym "GCC".
7. All documents relating or referring to the "small group" referenced in ICANN Staff's March 16, 2016 PDP Update, including without limitation documents identifying the members of the small group and all documents relating or referring to the mandate and/or meetings or deliberations of the small group.

8. All documents relating or referring to the Board's efforts to reconcile the bare GAC Advice to reject the .GCC application, and the GNSO's unanimous, thoroughly developed and reasoned advice that purported IGO acronyms should not be protected at the top level.

Response

A principal element of ICANN's approach to transparency and information disclosure is the commitment to make publicly available a comprehensive set of materials concerning ICANN's operational activities. In addition to ICANN's practice of making many documents public as a matter of course, the DIDP is "intended to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, are made available to the public unless there is a compelling reason for confidentiality." (See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) A threshold consideration in responding to a DIDP request is whether the documents requested are in ICANN's possession, custody or control. Under the DIDP Policy, where the responsive document does not exist, ICANN shall not be required to create or compile summaries of any documented information. (See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.)

Item Nos. 1 through 3: Item No. 1 requests documents relating to "the secret Beijing meetings between GAC and ICANN Board and Staff relating to the .GCC application." It is unclear what "secret meetings" the Requester is referencing in Item No. 1. ICANN is not aware of any "secret meetings" between the GAC and the ICANN Board or staff relating to the .GCC application. The ICANN Board and the GAC conducted an open and public meeting at ICANN56 in Beijing. The transcript of that meeting as well as the entire schedule for ICANN56 is available on the ICANN meetings site, available here <http://archive.icann.org/en/meetings/beijing2013/>.

Item No. 2 requests documents relating to the "reason for" the GAC advice in the Beijing Communiqué. The GAC issues its advice through communiqués such as the Beijing Communiqué it issued on 11 April 2013, which states: "The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on [t]he application for .gcc (application number: 1-1936-2101)." (Beijing Communiqué, available at <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>.) Previously, the GAC had issued an Early Warning on 20 November 2012, stating that the governments of Bahrain, Oman, Qatar, and UAE, and the Gulf Cooperation Council expressed their "serious concerns toward '.GCC' new gTLD application made by GCCIX WLL specifically in two areas": (a) that the applied-for gTLD exactly matches a name of an Intergovernmental Organization; and (b) there is a lack of community involvement and support for the .GCC application. The Early Warning further stated that: "the governments of Bahrain, Oman, Qatar and the UAE and the Gulf Cooperation Council would like to **raise its disapproval and non-endorsement** to this application and request the ICANN and the new gTLD program evaluators to not approve this application." (See <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings> (emphasis in original).)

See the GAC Early Warning notice for the rationale for the stated concerns at <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings>.

Item No. 3 requests documents relating to the Board's acceptance of the GAC advice. Upon receipt of the Beijing Communiqué, ICANN published it, thereby triggering the response period (<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>). The Requester responded to the GAC advice. (See Summary and Analysis of Applicant Responses to GAC Advice available at <https://www.icann.org/en/groups/board/documents/briefing-materials-3-04jun13-en.pdf>.) On 4 June 2013, the NGPC adopted the NGPC Scorecard, which contained the NGPC's response to the GAC advice found in the Beijing Communiqué. With respect to the .GCC string, the NGPC Scorecard stated in pertinent part:

The NGPC accepts [the GAC] advice. The [Guidebook] provides that if “GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.”

The NGPC's 4 June 2013 resolution (Resolution 2013.06.04.NG01) contains a lengthy rationale stating, among other things, why (and under what authority) the NGPC was addressing the GAC advice, which stakeholders were consulted, what concern or issues were raised by the community, what significant materials the Board reviewed as part of its deliberations, what factors the Board found to be significant, and whether there were positive or negative community impacts. (See Resolution 2013.06.04.NG01 at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-04-en>.)

The NGPC meeting minutes for the 4 June 2013 meeting are available at <https://www.icann.org/resources/board-material/minutes-2013-05-18-en>; and the NGPC briefing materials for the 4 June 2013 meeting are available at <https://www.icann.org/resources/pages/2013-51-2012-02-25-en>.

To the extent there are other documents that may be responsive to Item Nos. 1 through 3, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.
- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to

compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Confidential business information and/or internal policies and procedures.

Item Nos. 4 through 5 request documents relating to the termination of the Legal Rights Objection (LRO) that the Cooperation Council for the Arab States of the Gulf (CCASG) filed against the .GCC application, and “the GAC and/or Board’s consideration” of the briefing and/or evidence supporting or opposing the LRO. As was explained in the BGC Recommendation on Reconsideration Request 13-17 and the NGPC’s adoption of the BGC Recommendation (see <https://www.icann.org/resources/pages/13-17-2014-02-13-en>), the CCASG filed an LRO against the .GCC application on 13 March 2013 with the WIPO Arbitration and Mediation Center (WIPO), the third-party provider selected to handle legal rights objections under ICANN’s New gTLD Program. The Requester responded on 15 May 2013. While the LRO was pending, the GAC issued the Beijing Communiqué (explained in detail above), with consensus GAC advice that ICANN not proceed with the application for the .GCC string. As Christine Willett (then-Vice President, gTLD Operations) explained in her letter to the Requester on 5 September 2013 (which the Requester attached as an exhibit to its Reconsideration Request 13-17 regarding this same topic, available at <https://www.icann.org/resources/pages/13-17-2014-02-13-en>):

Module 3 of the AGB provides the objection procedures for applications, and provides for two types of mechanisms that may affect an application’s ability to continue to move forward: (1) GAC advice, and (2) the dispute resolution procedure. Applicants are on notice that the GAC may provide advice directly to the ICANN Board on any application as provided in the AGB. The GAC’s objection to your application is separate and distinct from the Legal Rights Objection filed by CCASG. While I acknowledge your concern about the Legal Rights Objection to your application, the NGPC had an obligation to consider the GAC’s advice and decided not to act inconsistently with the advice. Please be advised that the WIPO proceeding for the Legal Rights Objection is not moving forward based on the NGPC’s action on 4 June 2013.

The termination of the CCASG’s LRO against the .GCC application is noted on the WIPO webpage, under the heading Legal Rights Objection Cases, available here <http://www.wipo.int/amc/en/domains/lro/>; and is noted on the new gTLD microsite, available here <https://newgtlds.icann.org/en/program-status/odr/determination>. Any correspondence between WIPO and the parties to the LRO that may relate to the termination of the LRO is: (a) confidential as between WIPO and the relevant parties; and (b) already available to the Requester since the Requester was a party to the LRO.

With respect to Item No. 5, to the extent that the Requester included any documents relevant to the LRO as exhibits to its Reconsideration Request 13-17, the BGC and the NGPC reviewed such documents in the course of making their recommendation and determination on Reconsideration Request 13-17. As noted above, Reconsideration Request 13-17 and its exhibits, a letter from WIPO to the BGC, the BGC's Recommendation on Request 13-17, and the NGPC's adoption of the BGC's Recommendation are available at <https://www.icann.org/resources/pages/13-17-2014-02-13-en>. ICANN makes no representations regarding what the GAC did or did not review with respect to the briefing and/or evidence supporting or opposing the LRO.

To the extent there are other documents that may be responsive to Item Nos. 4 through 5, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Confidential business information and/or internal policies and procedures.

Item Nos. 6 through 8: Item Nos. 6-7 request documents relating to “the Board’s consideration of IGO name protection at the top level,” and the members and deliberations of the IGO “small group.” Item No. 8, as written, requests documents relating to the Board’s efforts to reconcile “the bare GAC Advice to reject the .GCC application,” and the GNSO policy recommendations regarding IGO protections. This request seems to conflate two separate issuances of GAC advice—one being the GAC consensus advice (provided in the Beijing Communiqué) that the .GCC application should not proceed; and the other being GAC advice relating to IGO protections in general at the top and second level. As such, the response provided herein to Item No. 8 relates to the Board’s efforts to reconcile the inconsistencies between the GAC advice and the GNSO policy recommendations regarding IGO protections.

Issues related to whether certain international organizations such as International Governmental Organizations (IGOs), including the Red Cross/Red Crescent Movement (RCRC) and the International Olympic Committee (IOC), should receive special protection for their names at the top level and second level in new gTLDs have been raised throughout the development of the New gTLD Program. In order to explore the issue in detail, the ICANN Board requested policy advice from the GNSO Council. The

scope of organizations was expanded to also generally consider all International Non-Governmental Organizations (INGOs). Advice or other commentary issued by the GAC relating to IGO and INGO names is available on the GAC's website at <https://gacweb.icann.org/display/GACADV/IGO+and+INGO+Names>. The Board's consideration of GAC advice relating to IGO protections is available through the Board and NGPC resolutions relating to each such instance of GAC advice; relevant meeting minutes, and applicable Board briefing materials for these meetings are publicly available at <https://www.icann.org/resources/pages/2016-board-meetings>. In addition, the NGPC posted a GAC Advice Scorecard at <https://www.icann.org/en/system/files/files/gac-advice-scorecard-07oct15-en.pdf>, which is a compilation of all GAC advice issued between April 2013 and June 2015 along with related actions taken by the NGPC.

Contemporaneously, the GNSO initiated a Policy Development Process (PDP), in October 2012, to evaluate whether there is a need for special protections at the top level and second level in all gTLDs for the names and acronyms of IGOs and INGOs; and, if so, to develop policy recommendations for such protections (PDP Working Group). The PDP Working Group issued its Final Report in November 2013, following which the GNSO Council adopted all the consensus recommendations from its PDP Working Group regarding protections at the top and second level in all gTLDs for the names and acronyms of certain IGOs and INGOs. The development of the PDP Working Group, the Final Report, the GNSO's resolution adopting the recommendations, and additional relevant information are publicly available on the GNSO webpage at <http://gnso.icann.org/en/group-activities/active/igo-ingo>.

On 30 April 2014, the Board adopted the GNSO's recommendations that are not inconsistent with GAC advice received on the topic and requested additional time to consider the remaining recommendations (which include those relating to IGO acronym protections). The Board also resolved to facilitate dialogue between the GAC, GNSO, and other affected parties to resolve the remaining differences. The Board's 30 April 2014 resolution, meeting minutes, and briefing materials are available online at <https://www.icann.org/resources/pages/2014-2015-01-28-en>. In June 2014, the NGPC requested that the GNSO Council consider amending its remaining policy recommendations with respect to the nature and duration of protection for IGO acronyms, the full names of the entities making up the international Red Cross movement, and the names of 189 national Red Cross societies. (See <http://gnso.icann.org/en/correspondence/chalaby-to-robinson-16jun14-en.pdf>.) The GNSO Council responded to the NGPC's request in October 2014 seeking further clarification (see <http://gnso.icann.org/en/correspondence/robinson-to-chalaby-disspain-07oct14-en.pdf>), and in January 2015, the NGPC replied and indicated that discussions remain ongoing (see <http://gnso.icann.org/en/correspondence/chalaby-to-robinson-15jan15-en.pdf>).

In the meantime, at the ICANN meeting in Los Angeles in October 2014, the NGPC resolved to provide temporary protections for the names of the entities of the Red Cross and the 189 national societies on an interim basis "while the GAC, GNSO, Board, and ICANN community continue to actively work on resolving the differences in the

advice from the GAC and the GNSO policy recommendations on the scope of protections for the RCRC names.” (See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.d>). In addition, the IGO “small group” was formed as a result of discussions between the NGPC and the GAC at the Los Angeles meeting, where representatives of various IGOs were observers. The informal “small group” serves as a forum for discussions regarding the protection of IGO identifiers in an effort to resolve the conflicts between the GNSO policy recommendations and the GAC advice, and consists of volunteer representatives of various IGOs, representatives of the ICANN Board, and representatives of the GAC. Once the GNSO Council receives further information from the Board and delivery of the IGO small group final proposal, the GNSO Council will begin to consider whether or not to proceed with possible amendments to its adopted policy recommendations, pursuant to the GNSO Operating Procedures. Information regarding the progress of the IGO small group and the Board’s efforts to reconcile the inconsistencies between the GAC advice and the GNSO policy recommendations regarding IGO protections is publicly available at the following links:

- GAC Buenos Aires Communiqué (June 2015):
<https://gacweb.icann.org/download/attachments/39059707/GAC%20Buenos%20Aires%2053%20Communique.pdf?version=1&modificationDate=1436283677000&api=v2>
- GAC Dublin Communiqué (October 2015):
<https://gacweb.icann.org/download/attachments/40632516/GAC%20Dublin%2054%20Communique.pdf?version=1&modificationDate=1445598555000&api=v2>
- April 2016 GNSO PDP Update – Protection of Certain International Organization Names in all gTLDs:
<https://gacweb.icann.org/display/gacweb/Early+Engagement+Policy+Document+-+IGO+INGO>
- Prior GNSO PDP Updates - Protection of Certain International Organization Names in all gTLDs, available by month at:
<https://gacweb.icann.org/display/gacweb/Archives+-+Early+GAC+engagement+in+GNSO+and+ccNSO+PDPs>
- Correspondence regarding the IGO small group and the Board’s efforts to reconcile the GAC advice and the GNSO policy recommendations:
 - 20 March 2014 email from the NGPC to the GNSO enclosing a proposal for dealing with GAC advice on IGO acronyms:
<http://gns0.icann.org/mailling-lists/archives/council/msg15906.html>
 - 20 March 2014 letter from the NGPC to the GNSO:
<http://gns0.icann.org/en/correspondence/chalaby-to-robinson-20mar14-en.pdf>
 - 6 March 2014 letter from the GAC to the NGPC:
https://gacweb.icann.org/download/attachments/27492514/Letter%20from%20Heather%20Dryden%20to%20Cherine%20Chalaby%20re%20IGO%20Protection_20140306%20%281%29.pdf?version=1&modificationDate=1441637008000&api=v2

- 16 June 2014 letter from the NGPC to the GNSO:
<http://gnso.icann.org/en/correspondence/chalaby-to-robinson-16jun14-en.pdf>
- 25 June 2014 letter from the GNSO to the GAC:
<http://gnso.icann.org/en/correspondence/robinson-to-dryden-25jun14-en.pdf>
- 24 July 2014 letter from the NGPC to the GNSO:
<http://gnso.icann.org/en/correspondence/chalaby-to-robinson-24jul14-en.pdf>
- 7 October 2014 letter from the GNSO to the NGPC:
<http://gnso.icann.org/en/correspondence/robinson-to-chalaby-disspain-07oct14-en.pdf>
- 12 December 2014 email from GNSO-GAC Liaison to the IGO-INGO Curative Rights Working Group regarding questions to be addressed by the IGO small group: <http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2014-December/000223.html>
- 15 January 2015 letter from the NGPC to the GNSO:
<http://gnso.icann.org/en/correspondence/chalaby-to-robinson-15jan15-en.pdf>
- 16 January 2015 IGO small group response to the GNSO PDP Working Group questions:
<https://gacweb.icann.org/download/attachments/27492514/IGO%20small%20group%20response%20-%202019%20Jan%20%285%29.pdf?version=1&modificationDate=1425940694000&api=v2>
- 19 January 2015 email enclosing the IGO small group's response to the IGO-INGO Curative Rights Working Group's list of questions:
<http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2015-January/000245.html>
- 22 January 2015 letter from the NGPC to the GAC Chair:
<https://gacweb.icann.org/download/attachments/27492514/chalaby-to-schneider-22jan15-en.pdf?version=1&modificationDate=1425597236000&api=v2>
- 3 February 2015 letter from the IGO group to the GAC Chair:
<https://gacweb.icann.org/download/attachments/27492514/Letter%20to%20Thomas%20Schneider-OECD.pdf?version=1&modificationDate=1425581746000&api=v2>
- 20 July 2015 letter from OECD Secretary General to then-ICANN CEO Fadi Chehade:
<https://www.icann.org/en/system/files/correspondence/gurria-to-chehade-20jul15-en.pdf>

To the extent there are other documents that may be responsive to Item Nos. 6 through 8, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will

be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Confidential business information and/or internal policies and procedures.

Notwithstanding the applicable Defined Conditions of Nondisclosure identified in this Response, ICANN also evaluated the documents subject to these conditions to determine if the public interest in disclosing them outweighs the harm that may be caused by such disclosure. ICANN has determined that there are no particular circumstances for which the public interest in disclosing the information outweighs the harm that may be caused by the requested disclosure.

About DIDP

ICANN's DIDP is limited to requests for documentary information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, please see <http://www.icann.org/en/about/transparency/didp>. ICANN makes every effort to be as responsive as possible to the entirety of your Request. As part of its accountability and transparency commitments, ICANN continually strives to provide as much information to the community as is reasonable. We encourage you to sign up for an account at MyICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN's website that are of interest because, as we continue to enhance our reporting mechanisms, reports will be posted for public access.

We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.

Annex 7

**IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS
BEFORE THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

AFILIAS DOMAINS NO. 3 LIMITED,
Claimant

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,
Respondent

ICDR Case No. 01-18-0004-2702

**LIST OF EXHIBITS TO
AFILIAS DOMAINS NO. 3 LIMITED'S SUR-REPLY TO
VERISIGN, INC.'S AND NU DOTCO LLC'S REQUESTS TO PARTICIPATE AS
AMICUS CURIAE IN INDEPENDENT REVIEW PROCESS**

12 February 2019

LIST OF EXHIBITS
(Proceeding before Procedures Officer)

Exhibit No.	Description
302	ICANN, Independent Review Process – Implementation Oversight Team (IRP-IOT), Plenary Meetings, 2018 Calls
303	June 2018 Archives by Date (IRP-IOT Messages)
304	July 2018 Archives by Date (IRP-IOT Messages)
305	August 2018 Archives by Date (IRP-IOT Messages)
306	September 2018 Archives by Date (IRP-IOT Messages)
307	ICANN DIDP Response to Request No. 20181221-1 (20 Jan. 2019)
308	December 2018 Archives by Date (IRP-IOT Messages)
309	<i>Tri-State Generation & Transmission Ass’n, Inc. v. New Mexico Public Regulation Com’n</i> , 787 F.3d 1068 (10th Cir. 2015)
310	IRP IOT Meeting, March 23, 2017 (Joinder Issues)
311	IRP-IOT Meeting #30 (14 Nov. 2017), Transcript
312	Email from D. McAuley (VeriSign) to Members of the IRP-IOT (1 Dec. 2017)
313	IRP-IOT Meeting #36 (22 Feb. 2018), Transcript
314	Adopted Board Resolutions Regular Meeting of the ICANN Board (25 Oct. 2018)
315	Email from Independent Review (ICANN) to A. Ali and R. Wong (Counsel for Afilias) (14 Nov. 2018)
316	Letter from A. Ali (Counsel for Afilias) to ICANN (20 Nov. 2018)

EXHIBIT 302

Dashboard / Independent Review Process - Implementation Oversight Team (IRP-IOT) Home / Plenary Meetings

2018 Calls

Created by Brenda Brewer, last modified on Nov 29, 2018

DATE	MEETING	WIKI PAGE
11 Jan 2018	Meeting #34	https://community.icann.org/x/XAhyB
08 Feb 2018	Meeting #35	https://community.icann.org/x/KwO8B
22 Feb 2018	Meeting #36	https://community.icann.org/x/LQO8B
03 May 2018	Meeting #37	https://community.icann.org/x/CACvB
10 May 2018	Meeting #38	https://community.icann.org/x/GA8_BQ
24 May 2018	Meeting #39	https://community.icann.org/x/LRs_BQ
31 May 2018	Meeting #40	https://community.icann.org/x/Jxs_BQ
07 Jun 2018	Meeting #41	https://community.icann.org/x/dSU_BQ
09 Oct 2018	Meeting #42	https://community.icann.org/x/awtpBQ
11 Oct 2018	Meeting #43	https://community.icann.org/x/swirBQ
29 Nov 2018	Meeting #44	https://community.icann.org/x/qQDVBQ
13 Dec 2018	Meeting #45	https://community.icann.org/x/JwbuBQ

EXHIBIT 303

June 2018 Archives by date

- Messages sorted by: [\[thread \]](#) [\[subject \]](#) [\[author \]](#)
- [More info on this list...](#)

Starting: *Fri Jun 1 00:36:46 UTC 2018*

Ending: *Wed Jun 20 13:28:26 UTC 2018*

Messages: 15

- [\[IOT\] Recordings, DAIRs, Raw Caption Notes for IRP-IOT Meeting #40 - 31 May 2018](#) *MSSI Secretariat*
- [\[IOT\] Interim Supplementary Rules of Procedure](#) *Malcolm Hutty*
- [\[IOT\] IRP IOT - remaining tasks](#) *McAuley, David*
- [\[IOT\] IRP IOT call Thursday, June 7, 19:00 UTC - Agenda](#) *McAuley, David*
- [\[IOT\] IOT - Transition proposal for repose issue](#) *Samantha Eisner*
- [\[IOT\] Types of Hearings](#) *McAuley, David*
- [\[IOT\] IOT - Transition proposal for repose issue](#) *Malcolm Hutty*
- [\[IOT\] \[Ext\] Re: IOT - Transition proposal for repose issue](#) *Samantha Eisner*
- [\[IOT\] Recordings, DAIRs, Raw Caption Notes for IRP-IOT Meeting #41 - 7 June 2018](#) *MSSI Secretariat*
- [\[IOT\] IOT call Thursday June 14 - cancelation](#) *McAuley, David*
- [\[IOT\] IOT call Thursday June 14 - cancelation](#) *Kavouss Arasteh*
- [\[IOT\] IOT call Thursday June 14 - cancelation](#) *McAuley, David*
- [\[IOT\] IOT call Thursday June 14 - cancelation](#) *Kavouss Arasteh*
- [\[IOT\] IRP-IOT - Edits for clarity to public consultation text](#) *Bernard Turcotte*
- [\[IOT\] IRP-IOT - Edits for clarity to public consultation text](#) *Bernard Turcotte*

Last message date: *Wed Jun 20 13:28:26 UTC 2018*

Archived on: *Wed Jun 20 13:29:00 UTC 2018*

- Messages sorted by: [\[thread \]](#) [\[subject \]](#) [\[author \]](#)
- [More info on this list...](#)

This archive was generated by Pipermail 0.09 (Mailman edition).

EXHIBIT 304

July 2018 Archives by date

- Messages sorted by: [\[thread \]](#) [\[subject \]](#) [\[author \]](#)
- [More info on this list...](#)

Starting: *Wed Jul 25 12:49:54 UTC 2018*

Ending: *Thu Jul 26 16:33:45 UTC 2018*

Messages: 2

- [\[IOT\] plans for next call](#) *McAuley, David*
- [\[IOT\] FW: plans for next call](#) *McAuley, David*

Last message date: *Thu Jul 26 16:33:45 UTC 2018*

Archived on: *Thu Jul 26 16:34:17 UTC 2018*

- Messages sorted by: [\[thread \]](#) [\[subject \]](#) [\[author \]](#)
- [More info on this list...](#)

This archive was generated by Pipermail 0.09 (Mailman edition).

EXHIBIT 305

August 2018 Archives by date

- Messages sorted by: [\[thread \]](#) [\[subject \]](#) [\[author \]](#)
- [More info on this list...](#)

Starting: Tue Aug 14 08:48:06 UTC 2018

Ending: Wed Aug 29 19:16:11 UTC 2018

Messages: 3

- [\[IOT\] Reviewing the consultation responses](#) *Malcolm Hutty*
- [\[IOT\] IOT - Next call scheduled for 1900UTC 6 September - Confirmation of attendance requested.](#) *Bernard Turcotte*
- [\[IOT\] FW: IOT - Next call scheduled for 1900UTC 6 September - Confirmation of attendance requested.](#) *McAuley, David*

Last message date: Wed Aug 29 19:16:11 UTC 2018

Archived on: Wed Aug 29 19:16:33 UTC 2018

- Messages sorted by: [\[thread \]](#) [\[subject \]](#) [\[author \]](#)
- [More info on this list...](#)

This archive was generated by Pipermail 0.09 (Mailman edition).

EXHIBIT 306

September 2018 Archives by date

- Messages sorted by: [\[thread \]](#) [\[subject \]](#) [\[author \]](#)
- [More info on this list...](#)

Starting: *Tue Sep 4 16:32:14 UTC 2018*

Ending: *Tue Sep 25 15:33:15 UTC 2018*

Messages: 10

- [\[IOT\] IOT - 6 September meeting 1900 UTC - Cancelled](#) *Bernard Turcotte*
- [\[IOT\] IOT - 6 September meeting 1900 UTC - Cancelled](#) *McAuley, David*
- [\[IOT\] IRP IOT - taking stock and moving forward](#) *McAuley, David*
- [\[IOT\] IRP IOT - taking stock and moving forward](#) *Burr, Becky*
- [\[IOT\] IRP IOT - taking stock and moving forward](#) *McAuley, David*
- [\[IOT\] IRP IOT - taking stock and moving forward](#) *Bernard Turcotte*
- [\[IOT\] IRP IOT - taking stock and moving forward](#) *avri doria*
- [\[IOT\] IRP IOT - taking stock and moving forward](#) *McAuley, David*
- [\[IOT\] IRP IOT - taking stock and moving forward](#) *avri doria*
- [\[IOT\] IRP IOT - taking stock and moving forward](#) *McAuley, David*

Last message date: *Tue Sep 25 15:33:15 UTC 2018*

Archived on: *Tue Sep 25 15:33:19 UTC 2018*

- Messages sorted by: [\[thread \]](#) [\[subject \]](#) [\[author \]](#)
- [More info on this list...](#)

This archive was generated by Pipermail 0.09 (Mailman edition).

EXHIBIT 307

To: Arif Ali on behalf of Afilias Domains No. 3 Limited

Date: 20 January 2019

Re: Request No. 20181221-1

This is in response to your request for documentary information (Request), which was submitted on 21 December 2018 through the Internet Corporation for Assigned Names and Numbers' (ICANN org) Documentary Information Disclosure Policy (DIDP) on behalf of Afilias Domains No. 3 Limited (Afilias). For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

Your Request seeks disclosure of the following information related to the .WEB contention set and Interim Supplementary Procedures (Interim Supplementary Procedures) for ICANN's Independent Review Process (IRP):

1. All communications between ICANN and VeriSign, including between and among legal counsels to ICANN and VeriSign, regarding or that reference Afilias' complaints about the .WEB contention set;
2. All communications between ICANN and VeriSign, including between and among legal counsels to ICANN and VeriSign, regarding or that reference the Cooperative Engagement Process ("CEP") between ICANN and Afilias regarding the .WEB generic top-level domain ("gTLD");
3. All communications between ICANN and VeriSign, including between and among legal counsels to ICANN and VeriSign, regarding or that reference the *Afilias Domains No. 3 Limited v. ICANN* Independent Review Process ("IRP");
4. All communications between ICANN representatives on the Independent Review Process-Implementation Oversight Team ("IRP-IOT"), including Samantha Eisner, and any other employee of ICANN regarding any [of] the drafting, text, effect, or interpretation of the final or any prior draft of what is now Section 7 of the Interim Procedures;
5. All communications between Samantha Eisner and David McAuley concerning the development, drafting, text, effect, or interpretation of the Interim Procedures, and/or, the mandate and/or work of the IRP-IOT, including all communications concerning or that reference the modifications to Section 7 that were circulated to the IRP-IOT on 19 October 2018;
6. All communications circulated among members of the IRP-IOT between 19 October 2018 and 21 October 2018 on any subject related to or that references the Interim Procedures;

7. Documents sufficient to show the sum and substance of representations that were made to the ICANN Board concerning the drafting of the Interim Procedures and, in particular, the development of the text of Section 7;
8. Documents sufficient to show the sum and substance of representations that were made to the ICANN Board concerning the changes made to Section 7 of the Interim Procedures as compared with the version of Section 7 that had been posted for public comment on 28 November 2016; and
9. Documents sufficient to show the sum and substance of representations that were made to the ICANN Board concerning the need to seek a further public consultation regarding Section 7 of the Interim Procedures.

Response

I. Background Information

A. The .WEB/.WEBS Contention Set

In 2012, ICANN opened the application window for the New Generic Top-Level Domain (gTLD) Program (Program) and created the new gTLD microsite (<https://newgtlds.icann.org/en/>), which provides detailed information about the Program. From the Program Status webpage of the new gTLD microsite (<https://newgtlds.icann.org/en/program-status>), people can access the public portions of each new gTLD application, including all of the .WEB applications, by clicking on “Current Application Status” and accessing the New gTLD Current Application Status webpage at <https://gtldresult.icann.org/applicationresult/applicationstatus/viewstatus>.

ICANN received seven applications for .WEB, which were placed into a contention set (see [Applicant Guidebook](#) (Guidebook), §1.1.2.10 (String Contention)). Module 4 of the Guidebook (String Contention Procedures) describes situations in which contention for applied-for new gTLDs occurs, and the methods available to applicants for resolving contention absent private resolution: “It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.” (Guidebook, § 4.3 (Auction: Mechanisms of Last Resort).)

Should private resolution not occur, the contention set will proceed to an ICANN auction of last resort governed by the Auction Rules that all applicants agreed to by applying. (Guidebook, § 1.1.2.10 (String Contention)). In furtherance of ICANN’s commitment to transparency, ICANN org established the New gTLD Program Auctions webpage, which provides extensive detailed information about the auction process. (See <https://newgtlds.icann.org/en/applicants/auctions>.)

Following the procedures set forth in the Guidebook, ICANN org scheduled an auction of last resort for 27 July 2016 to resolve the .WEB/.WEBS contention set (Auction). (See <https://newgtlds.icann.org/en/applicants/auctions/schedule-13mar18-en.pdf>.)

On or about 22 June 2016, Ruby Glen LLC (Ruby Glen) asserted that changes had occurred in Nu Dot Co LLC's (NDC's) application for .WEB, in particular to NDC's management and ownership, and asserted that the Auction should be postponed pending further investigation. (See <https://www.icann.org/en/system/files/files/litigationruby-glen-icann-memorandum-point-authorities-support-motion-dismiss-first-amendedcomplaint-26oct16-en.pdf>.)

ICANN org investigated Ruby Glen's¹ assertions regarding NDC's application. After completing its investigation, ICANN org sent a letter to the members of the contention set stating, among other things, that "in regards to inquiries we have received concerning potential changes of control of [NDC]," "we have investigated the matter, and to date we have found no basis to initiate the application change request process or postpone the auction." (See <https://www.icann.org/en/system/files/correspondence/willett-to-web-webs-members13jul16-en.pdf>.)

On 18 June 2018, Afilias initiated a Cooperative Engagement Process (CEP) regarding .WEB. (See <https://www.icann.org/en/system/files/files/irp-cep-status-11jan19-en.pdf>.) CEP is a process that is part of the IRP that allows parties to participate in non-binding cooperative engagement for the purpose of attempting to resolve and/or narrow the issues in dispute prior to filing an IRP. (See Bylaws, Art. 4, § 4.3(e), <https://www.icann.org/resources/pages/governance/bylaws-en/#article4>.) CEP is a confidential process between ICANN and the requesting party. (See <https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf>.) Following the closure of the CEP, Afilias initiated an IRP against ICANN regarding .WEB (the Afilias IRP). (See <https://www.icann.org/resources/pages/irp-afili-as-v-icann-2018-11-30-en>.)

B. IRP Interim Supplementary Procedures

The IRP is an accountability mechanism set out in the ICANN Bylaws that allows for independent third-party review of actions (or inactions) of the ICANN Board or staff that a party or entity claims are in violation of the Bylaws or Articles of Incorporation and that materially and adversely affected them. (See [ICANN Bylaws, Art. 4, Section 4.3](#).) The International Centre for Dispute Resolution (ICDR) currently administers

¹ Ruby Glen also invoked ICANN's accountability mechanisms by submitting a reconsideration request. (See <https://www.icann.org/en/system/files/files/reconsideration-16-9-ruby-glen-radix-requestredacted-17jul16-en.pdf>.) When the request was denied, Ruby Glen sued ICANN org. (See <https://www.icann.org/en/system/files/files/reconsideration-16-9-ruby-glen-radix-bgc-determination-21jul16-en.pdf> and <https://www.icann.org/en/system/files/files/litigation-ruby-glen-complaint-22jul16-en.pdf>.) When the Court dismissed Ruby Glen's complaint, Ruby Glen appealed. On 15 October 2018, the Ninth Circuit affirmed the dismissal. (See <https://www.icann.org/en/system/files/files/litigation-ruby-glen-judgment-28nov16-en.pdf> and <https://www.icann.org/en/system/files/files/litigation-ruby-glen-notice-appeal-regardingdismissal-20dec16-en.pdf>.)

the ICANN IRPs. ICANN IRPs are governed by the [ICDR's International Arbitration Rules](#) as modified by the IRP Supplementary Procedures. (*Id.*) The IRP was significantly modified through the [Enhancing ICANN Accountability Process](#), and the Bylaws reflecting the new IRP process were updated on 1 October 2016. (See <https://www.icann.org/resources/board-material/resolutions-2018-10-25-en#2.e>.) The IRP Supplementary Procedures in place before the October 2016 revisions to the Bylaws did not meet all the requirements of the updated Bylaws. (*Id.*) Accordingly, an IRP Implementation Oversight Team (IRP-IOT) was formed to, among other tasks, prepare updates to the Supplementary Procedures (Updated Supplementary Procedures) for Board approval. (*Id.*)

In November 2016, a draft of the Updated Supplementary Procedures was published for public comment. (<https://www.icann.org/public-comments/irp-supp-procedures-2016-11-28-en>.) Following the close of the public comment period on 1 February 2017, the IRP-IOT considered amending the draft Updated Supplementary Procedures in light of the comments received.²

In February 2018, because of the time it was taking the IRP-IOT to finalize a full set of recommended Updated Supplementary Procedures, and recognizing that the IRP had been in place for over a year with Supplementary Procedures that did not align with the updated Bylaws, the IRP-IOT started work towards an interim set of updated Supplementary Procedures (Interim Supplementary Procedures).³ This would allow for the adoption of a set of Supplementary Procedures that aligns with the current Bylaws while the IRP-IOT completed its work on a final version of Updated Supplementary Procedures. The IRP-IOT could then take the time that it needed to produce the final version of Updated Supplementary Procedures while still providing ICANN org and IRP claimants with a set of interim procedures that align with the new Bylaws if any IRP was initiated before the final version was completed.

The IRP-IOT began consideration of a set of Interim Supplementary Procedures in May 2018. That version included changes that were anticipated as a result of the IRP-IOT's consideration of public comments. The IRP-IOT gave additional direction to ICANN's attorneys and Sidley Austin, the law firm engaged to assist the IRP-IOT, and additional drafting and refinement took place. Ultimately, the version of the Interim Supplementary Procedures that was sent to the Board for consideration had been the subject of intensive focus by the IRP-IOT in two meetings on 9 and 11 October 2018, convened with the intention of delivering a set to the Board for consideration at ICANN63. There were modifications to four sections of the Interim Supplementary Procedures identified through those meetings, and a set reflecting those changes was proposed to the IRP-IOT on 19 October 2018. With no objection raised in the IRP-IOT, on 22 October 2018

² The IRP-IOT sought a second public consultation on the proposed revisions to Rule 4 from 22 June 2018 to 10 August 2018. Additional details about the second public consultation are available at <https://www.icann.org/public-comments/irp-iot-recs-2018-06-22-en>.

³ The principles followed in drafting the Interim Supplementary Procedures are available at [Interim Supplementary Procedures for Internet Corporation for Assigned Names and Numbers \(ICANN\) Independent Review Process \(IRP\)](#), adopted 25 October 2018, at pg. 3.

the IRP-IOT sent the proposed set of Interim Supplementary Procedures to the Board for consideration. On 25 October 2018, the ICANN Board adopted the IRP Interim Supplementary Procedures. (See <https://www.icann.org/resources/board-material/resolutions-2018-10-25-en#2.e>.) The IRP-IOT's work towards a final set of Updated Supplementary Procedures is still underway.

II. Your Request

The DIDP is a mechanism, developed through community consultation, to ensure that information contained in documents concerning ICANN organization's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality. (See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.)

Consistent with its commitment to operating to the maximum extent feasible in an open and transparent manner, ICANN org has published process guidelines for responding to requests for documents submitted pursuant to the DIDP (DIDP Response Process). (See <https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf>.) In responding to this DIDP, ICANN org followed the DIDP Response Process. ICANN org has identified the relevant custodians who may have responsive documentary information and has begun to conduct in-depth searches and reviews for all documents that may be responsive to the items requested. Given that the Request seeks the disclosure of documents on nine subject matters and covers a broad time period of more than two years, ICANN org wanted to ensure that all relevant custodians are included in this search. However, due to the timing of when this Request was received, which was the last business day before the ICANN 2018 holiday shutdown, ICANN org was not in a position to begin processing this Request until 11 days later. In an effort to meet its obligations to respond to the DIDP Request within 30 calendar days of receipt of the Request, ICANN org devoted all reasonably available resources to search and review available documents to determine their responsiveness, which included consideration of "whether any of the documents identified as responsive to the Request are subject to any of the Defined Conditions for Nondisclosure identified [on ICANN org's website]" and whether the public interest outweighs the potential harm in disclosure for those documents that are subject to applicable DIDP Defined Conditions of Nondisclosure (Nondisclosure Conditions). Due to number of custodians identified, combined with the number of subject matters and the time span the Request covers, along with the loss of processing time, ICANN org is still searching and reviewing relevant documentary information that may be responsive to this request. ICANN org will supplement this Response once it is done with its document review if it identifies additional responsive documents.

Items 1 through 3

Items 1 through 3 seek, in part, the disclosure of communications "between and amongst legal counsels to ICANN and VeriSign." To the extent that this is intended to include communications between ICANN org's outside counsel and VeriSign, such communications are outside the scope of ICANN org's operational activities. In

addition, the request itself runs contrary to the intent of the DIDP process. The DIDP is an example of ICANN's commitment to supporting transparency and accountability by setting forth a procedure through which documents concerning ICANN org's operations that are not already publicly available are made available unless there is a compelling reason for confidentiality; it is not a mechanism to make broad information requests or to obtain litigation-style discovery.

It should be noted that neither the DIDP nor ICANN's Commitments and Core Values supporting transparency and accountability obligates ICANN org to make public every document in its possession. Since it is unclear, in the instant case, what operational importance, if any, such communications between outside legal counsels of ICANN and VeriSign provides, such documents are not appropriate for disclosure.

Item 1 seeks, in part, "[a]ll communications between ICANN and VeriSign... regarding or that reference Afilias' complaints about the .WEB contention set."

Based upon ICANN org's extensive review to date, ICANN org has determined there are two letters responsive to this Request. The first is a letter from Christine Willet to Patrick Kane dated 16 September 2016. This letter has already been published on ICANN's website at <https://www.icann.org/resources/pages/correspondence-2016>. The second is VeriSign's response to this letter. A previous DIDP request for this letter was made on 23 February 2018 (See [DIDP Request and Response 20180223-1](#).) ICANN org indicated in its response that the letter was subject to certain DIDP Nondisclosure Conditions. Upon receiving the current request, ICANN org re-evaluated whether this letter is appropriate for disclosure under the current circumstances including reaching out to VeriSign to see if it still wanted to maintain its confidentiality. VeriSign again has indicated that its response to ICANN's 16 September 2016 request for information should remain confidential. ICANN org has determined that this letter remains subject to the following Nondisclosure Conditions:

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.
- Confidential business information and/or internal policies and procedures.

As previously stated, ICANN org is continuing to conduct its due diligence to ensure a comprehensive search across all custodians has been performed. If there are

additional documents identified as appropriate for disclosure pursuant to the DIDP, ICANN org will disclose such documents and will notify you accordingly. If there are additional documents responsive to this request that are not appropriate for disclosure, ICANN org will provide an updated response with the further information about such documents and the applicable Nondisclosure Conditions.

Item 2 seeks, in part, “[a]ll communications between ICANN and VeriSign... regarding or that reference the Cooperative Engagement Process (“CEP”) between ICANN and Afilias regarding the .WEB generic top-level domain (“gTLD”).”

As discussed above, the CEP is a confidential process between ICANN org and the requesting party. (See <https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf>.) While ICANN identifies the CEPs that are filed (<https://www.icann.org/en/system/files/files/irp-cep-status-20jun18-en.pdf>), ICANN org does not share or disclose conversations between ICANN and the claimant engaged in a CEP. Consistent with that approach, and based on our search to date, we have not identified any documents where ICANN and VeriSign discuss or reference this CEP, therefore, there are no documents responsive to this request. If there are documents identified as appropriate for disclosure pursuant to the DIDP, ICANN org will disclose such documents and will notify you accordingly. If there are additional documents responsive to this request that are not appropriate for disclosure, ICANN org will provide an updated response with the further information about such documents and the applicable DIDP Defined Conditions of Nondisclosure.

Item 3 seeks, in part, “[a]ll communications between ICANN and VeriSign... regarding or that reference the *Afilias Domains No. 3 Limited v. ICANN* Independent Review Process (“IRP”).”

ICANN org makes available all relevant documents submitted in an IRP on the IRP Documents webpage at <https://www.icann.org/resources/pages/accountability/irp-en>. The relevant documents that have been submitted to date for the Afilias IRP have been published at <https://www.icann.org/resources/pages/irp-afilias-v-icann-2018-11-30-en>. Based on its search and review to date, ICANN org has determined that there are no documents in its possession or control that are responsive to this request that have not already been published. If there are additional documents identified as appropriate for disclosure pursuant to the DIDP, ICANN org will disclose such documents and will notify you accordingly. If there are additional documents responsive to this request that are not appropriate for disclosure, ICANN org will provide an updated response with the further information about such documents and the applicable DIDP Defined Conditions of Nondisclosure.

Item 4

Item 4 seeks “[a]ll communications between ICANN representatives on the Independent Review Process-Implementation Oversight Team (“IRP-IOT”), including Samantha Eisner, and any other employee of ICANN regarding any [of] the drafting, text, effect, or

interpretation of the final or any prior draft of what is now Section 7 of the Interim Procedures.”

In responding to this item, ICANN org has reached out to all ICANN representatives that participated on the IRP-IOT and collected available documentary information, consisting of emails that were exchanged between ICANN representatives. Due to the volume of documents identified, combined with the loss of processing time, ICANN org has conducted an extensive review of a portion of the emails collected and has determined that the emails exchanged between ICANN representatives consisting of internal discussion with ICANN’s legal counsel and internal discussions between ICANN representatives about legal counsel’s advice are subject to the following DIDP Defined Conditions of Nondisclosure, and are therefore not appropriate for disclosure:

- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.
- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

Item 5

Item 5 seeks “[a]ll communications between Samantha Eisner and David McAuley concerning the development, drafting, text, effect, or interpretation of the Interim Procedures, and/or, the mandate and/or work of the IRP-IOT, including all communications concerning or that reference the modifications to Section 7 that were circulated to the IRP-IOT on 19 October 2018.”

The IRP-IOT maintains a page on the ICANN community wiki, at <https://community.icann.org/display/IRPIOTI/Independent+Review+Process+-+Implementation+Oversight+Team+%28IRP-IOT%29+Home>. ICANN org makes available a comprehensive set of materials pertaining to the IOT’s work on this page as a matter of course. (See [Independent Review Process – Implementation Oversight Team \(IRP-IOT\) Home](#).) Amongst other things, the home page contains information about members of the IRP-IOT, provides links to email archives detailing discussions that took place within the IRP-IOT, provides transcripts of all IRP-IOT meetings, as well as all documents exchanged within the IRP-IOT. To the extent that there are communications on the IRP-IOT mailing list that are responsive to this request, such documents have already been made public at <http://mm.icann.org/pipermail/iot/>. ICANN org has also conducted a search for communications responsive to this request that were exchanged outside of the iot@icann.org listserv. To date, ICANN org has reviewed the majority of the emails collected in response to this request and has begun publishing responsive emails on the IRP-IOT community wiki page under “Off-List Correspondences,” at <https://community.icann.org/x/TpcWBq>. ICANN org will continue

its review of these emails to determine if additional documents should be publicly disclosed and if so, will post these documents on the IRP-IOT community wiki page on a rolling basis.

Item 6

Item 6 seeks “[a]ll communications circulated among members of the IRP-IOT between 19 October 2018 and 21 October 2018 on any subject related to or that references the Interim Procedures.”

As discussed above, any communications amongst IRP-IOT members sent through the iot@icann.org listserv are available on the IRP-IOT community wiki page. (See <https://mm.icann.org/pipermail/iot/>.) Responsive off-list communications between Samantha Eisner and David McAuley are being made available in response to item 5 of this Request. To the extent there are other communications between IRP-IOT members that do not include ICANN representatives and/or the IRP-IOT listserv, such communications would be outside of ICANN org’s possession and control, and are subject to the following Nondisclosure Conditions, and are therefore not appropriate for disclosure:

- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii) complying with which is not feasible; or (iv) are made with an abusive or vexatious purpose or by a vexatious or querulous individual.

Items 7 and 8

Item 7 seeks “[d]ocuments sufficient to show the sum and substance of representations that were made to the ICANN Board concerning the drafting of the Interim Procedures and, in particular, the development of the text of Section 7.”

Item 8 seeks “[d]ocuments sufficient to show the sum and substance of representations that were made to the ICANN Board concerning the changes made to Section 7 of the Interim Procedures as compared with the version of Section 7 that had been posted for public comment on 28 November 2016.”

Board Resolutions 2018.10.25.20 – 2018.10.25.21 and the Rationale for Resolutions 2018.10.25.20 – 2018.10.25.21, which set forth the basis for the Board’s adoption of the Interim Supplementary Procedures, have been published at <https://www.icann.org/resources/board-material/resolutions-2018-10-25-en#2.e>. The corresponding Preliminary Report for this meeting is available at <https://www.icann.org/resources/board-material/prelim-report-2018-10-25-en>. Additionally, the transcript and audio recordings for this meeting have been published at <https://63.schedule.icann.org/meetings/901535>.

The briefing materials that were provided to the ICANN Board for its consideration of the Interim Supplementary Procedures at the 25 October 2018 Board meeting will be published, along with the minutes from the 25 October 2018 meeting, once the minutes are approved by the Board. Once the minutes are approved, the minutes and briefing materials will be published at <https://www.icann.org/resources/pages/2018-board->

[meetings](#) in accordance with the Bylaws and the [Guidelines for the Posting of Board Briefing Materials](#). We encourage you to check back once the minutes are approved.

Item 9

Item 9 seeks “[d]ocuments sufficient to show the sum and substance of representations that were made to the ICANN Board concerning the need to seek a further public consultation regarding Section 7 of the Interim Procedures.”

There are currently no documents responsive to this request.

Public Interest in Disclosure of Information Subject to Nondisclosure Conditions

Notwithstanding the applicable Nondisclosure Conditions identified in this Response, ICANN org has considered whether the public interest in disclosure of the information subject to these conditions at this point in time outweighs the harm that may be caused by such disclosure. ICANN org has determined that there are no current circumstances for which the public interest in disclosing the information outweighs the harm that may be caused by the requested disclosure. ICANN org will continue to search and review potentially responsive materials to determine if additional documentary information is appropriate for disclosure under this DIDP. If it is determined that certain additional documentary information is appropriate for public disclosure, ICANN org will supplement this DIDP Response and notify you of the supplement.

About DIDP

ICANN’s DIDP is limited to requests for documentary information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, please see <http://www.icann.org/en/about/transparency/didp>. ICANN makes every effort to be as responsive as possible to the entirety of your Request. As part of its accountability and transparency commitments, ICANN continually strives to provide as much information to the community as is reasonable. We encourage you to sign up for an account at ICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN's website that are of interest. We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.

EXHIBIT 308

December 2018 Archives by date

- Messages sorted by: [\[thread \]](#) [\[subject \]](#) [\[author \]](#)
- [More info on this list...](#)

Starting: Tue Dec 4 15:43:54 UTC 2018

Ending: Thu Dec 20 16:48:26 UTC 2018

Messages: 19

- [\[IOT\] Recordings, DAIRs, Raw Caption Notes for IRP-IOT Meeting #44 - 29 November 2018](#) *MSSI Secretariat*
- [\[IOT\] FW: Reviewing the consultation responses](#) *avri doria*
- [\[IOT\] Status of ICANN staff in IOT](#) *Malcolm Hutty*
- [\[IOT\] Status of ICANN staff in IOT](#) *Arasteh*
- [\[IOT\] Status of ICANN staff in IOT](#) *Mike Rodenbaugh*
- [\[IOT\] Status of ICANN staff in IOT](#) *Burr, Becky*
- [\[IOT\] Status of ICANN staff in IOT](#) *avri doria*
- [\[IOT\] Status of ICANN staff in IOT](#) *Burr, Becky*
- [\[IOT\] Status of ICANN staff in IOT](#) *Mike Rodenbaugh*
- [\[IOT\] Status of ICANN staff in IOT](#) *León Felipe Sánchez Ambía*
- [\[IOT\] Status of ICANN staff in IOT](#) *Malcolm Hutty*
- [\[IOT\] FW: Reviewing the consultation responses](#) *Malcolm Hutty*
- [\[IOT\] Status of ICANN staff in IOT](#) *Arasteh*
- [\[IOT\] Status of ICANN staff in IOT](#) *McAuley, David*
- [\[IOT\] Status of ICANN staff in IOT](#) *Chris Disspain*
- [\[IOT\] Status of ICANN staff in IOT](#) *Burr, Becky*
- [\[IOT\] IRP-IOT call Dec. 13 19:00 UTCF - Agenda](#) *McAuley, David*
- [\[IOT\] IRP-IOT - Excerpts from compiled remarks on ICANN status issue](#) *McAuley, David*
- [\[IOT\] Recordings, DAIRs, Raw Caption Notes for IRP-IOT Meeting #45 - 13 December 2018](#) *MSSI Secretariat*

Last message date: Thu Dec 20 16:48:26 UTC 2018

Archived on: Thu Dec 20 16:48:51 UTC 2018

- Messages sorted by: [\[thread \]](#) [\[subject \]](#) [\[author \]](#)
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EXHIBIT 309

765, 124 S.Ct. 2204. The Corps has been issuing and reissuing NWP 12 for decades, with no party objecting to the deferral practice.

For these reasons, I concur.



TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., a Colorado nonprofit cooperative corporation, Plaintiff-Appellee,

v.

NEW MEXICO PUBLIC REGULATION COMMISSION, a New Mexico Agency, and its members; Commissioner Patrick H. Lyons; Commissioner Theresa Becenti-Aguilar; Commissioner Ben L. Hall; Commissioner Valerie Espinoza; Commissioner Karen L. Montoya, acting in their official capacities, Defendants.

Kit Carson Electric Cooperative, Inc., Movant-Appellant.

No. 14-2164.

United States Court of Appeals,
Tenth Circuit.

June 1, 2015.

Background: Wholesale electric power supplier filed § 1983 action alleging that New Mexico Public Regulation Commission's (NMPRC) exercise of jurisdiction and suspension of its wholesale electric rates in New Mexico violated Commerce Clause. The United States District Court for the District of New Mexico denied electric distribution cooperative's motion to intervene, and it appealed.

Holdings: The Court of Appeals, Kelly, Circuit Judge, held that:

- (1) cooperative could not intervene as of right, and
- (2) district court did not abuse its discretion in denying cooperative's motion for permissive intervention.

Affirmed.

1. Federal Courts ⇌3585(1)

Court of Appeals reviews de novo denial of motion to intervene as of right. Fed.Rules Civ.Proc.Rule 24(a), 28 U.S.C.A.

2. Federal Civil Procedure ⇌316

Even if applicant satisfies other requirements for intervention as of right, it is not entitled to intervene if its interest is adequately represented by existing parties. Fed.Rules Civ.Proc.Rule 24(a)(2), 28 U.S.C.A.

3. Federal Civil Procedure ⇌316

When objective of applicant for intervention is identical to that of party, court will presume that representation is adequate. Fed.Rules Civ.Proc.Rule 24(a)(2), 28 U.S.C.A.

4. Federal Civil Procedure ⇌331

Electric distribution cooperative and New Mexico Public Regulation Commission (NMPRC) had identical interests in opposing wholesale electric power supplier's action challenging NMPRC's jurisdiction over it, and thus cooperative could not intervene as of right in action; all of cooperative's claimed interests, including its track record of rate advocacy, its direct economic interest in result of litigation, its interest in upholding its contracts with supplier, its interest in preserving its right to regulatory review of rates, and its interest in upholding merger, ineluctably flowed from its objective of preserving NMPRC's jurisdiction over supplier's

wholesale electricity rates, and nothing prevented NMPRC from asserting arguments against supplier's Commerce Clause claim. U.S.C.A. Const. Art. 1, § 8, cl. 3; Fed.Rules Civ.Proc.Rule 24(a)(2), 28 U.S.C.A.; West's NMSA § 62-6-4(D).

5. Federal Courts ⇔3585(1)

Court of Appeals reviews district court's denial of permissive intervention for abuse of discretion. Fed.Rules Civ. Proc.Rule 24(b), 28 U.S.C.A.

6. Federal Civil Procedure ⇔331

District court did not abuse its discretion in denying electric distribution cooperative's motion for permissive intervention in wholesale electric power supplier's action alleging that New Mexico Public Regulation Commission's (NMPRC) exercise of jurisdiction and suspension of its wholesale electric rates in New Mexico violated Commerce Clause, where cooperative and NMPRC had identical interests in matter, and intervention would create possibility of duplicative discovery. U.S.C.A. Const.Art. 1, § 8, cl. 3; Fed.Rules Civ.Proc.Rule 24(b), 28 U.S.C.A.

Charles V. Garcia of Cuddy & McCarthy, L.L.P., Albuquerque, New Mexico (Arturo L. Jaramillo, and Young-Jun Roh of Cuddy & McCarthy, L.L.P., Santa Fe, New Mexico, on the briefs), for Movant-Appellant.

John R. Cooney (Earl E. DeBrine, Jr., and Joan E. Drake of Modrall, Sperling, Roehl, Harris & Sisk, P.A., Albuquerque, NM; Robert E. Youle and Brian G. Eberle of Sherman & Howard, L.L.C., Denver, CO, on the brief), for Plaintiff-Appellee.

Before KELLY, PHILLIPS, and MORITZ, Circuit Judges.

KELLY, Circuit Judge.

Movant-Appellant Kit Carson Electric Cooperative, Inc. (KCEC) appeals from the district court's denial of its motion seeking intervention as of right or permissive intervention in a pending case. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, Civ. No. 13-00085 KG/LAM (D.N.M. Aug. 18, 2014). Our jurisdiction arises under 28 U.S.C. § 1291, and we affirm.

Background

Tri-State Generation and Transmission Association, Inc. (Tri-State), a Colorado non-profit regional cooperative that provides wholesale electric power, filed suit against the New Mexico Public Regulation Commission (NMPRC) seeking declaratory and injunctive relief under 42 U.S.C. § 1983. Tri-State argued that the NMPRC's exercise of jurisdiction and suspension of Tri-State's wholesale electric rates in New Mexico violated the Commerce Clause of the United States Constitution.

Briefly, Tri-State is a regional generation and transmission (G & T) cooperative that provides wholesale electric power to its forty-four member systems in four states—Colorado, Nebraska, New Mexico, and Wyoming. Each of the member systems has a representative that sits on Tri-State's Board of Directors and has an equal vote as to Tri-State's annual rates. Tri-State charges a "postage-stamp rate" for electricity to its members—i.e., the members systems are all charged the same amount. Apt. App. 649 & n.3. Each member system has entered into a requirements contract with Tri-State, pursuant to which each member agrees to purchase and receive from Tri-State all the electric power and energy the member requires. These member systems then sell the electricity provided by Tri-State to their mem-

bers at retail. One of Tri-State's member systems is KCEC, a New Mexico rural electric cooperative that provides services to roughly 28,500 commercial, governmental, and residential member-customers in Northern New Mexico.

Public utilities in New Mexico are regulated by the NMPRC. *See* N.M. Stat. Ann. § 62-6-4(A) (granting the NMPRC the "general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations"). In 1999, Tri-State and Plains Electric Generation and Transmission Cooperative, Inc. (Plains) applied to the NMPRC to allow the two to merge. Tri-State, Plains, and others entered into a Stipulation which, among other things: (1) required Tri-State to file an "Advice Notice" with the NMPRC prior to setting rates for New Mexico members; (2) provided member cooperatives with the opportunity to file protests to Tri-State's rates with the NMPRC; and (3) provided procedures for the NMPRC to suspend the rates, conduct a hearing, and "establish reasonable rates." *Aplt. App.* 541. In 2000, the NMPRC approved the Stipulation and merger on condition that Tri-State would be subject to its jurisdiction "to the extent provided by law." *Id.* at 407. The New Mexico legislature subsequently codified the Stipulation's protest procedures, which provide in relevant part:

New Mexico rates proposed by a generation and transmission cooperative shall be filed with the commission in the form of an advice notice, a copy of which shall be simultaneously served on all member utilities. Any member utility may file a protest of the proposed rates no later than twenty days after the generation and transmission cooperative files the advice notice. If three or more New Mexico member utilities file protests and the commission determines there is just cause in at least three of the pro-

tests for reviewing the proposed rates, the commission shall suspend the rates, conduct a hearing concerning reasonableness of the proposed rates and establish reasonable rates.

N.M. Stat. Ann. § 62-6-4(D). In 2012, Tri-State's Board of Directors voted to approve a 4.9% rate increase for the calendar year 2013. Tri-State appropriately filed Advice Notice No. 15 with the NMPRC to inform it of the increase. KCEC, along with two other New Mexico member systems, filed protests objecting to the rate increase. Over Tri-State's objections, the NMPRC suspended Tri-State's rate increase for 2013.

On January 25, 2013, Tri-State filed the present action against the NMPRC. Later, in September 2013, Tri-State approved a wholesale rate increase for 2014 and filed an Advice Notice with the NMPRC. After rate protests by KCEC and three others, the NMPRC proceeded to suspend Tri-State's 2014 rate increases as well. The NMPRC consolidated the proceedings on both the 2013 and 2014 wholesale rates. These proceedings remain pending before the NMPRC.

In February 2014, Tri-State filed an amended complaint adding factual allegations regarding the NMPRC's suspension of its 2014 wholesale rate. Tri-State's amended complaint asserts Tri-State is entitled to declaratory and injunctive relief because "[t]he Commission's exertion of jurisdiction to suspend and subsequently review and establish Tri-State's rates in New Mexico constitutes economic protectionism and imposes a burden on interstate commerce in violation of the Commerce Clause." *Aplt. App.* 658-60. Tri-State requested an order declaring that:

(a) the Commission lacks jurisdiction over Tri-State's rates and interstate wholesale contracts in New Mexico and

any attempt by the Commission to exercise jurisdiction over, suspend and/or determine Tri-State's rates is unconstitutional under the United States Constitution; (b) the Commission's order suspending Tri-State's 2013 and 2014 wholesale rates and setting a rate hearing is unconstitutional under the United States Constitution; (c) the Commission may not take any action with respect to Tri-State's rates or contracts.

Id. at 661; *see also id.* at 662 (requesting injunctive relief under 42 U.S.C. § 1983). In its answer, the NMPRC raised eight affirmative defenses, including the doctrines of waiver and estoppel. It also reserved the right to raise further affirmative defenses that later might become available.

On May 28, 2013, KCEC sought to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a)(2) and permissively pursuant to Rule 24(b). Tri-State opposed intervention, but the NMPRC did not.

Though not a party to the litigation, KCEC filed an answer to Tri-State's complaint in which it asserted essentially the same affirmative defenses to Tri-State's claims as had the NMPRC. *Aplt. App.* 382. The only unique defense KCEC presented was that Tri-State's complaint failed to state a claim upon which relief could be granted. Prior to the district court's ruling on KCEC's motion, the NMPRC moved for summary judgment, arguing both that: (1) Tri-State was estopped from challenging the NMPRC's rate-making jurisdiction given its agreement to the earlier Stipulation; and (2) the NMPRC's order did not violate either New Mexico law or the Commerce Clause of the United States Constitution. *Id.* at 931–47. Though still not a party to the litigation, KCEC filed a proposed response to the NMPRC's motion for summary judgment,

presenting essentially the same arguments as the NMPRC and providing no additional evidence. *Aplee. Supp. App.* 52–58.

The district court then denied KCEC's motion to intervene, finding that neither intervention as of right nor permissive intervention was appropriate. KCEC timely appealed.

Discussion

KCEC argues that the district court erred in denying intervention as of right under Rule 24(a)(2) and in denying permissive intervention under Rule 24(b).

A. Intervention as of Right

[1] We review *de novo* the denial of a motion to intervene as of right. *Kane Cnty., Utah v. United States*, 597 F.3d 1129, 1133 (10th Cir.2010). Rule 24(a) of the Federal Rules of Civil Procedure provides that, upon timely motion, the court must allow a party to intervene who: “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.”

Tri-State does not dispute that KCEC's motion for intervention was timely. Thus, we address whether KCEC can satisfy the remaining two requirements of intervention as of right. First, KCEC must establish an interest in the property or transaction underlying the action that might be impaired by the action's disposition. *See Natural Res. Def. Council, Inc. v. U.S. Nuclear Regulatory Comm'n*, 578 F.2d 1341, 1345 (10th Cir.1978) (“the question of impairment is not separate from the question of existence of an interest”). KCEC identifies several interests that could be impaired by the case at hand that it contends are sufficient to satisfy Rule 24(a)(2):

(1) its “persistent record of advocacy to obtain reasonable rates from Tri-State”; (2) its “direct economic interest in the determination of whether the NMPRC’s exercise of its rate jurisdiction pursuant to Section 62–6–4(D) violates the Commerce Clause”; (3) its interest in upholding its membership agreement and power supply contract with Tri-State; (4) its statutory right to regulatory review of Tri-State’s rates; and (5) its interest in upholding the Tri-State/Plains merger and the Stipulation. Aplt. Br. 23–26. We assume, as did the district court, that KCEC has sufficiently shown an interest in the lawsuit that may be impaired by its disposition. Cf. *Kane Cnty.*, 597 F.3d at 1133. Thus, we proceed directly to the inquiry whether KCEC’s interest is adequately represented by the NMPRC.

[2] “Even if an applicant satisfies the other requirements of Rule 24(a)(2), it is not entitled to intervene if its ‘interest is adequately represented by existing parties.’” *San Juan Cnty., Utah v. United States*, 503 F.3d 1163, 1203 (10th Cir.2007) (en banc) (quoting Fed.R.Civ.P. 24(a)(2)). This requirement is satisfied where the applicant “shows that representation of his interest *may be* inadequate”—a “minimal” showing. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n. 10, 92 S.Ct. 630, 30 L.Ed.2d 686 (1972) (emphasis added) (internal quotation marks omitted); see also *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1254 (10th Cir.2001). Thus, the likelihood of a divergence of interest “need not be great” to satisfy the requirement. *Natural Res. Def. Council*, 578 F.2d at 1346.

For instance, where a governmental agency is seeking to represent both the interests of the general public and the

interests of a private party seeking intervention, we have repeatedly found representation inadequate for purposes of Rule 24(a)(2). See, e.g., *Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 295 F.3d 1111, 1117 (10th Cir.2002) (“[I]n such a situation the government’s prospective task of protecting ‘not only the interest of the public but also the private interest of the petitioners in intervention’ is ‘on its face impossible’ and creates the kind of conflict that ‘satisfies the minimal burden of showing inadequacy of representation.’” (citation omitted)); *Clinton*, 255 F.3d at 1256 (inadequate representation prong satisfied where government was “obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of the would-be intervenor”); *Nat’l Farm Lines v. Interstate Commerce Comm’n*, 564 F.2d 381, 384 (10th Cir.1977) (inadequate representation prong satisfied where Interstate Commerce Commission sought to protect “not only the interest of the public but also the private interest of the petitioners in intervention”).

[3] These cases, however, are inapplicable where “the objective of the applicant for intervention is identical to that of one of the parties.” *City of Stilwell, Okla. v. Ozarks Rural Elec. Coop. Corp.*, 79 F.3d 1038, 1042 (10th Cir.1996) (quoting *Bottoms v. Dresser Indus., Inc.*, 797 F.2d 869, 872 (10th Cir.1986)); see also *Coal. of Ariz. /N.M. Counties for Stable Econ. Growth v. Dep’t of Interior*, 100 F.3d 837, 845 (10th Cir.1996). Under such circumstances, we presume representation is adequate. See *Bottoms*, 797 F.2d at 872–73; *San Juan Cnty.*, 503 F.3d at 1204 (opinion of Hartz, J.); *id.* at 1227 & n. 1 (Ebel, J., dissenting).¹ Thus, even though a party seeking

1. In *San Juan County*, this court addressed en banc whether several conservation groups were entitled to intervene in a federal quiet-

title action brought by San Juan County against the United States. 503 F.3d at 1167. Six judges concluded that the conservation

intervention may have different “ultimate motivation[s]” from the governmental agency, where its objectives are the same, we presume representation is adequate. *Ozarks*, 79 F.3d at 1042.

[4] We are presented with precisely such a situation here, where the NMPRC and KCEC have identical litigation objectives: preserving the NMPRC’s rate jurisdiction over Tri-State. All of KCEC’s claimed interests—its track record of rate advocacy, its direct economic interest in the result of the litigation, its interest in upholding its contracts with Tri-State, its interest in preserving its right to regulatory review of rates, and its interest in upholding the Tri-State/Plains merger and Stipulation—ineluctably flow from its objective of preserving the NMPRC’s jurisdiction over Tri-State’s wholesale electricity rates. Each of KCEC’s claimed interests are part and parcel of its broader interest in maintaining the NMPRC’s jurisdiction over these rates.

And of course, the NMPRC’s objective in the proceeding is identical—preserving its own jurisdiction over Tri-State’s wholesale electric rates. This simply is not a case where the governmental agency must account for a “broad spectrum” of interests that may or may not be coextensive with the intervenor’s particular interest. *Clinton*, 255 F.3d at 1256. Tri-State’s suit challenges the constitutionality of a New Mexico statute granting the NMPRC power to, under certain circumstances, “suspend” a G & T cooperative’s rates, “conduct a hearing” on the reasonableness of the rates, and “establish reasonable rates.” N.M. Stat. Ann. § 62–6–4(D). Thus, the

groups did not have a sufficient “interest” under Rule 24(a), *id.* at 1207 (Kelly, J., concurring), and thus had no occasion to address whether the conservation groups’ interests would be adequately represented by the United States. Of the judges to address the adequate representation prong, all seven—Judge

suit presents a “binary” issue—whether the New Mexico statute granting the NMPRC this authority accords with the Commerce Clause of the United States Constitution. *San Juan Cnty.*, 503 F.3d at 1228 (Ebel, J., dissenting). The challenge does not require the NMPRC to strike some balance between the interest of electricity wholesalers, retailers, and the general public. Nor does it require the NMPRC to determine the reasonableness of Tri-State’s current rates or establish reasonable rates. It simply requires the NMPRC to argue its authority under § 62–6–4(D) does not violate the Commerce Clause.

Given that the NMPRC and KCEC have identical objectives in the dispute, we presume that the NMPRC’s representation is adequate. To overcome this presumption, KCEC must make “a concrete showing of circumstances” that the NMPRC’s representation is inadequate. *Bottoms*, 797 F.2d at 872 (quoting 7A Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1909, at 529 (1972)). These circumstances include a “showing that there is collusion between the representative and an opposing party, that the representative has an interest adverse to the applicant, or that the representative failed to represent the applicant’s interest.” *Id.* at 872–73 (citing *Sanguine, Ltd. v. U.S. Dep’t of Interior*, 736 F.2d 1416, 1419 (10th Cir.1984)).

KCEC argues that “the NMPRC, as an adjudicatory body in a pending rate case, is limited in its ability to present evidence or advance arguments” regarding how its

Hartz writing for three judges and Judge Ebel writing for four—agreed that a presumption of adequate representation applied where an applicant for intervention had objectives “identical” to a party to the suit. *Id.* at 1204 (opinion of Hartz, J.); *id.* at 1227 & n. 1 (Ebel, J., dissenting).

rate-making authority satisfies the Commerce Clause. Aplt. Br. 31. It argues that, under existing Commerce Clause standards, the NMPRC will have to establish that the law's burden on interstate commerce was not "clearly excessive in relation to the putative local benefits." *Id.* at 30 (quoting *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 395, 103 S.Ct. 1905, 76 L.Ed.2d 1 (1983)). KCEC contends that the NMPRC will be inhibited from effectively making this argument, given its "impartial adjudicatory role" in the pending rate proceedings. *Id.* at 31. But contrary to KCEC's assertion, the pendency of rate proceedings will not prevent the NMPRC from arguing the local benefits furthered by § 62-6-4(D). The NMPRC need not argue for a particular rate or rate structure in order to set forth the intrastate benefits of its jurisdiction over Tri-State's rates.

In addition, there is no reason to think that the NMPRC will not vigorously argue in favor of its statutory authority. The NMPRC is represented by the New Mexico Attorney General, who is obligated by law to defend the constitutionality of the statute. *See* N.M. Stat. Ann. § 8-5-2. Further, through this point in litigation, the NMPRC has "displayed no reluctance" to defend the statute. *San Juan Cnty.*, 503 F.3d at 1206 (opinion of Hartz, J.); *see also Coal. of Ariz./N.M. Counties*, 100 F.3d at 845 (considering DOI's "reluctance in protecting the Owl" in finding that DOI may not adequately represent photographer/biologist's interests). As noted, the NMPRC has raised a number of affirmative defenses to Tri-State's claims and reserved the right to raise additional defenses. KCEC's proposed response to Tri-State's complaint raised nearly identical defenses. The NMPRC raised additional arguments in its motion for summary judgment, including that Tri-State was estopped from challenging the NMPRC's

rate-making jurisdiction given its agreement to the earlier Stipulation. The NMPRC's arguments were once again parroted by KCEC in its proposed motion for summary judgment. In short, the NMPRC appears to be representing KCEC's interests precisely as KCEC would.

Finally, we note that, unlike cases where intervention applicants possessed unique knowledge or expertise beyond that of the governmental agency, *see, e.g., Nat'l Farm Lines*, 564 F.2d at 383, KCEC does not argue it possesses particular expertise beyond that of the NMPRC, *cf. Kane Cnty.*, 597 F.3d at 1135.

For the foregoing reasons, we affirm the district court's denial of intervention as of right under Rule 24(a)(2).

B. *Permissive Intervention*

Rule 24(b)(1)(B) governing permissive intervention provides that, on timely motion, the court may permit anyone to intervene who "has a claim or defense that shares with the main action a common question of law or fact." In exercising its discretion to permit a party to intervene, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed.R.Civ.P. 24(b)(3). The district court observed that it was clear that KCEC's affirmative defenses had questions of law and fact in common with the NMPRC's defenses. It further rejected Tri-State's argument that allowing intervention would yield a deluge of other intervention applications from similarly situated electricity retailers. Nevertheless, the court found that, on balance, permissive intervention was inappropriate, because: (1) allowing intervention would burden the parties with additional discovery; and (2)

the NMPRC would adequately represent KCEC's interests.

[5] We review the district court's denial of permissive intervention for an abuse of discretion. *Kane Cnty.*, 597 F.3d at 1135; *Alameda Water & Sanitation Dist. v. Browner*, 9 F.3d 88, 89–90 (10th Cir. 1993). In reviewing for abuse of discretion, “we may not . . . substitute our own judgment for that of the trial court.” *Nalder v. West Park Hosp.*, 254 F.3d 1168, 1174 (10th Cir.2001) (internal quotation marks omitted). “An abuse of discretion will be found only where the trial court makes ‘an arbitrary, capricious, whimsical, or manifestly unreasonable judgement.’” *Fed. Deposit Ins. Corp. v. Oldenburg*, 34 F.3d 1529, 1555 (10th Cir.1994) (quoting *United States v. Hernandez–Herrera*, 952 F.2d 342, 343 (10th Cir.1991)). As KCEC notes, “decisions holding that the district court abused its discretion in denying permissive intervention are predictably rare.” *Aplt. Br.* 35–36. This concession is in fact an understatement—KCEC cites no Tenth Circuit decisions reversing a district court's denial of permissive intervention.

[6] KCEC contends that the district court abused its discretion by relying on the NMPRC's adequate representation of KCEC's interests, both because the NMPRC could not adequately represent KCEC's interests and because Rule 24(b) does not speak to adequate representation as a consideration. *Aplt. Br.* 40–41. As to the contention that NMPRC may not adequately represent KCEC's rights, we reject this argument for reasons specified above in our Rule 24(a) analysis. As to KCEC's suggestion that Rule 24(b) does not provide for consideration of adequate representation, we have elsewhere affirmed denial of permissive intervention on such grounds. *Ozarks*, 79 F.3d at 1043; *see also Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 955 (9th Cir.

2009) (in exercising discretion under Rule 24(b), district court may consider “whether the intervenors' interests are adequately represented by other parties” (citation omitted)); *Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236, 249 (D.N.M.2008) (“While not a required part of the test for permissive intervention, a court's finding that existing parties adequately protect prospective intervenors' interests will support a denial of permissive intervention.”).

KCEC also argues that the district court abused its discretion by finding that the parties would be burdened by discovery propounded by KCEC virtually identical to that sought by the NMPRC. KCEC argues that there was no evidence to support this finding, and that even if there was, the district court always retains the ability to limit and manage discovery pursuant to its authority under Rule 26 of the Federal Rules of Civil Procedure. *Aplt. Br.* 38 (citing *United States v. Albert Inv. Co.*, 585 F.3d 1386, 1396 (10th Cir.2009)). Given Rule 24(b)(3)'s mandate to the district court to consider whether intervention might unduly delay or prejudice adjudication of the original parties' rights, we think the district court was entitled to consider the potential for burdensome or duplicative discovery in its analysis—even given its ability to manage discovery. In short, KCEC has not shown that the district court's denial of permissive intervention was “arbitrary, capricious, whimsical, or manifestly unreasonable.” *Oldenburg*, 34 F.3d at 1555.

AFFIRMED.



EXHIBIT 310

IRP IOT Meeting, March 23, 2017

- Discussion of Public Comments on Supplementary Rules (con't):
- Background Bylaws provisions:
 - 4.3(a): IRP intended for following purposes: ... (vii) Secure ... just resolution of Disputes.
 - 4.3(n)(iv): The Rules of Procedure are intended to ensure fundamental fairness and due process ...

IRP IOT Meeting, March 23rd, 2017

Joinder-related issues (Section 7 of Draft Supplementary Rules):

- From appeals of other panels.
- Joinder - Procedures Officer or IRP panel decision?
- Page limitation for written statements.

Joinder-related issues

- From appeals of other panels (Bylaw 4.3.(b)(iii)(A)(3)):
 - Fletcher, Heald & Hildreth:
 - Actual notice to all original parties to an expert panel under appeal.
 - Mandatory right of intervention to parties to expert panel under appeal.
 - Right for such parties to be heard prior to IRP granting interim relief.
 - GNSO-IPC:
 - Any 3d party directly involved in action below can petition (panel or provider) to intervene as additional claimant or in opposition to claimant.

Joinder-related issues

- Joinder - Procedures Officer or IRP panel decision?
 - Dot Music: Joinder/intervention/consolidation issues should be decided by IRP panel, not by a single Procedures Officer. Panel best positioned to judge.
 - GNSO-IPC: Requests should be determined by the IRP Panel and not by a Procedures Officer.
 - GNSO-RySG: IRP Panel should determine whether panel or PO makes the call.

Joinder-related issues

- Page limitation - written statements (Section 6, Draft ...Rules):
 - GNSO-IPC: Multiple claimants should not be limited collectively to the 25-page limit for written statements – individual page limits should apply.

EXHIBIT 311

EN

IRP-IOT SUBGROUP

Tuesday, November 14, 2017 – 19:00-20:00

>> DAVID MCAULEY: Thank you. I would like to say—and welcome everybody to the call. I expect maybe a few more will join in as they realize the call is an hour earlier than typically. Hopefully that'll be the case for many that is. Not for everyone- but for many. And I'd like to press on and at least create a record of this call for the others to look. Typically Aubrey and Greg have joined us a moment or two late so we'll see. But now that we've done that I want to ask those on the call—if anyone has a statement, any change to their statement of interest and at the same time I would like to ask people that may be on the phone who are not in Adobe to please speak up and identify themselves. Is there anyone that is on the phone that's not in Adobe? I'm not hearing any. We can press on. Does anybody have a change in their statement of interest? And the statement of interest was an interesting discussion that's public forum at ICANN60 so it is important then we need to remember to pay attention to it so if there's any change please know that we know. Having none, we can move forward. Before we get to the issues I would like to welcome, as an observer, Cherine Chalaby, who has been on the ICANN board for sometime now and who at the conclusion of ICANN60 took on the role as chair of the board. And I would like to congratulate Cherine again and Cherine- today we have a small group. We typically have a small group and in a few minutes I'll just do a brief summarized history but in the meantime I want to give you a chance to say something if you wish to. Certainly, you don't have to. But if you would like to make a comment please feel free.

>> CHERINE CHALABY: Thank you, David. And thank you everyone. David, thank you for letting me observe this call. Completing the work of new system, establishing – I

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consider this to be a major accomplishment of our transbility process. So hence my heightened interest particularly in three areas. One is the supplemental rules. I understand that the IRT is working through issues that were raised at the public comment on supplemental rules. And there's perhaps another space for another round of public comment. And, so, I'm very curious about the issues but also about the time frame of getting those issues on board would be useful to know for getting for it. The second area would be the standing pillow and particularly the process and time scale for doing so and selecting the members for this panel is important. And particularity from my limited experience the choice of a lead person on the panel is very critical. So, I would like to observe also, that process and the time scale and finally the CEP process. My understanding also the IOT took over the CEP issue from the CCSW to work. And post [indiscernible] I don't know where we are on the time scales for that. So those are the three issues. That I would like to observe. The supplemental rules, the sounding panel, and the CEP. Thank you, David.

>> DAVID MCAULEY: Cherine, thank you very much. And I would like to comment on that and again say welcome. We're very glad you are here. And then I will open it to the floor if anyone else would like to comment in the meantime. And you are absolutely correct, the supplemental, the IOT, the team itself, is a small team. It was capped at 25 members by the CCWG on accountability workstream one and we now have 26 members. We took on Anna Loop as an additional member when we took on the CEP process. And it's a small group but it's an active group at times. It's a mix of legal skills and other skills and we've been working on supplemental rules. The initial leader of the IOT was Becky Burr and she's still a member of the team. Becky stepped away from the leadership of the team when she stepped onto the ICANN board last year. Last November I guess it was. And then I took over as lead of the team. And just as Becky was leaving

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we had the first draft of the supplemental rules that are basically supplements to the International Center for Dispute Resolution rules to take advantage of ICANN and the supplemental rules to primacy if there's a conflict between the supplemental and ICDR rules. They are put out for public comments. The public had comment closed in February of this year. We started working on the rules, and the staff report came out in May, and we spent a lot of time discussing them.

We are we have moved some through to conclusion, and we are basically very near the end. We've discussed the rules at great length including the timing, retroactivity, all those kinds of things. We are very near the end. So that part of it is very good.

So the supplemental rules, I hope, will be done and presented to the board in the January/February time frame. I'm hoping we get all of the heavy lifting work done by the end of this year (indiscernible), on this and on another call in addition to this one.

Secondly, we expect the standing panel Liz Le is on the call, and she will be talking later about where the preparation is. But the standing panel is something that will be created for this IRP under the bylaws, and it will involve an expression of interest, a document that has been prepared seeking people to apply for the standing panel. But we the ICANN legal and ICANN policy are waiting on people to help, supporting advisory committees to nominate for the standing panel. Under the bylaws, it's the role of the ACs and SAOs to nominate. It's the role of SAs and SEs and ICANN to put them in two qualifications, qualified and unqualified. Once you have a pile of qualifications, it's the SAO's job to nominate to that panel, and ICANN policy is working to get organized doing that. We in the AOT have offered our assistance in that respect because we're developing some facility with the IRP bylaw. That's moving on. And I think Liz can speak to that a little bit later.

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And then with respect to the cooperative engagement process, that was a separate subgroup of Workstream 2, and at that time Jill Burke there was a change in the CCWC Accountability Co Chairs asked us if we would take that work on, and we've agreed to do that. And that will probably follow the issuance of the rules.

Our first order of business, I believe, as we see it right now is to get the rules done and then step on to some further work. And I'll speak about that in a little bit. But thank you very much for your interest. That's exciting for us, and that's roughly where we stand right now.

Today's meeting is to discuss and hopefully wrap up issues of joinder of parties to an IRP, work on how parties can do discovery and gather evidence, and also work on translation services, all with a view towards recognizing IRP as an arbitration is meant to be quick, to the point, fair, not prolonged and not necessarily expensive, at least when compared to litigation. And so I hope that we will have some fruitful discussion on that, and I have invited discussion on the list waiting up to this call. So that's roughly where we are, and I will invite others in the group if they wish to make a comment to please, you know, indicate by their hand now. Charene, you're certainly welcome to comment, in light of what I've said, as well.

Hearing hearing nothing right now, let's move on. Liz, let me ask you if I could move you up on the agenda from Number 6 to to right now before we get into the joinder of discussion, inasmuch as the issue about preparations for getting to the standing panel have been have been mentioned.

Are you able to do that now?

EN

>> LIZ: Hi, there. This is Liz. I'm happy to do that. So just to follow up on your recap, as you know, we circulated the we drafted the call for expression of interest. We'll also served related to the group for comment the process flow that we mapped out in terms of the four step process that is establishing the standing panel that the bylaws calls for, and we have identified in there certain points where we needed additional input from the community, and we've received some input from the IOT group, and we've also identified that we should get input and need input from the SNLAC leaders.

Weaving working with ICANN policy team in terms of figuring out, what is the best way to go about that. And I think the goal is leading to do a webinar, as we've discussed with this group here to do.

We are one of the things that we have been working with policy team is to recalculate to AOC leaders to identify for them what issues and probably what we planned to see get some kind of get their input in suggesting a planning call. I don't I think that might be the first step that they find to be appropriate, and then following that, a webinar, or if they feel that the webinar and the planning call can be done at the one step, that would be the next thing that we identify.

So from our standpoint, we are hoping to get that out to the SNLAC leaders this week, and depending on when they feel and identify is the time they are available to do so, we're hoping that we would be able to get this planning call up and going within the next couple weeks.

>> DAVID: Liz, thank you. So and thank you for that. In a moment, I will turn to Aubrey and Becky who joined the call, both members of this group, and see if they have any comment. Let me respond just briefly, Liz, and thanks for the update.

EN

You've heard me speak about this before. I think the webinar is a good idea, the sooner the better. We would be happy to participate. We can find folks. I would be happy to participate and having read the bylaw now, I don't know how many times, I'm certainly gaining some knowledge of it.

The other thing I think we need to do is identify in conjunction with leaders from the SLACs is whether they need time for face to face, because the planning for Puerto Rico is done I don't know and maybe for Panama, I guess, will come up soon. It's amazing the lead time that's needed. While I hoped we could wrap all this up before then, if we need to preserve some time at one of these meetings, it would be nice to identify that fairly early. I'm looking forward to what you want to send out and looking forward to getting this moving.

Having said all that, Aubrey and Charene is a welcome observer today. I have given a recap of what we've done and where we are, and if you have any comments, you're certainly welcome to make them now.

>> AUBREY: Hi, this is Aubrey. I'm not sure I can be heard. Can I be heard?

>> DAVID: You're heard, but very, very faintly.

>> AUBREY: Sorry, this is the first time I'm looking this connectivity. I have no comments to add at this point. Thanks.

>> DAVID: Okay. Thank you. Becky, do you have anything that you want to say at this point?

>> BECKY: Not at this point. Thank you, David.

EN

>> DAVID: Okay. Thank you. So, Liz, unless you have anything in light of what I said, then we can move on to the next agenda item.

>> LIZ: Nothing from me.

>> DAVID: Okay. Thanks. So let's move on to joinder. And as I mentioned in E mails, I have had a little bit of a time challenge. So I didn't send out anything more extensive than the E mails that I sent out following the last meeting to try and move these issues to closure.

We've discussed joinder quite a bit. And what I would like to do is just read the language as to where we are now. It will take two or three minutes, but I think it's good for the record to go ahead and read this now. And this is where we presently are on joinder. And if anybody wishes to say anything different, I have urged them to do some on lists. You can do it on the call, too, but to give specific language as an alternative. Here on joinder, only those entities who participated in the underlying (Indiscernible) of the full notice of IRP and request for IRP, including copies of all related file documents, contemporaneously with claimants serving those documents on ICANN.

2. That subject to the following sentence, all such parties shall have a right to intervene in the IRP. Notwithstanding the foregoing, a person or entity seeking to intervene in an IRP can only be granted party status if; one, that person or entity demonstrates that it meets the standing requirement to be a claimant under IRP Section 4.3 B of the ICANN bylaws, or 2, that person or entity demonstrates it has a material interest at stake directly related to the injury or harm by the claimant to have been directly or causally related to the alleged violation at issue in the dispute. The timing and other aspects of intervention shall be managed pursuant to the applicable rules of arbitration of the ICDR, except as otherwise indicated here.

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Subject to the preceding provisions in the this paragraph, the manner in which this limited intervention rights shall be excised shall be up to the procedures officer, who may allow such intervention through granting such IRP party status or by allowing such parties to file amicus briefs as determined in his or her discretion.

An intervening party shall be subject to applicable costs, fees, expenses and deposits, provisions of the IRP as determined by the ICDR. An amicus may be subject to the applicable costs, fees, expenses and deposit provisions of the IRP as deemed reasonable by the procedure's officer.

3. No interim relief that would materially affect an interest of any such amicus to an IRP can be made without allowing such amicus an opportunity to be heard on the requested relief in a manner as determined by the procedures officer.

4. In handling all matters of intervention and without limitation to other obligations under the bylaws, the procedures officer shall adhere to the provisions of bylaw Section 4.3(s) to the extent possible while maintaining fundamental fairness.

That concludes the reading of the suggested language.

Just as background, I believe this addresses some of the concern you had last time. And the notion of fundamental fairness is something that is stated in the bylaws where it says that the rules of procedure are intended to ensure fundamental fairness and due process and shall at a minimum address certain elements. So that's where we are.

And the floor is now open for people to speak to this. Otherwise, we will consider this having reached second reading conclusion.

Liz, you have a comment? You have the floor.

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>> LIZ: Thanks, David. One question that ICANN org has has with respect to the second provision second clause in Paragraph 2 where at the end of that it states that it's claimed by the claimant to have been directly and causally connected to the alleged violation at issue in the dispute.

We're not clear what you intended for that clause to mean.

>> DAVID: Thanks, Liz. I'm looking for it. Where is it again?

>> LIZ: So Paragraph 2.

>> DAVID: Okay. It's in Number 2?

>> LIZ: Right.

>> DAVID: So let me just read that out loud. That person or entity demonstrates that it has a material interest at stake directly relating to the injury or harm that's claimed by the claimant to have been directly and causally connected to the alleged violation at issue in the dispute.

I actually think this may have come from somebody else. But it seems to me that what's involved here is that this has to be directly tied to the dispute. It can't be tangential. There may be better language to state that, and if you have a concern with that language, I would urge you to maybe give me something else. But it's basically, you know, this has to be directly stemming or directly tied to the dispute in question.

>> LIZ: Okay. I understand that. I think what we would propose to change that to is that that person or entity demonstrates that it has a material interest at stake directly relating to the injury or harm that is claimed by the claimant that has resulted from the alleged violation.

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>> DAVID: Okay. So if that's what you want, then we I don't think I wouldn't sense any objection to that on my part. If there's anyone else, they will have to raise their hand and make a statement about it, but I think that would be fine. And I would ask you to send that to me in the E mail and send it to the list; yeah.

>> LIZ: Absolutely. Happy to do so.

>> DAVID: Okay. Any other questions about joinder or any concern with what Liz just proposed?

Since that involves a bit of a change, what we will do is, I'll get the language from Liz. We will incorporate the language, and before we give this a second reading, we'll have to leave it on the list for several days to give people who are not in the call a chance to respond.

So absent any requests to speak, we'll move on to the issue of discovery. Of course, I have lost my place. We'll move on. Liz, your hand is still up. Is that old or new?

>> LIZ: Sorry, that's old. I'll take it down.

>> DAVID: Okay. So we are at the next agenda item, which has to do with discovery. And at the conclusion of the last meeting, Liz and I had gone through some suggested variances with respect to the paragraph entitled "Written Statements." And so I would like to read now where that is based on Liz's changes and do the same go through the same procedure. If anyone has a concern, then please note it when I finish reading, and otherwise, we'll move this one to a successful conclusion of second reading.

So the paragraph on written statements reads as follows: The initial written submissions of the parties shall not exceed 25 pages each in argument, double spaced

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and in 12 point font. All necessary and available evidence in support of the claimant's claims or claim should be part of the initial written submission. Evidence will not be included when calculating the page limit. The parties may submit expert evidence in writing and there shall be one right of reply to that expert evidence. The IRP panel may request additional written submissions from the party seeking review, the board, the supporting organizations or from other parties. In addition, the IRP panel may request for additional risks the IRP panel may grant a request for additional written submissions from the party seeking review, the board, or from other persons or entities that meet the standing requirement to be a claimant under the IRP at Section 4.3 B of the ICANN bylaws and as defined within the supplemental procedures upon the showing of a compelling basis for such request.

In the event the IRP panel grants a request for additional written submissions, any additional such written submission shall not exceed 15 pages. That concludes the reading.

So I open the floor to comments, concerns, otherwise, we will move this one to second reading.

Thank you, Brenda, for putting that up. It looks better in color than my reading did for it.

So, Bernie, your hand is up. Do you have the floor?

>> BERNIE: Thank you. I wrote it in the chat, but it's everyone could speak their name before they start speaking, we're not capturing that right now. It's not our usual captioning team, and it's going to make it difficult to use the captioning record if we don't do that. So, please, everyone, if you can state your name before you start speaking. Thank you.

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>> DAVID: Thank you, Bernie. So we can we can move on then to the next issue, which is about the next supplementary procedure that we were addressing is translation and interpretation. And in this E mail that I sent out, it was a summary of the discussions that we had rather than putting something into words, and so the gist of this is that they were going to ask Sidley, and we have budget with Sidley to polish off the rules when we're done with them to basically capture what we have in this E mail. And the principal elements of the E mail are that the claimant would get translation interpretation services based on need, not on preference.

We did have some public comments that asked that these services be provided if they were simply requested by the claimant. And we agreed and, of course, we have to, really, the bylaws say it's a matter of need. I can't I can't remember the specific paragraph, but the bylaws say these services are available if needed. And so we stick with this element, this concept of need, not preference. And we go so far as to say, and that includes if someone is bilingual and has a couple of language skills. If one of those language skills is English, then there would be no need for translation. If one of those language skills is one of the ICANN six languages of Arabic, Chinese, French, Russian or Spanish and the other language is something a little bit more esoteric, the translation can be done in one of the ICANN provided languages. This is principally, then, Caboose, you brought up an issue with respect to other documents that are requested to be translated, other documents than the Complaint or the response to the Complaint. And there we're basically putting those

costs/materiality balancing issues in the hands of the panel.

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And so I would like to open the floor to anyone to say if they have any concern with what with what we're doing on language and translation, and I want to offer any other suggestion.

The one thing I forgot to mention is that if a claimant is more than an individual let's say it's a corporation where there are directors and officers then the language skill would be met by a director or an officer; in other words, as long as the claimant has some facility in English or one of the ICANN six languages, then that's going to be determinative.

So I open the floor if anyone has a comment. And if anyone doesn't, we will move this to closure for for the reading, and we're driving to an early conclusion for this call.

The other thing I wanted to handle today was getting towards how to wrap up the supplemental rules that we've already had the update on AOC and SO preparation for nominations to the standing panel. So we've moved to agenda item number 7. And as you heard me in the discussion with Charene at the outset say, it is my hope the supplemental rules will be done, through and to the hands of the board in the January time frame. In order for that to happen, we need to get through them, I hope, by the end of this calendar year.

Brenda, can I ask that you put up the sign up sheet on the screen if you can? And so what that means is, even though the sign up sheet on these rules appears somewhat blank it may be hard to read there the four issues below the second yellow line in the left hand column are things we will do after the supplemental rules. The items above that are the supplemental rules. Despite the fact it appears a little bit blank, we're actually making great progress, and I think we can finish these rules by the end of the year. And to do that, I think, would take one more teleconference, at least, and a lot of work on the list. And I'm happy to tee things up on the list the way we have been moving along. And

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many of the rules, basically we have had substantive discussions along the way, so I think we're near the end.

So I would encourage all of us, and I would encourage the people on the list, be sure and throw in comments towards the end of the year so that we can wrap these up. I imagine we give it off to Sidley, it will take them a couple of weeks, and I need to get in touch with Holly to make sure she knows this is coming.

All of that being said, we would then turn our attention to the different items. Charene was asking about the CFP at the beginning of the call. We would turn to the cooperative engagement process and come up with any rules we think are germane for that, and we would also turn to things that the bylaws asked us to do, such as to consider whether there are additional requirements needed for conflict of interest rules for panelists, the bylaws at 4.3(q) set out conflict of interest standard, but give us the role of saying, you know: Take a look and see if more are needed.

We also have to come up with rules for appeal and with rules for claims by customers of the IANA services contract. Those things, we think are secondary right now to getting these rules done, because they follow sequentially in time anyway. So that's the plan, folks. And you'll see some more from me on the list to tee these up and move them along, and we will have to set a meeting between here and the end of the year. We don't have anything scheduled. Bernie is reminding me, we should try and schedule some tentatively, at least, right now. So I may put Bernie on the spot in a minute and ask him if he could suggest maybe something in the first week of December that would be good for us. We're usually Thursday afternoon, 19:00 UTC.

Bernie, can I turn it over to you and ask you to comment in this whole area?

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>> BERNIE: Sure, David. We're as it happens, December is wide open. So you get your pick, Thursday, December 7th, 19:00 is your choice, that is open, and more than willing to book it now. I also have Thursday, December 7th.

>> DAVID: Okay.

>> BERNIE: And I also have the last day in November is 30th. I also have that if you prefer.

>> DAVID: So I personally think maybe we should schedule a meeting for Thursday, December 7th. But is there anyone on the call that has other thoughts about this? I think if it goes past the 7th, it's a little bit too late. And if it's on the 30th, I might be able to get things out through the list. Does anybody have any objection to setting things for Thursday, December 7th at 19:00? Let's do that, Bernie.

>> BERNIE: All right. Given things get very quiet towards the end of December, should we try and book something for January right now, at least one meeting, maybe on Thursday or Thursday the 18th?

>> DAVID: What was the first Thursday you mentioned?

>> BERNIE: We have well, they are all open. So we have January 11th, January 18th and January 25th.

>> DAVID: Okay. What's the one let's set one for January 10th. Better to have and not need than to need and not have.

>> BERNIE: Thank you very much. The invitations will be sent out.

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>> DAVID: Okay. Any other business? If anyone has any comments, I would welcome them now.

Seeing and hearing none, I will thank everybody for participating. It's a tough time to get on the phone calls around the holidays. Hopefully, December 7th, we'll be able to get our group together. And look for some E mails from me on the list. We'll move these rules to conclusion. We have had great discussions about them, happy about getting near of the end of this process so we can move on to other things.

Aubrey, you have a hand up, so go ahead and take the floor.

>> AUBREY: Thank you. I can be heard slightly better now. This is Aubrey speaking.

>> DAVID: It's better.

>> AUBREY: The one thing I haven't finished, the one thing we didn't get on the agenda today is the subject of the ongoing monitoring. So I just didn't want to let the call slip away without having fessed up for not having gotten much further on it and developed the document further. I did have a lot of discussions about people at the ICANN meeting about whether to continue sort of on the separate view that we have been having, or to sort of accept the notion that you had accepted that a small change to the bylaw, basically saying that the ATRT shall review the as opposed to may review the procedures would be an adequate response. And I guess the desire to not have a complicated solution has been pushing me that way. The only problem I still have with that and wanted to put on the table, and the one that's been sort of working in the back of my mind is, that leaves out the whole notion of including the panelists in that review.

Now, one could assume that the ATRT would indeed review them. But the there would be nothing explicit saying that they would have to be included.

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So going back, the simple solution is just a simple bylaws change that changes may review to shall review in the appropriate bylaw. And I don't have the document with me. I'm traveling with less machinery and don't have my laptop with me and the full copy in front of me. But basically, that could be the one change that was needed. Because we did want to make sure that there would be a review. And any other solution that I had been working towards gets more complicated, and I'm not sure it's worth the complication. I didn't want this one meeting to end without having put that back on the table.

Thanks.

>> DAVID: Thank you, Aubrey. As you said, you and I have been discussing this within the meetings. Within our teleconference, it's you and I that have been sort of batting this around. And I am of the view and just to mention for Charene, the current bylaw does, as Aubrey suggested, the ATRT reviews for IRP, but the lead in language is that it may be reviewed. And one of the public comments, I believe it was from ALAC, to our rules was that there should be periodic reviews of IRP. And we all I believe we all agree with that. And I came to the view that, like Aubrey stated, it could be under ATRT if it says shall. But I also was one that believed we should include as least the lead arbitrator or lead panelist, if that's the term, in their review. And so we will work more on that one. I agree with you, we will work more on that one. If it is something that involves a bylaw change, it would be a recommendation to the board, but a bylaw change along this lines would be required. It shouldn't be unleashed without an opportunity for the community to review its performance every five years or so. So more to do.

Aubrey, on that one, that issue, while it came up in public comments to the draft rules, it really doesn't affect the rules. So we can finish the rules before we finish ongoing monitoring, because that's sort of separate.

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Now, your hand is still up. Is that an old hand or new hand? Old hand. Is there anyone else that has a comment regarding what we've discussed or anything else on the list? If not, I want to thank Charene very much for attending. It's certainly a very welcome attendance. We're glad you were here, and you're welcome back any time. And I'm going to close the meeting.

Seeing no hands, I want to thank everybody for participating, and enjoy the rest of your day. We were able to wrap up early, and thank you. We can stop the recording.

(Meeting adjourned.)

EXHIBIT 312

[IOT] IRP IOT call reminder AND Joinder issue text

McAuley, David Contact Information Redacted

Fri Dec 1 19:18:31 UTC 2017

- Next message: [\[IOT\] IRP IOT call reminder AND Joinder issue text](#)
- Messages sorted by: [\[date \]](#) [\[thread \]](#) [\[subject \]](#) [\[author \]](#)

Dear members of the IRP IOT:

Reminder - we have next call on Thursday, Dec, 7th, at 19:00 UTC. Please double-check that time in case you are located where a daylight savings time change has taken place.

I will send an agenda by Tuesday and will be sending some issue-specific emails in the interim as well.

In this email I also address the Joinder issue we have been discussing. On our last call on Nov. 14th, Liz le of ICANN Legal suggested a tweak to the language we have been focusing on and she promised to send along draft text in that respect.

Here is what Liz has proposed:

1. If the person or entity participated in the underlying proceeding, (s)he/it/they receive notice.

1.A. If the person or entity satisfies (1.), above, then (s)he/it/they have a right to intervene in the IRP.

1.A.i. BUT, (s)he/it/they may only intervene as a party if they satisfy the standing requirement set forth in the Bylaws.

1.A.ii. If the standing requirement is not satisfied, then (s)he/it/they may intervene as an amicus.

2. For any person or entity that did not participate in the underlying proceeding, (s)he/it/they may intervene as a party if they satisfy the standing requirement set forth in the Bylaws.

2.A. If the standing requirement is not satisfied, the persons described in (2.), above, may intervene as an amicus if the Procedures Officer determines, in her/his discretion, that the entity has a material interest at stake directly relating to the injury or harm that is claimed by the Claimant to have been directly and causally connected to the alleged violation at issue in the Dispute.

I personally (not as IOT lead) find this acceptable and encourage each of you to consider it. If you object, or have comments, please come on list by Dec. 7th or join the call to make your points. This is drawing to a completed second reading at the Dec. 7th call.

For changes to text I ask for specific language proposals, not just observations. We are entering the home stretch on these public comments to the draft supplementary procedures and we need specific text to consider.

Many thanks to all.

David

David McAuley

Sr International Policy & Business Development Manager

Verisign Inc.

Contact Information Redacted

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<http://mm.icann.org/pipermail/iot/attachments/20171201/3dc838d3/attachment.html>

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EXHIBIT 313

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IRP-IOT MEETING

Thursday, February 22, 2018 -- 19:00-20:30

[Captioner standing by]

>> DAVID MCAULEY: Hello, everyone. This is David McAuley speaking. Welcome to the IRP implementation oversight team call. We are probably lacking a quorum, but I'm going to be make can some remarks, so I would ask for the recording to be started.

[This meeting is now being recorded]

>> DAVID MCAULEY: Thank you. I see that we have several participants and some observers, but probably not enough to make a quorum and that's disappointed. I would like to make a few comments and have them recorded and ask people to take a look at the comments and in the meantime we might gather a quorum, but we are so close to being finished that I am going to encourage folks to pay strict attention to the list. I think we can accomplish and perhaps close this out on the list, to look to encouraging our fellow participants when we see them at ICANN 61 to get more deeply involved. Once we finish these rules, and as I said, I think we're within a hair's length of finishing them, we have other things to do, including rules for appeals and things of that nature. So we have quite a bit on the plate.

I see we now have five on the line. So let's proceed and we will proceed with the meeting and do the best we can. I don't think we're going to fill the allotted time, but let's go through the agenda and then we can finish up on list and draw people's attention to this on list.

And as I said a moment ago, I'm going to encourage all of us involved in this, both as observers and participants to encourage our fellows in this group to get more deeply involved. We have we're about to finish one project and launch into some others, all of which I think are quite important. And then in tandem, the SOs and ACs are about to get much more serious about looking to establish a standing panel. So the new IRP is coming very close. We are going to be instrumental in making that happen, so let's encourage each other to redouble our efforts.

Welcome everybody to the call. I would like to ask if there's anybody attending the meeting on the phone only and not showing up in the Adobe meeting.

>> SAM EISNER: Hi, David. This is Sam Eisner, I will be joining the Adobe room soon.

>> DAVID MCAULEY: Thank you, Sam. Anyone else? Not hearing any, I'm going to ask if there is anybody in the call who has a change to their statement of interest that they would like to note. Not seeing any hands or hearing any, let's proceed.

Note: The following is the output resulting from the RTT (Real-Time Transcription also known as CART) of a teleconference call and/or session conducted into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

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So the next item on the agenda is the time for filing issue and this I put in our agenda as a status discussion and made some notes lower down in the agenda to describe what's been happening recently. And as you heard in the last call, this is the one serious issue, the one that's taken up most of our time or a lot of our time, I should say, the single issue that's had the most discussion, and I went back, as I promised I would in the last call, and looked at the record and came away believing, notwithstanding an inclination for an overall repose period, I came away that the bylaws struck me very clear, that the time for filing issue, in so far as it relates to an overall period of repose was correctly stated by Malcolm Huttly's suggested text. The one concern I came away with was, did we have a consensus? How do we determine consensus? And so in a moment I'm going to ask Bernie to talk about that from the perspective of the CCWG Accountability. So far procedurally we have operated as the CCWG Accountability has and we have not made any decision to do otherwise. So that could be an illuminating remark, so I'll ask Bernie in just a moment. I know Malcolm, Sam and Liz may be interested in making comments on this, too. And so I'm going to open the floor for comments and I'm particularly wondering if Sam, Liz, or Malcolm want to make a comment. And then I will turn to Bernie. So that being said, does anybody want to make any comment about the status of this particular issue?

>> SAM EISNER: David, this is Sam from ICANN. I think in some ways we're back in the conversation we had around June or so of this year on it and so we're at the point where, for those who have been participates in the IRP there's agreement to go forward with language that reflects there's no statute of repose on no outer limit on time for filing and so, you know, as we discussed before, that's a material change from what was posted for public comment. Within ICANN, I think and we've heard some other voices in the IOT as well that have not necessarily been supportive of the no IOT. I don't know the consensus process or how you determine consensus, but I know from ICANN's position, for purposes of the public comment, you know, we would actually like to be able to put in like a minority statement stating out our concerns around it. And then, you know, whatever else would go out with the public comment would be there, but we could develop a minority statement. We would be happy to circulate it among the IOT to see if there's anyone else that's part of the IOT that would like to join us or give statements of their own, but I think that's a way to frame some of the dialogue around public comment, understanding that the view of the group right now is to move forward with the no statute of repose in the next version of the rules.

>> DAVID MCAULEY: Thanks, Sam. David McAuley speaking again. You raised a good point, an interesting point, and that is public comment. This is a material change and so this, while I don't think the rules need to go back out for public comment, I think this particular change would need to go back out for public comment. And I'll ask Bernie to speak after Malcolm in just a minute. But I know in Work Stream II in CCWG Accountability there's been a series of minority statements. I don't expect there would be any problem with having a minority statement. But anyway, having said that, let me ask if Malcolm would make some comments and after Malcolm, I'll turn to Bernie to see if he can shed some light for us where we are consensually.

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>> MALCOLM HUTTY: Thank you. Can you hear me?

>> DAVID MCAULEY: Yes, we can hear you. Yes.

>> MALCOLM HUTTY: Thank you. Right, I mean, yes, now I think we're in the stage of just trying to write up our report, having made the decisions. The consensus, you called a consensus on this, I don't know, back in whatever it was, I think May, some time ago anyway, so now we just need to make sure that the report is clear and states the reason clearly as well as the decision clearly. I must say I'm surprised that ICANN would wish to put in a minority statement just from the point of view of the, I mean, has ICANN ever put in a minority statement on a matter in which it is actually, you know, the interested party? It seems strange as to whether that's even a thing for ICANN to do.

If it is decided that ICANN should be considered able to do that, then I think that would mean that we would need to be a little more forthcoming about the reasoning for the decision than we had talked about being. I think we would have if ICANN is going to argue its position that it disagrees with this, we would have to actually state the points that were raised as to why we had done this. We couldn't be silent on that and just simply state what we were doing.

But I must say, I'm I would think it strange and surprising and I would actually wonder about precedent and order as to whether ICANN can put in a minority statement. We are actually talking about, you know, the accountability of ICANN.

>> DAVID MCAULEY: Thank you, Malcolm. Is that are you finished?

>> MALCOLM HUTTY: Yes, I'm finished on that. I don't know how we would go about asking that question as to whether it was appropriate for ICANN to do that and who we would ask. Perhaps I could turn that to you, maybe you could get some advice on that.

>> DAVID MCAULEY: Thank you. This is David McAuley speaking. I'm going to turn to Liz in just a minute, but on the procedural question, I take your point, I hadn't thought that myself. My initial reaction to what you said, ICANN is, as Avri explained in the chat a concerned party, but there are many in the community that would probably like the idea of certainty at some point. I don't know. But I never thought that ICANN could not make such a statement as a participant in the group, I would expect they would. And even if this is a first instance of doing that, that wouldn't strike me all that unusual. But anyway, Bernie is going to comment. Bernie, if I could ask you to just hold on one moment and let Liz comment on this and then we'll go to you Bernie. So, Liz, take the floor.

>> SAM EISNER: This is Sam, I'm with Liz and I had to raise my hand before I was able to get into the room. I think, David, as you mentioned, ICANN is actually listed as a participant in this IOT group. There are many places where ICANN is not actually an active participant and designated and it was in that view of our role as a participant that we were considering making a minority statement. I thought, you know,

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so the reason I suggested that is, you know, I think we need to make sure that when this goes for public comment, we're not just posting a redline, there has to be some expression around why the change was made. And so, you know, I wouldn't want to ask the IOT itself to carry the water to agree on reflecting ICANN's concerns that were raised during the discussion and to require the IOT to reflect those in a public comment document. And so the suggestion of making a minority statement was a way to allow that to come into consideration as the community is considering this very major change to the rules that could have very broad impact across the ICANN community, without trying to impose on the IOT the need to reflect ICANN's concerns in a summary that got posted for comment.

>> DAVID MCAULEY: Thanks, Sam. Malcolm, before I go to you, I'm going to ask Bernie to comment on this and then we'll come to you.

>> BERNARD TURCOTTE: Thank you, David. Can you hear me?

>> DAVID MCAULEY: Yes, Bernie, we can hear you. Thanks.

>> BERNARD TURCOTTE: All right. On the minority statement, I don't think there's any limitations and from the historical point of view, from the CCWG Accountability, I don't think we've ever applied any significant limitations. If there was a major divergence of opinion, we've always strived to ensure that that gets presented. So our latest example is the point from Brazil and the jurisdiction discussion. So from that point of view, it's fairly straightforward.

I think as Sam has pointed out, ICANN and council are typically members of this group, but I don't think beyond presenting the views and participating in discussion that they don't get involved in actually establishing quorum on decisions. So if you look at that, then, you know, the sum of our meetings of this group, if we applied the same rule that we would apply to other Work Stream II subgroups, is that technically we need five, if you will, full participants to have a valid reading of a recommendation. The second rule that has permeated through most of the Work Stream II stuff from Work Stream I is there has to be two readings to ensure that people get a chance to join in if they could not for any reason join on one meeting, they should be there upon the second meeting.

And the other point is that in between two readings, there should be a clear presentation of the issue on the list and who should accept comments on the list as also having a weight in expressing consent.

So I think if we go through all of that, I've been going through a bit of the history, you know, there hasn't been beyond ICANN, I think, any significant disagreement with the Malcolm point of view, but we have been rather shy on if we're trying to keep to the quorum rule that we've had. I hope that's sufficient.

>> DAVID MCAULEY: That's helpful, Bernie. David McAuley speaking again. Malcolm oops. Malcolm's hand is down. I see Malcolm's comment in the chat where he says, I share Sam's view that we should not merely post a redline, but should give explanation of why the change was made. I don't quarrel with that.

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Based on what Bernie said, my way forward is to confirm the consensus on the list and to do that, I would come up with a statement of the issue and then I would pass it amongst myself, Malcolm, and Sam, I think, to try to make sure we get to crisp and accurate statement that we would put to the list and say we have come to consensus.

Malcolm, your hand is back up. Yes, go ahead.

>> MALCOLM HUTTY: That sounds like you are reopening the question at hand. You had already declared that a consensus had been reached. You did so I'm checking my e mail now, I believe it was the 11th of June, was it not?

>> DAVID MCAULEY: I don't remember the date. I think that you're accurate in what you're saying, but I think I was probably not taking account of the attendance. In other words, I'm not sure that the group has had a chance to weigh in on this. And as I listened to Bernie

>> MALCOLM HUTTY: Well

>> DAVID MCAULEY: as I listened to Bernie's comments, this idea of confirming consensus struck me as consistent with what Bernie was saying.

>> MALCOLM HUTTY: Basically [indiscernible] a meeting that was given proper notice, we held a meeting, we posted to the list several days before the second meeting was held, and in that post we made a very clear statement of what was the issue before us, the language that was scheduled for approval, and invited people's comments and then we held with due and adequate notice a second meeting that was held to be [indiscernible] and at that fact you said we now had second reading.

>> DAVID MCAULEY: Are you done, Malcolm?

>> MALCOLM HUTTY: I'm done.

>> DAVID MCAULEY: Bernie, did I misinterpret anything that you said in well, I guess it's hard for you to know that. To read my mind. Do you have anything to add to this, Bernie?

>> BERNARD TURCOTTE: As I said, you know, I can just give you references as to what is common practice in Work Stream II and it's really for the group. And so what I will say is, you know, if there is a critical this may be useful, if there is a critical timing issue, the CCWG Accountability has gathered the Plenary, you know, where there is usually sufficient attendance and dealt with things quickly. There has been a history of if there is something that is dicey on the quorum side to ask the Plenary's view of that, but the IOT is a bit of a different creature, as we know.

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The reason I raised my hand, originally, was to note that if the decision is made to go ahead with the proposal on timing, that this would represent a major change and according to our basic rules would require going back to public comment. Thank you.

>> DAVID MCAULEY: Thanks, Bernie. I don't disagree on the public comment aspect of it.

I think what I'm going to do is yet again go back to the record and examine exactly what Malcolm is saying happened for myself, again, and I'll come back on the list and say what I believe the case is. Malcolm, I'll be at you in just one second. But I feel, I mean, I have done this and this will be another step back into it, I don't mind doing that, but I don't feel comfortable in making a decision on this on the fly right here. And I think what I'll do along the way, as I said, is keep the major proponents of the two sides involved in this rather than the entire list, unless anyone would object to that. That doesn't mean that we would keep anything from the list, it simply means we would be doing some of the background work in the background and then come to the list and explain what happened. So I'm tempted to operate in that manner.

Malcolm's hand was up first and then Sam. I'll turn to Malcolm.

>> MALCOLM HUTTY: Thank you, David. I would like to be clear, I'm not in any way arguing with Bernie about the procedure. I'm simply saying that I believe the procedure was, as Bernie laid out, has been fully complied with. I have just this moment forwarded for your convenience a copy of the message that was sent after the first reading meeting and before the second reading meeting, which you will see sets the issue out clearly and gives a week's notice of the second reading and inviting people to comment on the list or to attend that second reading meeting. That second reading meeting was then held. It was considered [indiscernible] and it went through without further demurrals.

If you are to say now that meeting that was in quorum, apart from the fact that I think doing so at this late stage is probably wrong, it would also invalidate anything else that was done at that meeting. I think we have complied with the procedures fully. We are where we are. And the next stage is to complete the write up so we can go to public comment. I'm not disagreeing with any public comment on this issue.

>> DAVID MCAULEY: Thanks, Malcolm. And what I'm saying now is I'm not disagreeing with you, I'm not saying you're misstating anything, I just need to go back and look at this myself, that's all.

>> MALCOLM HUTTY: [Indiscernible].

>> DAVID MCAULEY: I'm sorry?

>> MALCOLM HUTTY: I said, that's fine.

>> DAVID MCAULEY: Liz's hand is up

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>> MALCOLM HUTTY: I'm done.

>> DAVID MCAULEY: Okay, thank you. Liz's hand was up, but now down. So what I'm going to do is move on. I will go back and look at that procedural matter again. The last time I went back was looking more at the substance of the timing issue. This time I'll look more at the procedural side.

So what I'd like to do is move on to the third item on the agenda which is the review of the public comments document, our draft, unless anyone has anything else to say on this. Seeing no hands, let's move on to Brenda, if you could bring up on the screen the revised document that deals with our treatment of the public comments. On this document we went through the greater part of it on the last call and I don't recall any specific requests for changes in it.

In this latest draft you'll see that there are, in track changes format, there are some additional language insertions, but they're pretty nominal in a sense. Many of them simply go through sections where we say, no change is recommended, or, see the recommendations regarding [indiscernible]. So you have scroll control, I believe, on this document. Let me just go through briefly at a very high level.

What this has is an introduction. The introduction is basically the way that we've worked. Near the bottom of page 1, prior to the language that is shaded in red, there's red text. Do we need actually revisions drafted by Sidley for this report or can we proceed in this manner? I take it from the way we have been treating this document is the answer is the latter. We can proceed in this manner. We are going to give instructions to Sidley and vet our instructions to make sure they receive the instructions and move forward from that point. So unless anyone thinks that's an incorrect assessment of where we are in dealing with Sidley, please speak up now. Raise your hand or make a comment.

The next thing I would mention is you will see there's some shade I had language at the bottom of page 1 going over to the next page that added a paragraph that says, by the way in the public comment exercise, a number of people commented on things that have nothing to do with the actual rules. One example I'll give is the ALAC's comment that there should be on going monitoring of IRP process overall. And that's an issue that Avri took the lead on for us and it simply happens that whatever we do with that comment doesn't show up in the rules. It won't have language reflected in the rule to deal with it. So this shaded paragraph says, to the reader of this report, with respect to those kinds of comments we will come out with another document telling you what we've done, if anything, with respect to those comments. Does anybody object? I think there may have been concern on some part that this kind of paragraph may get us into trouble or might lead to questions that are not necessarily productive. We don't need to have a paragraph like this, I just thought it would be useful to tell folks, there were comments, we haven't ignored them, if we think they will make a difference, we will come up and say so. And for instance, continuing on with Avri's example, the example rather of on going monitoring, I think we will make a recommendation that there be on going monitoring of the IRP process, consistent with the bylaws. IRP is mentioned in one of the five year reviews.

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Avri, your hand is up, why don't you take the floor?

>> AVRI DORIA: Thanks, this is Avri. I just wanted to ask a question about the timing of this separate document. I mean, can this separate I mean, does it come out at the same time? Does it come out much, much later? Can things be attached? Like annexes of other issues discussed or something? So I have no problem with the paragraph, I'm just wondering does the timing require it? Thanks.

>> DAVID MCAULEY: Thank you, Avri. David McAuley speaking again. With respect to timing, it would be following this document on the rules and it would I would come up with a draft, I would pass it around the group and we could see if we could issue it. My expectation is it wouldn't necessarily need to take a lot of time, but you never know. Something might grab somebody's attention and we could get bogged down on it. So it would be subsequent to this document that's in front of us. Hopefully not too much past that. Much, a much briefer document than the one that's in front of us now that we're working on. Those are my thoughts about it.

Any other comments? Okay.

But then you'll see that I've basically filled in the rest of the document, taking out comments like, in process, with the exception for the time for filing issue, and saying where changes are recommendations or where they're not. And so I will, I believe, frankly, that the document that we have in front of us dealing with our report to the community on our treatment of public comments is, with the exception of the time for filing issue, is basically close to down. So what I'm going to do is put this back on the list and say, look, we have finished with this now, you know, this is essentially the first reading and a week later the second reading on this document and asking people if they have any objection or anything like that to please state it with specific language suggested as an alternative, and I'll reserve the time for filing issue consistent with what we do on that as per our prior discussion just a few moments ago.

If anybody has any other approach or concerns, just let me know. Hearing none and seeing none, let me move to the next agenda item. And that is called types of hearing discussion. And I sent a separate e mail about this. And what prompted me to send the separate e mail is among all of the issues on our sign up sheet and public comments, this is the one I think had the least discussion. So I wanted to ask amongst this group, or give us a chance to speak up on the types of hearing. And you've seen my e mail. I'm going to ask Brenda if she could put up the types of hearing e mail and give scroll control on it. But it was basically an e mail that pointed to comments to people like .music that argued for in persons hearing in cases as being fairly standard. And what we did in the draft supplementary procedures, in paragraph five, is we basically said that the panel can conduct proceedings electronically to the extent feasible and if there needed to be telephonic or video conferences they should be limited to where necessary. And we went on to say in person hearing that would be a presumption against them, but they could be overcome, the presumption could be overcome in extraordinary circumstances as described in USP 5. So some of the community said that wasn't a good idea. I put that out in my e mail. You have scroll control on that. And I

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made a recommendation as a participant that no change struck me being needed to the rule we had drafted. I said it allows the panel to have video or telephonic conferences where necessary and made in person hearing presumptively not to be held, but they could be in extraordinary circumstances, and it left discretion in the panel, which is going to be in the best position to do this, consistent with the idea of fundamental fairness, due process, and expeditious IP hearing. This is an arbitration system that is designed by ICANN to be expeditious. People have the ability to go to court if they wish for some other venue so that's why I made the recommendation that I did.

I'm going to open this to the floor and see if anybody has other thoughts on it. Malcolm, you have the floor. If you are speaking, Malcolm, we can't hear you.

>> MALCOLM HUTTY: I think I was muted.

>> DAVID MCAULEY: There you go.

>> MALCOLM HUTTY: Thank you, David. You raised this point in an e mail to the list on the 2nd of January and I replied in some detail the following day, the 3rd of January. When you raised it, you said that you thought that if we were if people wanted to make comments for changes they should offer text, not merely commentary. So I did that. I attached a suggestion for what rule 5 could look like in a way that slightly broadened this out, while giving more discretion to the panel to decide when an in person hearing should be allowed, but nonetheless emphasizing the critical importance that matters are decided expeditiously and at low cost. As a standard to apply when exercising its discretion.

Now I'm not going to walk you through the full text of my e mail or the proposal that I made now, it would take too long, but I would like to direct, if you are asking for our comments on this issue, I'd like to direct your attention to that reply.

>> DAVID MCAULEY: Thank you, Malcolm. I'll take that under advisement. I did lose sight of that, my apologies. That's exactly what I'm looking for, so I'll go find it and go through it and come back on the list.

Is there anyone else that would like to comment on the types of hearing subject hearing? Liz your hand is up. Liz or Sam, you have the floor.

>> LIZ: Hi, David, it's Liz. I just wanted to raise the issue that we did discuss this issue during the January call. I don't think Malcolm was present during that call, but we did discuss this and stated ICANN's position, which is that we are in agreement with the position that you set forth as a participant. In that, this is an issue that has been debated and worked through prior to the publication of the draft that went out for public comment. And we agree with your position that it should remain as drafted.

>> DAVID MCAULEY: Thanks, Liz. And, again, I went back on this and went back to the record, obviously I missed that portion of the January hearing where we discussed this. My apologies to this group for doing

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that. I'm going to go back and look again, as I said to Malcolm, and come back to the list. I appreciate the points you made and Malcolm list, I appreciate the discussion, I'll go through that and come back to the list. I'm glad to hear it. I'm glad there was discussion.

Does anybody else want to make a point about this? Not seeing any hands or hearing any, let's move on to agenda item number five which talks about next steps. First with respect to the Report on Public Comments, I just mentioned that, but I also wanted to and I also mentioned about the public comments on non rules matters. So we actually discussed those briefly.

I want to just at this time make a point that there's something I would suggest that we address and what it is is under the rule, under the bylaws 4.3N talks about us constructing rules of procedure and 4.3N4C talks about us coming up with description of written statements, including let me see if I can find the language. Bear with me just one second. Including to come up with rules governing written submissions, including required elements of a claim. The one thing I don't believe we have laid out is the required elements of a claim.

Now the I think it would be good if I came out on list and suggested that we do this. And we could perhaps include this in the item for public comment, although it's probably not a major thing. But I only think it's just a point for sort of cleaning up and making sure that it's dressed with respect to the IRP as opposed to arbitration under ICDR rules. ICDR rules do cover what is what's required in a notice of arbitration, as they call it. And basically they ask not only for a copy of the arbitration clause, but a description of the claim, in fact, supporting it. So my question to us is, do we want to just list the elements of a claim as being things like the name of the party, the capacity that they are filing in, are they an individual, a registrant, a Registrar, whatever? To describe the action or inaction by ICANN with some particularity as to what that action was, when it was, describe the effect on the Claimant and specifically call out the Article or bylaw they allege was violated? We haven't discussed this. It's a suggestion that I could come up with some draft language fairly quickly and I was wondering if anybody had any thoughts on this as to the wisdom of doing something like this or simply leaving this unstated and as it's treat under the ICDR rules.

Sam, you had your hand up. Go ahead.

>> SAM EISNER: Thank you, David. I think the concept is stating what does it mean to raise a claim? And what are the points needed to raise a claim? You know, it's definitely worth considering. I think we have to go back to the language that's actually within the bylaws that specifies what a claim is and that might be the biggest guidance. I think some of your suggestions about referencing which section of the bylaws or the articles is alleged to be violated, et cetera, that was missing that and it could make it very difficult for people to actually state their claim. I think, currently I know we have a, I'm not sure how specific the ICDR form is around the filing of an IRP and I'm here with Liz and she is shaking her head going, no, no, it's not really specific anyway, so it's not actually handled within the IRP filing form. So I think you raise a

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point, you know, we need to make sure things are there and stated. Is it something we need to reflect in the rules of procedure? I'm not sure. I think it could go either way. I think we should also look at the ICDR procedures themselves because they might tether it to whatever basis is there. I don't know if this is a place we would be recreated work we don't necessarily do, but I wouldn't be opposed to taking an initial to seeing an initial draft on if you want to do as you proposed.

>> DAVID MCAULEY: Thanks, Sam. Excuse me. It's David McAuley speaking again. I think I may come out to the list with a suggestion. It's not a make or break issue, obviously, because the ICDR rules are in the background and the bylaws require what they require. Since that rule 4.3N4C, I think it was, spoke about elements of the claim, I thought I'd mention it. It's something that we have neglected. Probably I should have raised it sooner, but I didn't really notice it until lately.

So I will probably suggest something and we can discuss whether it's the idea is merited or not. I don't think we'll disagree. I mean, the elements are going to be fairly straightforward and factually based. So thank you. Thank you for that.

Excuse me. I had another point under next steps discussion with respect to future non rules work. And simply here I'll just remind this group that the SOs and ACs are embarking on the effort to establish a standing panel. And those of us here, and I'll probably say something about this on list, those in our group are constituents in these groups. And so I would encourage us to offer our services to our constituent bodies, help them, they're going to need help. It's not very well described in the bylaws what they have to do. They have to sort of establish a standing panel and there's not that much guidance. I'm hoping that we as a team, if asked, can help them, and we as individuals in our constituencies can help them, too. Please be attentive, too.

Sam, is that an old hand or new hand?

>> SAM EISNER: It's an old hand, but I'll just call attention to what I just posted in the chat that we have just received confirmation a couple days ago that we have a formal time on the schedule, Wednesday at 17:00 Puerto Rico time local for that community discussion to continue. We'll circulate that more broadly to the IOT list as well.

>> DAVID MCAULEY: Thank you. And then I'd also simply remind our group that in addition to that work, there are other things we need to do. I can't remember all of them, but they involved coming up with process for can cooperative engagement group. That group in CCWG Accountability went away and we have to come up that effort. And in our public comments we got for non appeal, but regular IRP appeal, we got a couple of people saying on appeal, the cost should go to the losing party or an appellant that loses. Excuse me. And things of that nature. And we could be requested by PTI customers to come up with PTI claims. So there's more for us to do before this group is disbanded or whatever. So look for I think we're close. If we can figure out the time for filing where we are on that, I think we're close to getting a report out. And so I encourage us to stay involved and I hope to get a chance to chat with a

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number of you in Puerto Rico. All that being said, I'm going to ask if anybody has any comments, thoughts, insights or suggestion for work we have in the future. For the dynamics of the team, we need to encourage more folks to jump on the call and I've been doing that, but probably not all that successfully, and to get more involved on the list. I look forward to continuing those efforts.

And if there are no further comments, I think we can call this to a close. I'll go back to the notes and start work for time for filing issue tomorrow or over the weekend to try to sort out where we are. That said, if no one has any other suggestions or comments, we can wrap this up.

Malcolm, I see you are typing. If you have a comment you want to mention, feel free to go ahead and do so. Okay, thank you. You're welcome. That will be a wrap then. I think we can close the recording and I'll simply say thanks, everybody. Thank you so much for being here. And we shall move forward and we're getting close to getting the rules done, so my thanks to all. And goodbye.

>> Thank you, David. Thank you.

>> DAVID MCAULEY: Thank you.

[Meeting concluded]

EXHIBIT 314

Adopted Board Resolutions | Regular Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board

25 Oct 2018

1. **Consent Agenda:**

- a. **Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) (SSAC (Security and Stability Advisory Committee)) Member Appointments**

Rationale for Resolution 2018.10.25.01

- b. **Appointment of Root Server Operator Organization Representatives to the RSSAC (Root Server System Advisory Committee)**

Rationale for Resolution 2018.10.25.02

- c. **Appointment of Root Server System Advisory Committee (Advisory Committee) (RSSAC (Root Server System Advisory Committee)) Co-Chair**

Rationale for Resolution 2018.10.25.03

- d. **Deferral of Transition to Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Consensus (Consensus) Policy Implementation**

Rationale for Resolution 2018.10.25.04

- e. **Payment of Legal Invoice Exceeding \$500,000**

Rationale for Resolution 2018.10.25.05

- f. **Thank You to Community Members**
- g. **Thank You to Local Host of ICANN (Internet Corporation for Assigned Names and Numbers) 63 Meeting**
- h. **Thank You to Sponsors of ICANN (Internet Corporation for Assigned Names and Numbers) 63 Meeting**
- i. **Thank You to Interpreters, Staff, Event and Hotel Teams of ICANN (Internet Corporation for Assigned Names and Numbers) 63 Meeting**

2. **Main Agenda:**

- a. **Appointment of Board Designee to the Third Accountability and Transparency Review Team**
Rationale for Resolutions 2018.10.25.14 – 2018.10.25.15
- b. **Geographic Regions Review Working Group Final Report**
Rationale for Resolution 2018.10.25.16
- c. **Transfer of funds from Operating fund to Reserve fund**
Rationale for Resolution 2018.10.25.17
- d. **New gTLD (generic Top Level Domain) Applications for .AMAZON**
Rationale for Resolutions 2018.10.25.18 – 2018.10.25.19
- e. **Independent Review Process Interim Supplementary Rules of Procedure**

Rationale for Resolutions 2018.10.25.20
– 2018.10.25.21

f. **Reserve Fund Replenishment Strategy**

Rationale for Resolutions 2018.10.25.22
– 2018.10.25.23

g. **Thank You to Lousewies van der Laan for her service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board**

h. **Thank You to Jonne Soininen for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board**

i. **Thank You to Mike Silber for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board**

j. **Thank You to Ram Mohan for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board**

k. **Thank You to George Sadowsky for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board**

1. **Consent Agenda:**

a. **Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) (SSAC (Security and Stability Advisory**

Committee)) Member Appointments

Whereas, Article 12, Section 12.2(b) of the Bylaws governs the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) (SSAC (Security and Stability Advisory Committee)).

Whereas, the Board, at Resolution 2010.08.05.07, approved Bylaws revisions that created three-year terms for SSAC (Security and Stability Advisory Committee) members, required staggering of terms, and obligated the SSAC (Security and Stability Advisory Committee) Chair to recommend the reappointment of all current SSAC (Security and Stability Advisory Committee) members to full or partial terms to implement the Bylaws revisions.

Whereas, the Board, at Resolution 2010.08.05.08 appointed SSAC (Security and Stability Advisory Committee) members to terms of one, two, and three years beginning on 01 January 2011 and ending on 31 December 2011, 31 December 2012, and 31 December 2013.

Whereas, in January 2018 the SSAC (Security and Stability Advisory Committee) Membership Committee initiated an annual review of SSAC (Security and Stability Advisory Committee) members whose terms are ending 31 December 2018 and submitted to the SSAC (Security and Stability Advisory Committee) its

recommendations for reappointments in August 2018.

Whereas, on 22 August 2018, the SSAC (Security and Stability Advisory Committee) members approved the reappointments.

Whereas, the SSAC (Security and Stability Advisory Committee) recommends that the Board reappoint the following SSAC (Security and Stability Advisory Committee) members to three-year terms: Jaap Akkerhuis, Patrik Fältström, Ondrej Filip, Jim Galvin, Robert Guerra, Julie Hammer, Ram Mohan, Doron Shikmoni, and Suzanne Woolf.

Resolved (2018.10.25.01), the Board accepts the recommendation of the SSAC (Security and Stability Advisory Committee) and reappoints the following SSAC (Security and Stability Advisory Committee) members to three-year terms beginning 01 January 2019 and ending 31 December 2021: Jaap Akkerhuis, Patrik Fältström, Ondrej Filip, Jim Galvin, Robert Guerra, Julie Hammer, Ram Mohan, Doron Shikmoni, and Suzanne Woolf.

Rationale for Resolution *2018.10.25.01*

The SSAC (Security and Stability Advisory Committee) is a diverse group of individuals whose expertise in specific subject matters enables the SSAC (Security and Stability Advisory Committee) to fulfill its charter and execute its mission. Since its inception, the SSAC (Security and Stability Advisory Committee) has invited individuals with deep knowledge and experience in technical and

security areas that are critical to the security and stability of the Internet's naming and address allocation systems. The above-mentioned individuals provide the SSAC (Security and Stability Advisory Committee) with the expertise and experience required for the Committee to fulfill its charter and execute its mission.

This resolution is an organizational administrative function for which no public comment is required. The appointment of SSAC (Security and Stability Advisory Committee) members is in the public interest and in furtherance of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission as it contributes to the commitment of the ICANN (Internet Corporation for Assigned Names and Numbers) to strengthen the security, stability, and resiliency of the DNS (Domain Name System).

b. **Appointment of Root Server Operator Organization Representatives to the RSSAC (Root Server System Advisory Committee)**

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws call for the establishment of the Root Server System Advisory Committee (Advisory Committee) (RSSAC (Root Server System Advisory Committee)) with the role to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community and ICANN (Internet Corporation for Assigned Names and

Numbers) Board of Directors on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System.

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws call for the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors to appoint one RSSAC (Root Server System Advisory Committee) member from each root server operator organization, based on recommendations from the RSSAC (Root Server System Advisory Committee) Co-Chairs.

Whereas, the RSSAC (Root Server System Advisory Committee) Co-Chairs have recommended to the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors the appointment of representatives from Internet Systems Consortium (ISC), Inc.; National Aeronautics and Space Administration (NASA); ICANN (Internet Corporation for Assigned Names and Numbers) organization; Netnod; University of Maryland; and Verisign, Inc. to the RSSAC (Root Server System Advisory Committee).

Resolved (2018.10.25.02), the Board appoints the following persons to serve on the RSSAC (Root Server System Advisory Committee): Keith Bluestein and Karl Reuss through 31 December 2019; and Fred Baker, Matt Larson, Lars-Johan Liman, and Brad Verd through 31 December 2021.

Rationale for Resolution *2018.10.25.02*

In May 2013, the root server operator organizations agreed to an initial membership of representatives for the RSSAC (Root Server System Advisory Committee), each nominating an individual. The ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors approved the initial membership of the RSSAC (Root Server System Advisory Committee) in July 2013 with staggered terms.

The current term for the representatives from Internet Systems Consortium (ISC), Inc.; ICANN (Internet Corporation for Assigned Names and Numbers) organization; Netnod; and Verisign, Inc. expires 31 December 2018. In September 2018, the ICANN (Internet Corporation for Assigned Names and Numbers) organization and University of Maryland requested to change their representatives for the remainder of the current term, which expires on 31 December 2019.

The appointment of RSSAC (Root Server System Advisory Committee) members is not anticipated to have any fiscal impact on the ICANN (Internet Corporation for Assigned Names and Numbers) organization that has not already been accounted for in the budgeted resources necessary for ongoing support of the RSSAC (Root Server System Advisory Committee).

This resolution is an organizational administrative function for which no public comment is required. The appointment of

RSSAC (Root Server System Advisory Committee) members is in the public interest and in furtherance of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission as it contributes to the commitment of the ICANN (Internet Corporation for Assigned Names and Numbers) organization to strengthen the security, stability, and resiliency of the DNS (Domain Name System).

c. Appointment of Root Server System Advisory Committee (Advisory Committee) (RSSAC (Root Server System Advisory Committee)) Co-Chair

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws state that the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors shall appoint the co-chairs and members of the RSSAC (Root Server System Advisory Committee).

Whereas, on 24 October 2018, the RSSAC (Root Server System Advisory Committee) conducted an election for one co-chair position and elected Fred Baker to a two-year term as co-chair.

Whereas, the RSSAC (Root Server System Advisory Committee) recommends that the Board take action with respect to the appointment of the RSSAC (Root Server System Advisory Committee) Co-Chair.

Resolved (2018.10.25.03), the Board accepts the recommendation of the RSSAC (Root

Server System Advisory Committee) and appoints Fred Baker as Co-Chair of the RSSAC (Root Server System Advisory Committee) and extends its best wishes on this important role.

Rationale for Resolution **2018.10.25.03**

The ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws call for the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors to appoint the RSSAC (Root Server System Advisory Committee) Co-Chairs as selected by the membership of the RSSAC (Root Server System Advisory Committee). The appointment of the RSSAC (Root Server System Advisory Committee) Co-Chairs will allow the RSSAC (Root Server System Advisory Committee) to be properly composed to serve its function as an advisory committee.

The appointment of the RSSAC (Root Server System Advisory Committee) Co-Chairs is not anticipated to have any fiscal impact on the ICANN (Internet Corporation for Assigned Names and Numbers) organization that has not already been accounted for in the budgeted resources necessary for ongoing support of the RSSAC (Root Server System Advisory Committee).

This is an organizational administrative function for which no public comment is required. The appointment of the RSSAC (Root Server System Advisory Committee) Co-Chairs contributes to the commitment of the ICANN (Internet Corporation for Assigned

Names and Numbers) organization to strengthen the security, stability, and resiliency of the DNS (Domain Name System).

d. **Deferral of Transition to Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Consensus (Consensus) Policy Implementation**

Whereas, the Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Transition Policy for .COM, .NET and .JOBS (/resources/pages/thick-whois-transition-policy-2017-02-01-en) ("Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Policy") requires Verisign to begin accepting "Thick" registration data from registrars for .COM and .NET starting 31 May 2019, all new domain name registrations must be submitted to the registry as "Thick" starting on 30 November 2019 at the latest, and all relevant registration data for existing domain names must be migrated from "Thin" to "Thick" by 31 May 2020.

Whereas, in preparation to complete the deployment to accept Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) data, Verisign proposed amendments to the registry-registrar agreements for .COM and .NET.

Whereas, the Registrar Stakeholder Group expressed concerns about agreeing to Verisign's proposed amendments based on issues relating to the European Union's General Data Protection Regulation, the processing of data, and new requirements and

obligations imposed on the registrars. ICANN (Internet Corporation for Assigned Names and Numbers) org has also provided comments to Verisign regarding the proposed amendments.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) org has been facilitating discussions between Verisign and the Registrar Stakeholder Group to reach agreement on the proposed amendments to the registry-registrar agreements to implement the Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Transition Policy.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) org, Verisign and the Registrar Stakeholder Group need additional time to reach agreement on the proposed amendments to the applicable registry-registrar agreements to implement the Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Transition Policy.

Whereas, the deferred enforcement period will allow the affected contracted parties additional time to assess the progress of the Expedited Policy Development Process Team's work to formulate a Consensus (Consensus) Policy to replace the Temporary Specification for gTLD (generic Top Level Domain) Registration Data.

Resolved (2018.10.25.04), the President and CEO, or his designee(s), is authorized to defer compliance enforcement of the Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Transition Policy to 31 May 2019, 30 November 2019, and 31 May 2020, respectively, to allow additional time for the registrars and Verisign to reach agreement on

amendments needed to applicable agreements to implement the Policy.

Rationale for Resolution *2018.10.25.04*

The Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Transition Policy (/resources/pages/thick-whois-transition-policy-2017-02-01-en) specifies a phased approach to transition the .COM and .NET registries from "Thin" to "Thick" WHOIS (WHOIS (pronounced "who is"; not an acronym)). The three phases are:

1. Registry operator to begin accepting Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) data from registrars,
2. New .COM and .NET domain name registrations to be created as thick registrations, and
3. The complete migration of all existing domain registration data from "Thin" to "Thick" one year following the date the registry operator begins accepting Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) data from registrars.

The Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Transition Policy requires Verisign to begin accepting "Thick" registration data from registrars starting 30 November 2018, registrars to submit Thick registration data to the .COM, .NET, and .JOBS registries for all new domain name registrations starting on 30 April 2019, and the migration of all

existing domain registration data from Thin to Thick by 31 January 2020. In preparation for accepting Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) data, Verisign, the registry operator for .COM and .NET and the back-end registry services provider for .JOBS, proposed amendments to the registry-registrar agreements for .COM and .NET to have the legal framework necessary for acceptance of the data. While the Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Consensus (Consensus) Policy also applies to the .JOBS TLD (Top Level Domain), the registry operator for .JOBS, Employ Media, did not require changes to the Registry-Registrar Agreement to begin accepting Thick registration data and registrars have already started submitting Thick registration data for .JOBS as per the Policy.

Following the [Registry-Registrar Agreement Amendment Procedure \(/resources/pages/rra-amendment-procedure-2015-04-06-en\)](#), ICANN (Internet Corporation for Assigned Names and Numbers) org has been facilitating discussions between Verisign and the Registrar Stakeholder Group to reach agreement on the proposed amendments to the registry-registrar agreements, but the parties have not yet reached agreement. Also, ICANN (Internet Corporation for Assigned Names and Numbers) has provided comments on the proposed amendments to the registry-registrar agreements, which are being discussed with Verisign. Additionally, the community is working to consider the Temporary Specification for gTLD (generic

Top Level Domain) Registration Data as a Consensus (Consensus) Policy.

The Board is taking action at this time to authorize the ICANN (Internet Corporation for Assigned Names and Numbers) President and CEO to defer compliance enforcement of the Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Policy for an additional six months. The deferral will allow additional time for Verisign, registrars and ICANN (Internet Corporation for Assigned Names and Numbers) to reach agreement on the amendments needed to the registry-registrar agreements to implement the Policy. This deferred enforcement period will also allow the Expedited Policy Development Process Team to determine if the Temporary Specification for gTLD (generic Top Level Domain) Registration Data should become an ICANN (Internet Corporation for Assigned Names and Numbers) Consensus (Consensus) Policy while complying with the GDPR and other relevant privacy and data protection law.

As a result of the Board's action, ICANN (Internet Corporation for Assigned Names and Numbers) org will begin compliance enforcement of the Policy requirement for registrars to submit all new domain name registrations to the registry as Thick starting on 30 November 2019, and all relevant registration data for existing domain names must be migrated from Thin to Thick by 31 May 2020. The optional milestone date for registrars to begin voluntarily submitting Thick data to the registry will be 31 May 2019 presuming there are no additional changes as

a result of the Expedited Policy Development Process Team's recommendations.

During this period of deferred compliance enforcement, ICANN (Internet Corporation for Assigned Names and Numbers) org will continue to work with Verisign and the Registrar Stakeholder Group to facilitate discussions on the proposed amendments.

The Board's deliberations on this matter referenced several significant materials including:

- Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Transition Policy for .COM, .NET and .JOBS (/resources/pages/thick-whois-transition-policy-2017-02-01-en)
- Registry Registration Data Directory Services Consistent Labeling and Display Policy (/resources/pages/rdds-labeling-policy-2017-02-01-en)
- PDP (Policy Development Process) Documentation (<http://gnso.icann.org/en/group-activities/thick-whois.htm>)
- PDP (Policy Development Process) WG (Working Group) Final Report (<http://gnso.icann.org/en/issues/whois/thick-final-21oct13-en.pdf>)
- Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Implementation (/resources/pages/thick-whois-2016-06-27-en)

- IRT (Implementation Recommendation Team (of new gTLDs)) letter to GNSO (Generic Names Supporting Organization) regarding implications GDPR to implement Thick WHOIS (WHOIS (pronounced "who is"; not an acronym))
(<https://community.icann.org/display/TWCPI/Documentation?preview=/52889541/63157407/IRT%20to%20GNSO%20Council%20on%20Privacy%2020161215.pdf>)
- Public Comment period on Consistent Labeling and Display implementation proposal (</public-comments/rdds-output-2015-12-03-en>)
- Public Comment period on Transition from Thin to Thick for .COM, .NET and .JOBS (</public-comments/proposed-implementation-gnso-thick-rdds-whois-transition-2016-10-26-en>)
- Letter from Patrick Kane to Akram Atallah re: Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) for .COM and .NET – 20 June 2017
(</en/system/files/correspondence/kane-to-atallah-20jun17-en.pdf>)
- Letter from Akram Atallah to Patrick Kane re: Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) for .COM and .NET –29 June 2017
(</en/system/files/correspondence/atallah-to-kane-29jun17-en.pdf>)
- Letter from Graeme Bunton to Akram Atallah re: Extension Request for Thick

WHOIS (WHOIS (pronounced "who is"; not an acronym)) Migration – 17 August 2017
(/en/system/files/correspondence/bunton-to-atallah-17aug17-en.pdf)

- 27 October 2017 Board Resolution to Defer Compliance Enforcement of Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Consensus (Consensus) Policy for 180 Days
(<https://features.icann.org/request-defer-compliance-enforcement-thick-whois-consensus-policy-180-days>)
- Letter from Patrick Kane to Akram Atallah requesting an extension of the implementation deadlines under the Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Consensus (Consensus) Policy
(/en/system/files/correspondence/kane-to-atallah-13apr18-en.pdf)
- 13 May 2018 Board Resolution to Defer Compliance Enforcement of Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Consensus (Consensus) Policy for 180 Days
(<https://features.icann.org/deferral-transition-thick-whois-policy-implementation>)
- Letter from Patrick Kane to Akram Atallah re: Extension request for Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Migration – 21 September 2018

(/en/system/files/correspondence/kane-to-atallah-21sep18-en.pdf)

The Board's action is not anticipated to have a fiscal impact on ICANN (Internet Corporation for Assigned Names and Numbers) that is not already anticipated in the current budget. This resolution is an organizational administrative function for which no public comment is required. This action is in the public interest as it helps to ensure a consistent and coordinated implementation of policies in gTLDs.

e. Payment of Legal Invoice Exceeding \$500,000

Whereas, one of outside legal counsel's invoices for July 2018 has exceeded \$500,000, which pursuant to ICANN (Internet Corporation for Assigned Names and Numbers)'s Contracting and Disbursement Policy requires Board approval to pay.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) organization and the Board Finance Committee (BFC) has recommended that the Board authorize the payment of the above reference legal invoice.

Resolved (2018.10.25.05), the Board hereby authorizes the President and CEO, or his designee(s), to pay outside legal counsel's July 2018 invoice.

Rationale for Resolution
2018.10.25.05

When required, ICANN (Internet Corporation for Assigned Names and Numbers) must

engage outside legal counsel to help prepare for and defend against all types of disputes that are brought against ICANN (Internet Corporation for Assigned Names and Numbers). When those disputes become highly contentious they often require significant involvement during a certain time period by outside counsel and that significant amount of time also results in significant fees and related expenses.

Per ICANN (Internet Corporation for Assigned Names and Numbers)'s Contracting and Disbursement policy (<https://www.icann.org/resources/pages/contracting-disbursement-policy-2015-08-25-en> ([/resources/pages/contracting-disbursement-policy-2015-08-25-en](https://www.icann.org/resources/pages/contracting-disbursement-policy-2015-08-25-en))), if any invoice calls for disbursement of more than \$500,000 Board approval is required to make the payment. In the month of July 2018, during which ICANN (Internet Corporation for Assigned Names and Numbers) was preparing for trial (which ultimately was postponed), one of ICANN (Internet Corporation for Assigned Names and Numbers)'s outside counsel invoices exceeded \$500,000. Accordingly, the Board has been asked by the organization to approve payment of that invoice, which the BFC has reviewed and which the Board has done through this resolution.

The Board is comfortable that ICANN (Internet Corporation for Assigned Names and Numbers) organization, including ICANN (Internet Corporation for Assigned Names and Numbers)'s General Counsel's Office, is properly monitoring the work performed and

expenses incurred by outside legal counsel to ensure that all fees and costs are appropriate under the given circumstances at any given time. Therefore, the Board is comfortable taking this decision.

Taking this Board action fits squarely within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and the public interest in that it ensures that payments of large amounts for one invoice to one entity are reviewed and evaluated by the Board if they exceed a certain amount of delegated authority through ICANN (Internet Corporation for Assigned Names and Numbers)'s Contracting and Disbursement Policy. This ensures that the Board is overseeing large disbursements and acting as proper stewards of the funding ICANN (Internet Corporation for Assigned Names and Numbers) receives from the public.

While this will have a fiscal impact on ICANN (Internet Corporation for Assigned Names and Numbers), it is an impact that was contemplated in the FY19 budget and as part of the New gTLD (generic Top Level Domain) Program Application Fee. This decision will not have an impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

f. Thank You to Community Members

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) wishes to acknowledge the considerable effort, skills, and time that members of the stakeholder

community contribute to ICANN (Internet Corporation for Assigned Names and Numbers).

Whereas, in recognition of these contributions, ICANN (Internet Corporation for Assigned Names and Numbers) wishes to express appreciation for and thank members of the community when their terms of service end in relation to our Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), the Customer Standing Committee, the Nominating Committee, and the Public Technical Identifiers Board.

Whereas, the following members of the Address Supporting Organization (Supporting Organization) are concluding their terms of service:

- Tomohiro Fujisaki, Address Supporting Organization (Supporting Organization)
Address Councilor
- Wilfried Wöber, Address Supporting Organization (Supporting Organization)
Address Councilor

Resolved (2018.10.25.06), Tomohiro Fujisaki and Wilfried Wöber have earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for their terms of service, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes them well in their future endeavors within the ICANN (Internet

Corporation for Assigned Names and Numbers) community and beyond.

Whereas, the following members of the County Code Names Supporting Organization (Supporting Organization) are concluding their terms of service:

- Ben Fuller, County Code Names Supporting Organization (Supporting Organization) Council Liaison
- Nigel Roberts, County Code Names Supporting Organization (Supporting Organization) Councilor
- Christelle Vaval, County Code Names Supporting Organization (Supporting Organization) Councilor

Resolved (2018.10.25.07), Ben Fuller, Nigel Roberts, and Christelle Vaval have earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for their terms of service. The ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes them well in their future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond, and joins the community in offering our condolences to the family of Ben Fuller on his passing.

Whereas, the following members of the Generic Names Supporting Organization (Supporting Organization) are concluding their terms of service:

- Donna Austin, Generic Names Supporting Organization (Supporting Organization) Council Vice Chair
- Farzaneh Badii, Non-Commercial Stakeholder Group Chair
- Phil Corwin, Generic Names Supporting Organization (Supporting Organization) Councilor
- Samantha Demetriou, Registries Stakeholder Group Vice Chair
- Paul Diaz, Registries Stakeholder Group Chair
- Heather Forrest, Generic Names Supporting Organization (Supporting Organization) Chair
- Susan Kawaguchi, Generic Names Supporting Organization (Supporting Organization) Councilor
- Andrew Mack, Business Constituency Chair
- Stephanie Perrin, Generic Names Supporting Organization (Supporting Organization) Councilor
- Renata Aquino Ribeiro, Non-Commercial Users Constituency Chair
- Lori Schulman, Intellectual Property Constituency Treasurer
- Greg Shatan, Intellectual Property Constituency President

- Stephane Van Gelder, Registries
Stakeholder Group Vice Chair

Resolved (2018.10.25.08), Donna Austin, Farzaneh Badii, Phil Corwin, Samantha Demetriou, Paul Diaz, Heather Forrest, Susan Kawaguchi, Andrew Mack, Stephanie Perrin, Renata Aquino Ribeiro, Greg Shatan, Lori Schulman, and Stephane Van Gelder have earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for their terms of service. The ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes them well in their future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond, and joins the community in offering our condolences on the passing of Stephane Van Gelder.

Whereas, the following members of the At-Large community are concluding their terms of service:

- Maritza Aguero, Latin American and Caribbean Islands Regional At-Large Organization Secretary
- Humberto Carrasco, Latin American and Caribbean Islands Regional At-Large Organization Chair
- Alan Greenberg, At-Large Advisory Committee (Advisory Committee) Chair
- Bastiaan Goslings, At-Large Advisory Committee (Advisory Committee) Vice Chair

- Maureen Hilyard, At-Large Advisory Committee (Advisory Committee) Vice Chair
- Andrei Kolesnikov, At-Large Advisory Committee (Advisory Committee) Member
- Bartlett Morgan, At-Large Advisory Committee (Advisory Committee) Leadership Team Member
- Seun Ojedeji, At-Large Advisory Committee (Advisory Committee) Leadership Team Member
- Alberto Soto, At-Large Advisory Committee (Advisory Committee) Member

Resolved (2018.10.25.09), Maritza Aguero, Humberto Carrasco, Alan Greenberg, Bastiaan Goslings, Maureen Hilyard, Bartlett Morgan, Seun Ojedeji, and Alberto Soto have earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for their terms of service, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes them well in their future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

Whereas, the following member of the Governmental Advisory Committee (Advisory Committee) is concluding her term of service:

- Milagros Castañon, Governmental Advisory Committee (Advisory Committee) Vice Chair

Resolved (2018.10.25.10), Milagros Castañon has earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for her term of service, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes her well in her future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

Whereas, the following members of the Root Server System Advisory Committee (Advisory Committee) are concluding their terms of service:

- Venkateswara Dasari, Root Server System Advisory Committee (Advisory Committee) Alternate Representative
- Grace De Leon, Root Server System Advisory Committee (Advisory Committee) Alternate Representative
- Ray Gilstrap, Root Server System Advisory Committee (Advisory Committee) Alternate Representative
- Johan Ihrén, Root Server System Advisory Committee (Advisory Committee) Alternate Representative
- Kevin Jones, Root Server System Advisory Committee (Advisory Committee) Representative

- Tripti Sinha, Root Server System
Advisory Committee (Advisory
Committee) Co-Chair

Resolved (2018.10.25.11), Venkateswara Dasari, Grace De Leon, Ray Gilstrap, Johan Ihrén, Kevin Jones, and Tripti Sinha have earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for their terms of service, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes them well in their future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

Whereas, the following members of the Customer Standing Committee are concluding their terms of service:

- Jay Delay, Customer Standing
Committee Member
- Kal Feher, Customer Standing
Committee Member
- Elise Lindeberg, Customer Standing
Committee Liaison

Resolved (2018.10.25.12), Jay Delay, Kal Feher, and Elise Lindeberg have earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for their terms of service, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes them well in their future endeavors within the ICANN (Internet

Corporation for Assigned Names and Numbers) community and beyond.

Whereas, the following members of the Nominating Committee are concluding their terms of service:

- Theo Geurts, Nominating Committee Member
- Sandra Hoferichter, Nominating Committee Member
- Hans Petter Holen, Nominating Committee Associate Chair
- Danny McPherson, Nominating Committee Member
- Jose Ovidio Salguiero, Nominating Committee Member
- Jay Sudowski, Nominating Committee Member

Resolved (2018.10.25.13), Theo Geurts, Sandra Hoferichter, Hans Petter Holen, Danny McPherson, Jose Ovidio Salguiero, and Jay Sudowski have earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for their terms of service, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes them well in their future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

**g. Thank You to Local Host of ICANN
(Internet Corporation for Assigned
Names and Numbers) 63 Meeting**

The Board wishes to extend its thanks to Nadia Calviño, the Minister for Economy and Business of Spain, and the local host organizers, Ministry of Economy and Business of Spain and RED.ES.

**h. Thank You to Sponsors of ICANN
(Internet Corporation for Assigned
Names and Numbers) 63 Meeting**

The Board wishes to thank the following sponsors: Fundació puntCAT, Verisign, Public Interest Registry, CORE Association, Nominet, Knipp Medien und Kommunikation GmbH, The Canadian Internet Registration Authority (CIRA), Afiliat plc, Domain Connect, CentralNic, ICU, Data Provider, Denic Eg, Domgate, Neustar, and Radix.

**i. Thank You to Interpreters, Staff,
Event and Hotel Teams of ICANN
(Internet Corporation for Assigned
Names and Numbers) 63 Meeting**

The Board expresses its deepest appreciation to the scribes, interpreters, audiovisual team, technical teams, and the entire ICANN (Internet Corporation for Assigned Names and Numbers) org staff for their efforts in facilitating the smooth operation of the meeting. The Board would also like to thank the management and staff of Centre Convencions Internacional Barcelona (CCIB) for providing a wonderful facility to hold this event. Special thanks are extended to Elisabet Caravaca,

Project Manager; Raquel Jimenez, Project Manager; Laura-Marco Turro, Project Manager F&B; Charlotte d'Indy, Project Manager F&B; Inés Buch Ubach, Satellites Manager; Jordi Gay, IT Supervisor; and Bart Van Campen, Manager of ASP Group.

2. Main Agenda:

a. **Appointment of Board Designee to the Third Accountability and Transparency Review Team**

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws specify that the Board shall cause a periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'s execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency to ensure that the outcomes of its decision-making reflect the public interest and are accountable to the Internet community ("Accountability and Transparency Review").

Whereas, the third Accountability and Transparency Review process (ATRT3) began with a call for volunteers for review team in January 2017.

Whereas, the proposed next steps after consultation with the community include community reconfirmation of review team nominees and the appointment of the review team by the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) chairs by 30 November 2018. The third Accountability and Transparency Review Team is proposed to

commence its substantive work in January 2019.

Whereas, under Section 4.6 of the Bylaws, the Board may appoint a Director or Liaison to serve as a member of the Accountability and Transparency Review Team and the Board has considered the skills and experience relevant to the third Accountability and Transparency Review Team.

Whereas, the Board Governance Committee has recommended that the Board designate Maarten Botterman to serve as a member of the third Accountability and Transparency Review Team.

Whereas, the Organizational Effectiveness Committee recommended that the Board request ATRT3 to adopt its Terms of Reference and Work Plan within 60 days of convening its first meeting and submit these documents to the Board and to the leadership of the Supporting Organizations (Supporting Organizations) and the Advisory Committees (Advisory Committees), to confirm compliance with Bylaws provisions and ICANN (Internet Corporation for Assigned Names and Numbers) community expectations.

Whereas, the Bylaws specify that the Accountability and Transparency Review Team should issue its final report within one year of convening its first meeting, which informs the timing requested by the Board.

Resolved (2018.10.25.14), the Board hereby appoints Maarten Botterman to serve as a member of ATRT3.

Resolved (2018.10.25.15), the Board requests that ATRT3 adopt its Terms of Reference and Work Plan within 60 days of convening its first meeting, and submit these documents to the Board and to the leadership of the Supporting Organizations (Supporting Organizations) and the Advisory Committees (Advisory Committees), to confirm that the team's scope and timeline are consistent with the requirements of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws and ICANN (Internet Corporation for Assigned Names and Numbers) community expectations.

Rationale for Resolutions 2018.10.25.14 - 2018.10.25.15

Why is the Board addressing the issue?

On 1 October 2016, new Bylaws became effective following the IANA (Internet Assigned Numbers Authority) Stewardship Transition that introduced new commitments to enhance ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability. These Bylaws incorporated the reviews that previously were found in the Affirmation of Commitments, and specified new selection procedures for convening them, now referred to as "Specific Reviews." This created an opportunity for the Board to designate a representative to participate as a member of each of the Specific Review teams.

ICANN (Internet Corporation for Assigned Names and Numbers) organization launched a [Call for Volunteers \(/news/announcement-2017-01-31-en\)](#) for ATRT3 on 31 January

2017. The community nomination process was still open when ICANN (Internet Corporation for Assigned Names and Numbers) organization posted a public comment proceeding on [Short-term Options for Specific Reviews \(/public-comments/specific-reviews-short-term-timeline-2018-05-14-en\)](#) (May – July 2018) to invite feedback on options on whether and how to adjust the timeline for ATRT3. ICANN (Internet Corporation for Assigned Names and Numbers) organization then posted [Next Steps for Reviews \(/public-comments/reviews-next-steps-2018-09-05-en\)](#) in September 2018, setting the proposed path forward for ATRT3 (community appointment of ATRT3 members by 30 November 2018; first meeting in January 2019).

With the launch of the third Accountability and Transparency Review in January 2017, the Board has chosen to appoint a representative for this important review. Additionally, the Board is requesting that the third Accountability and Transparency Review Team (ATRT3) provide the Board with its adopted Terms of Reference and Work Plan within 60 days of convening its first meeting.

What is the proposal being considered?

The proposal being considered is that Maarten Botterman be appointed by the Board to serve as a member of ATRT3, based on skill and experience relevant to this review. In line with established best practices for all Specific Reviews and because the Bylaws specify that ATRT3 should issue its final report within one year of convening its first meeting, the Board is

requesting ATRT3 to adopt its Terms of Reference and Work Plan on a timely basis and submit these documents to the Board and to the leadership of the Supporting Organizations (Supporting Organizations) and the Advisory Committees (Advisory Committees).

The Terms of Reference should demonstrate at a high level how the objective of the review will be accomplished within the required time frame and with specified resources. It should provide a clear articulation of work to be done and a basis for how the success of the project will be measured. The Work Plan should detail the specific tasks to be performed to effectively complete the scope of work of the review (the topics ATRT3 will address, within the bounds of ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws), with clear deadlines, milestones and task owners. The Board is responsible for confirming that the Bylaws provisions for Specific Reviews are adhered to and that there are adequate resources available for ATRT3 to complete its work on a timely basis.

Which stakeholders or others were consulted?

The Board consulted with the Board Governance Committee (BGC) and the Organizational Effectiveness Committee (OEC). The BGC recommended a suitable Board designee based on the Bylaws-mandated broad scope of this review, and the skills and experience detailed in the [Call for Volunteers \(/news/announcement-2017-01-31-](#)

en). Based on its oversight of reviews, the OEC recommended good practices for conducting effective reviews on a timely basis. While no consultation with the community was required for this Board action, the Board took into consideration community input on Draft Operating Standards (/en/system/files/files/report-comments-reviews-standards-21feb18-en.pdf) and on Short-term Options for Specific Reviews (/en/system/files/files/report-comments-specific-reviews-short-term-timeline-09aug18-en.pdf).

What concerns, or issues were raised by the community?

The community expressed strong support for all Specific Review Teams (including ATRT3) to set their own scope without prior community consultation but agreed that the Board has a responsibility to ensure adherence to the Bylaws. Additionally, the community has been supportive of ATRT3 providing timely information to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) leadership to gather community input and confirmation that their needs are addressed by the review team.

What significant materials did the Board review?

The Board reviewed relevant Bylaws sections (/resources/pages/governance/bylaws-en/#article4), Specific Review Process documentation (/en/system/files/files/specific-reviews-process-flowchart-31aug17-en.pdf),

[Call for Volunteers \(/news/announcement-2017-01-31-en\)](#) to serve on ATRT3, [public comments on Short-term options for Specific Reviews \(/en/system/files/files/report-comments-specific-reviews-short-term-timeline-09aug18-en.pdf\)](#), and the [proposed Next Steps for Reviews \(/en/system/files/files/reviews-next-steps-consultation-paper-05sep18-en.pdf\)](#).

What factors did the Board find to be significant?

The Board found several factors to be significant:

- skill and experience required to conduct this review,
- importance of timely and clearly-formulated Terms of Reference and Work Plan, and
- the need for [ICANN \(Internet Corporation for Assigned Names and Numbers\) Community](#) to be informed about the work of the review team on a timely basis.

Are there positive or negative community impacts?

This Board action is expected to have a positive impact on the community by adding useful skills and expertise to this important review and by encouraging timely completion of the third Accountability and Transparency Review, within the bounds of the [ICANN](#)

(Internet Corporation for Assigned Names and Numbers) Bylaws.

Are there fiscal impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (strategic plan, operating plan, budget); the community; and/or the public?

This Board action is anticipated to have a positive fiscal impact, by encouraging timely and efficient completion of the third Accountability and Transparency Review work within the Bylaws-specified 12-month period. The expenses associated with conducting the third Accountability and Transparency Review are included in the ICANN (Internet Corporation for Assigned Names and Numbers) Budget for Fiscal Year 2019.

Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?

This Board action is not expected to have a direct effect on security, stability or resiliency issues relating to the DNS (Domain Name System).

How is this action within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and what is the public interest served in this action?

The Board's action is consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s commitment pursuant to section 4.6 of the Bylaws to maintain and improve robust mechanisms for public input,

accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and that ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to all stakeholders.

This action will serve the public interest by fulfilling ICANN (Internet Corporation for Assigned Names and Numbers)'s commitment to maintaining and improving its accountability and transparency.

Is public comment required prior to Board action?

This decision is an Organizational Administrative Function that does not require public comment.

b. Geographic Regions Review Working Group Final Report

Whereas, the cross-community Geographic Regions Review Working Group has produced its Final Report in which it proposed a series of findings and recommendations regarding the ongoing application of the ICANN (Internet Corporation for Assigned Names and Numbers) organization's geographic regions framework.

Whereas, in addition to several public comment forums conducted during the Working Group's deliberations, a public comment period of 120 days was provided following submission of the Final Report to give the community an opportunity to thoroughly review the proposals and provide any

additional comments on the Working Group's recommendations.

Whereas, the Board's Organizational Effectiveness Committee has reviewed the process followed and recommends that the Board approves the actions identified in the accompanying "Recommendations Mapping Document".

Whereas, the Board has considered the comments of the community and operational recommendations from ICANN (Internet Corporation for Assigned Names and Numbers) organization.

Resolved (2018.10.25.16), the ICANN (Internet Corporation for Assigned Names and Numbers) Board accepts the Working Group recommendations that are consistent with the accompanying "Recommendations Mapping Document (/en/system/files/files/geo-regions-review-recs-mapping-document-25oct18-en.pdf)" and directs the ICANN (Internet Corporation for Assigned Names and Numbers) organization to implement those recommendations in a manner that aligns with the Board's expectations as outlined in the mapping document.

Rationale for Resolution 2018.10.25.16

Why is the Board addressing this issue now?

The Board-chartered cross-community Geographic Regions Review Working Group submitted its Final Report recommendations to

the Chair of the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 4 November 2015. In accordance with the Working Group's recommendation, the Board sought additional community comment on the Working Group recommendations.

What are the proposals being considered?

The Working Group's Final Report provided an extensive series of conclusions, proposals and recommendations including:

- a. The Working Group concludes that the general principle of geographic diversity is valuable and should be preserved.
- b. Application of the geographic diversity principles must be more rigorous, clear and consistent.
- c. Adjusting the number of ICANN (Internet Corporation for Assigned Names and Numbers) geographic regions is not currently practical.
- d. No other International Regional Structures offer useful options for ICANN (Internet Corporation for Assigned Names and Numbers).
- e. ICANN (Internet Corporation for Assigned Names and Numbers) must formally adopt and maintain its own unique Geographic Regions Framework.
- f. The Community wants to minimize any changes to the current structure.

- g. ICANN (Internet Corporation for Assigned Names and Numbers) must acknowledge the sovereignty and right of self-determination of states to let them choose their region of allocation.
- h. ICANN (Internet Corporation for Assigned Names and Numbers) communities have flexibly applied geographic diversity principles over the years. While the Board should remain strictly subject to the current framework, flexibility should be preserved for other structures.
- i. "Special Interest Groups" or "Cross-Regional Sub-Groups" offer new diversity opportunities.
- j. Implementation mechanisms and processes must be developed by Staff.
- k. The Board must preserve its oversight and future review opportunities.

What stakeholders or others were consulted?

All ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) were invited to participate in the Working Group. At various times throughout the effort, the ALAC (At-Large Advisory Committee), ASO (Address Supporting Organization), ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) had representatives in the Working Group. The GAC

(Governmental Advisory Committee) Chair also participated early in the process. Prior to submission of the Working Group's Final Report, comments were provided by the ALAC (At-Large Advisory Committee), ccNSO (Country Code Names Supporting Organization), GNSO (Generic Names Supporting Organization) and the GAC (Governmental Advisory Committee) Chair. The formal ALAC (At-Large Advisory Committee), ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) comments accompanied the submission of the Final Report.

What significant materials did the Board review?

The Board reviewed the Working Group's Final Report, including formal written statements from the ALAC (At-Large Advisory Committee), ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization). The Board also received a copy of the Staff Summary Report of Public Comments received and a mapping document that aligned the Working Group's conclusions and recommendations with community comments and suggestions for resolution of each.

What factors did the Board find to be significant?

The Board considered the extensive time frame taken by the Working Group to produce the recommendations, the extensive consultation with various community groups

and opportunities for input, the concurrent developments surrounding the IANA (Internet Assigned Numbers Authority) Stewardship Transition and the creation of the Empowered Community in arriving at its resolution.

Are there positive or negative community impacts?

The community had multiple opportunities to participate in and comment on the work of the Working Group. The final recommendations from the Working Group represent a consensus from across the ICANN (Internet Corporation for Assigned Names and Numbers) community, and will ensure continued certainty in the community's operations in ensuring that there is geographic diversity and representation in its policy and advisory activities.

This decision is in the public interest and within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission, as it supports ICANN (Internet Corporation for Assigned Names and Numbers) org's work to ensure the stable and secure operation of the Internet's unique identifier systems.

Are there fiscal impacts/ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (Strategic Plan, Operating Plan, Budget); the community; and/or the public?

Implementation of the Working Group's recommendations is not expected to have any immediate fiscal impacts/ramifications on the organization, the community or the public.

Are there any Security (Security – Security, Stability and Resiliency (SSR)), Stability (Security, Stability and Resiliency) or Resiliency (Security Stability & Resiliency (SSR)) issues relating to the DNS (Domain Name System)?

Implementation of the Working Group's recommendations is not expected to have any substantive impact on the security, stability and resiliency of the domain name system.

Is this either a defined policy process within ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (Supporting Organizations) or ICANN (Internet Corporation for Assigned Names and Numbers)'s Organizational Administrative Function decision requiring public comment or not requiring public comment?

While public comment opportunities regarding this matter were numerous and extensive, no further comment opportunities are required. The decision to provide an additional public comment opportunity reflects the Board's interest in receiving additional feedback from the community before it deliberates on the recommendations of the Working Group. The Board anticipates that implementation of certain specific recommendations set forth in the accompanying "mapping" document may require further community review and comment.

c. Transfer of funds from Operating fund to Reserve fund

Whereas, the Operating Fund includes the funds used for ICANN (Internet Corporation for Assigned Names and Numbers)'s day-to-day operations and must contain enough funds to cover at a minimum ICANN (Internet Corporation for Assigned Names and Numbers)'s expected expenditures for three months.

Whereas, periodically, any funds considered to be in excess of the three-month minimum should be transferred to the Reserve Fund.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) organization has performed an analysis of the required levels of the Operating Funds and has determined that the balance of the Operating Fund as of 30 June 2018, based on the unaudited Financial Statements, contained excess funds.

Resolved (2018.10.25.17), the Board authorizes the President and CEO, or his designee(s), to transfer US\$3,000,000 from the Operating Fund to the Reserve Fund.

Rationale for Resolution 2018.10.25.17

Per ICANN (Internet Corporation for Assigned Names and Numbers)'s Investment Policy, the Operating Fund contain funds to cover a minimum of three months of ICANN (Internet Corporation for Assigned Names and Numbers) organization's operating expenses, and that any amount determined to be in excess may be transferred to the Reserve Fund (see

<https://www.icann.org/resources/pages/investment-policy-2018-03-12-en>
(/resources/pages/investment-policy-2018-03-12-en)).

ICANN (Internet Corporation for Assigned Names and Numbers) Organization evaluated the Operating Fund as of the end of FY18 on the basis of its unaudited Financial Statements, and has determined that excess funds of US\$3,000,000 should be transferred from the Operating Fund to the Reserve Fund.

This action is in the public interest and is consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s mission as it is important to ensure stability of ICANN (Internet Corporation for Assigned Names and Numbers) organization in the way of a robust Reserve Fund in case use of a Reserve Fund becomes necessary.

This action will not have a financial impact on ICANN (Internet Corporation for Assigned Names and Numbers), and will not have any impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative function that does not require public comment.

d. **New gTLD (generic Top Level Domain) Applications for .AMAZON**

Whereas, in 2012, Amazon EU S.à r.l. (Amazon corporation) applied for .AMAZON and two Internationalized Domain Name (Domain Name) (IDN) versions of the word

'Amazon' (.AMAZON applications).

The .AMAZON applications were the subject of GAC (Governmental Advisory Committee) Early Warnings submitted by the governments of Brazil and Peru (with the endorsement of Bolivia, Ecuador and Guyana), which put the Amazon corporation on notice that these governments had a public policy concern about the applied-for strings.

Whereas, on 29 October 2017, the Board asked the GAC (Governmental Advisory Committee) for additional information regarding the GAC (Governmental Advisory Committee)'s advice on the .AMAZON applications. In its November 2017 Abu Dhabi Communiqué, the GAC (Governmental Advisory Committee) advised the Board to "[c]ontinue facilitating negotiations between the Amazon Cooperation Treaty Organization's (ACTO) member states and the Amazon corporation with a view to reaching a mutually acceptable solution to allow for the use of .amazon as a top-level domain name."

Whereas, on 4 February 2018, the ICANN (Internet Corporation for Assigned Names and Numbers) Board accepted the GAC (Governmental Advisory Committee) advice and directed the President and CEO "to facilitate negotiations between the Amazon Cooperation Treaty Organization's (ACTO) member states and the Amazon corporation."

Whereas, in October 2017, the Amazon corporation presented the GAC (Governmental Advisory Committee) and ACTO with a new proposal. After the Amazon

corporation submitted a further updated proposal in February 2018, the ACTO member states issued a statement on 5 September 2018, declaring that "...[t]he Amazon countries have concluded that the proposal does not constitute an adequate basis to safeguard their immanent rights relating to the delegation of the '.amazon' TLD (Top Level Domain)." The ACTO member states also stated the delegation of .AMAZON "requires consent of the Amazon countries" and that they "have the right to participate in the governance of the '.amazon' TLD (Top Level Domain)."

Whereas, on 16 September 2018, the ICANN (Internet Corporation for Assigned Names and Numbers) Board directed the President and CEO "to support the development of a solution for delegation of the strings represented in the .AMAZON applications that includes sharing the use of those top-level domains with the ACTO member states to support the cultural heritage of the countries in the Amazonian region" and "if possible, to provide a proposal to the Board, on the .AMAZON applications to allow the Board to take a decision on the delegation of the strings represented in the .AMAZON applications".

Resolved (2018.10.25.18), the Board directs the President and CEO, or his designee(s), to remove the "Will Not Proceed" status and resume processing of the .AMAZON applications according to the policies and procedures governing the 2012 round of the New gTLD (generic Top Level Domain) Program. This includes the publication of the Public Interest Commitments, as proposed by

the Amazon Corporation, according to the established procedures of the New gTLD (generic Top Level Domain) program.

Resolved (2018.10.25.19), the Board directs the President and CEO, or his designee(s), to provide regular updates to the Board on the status of the .AMAZON applications.

Rationale for Resolutions 2018.10.25.18 – 2018.10.25.19

Building from its September 2018 resolution, the ICANN (Internet Corporation for Assigned Names and Numbers) Board is taking this action to further support the Board's consideration of the outcome of the Independent Review Process (IRP) initiated by the Amazon corporation against ICANN (Internet Corporation for Assigned Names and Numbers), as well as consideration of advice from the Governmental Advisory Committee (Advisory Committee) (GAC (Governmental Advisory Committee)) as it relates to the .AMAZON applications.

In light of all that has come before, including the results of the .AMAZON IRP and subsequent GAC (Governmental Advisory Committee) advice, the Board considers that the GAC (Governmental Advisory Committee)'s consensus advice of the Abu Dhabi Communiqué which advises the ICANN (Internet Corporation for Assigned Names and Numbers) Board to "continue facilitating negotiations between the [ACTO] member states and the Amazon corporation"¹ to supersede previous GAC (Governmental Advisory Committee) advice provided in the

Durban Communique that the applications should "not proceed beyond Initial Evaluation".² Accordingly, the Board directed the ICANN (Internet Corporation for Assigned Names and Numbers) org to facilitate a dialogue between the Amazon corporation and ACTO member states to reach a mutually agreeable solution.

The Board is taking this action today to move forward with delegation of the .AMAZON applications, as contemplated in the declaration of the IRP Panel, while recognizing the public policy issues raised through GAC (Governmental Advisory Committee) advice on these applications. As the ICANN (Internet Corporation for Assigned Names and Numbers) org has informed the Board that the parties have identified a path forward, the Board takes this action today to allow the .AMAZON applications to move forward in a manner that would align with GAC (Governmental Advisory Committee) advice and inputs on this topic.

Background

Following the resolution by the Board (acting via the New gTLD (generic Top Level Domain) Program Committee) to accept the GAC (Governmental Advisory Committee) Advice that the .AMAZON applications should not move forward, the ICANN (Internet Corporation for Assigned Names and Numbers) org updated the .AMAZON applications to a "Will Not Proceed" status. In October 2015, the Amazon corporation submitted a proposal to the Amazon

Cooperation Treaty Organization (ACTO) member states in an attempt to come to a solution that could benefit both the Amazon Corporation and concerned ACTO member states. However, this proposal was rejected by the ACTO member states. Subsequently, in March 2016, the Amazon corporation began an Independent Review Process (IRP) against ICANN (Internet Corporation for Assigned Names and Numbers). The IRP ended in July 2017 with the IRP Panel finding in favor of the Amazon corporation. Following the outcome of the IRP, and acting on additional GAC (Governmental Advisory Committee) advice, the ICANN (Internet Corporation for Assigned Names and Numbers) Board tasked the ICANN (Internet Corporation for Assigned Names and Numbers) org with supporting the Amazon corporation and ACTO member states in negotiating a solution.

Previous Amazon Corporation Proposals

Since October 2015, the Amazon corporation has submitted various proposals to the ACTO member states in an effort to reach a mutually agreeable solution. The initial October 2015 proposal was rejected by the ACTO member states, which led to the IRP initiated by the Amazon corporation against ICANN (Internet Corporation for Assigned Names and Numbers) in March 2016. Following resolution of the IRP, the Amazon corporation presented to the GAC (Governmental Advisory Committee) a new proposal for a "practical compromise" in October 2017 at ICANN60 in Abu Dhabi. In February 2018, following dialogue facilitated by the ICANN (Internet

Corporation for Assigned Names and Numbers) org between the Amazon corporation and ACTO member states, the Amazon corporation proposed four main courses of action that included: helping with the global visibility of the Amazonia region and its peoples as well as to protect their cultural heritage; helping to prevent the misuse of domain names associated with the Amazonia region and its peoples; creating a Steering Committee to oversee implementation of the agreement; and, engaging in goodwill efforts by providing the ACTO member states credits for use of Amazon corporation services and products up to \$5,000,000. Additionally, the Amazon corporation proposed helping the ACTO member states create an informational program to help publicize the benefits of the agreement.

ACTO Concerns and Response to Amazon Proposals

The ACTO member states concerns regarding the use of the .AMAZON TLDs center on the ability for countries and individuals in the Amazon region to use the domain names for public interest purposes. In October 2017, following the IRP Panel Final Declaration on the .AMAZON applications, the ACTO member states issued a statement, reaffirming:

"...that the name Amazon, in any language, is part of the cultural heritage and identity of the Amazon countries, and that its use as a first level domain name, unless otherwise agreed by the Amazon countries, shall be reserved for

the promotion of the interests and rights of the Amazon peoples and their inclusion in the information society."

On 5 September 2018, following an updated proposal submitted by the Amazon corporation in February 2018, including after clarifications sought by the ACTO member states in understanding the proposal, the ACTO member states sent a letter to the Board stating that, with regard to the delegation of .AMAZON, that this "requires consent of the Amazon countries" and that they "have the right to participate in the governance of the '.amazon' TLD (Top Level Domain)". Additionally, the ACTO member states declare that "the proposal does not constitute an adequate basis to safeguard their immanent rights relating to the delegation of the '.amazon' TLD (Top Level Domain)." The member states did mention, however, that they were willing "to engage with the ICANN (Internet Corporation for Assigned Names and Numbers) Board...with a view to safeguarding their rights as sovereign states."

On 12 October 2018, the Ministry of Foreign Affairs of Colombia issued a letter to ICANN (Internet Corporation for Assigned Names and Numbers) noting concerns with the Amazon corporation proposal and reiterated the position of the ACTO members states, as noted above.

Current Proposal from the Amazon Corporation

Since the Board's September 2018 resolution, the Amazon corporation, in effort to show its appreciation for the concerns of the ACTO member states regarding the use and governance of the .AMAZON TLDs, has submitted proposed Public Interest Commitments (PICs) that could be inserted into Specification 11 of its Registry Agreement with ICANN (Internet Corporation for Assigned Names and Numbers). As part of the Registry Agreements, these PICs would be enforceable through standard Contractual Compliance mechanisms, as well as through the PIC Dispute Resolution Procedure (PICDRP (Public Interest Commitment Dispute Resolution Procedure)).³ Should an ACTO member state believe that the Amazon corporation (as Registry Operator) is not complying with one of the PICs in one of its Registry Agreements, the ACTO member state would be able submit a complaint via the Contractual Compliance or the PICDRP (Public Interest Commitment Dispute Resolution Procedure). ICANN (Internet Corporation for Assigned Names and Numbers) would then begin the review process, and, if found to be noncompliant, the Amazon corporation would need to take measures to remediate the issue.⁴

Items considered by the Board

In taking this action, the Board considered:

- The GAC (Governmental Advisory Committee) Early Warning regarding the .AMAZON applications of 20 November 2012.

- The GAC (Governmental Advisory Committee) Advice from the GAC (Governmental Advisory Committee) Durban Communiqué regarding the .AMAZON applications.
- The Amazon corporation's Proposals of 6 October 2015 and 7 February 2018;
- The IRP Panel Declaration in .AMAZON Independent Review Process;
- The Amazon corporation's October 2017 proposal to the GAC (Governmental Advisory Committee) and ACTO member states;
- The NGPC's 14 May 2014 action on the .AMAZON applications and the Board's 29 October 2017 and 4 February 2018 actions on the .AMAZON applications;
- ACTO's 5 September 2018 letter and related annexes.
- The Amazon corporation proposed Public Interest Commitments (PICs) of September 2018
- Colombian Government's Letter of 12 October 2018

Impacts

This action is anticipated to have a small resource impact on the ICANN (Internet Corporation for Assigned Names and Numbers) org based upon the resources needed to meet the Board's direction. This

action is in support of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission, in that it furthers the New gTLD (generic Top Level Domain) Program and anticipated expansion of the DNS (Domain Name System). It is also in the public interest in its balancing the core values of introducing and promoting competition while recognizing governments' provision of public policy advice.

This action will not impact the security, stability and resiliency of the domain name system.

**e. Independent Review Process
Interim Supplementary Rules of
Procedure**

Whereas, the Independent Review Process (IRP) is an accountability mechanism provided by the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws that allows for third party review of ICANN (Internet Corporation for Assigned Names and Numbers) Board or staff actions (or inactions) alleged by an affected party to be inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation or Bylaws.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) IRPs are governed by the International Centre for Dispute Resolution's (ICDR) International Arbitration Rules, as modified by the IRP Supplementary Procedures.

Whereas, an IRP Implementation Oversight Team (IOT) was formed under the Bylaws to,

among other tasks, draft the detailed IRP supplementary rules of procedure (Updated Supplementary Procedures) for Board adoption.

Whereas, the IRP IOT has made significant progress in drafting the Updated IRP Supplementary Procedures; however, there are still some areas that need further development and are not yet ready to be finalized for Board approval.

Whereas, in consideration that the current Supplementary Procedures in effect do not correspond to the Bylaws as updated on 1 October 2016, the IRP IOT has developed a set of Interim Supplementary Procedures that align with the current Bylaws, in order to apply to an IRP if one is initiated before all issues are addressed to meet a final set of Updated IRP Supplementary Procedures. As of 21 October 2018, the IOT consented to submitting this set of Interim Supplementary Procedures for Board consideration.

Whereas, the IRP IOT is, among other items, considering potential modifications to Rule 4 regarding time limits for filing an IRP, and there does not yet appear to be community consensus on whether it is appropriate to have an outside time limit on when an IRP can be filed to challenge any action of ICANN (Internet Corporation for Assigned Names and Numbers). Some in the community believe that it is against ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws to have an outside time limit based on the date of ICANN (Internet Corporation for Assigned

Names and Numbers)'s action, but that is disputed and ICANN (Internet Corporation for Assigned Names and Numbers)'s Office of the General Counsel has advised that it disagrees with such an interpretation. ICANN (Internet Corporation for Assigned Names and Numbers)'s General Counsel advises that the Interim Supplementary Procedures are consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws.

Whereas, the Board remains open to considering any proposed consensus-based resolution of the time for filing issue presented within an Updated Supplementary Procedures draft.

Whereas, the Board Accountability Mechanisms Committee (BAMC), in its oversight role of accountability mechanisms, has considered the Interim Supplementary Procedures and recommended that the Board adopt the Interim Supplementary Procedures until there is a completed set of Updated IRP Supplementary Procedures available.

Resolved (2018.10.25.20), the Board adopts the Independent Review Process Interim Supplementary Procedures (</en/system/files/files/irp-interim-supplementary-procedures-25oct18-en.pdf>).

Resolved (2018.10.25.21), the Board thanks the IRP IOT for its work to date, and urges the IRP IOT to deliver a set of Updated Supplementary Procedures to the Board as soon as possible.

Rationale for Resolutions *2018.10.25.20 – 2018.10.25.21*

ICANN (Internet Corporation for Assigned Names and Numbers) has a proven commitment to accountability and transparency in all of its practices. ICANN (Internet Corporation for Assigned Names and Numbers) considers these principles to be fundamental safeguards in ensuring that its bottom-up, multistakeholder model remains effective. The mechanisms through which ICANN (Internet Corporation for Assigned Names and Numbers) achieves accountability and transparency are built into every level of its organization and mandate. In order to reinforce its transparency and accountability, ICANN (Internet Corporation for Assigned Names and Numbers) has established, among other accountability mechanisms, the Independent Review Process (IRP), that allows for third party review of ICANN (Internet Corporation for Assigned Names and Numbers) Board or staff actions (or inactions) alleged by an affected party to be inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation or Bylaws.

The International Centre for Dispute Resolution (ICDR) currently administers ICANN (Internet Corporation for Assigned Names and Numbers) IRPs. IRPs are governed by the ICDR's International Arbitration Rules, as modified by Supplementary Procedures for the ICANN (Internet Corporation for Assigned Names and Numbers) IRP. The IRP was significantly modified through the Enhancing ICANN (Internet Corporation for Assigned

Names and Numbers) Accountability Process, and the Bylaws reflecting the new IRP were updated on 1 October 2016. The IRP Supplementary Procedures in place before the Bylaws were revised in 2016 do not meet all the requirements of the new Bylaws. Accordingly, the IRP Implementation Oversight Team (IOT) was charged with preparing updates to those Supplementary Procedures for Board adoption.

The IRP IOT has spent a significant amount of time and effort in updating the Supplementary Procedures. A draft set of Updated Supplementary Procedures were submitted for public comment from 28 November 2016 to 1 February 2017. (See <https://www.icann.org/public-comments/irp-supp-procedures-2016-11-28-en> (/public-comments/irp-supp-procedures-2016-11-28-en).) Following the close of the comment period, the IRP IOT considered the inputs received from the community and revised the draft set of Updated Supplementary Procedures as appropriate. Following its deliberations, the IRP IOT sought public consultation for a second time from 22 June 2018 to 10 August 2018 on proposed revisions to Rule 4: Time for Filing that were material from the original Updated Supplementary Procedure Rule 4 that was published for public comment on 28 November 2016. (See <https://www.icann.org/public-comments/irp-iot-recs-2018-06-22-en> (/public-comments/irp-iot-recs-2018-06-22-en).) The comments received from the second public comment period are currently under review by the IRP IOT along with some other areas that need further

development and are not yet ready to be finalized for Board approval.

Cognizant that the Supplementary Procedures in effect correspond with the old ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, the IRP IOT developed a set of Interim Supplementary Procedures that align with the new Bylaws and which could be put in place in the event that an IRP is filed prior to the time that there is a completed set of Updated IRP Supplementary Procedures available

In drafting these Interim Supplementary Procedures, the IRP IOT applied the following principles: (1) remain as close as possible to the current Supplementary Procedures or the Updated Supplementary Procedures posted for public comment on 28 November 2016;; (2) to the extent public comments received in response to the Updated Supplementary Procedures reflected clear movement away from either the current Supplementary Procedures or the Updated Supplementary Procedures, to reflect that movement unless doing so would require significant drafting that should be properly deferred for broader consideration; and (3) take no action that would materially expand any part of the Supplementary Procedures that the IRP IOT has not clearly agreed upon, or that represent a significant change from what was posted for comment and would therefore require further public consultation prior to changing the supplemental rules to reflect those expansions or changes.

The IOT began consideration of a set of Interim Supplementary Procedures in May 2018. The version considered by the Board today was the subject of intensive focus by the IOT in two meetings on 9 and 11 October 2018, convened with the intention of delivering a set to the Board for our consideration at ICANN63. There were modifications to four sections identified through those meetings, and a set reflecting those changes was proposed to the IOT on 19 October 2018. With no further comment, on 22 October 2018 the IOT process on the Interim Supplementary Procedures concluded and it was sent to the Board for consideration.

The Board understands that among the areas where further consideration is needed is the issue of "time for filing", or Rule 4 of the Procedures. The most recent public comment period referenced above (closing on 10 August 2018) was focused on the issue of if a person/entity was harmed by an act of ICANN (Internet Corporation for Assigned Names and Numbers), how long after that act (or inaction) should the person/entity have to file an IRP. The fundamental issue posed in the public comment is whether it is appropriate to have any outside time limit by when an IRP can be filed. During the IOT's work on the issue, a position was raised that including any external limitation is in violation of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, which at Section 4(n)(iii)(A) requires the IOT to develop a procedure on "[t]he time within which a Claim must be filed after a Claimant becomes aware or reasonably should have become aware of the action or

inaction giving rise to the Dispute." The Board has been advised, and ICANN (Internet Corporation for Assigned Names and Numbers) Legal has publicly stated its position, that this portion of the Bylaws does not preclude an outside time limit on filing disputes.

The set of Interim Supplementary Procedures includes at Rule 4 the same external limit on filing an IRP as was initially proposed by the IOT – 12 months from the date of ICANN (Internet Corporation for Assigned Names and Numbers)'s action. The Board understands that the IOT has not yet considered the public comment on its proposal to remove that 12-month limitation, and that is a key area where the Board understands there may be changes presented in the forthcoming Updated Supplementary Procedures. The Board acknowledges that ICANN (Internet Corporation for Assigned Names and Numbers) organization has committed to ensure that if that time for filing is expanded in the Updated Supplementary Procedures, those Updated Supplementary Procedures "will include transition language that provides potential claimants the benefit of that additional time, so as not to prejudice those potential claimants." The Board agrees that is an appropriate balance that will accommodate potential future changes with minimal impact to those seeking to use ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability mechanisms. While the Board believes that it is allowable under the Bylaws to incorporate an external time limit for the filing of an IRP, the Board understands

that the community might have different reasons for recommending modifications to that time for filing limitation, and today's action does not in any way preclude the IOT's ability to propose different language for this Rule 4 for the Updated Supplementary Procedures.

The Board appreciates the amount of time and effort the IOT has dedicated to deliver procedures to govern the IOT, and we expect that work to continue to completion on all remaining issues the IOT has identified.

This action is within ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission and is in the public interest as it is important to ensure that, in carrying out its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to the community for operating within the Articles of Incorporation, Bylaws, and other established procedures, by having a process in place that allows for third party review of ICANN (Internet Corporation for Assigned Names and Numbers) Board or staff actions (or inactions) alleged by any harmed party to be inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation or Bylaws. This action has no financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) and will not negatively impact the security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that has already been

the subject of two public comment processes and does not require further public comment at this stage.

f. Reserve Fund Replenishment Strategy

Whereas, the Board confirmed by previous decision (resolutions 2018.02.04.09 – 2018.02.04.10) that the target level of the ICANN (Internet Corporation for Assigned Names and Numbers) Reserve Fund should be at a minimum equivalent to 12 months of operating expenses.

Whereas, the current level of the Reserve Fund is approximately of US\$70 million as of 30 June 2018, reflecting a shortfall compared to the minimum target level of approximately US\$68 million.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) organization posted for public comment a proposed strategy to replenish the Reserve Fund and the Board took all comments submitted into account to determine the final Reserve Fund replenishment strategy.

Whereas, the proposed replenishment strategy entails allocating to the Reserve Fund: (i) annual operational excess of funding over expenses for a total of US\$32 million over an eight-year period; and (ii) US\$36 million of new gTLD (generic Top Level Domain) auction proceeds.

Resolved (2018.10.25.22), the Board directs the President and CEO, or his designee(s), to

take all actions necessary to increase the Reserve Fund through annual excesses from the operating fund of ICANN (Internet Corporation for Assigned Names and Numbers) organization by a total amount of US\$32 million over a period of seven to eight years, starting with FY19.

Resolved (2018.10.25.23), the Board directs the President and CEO, or his designee(s), to take all actions necessary to allocate US\$36 million of auction proceeds to the Reserve Fund, as soon as technically feasible.

Rationale for Resolutions *2018.10.25.22 – 2018.10.25.23*

Based on its fiduciary duties and considering the significant growth and risk profile that ICANN (Internet Corporation for Assigned Names and Numbers) has seen since the creation of its Reserve Fund, the Board determined that the Reserve Fund required to be reviewed, especially in light of the significant drop in its level.

The Board conducted an evaluation of the Rationale and Target level for the Reserve Fund, which was based on the public comments received on a first consultation paper. As a result, an updated ICANN (Internet Corporation for Assigned Names and Numbers) Investment Policy was approved by the Board to include: (a) an updated Reserve Fund Rationale; and (b) a confirmation that the Reserve Fund Target Level will be set at a minimum of 12 months of Operating Expenses (See resolution <https://features.icann.org/confirmation-reserve->

fund-target-level
(<https://features.icann.org/confirmation-reserve-fund-target-level>)).

Once the Target Level was confirmed, the Board outlined a proposed strategy to replenish the Reserve Fund from its current level to its updated minimum Target Level, which was the subject of a second public comment process.

The comments received provided for a wide range of views on the sources of funds and extent of use of such sources for the purpose of replenishment. Relative to the annual excess allocation, most comments received on this aspect suggested a higher allocation than the one proposed. On the allocation of auction proceeds, some comments suggested a lower allocation and others a higher allocation to the Reserve Fund. All comments but one indicated that no increase to ICANN (Internet Corporation for Assigned Names and Numbers) fees should be considered. Also, the use of New gTLD (generic Top Level Domain) Program funds for purpose of replenishment was not retained in the final proposed strategy due to the continued existence of risks associated with the program. Based on comments received, a final proposed replenishment strategy was drafted, which reflects a higher annual excess allocation than proposed, and is now submitted for Board approval and implementation.

The remaining auction proceeds continue to be segregated and are not intended to be used for day-to-day operations. The Board will review

the CCWG recommendations for a disbursement mechanism, as approved by the chartering organizations, and will then make a decision on the mechanism by which available proceeds should be disbursed, for implementation by ICANN (Internet Corporation for Assigned Names and Numbers) org. At all times, the Board will continue to make all decisions in furtherance of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission, under consideration of its duty of care and its fiduciary responsibility.

This action is in the public interest and is consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s mission as it is important to ensure stability of ICANN (Internet Corporation for Assigned Names and Numbers) organization in the way of an adequately funded Reserve Fund in case use of a Reserve Fund becomes necessary.

This action will have a positive financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) and will enable ICANN (Internet Corporation for Assigned Names and Numbers) to support its financial stability and sustainability. It will not have any impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative function that has already been subject to public comment as set forth above.

g. Thank You to Lousewies van der Laan for her service to the ICANN

(Internet Corporation for Assigned Names and Numbers) Board

Whereas, Lousewies van der Laan was appointed by the Nominating Committee to serve as a member of the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 22 October 2015.

Whereas, Lousewies van der Laan concludes her term on the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 25 October 2018.

Whereas, Lousewies served as a member of the following Committees and Working Groups:

- Audit Committee (Chair)
- Finance Committee
- Governance Committee
- Organizational Effectiveness Committee
- Board-GAC (Governmental Advisory Committee) Recommendation Implementation Working Group
- Board Working Group on Internet Governance
- Board Trust Working Group (Chair)

Resolved (2018.10.25.24), Lousewies van der Laan has earned the deep appreciation of the Board for her term of service, and the Board wishes her well in her future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

h. Thank You to Jonne Soininen for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board

Whereas, Jonne Soininen was appointed by IETF (Internet Engineering Task Force) to serve as a liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 21 November 2013.

Whereas, Jonne Soininen concludes his term on the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 25 October 2018.

Whereas, Jonne has served as a liaison member of the following Committees and Working Groups:

- Compensation Committee
- New gTLD (generic Top Level Domain) Program Committee
- Risk Committee
- Technical Committee
- Board IDN Variants Working Group
- Board Trust Working Group
- Work Stream 2 (WS2) Board Caucus Working Group

Resolved (2018.10.25.25), Jonne has earned the deep appreciation of the Board for his term of service, and the Board wishes him well in his future endeavors within the ICANN

(Internet Corporation for Assigned Names and Numbers) community and beyond.

i. **Thank You to Mike Silber for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board**

Whereas, Mike Silber was appointed by the ccNSO (Country Code Names Supporting Organization) to serve as a member of the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 30 October 2009.

Whereas, Mike Silber concludes his term on the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 25 October 2018.

Whereas, Mike served as a member of the following ICANN (Internet Corporation for Assigned Names and Numbers) Board Committees and Working Groups:

- Accountability Mechanisms Committee
- Audit Committee (Chair)
- Finance Committee
- Governance Committee
- IANA (Internet Assigned Numbers Authority) Committee
- New gTLD (generic Top Level Domain) Program Committee
- Public Participation Committee (Chair)

- Risk Committee (Chair and Co-Chair)
- Structural Improvements Committee
- Board-GAC (Governmental Advisory Committee) Recommendation Implementation Working Group
- Work Stream 2 (WS2) Board Caucus Working Group

Resolved (2018.10.25.26), Mike Silber has earned the deep appreciation of the Board for his term of service, and the Board wishes him well in his future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

j. **Thank You to Ram Mohan for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board**

Whereas, Ram Mohan was appointed by the SSAC (Security and Stability Advisory Committee) to serve as a liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 7 November 2008.

Whereas, Ram Mohan concludes his term on the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 25 October 2018.

Whereas, Ram has served as a liaison member of the following Committees and Working Groups:

- Governance Committee

- Compensation Committee
- CEO Search Committee
- Risk Committee (Co-Chair)
- Technical Committee
- Board-GAC (Governmental Advisory Committee) Recommendation Implementation Working Group
- Board IDN Variants Working Group (Chair)
- Board Trust Working Group
- Board Strategic Planning Working Group (Chair)
- Board Working Group on Nominating Committee
- Work Stream 2 (WS2) Board Caucus Working Group

Resolved (2018.10.25.27), Ram Mohan has earned the deep appreciation of the Board for his term of service, and the Board wishes him well in his future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

k. Thank You to George Sadowsky for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board

Whereas, George Sadowsky was appointed by the Nominating Committee to serve as a member of the ICANN (Internet Corporation

for Assigned Names and Numbers) Board on 30 October 2009.

Whereas, George Sadowsky concludes his term on the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 25 October 2018.

Whereas, George served as a member of the following Committees:

- Audit Committee
- Compensation Committee (Chair)
- CEO Search Committee (Chair)
- Finance Committee
- Global Relationships Committee
- New gTLD (generic Top Level Domain) Program Committee
- Organizational Effectiveness Committee
- Risk Committee
- Structural Improvements Committee
- Technical Committee
- Board Working Group on Internet Governance
- Board Working Group on Nominating Committee (Chair)
- Board Trust Working Group (Chair)
- Work Stream 2 (WS2) Board Caucus Working Group

Resolved (2018.10.25.28), George Sadowsky has earned the deep appreciation of the Board for his term of service, and the Board wishes him well in his future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

Published on 25 October 2018

¹ See:

<https://www.icann.org/en/system/files/correspondence/ismail-to-chalaby-15mar18-en.pdf>
([/en/system/files/correspondence/ismail-to-chalaby-15mar18-en.pdf](https://www.icann.org/en/system/files/correspondence/ismail-to-chalaby-15mar18-en.pdf)).

² See: <https://gac.icann.org/contentMigrated/icann47-durban-communique> (<https://gac.icann.org/contentMigrated/icann47-durban-communique>).

³ See: <https://www.icann.org/resources/pages/picdrp-2014-01-09-en> ([/resources/pages/picdrp-2014-01-09-en](https://www.icann.org/resources/pages/picdrp-2014-01-09-en)).

⁴ See: <http://newgtlds.icann.org/en/applicants/agb/picdrp-19dec13-en.pdf>
(<http://newgtlds.icann.org/en/applicants/agb/picdrp-19dec13-en.pdf>).

EXHIBIT 315

From: Independent Review <independentreview@icann.org>
Sent: Wednesday, November 14, 2018 7:04 PM
To: Ali, Arif; Wong, Rosey
Cc: Litwin, Ethan; Cilingin, Jenn; de Gramont, Alexandre; Scott Hemphill; Independent Review
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Arif,

Following up on our email below and the discussion regarding the "on hold" status of the .WEB contention set.

The .WEB contention set status will remain "on hold" until 27 November 2018 (the initial time period provided to Afiliias to file its Independent Review Process (IRP) request). We note that Afiliias has filed its IRP request with the ICDR today (14 November 2018). If Afiliias does not file its request for emergency interim relief with the ICDR on or before 27 November 2018, the .WEB contention set will be taken off the "on hold" status. If Afiliias does file its request for emergency interim relief with the ICDR on or before 27 November, the status of the .WEB contention set will remain "on hold" until the parties receive a decision from the IRP panel regarding the interim relief request.

Please let us know if you have any questions.

Best Regards,

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

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>
Date: Tuesday, November 13, 2018 at 3:43 PM
To: "Ali, Arif" <Arif.Ali@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>
Cc: "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Independent Review <independentreview@icann.org>, "Cilingin, Jenn" <Jenn.Cilingin@dechert.com>, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, Scott Hemphill Contact Information Redacted
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Arif,

Pursuant to our discussion during the Cooperative Engagement Process (CEP) conference we had today, we are writing to confirm that the CEP for this matter is closed effective today, 13 November 2018.

ICANN will grant Afiliias an extension of time to 27 November 2018 (14 days following the close of CEP) to file an IRP regarding the matters raised in the CEP if Afiliias chooses to do so, and if Afiliias satisfies the standing

requirements, the timing requirements, and the criteria necessary to make a claim that the ICANN Board violated its Articles of Incorporation or Bylaws. Please note that this extension will not alter any deadlines that may have expired before the initiation of the CEP.

With regard to our discussion regarding contention set status and interim relief from the IRP panel, we will revert back to you in the next day or two.

Please let us know if you have any questions.

Best Regards,

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

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>

Date: Wednesday, October 31, 2018 at 1:58 PM

To: "Wong, Rosey" <Rosey.Wong@dechert.com>

Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Cilingin, Jenn" <Jenn.Cilingin@dechert.com>, Scott Hemphill Contact Information Redacted, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, Independent Review <independentreview@icann.org>

Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Rosey –

Given the recent conclusion of ICANN63 in Barcelona and additional scheduling issues, we need to postpone the CEP conference to the 13 November date, which was mentioned as a possibility in our email below. It appears that Arif and Ethan are the only ones who have responded to the calendar invite sent for 13 November 1:00pm-2:00pm Pacific / 4:00pm-5:00pm EST. As a reminder, a representative of Afilias must also participate in the CEP conference.

Thank you for sending the draft IRP Request in your earlier email. ICANN is in the process of reviewing the materials in advance of the 13 November CEP conference.

Best regards,

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

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>

Date: Friday, October 19, 2018 at 3:25 PM

To: "Wong, Rosey" <Rosey.Wong@dechert.com>, Independent Review <independentreview@icann.org>

Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Scott Hemphill Contact Information Redacted, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "Cilingin, Jenn"

<Jenn.Cilingin@dechert.com>

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Rosey –

Thank you for sending the available dates and times below.

We will be sending two calendar invites for CEP conferences – one for 1 November 12:00pm-1:00pm Pacific / 3:00pm-4:00pm EST and one for 13 November 1:00pm-2:00pm Pacific / 4:00pm-5:00pm EST.

We are setting up two calls so that if there is a scheduling conflict on 1 November or if we need to have a further CEP conference after 1 November, we will already have a second call scheduled.

Best regards,

ICANN

12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "Wong, Rosey" <Rosey.Wong@dechert.com>

Date: Monday, October 15, 2018 at 12:36 PM

To: Independent Review <independentreview@icann.org>

Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Scott Hemphill
Contact Information Redacted "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "Cilingin, Jenn" <Jenn.Cilingin@dechert.com>

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear ICANN,

We are available for a further CEP call during the following times:

01 November 2018: 2pm-7pm EST
12 November 2018: 9am-7pm EST
13 November 2018: 9am-6pm EST
14 November 2018: 11am-12pm; 2pm-7pm EST

We look forward to hearing from you soon.

Thank you,
Rosey

Rose Marie Wong
Associate

Dechert LLP
+1 215 994 2052
rosey.wong@dechert.com
dechert.com [dechert.com]

From: Independent Review [mailto:independentreview@icann.org]
Sent: Thursday, October 11, 2018 3:40 PM
To: Wong, Rosey <Rosey.Wong@dechert.com>; Ali, Arif <Arif.Ali@dechert.com>
Cc: Litwin, Ethan <Ethan.Litwin@dechert.com>; Scott Hemphill Contact Information Redacted; de Gramont, Alexandre <Alexandre.deGramont@dechert.com>; Cilingin, Jenn <Jenn.Cilingin@dechert.com>; Independent Review <independentreview@icann.org>
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Arif –

As you may be aware, ICANN63 is scheduled to take place in Barcelona beginning next week. Therefore, please send us all dates and times that your client is available for a further CEP call between 1-16 November 2018 (please indicate all availability, so we can coordinate schedules).

Best regards,

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

From: Independentreview <independentreview-bounces@icann.org> on behalf of "Wong, Rosey" <Rosey.Wong@dechert.com>
Date: Wednesday, October 10, 2018 at 9:00 PM
To: Independent Review <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Scott Hemphill Contact Information Redacted, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "Cilingin, Jenn" <Jenn.Cilingin@dechert.com>
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear ICANN,

Unfortunately, none of the dates/times proposed in your email below work for us. We will be back in touch shortly with proposed dates and times for next week.

In our last CEP call, we had discussed a further explanation of our position. Subject to the rules on confidentiality and non-disclosure that apply to CEP, please find attached a draft IRP request, which sets out Afiliias' position. We understand that the draft is and will remain confidential as part of the materials exchanged during the CEP, and that ICANN will not assert any waiver of any privilege by virtue of our having provided you with the draft. We look forward to discussing with you on our next CEP call a concrete timeline and proposal regarding the steps that ICANN will take to disqualify NDC's application and/or disqualify NDC's bids in the ICANN auction for .WEB. We remain hopeful that we will be able to resolve this matter amicably.

Sincerely,

Arif Hyder Ali
www.dechert.com/arif_ali [dechert.com]

Dechert LLP
+1 202 261 3307 Washington, D.C.
+44 207 1847372 London
+1 202 261 3441 Assistant (Remy Bracey)
+44 207 1847372 Assistant (Annette Brombley)
Contact Information Redacted Mobile

arif.ali@dechert.com

From: Independent Review [<mailto:independentreview@icann.org>]
Sent: Wednesday, October 10, 2018 7:47 PM
To: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>
Cc: Ali, Arif <Arif.Ali@dechert.com>; Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; Scott Hemphill Contact Information Redacted; independentreview@icann.org
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear All –

We have received no response to our email below and therefore presume that Afiliias was/is not available during the dates/times offered in the email below for a further CEP call.

In an effort to schedule a CEP call prior to ICANN63, we offer the following date and times. Please indicate by tomorrow whether Afiliias is available on Monday for a one hour CEP call during the times offered below.

15 October – Monday
10:30am – 12:00pm (Pacific)
2:00pm – 3:30pm (Pacific)

Best regards,

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

From: Independentreview <independentreview-bounces@icann.org> on behalf of "independentreview@icann.org" <independentreview@icann.org>
Date: Friday, October 5, 2018 at 2:12 PM
To: "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, Scott Hemphill Contact Information Redacted
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Greetings:

As we have not heard from you since 10 September, we offer you the following dates and times next week for a further CEP call. Please advise which one works for you.

8 Oct, Monday, 11a – noon PST
10 Oct, Wed, 2-3p PST
11 Oct, Thurs, 2-3p PST

We look forward to hearing from you soon.

Best regards,

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

On Sep 10, 2018, at 11:51 AM, de Gramont, Alexandre <Alexandre.deGramont@dechert.com> wrote:

Dear ICANN:

When we spoke on 28 August, you had indicated that you would be available to continue the CEP today. We are disappointed that you have now cancelled two CEP calls that we had on calendar – and are now proposing a single, two-hour time slot over the next two weeks as an alternative. In any event, we are unavailable on 12 September between 7:00 am and 9:00 am (Pacific time).

We will discuss internally and revert to you soon on our position re moving forward.

Best regards,

Alexandre de Gramont
Partner

Dechert LLP

1900 K Street N.W.
Washington, DC 20006
+1 202 261 3320 Direct
Contact information Redacted Mobile

+1 202 261 3082 Fax
alex.degramont@dechert.com
dechert.com [dechert.com]

From: Independent Review [<mailto:independentreview@icann.org>]

Sent: Monday, September 10, 2018 1:58 PM

To: Ali, Arif <Arif.Ali@dechert.com>; de Gramont, Alexandre <Alexandre.deGramont@dechert.com>

Cc: Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; Scott Hemphill Contact Information Redacted; Independent Review <independentreview@icann.org>

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Arif –

We have not received a response to our 6 September email (below).

Could you please let us know as soon as possible if you and your client are available for a one hour call on 12 September between 7:00am – 9:00am (Pacific time) so that we can schedule it accordingly. Also, please let us know if you intend to submit any further documents or information in advance of our next call.

Best Regards,

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

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>

Date: Thursday, September 6, 2018 at 2:25 PM

To: "Ali, Arif" <Arif.Ali@dechert.com>, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>

Cc: "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "independentreview@icann.org" <independentreview@icann.org>, "Wong, Rosey" <Rosey.Wong@dechert.com>, Scott Hemphill Contact Information Redacted

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Arif –

Regarding scheduling the further CEP call that we discussed during our 28 August 2018 CEP conference, unfortunately schedules are very tight over the next two weeks. Please let us know if you and your client are available for a one hour call on 12 September 2018 between 7:00am – 9:00am (Pacific time).

Also, please let us know if you intend to submit any further documents or information in advance of our next call.

Best Regards,

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

From: Independentreview <independentreview-bounces@icann.org> on behalf of "Ali, Arif" <Arif.Ali@dechert.com>

Date: Tuesday, August 28, 2018 at 3:34 PM

To: Amy Stathos <amy.stathos@icann.org>, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>

Cc: "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "independentreview@icann.org" <independentreview@icann.org>, "Wong, Rosey" <Rosey.Wong@dechert.com>, Scott Hemphill Contact Information Redacted

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Amy:

Further to our call today, I assume that you had an opportunity to review our earlier correspondence on the matter of Afiliias' claim. In any event, I am re-sending them so that they are at the top of you In-Box.

Kind regards,

Arif Hyder Ali

www.dechert.com/arif_ali [dechert.com]

Dechert LLP

+1 202 261 3307 Washington, D.C.

+44 207 1847372 London

+1 202 261 3441 Assistant (Remy Bracey)

+44 207 1847372 Assistant (Annette Brombley)

Contact information Redacted Mobile

arif.ali@dechert.com

From: Amy Stathos [<mailto:amy.stathos@icann.org>]

Sent: Monday, July 30, 2018 12:36 PM

To: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>

Cc: Ali, Arif <Arif.Ali@dechert.com>; Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; Scott Hemphill Contact Information Redacted; independentreview@icann.org

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Importance: High

Thank you for the detailed agenda below, we will continue to analyze this in advance of our call, but unfortunately we are going to have to re-schedule the call that is scheduled for today. Sorry for the late notice.

We will work internally to find some times next week for a call, and will ensure that we have the right people to participate.

We will be in touch in next day or two to reschedule. Again, sorry for the late notice. Please confirm your receipt of this note.

Thank you.

Amy Stathos
Deputy General Counsel
Internet Corporation for Assigned Names and Numbers
+1-310-301-3866 (direct)
amy.stathos@icann.org

On Jul 23, 2018, at 12:40 PM, de Gramont, Alexandre
<Alexandre.deGramont@dechert.com> wrote:

Dear ICANN:

Thank you for your email below. I will plan to join Messrs. Hemphill and Ali on the call. Others on our team may also be present.

In the meantime, we believe it would be helpful to propose an agenda around which to organize the call. Afiliias has three general goals for the CEP call: (1) to understand ICANN's positions concerning the resolution of the .WEB contention set, and the bases for those positions; (2) to

understand whether ICANN is willing to reconsider its positions, or if there are any avenues toward a resolution of this matter without having to proceed to an IRP; and (3) if not, to see if we can agree on at least certain aspects concerning the schedule and process for the IRP. With those goals in mind, we propose the following agenda:

I. ICANN'S POSITIONS

1. Is it ICANN's intention to enter a .WEB registry agreement with NDC, with the understanding that NDC has contractually committed to assigning the exclusive right to operate the .WEB registry (and/or transferring any other rights obtained through NDC's application) to Verisign? If so, has ICANN informed or otherwise discussed with NDC or Verisign whether ICANN will agree to such assignment and/or transfer?
2. Is it ICANN's position that NDC's application – which made no mention of Verisign's involvement, and specifically stated that its goal was to increase competition among registry operators and diminish “[c]ongestion in the current availability of commercial TLD names [which] fundamentally advantages older incumbent players” – complied with the letter and spirit of the AGB?
3. Is it ICANN's position that NDC was not required to disclose that it had assigned or otherwise transferred any of its rights as an applicant (including, without limitation, the exclusive right to operate the .WEB registry) to Verisign in exchange for Verisign's funding of NDC's bid prior to the commencement of the auction?
4. Is it ICANN's position that it fully investigated the concerns about the conduct of NDC and Verisign raised by Afiliias (and other applicants) after the conclusion of the auction? If so, is ICANN willing to tell us what the investigation entailed and uncovered?
5. Did ICANN consider disqualifying NDC's application after ICANN learned that NDC had agreed to assign or otherwise transfer any rights in its application for .WEB to Verisign in exchange for Verisign's funding of NDC's bid? If so, is ICANN willing to tell us the basis of its decision not to disqualify NDC's application?
6. Is it ICANN's position that ICANN complied with its Articles of Incorporation and Bylaws in its handling of NDC's .WEB application and in its decision to enter into a .WEB registry agreement with NDC?

II. WHETHER ICANN IS WILLING TO RECONSIDER ITS POSITIONS

1. Is ICANN willing to reconsider its positions, in particular, its decision to enter a .WEB registry agreement with NDC, without Afiliias having to commence an IRP?

2. Does ICANN have other ideas on how this dispute might be amicably resolved absent an IRP?

III. PROCEDURAL AND SCHEDULING ISSUES FOR AN IRP (IF NECESSARY)

1. If the CEP is unsuccessful, will ICANN, consistent with other IRPs, keep the contention set on hold pending the resolution of this IRP? Or will Afiliias have to seek an emergency arbitrator to order interim relief? If the latter, will ICANN tell us when it plans to execute the .WEB registry agreement with NDC and/or Verisign?

2. If the CEP is unsuccessful, and Afiliias commences an IRP, can we agree on a schedule for the submission of Afiliias' IRP request (and if necessary, its request for an emergency arbitrator to order interim relief), as well as for further steps in the procedure?

Please let us know if you have any questions or comments concerning our proposed agenda. We would of course be pleased to consider additional items that ICANN would like to propose. In the meantime, we will look forward to speaking with Mr. Jeffrey next week.

Kind regards,

Alexandre de Gramont
Dechert LLP
Counsel for Afiliias

From: Independent Review [<mailto:independentreview@icann.org>]
Sent: Thursday, July 19, 2018 4:36 PM
To: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>; 'Independent Review' <independentreview@icann.org>
Cc: Ali, Arif <Arif.Ali@dechert.com>; Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; 'Scott Hemphill' Contact Informat on Redacted
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont –

Thank you for your response.

We will schedule the CEP conference for Monday 30 July 2018 11:00am-12:00pm (Pacific time).

We will send a meeting invite to Mr. Hemphill and Mr. Ali with call-in information to follow.

Best regards,

ICANN
12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>
Date: Monday, July 16, 2018 at 1:31 PM
To: 'Independent Review' <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, 'Scott Hemphill' Contact Information Redacted
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Thank you for your email below. I have conferred with Messrs. Hemphill and Ali. They are both available on **Monday, 30 July between 10:00 am and 12:00 pm (Pacific time)**. Please let us know when in that time frame you would like to begin and we will plan accordingly.

Alexandre de Gramont
Partner

Dechert LLP
1900 K Street N.W.
Washington, DC 20006
+1 202 261 3320 Direct
Contact Information Redacted Mobile
+1 202 261 3082 Fax
alex.degramont@dechert.com
dechert.com [dechert.com]

From: Independent Review [<mailto:independentreview@icann.org>]
Sent: Monday, July 16, 2018 1:45 PM
To: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>
Cc: Ali, Arif <Arif.Ali@dechert.com>; Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; 'Scott Hemphill' Contact Information Redacted
Independent Review <independentreview@icann.org>
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,
Following up on my emails below regarding scheduling the CEP conference as set forth in Section 4 of the CEP.

You indicated that Mr. Ali and Mr. Hemphill were not available on 17 July 2018 10-11am (Pacific) or on 19 July 2018 11am-12pm (Pacific) – the dates and times provided below in my 6 July email.

In an effort to accommodate Afiliias' schedule and to find a mutually acceptable date and time for the conference, below are additional dates and times when

Mr. Jeffrey is available for a one-hour telephonic CEP conference. Please let us know as soon as possible if Mr. Ali and Mr. Hemphill are available for these dates and times (please indicate all availability, so we can coordinate schedules).

Dates and Times:

Wed. 18 July 2018 3:00pm – 5:00pm (Pacific)

Thurs. 19 July 2018 2:00pm – 4:00pm (Pacific)

Monday 30 July 10:00am – 12:00pm (Pacific) and/or 3:00pm – 5:00pm (Pacific)

Tuesday 31 July 3:00pm – 5:00pm (Pacific)

Thursday 3 August 2:00pm – 4:00pm (Pacific)

Best regards,

ICANN

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>

Date: Thursday, July 12, 2018 at 5:11 PM

To: "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, 'Independent Review' <independentreview@icann.org>

Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, 'Scott Hemphill' Contact Information Redacted

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,

Unfortunately, Mr. Jeffrey is not available the week of 23 July.

He is available on the following dates and times the following week:

Monday 30 July 10:00am – 12:00pm (Pacific) and/or 3:00pm – 5:00pm (Pacific)

Tuesday 31 July 3:00pm – 5:00pm (Pacific)

Thursday 3 August 2:00pm – 4:00pm (Pacific)

Please let us know if Mr. Hemphill and Mr. Ali are available on the dates and times listed above for a one hour telephonic CEP conference (please indicate all availability, so we can coordinate schedules).

Best regards,

ICANN

12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>
Date: Thursday, July 12, 2018 at 3:10 AM
To: 'Independent Review' <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, 'Scott Hemphill' Contact Information Redacted
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

We are having trouble with both those dates and times. Would Mr. Jeffrey be available on Monday, July 23, between 8am and noon Pacific time?

Thanks, Alex

Alexandre de Gramont
Partner

Dechert LLP
1900 K Street N.W.
Washington, DC 20006
+1 202 261 3320 Direct
Contact Information Redacted Mobile
+1 202 261 3082 Fax
alex.degramont@dechert.com
dechert.com [dechert.com]

From: Independent Review [<mailto:independentreview@icann.org>]
Sent: Tuesday, July 10, 2018 2:49 PM
To: Independent Review <independentreview@icann.org>; de Gramont, Alexandre <Alexandre.deGramont@dechert.com>
Cc: Ali, Arif <Arif.Ali@dechert.com>; Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; 'Scott Hemphill' Contact Information Redacted
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,
I am following up on my email below.
Could you please let us know if Mr. Hemphill and Mr. Ali are available on the dates and times listed below for a one hour telephonic CEP conference.

Best regards,

ICANN
12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>

Date: Friday, July 6, 2018 at 12:07 PM

To: "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "independentreview@icann.org" <independentreview@icann.org>

Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, 'Scott Hemphill' Contact Information Redacted

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,

Thank you for responding.

Mr. Jeffrey is available for a telephonic CEP conference on the following days and times:

17 July 2018 10:00am – 11:00am (Pacific time)

19 July 2018 11:00am – 12:00pm (Pacific time)

Please let us know if Mr. Hemphill and Mr. Ali are available on either of those two dates.

Best regards,

ICANN

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>

Date: Friday, July 6, 2018 at 10:01 AM

To: "independentreview@icann.org" <independentreview@icann.org>

Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, 'Scott Hemphill' Contact Information Redacted

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Thank you for your email below and we apologize for not responding sooner. Our team has been in an arbitration hearing in Paris that just finished up today. In any event, neither Mr. Ali nor Mr. Hemphill were able to attend ICANN62. We would be available for a meeting (preferably in Washington, D.C. or elsewhere on the east coast) from July 17-24 or July 30-Aug. 3. If those dates don't work, we will have to look for dates in September. Please let us know.

Kind regards,

Alexandre de Gramont
Partner

Dechert LLP

1900 K Street N.W.
Washington, DC 20006
+1 202 261 3320 Direct
Contact Information Redacted Mobile
+1 202 261 3082 Fax
alex.degramont@dechert.com
dechert.com [dechert.com]

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

Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

From: independentreview@icann.org

Date: Jun 20, 2018, 3:08 PM

To: "Ali, Arif" <Arif.Ali@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>

Dear Mr. Ali,

This will acknowledge receipt of the email, with the attached letter, on behalf of your clients Afilias plc and Afilias Domains No. 3 Limited (collectively, "Afilias") to independentreview@icann.org on 18 June 2018, whereby Afilias initiated the Cooperative Engagement Process (CEP) regarding .WEB in advance of filing a Request for Independent Review (IRP). Pursuant to Section 3 of the CEP, ICANN has designated John Jeffrey as the Executive that will participate in the CEP that Afilias has initiated.

As Mr. Jeffrey is currently traveling to Panama, we will be contacting you in the next few days regarding your client's availability for a conference as set forth in Section 4 of the CEP, perhaps to take place at ICANN62 in Panama (please advise if Mr. Hemphill will be attending ICANN62) or soon thereafter.

Best regards,

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

From: Independentreview <independentreview-bounces@icann.org> on behalf of "Wong, Rosey" <Rosey.Wong@dechert.com>

Date: Monday, June 18, 2018 at 12:23 PM

To: "independentreview@icann.org" <independentreview@icann.org>

Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Scott Hemphill <shemphill@afilias.info>, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "Sancheti, Harsh" <Harsh.Sancheti@dechert.com>

Subject: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear ICANN:

Please find attached a letter on behalf of Afiliac plc and Afiliac Domains No. 3, initiating the Cooperative Engagement Process with ICANN pursuant to Article 4, Section 4.3(e) of the ICANN Bylaws. The exhibits accompanying the letter can be downloaded at: <https://dechert.box.com/s/hguexsi6nj99bvtx4grlq7mw5ex14epq> [dechert.box.com].

We would be grateful if you acknowledge receipt.

Sincerely,
Rose Marie Wong

Rose Marie Wong
Associate

Dechert LLP
+1 215 994 2052
rosey.wong@dechert.com
dechert.com [dechert.com]

This e-mail is from Dechert LLP, a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

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Independentreview mailing list
Independentreview@icann.org
<https://mm.icann.org/mailman/listinfo/independentreview>

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This e-mail is from Dechert LLP, a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

EXHIBIT 316

ARIF HYDER ALI

arif.ali@dechert.com
+1 202 261 3307 Direct
+1 261 261 3079 Fax

November 20, 2018

VIA E-MAIL

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094
independentreview@icann.org

Re: “On Hold” Status of the .WEB Contention Set

Dear ICANN:

We write with reference to your email of 14 November 2018 in which you set out ICANN’s position regarding the “on hold” status of the .WEB contention set. Specifically, in response to Afiliias’ request that ICANN continue to maintain the hold status on the .WEB contention set, you state: “If Afiliias does not file its request for emergency interim relief with the ICDR on or before 27 November 2018, the .WEB contention set will be taken off the “on hold” status. If Afiliias does file its request for emergency interim relief with the ICDR on or before 27 November, the status of the .WEB contention set will remain “on hold” until the parties receive a decision from the IRP panel regarding the interim relief request.”¹

First, consistent with ICANN’s policy mandate and past practice, given that Afiliias has commenced an ICANN accountability process, the .WEB contention set must remain on hold. As the emergency arbitrator noted in the Donuts IRP regarding .SPORTS: “In other words, a deal is a deal. If claimant is entitled to a prompt, efficacious, and thorough independent review process, why has it had to file the present request for emergency relief . . .?”² The .AFRICA panel raised similar concerns, agreeing that the claimant in that IRP had a “procedural right” to an IRP conducted “with legitimacy and integrity, with the capacity to provide a meaningful remedy.”³ We note that ICANN voluntarily placed the .SPORTS contention set on hold in light of the concerns of, and issues identified, by the emergency arbitrator in that IRP.

¹ Email from ICANN to A. Ali (14 Nov. 2018).

² *Donuts Inc. v. ICANN*, ICDR Case No. 01-14-0000-1579, Procedural Order No. 2 (10 Nov. 2014), p. 2.

³ See *DotConnectAfrica (DCA) Trust v. ICANN*, ICDR Case No. 50-117-T-1083-13, Decision on Interim Measures of Protection (12 May 2014), ¶¶ 19, 27, 47.

Second, ICANN is required by its Bylaws to apply its policies and make decisions consistently, neutrally, objectively, and fairly, and to not single out any particular party for discriminatory treatment. ICANN is also obligated to act transparently. Absent a clear justification by ICANN as to why the contention set's status must be changed, ICANN cannot simply at its whim decide the status of the contention set. Specifically, there is nothing to suggest that the removal of the hold status is either urgent or necessary here. To the contrary, should ICANN seek to delegate .WEB to Afilias' competitor, ICANN would needlessly create an urgent situation making the grant of interim measures necessary under international law, as was the case in the .AFRICA IRP. As that panel reasoned: if a stay was not ordered there, "the chances for [claimant] having its Request for an independent review heard and properly considered will be jeopardized."⁴

If there are, in fact, compelling reasons as to why the contention set must be removed from the on hold status, including circumstances of urgency and necessity (which ICANN must disclose to the contention set, if they in fact exist), then it is for ICANN to seek emergency interim relief and not Afilias. ICANN cannot artificially and opaquely create circumstances of urgency, and place the onus on (i.e., force) an applicant to unnecessarily seek emergency relief.

Third, as ICANN well knows, a panel will be constituted in short order in the IRP commenced by Afilias. This is certainly achievable if ICANN cooperates with Afilias in establishing an efficient procedural framework for the IRP. Once the panel is constituted, ICANN can determine whether to seek an early ruling from the panel as to whether it has the right to change the status of the contention set.

Fourth, instead of proceeding in an objective, fair, transparent, non-discriminatory, and efficient manner, should ICANN decide to change the on hold status of the .WEB gTLD and proceed to conclude a registry agreement with NDC/VeriSign and with the delegation of the gTLD, ICANN will be intentionally causing significant harm to Afilias. Afilias will assert all of its rights and remedies against ICANN in all available forums.

Finally, we request immediate disclosure by ICANN of the documents listed below, all of which must be provided to Afilias by 23 November 2018. Subject to our position above, Afilias considers that there can be no obligation on its part, if one exists at all (which we reject), to seek emergency interim relief until ICANN has disclosed the relevant documents.

- All documents relevant to the status of the delegation of the .WEB gTLD, including internal ICANN communications and communications between (1) ICANN and (2) either or both of NDC and VeriSign, including, but not limited to,

⁴ *Id.* at ¶ 45.

(a) negotiation of a registry agreement concerning .WEB, (b) pre-delegation testing for the .WEB registry, and (c) Afilias' invocation of CEP concerning .WEB, the conduct of CEP concerning .WEB, and Afilias' request for IRP concerning .WEB.

- Documents sufficient to show that there are in fact underlying circumstances of urgency and necessity sufficient to justify taking the .WEB contention set off hold and forcing Afilias to file a request for emergency relief.
- All documents, including internal memoranda and policy positions, addressing ICANN's decisions to place a contention set on hold or to take a contention set off the "on hold" status. In this regard, we request that ICANN provide any and all documents, including internal emails and memoranda, relating to the justifications as to why a specific gTLD contention set was put on hold or was taken off the "on hold" status. This request includes all documents related to ICANN's decision to put the .WEB contention set on hold pending the .WEBS IRP concerning Vistaprint's application.

We find it astonishing that we are still in the position of having to make the above requests— notwithstanding our repeated inquiries for the most basic information about the status of the contention set.

Sincerely,



Arif Hyder Ali

Partner

Annex 8

**IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS
BEFORE THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

ICDR Case No. 01-18-0004-2702

AFILIAS DOMAINS NO. 3 LIMITED,
Claimant

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,
Respondent

FINAL DECISION

Corrected version dated 15 July 2021

20 May 2021

Members of the IRP Panel

Catherine Kessedjian
Richard Chernick
Pierre Bienvenu Ad. E., Chair

Administrative Secretary to the IRP Panel

Virginie Blanchette-Séguin

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GLOSSARY OF DEFINED TERMS

Afilias	Claimant Afilias Domains No. 3 Limited.
Afilias' First DIDP Request	Documentary Information Disclosure Policy request submitted by Afilias to ICANN on 23 February 2018.
Afilias' Response to the <i>Amici's</i> Brief	Afilias' Response to the <i>Amici Curiae</i> Briefs dated 24 July 2020.
Amended Request for IRP	Afilias's Amended Request for Independent Review dated 21 March 2019.
<i>Amici</i>	Collectively, Verisign, Inc. and Nu DotCo, LLC.
<i>Amici's</i> PHB	Verisign, Inc. and Nu DotCo, LLC's post-hearing brief dated 12 October 2020.
Articles	<i>Amended and Restated Articles of Incorporation of Internet Corporation for Assigned Names and Numbers</i> , as approved by the Board on 9 August 2016, and filed on 3 October 2016, Ex. C-2.
Auction Rules	Power Auctions LLC's Auction Rules for New gTLDs: Indirect Contentions Edition, Ex. C-4.
Board	ICANN's board of directors.
Blackout Period	Period associated with an ICANN auction extending from the deposit deadline until full payment has been received from the prevailing bidder, and during which discussions among members of a contention set are prohibited.
Bylaws	Bylaws for Internet Corporation for Assigned Names and Numbers, as amended 18 June 2018, Ex. C-1.
CCWG	The Cross-Community Working Group for Accountability created by ICANN's supporting organizations and advisory committees to review and advise on ICANN's accountability mechanisms.
CEP	ICANN's Cooperative Engagement Process, as described in Article 4, Section 4.3(e) of the Bylaws, intended to help parties to a potential IRP resolve or narrow the issues that might need to be addressed in the IRP.

CEP Rules	Rules applicable to a Cooperative Engagement Process described in an ICANN document dated 11 April 2013, Ex. C-121.
Claimant	Afilias Domains No. 3 Limited.
Claimant’s PHB	Afilias’ post-hearing brief dated 12 October 2020.
Claimant’s Reply	Afilias’ Reply Memorial in Support of Amended Request by Afilias Domains No. 3 Limited for Independent Review dated 4 May 2020.
Claimant’s Reply Submission on Costs	Afilias’ reply dated 23 October 2020 to the Respondent’s submissions on costs.
Covered Actions	As defined at Section 4.3(b)(ii) of the Bylaws : “any actions or failures to act by or within ICANN committed by the Board, individual Directors, Officers, or Staff members that give rise to a Dispute”.
DAA, or Domain Acquisition Agreement	Domain Acquisition Agreement between Verisign, Inc. and Nu DotCo, LLC dated 25 August 2015, Ex. C-69.
Decision on Phase I	Panel’s decision on Phase I dated 12 February 2020.
DIDP	ICANN’s Documentary Information Disclosure Policy.
DNS	Domain Name System.
DOJ	United States Department of Justice.
Donuts	Donuts, Inc., the parent company of .WEB applicant Ruby Glen, LLC.
Donuts CEP	Cooperative Engagement Process invoked by Donuts on 2 August 2016 in regard to .WEB.
First Procedural Order	Panel’s first procedural order for Phase II, dated 5 March 2020.
gTLD	Generic top-level domain.
Guidebook	ICANN’s New gTLD Applicant Guidebook, Ex. C-3.
ICANN, or Respondent	Respondent Internet Corporation for Assigned Names and Numbers.
ICANN’s Response to the Amici’s Briefs	ICANN’s response dated 24 July 2020 to the <i>amici curiae</i> briefs.

ICDR	International Centre for Dispute Resolution.
ICDR Rules	International Arbitration Rules of the ICDR.
Interim Procedures	Interim Supplementary Procedures for Internet Corporation for Assigned Names and Numbers' Independent Review Process, Ex. C-59.
IOT	Independent Review Process Implementation Oversight Team.
IRP	Independent Review Process provided for under ICANN's Bylaws.
Joint Chronology	Chronology of relevant facts dated 23 October 2020, agreed to by the Parties and the <i>Amici</i> pursuant to the Panel's communication dated 16 October 2020.
NDC	<i>Amicus Curiae</i> Nu DotCo, LLC.
NDC's Brief	Nu DotCo, LLC's <i>amicus curiae</i> brief dated 26 June 2020.
New gTLD Program Rules	Collectively, ICANN's New gTLD Applicant Guidebook, Ex. C-3, and the Power Auctions LLC's Auction Rules for New gTLDs: Indirect Contentions Edition, Ex. C-4.
November 2016 Workshop	Workshop held by the Board on 3 November 2016 during which a briefing was presented by in-house counsel regarding the .WEB contention set.
Ombudsman	ICANN's Ombudsman.
Panel	The Panel appointed to resolve Claimant's IRP in the present case.
Phase I	First phase of this Independent Review Process which concluded with the Panel's Decision on Phase I dated 12 February 2020.
Procedural Order No. 2	Panel's second procedural order for Phase II dated 27 March 2020.
Procedural Order No. 3	Panel's third procedural order for Phase II dated 27 March 2020.
Procedural Order No. 4	Panel's fourth procedural order for Phase II dated 12 June 2020.
Procedural Order No. 5	Panel's fifth procedural order for Phase II dated 14 July 2020.
Procedural Order No. 6	Panel's sixth procedural order for Phase II dated 27 July 2020.

Procedural Timetable	Procedural timetable for Phase II attached to the First Procedural Order dated 5 March 2020.
Questionnaire	Questionnaire issued by ICANN on 16 September 2016.
Radix	Radix FZC.
Reconsideration Request 18-7	Reconsideration request submitted by Afilias challenging ICANN's response to its First Documentary Information Disclosure Policy Request.
Reconsideration Request 18-8	Reconsideration request submitted by Afilias challenging ICANN's response to its Second Documentary Information Disclosure Policy Request.
Request for Emergency Interim Relief	Afilias' Request for Emergency Panelist and Interim Measures of Protection, dated 27 November 2018.
Respondent, or ICANN	Respondent Internet Corporation for Assigned Names and Numbers.
Respondent's Answer	ICANN's Answer to the Amended Request for IRP dated 31 March 2019.
Respondent's PHB	ICANN's post-hearing brief dated 12 October 2020.
Respondent's Rejoinder	ICANN's Rejoinder Memorial in Response to Amended Request by Afilias Domains No. 3 Limited for Independent Review dated 1 June 2020.
Respondent's Response Submission on Costs	ICANN's response dated 23 October 2020 to the Claimant's submissions on costs.
Revised Procedural Timetable	Revised procedural timetable for Phase II attached to the Procedural Order No. 3 dated 13 March 2020.
Ruby Glen	Ruby Glen, LLC.
Ruby Glen Litigation	Ruby Glen, LLC's complaint against ICANN filed in the US District Court of the Central District of California and application seeking to halt the .WEB auction.
Rule 7 Claim	Afilias' claim that ICANN violated its Bylaws in adopting the <i>amicus curiae</i> provisions set out in Rule 7 of the Interim Procedures.

Second DIDP Request	Documentary Information Disclosure Policy request submitted by Afilias to ICANN on 23 April 2018.
Staff	ICANN's Staff.
Supplemental Submission	Afilias' supplemental submission dated 29 April 2020 adding an additional argument in favour of a broader document production by ICANN.
Verisign	<i>Amicus Curiae</i> Verisign, Inc.
Verisign's Brief	Verisign, Inc.'s <i>amicus curiae</i> brief dated 26 June 2020.
10 June Application	Afilias' application dated 10 June 2020 regarding the status of the evidence originating from the <i>Amici</i> which had been filed with the Respondent's Rejoinder.
29 April 2020 Application	Afilias' application seeking assistance from the Panel regarding ICANN's document production and privilege log.

I. INTRODUCTION

A. Overview

1. The Claimant is one of seven (7) entities that submitted an application to the Respondent for the right to operate the registry of the .WEB generic Top-Level Domain (**gTLD**), pursuant to the rules and procedures set out in the Respondent's New gTLD Applicant Guidebook (**Guidebook**) and the Auction Rules for New gTLDs (**Auction Rules**) (collectively, **New gTLD Program Rules**).
2. gTLDs are one category of top-level domains used in the domain name system (**DNS**) of the Internet, to the right of the final dot, such as ".COM" or ".ORG". Under the Guidebook and Auction Rules, in the event of multiple applicants for the same gTLD, the applicants are placed in a "contention set" for resolution privately or, if this first option fails, through an auction administered by the Respondent.
3. On 27 and 28 July 2016, the Respondent conducted an auction among the seven (7) applicants for the .WEB gTLD. Nu DotCo, LLC (**NDC**) won the auction while the Claimant was the second-highest bidder. Shortly after the .WEB auction, it was revealed that NDC and Verisign, Inc. (**Verisign**) had entered into an agreement (**Domain Acquisition Agreement** or **DAA**) under which Verisign undertook to provide funds for NDC's bid for the .WEB gTLD, while NDC undertook, if its application proved to be successful, to transfer and assign its registry operating rights in respect of .WEB to Verisign upon receipt from the Respondent of its actual or deemed consent to this assignment.¹
4. The Claimant initiated the present Independent Review Process (**IRP**) on 14 November 2018, seeking, among others, binding declarations that the Respondent must disqualify NDC's bid for .WEB and, in exchange for a bid price to be specified by the Panel, proceed with contracting the registry agreement for .WEB with the Claimant.
5. At the outset of these proceedings, on 30 August 2019, the Parties agreed that there should

¹ Domain Acquisition Agreement entered into by NDC and Verisign on 25 August 2015, Ex. C-218, as amended and supplemented by the "Confirmation of Understanding" executed by these same parties on 26 July 2016, Ex. H to Mr. Livesay's witness statement. See below, paras. 39, 84 and 101.

be a bifurcated Phase I in this IRP to address two questions. The first was the Claimant's claim that the Respondent violated its *Bylaws for Internet Corporation for Assigned Names and Numbers*, as amended on 18 June 2018 (**Bylaws**), in adopting the *amicus curiae* provisions set out in Rule 7 of the *Interim Procedures for Internet Corporation for Assigned Names and Numbers' Independent Review Process*, adopted by the Respondent's board of directors (**Board**) on 25 October 2018 (**Interim Procedures**), and that Verisign and NDC should be prohibited from participating in the IRP on that basis. This question has been referred to in these proceedings as the Claimant's **Rule 7 Claim**. The second question to be addressed in Phase I was the extent to which, in the event the Rule 7 Claim failed, NDC and Verisign should be permitted to participate in the IRP as *amici*.

6. In its Decision on Phase I dated 12 February 2020 (**Decision on Phase I**), which concluded the first phase of the IRP, this IRP Panel (**Panel**) unanimously decided to grant the requests respectively submitted by Verisign and NDC (collectively, the *Amici*) to participate as *amici curiae* in the present IRP, on the terms and subject to the conditions set out in that decision. On the basis of the Claimant's alternative request for relief in Phase I,² the Panel decided to join to the Claimant's other claims in Phase II those aspects of Afiliias' Rule 7 Claim over which the Panel determined that it had jurisdiction³ – to the extent the Claimant were to choose to maintain them.
7. On 4 March 2020, the Panel held a case management conference in relation to Phase II of the IRP. On that occasion, the Claimant informed the Panel that it intended to maintain its Rule 7 Claim in order to illustrate what it described as the “unseemly relationship between the regulator and the monopolist”⁴ (*i.e.*, in this case, respectively, the Respondent and Verisign). For reasons set out later in this Final Decision, the Panel has determined that the outstanding aspects of the Rule 7 Claim that were joined to the Claimant's other claims in Phase II have become moot by the participation of the *Amici* in this IRP in accordance with the Panel's Decision on Phase I. Accordingly, the Panel has concluded that no useful

² See Decision on Phase I, para. 183.

³ In its decision on Phase I, the Panel found that it has jurisdiction over any actions or failures to act alleged to violate the Articles or Bylaws: (a) committed by the Board; or (b) committed by Staff members of ICANN, but not over actions or failures to act committed by the IRP Implementation Oversight Team as such. See Decision on Phase I, para. 133.

⁴ Transcript of the preparatory conference of 4 March 2020, p. 11.

purpose would be served by the Rule 7 Claim being addressed beyond the findings and observations contained in the Panel's Decision of Phase I, which the Respondent's Board has no doubt reviewed and can act upon, as deemed appropriate. In this Final Decision, the Panel disposes of the Claimant's other substantive claims in this IRP, as well as its cost claims in connection with the IRP, including in relation to Phase I.

8. After careful consideration of the facts, the applicable law and the submissions made by the Parties and the *Amici*, the Panel finds that the Respondent has violated its *Amended and Restated Articles of Incorporation of Internet Corporation for Assigned Names and Numbers*, as approved by the Board on 9 August 2016, and filed on 3 October 2016 (**Articles**) and its Bylaws by (a) its staff (**Staff**) failing to pronounce on the question of whether the Domain Acquisition Agreement complied with the New gTLD Program Rules following the Claimant's complaints that it violated the Guidebook and Auction Rules, and, while these complaints remained unaddressed, by nevertheless moving to delegate .WEB to NDC in June 2018, upon the .WEB contention set being taken "off hold"; and (b) its Board, having deferred consideration of the Claimant's complaints about the propriety of the DAA while accountability mechanisms in connection with .WEB remained pending, nevertheless (i) failing to prevent the Staff, in June 2018, from moving to delegate .WEB to NDC, and (ii) failing itself to pronounce on these complaints while taking the position in this IRP, an accountability mechanism in which these complaints were squarely raised, that the Panel should not pronounce on them out of respect for, and in order to give priority to the Board's expertise and the discretion afforded to it in the management of the New gTLD Program. In the opinion of the Panel, the Respondent in so doing violated its commitment to make decisions by applying documented policies objectively and fairly. The Panel also finds that in preparing and issuing its questionnaire of 16 September 2016 (**Questionnaire**), and in failing to communicate to the Claimant the decision made by the Board on 3 November 2016, the Respondent has violated its commitment to operate in an open and transparent manner and consistent with procedures to ensure fairness.
9. The Panel is also of the view that it is for the Respondent, that has the requisite knowledge, expertise, and experience, to pronounce in the first instance on the propriety of the DAA under the New gTLD Program Rules, and on the question of whether NDC's application

should be rejected and its bids at the auction disqualified by reason of its alleged violations of the Guidebook and Auction Rules. The Panel therefore denies the Claimant's requests for (a) a binding declaration that the Respondent must disqualify NDC's bid for .WEB for violating the Guidebook and Auction Rules, and (b) an order directing the Respondent to proceed with contracting the Registry Agreement for .WEB with the Claimant, in exchange for a price to be specified by the Panel and paid by the Claimant.

B. The Parties

10. The Claimant in the IRP is Afilius Domains No. 3 Limited (**Afilius** or **Claimant**), a legal entity organised under the laws of the Republic of Ireland with its principal place of business in Dublin, Ireland. Afilius provides technical and management support to registry operators and operates several generic gTLD registries.
11. The Claimant's parent company, Afilius, Inc., was, until 29 December 2020, a United States corporation that was the world's second-largest Internet domain name registry. As noted below in paragraphs 244 to 249, in post-hearing submissions made in December 2020, the Panel was informed that pursuant to a Merger Agreement signed on 19 November 2020 between Afilius, Inc. and Donuts, Inc. (**Donuts**), these two (2) companies have merged as of 29 December 2020. The Claimant has explained, however, that this transaction does not include the transfer of the Claimant's .WEB application, as both the Claimant as an entity and its .WEB application have been carved out of the transaction.
12. The Claimant is represented in the IRP by Mr. Arif Hyder Ali, Mr. Alexandre de Gramont, Ms. Rose Marie Wong, Mr. David Attanasio, Mr. Michael A. Losco and Ms. Tamar Sarjveladze of Dechert LLP, and by Mr. Ethan Litwin of Constantine Cannon LLP.
13. The Respondent is the Internet Corporation for Assigned Names and Numbers (**ICANN** or **Respondent**), a not-for-profit corporation organised under the laws of the State of California, United States. ICANN oversees the technical coordination of the Internet's DNS on behalf of the Internet community. The essential function of the DNS is to convert

domain names that are easily remembered by humans – such as “icann.org” – into numeric IP addresses understood by computers.

14. ICANN’s core mission, as described in its Bylaws, is to ensure the stable and secure operation of the Internet’s unique identifier system. To that end, ICANN contracts with, among others, entities that operate gTLDs. The Bylaws provide that in performing its mission, ICANN will act in a manner that complies with and reflects ICANN’s commitments and respects ICANN’s core values, as described in the Bylaws.
15. ICANN is represented in the IRP by Mr. Jeffrey A. LeVee, Mr. Steven L. Smith, Mr. David L. Wallach, Mr. Eric P. Enson and Ms. Kelly M. Ozurovich, of Jones Day LLP.

C. The IRP Panel

16. On 26 November 2018, the Claimant nominated Professor Catherine Kessedjian as a panelist for the IRP. On 13 December 2018, the International Centre for Dispute Resolution (**ICDR**) appointed Prof. Kessedjian on the IRP Panel and her appointment was reaffirmed by the ICDR on 4 January 2019.
17. On 18 January 2019, the Respondent nominated Mr. Richard Chernick as a panelist for the IRP and he was appointed to that position by the ICDR on 19 February 2019.
18. On 17 July 2019, the Parties nominated Mr. Pierre Bienvenu, Ad. E., to serve as the IRP Panel Chair. Mr. Bienvenu accepted the nomination on 23 July 2019 and he was appointed by the ICDR on 9 August 2019.
19. In September 2019, with the consent of the Parties, Ms. Virginie Blanchette-Séguin was appointed as Administrative Secretary to the IRP Panel.

D. The Amici

20. Verisign is a publicly traded company organised under the laws of the State of Delaware. Verisign is a global provider of domain name registry services and Internet infrastructure that operates, among others, the registries for the .COM, .NET and .NAME gTLDs. Verisign is represented in this IRP by Mr. Ronald L. Johnston, Mr. James S. Blackburn,

Ms. Maria Chedid, Mr. Oscar Ramallo and Mr. John Muse-Fisher, of Arnold & Porter Kaye Scholer LLP.

21. NDC is a limited liability company organised under the laws of the State of Delaware. NDC was established as a special purpose vehicle to participate in ICANN's New gTLD Program. NDC was initially represented in this IRP by Mr. Charles Elder and Mr. Steven Marenberg, of Irell & Manella LLP, and from 1 March 2020 onward by Mr. Steven Marenberg, Mr. Josh B. Gordon and Ms. April Hua, of Paul Hastings LLP.

E. Place (Legal Seat) of the IRP

22. The Claimant has proposed that the seat of the IRP be London, England, without prejudice to the location of where hearings are held. In its letter dated 30 August 2019, the Respondent has confirmed its agreement with this proposal.

F. Language of the Proceedings

23. In accordance with Section 4.3(I) of the Bylaws, the language of the proceedings of this IRP is English.

G. Jurisdiction of the Panel

24. The Claimant's Request for IRP is submitted pursuant to Article 4, Section 4.3 of the Bylaws, the International Arbitration Rules of the ICDR (**ICDR Rules**), and the Interim Procedures. Section 4.3 of the Bylaws provides for an independent review process to hear and resolve, among others, claims that actions or failures to act by or within ICANN committed by the Board, individual Directors, Officers or Staff members constituted an action or inaction that violated the Articles or the Bylaws.
25. In its Decision on Phase I, the Panel concluded, in respect of Afiliias' Rule 7 Claim, that it has jurisdiction over any actions or failures to act alleged to violate the Articles or Bylaws:
 - (a) committed by the Board; or
 - (b) committed by Staff members;

but not over actions or failures to act allegedly committed by the IRP Implementation Oversight Team (**IOT**), on the ground that the latter does not fall within the enumeration “Board, individual Directors, Officers or Staff members” in the definition of **Covered Actions** at Section 4.3(b)(ii) of the Bylaws.

26. In relation to Phase II issues, the Parties and *Amici* have characterized a number of issues as “jurisdictional”, such as the scope of the dispute described in the Amended Request for IRP, the timeliness of the claims, the applicable standard of review, and the relief that the Panel is empowered to grant. Those issues are addressed in the relevant sections of this Final Decision. However, and subject to the foregoing, the jurisdiction of the Panel to hear the Claimant’s core claims against the Respondent in relation to .WEB is not contested.

H. Applicable Law

27. The rules applicable to the present IRP are, in the main, those set out in the Bylaws and the Interim Procedures.
28. Section 1.2(a) of the Bylaws provides that “[i]n performing its Mission, ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law [...]”. The Panel notes that Article III of the Articles is to the same effect as Section 1.2(a) of the Bylaws.
29. At the hearing on Phase I, counsel for the Respondent, in response to a question from the Panel, submitted that in case of ambiguity the Interim Procedures, as well as the Articles and other “quasi-contractual” documents of ICANN, are to be interpreted in accordance with California law, since ICANN is a California not-for-profit corporation. The Claimant did not express disagreement with ICANN’s position in this respect.
30. As noted later in these reasons, the issues of privilege that arose in the document production phase of this IRP were resolved applying California law, as supplemented by US federal law.

I. Burden and Standard of Proof

31. It is a well-known and accepted principle in international arbitration that the party advancing a claim or defence carries the burden of proving its case on that claim or defence.
32. As regards the standard (or degree) of proof to which a party will be held in determining whether it has successfully carried its burden, it is generally accepted in practice in international arbitration that it is normally that of the balance of probabilities, that is, “more likely than not”. That said, it is also generally accepted that allegations of dishonesty or fraud will attract very close scrutiny of the evidence in order to ensure that the standard is met. To quote from a leading textbook, “[t]he more startling the proposition that a party seeks to prove, the more rigorous the arbitral tribunal will be in requiring that proposition to be fully established.”⁵
33. These principles were applied by the Panel in considering the issues in dispute in Phase II of this IRP.

J. Rules of Procedure

34. The ICDR is the IRP Provider responsible for administering IRP proceedings.⁶ The Interim Procedures, according to their preamble and the contextual note at footnote 1 thereof, are intended to supplement the ICDR Rules in effect at the time the relevant request for independent review is submitted. In the event of an inconsistency between the Interim Procedures and the ICDR Rules, the Interim Procedures govern.⁷

II. HISTORY OF THE PROCEEDINGS

A. Phase I

35. The history of these proceedings up to 12 February 2020, the date of the Panel’s Decision on Phase I, is set out at paragraphs 33 to 67 of the Panel’s Phase I decision, which are

⁵ See, generally, Nigel Blackaby, Constantine Partasides QC, Alan Redfern and Martin Hunter, *Redfern and Hunter on International Arbitration*, 6th ed., Oxford, Oxford University Press, 2015, para. 6.87.

⁶ See Bylaws, Ex. C-1, Section 4.3 (m).

⁷ See Interim Procedures, Ex. C-59, Rule 2.

incorporated by reference in this Final Decision.

36. In order to provide context for the present decision, the Panel recalls that on 18 June 2018, Afiliás invoked ICANN’s Cooperative Engagement Process (**CEP**) after learning that ICANN had removed the .WEB gTLD contention set’s “on-hold” status. A CEP is intended to help parties to a potential IRP resolve or narrow the issues that might need to be addressed in an IRP. The Parties participated in the CEP process until 13 November 2018.
37. On 14 November 2018, Afiliás filed its request for IRP with the ICDR. On the same day, ICANN informed Afiliás that it would only keep the .WEB gTLD contention set “on-hold” until 27 November 2018, so as to allow Afiliás time to file a request for emergency interim relief, barring which ICANN would take the .WEB gTLD contention set off of its “on hold” status. Afiliás filed a Request for Emergency Panelist and Interim Measures of Protection with the ICDR on 27 November 2018 (**Request for Emergency Interim Relief**), seeking to stay all ICANN actions that would further the delegation of the .WEB gTLD.
38. From November 2018 to March 2019, the Parties focused on the Claimant’s Request for Emergency Interim Relief and, pursuant to Requests to Participate as *Amicus* in the IRP filed by the *Amici* on 11 December 2018, on the possible participation of the *Amici* in the proceedings.
39. The Emergency Panelist presided over a focused document production process during which, on 18 December 2018, ICANN produced the Domain Acquisition Agreement entered into between Verisign and NDC in connection with .WEB. The Claimant then took the position that the documents produced to it by the Respondent warranted the amendment of its Request for IRP. Accordingly, on 29 January 2019, the Parties agreed to postpone the deadline for the submission of the Respondent’s Answer until after the Claimant filed its Amended Request for IRP. In the event, the Claimant filed its Amended Request for IRP with the ICDR on 21 March 2019 (**Amended Request for IRP**), and the Respondent submitted its Answer to the Amended Request for IRP on 31 May 2019 (**Respondent’s Answer**).
40. In January 2019, the Parties asked the Emergency Panelist to postpone further activity

pending resolution of the *Amici*'s requests to participate in the IRP. After the appointment of this Panel to determine the IRP, the Parties expressed their understanding that it would be for this Panel to resolve the Emergency Interim Relief Request. In the meantime, the Respondent agreed that the .WEB gTLD contention set would remain on hold until the conclusion of this IRP.⁸

41. As for the *Amici*'s requests to participate in the IRP, they were first the subject of proceedings before a Procedures Officer appointed by the ICDR on 21 December 2018. In its final Declaration, dated 28 February 2019, the Procedures Officer found that "the issues raised [...] are of such importance to the global Internet community and Claimants [sic] that they should not be decided by a "Procedures Officer", and therefore the issues raised are hereby referred to [...] the IRP Panel for determination".⁹ The *Amici*'s requests to participate in the IRP were referred to the Panel and, by agreement of the Parties, were resolved in Phase I of this IRP by the Panel's Decision on Phase I dated 12 February 2020.

B. Phase II

42. On 4 March 2020, the Panel presided over a case management conference to discuss the issues to be decided in Phase II and the Parties' respective proposed procedural timetables for the Phase II proceedings. The Parties differed as to the timing of document production and the briefing schedule for Phase II. The Claimant favoured document production taking place after the filing of Afilias' Reply, ICANN's Rejoinder and the *Amici*'s Briefs, such production to be followed by the simultaneous filing of Responses from the Parties. The Respondent, for its part, proposed a document production stage at the outset of Phase II, to be followed by a briefing schedule for the filing of the Parties' additional submissions and the *Amici*'s Briefs.
43. In its First Procedural Order for Phase II, dated of 5 March 2020 (**First Procedural Order**), the Panel decided that the document production phase in relation to Phase II would take place at the outset of Phase II, as proposed by the Respondent, so as to give the Parties

⁸ See ICANN's Response to Afilias' Costs Submission, dated 23 October 2020, at para. 23.

⁹ Declaration of the Procedures Officer dated 28 February 2019, p. 38.

the benefit of the documents produced during this process in their additional submissions in relation to Phase II. With respect to the other elements of the Procedural Timetable, the Panel adopted the Claimant’s proposed briefing sequence, which provided for the filing of the Claimant’s Reply, the Respondent’s Rejoinder, the *Amici*’s Briefs, and an opportunity for the Claimant and the Respondent subsequently to respond simultaneously to the *Amici*’s Briefs. The Panel attached to the First Procedural Order the following procedural timetable for Phase II, reflecting these decisions (**Procedural Timetable**):

No.	Action	Party	Date
1.	Simultaneous requests to produce (via Redfern Schedules)	Afilias and ICANN	6 March 2020
2.	Simultaneous responses/objections (via Redfern Schedules)	Afilias and ICANN	13 March 2020
3.	List of agreed issues to be decided in Phase II and, as the case may be, list(s) of additional issues to be decided in Phase II	Afilias and ICANN	13 March 2020
4.	Simultaneous replies to responses/objections (via Redfern Schedules)	Afilias and ICANN	20 March 2020
5.	Hyperlinked list of constituent elements (as of that date) of the Phase II record	Afilias and ICANN	20 March 2020
6.	Panel ruling on outstanding objections	N/A	27 March 2020
7.	Production of documents	Afilias and ICANN	17 April 2020
8.	Submissions on questions as to which the <i>Amici</i> will be permitted to submit briefings to the Panel, as well as page limits and other modalities	Afilias, ICANN, Verisign and NDC	24 April 2020
9.	Reply (along with all supporting exhibits, witness statements, expert reports and legal authorities)	Afilias	1 May 2020
10.	Rejoinder (along with all supporting exhibits, witness statements, expert reports and legal authorities)	Afilias	29 May 2020
11.	<i>Amici</i> ’s Briefs (along with all supporting exhibits, if any, and legal authorities)	Verisign and NDC	26 June 2020
12.	Simultaneous Responses to the <i>Amici</i> ’s Briefs	Afilias and ICANN	15 July 2020
13.	Parties to identify witnesses called for cross-examination at the hearing	Afilias and ICANN	24 July 2020
14.	Final status and pre-hearing conference	Afilias, ICANN, Verisign and NDC	29 July 2020
15.	Hearing	Afilias, ICANN, Verisign and NDC	3-7 August 2020

No.	Action	Party	Date
16.	Post-hearing submissions	Afilias, ICANN, Verisign and NDC	TBD

44. As reflected in the Procedural Timetable, in its First Procedural Order the Panel also asked the Parties to develop a joint list of issues to be decided in Phase II, and laid out a process for the determination, in consultation with the Parties and as contemplated in the Panel’s Decision on Phase I, of the questions as to which the *Amici* would be permitted to submit briefings to the Panel. The Panel also accepted the Parties’ proposal that the hearing, scheduled on 3-7 August 2020, be held in Chicago, IL.
45. In accordance with the Procedural Timetable, on or about 6 March 2020, the Parties exchanged document production requests in the form of Redfern Schedules. The Claimant addressed twenty-one (21) requests to produce documents to the Respondent, while the Respondent addressed two (2) requests to produce to the Claimant. Responses or objections to those requests were exchanged on or about 13 March 2020. The Claimant objected to both of the Respondent’s requests. The Respondent objected to many, but not all, of the Claimant’s requests, having agreed to search for some categories of documents requested by the Claimant.
46. Also on 6 March 2020, the Claimant sought clarification of the First Procedural Order as regards the question of whether the *Amici* would be permitted, in their briefs, to add new documents to the record as exhibits. The Claimant argued that any documents to be submitted by the *Amici* would inevitably be “cherry picked” and supportive of their submissions. The Claimant thus took the position that if the *Amici* were allowed to refer to documents that are not already in the record, the principles of fundamental fairness and due process required that it be granted an opportunity to request documents from the *Amici*. On 11 March 2020, the Respondent submitted in response that pursuant to the Decision on Phase I, the *Amici* are entitled to submit “briefings and supporting exhibits” and that the provisions of the Interim Procedures relating to the exchange of information do not apply to the *Amici*. On the same date, the *Amici* contended, for their part, that the First Procedural Order clearly states that they may submit exhibits, without specifying that such exhibits are limited to those already in the record. The *Amici* stressed that material evidence may

be in their possession and not in possession of the Parties. They further contended that the Panel had already ruled that they may not propound discovery nor be the recipient of information requests. In its reply dated 12 March 2020, the Claimant reiterated its fairness concerns and stated that the First Procedural Order did not address the question of whether the *Amici*'s exhibits were to be limited to those on record.

47. By email dated 13 March 2020, the Parties informed the Panel that they had attempted – for a second time and still without success – to agree on a joint list of issues to be decided in Phase II. While unable to agree on the joint issues list requested by the Panel, the Parties proposed an agreed procedure for the Panel ultimately to determine the questions on which the *Amici* would be invited to submit briefs. In the event, the Panel accepted the Parties' suggestion in Procedural Order No. 3, and issued a revised procedural timetable reflecting the changes proposed by the Parties (**Revised Procedural Timetable**).
48. In Procedural Order No. 2 dated 27 March 2020 (**Procedural Order No. 2**), the Panel ruled on the outstanding objections to the Parties' respective requests to produce, granting twelve (12) of the Claimant's fourteen (14) outstanding requests and one (1) of the two (2) requests presented by the Respondent. In the same order, the Panel directed each of the Parties to provide to the other a privilege log listing each document over which a privilege is asserted, on the ground that such logs might prove useful to the Parties and the Panel in addressing issues arising from refusals to produce based on privilege.
49. In Procedural Order No. 3, also dated 27 March 2020 (**Procedural Order No. 3**), the Panel ruled on the Claimant's clarification request in regard to the possibility for the *Amici*, as part of their briefs, to add to the evidentiary record of the IRP. It is useful to cite in full the Panel's ruling on that question:

In its Decision on Phase I, the Panel made clear that, under the Interim Procedures, the *Amici* are non-disputing parties whose participation in the IRP is through the submission of "written briefings", possibly supplemented by oral submissions at the merits hearing. The Panel also rejected the notion that, under the Interim Procedures, the *Amici* can enjoy the same participation rights as the disputing parties. It follows that it is for the Parties, who bear the burden of proving their case, to build the evidentiary record of the IRP, and it is based on that record that the *Amici* "may submit to the IRP Panel written briefing(s) on the DISPUTE or on such discrete questions as the IRP Panel may request briefing" (see Rule 7 of the Interim Procedures).

The Panel expects the Parties, in accordance with the Procedural Timetable, to file the entirety of the remainder of their case as part of the second round of submissions contemplated by the timetable, that is to say, with the Claimant's Reply and the Respondent's Rejoinder. As evoked in the Panel's Decision on Phase I (*see* par. 201), if there is evidence in the possession of the *Amici* that the Respondent considers relevant to, and that it wishes to adduce in support of its case, be it witness or documentary evidence, that evidence is required to be filed as part of the Respondent's Rejoinder, and not with the *Amici*'s Briefs.

The Panel did not preclude the possibility in its Phase I Decision (and the Procedural Timetable) that the *Amici* might wish to file documents in support of the submissions to be made in their Briefs. By referring to such documents as "exhibits", however, as other arbitral tribunals have in referring to materials to be filed with the submissions of *amicus* participants, the Panel did not mean to suggest that these "exhibits" (which the Panel would expect to be few in number, and to be directed to supporting the *Amici*'s submissions, not the Respondent's case) would become part of the record and acquire the same status as the documentary evidence filed by the Parties.

Should a Party be of the view that documents submitted in support of the *Amici*'s Briefs are incomplete or somehow misleading, it will be open to that Party to advance the argument in response to the *Amici*'s submissions and to seek whatever relief it considers appropriate from the Panel.¹⁰

50. As regards the Claimant's request to be granted an opportunity to request documents from the *Amici*, the Panel referred to its Decision on Phase I, in which it was noted that the provisions of the Interim Procedures relating to Exchange of Information (Rule 8) apply to *Parties*, not to persons, groups or entities that are granted permission to participate in an IRP with the status of an *amicus curiae*.¹¹
51. On 17 April 2020, the Respondent produced to the Claimant its document production pursuant to the Procedural Order No. 2. On 24 April 2020, the Respondent transmitted to the Claimant a privilege log identifying documents withheld from production based on the attorney-client privilege or the attorney work product doctrine.
52. On 29 April 2020, the Claimant filed an application seeking assistance from the Panel regarding what the Claimant described as the Respondent's "grossly deficient document production and insufficiently detailed Privilege Log" (**29 April 2020 Application**). By way of relief, the Claimant requested in this application that the Panel order the Respondent to "(i) supplement and remedy its production by producing those documents that are subject to the Tribunal's production order or ICANN's production agreement; (ii) produce those

¹⁰ Procedural Order No. 3, pp. 2-3.

¹¹ See Decision on Phase I, para. 195.

documents listed on ICANN’s Privilege Log that are not privileged; (iii) produce those documents that contain privileged and non-privileged information with appropriate redactions covering only the privileged information; and (iii) (*sic*) for the remaining documents, remedy its Privilege Log so that the Panel and Afilias can properly assess the validity of the privilege that ICANN has invoked.”¹² The Claimant also reserved “its right to request the Panel to conduct an in camera review of documents that ICANN has asserted are covered by privilege”.¹³

53. As directed by the Panel, the Respondent responded to the 29 April 2020 Application on 6 May 2020, rejecting the Claimant’s complaints and asserting that the Respondent had in all respects complied with the Procedural Order No. 2. The Respondent argued that it searched and produced all non-privileged documents responsive to the Claimant’s requests to which the Respondent agreed or was directed by the Panel to respond, and that it properly withheld only those documents protected by attorney-client privilege or the work product doctrine. The Respondent added that it served a privilege log providing, in respect of each withheld document, all of the information necessary to establish privilege.
54. On 11 May 2020, the Panel, as suggested by the Claimant, held a telephonic hearing in connection with the 29 April 2020 Application. On that occasion, both Parties had the opportunity to amplify their written submissions orally and to present arguments in reply. Consistent with the Panel’s Decision on Phase I, the *Amici* were permitted to attend this procedural hearing as observers, which they did. In the course of its counsel’s reply submissions at the hearing, the Claimant articulated a new waiver argument, namely that by arguing that the Board reasonably decided, in November 2016, not to make any determination regarding NDC’s conduct until after the conclusion of the IRP, as alleged in the Respondent’s Rejoinder, the Respondent had in effect affirmatively put the reasonableness and good faith of that Board’s decision at issue in the case.
55. In accordance with the Revised Procedural Timetable (as modified by the Panel’s correspondence of 1 May 2020), on 4 May 2020, the Claimant filed its Reply Memorial in

¹² 29 April 2020 Application, p. 11.

¹³ *Ibid*, fn 29.

Support of Amended Request by Afilias Domains No. 3 Limited for Independent Review (**Claimant's Reply**) and, on 1 June 2020, the Respondent filed its Rejoinder Memorial in Response to Amended Request by Afilias Domains No. 3 Limited for Independent Review (**Respondent's Rejoinder**).

56. On 10 June 2020, while the Claimant's 29 April 2020 Application regarding document production remained under advisement, the Claimant filed a supplemental submission to add an additional argument in favour of a broader document production by the Respondent, which echoed the new argument put forward in the course of its counsel's reply at the hearing of 11 May 2020 (**Supplemental Submission**). In that supplemental submission, the Claimant argued that the Respondent had waived potentially applicable privilege with the filing of its Rejoinder Memorial where it allegedly put certain documents for which it claimed privilege "at issue" in this IRP.
57. By emails dated 11 June 2020 (corrected the following day), the Panel established a briefing schedule in relation to the Claimant's Supplemental Submission. In accordance with this schedule, the Respondent set out its position in relation to the Supplemental Submission in a response dated 17 June 2020 and a sur-reply dated 26 June 2020, inviting the Panel to find that the Respondent did not waive privilege and, therefore, that the relief sought by the Supplemental Submission should be denied. As for the Claimant, its position in relation to the Supplemental Submission was amplified in a reply dated 19 June 2020. The relief sought by the Claimant's Supplemental Submission as set out in the Claimant's 19 June 2020 reply is that the Panel order the Respondent to produce all documents that formed the basis of its Board's alleged determination, in November 2016, to defer any decision on the .WEB contention set, as well as all documents reflecting any determination by the Board to continue or terminate such deferral, including all such documents for which the Respondent claimed privilege, on the ground that the Respondent has waived any applicable privilege by putting such documents at issue.
58. The Claimant filed another application on 10 June 2020, this one regarding the status of the evidence originating from the *Amici* which had been filed with the Respondent's Rejoinder with the caveat that "ICANN did so without endorsing those statements or

agreeing with them in full”¹⁴ (**10 June Application**). The Claimant argued that ICANN was not permitted, pursuant to Procedural Order No. 3, to submit materials from the *Amici* unless it considered them relevant and wished to adduce them in support of its case. By way of relief, the Claimant requested that the Respondent be directed to resubmit the evidence filed with its Rejoinder that originated from the *Amici*, with a clear indication of the portions thereof with which the Respondent did not agree or which it did not endorse. Should the Respondent fail to do so, the Claimant invited the Panel to hold that all of the evidence submitted by the Respondent should be taken to have been submitted by and on behalf of the Respondent. On 15 June 2020, the Respondent responded to the 10 June Application, arguing that the submission of evidence on behalf of the *Amici* with the Respondent’s Rejoinder complied with Procedural Order No. 3. The Claimant replied on 17 June 2020, contending that the Panel could not allow Respondent to hide the basis for its actions and non-actions by letting the *Amici* defend it in the abstract and without affirming that it agrees with the *Amici*’s evidence.

59. In Procedural Order No. 4 dated 12 June 2020 (**Procedural Order No. 4**), the Panel denied the Claimant’s 29 April 2020 Application while reserving the question raised in the Supplemental Submission. The Panel decided that the Respondent had no obligation to ask the *Amici* to search for documents responsive to the Claimant’s requests to produce, and consequently rejected the Claimant’s claim that the Respondent ought to have produced responsive documents in the possession of the *Amici*. In that same order, a majority of the Panel concluded, applying California law as supplemented by US federal law, that the description used by the Respondent in its privilege log was sufficient to validly assert privilege and, therefore, that the Claimant had failed to justify its request that the Respondent be required to revise its privilege log. One member of the Panel, however, would have required disclosure of more detailed information from the Respondent in order to support the latter’s claims of privilege. Finally, the Panel rejected the remaining allegations of the Claimant regarding the alleged insufficiency of the Respondent’s production. Specifically, the Panel held that it would violate the attorney-client privilege and work product protection to call upon the Respondent, as requested by the Claimant, to

¹⁴ Respondent’s Rejoinder, fn 6.

redact privileged communications or work product documents so as to reveal “facts or information” contained in those protected documents.

60. On 26 June 2020, NDC and Verisign respectively filed the *Amicus Curiae* Brief of Nu DotCo, LLC (**NDC’s Brief**) and Verisign, Inc.’s Pre-Hearing Brief (Phase II) (**Verisign’s Brief**). In accordance with the Revised Procedural Timetable, the Claimant and the Respondent both responded to the *Amici*’s briefs on 24 July 2020, respectively in Afilias Domains No. 3 Limited’s Response to the *Amicus Curiae* Briefs (**Afilias’ Response to the Amici’s Briefs**) and ICANN’s Response to the Briefs of *Amicus Curiae* (**ICANN’s Response to the Amici’s Briefs**).
61. On 14 July 2020, the Panel issued its fifth procedural order (**Procedural Order No. 5**). In relation to the 10 June Application, the Panel found that the Respondent had allowed its Rejoinder to serve as a vehicle for the filing of what the Respondent itself described as the “*Amici*’s evidence”, the “*Amici*’s expert reports and witness statements”. In the Panel’s view, the Respondent had thus sought to do indirectly what the Panel had decided in Phase I could not be done directly under the Interim Procedures. By way of relief, the Panel directed the Respondent to clearly identify, in a communication to be addressed to the Claimant and the *Amici* and filed with the Panel, those aspects (if any) of the *Amici*’s facts and expert evidence which the Respondent formally refused to endorse, or with which it disagrees, and to provide an explanation for this non-endorsement or disagreement.¹⁵ The Respondent complied with the Panel’s direction by letters dated 17-18 July 2020.
62. The Panel considers it useful to cite the reasons supporting this ruling as they laid the foundations to the Panel’s approach to the issues in dispute in this IRP:

17. The Respondent has filed a Rejoinder seeking to draw a distinction between the Respondent’s evidence, filed without reservation in support of the Respondent’s primary case, and the “*Amici*’s evidence”, which the Respondent states it is filing “on behalf of the *Amici*” “to help ensure that the factual record in this IRP is complete”. However, the Respondent files this *Amici* evidence with the caveat that it is neither endorsing it, nor agreeing with it in full, as set out in the above quoted footnote 6 of the Rejoinder.

¹⁵ Procedural Order No. 5, para. 24.

18. In the Panel's view, the Respondent is thus seeking to do indirectly what the Panel decided in Phase I could not be done directly under the terms of the Interim Procedures. Instead of the *Amici* filing their own evidence with their Briefs, the Respondent has allowed the Rejoinder to serve as a vehicle for the filing of the "*Amici's* evidence", the "*Amici* expert reports and witness statements". This is indeed how the Respondent describes that evidence in its 15 June 2020 correspondence. The fact that the Rejoinder serves as a vehicle for the filing of what is, in effect, the *Amici's* evidence is consistent with the Respondent's proposal, in its submissions of 22 June 2020 relating to the modalities of the merits hearing (discussed below), that "the *Amici* be permitted to [...] introduced and conduct redirect examination of their own witnesses" (Respondent's letter of 22 June 2020, p. 2, para. 3 [emphasis added in PO5]).

19. The Respondent explains, in its 15 June response, that the purpose of the so-called "*Amici* evidence" is to address the Claimant's challenge of the *Amici's* conduct. The Respondent goes on to explain [emphasis added in PO5]:

Given that ICANN has not fully evaluated the competing contentions of Afilias and the *Amici*, for reasons ICANN explains at length in its Rejoinder, ICANN is not in a position to identify the portions of the *Amici* witness statements with which it "agrees or disagrees." But ICANN views it as essential that this evidence be of record, and that the Panel consider it, if the Panel decides to address the competing positions of Afilias and Amici regarding the latter's conduct.

20. The Panel understands the resulting procedural posture to be as follows. The Respondent has adduced evidence in support of its primary case that the ICANN Board, in the exercise of its fiduciary duties, made a decision that is both consistent with ICANN's Articles and Bylaws and within the realm of reasonable business judgment when, in November 2016, it decided not to address the issues surrounding .WEB while an Accountability Mechanism regarding .WEB was pending. That, according to the Respondent, should define the proper scope of the present IRP.

21. However, recognizing that the Claimant's case against the Respondent includes allegations concerning the *Amici's* conduct (specifically, NDC's alleged non-compliance with the Guidebook and Auction Rules), the Respondent files the "*Amici* evidence" on the ground that the record should include not only Afilias' allegations against Verisign and NDC, "but also Verisign's and NDC's responses." The difficulty is that this evidence is propounded not as the Respondent's defense to Afilias' claims against it, but rather (on the ground that the Respondent has not fully evaluated the competing contentions of Afilias and the *Amici*) as the *Amici's* response to Afilias' allegations that NDC violated the Guidebook and Auction Rules.

22. The Panel recalls that this IRP is an ICANN Accountability Mechanism, the parties to which are the Claimant and the Respondent. As such, it is not the proper forum for the resolution of potential disputes between Afilias and two non-parties that are participating in these proceedings as *amici curiae*. While it is open to the Respondent to choose how to respond to the Claimant's allegations concerning NDC's conduct, and to evaluate the consequences of its choice in this IRP, the Panel is of the view that the Respondent may not at the same time as it elects not to provide a direct response, adduce responsive evidence on that issue on behalf of the *Amici* and, in relation to that evidence, reserve its position as to which portions thereof the Respondent endorses or agrees with. In the opinion of the Panel, this leaves the Claimant uncertain as to the case it has to meet, which the Panel considers unfair, and it has the potential to disrupt the proceedings if the Respondent were later to take a position, for example in its post-hearing brief, which the Claimant would not have had the opportunity to address prior to, or at the merits hearing.

23. The Panel has taken due note of the Respondent's evidence and associated contentions concerning its Board's decision of November 2016. Nevertheless, the Guidebook and Auction Rules originate from ICANN. That being so, in this ICANN Accountability Mechanism in which the Respondent's conduct in relation to the application of the Guidebook and Auction Rules is being impugned, the Respondent should be able to say whether or not the position being defended by the *Amici* in relation to these ICANN instruments is one that ICANN is prepared to endorse and, if not, to state the reasons why.

63. In Procedural Order No. 5, the Panel also ruled on the Claimant's Supplemental Submission by rejecting the Claimant's contention that the Respondent's Rejoinder had itself put in issue in the IRP documents over which the Respondent had claimed privilege, and that the Respondent had thus waived attorney-client privilege. Having quoted the leading case on implied waiver of attorney-client privilege under California law,¹⁶ the Panel wrote:

37. In the Panel's opinion, the Supreme Court's reasoning directly applies, and defeats the Claimant's claim of implied waiver. While the Respondent has disclosed the fact that its Board received legal advice before deciding to defer acting upon Afilias' complaints, the Respondent did not disclose the content of counsel's advice. Nor is the Respondent asserting that the Board's decision was consistent with counsel's advice, or that the Board's decision was reasonable because it followed counsel's advice. Disclosure of the *fact* that the Board solicited and received legal advice does not entail waiver of privilege as to the *content* of that advice. If that were so, the Respondent's compliance with the Panel's directions concerning the contents of the privilege log to be filed in support of its claims of privilege would, in of itself, waive the privilege that the privilege log serves to protect.

[emphasis in the original]

64. On 26 July 2020, the *Amici* filed a request for "urgent clarification from the Panel regarding the status of the evidence from *Amici* that ICANN has not endorsed in response to Procedural Order No. 5". The *Amici* stressed that, while ICANN endorsed almost all of the statements of the *Amici*'s expert witnesses, ICANN declined to endorse almost all of the *Amici*'s fact witnesses. In its order dated 27 July 2020 (**Procedural Order No. 6**), the Panel ruled that, notwithstanding ICANN's decision not to endorse them, the witness statements of Messrs. Paul Livesay and Jose I. Rasco III remained part of the record of this IRP, and that the Panel would consider the evidence of these witnesses, as well as the rest of the evidence filed in the IRP.
65. On 29 July 2020, the Panel held a telephonic pre-hearing conference, which was attended

¹⁶ *Southern Cal. Gas Co. v. Public Utilities Com.*, 50 Cal. 3d 31 (1990).

by the Parties and *Amici*, to discuss various points of order in advance of the merits hearing.

66. The evidentiary hearing in relation to the merits of the IRP was held from 3 to 11 August 2020 inclusive. Because of the ongoing COVID-19 pandemic and the associated air travel restrictions, the hearing was conducted remotely using a videoconference platform selected by the Parties. Since the participants were located in multiple time zones, hearing days had to be shortened. To compensate, three (3) additional days to the five (5) days initially scheduled for the hearing were held in reserve. In the end, fewer witnesses than had been anticipated were heard and the hearing was completed in seven (7) days. A transcript of the hearing was prepared by Ms. Balinda Dunlap.
67. The Claimant had filed with its original Request for IRP witness statements from three (3) fact witnesses, Messrs. John L. Kane, Cedarampattu “Ram” Mohan and Jonathan M. Robinson, as well as one expert report by Mr. Jonathan Zittrain. Upon the filing of its Amended Request for IRP, on 21 March 2019, the Claimant filed one expert report, by Dr. George Sadowsky, and withdrew the witness statements of its three (3) fact witnesses “[i]n light of ICANN’s disclosure of the August 2015 Domain Acquisition Agreement between VeriSign and NDC”.¹⁷
68. For its part, the Respondents filed, on its own behalf, witness statements from five (5) fact witnesses, Ms. J. Beckwith Burr, Mr. Todd Strubbe, Ms. Christine A. Willett, Mr. Christopher Disspain and Ms. Samantha S. Eisner, and one (1) expert report by Dr. Dennis W. Carlton. In addition, the Respondent filed, on behalf of the *Amici*, witness statements from three (3) fact witnesses, Mr. Rasco, of NDC, and Messrs. David McAuley and Paul Livesay, of Verisign, and two (2) expert reports, one (1) by the Hon. John Kneuer, the other by Dr. Kevin M. Murphy. In its letter of 18 July 2020, the Respondent withdrew the witness statement of Mr. Strubbe, a Verisign employee whose evidence had been offered in support of the Respondent’s opposition to the Request for Emergency Interim Relief sought by the Claimant at the outset of the proceedings. The Respondent explained that Mr. Strubbe’s evidence related to the question of whether Verisign would be irreparably injured by a delay in the delegation of .WEB, an issue that had become moot

¹⁷ See Amended Request for IRP, fn 14, at p. ii.

by the time of the hearing.

69. The seven (7) fact witnesses whose witness statements remained in evidence, as well as the three (3) expert witnesses appointed by the Parties, were all initially called to appear at the hearing for questioning.¹⁸ In the course of the hearing, the Claimant informed the Panel of its decision not to cross-examine the Respondent's expert witness, which prompted the Respondent to decide not to cross-examine the Claimant's experts.
70. The evidentiary hearing was thus devoted to hearing the Parties' and *Amici*'s opening statements, and to the questioning of the remaining seven (7) fact witnesses called by the Respondent, on its behalf or on behalf of the *Amici*, namely Ms. Burr, Ms. Willett, Mr. Disspain, Ms. Eisner, Mr. McAuley, Mr. Rasco and Mr. Livesay.
71. At the end of the hearing, it was decided that the Parties and *Amici* would be permitted to file post-hearing briefs on 8 October 2020. The Panel indicated, referring back to a question that had been discussed at the pre-hearing conference, that it would inform the Parties and *Amici* of a date – to be held in reserve – on which the Panel would make itself available to hear oral closing submissions from the Parties and *Amici* should the Panel feel the need to do so after perusing the post-hearing submissions. The date was later set to 20 November 2020.
72. On 23 August 2020, the Panel forwarded to the Parties and *Amici* a list of questions that the Panel invited them to address in their respective post-hearing submissions.
73. Pursuant to a short extension of time granted by the Panel on 6 October 2020, on 12 October 2020, the Parties filed their post-hearing briefs (respectively, **Claimant's PHB** and **Respondent's PHB**), submissions on costs, and updated lists of Phase II issues, along with a factual chronology agreed to by both of them.
74. Also on 12 October 2020, the *Amici* filed a joint post-hearing brief (***Amici's PHB***). In their cover email, as well as in footnote 2 to their PHB, the *Amici* noted that the Parties had not consulted with them in the preparation of their respective issues lists, nor in the preparation

¹⁸ The Claimant did not request the presence of the *Amici*'s expert witnesses at the hearing.

of their joint chronology. The *Amici* therefore objected to the Parties' Phase II issues lists "to the extent that they omit or misrepresent the issues before this Panel", and they objected also to the Parties' joint chronology, which they asserted was incomplete.

75. On 16 October 2020, the Panel noted the *Amici*'s conditional objection to the Parties' respective issues lists. As regards the Parties' joint chronology, the *Amici* were given until 23 October 2020 to file, after consultations with the Parties, an amended version of the joint chronology with marked-up additions showing the items that they consider should be added to the joint chronology for it to be complete.
76. Also on 16 October 2020, the Claimant sought leave to respond to a number of "new non-record documents" cited in the *Amici*'s PHB. Having considered the Respondent's and *Amici*'s comments on this request, on 22 October 2020 the Panel granted the Claimant's request and a response to the impugned non-record documents was filed by the Claimant on 26 October 2020.
77. On 23 October 2020, the Parties filed their respective replies to the cost submissions of the other party (respectively, **Claimant's Reply Submission on Costs** and **Respondent's Response Submission on Costs**). On that date, the Claimant also provided the Panel with a joint chronology which had been agreed by the Parties and the *Amici* pursuant to the Panel's communication dated 16 October 2020 (**Joint Chronology**). The 23 October 2020 Joint Chronology is the chronology referred to in this Final Decision, and it is the one that the Panel has used in its deliberations
78. On 3 November 2020, having had the opportunity carefully to review the Parties' and *Amici*'s comprehensive post-hearing submissions, the Panel informed them of its decision not to avail itself of the possibility to hear additional oral closing submissions. The date reserved for that purpose was therefore released.
79. In a series of letters beginning with counsel for Verisign's letter of 9 December 2020, sent on behalf of both *Amici*, the Panel was informed of an impending, and later consummated merger of the Claimant's parent company, Afilias, Inc., and its competitor Donuts, Inc. This was described by Verisign as "new facts arising subsequent to the merits hearing, as

well as related newly discovered evidence, that contradict critical representations made by Afiliás Domains No. 3 Limited (“Afiliás”) in the pre-hearing pleadings and at the merits hearing [...]”. The *Amici* requested that the Panel consider these new developments in resolving the Claimant’s claims in this IRP. The submissions of the Parties and *Amici* concerning these post-hearing developments are summarized in the next section of this Final Decision.

80. On 7 April 2021, the Panel, being satisfied that the record of the IRP was complete and that the Parties and *Amici* had no further submissions to make in relation to the issues in dispute, formally declared the arbitral hearing closed in accordance with Article 27 of the ICDR Rules.
81. The Panel concludes this history of the proceedings by expressing its gratitude to Counsel for the Parties and *Amici* for their assistance in the resolution of this dispute and the exemplary professional courtesy each and everyone of them displayed throughout these proceedings.

III. FACTUAL BACKGROUND

82. The essential facts of this case have been conveniently laid out in the Joint Chronology dated 23 October 2020 agreed to by the Parties and *Amici*. In order to provide some background for the Panel’s analysis below, the most salient facts of this case are summarized in this section.
83. The deadline for the submission of applications for new gTLDs under the Respondent’s New gTLD Program was 30 May 2012. As mentioned in the overview, the Claimant is one of seven (7) entities that submitted an application to the Respondent for the right to operate the registry of the .WEB gTLD pursuant to the rules and procedures set out in the Respondent’s Guidebook and the Auction Rules for New gTLDs.
84. Because there were multiple applicants for .WEB, the applicants were placed in a “contention set” for resolution either privately or through an auction of last resort administered by the Respondent.
85. Towards the end of 2014, at a time when the .WEB contention set was still on hold, and

had thus not been resolved, Redacted - Third Party Designated Confidential Information

.¹⁹ Apart from filing applications for new gTLDs that were variants of the company's name, for example ".Verisign", or internationalized versions of Verisign's existing TLDs, Verisign had not otherwise sought to acquire rights to new gTLDs as part of ICANN's New gTLD Program. Redacted - Third Party Designated Confidential Information

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86. Verisign identified .WEB as one business opportunity in the New gTLD Program. Redacted - Third Party Designated Confidential Information

. In May 2015, Mr. Livesay contacted Mr. Rasco, NDC's CFO and manager, and expressed interest in working with NDC to acquire the rights to .WEB.²¹

87. On 25 August 2015, Verisign and NDC executed the DAA under which Verisign undertook to provide, Redacted - Third Party Designated Confidential Information, funds for NDC's bid for the .WEB gTLD while NDC undertook, if it prevailed at the auction and entered into a registry agreement with ICANN, to transfer and assign its .WEB registry agreement to Verisign upon receipt of ICANN's actual or deemed consent to the assignment.

88. On 27 April 2016, ICANN scheduled the .WEB auction of last resort for 27 July 2016.

89. Early in June 2016, it became known among members of the .WEB contention set that NDC did not intend to participate in a private auction in order to privately resolve the contention set. It is common ground that the Respondent, as a rule, favours the private resolution of contention sets. On 7 June 2016, in answer to a request to postpone the

¹⁹ Merits hearing transcript, 11 August 2020, pp. 1125:17-1126:15 (Mr. Livesay).

²⁰ Mr. Livesay's witness statement, 1 June 2020, para. 4.

²¹ Merits hearing transcript, 7 August 2020, p. 806:12-18 (Mr. Rasco).

ICANN auction in order for members of the contention set to “try to work this out cooperatively”, Mr. Rasco stated in an email: “I went back to check with the powers that be and there was no change in the response and will not be seeking an extension.”²² The email in question was addressed to Mr. Jon Nevett, of Ruby Glen, LLC (**Ruby Glen**).

90. On 23 June 2016, Ruby Glen informed ICANN that it believed NDC “failed to properly update its application” to account for “changes to the Board of Directors and potential control of [NDC]”.²³ On 27 June 2016, ICANN asked NDC to “confirm that there have not been changes to [its] application or [to its] organization that need to be reported to ICANN.” On the same day, NDC confirmed that “there have been no changes to [its] organization that would need to be reported to ICANN.”²⁴
91. On 29 June 2016, Ms. Willett, then Vice-President of ICANN’s gTLD Operations, informed Ruby Glen that her team had investigated and that NDC had confirmed that there had been no changes to NDC’s ownership or control. As a result, she advised that “ICANN was continuing to proceed with the Auction as scheduled.”²⁵
92. On 30 June 2016, Ruby Glen formally raised its concern about a possible change in control of NDC with ICANN’s ombudsman (**Ombudsman**). On 12 July 2016, the Ombudsman informed Ms. Willett that he had “not seen any evidence which would satisfy [him] that there ha[d] been a material change to the application. So [his] tentative recommendation [was] that there was nothing which would justify a postponement of the auction based on unfairness to the other applicants.”²⁶ The following day, Ms. Willett informed the .WEB contention set accordingly.
93. On 17 July 2016, two other .WEB applicants, Donuts and Radix FZC (**Radix**), filed an emergency Reconsideration Request, alleging that ICANN had failed to perform a “full

²² Mr. Rasco’s email dated 7 June 2016, Ex. C-35.

²³ Ms. Willett’s witness statement, 31 May 2019, Ex. A.

²⁴ Exchanges between Messrs. Rasco and Jared Erwin, Ex. C-96.

²⁵ Declaration of Ms. Willett in support of ICANN’s opposition to Plaintiff’s *ex parte* application for temporary restraining order, Ex. C-40, paras. 15-16.

²⁶ Ms. Willett’s witness statement, 31 May 2019, Ex. G.

and transparent investigation into the material representations made by NDC” and contesting ICANN’s decision to proceed with the ICANN auction.²⁷ Reconsideration is an ICANN accountability mechanism allowing any person or entity materially affected by an action or inaction of the Board or Staff to request reconsideration of that action or inaction.²⁸ Donuts’ and Radix’s Reconsideration Request was denied on 21 July 2016.²⁹

94. On 22 July 2016, Ruby Glen filed a complaint against ICANN in the US District Court of the Central District of California, and an application for a temporary restraining order seeking to halt the .WEB auction (**Ruby Glen Litigation**). On 26 July 2016, the application for a temporary restraining order was denied.³⁰
95. In the meantime, on 20 July 2016, the blackout period associated with the ICANN auction had begun. The blackout period extends from the deposit deadline, in this case 20 July 2016, until full payment has been received from the prevailing bidder (**Blackout Period**). During the Blackout Period, members of a contention set, including the .WEB contention set, “are prohibited from cooperating or collaborating with respect to, discussing with each other, or disclosing to each other in any manner the substance of their own, or each other’s, or any other competing applicants’ bids or bidding strategies, or discussing or negotiating settlement agreements or post-Auction ownership transfer arrangements, with respect to any Contention Strings in the Auction.”
96. On 22 July 2016, Mr. Kane, a representative of Afilias, wrote a text message to Mr. Rasco asking whether NDC would consider a private auction if ICANN were to delay the scheduled auction.³¹ Mr. Rasco did not respond to this query, as he testified he considered

²⁷ Reconsideration Request by Ruby Glen, LLC and Radix FZC, Ex. R-5, p. 2.

²⁸ See Bylaws, Ex. C-1, Article 4, Section 4.2.

²⁹ Reconsideration Request by Ruby Glen, LLC and Radix FZC, Ex. R-5, pp. 11-12.

³⁰ *Ruby Glen, LLC v. ICANN*, Case No. 2:16-cv-05505 (C.D. Cal.), Order on *Ex Parte* Application for Temporary Order (26 July 2016), Ex. R-9.

³¹ See the exchange of text messages between Messrs. Kane and Rasco, Attachment E to Arnold & Porter’s letter to Mr. Enson dated 23 August 2016, Ex. R-18, p. 73.

it an attempt to engage in a prohibited discussion during the Blackout Period.³²

97. Redacted - Third Party Designated Confidential Information

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98. On 27 and 28 July 2016, ICANN conducted the auction of last resort among the seven (7) applicants for the .WEB gTLD. As already mentioned, NDC won the auction while the Claimant was the second-highest bidder.

99. On 28 July 2016, Verisign filed a form with the U.S. Security and Exchange Commission stating that “[s]ubsequent to June 30, 2016, the Company incurred a commitment to pay approximately \$130.0 million for the future assignment of contractual rights, which are subject to third party consent.”³⁴

100. On 31 July 2016, Mr. Rasco informed Ms. Willett that Redacted - Designated Confidential Information

.”³⁵ On 1 August 2016, Verisign issued a press release stating that it had “entered into an agreement with Nu Dot Co LLC wherein the Company provided funds for Nu Dot Co’s bid for the .web TLD.”³⁶

101. The following day, 2 August 2016, Donuts invoked the CEP with ICANN in regard to

³² Mr. Rasco’s witness statement, 10 December 2018, para. 17.

³³ Mr. Livesay’s witness statement, 1 June 2020, para. 27, and Ex. H attached thereto.

³⁴ Verisign’s Form 10-Q, Quarterly Report, Ex. C-45, p. 13.

³⁵ Ms. Willett’s email dated 31 July 2016, Ex. C-100, [PDF] pp. 1-2.

³⁶ Verisign statement regarding .WEB auction results, Ex. C-46.

.WEB (**Donuts CEP**).³⁷ The CEP is a non-binding process in which parties are encouraged to participate to attempt to resolve or narrow a dispute.³⁸ While the CEP is voluntary, the Bylaws create an incentive for parties to participate in this process by providing that failure of a Claimant to participate in good faith in a CEP exposes that party, in the event ICANN is the prevailing party in an IRP, to an award condemning it to pay all of ICANN's reasonable fees – including legal fees – and costs incurred by ICANN in the IRP.

102. On 8 August 2016, Ruby Glen filed an Amended Complaint against ICANN in the Ruby Glen Litigation. Also on 8 August 2016, Afiliis sent to Mr. Atallah a letter raising concerns about Verisign's involvement with NDC and in the ICANN auction, and, on the same day, submitted a complaint with the Ombudsman.
103. On 19 August 2016, ICANN informed the .WEB applicants that the .WEB contention set had been placed "on-hold" to reflect the pending accountability mechanism initiated by Donuts.
104. Redacted - Third Party Designated Confidential Information

105. On 9 September 2016, Afiliis sent ICANN a second letter regarding Afiliis' concerns about Verisign's involvement with NDC's application for .WEB, stating that "ICANN's Board and officers are obligated under the Articles, Bylaws and the Guidebook (as well as

³⁷ Cooperative Engagement and Independent Review Processes Status Update, 8 August 2016, Ex. C-108, [PDF] p. 1.

³⁸ Bylaws, Ex. C-1, Article 4, Section 4.3 (e).

³⁹ Arnold & Porter's letter to Mr. Enson dated 23 August 2016, Ex. R-18, [PDF] pp. 1-8.

⁴⁰ See Respondent's Rejoinder, para. 35 and Transcript of the 11 May 2020 Hearing, Ex. R-29, p. 20:9-15.

international law and California law) to disqualify NDC's bid immediately and proceed with contracting of a registry agreement with Afilias, the second highest bidder", and asking ICANN to respond by no later than 16 September 2016.⁴¹

106. On 16 September 2016, Ms. Willett sent Afilias, Ruby Glen, NDC and Verisign a detailed Questionnaire and invited them to provide information and comments on the allegations raised by Afilias and Ruby Glen.⁴² The Respondent avers that the purpose of the Questionnaire "was to assist ICANN in evaluating what action, if any, should be taken in response to the claims asserted by Afilias and Ruby Glen".⁴³ It is common ground that at the time, while ICANN, NDC and Verisign had knowledge of the provisions of the Domain Acquisition Agreement, of which each of them had a copy, Afilias and Ruby Glen did not. Responses to the Questionnaire were provided to ICANN on 7 October 2016 by Afilias⁴⁴ and Verisign⁴⁵, and on 10 October 2016 by NDC.⁴⁶
107. On 19 September 2016, the Ombudsman informed Afilias that he was declining to investigate Afilias' complaint regarding the .WEB auction because Ruby Glen had initiated both a CEP and litigation in respect of the same issue.⁴⁷
108. On 30 September 2016, ICANN acknowledged receipt of Afilias' letters of 8 August 2016 and 9 September 2016, noted that ICANN had placed the .WEB contention set on hold "to reflect a pending ICANN Accountability Mechanism initiated by another member in the contention set", and added that Afilias would "be notified of future changes to the contention set status or updates regarding the status of relevant Accountability Mechanisms." ICANN further stated that it would "continue to take Afilias' comments,

⁴¹ Afilias' Letter to Mr. Atallah dated 9 September 2016, Ex. C-103.

⁴² ICANN's letter to Mr. Kane dated 16 September 2016 and attached Questionnaire, Ex. C-50.

⁴³ Respondent's Rejoinder, para. 46.

⁴⁴ Afilias' letter to Ms. Willett dated 7 October 2016, Ex. C-51.

⁴⁵ Arnold & Porter's letter to Ms. Willett dated 7 October 2016, Ex. C-109.

⁴⁶ Mr. Rasco's email to ICANN dated 10 October 2016, Ex. C-110.

⁴⁷ Mr. Herb Waye's email to Mr. Hemphill dated 19 September 2016, Ex. C-101.

and other inputs that we have sought, into consideration as we consider this matter.”⁴⁸

109. On 3 November 2016, the Board of ICANN held a Board workshop during which a briefing was presented by in-house counsel regarding the .WEB contention set (**November 2016 Workshop**).⁴⁹ A memorandum prepared by ICANN’s outside counsel and containing legal advice in anticipation of litigation regarding the .WEB contention set had been sent to “non-conflicted” ICANN Board members on 2 November 2016, in advance of the workshop.⁵⁰ As will be seen in the following section of this Final Decision, the November 2016 Workshop is of particular importance in this case. Suffice it to say for present purposes that, at least according to ICANN, during this workshop the Board “specifically [chose...] not to address the issues surrounding .WEB while an Accountability Mechanism regarding .WEB was pending”.⁵¹ That decision of the ICANN Board was not communicated to Afilias at the time. Indeed, it was first made public and disclosed to Afilias 3 ½ years later, upon the filing of the Respondent’s Rejoinder in this IRP, filed on 1 June 2020.⁵²
110. On 28 November 2016, the US District Court of the Central District of California dismissed Ruby Glen’s claims against ICANN in the Ruby Glen Litigation on the basis that “the covenant not to sue [in Module 6 of the Guidebook] bars Plaintiff’s entire action.”⁵³
111. On 18 January 2017, the Department of Justice (**DOJ**) issued a civil investigative demand to Verisign, ICANN, and others regarding Verisign’s “proposed acquisition of [NDC’s] contractual rights to the .web generic top-level domain.”⁵⁴ The DOJ requested that ICANN take no action on .WEB during the pendency of the investigation. Between February

⁴⁸ ICANN’s letter to Mr. Hemphill dated 30 September 2016, Ex. C-61.

⁴⁹ Joint Fact Chronology, and ICANN’s Privilege Log of 24 April 2020, pp. 29-30.

⁵⁰ Respondent’s Rejoinder, para. 40.

⁵¹ *Ibid*, para. 3.

⁵² There are multiple references to the November 2016 Workshop in the Respondent’s privilege log of 24 April 2020, but not to any decision made in respect of .WEB.

⁵³ *Ruby Glen, LLC v. ICANN*, Case No. 2:16-cv-05505 (C.D. Cal.), 28 November 2016, Ex. C-106.

⁵⁴ DOJ Civil Investigative Demand to Thomas Indelicarto of Verisign dated 18 January 2017, Ex. AC-31.

and June 2017, ICANN made several document productions and provided information to DOJ, Redacted - Third Party Designated Confidential Information

.⁵⁵ On 9 January 2018, a year after the issuance of the DOJ's investigative demand, the DOJ closed its investigation of .WEB without taking any action.

112. On 30 January 2018, the Donuts CEP closed, and ICANN gave Ruby Glen (the entity through which Donuts, Inc. had submitted an application for .WEB) until 14 February 2018 to file an IRP. Ruby Glen did not file an IRP in respect of .WEB.
113. On 15 February 2018, Mr. Rasco requested via email that ICANN move forward with the execution of a .WEB registry agreement with NDC in light of the termination of the DOJ investigation and the absence of any pending accountability mechanisms.⁵⁶
114. On 23 February 2018, counsel for Afilias submitted a Documentary Information Disclosure Policy (**DIDP**) request to ICANN (**Afilias' First DIDP Request**) and asked for an update on ICANN's investigation of the .WEB contention set.⁵⁷ ICANN responded to Afilias' First DIDP Request on 24 March 2018.
115. On 28 February 2018, counsel for NDC sent a formal letter to ICANN requesting that it move forward with the execution of a registry agreement for .WEB with NDC.⁵⁸
116. On 16 April 2018, counsel for Afilias wrote to the ICANN Board requesting an update on the status of the .WEB contention set, an update on the status of ICANN's investigation, and prior notification of any action by the Board related to .WEB, adding that Afilias "intend[ed] to initiate a CEP and a subsequent IRP against ICANN, if ICANN proceeds toward delegation of .WEB to NDC."⁵⁹

⁵⁵ Respondent's Rejoinder, para. 49.

⁵⁶ Mr. Rasco's email to ICANN dated 15 February 2018, Ex. C-182.

⁵⁷ Dechert's letter to the Board dated 23 February 2018, Ex. C-78.

⁵⁸ Irell & Manella's letter to Messrs. Jeffrey and Atallah dated 28 February 2018, Ex. R-20.

⁵⁹ Dechert's letter to the Board dated 16 April 2018, Ex. C-113.

117. On 23 April 2018, counsel for Afilias wrote to the ICANN Board to object to the non-disclosure of the documents requested in the First DIDP Request by reason of their confidentiality, and to offer to limit their disclosure to outside counsel.⁶⁰ This request was treated as a new DIDP request (**Second DIDP Request**)⁶¹. On the same date, counsel for Afilias submitted a reconsideration request challenging ICANN's response to Afilias' First DIDP Request (**Reconsideration Request 18-7**).⁶²
118. On 28 April 2018, ICANN's outside counsel wrote to counsel for Afilias, confirming that the .WEB contention set was on-hold but declining to undertake to send Afilias prior notice of a change to its status on the ground that doing so "would constitute preferential treatment and would contradict Article 2, Section 2.3 of the ICANN Bylaws."⁶³ Afilias responded to that letter on 1 May 2018, reiterating the arguments it had previously made.⁶⁴
119. On 23 May 2018, ICANN responded to Afilias' Second DIDP Request, and on 5 June 2018, Afilias' Reconsideration Request 18-7 was denied.
120. On 6 June 2018, ICANN took the .WEB contention set off-hold and notified the .WEB applicants by emailing the contacts identified in the applications.⁶⁵ In the following days, the normal process leading to the execution of a registry agreement was put in motion within ICANN in relation to the .WEB registry.
121. On 12 June 2018, Ms. Willett and other Staff approved the draft Registry Agreement for .WEB and its transmittal to NDC. On 14 June 2018, ICANN sent the draft .WEB Registry Agreement to NDC, which NDC promptly signed and returned to ICANN. On the same day, Ms. Willett and other Staff approved executing the .WEB Registry Agreement on

⁶⁰ Dechert's letter to the Board dated 23 April 2018, Ex. C-79.

⁶¹ See Determination of the Board Accountability Mechanisms Committee (BAMC) Reconsideration Request 18-7 dated 5 June 2018, Ex. R-32, p. 5.

⁶² Afilias Domain No. 3 Limited Reconsideration Request, Ex. R-31 or VRSN-26.

⁶³ Jones Day's letter to Mr. Ali dated 28 April 2018, Ex. C-80.

⁶⁴ Dechert's letter to Mr. LeVee dated 1 May 2018, Ex. C-114.

⁶⁵ Exchange of emails between ICANN Staff dated 6 June 2018, Ex. C-166; and Mr. Erwin's email to Ms. Willett and Mr. Christopher Bare dated 6 June 2018, Ex. C-167.

ICANN's behalf.⁶⁶

122. On 18 June 2018, prior to ICANN's execution of the .WEB Registry Agreement, Afilias invoked a CEP with ICANN regarding the .WEB gTLD.⁶⁷ Two days later, ICANN placed the .WEB contention set back on hold to reflect Afilias' invocation of a CEP. As a result, the extant .WEB Registry Agreement was voided.⁶⁸
123. On 22 June 2018, Afilias filed a second reconsideration request (**Reconsideration Request 18-8**), seeking reconsideration of ICANN's response to Afilias' 23 April 2018 DIDP Request. On 6 November 2018, the Board, on the recommendation of the Board Accountability Mechanisms Committee, denied that request.⁶⁹
124. A week later, on 13 November 2018, ICANN wrote to counsel for Afilias to confirm that the CEP for this matter was closed as of that date and to advise that ICANN would grant Afilias an extension of time to 27 November 2018 (fourteen (14) days following the close of the CEP) to file an IRP regarding the matters raised in the CEP, if Afilias chooses to do so. As already noted, Afilias filed its Request for IRP on the following day, 14 November 2018.

IV. SUMMARY OF SUBMISSIONS AND RELIEF SOUGHT

125. The submissions made in relation to Phase II are voluminous. The Panel summarizes these submissions below. Where appropriate, the Panel refers in the analysis section of this Final Decision to those parts of the submissions and evidence found by the Panel to be most pertinent to its analysis. In reaching its conclusions, however, the Panel has considered all of the Parties' submissions and evidence.
126. The submissions made and the relief initially sought in relation to the Claimant's Rule 7 Claim are set out in detail in the Panel's Decision on Phase I. The position adopted by the Claimant in relation to its Rule 7 Claim in Phase II is discussed below, in section V.E. of

⁶⁶ Exchange of emails between ICANN Staff dated 14 June 2018, Ex. C-170.

⁶⁷ Dechert's letter to ICANN dated 18 June 2018, Ex. C-52.

⁶⁸ Exchange of emails between ICANN Staff dated 14 June 2018, Ex. C-170.

⁶⁹ ICANN, Approved Board Resolutions, Special Meeting of the ICANN Board, 6 November 2018, Ex. C-7, pp. 1-10.

this Final Decision.

A. Claimant's Amended Request for IRP

127. In its Amended Request for IRP dated 21 March 2019, the Claimant claims that the Respondent has breached its Articles and Bylaws as a result of the Board's and Staff's failure to enforce the rules for, and underlying policies of, ICANN's New gTLD Program, including the rules, procedures, and policies set out in the Guidebook and Auction Rules.⁷⁰
128. The Claimant avers that NDC ought to have disclosed the Domain Acquisition Agreement to ICANN and modified its .WEB application to reflect that it had entered into the DAA with Verisign, or to account for the implications of the agreement's terms for its application. The Claimant submits that while it is evident that NDC violated the New gTLD Program Rules, the Respondent has failed to disqualify NDC from the .WEB contention set, or to disqualify NDC's bids in the .WEB auction.
129. The Claimant contends that the Respondent has breached its obligation, under its Bylaws, to make decisions by applying its documented policies "neutrally, objectively, and fairly," in addition to breaching its obligations under international law and California law to act in good faith. The Claimant also submits that the Respondent, by these breaches, has failed to respect one of the pillars of the New gTLD Program and one of ICANN's founding principles: to introduce and promote competition in the Internet namespace in order to break Verisign's monopoly.⁷¹
130. More specifically, the Claimant contends that NDC violated the Guidebook's prohibition against the resale, transfer, or assignment of its application, as NDC transferred to Verisign crucial application rights, including the right to reach a settlement or participate in a private auction. The Claimant also asserts that NDC's bids at the .WEB auction were invalid because they were made on Verisign's behalf, reflecting what the latter was willing to pay and implying no financial risk for NDC.

⁷⁰ Amended Request for IRP, para. 2.

⁷¹ *Ibid*, para. 5.

131. By way of relief, the Claimant requested the Panel to issue a binding declaration:
- (1) that ICANN has acted inconsistently with its Articles and Bylaws, breached the binding commitments contained in the AGB, and violated international law;
 - (2) that, in compliance with its Articles and Bylaws, ICANN must disqualify NDC's bid for .WEB for violating the AGB and Auction Rules;
 - (3) ordering ICANN to proceed with contracting the Registry Agreement for .WEB with Afilias in accordance with the New gTLD Program Rules;
 - (4) specifying the bid price to be paid by Afilias;
 - (5) that Rule 7 of the Interim Procedures is unenforceable and awarding Afilias all costs associated with the additional work needed to, among other things, address arguments and filings made by Verisign and/or NDC;
 - (6) declaring Afilias the prevailing party in this IRP and awarding it the costs of these proceedings; and
 - (7) granting such other relief as the Panel may consider appropriate in the circumstances.⁷²

B. Respondent's Response

132. In its Response dated 31 May 2019, the Respondent argues that it complied with its Articles, Bylaws, and policies in overseeing the .WEB contention set disputes and resulting accountability mechanisms.

⁷² Amended Request for IRP, para. 89.

133. The Respondent contends that it thoroughly investigated claims made prior to the .WEB auction about NDC’s alleged change of control, and notes that it was not alleged at the time that NDC had an agreement with Verisign regarding .WEB. Accordingly, what the Respondent investigated was an alleged change in ownership, management or control of NDC, which it found had not occurred.
134. With regard to alleged Guidebook violations resulting from the Domain Acquisition Agreement with Verisign, the Respondent notes that due to the pendency of the DOJ investigation and various accountability mechanisms – including this IRP – its Board has not yet had an opportunity to fully evaluate the Guidebook violations alleged by the Claimant, adding that those are hotly contested and would not in any event call for automatic disqualification of NDC.⁷³
135. The Respondent explains that, with the exception of approximately two weeks in June 2018, after Afiliias’ DIDP-related Reconsideration Requests were resolved and before Afiliias initiated its CEP, the .WEB contention set has been on hold from August 2016 through today. The Respondent observes that during the entire period from July 2016 through June 2018, the Claimant took no action that could have placed the .WEB issues before the Board, although it could have.⁷⁴
136. The Respondent adds that the Guidebook breaches alleged by the Claimant “are the subject of good faith dispute by NDC and VeriSign”. The Respondent also avers that while the Claimant’s IRP “is notionally directed at ICANN, it is focused exclusively on the conduct of NDC and VeriSign to which NDC and VeriSign have responses”.⁷⁵ The Respondent argues, speaking of its Board, that deferring consideration of the alleged violations of the Guidebook until this Panel renders its final decision is within the realm of reasonable business judgment.⁷⁶

⁷³ Respondent’s Response, para. 61.

⁷⁴ *Ibid*, para. 62. As noted above, the Claimant’s second Reconsideration Request was lodged on 22 June 2018, and therefore after the Respondent placed the .WEB contention set back on hold following the Claimant’s commencement of a CEP.

⁷⁵ Respondent’s Response, para. 63.

⁷⁶ *Ibid*, para. 66.

137. The Respondent underscores that the Guidebook does not require ICANN to deny an application where an applicant failed to inform ICANN that previously submitted information has become untrue or misleading. Rather, according to ICANN, the Guidebook gives it discretion to determine whether the changed circumstances are material and what consequences, if any, should follow. By disqualifying NDC, this Panel would, in ICANN's submission, usurp the Board's discretion and exceed the Panel's jurisdiction.
138. As for the Claimant's allegation that the Domain Acquisition Agreement between NDC and Verisign is anticompetitive, the Respondent notes that this is denied by Verisign and contradicted by the DOJ's decision not to take action following its investigation into the matter. The Respondent also denies Afilias' assertion that the sole purpose of the New gTLD Program was to create competition for Verisign. The Respondent also contends, relying on the evidence of its expert economist, Dr. Carlton, that there is no evidence that .WEB will be a unique competitive check on .COM, nor that the Claimant would promote .WEB more aggressively than Verisign.
139. As regards the applicable standard of review, the Respondent submits that an IRP panel is asked to evaluate whether an ICANN action or inaction was consistent with ICANN's Articles, Bylaws, and internal policies and procedures. However, with respect to IRPs challenging the ICANN Board's exercise of its fiduciary duties, the Respondent submits that an IRP Panel is not empowered to substitute its judgment for that of ICANN. Rather, its core task is to determine whether ICANN has exceeded the scope of its Mission or otherwise failed to comply with its foundational documents and procedures.⁷⁷
140. The Respondent contends that all of Afilias' claims are time-barred under both the Bylaws in force in 2016 and the current Interim Procedures. The Bylaws in force in 2016 provided that an IRP had to be filed within thirty (30) days of the posting of the Board minutes relating to the challenged ICANN decision or action. The Interim Procedures now provide that an IRP must be filed within 120 days after a claimant becomes aware "of the material effect of the action or inaction" giving rise to the dispute, provided that an IRP may not be filed more than twelve (12) months from the date of such action or inaction.

⁷⁷ Respondent's Response, para. 55.

The Respondent contends that Afiliás' claims regarding alleged deficiencies in ICANN's pre-auction investigation accrued on 12 September 2016, when it posted minutes regarding the Board's denial of Ruby Glen's Reconsideration Request challenging that investigation. The Respondent takes the position that the facts and claims supporting the Claimant's allegations of Guidebook and Auction Rules violations were set forth in Afiliás' letters dated August and September 2016, and were therefore known to the Claimant at that time.⁷⁸

141. As for the Claimant's requested relief, the Respondent contends that it goes far beyond what is permitted by the Bylaws and calls for the Panel to decide issues that are reserved to the discretion of the Board.

C. Claimant's Reply

142. In its Reply dated 4 May 2020 (revised on 6 May 2020), the Claimant rejects ICANN's self-description as a mere not-for-profit corporation, averring that the Respondent serves as the *de facto* international regulator and gatekeeper to the Internet's DNS space, with no government oversight.⁷⁹
143. Regarding the standard of review, the Claimant denies that this case involves the exercise of the Board's fiduciary duties. The Panel is required to conduct an objective, *de novo* examination of the Dispute. Moreover, quite apart from the Board's alleged determination to defer consideration of the Claimant's claims until this Panel has issued its decision, the Claimant notes that this IRP also impugns the flawed analysis of the New gTLD Program Rules by the Staff, ICANN's inadequate investigation of the *Amici*'s conduct, its failure to disqualify NDC's application and auction bids, and its decision to proceed with contracting with NDC in respect of .WEB.⁸⁰
144. The Claimant submits that the Respondent's defences are baseless and self-contradictory:

⁷⁸ *Ibid*, paras. 73-76.

⁷⁹ Claimant's Reply, paras. 1-3.

⁸⁰ *Ibid*, para. 8.

on the one hand it argues that it appropriately handled Afiliias' concerns while on the other it asserts that its Board has deferred consideration of these concerns until the Panel's final decision in this IRP.⁸¹ The Claimant reiterates that ICANN violated its Bylaws and Articles by not disqualifying NDC's application and bids for .WEB, and in proceeding to contract with NDC for the .WEB registry agreement.

145. The Claimant contends that the New gTLD Program Rules are mandatory. In its view, it is not within ICANN's discretion to overlook violations of those rules by some applicants, such as NDC, nor to allow non-applicants like Verisign to circumvent them by "enlisting a shell like NDC".⁸² According to the Claimant, the Respondent improperly ignored NDC's clear violation of the prohibition against the resale, transfer or assignment of rights and obligations in connection with its application.
146. In addition, the Claimant contends that the public portions of NDC's application, left unchanged after its agreement with Verisign, deceived the Internet community as to the identity of the true party-in-interest behind NDC's .WEB application.⁸³ All in all, the Domain Acquisition Agreement constituted, according to the Claimant, a change of circumstances that rendered the information in NDC's application misleading, yet the Respondent did nothing to redress that situation even after it was provided with a copy of the Domain Acquisition Agreement.⁸⁴
147. In reply to the Respondent's argument that the Guidebook does not impose, but merely allows ICANN to disqualify applications containing a material misstatement, misrepresentation, or omission, the Claimant counters that the Respondent must exercise any discretion it may have in this regard consistent with its Articles and Bylaws and in accordance with its obligation towards the Internet community to implement the New gTLD Program openly, transparently and fairly, treating all applicants equally. According to the Claimant, the Respondent's position, were it accepted, would wipe away years of

⁸¹ *Ibid*, para. 20.

⁸² *Ibid*, para. 27.

⁸³ Claimant's Reply, para. 40.

⁸⁴ *Ibid*, para. 69.

carefully deliberated policy development work by the ICANN community.⁸⁵

148. The Claimant also submits that NDC's bids in the auction were invalid for failure to comply with the Auction Rules.⁸⁶ In that respect, the Claimant stresses that while the Auction Rules provide that bids must be placed by or on behalf of a Qualified Applicant, in the present case the DAA makes it clear that NDC was making bids “Redacted - Third Party Designated Confidential Information”

⁸⁷ Afilias therefore claims that the New gTLD Program Rules required ICANN to declare NDC's bids invalid and award the .WEB gTLD to Afilias, as the next highest bidder.

149. The Claimant avers that ICANN's investigation of its stated concerns was superficial, self-serving, and designed to protect itself, without the transparency, openness, neutrality, objectivity, fairness and good faith required under the Bylaws. In that respect, the Claimant stresses that the Respondent received the Domain Acquisition Agreement on 23 August 2016, and ought to have disqualified NDC's application and bids upon review of its terms.

150. Instead, the Respondent issued its 16 September 2016 Questionnaire to Afilias, Verisign, NDC and Ruby Glen, making no mention of the fact that the Respondent had already sought and received input from Verisign, nor of the fact that at the time, ICANN, Verisign and NDC had knowledge of the contents of the Domain Acquisition Agreement, whereas Afilias had not. According to the Claimant, the Questionnaire was a “pure artifice”, designed to elicit answers that would help Verisign's cause if its arrangement with NDC was challenged at a later date and to protect ICANN from the type of criticism and concerns already raised by Afilias.⁸⁸

151. The Claimant notes that there is no indication that the Respondent did anything with the responses it received to the Questionnaire, or what steps were taken to achieve an “informed resolution” of the concerns raised by Afilias. What is known is merely that the

⁸⁵ *Ibid*, para. 85.

⁸⁶ *Ibid*, para. 88.

⁸⁷ *Ibid*, para. 95.

⁸⁸ Claimant's Reply, para. 114.

Board decided not to make a determination on the merits on Afilias' contentions against Verisign and NDC until all accountability mechanisms had been concluded, and that on 6 June 2018, the Respondent decided to remove the .WEB contention set from its on-hold status and to proceed with the delegation of .WEB to NDC. This, the Claimant asserts, suggests that the Respondent had in fact made a determination on the merits of Afilias' contentions.⁸⁹

152. According to the Claimant, ICANN must exercise its discretion insofar as the application of the New gTLD Program Rules is concerned consistently with what the Claimant describes as the Respondent's competition mandate, that is, the mandate to promote competition and to constrain the market power of .COM.⁹⁰ In the Claimant's view, the DOJ's investigation is irrelevant to deciding this IRP as the DOJ's official policy is that no inference should be drawn from a decision to close a merger investigation without taking further action.
153. In response to the Respondent's contention that its claims are time-barred, the Claimant argues that the lack of merit of this defence is underscored by the Respondent's assertion that the Claimant's claims are in one sense premature and in another sense overdue. The Claimant recalls that (1) between August 2016 and the end of 2016, ICANN represented that it would seek the informed resolution of Afilias' concerns, and keep Afilias informed of the outcome; (2) between January 2017 and January 2018, the DOJ was conducting its antitrust investigation, and had asked ICANN to take no action on .WEB; and (3) between January 2018 and June 2018, Afilias repeatedly asked ICANN for information about the status of .WEB, which ICANN failed to provide until the Claimant was notified that the .WEB contention set had been taken off-hold, whereupon Afilias invoked the Cooperative Engagement Process.⁹¹
154. The Claimant disputes that the complaints it made in its 2016 letters are the same as those relied upon in its Amended Request for IRP: the former were based on public information

⁸⁹ *Ibid*, para. 118.

⁹⁰ *Ibid*, paras. 125-128.

⁹¹ Claimant's Reply, paras. 137-139.

only, and requested an investigation; the latter were prompted by the realization that in spite of its requests that NDC's application and bids be disqualified, ICANN had now signaled that it was proceeding to contract with NDC.

155. The Claimant contends that the Respondent misstates the relief that an IRP Panel may order. According to the Claimant, the Panel has the power to issue "affirmative declaratory relief" requiring the Respondent to disqualify NDC's application and bids and to offer the Claimant the rights to .WEB.⁹²

D. Respondent's Rejoinder

156. In its Rejoinder Memorial dated 1 June 2020, the Respondent states that a feature that sets this IRP apart is that ICANN has not yet fully addressed the ultimate dispute underlying the Claimant's claims.⁹³ In that respect, the Respondent stresses that, since the inception of the New gTLD Program, it placed applications and contention sets "on hold" when related accountability mechanisms were initiated.⁹⁴ In its view, the Respondent followed its processes by specifically choosing, in November 2016, not to address the issues surrounding .WEB while an accountability mechanism regarding that gTLD was pending.⁹⁵ When it received the Domain Acquisition Agreement in August of 2016, ICANN did not disqualify NDC's application because the .WEB contention set was on hold at that time due to a pending accountability mechanism by the parent company of another .WEB applicant.⁹⁶ The Respondent argues that it was reasonable for the Board to make this choice because the results of the accountability mechanism, and the subsequent DOJ investigation, could have had an impact on any eventual analysis ICANN might be called upon to make.⁹⁷

157. The Respondent explains that, in the November 2016 Workshop, Board members and

⁹² *Ibid*, paras. 147-155.

⁹³ Respondent's Rejoinder, para. 1.

⁹⁴ *Ibid*, paras. 2 and 89.

⁹⁵ *Ibid*, paras. 3 and 89.

⁹⁶ *Ibid*, para. 4.

⁹⁷ *Ibid*, paras. 41 and 91.

ICANN's in-house counsel discussed the issue of .WEB and chose to not take any action at that time regarding .WEB because an accountability mechanism was pending regarding .WEB. The Respondent states that it did not seem prudent for the Board to interfere with or pre-empt the issues that were the subject of the accountability mechanism. The Respondent underscores that the Claimant does not explain how the Board's determination not to make a decision regarding .WEB during the pendency of an accountability mechanism or other legal proceedings on the same issue represents an inconsistent application of documented policies.⁹⁸

158. Responding to the Claimant's suggestion that ICANN was beholden to Verisign, the Respondent avers that it has an arms-length relationship with Verisign which is no different from ICANN's relationship with other registry operators, including Afilias.⁹⁹
159. Regarding the applicable standard of review, the Respondent argues that the Panel must apply a *de novo* standard in making findings of fact and reviewing the actions or inactions of individual directors, officers or Staff members, but has to review actions or inactions of the Board only to determine whether they were within the realm of reasonable business judgment. In other words, in the Respondent's view, it is not for the Panel to opine on whether the Board could have acted differently than it did.¹⁰⁰
160. The Respondent maintains that the Claimant's claims regarding actions or inactions of ICANN in August through October 2016 are time-barred under Rule 4 of the Interim Procedures.¹⁰¹ The Respondent stresses that the Claimant's IRP was filed more than two (2) years after it sent letters complaining about the auction and NDC's relationship with Verisign.¹⁰² According to the Respondent, the Claimant was aware, in 2016, of the actions and inactions that it seeks to challenge, along with the material effect of those

⁹⁸ Respondent's Rejoinder, paras. 40-41 and 92.

⁹⁹ *Ibid*, paras. 51-53.

¹⁰⁰ *Ibid*, paras. 54-62.

¹⁰¹ *Ibid*, paras. 9 and 63-64.

¹⁰² *Ibid*, para. 65.

actions, even if it did not have a copy of the Domain Acquisition Agreement.¹⁰³ In any event, the Respondent contends that the Claimant ignores the final clause of Rule 4, which states that a statement of dispute may not be filed more than twelve (12) months from the date of the challenged action or inaction.¹⁰⁴ Responding to the equitable estoppel argument advanced by the Claimant, the Respondent argues that there is nothing in its 2016 letters to suggest that it encouraged the Claimant to delay the filing of an IRP, and that the Claimant has not alleged that it relied on those letters in deciding not to file an IRP.¹⁰⁵ The Respondent also notes that the Claimant was represented by experienced counsel throughout the period at issue.¹⁰⁶

161. Responding to the Claimant's contentions pertaining to its post-auction investigation, the Respondent notes that the Claimant asserted no claim in that regard in its Amended Request for IRP, which focussed on pre-auction rumors.¹⁰⁷ In addition, the Respondent avers that its post-auction investigation was prompt, thorough, fair, and fully consistent with its Bylaws and Articles.¹⁰⁸
162. The Respondent also observes that the Guidebook and Auction Rules violations alleged by the Claimant do not require the automatic disqualification of NDC and instead that ICANN is vested with significant discretion to determine what the penalty or remedy should be, if any.¹⁰⁹
163. The Respondent contends that it has, as yet, taken no position on whether NDC violated the Guidebook.¹¹⁰ The Respondent adds that determining whether NDC violated the Guidebook "is not a simple analysis that is answered on the face of the Guidebook" which,

¹⁰³ *Ibid*, paras. 66-70.

¹⁰⁴ Respondent's Rejoinder, paras. 64-65.

¹⁰⁵ *Ibid*, paras. 72-75.

¹⁰⁶ *Ibid*, paras. 76-78.

¹⁰⁷ *Ibid*, paras. 104-105.

¹⁰⁸ *Ibid*, paras. 8 and 107-113.

¹⁰⁹ *Ibid*, paras. 80-88.

¹¹⁰ *Ibid*, para. 81.

according to the Respondent, includes no provision that squarely addresses an arrangement like the Domain Acquisition Agreement. The Respondent submits that a “true determination of whether there was a breach of the Guidebook requires an in-depth analysis and interpretation of the Guidebook provisions at issue, their drafting history to the extent it exists, how ICANN has handled similar situations, and the terms of the DAA”. The Respondent argues that “[t]his analysis must be done by those with the requisite knowledge, expertise, and experience, namely ICANN.”¹¹¹

164. The Respondent notes, referring to the evidence of the *Amici*, that there have been a number of arrangements that appear to be similar to the DAA in the secondary market for new gTLDs.¹¹² Because it has the ultimate responsibility for the New gTLD Program, the Board has reserved the right to individually consider any application to determine whether approval would be in the best interest of the Internet community.¹¹³
165. Turning to the Claimant’s arguments regarding competition, the Respondent denies that it has exercised its discretion to benefit Verisign, repeating that it has not “fully evaluated” the Domain Acquisition Agreement – and NDC’s related conduct – because the .WEB contention set has been on hold due to the invocation of ICANN’s accountability mechanisms and the DOJ investigation. Accordingly, the Claimant’s assertion that the Respondent has violated its so-called “competition promotion mandate” is not ripe for consideration.¹¹⁴
166. The Respondent adds that it is not required or equipped to make judgment about which applicant for a particular gTLD would more efficiently promote competition. Rather, ICANN complies with its core value regarding competition by coordinating and implementing policies that facilitate market-driven competition, and by deferring to the appropriate government regulator, such as the DOJ, the investigation of potential competition issues. The Respondent notes, pointing to the evidence of Drs. Carlton and

¹¹¹ *Ibid*, para. 82.

¹¹² Respondent’s Rejoinder, para. 83.

¹¹³ *Ibid*, para. 87.

¹¹⁴ *Ibid*, para. 95.

Murphy, that there is no evidence that Verisign's operation of .WEB would restrain competition.¹¹⁵

167. Finally, the Respondent argues that the Claimant seeks relief which is beyond the Panel's jurisdiction and not available in these proceedings. While the Panel is empowered to declare whether the Respondent complied with its Articles and Bylaws, it cannot disqualify NDC's application, or bid, and offer Claimant the rights to .WEB.¹¹⁶

E. The *Amici's* Briefs

1. NDC's Brief

168. In its *amicus* brief dated 26 June 2020, NDC alleges that ICANN has approved many post-delegation assignments of registry agreements for new gTLDs pursuant to pre-delegation financing and other similar agreements.¹¹⁷ NDC notes that Afilias itself has participated extensively in the secondary market for new gTLDs.¹¹⁸
169. NDC argues that, having won the auction, it has the right and ICANN has the obligation under the Guidebook to execute the .WEB registry agreement, subject to compliance with the appropriate conditions. Although additional steps remain before the delegation of .WEB, NDC characterizes those as routine and administrative.¹¹⁹
170. Turning to the Panel's jurisdiction, NDC stresses that the Panel's remedial powers are significantly circumscribed. Section 4.3(o) of the Bylaws provides a closed list that only authorizes the Panel to take the actions enumerated therein. NDC contends that while the Panel is authorized to determine whether ICANN violated its Bylaws, it cannot decide the Claimant's claims on the merits or grant the affirmative relief sought by Afilias.¹²⁰

¹¹⁵ *Ibid.*, paras. 94-103.

¹¹⁶ *Ibid.*, paras. 114-124.

¹¹⁷ NDC's Brief, paras. 32-37.

¹¹⁸ *Ibid.*, paras. 38-39.

¹¹⁹ *Ibid.*, paras. 55-56.

¹²⁰ *Ibid.*, paras. 64-69.

171. NDC further argues that Section 4.3(o) does not permit the Panel to second-guess the Board's reasonable business judgment. If the Panel finds that there has been a violation of the Bylaws, the proper remedy is to issue a declaration to that effect. It would then be up to the Board to exercise its business judgment and decide what action to take in light of such declaration.¹²¹
172. According to NDC, the Panel's limited remedial authority is consistent with the terms of the Guidebook providing that ICANN retains the sole decision-making authority with respect to the Claimant's objections and NDC's .WEB application. NDC submits that only ICANN possesses the required expertise and resources to craft DNS policy and to weight the competing interests and policies that would factor into a decision on .WEB.¹²²
173. NDC argues that if ICANN were to find that NDC violated the Guidebook or other applicable rules, ICANN's discretion to make determinations regarding gTLD applications would offer it a wide range of possible reliefs, not limited to the relief that the Claimant has asked the Panel to grant.¹²³
174. Responding to the Claimant's argument that IRP decisions are intended to be final and enforceable, NDC contends that the binding nature of a dispute resolution procedure and the enforceability of a decision arising out of such procedure cannot expand the scope of the adjudicator's circumscribed remedial jurisdiction.¹²⁴ In that regard, the Cross-Community Working Group for Accountability (CCWG) did not, contrary to the Claimant's contention, recommend that IRP panels should be authorized to dictate a remedy in cases in which ICANN would be found to have violated its Articles or Bylaws. Rather, the CCWG stated that an IRP would result in a declaration that an action/failure to act complied or did not comply with ICANN's obligations.¹²⁵

¹²¹ *Ibid*, paras. 70-74.

¹²² NDC's Brief, paras. 75-79.

¹²³ *Ibid*, para. 80.

¹²⁴ *Ibid*, paras. 81-84.

¹²⁵ *Ibid*, paras. 85-89.

175. Finally, NDC denies making any material misrepresentations to ICANN, as there had been no change to its management, control or ownership since the filing of its .WEB application.¹²⁶ NDC also contends that it did not violate any ICANN rules by agreeing with Verisign to a post-auction transfer of .WEB. In arranging for such a post-auction transfer, NDC asserts that it acted consistently with what the industry understood was permissible.¹²⁷ In that respect, NDC argues that Afiliás' own participation in the secondary market – on both sides of transfers – belies its protestations in this case.¹²⁸ In addition, NDC submits that Afiliás itself violated the Guidebook by contacting NDC during the Blackout Period.¹²⁹
176. For these reasons, NDC requests that the Panel deny in its entirety the relief requested by the Claimant.¹³⁰

2. Verisign's Brief

177. In its *amicus* brief also dated 26 June 2020, Verisign declares that it joins in the sections of NDC's brief setting forth the background of this IRP and the scope of the Panel's authority, including as to the issues properly presented to the Panel for decision. In the submission of Verisign, the only question properly before the Panel is whether ICANN violated its Bylaws when it decided to defer a decision on the Claimant's objections, and the Panel should decline to determine the merits or lack thereof of these objections, or to award .WEB to the Claimant. According to Verisign, the Domain Acquisition Agreement complies with the Guidebook, is consistent with industry practices under the New gTLD Program, and there is no basis for refusing to delegate .WEB based on ICANN's mandate to promote competition.¹³¹
178. The Domain Acquisition Agreement, according to its terms, does not constitute a resale,

¹²⁶ *Ibid*, paras. 96-99.

¹²⁷ *Ibid*, paras. 100-107.

¹²⁸ *Ibid*, paras. 108-113.

¹²⁹ *Ibid*, paras. 114-119.

¹³⁰ *Ibid*, para. 120.

¹³¹ Verisign's Brief, pp. 1-2.

assignment, or transfer of rights or obligations with respect to NDC's .WEB application, nor does it require Verisign's consent for NDC to take any action necessary to comply with the Guidebook or with NDC's obligations under the application. Verisign argues that the only sale, assignment or transfer contemplated in the Domain Acquisition Agreement is the possible future and conditional assignment of the registry agreement for .WEB. Verisign contends that Section 10 of Module 6 of the Guidebook is intended to limit the acquisition of rights over the gTLD *by applicants*, providing that applicants would only acquire rights with respect to the subject gTLD upon execution of a post-delegation registry agreement with ICANN. Verisign contends that Section 10 does not prohibit future transfers of rights. Verisign further argues that restrictions on the assignment or transfer of a contract are to be narrowly construed consistent with the purpose of the contract.¹³² Verisign argues that the Domain Acquisition Agreement provides only for a possible future assignment of the registry agreement of .WEB upon ICANN's prior consent.¹³³

179. Verisign avers that the Domain Acquisition Agreement is consistent with industry practices under the Guidebook, including assignments of gTLDs approved by ICANN. According to Verisign, there exists a robust secondary marketplace with respect to the New gTLD Program in which Afilias itself has participated. Verisign argues that the Domain Acquisition Agreement contemplates nothing more than what has already often occurred under the Program.¹³⁴ Verisign further claims that it would be fundamentally unfair – and a violation of the equal treatment required under the Bylaws – if ICANN or the Panel were to adopt a new interpretation of the anti-assignment provision of the Guidebook.¹³⁵
180. In addition, Verisign argues that the drafting history of the Guidebook contradicts the Claimant's claims. According to Verisign, ICANN purposely declined to include proposed limits on post-delegation assignments of registry agreements, choosing instead to rely on ICANN's right, upon a post-delegation request for assignment of a registry agreement, to

¹³² *Ibid*, paras. 2-4, 6 and 11-20.

¹³³ *Ibid*, paras. 4 and 21-34.

¹³⁴ Verisign's Brief, paras. 5, 9-10 and 35-45.

¹³⁵ *Ibid*, para. 46.

approve such assignment.¹³⁶

181. Verisign contends that, in an attempt to contrive support for its contention that NDC sold the application to Verisign, the Claimant takes out of context select obligations of NDC under the Domain Acquisition Agreement to protect Verisign’s loan of funds to NDC for the auction.¹³⁷ Redacted - Third Party Designated Confidential Information

¹³⁸ In addition, Verisign underscores that there was no obligation for NDC to disclose Verisign’s support in the resolution of the contention set. As Verisign puts it, “confidentiality in such matters is common”.¹³⁹

182. Verisign argues that the Guidebook requires an amendment to the application only when previously submitted information becomes untrue or inaccurate, which was not the case here since the Domain Acquisition Agreement did not make Verisign the owner of NDC’s application.¹⁴⁰ Furthermore, Verisign asserts that the mission statement in a new gTLD application is irrelevant to its evaluation.¹⁴¹

183. Verisign also argues that there is no basis for refusing to delegate .WEB based on ICANN’s mandate to promote competition.¹⁴² According to Verisign, ICANN has no regulatory authority – including over matters of competition – and was not intended to supplant existing legal structures by establishing a new system of Internet governance.¹⁴³ In Verisign’s submission, ICANN has acted upon its commitment to enable competition by helping to create the conditions for a competitive DNS and by referring competition

¹³⁶ *Ibid*, paras. 49-51.

¹³⁷ *Ibid*, para. 52.

¹³⁸ *Ibid*, para. 57.

¹³⁹ *Ibid*, para. 62.

¹⁴⁰ *Ibid*, paras. 65-76.

¹⁴¹ *Ibid*, paras. 77-86.

¹⁴² *Ibid*, paras. 88-93.

¹⁴³ Verisign’s Brief, paras. 94-101.

issues to the relevant authorities.¹⁴⁴

184. Verisign claims that there is no threat or injury to competition resulting from its potential operation of the .WEB registry, and that the Claimant has submitted no economic evidence to support the contrary view.¹⁴⁵ Verisign further stresses that it does not have a dominant market position and that it is not a “monopoly”, as it has less than 50% of the relevant market.¹⁴⁶ In the view of the expert economists retained by Verisign and the Respondent, there is no evidence that .WEB will be a particularly significant competitive check on .COM.¹⁴⁷
185. Verisign concludes by reiterating that this Panel should only determine whether ICANN properly exercised its reasonable business judgment when it deferred making a decision on Afiliás’ claims regarding the .WEB auction. To the extent that the Panel considers the substance of the Claimant’s claims, Verisign submits that they are meritless and should be rejected.¹⁴⁸

F. Parties’ Responses to *Amici*’s Briefs

1. Afiliás’ Response to *Amici*’s Briefs

186. The Claimant begins its 24 July 2020 Response to the *Amici*’s Briefs by addressing what it describes as the omissions and misrepresentations of key facts in the *Amici*’s submissions.¹⁴⁹ The Claimant insists on the fact that Verisign failed to apply for .WEB by the set deadline¹⁵⁰ and provides no explanation for that failure. It observes that had Verisign applied for .WEB in 2012, its status as an applicant would have been known and the public

¹⁴⁴ *Ibid.*, paras. 102-107.

¹⁴⁵ *Ibid.*, paras. 108-112.

¹⁴⁶ *Ibid.*, paras. 112-119.

¹⁴⁷ *Ibid.*, paras. 125-134.

¹⁴⁸ *Ibid.*, para. 140.

¹⁴⁹ Claimant’s Response to *Amici*’s Briefs, paras. 5-66.

¹⁵⁰ While not material to the issues in dispute, there is some confusion in the Claimant’s submissions as to what the deadline was. In the Claimant’s Response, the deadline is said to be 13 June 2012 (para. 9); in the Claimant’s PHB, it is said to be 20 April 2012 (para. 10); while in the Joint Chronology, it is stated that it was 30 May 2012.

portions of its application would have been available for the public and governments to comment upon.¹⁵¹

187. Turning to the circumstances of the execution of the Domain Acquisition Agreement, the Claimant notes that as a small company with limited funding, NDC had no chance of obtaining .WEB for itself and was thus the perfect vehicle to allow Verisign to fly “under the radar” of the other .WEB applicants and to blindsides them with a high bid that none could have seen coming.¹⁵² The Claimant asks, if the *Amici* believed that their arrangement complied with the New gTLD Program Rules, why go through such lengths to conceal the Domain Acquisition Agreement not only to their competitors, but also to ICANN.¹⁵³ The Claimant notes in this regard Verisign’s inquiry to ICANN, shortly after the execution of the DAA, about ICANN’s practice when approached to approve the assignment of a new registry agreement. On that occasion, Verisign mentioned neither the DAA, nor .WEB.¹⁵⁴ The Claimant vehemently denies that the other transactions identified by the *Amici* as industry practice are analogous to the Domain Acquisition Agreement.¹⁵⁵
188. According to the Claimant, the *Amici*’s pre-auction conduct, including the execution of the Confirmation of Understandings of 26 July 2016, also exemplifies their concerted attempts to conceal the DAA and Verisign’s interest in .WEB. In regard to the post-auction period, the Claimant argues that the *Amici* misrepresent the Claimant’s letters of 8 August and 9 September 2016 as asserting the same claims as those made in this IRP, and adds that they have failed to explain how and why ICANN’s outside counsel came to contact Verisign’s outside counsel, by phone, to request information about the DAA.
189. With respect to the *Amici*’s reliance on ICANN’s purported “decision not to decide” of November 2016, the Claimant denies the existence of the “well-known practice” upon which the Board’s decision was allegedly based; states that this alleged practice is

¹⁵¹ Claimant’s Response to *Amici*’s Briefs, paras. 8-16.

¹⁵² *Ibid*, para. 20.

¹⁵³ *Ibid*, para. 22.

¹⁵⁴ *Ibid*, paras. 24-29.

¹⁵⁵ *Ibid*, para. 23.

inconsistent with ICANN’s conduct at the time; that not taking action on a contention set while an accountability mechanism is pending is not among ICANN’s documented policies;¹⁵⁶ that ICANN never informed Afiliás of such decision until well into this IRP;¹⁵⁷ and that such decision is not even documented.¹⁵⁸

190. The Claimant also notes that there is no indication that the Staff had undertaken any analysis of the compatibility of the DAA with the New gTLD Program Rules when the Staff moved toward contracting with NDC in June 2018, as soon as the Board rejected Afiliás’ request to reconsider the denial of its most recent document disclosure request.¹⁵⁹ Nor is it known what assessment of that question had been made by the Board. In this regard, the Claimant claims there is a contradiction between the Respondent’s statement in this IRP that it has not yet considered the Claimant’s complaints, and the Respondent’s submission to the Emergency Arbitrator that ICANN had evaluated these complaints.¹⁶⁰

191. According to the Claimant, the *Amici* misrepresent the nature of the Domain Acquisition Agreement. The Claimant notes that Redacted - Third Party Designated Confidential Information and were therefore not “executory” in nature.¹⁶¹ The Claimant also rejects any analogy between the Domain Acquisition Agreement and a financing agreement.¹⁶² In the Claimant’s submission, it is self-evident that the DAA was an attempt to circumvent the New gTLD Program Rules, and this should have been patently clear to the Staff and Board upon its review. The Domain Acquisition Agreement makes plain that NDC resold, assigned or transferred to Verisign several rights and obligations in its application for .WEB, including: Redacted - Third Party Designated Confidential Information

¹⁵⁶ *Ibid*, paras. 54-55.

¹⁵⁷ Claimant’s Response to *Amici*’s Briefs, para. 56.

¹⁵⁸ *Ibid*, paras. 49-58.

¹⁵⁹ *Ibid*, para. 62.

¹⁶⁰ *Ibid*, para. 65.

¹⁶¹ *Ibid*, paras. 67-71.

¹⁶² *Ibid*, paras. 72-73.

192. The Claimant avers that NDC violated the Guidebook by failing to promptly inform ICANN of the terms of the Domain Acquisition Agreement since those terms made the information previously submitted in NDC's .WEB application untrue, inaccurate, false or misleading. The Claimant stresses that the Guidebook does not exempt the section of the application that details the applicant's business plan from the obligation to notify changes to ICANN. In any event, NDC also failed to update its responses regarding the technical aspects of NDC's planned operation of the .WEB registry. The Claimant argues as well that NDC intentionally failed to disclose the Domain Acquisition Agreement prior to the auction, when Mr. Rasco was specifically asked whether there were any changed circumstances needing to be reported to ICANN.¹⁶⁴
193. The Claimant reiterates its arguments about NDC having violated the Guidebook by submitting invalid bids – made on behalf of a third party – at the .WEB auction. In the Claimant's submission, the *Amici's* examples of market practice are inapposite for a variety of reasons, and none of them reflects the level of control that the Domain Acquisition Agreement gave Verisign.¹⁶⁵
194. Responding to the *Amici's* arguments pertaining to the discretion enjoyed by ICANN in the administration of the New gTLD Program, the Claimant contends that such discretion is circumscribed by the Articles and Bylaws, as well as principles of international law, including the principle of good faith.¹⁶⁶ The Claimant underscores that the Bylaws require ICANN to operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. The Claimant argues that due process and procedural fairness require, among other procedural protections, that decisions be based on evidence and on appropriate inquiry into the facts. According to the Claimant,

¹⁶³ *Ibid*, paras. 74-98.

¹⁶⁴ Claimant's Response to *Amici's* Briefs, paras. 99-114.

¹⁶⁵ *Ibid*, paras. 121-136.

¹⁶⁶ *Ibid*, paras. 140-144.

ICANN repeatedly failed to comply with those principles in regards to Afiliás' claims. The Claimant notes again that even in this IRP the Respondent has taken diametrically opposed positions as to whether or not it has evaluated Afiliás' concerns.¹⁶⁷

195. The Claimant also argues that ICANN is required by its Bylaws to afford impartial and non-discriminatory treatment, an obligation that is consistent with the principles of impartiality and non-discrimination under international law. The Claimant submits that, upon receipt of the Domain Acquisition Agreement, and without conducting any investigation on the matter, ICANN accepted the *Amici*'s positions on their agreement at face value, and incorporated them into a questionnaire that was designed to elicit answers to advance the *Amici*'s arguments, and that was based on information that ICANN and the *Amici* had in their possession – but which they knew was unavailable to Afiliás.¹⁶⁸
196. The Claimant avers that the Respondent also failed to act openly and transparently as required by the Articles, Bylaws and international law. The Claimant contends that, far from acting transparently, ICANN allowed NDC to enable Verisign to secretly participate in the .WEB auction in disregard of the New gTLD Program Rules, failed to investigate NDC's conduct and instead proceeded to delegate .WEB to NDC in an implicit acceptance of its conduct at the auction, all the while keeping Afiliás in the dark about the status of its investigation regarding the .WEB gTLD for nearly two years.¹⁶⁹ The Claimant further claims that the Respondent failed to respect its legitimate expectations despite its commitment to make decisions by applying documented policies consistently, neutrally, objectively and fairly. According to the Claimant, had the Respondent followed the New gTLD Program Rules, it would necessarily have disqualified NDC from the application and bidding process.¹⁷⁰
197. As regards the applicable standard of review, the Claimant denies that the Board's conduct in November 2016 constitutes a decision protected by the business judgment rule. The

¹⁶⁷ *Ibid*, paras. 145-147.

¹⁶⁸ Claimant's Response to *Amici*'s Briefs, paras. 148-149.

¹⁶⁹ *Ibid*, paras. 151-158.

¹⁷⁰ *Ibid*, paras. 159-161.

Claimant also stresses that neither the *Amici* nor the Respondent assert that the business judgment rule applies to the decision taken by ICANN in June 2018 to proceed with delegating .WEB to NDC. The Claimant takes the position that its claims regarding (1) the Respondent’s failure to disqualify NDC, (2) its failure to offer Afilias the rights to .WEB and (3) the delegation process for .WEB after a superficial investigation of the Claimant’s complaints, do not concern the Board’s exercise of its fiduciary duties. The Claimant contends finally that, even assuming *arguendo* that the business judgment rule has any application, the secrecy regarding the Board’s November 2016 conduct makes it impossible for this Panel to evaluate the reasonableness of that conduct.¹⁷¹

198. Responding to the *Amici*’s claims regarding its own conduct, the Claimant denies having violated the Blackout Period. It contends that the provisions relating to Blackout Period are designed to prevent bid rigging and do not prohibit any and all contact among the members of the contention set.¹⁷²
199. The Claimant states that the *Amici* misrepresent the scope and effect of ICANN’s competition mandate. The Claimant argues that ICANN must act to promote competition pursuant to its Bylaws, and that it failed to do so when it permitted Verisign to acquire .WEB in a program designed to challenge .COM’s dominance. The Claimant stresses that Dr. Carlton – the economist retained by the Respondent – expressed views on the competitive benefits of introducing new gTLDs in 2009 that differ from those expressed in his report prepared for the purpose of this IRP.¹⁷³ According to the Claimant, any decision furthering Verisign’s acquisition of .WEB is inconsistent with ICANN’s competition mandate. In the Claimant’s view, .WEB cannot be considered as “just another gTLD”, since it has been uniquely identified by members of the Internet community as the next best competitor for .COM. The Claimant contends that the high price paid by Verisign for .WEB was at least partly driven by the benefits it would derive from keeping that

¹⁷¹ *Ibid*, paras. 165-178.

¹⁷² *Ibid*, paras. 179-184.

¹⁷³ Claimant’s Response to *Amici*’s Briefs, paras. 164 and 185-198.

competitive asset out of the hands of its competitors.¹⁷⁴ The Claimant reiterates its submission that the DOJ's decision to close its investigation is irrelevant to the Panel's analysis.¹⁷⁵

200. Turning to the Panel's remedial authority, the Claimant argues that the *Amici* are wrong in asserting that the Panel's authority is limited to issuing a declaration as to whether ICANN acted in conformity with its Articles and Bylaws when its Board deferred making any decision on .WEB in November 2016. The Claimant urges that meaningful and effective accountability requires review and redress of ICANN's conduct. In that regard, the Claimant invokes the international law principle that any breach of an engagement involves an obligation to make reparation.¹⁷⁶ Finally, the Claimant contends that the Panel must determine the scope of its authority based on the text, context, object and purposes of the IRP, and not only on Section 4.3(o) of the Bylaws, which is not exhaustive and should be read, *inter alia*, with reference to Section 4.3(a).¹⁷⁷

2. ICANN's Response to the *Amici*'s Briefs

201. In its brief Response dated 24 July 2020 to the *Amici*'s Briefs, the Respondent notes that the position advocated by the *Amici* in their respective briefs is generally consistent with its own position as regards the following three (3) issues: (1) the Panel's jurisdiction and remedial authority, (2) the nature and implications of the Bylaws' provisions in relation to competition, and (3) whether Verisign's potential operation of .WEB would be anticompetitive.¹⁷⁸
202. The Respondent reiterates that it does not take a position on what it describes as the Claimant's and NDC's "allegations against each other" regarding their respective pre-auction, and auction conduct, or whether NDC violated the Guidebook and Auction

¹⁷⁴ *Ibid*, paras. 199-209.

¹⁷⁵ *Ibid*, paras. 210-213.

¹⁷⁶ *Ibid*, paras. 218-220.

¹⁷⁷ *Ibid*, paras. 223-236.

¹⁷⁸ Respondent's Response to *Amici*'s Briefs, paras. 2-6.

Rules by the execution of the DAA, adding that it will consider those issues after this IRP concludes.¹⁷⁹

G. Post-Hearing Submissions

203. The Parties and *Amici* have filed comprehensive post-hearing submissions in which they have reiterated their respective positions on all issues in dispute. In the summary below, the Panel focuses on those aspects of the post-hearing submissions that comment on the hearing evidence, or put forward new points.

1. Claimant's Post-Hearing Brief

204. In its Post-Hearing Brief dated 12 October 2020, the Claimant argues that the two fundamental questions before the Panel are whether the Respondent was required to (i) determine that NDC is ineligible to enter into a registry agreement for .WEB for having violated the New gTLD Program Rules and, if so, (ii) offer the .WEB gTLD to the Claimant. The Claimant submits that the hearing evidence leaves no doubt that these questions must be answered in the affirmative.

205. The evidence revealed that the Respondent's failure to act upon the Claimant's complaints was a result of the unjustified position that these were motivated by "sour grapes" for having lost the auction. According to the Claimant, this attitude permeated every aspect of the Respondent's consideration of the Claimant's concerns, including its decision, in the course of 2018, to approve a gTLD registry contract for NDC.¹⁸⁰

206. The Claimant notes that Ms. Willett acknowledged that the decision of an applicant to participate in an Auction of Last Resort is one of the applicant's rights under a gTLD application. Redacted - Third Party Designated Confidential Information ^{.181}

207. The Claimant argues that the evidence of Mr. Livesay confirms the competitive significance of .WEB, in that Verisign's CEO was directly involved in the 2014 initiative

¹⁷⁹ *Ibid*, para. 7.

¹⁸⁰ Claimant's PHB, paras. 1-2.

¹⁸¹ Claimant's PHB, para. 16.

to seek to participate in the gTLD market. Mr. Livesay also confirmed, as did Mr. Rasco, that Redacted - Third Party Designated Confidential Information

According to the Claimant, the evidence of these witnesses demonstrates that they harboured serious doubts as to whether they were acting in compliance with the Program Rules; otherwise, why conceal the DAA's terms from ICANN's scrutiny, and keep Verisign's involvement in NDC's application hidden from the Internet community? In sum, the Claimant submits that the *Amici's* conduct evidence an attempt to "cheat the system".¹⁸²

208. In the pre-auction period, the Claimant focuses on Mr. Rasco's representation to the Ombudsman that there had been no changes to the NDC application, a statement that cannot be reconciled with the terms of the DAA, according to the Claimant. Also plainly incorrect, in the submission of the Claimant, is Mr. Rasco's assurance to Ms. Willett, as evidenced in the latter's email communication to the Ombudsman, that the decision not to resolve the contention set privately "was in fact his".
209. The Claimant notes that from the moment Verisign's involvement in NDC's application for .WEB was made public, the Respondent treated Verisign as though it was the *de facto* applicant for .WEB, for example, by directly contacting Verisign about questions concerning NDC's application and working with Verisign on the delegation process for .WEB. In regard to Verisign's detailed submission of 23 August 2016, which included a copy of the DAA, the Claimant notes that only the Claimant's outside counsel and Mr. Scott Hemphill have been able to review it and that the Internet community remains unaware of the Agreement's details. The Claimant finds surprising that Ms. Willett, in spite of her leadership position within ICANN in respect of the Program, would have never reviewed – indeed seen – the DAA, or Verisign's 23 August 2016 letter.¹⁸³
210. The Claimant also notes Ms. Willett's inability to address questions concerning the Questionnaire that was sent to some contention set members under cover of her letter

¹⁸² *Ibid*, paras. 21-23.

¹⁸³ *Ibid*, paras. 46-56.

dated 16 September 2016, including the fact that some questions were misleading for anyone, such as the Claimant, who had no knowledge of the terms of the DAA. The Claimant also notes that the Respondent presented no evidence explaining what it did with the responses to the Questionnaire, other than Mr. Disspain confirming that the responses were never considered by the Board.

211. Turning to the “load-bearing beam of ICANN’s defense in this case”, the November 2016 Board decision to defer consideration of Afilias’ complains, the Claimant submits that the evidence belies that any such decision was in fact made. Rather, according to the Claimant, both Ms. Burr and Mr. Disspain testified that ICANN simply adhered to its practice to put the process on hold once an accountability mechanism has been initiated, a practice that the Claimant says has not been proven in fact to exist. The Claimant quotes the evidence of Ms. Willett, who testified that work and communications within ICANN would continue while an accountability mechanism was pending, simply that the contention set would not move to the next phase; and points to the fact that the Staff were engaging with NDC and Verisign in December 2017 and January 2018 on the subject of the assignment of .WEB even though Ruby Glen had not yet resolved its CEP, or ICANN considered Afilias’ concerns. The Claimant also sees a contradiction between the Respondent’s claim that it has not yet taken a position on the merits of Afilias’ complaints, and the evidence of Ms. Willett that ICANN would not delegate a gTLD until a pending matter was resolved.¹⁸⁴
212. The Claimant reviews in its PHB the evidence concerning the genesis of Rule 7 of the Interim Procedures, as it reveals the degree to which, in its submission, the Respondent was willing to go to make things easier for itself and for Verisign to defend against future efforts by the Claimant to challenge ICANN’s conduct. The Claimant notes that Ms. Eisner and Mr. McAuley did speak over the phone on 15 October 2018, and that shortly thereafter, Ms. Eisner reversed her positions and expanded the categories of *amicus* participation to cover the circumstances in which the *Amici* found themselves at the time.¹⁸⁵

¹⁸⁴ Claimant’s PHB, paras. 61-76.

¹⁸⁵ *Ibid*, paras. 77-91.

213. Insofar as the DAA is concerned, the Claimant notes that the evidence confirms that NDC and Verisign performed exactly as the language of the DAA provides.¹⁸⁶
214. The Claimant argues that ICANN violated its Articles and Bylaws through its disparate treatment of Afilias and Verisign. For instance, the Claimant notes that ICANN: failed to provide timely answers to Afilias' letters while Verisign was able to reach ICANN easily to discuss .WEB, even though it was a non-applicant; informally invited Verisign's counsel to comment on Afilias' concerns; discussed the .WEB registry agreement with NDC, all the while stating that ICANN was precluded from acting on Afilias' complaints due to the pendency of an accountability mechanism; and also advocated for the *Amici* and against Afilias throughout this IRP. According to the Claimant, further evidence of disparate treatment can be found in the Staff's decision to make Rule 4 retroactive so as to catch the Claimant's CEP.¹⁸⁷
215. According to the Claimant, the Staff's decision to take the .WEB contention set off hold and to conclude a registry agreement with NDC also violated the Bylaws and ICANN's obligation to enforce its policies fairly. The Claimant argues that the Board delegated the authority to enforce the New gTLD Program Rules to Staff who authorized the .WEB registry agreement to be sent to NDC and would have countersigned it if the Claimant had not initiated a CEP. The Board did not act to stop the process even though it was aware that the execution of the .WEB registry agreement was imminent.¹⁸⁸
216. In addition, the Claimant contends that ICANN failed to enable and promote competition in the DNS contrary to its Bylaws. The Claimant submits that the only decision ICANN could have taken regarding .WEB to promote competition would have been to reject NDC's application and delegate .WEB to Afilias. In its view, ICANN cannot satisfy its competition mandate by relying on regulators or the DOJ's decision to close its .WEB investigation.¹⁸⁹

¹⁸⁶ *Ibid*, para. 103.

¹⁸⁷ Claimant's PHB, paras. 126-138.

¹⁸⁸ *Ibid*, paras. 139-143.

¹⁸⁹ *Ibid*, paras. 144-154.

217. In relation to its Rule 7 Claim, the Claimant maintains that the Staff improperly coordinated with Verisign the drafting of that rule. In response to a question raised by the Panel, the Claimant explained that its Rule 7 Claim remains relevant at the present stage of the IRP because the Respondent's breach of its Articles and Bylaws in regard to the development of Rule 7 justifies an award of costs in the Claimant's favour.¹⁹⁰
218. As regards the Respondent's argument based on the business judgment rule, the Claimant points to the evidence of Ms. Burr concerning the nature of Board workshops to advance the position that a workshop is not a forum where the Respondent's Board can take any action at all, still less one that is protected by the business judgment rule. The Claimant also asserts that the evidence of the Respondent's witnesses supports its position that no affirmative decision regarding .WEB had been taken during the November 2016 workshop. Finally, the Claimant reiterates that there is no evidence of an ICANN policy or practice to defer decisions while accountability mechanisms are pending.¹⁹¹
219. Turning to the limitations issue, the Claimant avers that the Respondent's position that the Claimant's claims are time-barred is inherently inconsistent with its assertion that ICANN has not yet addressed the fundamental issues underlying those claims. According to the Claimant, its claims are based on conduct of the Staff and Board that culminated in irreversible violations of Afilias' rights when the Staff proceeded with the delegation of .WEB to NDC on 6 June 2018. Consequently, the Claimant argues that its claims are not time-barred pursuant to Rule 4 of the Interim Procedures.
220. Responding to the Respondent's argument that the claims brought in the Amended Request for IRP are time-barred because Afilias raised the same issues in its letters of August and September 2016, the Claimant contends that in the face of ICANN's representations that it was considering the matter, it would have been unreasonable for Afilias to file contentious dispute resolution proceedings in 2016. The Claimant adds that those letters described how NDC had violated the New gTLD Program Rules – not how ICANN had violated its

¹⁹⁰ *Ibid.*, para. 157.

¹⁹¹ Claimant's PHB, paras. 159-170.

Articles and Bylaws.¹⁹²

221. The Claimant further contends that, because of the circumstances in which Rule 4 of the Interim Procedures was adopted, it cannot be applied to its claims. The Claimant avers that four (4) days after the Claimant commenced its CEP – understanding that its claims had never been subject to any time limitation – ICANN launched a public comment process concerning the addition of timing requirements to the rules governing IRPs. In spite of the fact that the public comment period on proposed Rule 4 remained open, ICANN included Rule 4 in the draft Interim Procedures that were presented to the Board for approval, and adopted by the Board on 25 October 2018. The Respondent further provided that the Interim Procedures would apply as from 1 May 2018, and no carve out was made for pending CEPs or IRPs. According to the Claimant, the decision to make Rule 4 retroactive can only have been made in an attempt to preclude Afilias from arguing that its CEP had been filed prior to the adoption of the new rules. The Claimant avers that ICANN’s enactment and invocation of Rule 4 is an abuse of right and is contrary to the international law principle of good faith.¹⁹³
222. In response to the argument that Afilias should have submitted a reconsideration request to the Board, the Claimant argues that, prior to June 2018, there was no action or inaction by the Staff or Board to be reconsidered.¹⁹⁴
223. The Claimant contends that the Board waived its right to individually consider NDC’s application by failing to do so at a time where such review would have been meaningful. The Claimant underscores that the Board failed to do so in November 2016, and again in early June 2018 when it was informed that the Staff was going to conclude a registry agreement for .WEB with NDC. According to the Claimant, there is no evidence to suggest that the Board ever intended to consider whether NDC had violated the New gTLD Program Rules, and it is now for this Panel to decide the Claimant’s claims.¹⁹⁵

¹⁹² *Ibid*, paras. 177-183.

¹⁹³ Claimant’s PHB, paras. 184-192.

¹⁹⁴ *Ibid*, paras. 193-195.

¹⁹⁵ *Ibid*, paras. 196-202.

224. Moving to the issue of the Panel’s jurisdiction, the Claimant emphasizes that this is the first IRP under both ICANN’s revised Bylaws and the Interim Procedures. The Claimant stresses that the IRP is a “final, binding arbitration process” and that the Panel is “charged with hearing and resolving the Dispute”. According to the Claimant, this is particularly important in light of the litigation waiver that ICANN required all new gTLD applicants to accept and to avoid an accountability gap that would leave claimants without a means of redress against ICANN’s conduct. The Claimant submits that the Panel’s jurisdiction extends to granting the remedies that Afilias has requested. In the Claimant’s view, the inherent jurisdiction of an arbitral tribunal sets the baseline for the Panel’s jurisdiction and any deviation must be justified by the text of the Bylaws. In that respect, the Claimant also invokes the international arbitration principle that a tribunal has an obligation to exercise the full extent of its jurisdiction.¹⁹⁶
225. The Claimant notes that the CCWG intended to enhance ICANN’s accountability with an expansive IRP mechanism to ensure that ICANN remains accountable to the Internet community. In Afilias’ view, the CCWG’s report “provides binding interpretations for the provisions of ICANN’s Bylaws that set forth the jurisdiction and powers of an IRP panel – none of which are inconsistent with the CCWG Report.”¹⁹⁷
226. The Claimant alleges that in the Ruby Glen Litigation before the Ninth Circuit, ICANN represented that the litigation waiver would neither affect the rights of New gTLD Program applicants nor be exculpatory, with the implication that the IRP could do anything that the courts could. In Afilias’ view, ICANN’s position before the Ninth Circuit contradicts ICANN’s position in this IRP when it asserts that the Panel cannot order mandatory or non-interim affirmative relief.¹⁹⁸
227. In relation to the relief it is requesting from the Panel, the Claimant avers that the CCWG Report states that claimants have a right to “seek redress” against ICANN through an IRP. According to the Claimant, unless the Panel directs ICANN to remedy the alleged

¹⁹⁶ *Ibid*, paras. 203-210.

¹⁹⁷ Claimant’s PHB, paras. 211-220.

¹⁹⁸ *Ibid*, paras. 221-228.

violations, there is a serious risk that this dispute will go unresolved. For that reason, the Claimant requests that the Panel issue a decision that is legally binding on the Parties and that fully resolves the Dispute. By way of injunctive relief, the Claimant asks the Panel to: reject NDC's application for the .WEB gTLD; disqualify NDC's bids at the ICANN auction; deem NDC ineligible to execute a registry agreement for the .WEB gTLD; offer the registry rights to the .WEB gTLD to Afilias, as the next highest bidder in the ICANN auction; set the bid price to be paid by Afilias for the .WEB gTLD at USD 71.9 million; pay the Claimant's fees and costs.¹⁹⁹

2. Respondent's Post-Hearing Brief

228. In its Post-Hearing Brief dated 12 October 2020, the Respondent argues that the Claimant has effectively abandoned its competition claim, which was rooted in the notion that ICANN's founding purpose was to promote competition and that this competition mandate and ICANN's Core Values regarding competition required it to disqualify NDC and block Verisign's potential operation of .WEB. The Respondent contends that without this competition claim, the Claimant's case boils down to whether the Respondent was required to disqualify NDC for a series of alleged violations of the Guidebook and Auction Rules.²⁰⁰ As to those, the Respondent reiterates that it has not decided whether the DAA violates the Guidebook or Auction Rules, or the appropriate remedy for any violation that may be found. Relying on the evidence of Mr. Disspain, the Respondent contends that the propriety of the DAA is a matter for the ICANN Board.
229. According to the Respondent, the practice of placing contention sets on hold while accountability mechanisms are pending is well known. Accordingly, the Board's decision to defer making a decision on .WEB in November 2016 should have come as no surprise to the Claimant and is entitled to deference from this Panel. As for the transmission of a registry agreement for .WEB to NDC in June 2018, the Respondent claims that it did not reflect a decision that the DAA was compliant with the Guidebook and Auction Rules, but

¹⁹⁹ *Ibid.*, paras. 229-246. The Parties' submissions on costs are summarized below, in the section of this Final Decision dealing with the Claimant's cost claim.

²⁰⁰ Respondent's PHB, paras. 1-6.

was merely a ministerial act triggered by the removal of the set's on hold status.²⁰¹

230. The Respondent recalls that the Panel's jurisdiction is circumscribed by the Bylaws in relation to the types of disputes that may be addressed, the claims that can be raised, the remedies available, the time within which a Dispute may be brought, and the standard of review.²⁰² The Respondent contends that the Panel can only address alleged violations that are asserted in the Amended Request. In relation to those, the Panel's remedial authority is limited to issuing a declaration as to whether a Covered Action constituted an action or inaction that violated the Articles or Bylaws. According to the Respondent, the relief requested by the Claimant clearly exceeds the Panel's limited remedial authority, which does not include the authority to disqualify NDC's bid, proceed to contracting with Afilias, specify the price to be paid by Afilias, or invalidate Rule 7. The Respondent argues that the Panel is authorized to shift costs only on a finding that the losing party's claim or defence is frivolous or abusive. The Respondent submits that the CCWG's Supplemental Proposal dated 23 February 2016 does not expand the Panel's remedial authority. If there is any inconsistency, the Bylaws clearly control.²⁰³
231. The Respondent argues that there is no "gap" created by the litigation waiver and avers that it takes the same position in this IRP as it did in the Ruby Glen Litigation, where it sought to enforce the litigation waiver. The Respondent submits that the Claimant's position in this regard is based on the false premise that remedies available in IRPs must be co-extensive with remedies available in litigation.²⁰⁴
232. The Respondent also contends that the Panel is required to apply the prescribed standard of review. The first sentence of Section 4.3(i) of the Bylaws establishes a general *de novo* standard, and Subsection (iii) then creates a carve-out, providing that actions of the Board in the exercise of its fiduciary duty are entitled to deference provided that they are within the realm of "reasonable judgment". The Respondent argues that all actions by the Board

²⁰¹ Respondent's PHB, paras. 10-12.

²⁰² *Ibid*, para. 14.

²⁰³ *Ibid*, paras. 15-45.

²⁰⁴ *Ibid*, paras. 46-48.

on behalf of ICANN are subject to a fiduciary duty to act in good faith in the interests of ICANN.²⁰⁵

233. Turning to time limitation, the Respondent notes that the Panel has jurisdiction only over claims brought within the time limits established by Rule 4 of the Interim Procedures, and contends that the limitations and repose periods set out in Rule 4 are jurisdictional in nature.²⁰⁶ According to the Respondent, the Claimant's claim that ICANN had an unqualified obligation to disqualify NDC is barred by the repose period and the time limitation, which are dispositive.²⁰⁷ The Respondent contends that the Claimant's claim that the Staff violated the Articles and Bylaws in their investigation of pre-auction rumors or post-auction complaints is also time-barred and therefore outside the jurisdiction of the Panel.²⁰⁸ The Respondent denies that it is equitably estopped from relying on its time limitation defence, and avers that the repose and limitations periods apply retroactively because of the express terms of the Interim Procedures. According to the Respondent, if the Claimant wished to challenge Rule 4, it could have brought such a claim in this IRP, as it did with Rule 7.²⁰⁹
234. Regarding the merits of the Claimant's claims, the Respondent notes the Claimant's decision not to cross-examine Mr. Kneuer, Dr. Carlton, or Dr. Murphy, indicating the abandonment of its competition claim, and reiterates that ICANN does not have the mandate, authority, expertise or resources to act as a competition regulator of the DNS.²¹⁰ According to the Respondent, the unrebutted economic evidence establishes that .WEB will not be competitively unique such that Verisign's operation of .WEB would be anticompetitive.²¹¹

²⁰⁵ Respondent's PHB, paras. 49-57.

²⁰⁶ *Ibid.*, paras. 58-61.

²⁰⁷ *Ibid.*, paras. 62-69.

²⁰⁸ *Ibid.*, paras. 70-72.

²⁰⁹ *Ibid.*, paras. 73-85.

²¹⁰ *Ibid.*, paras. 86-101.

²¹¹ *Ibid.*, paras. 102-129.

235. The Respondent further contends that it was not required to disqualify NDC based on alleged violations of the Guidebook and Auction Rules. According to the Respondent, “it is not a foregone conclusion that NDC is or is not in breach”.²¹² The Respondent argues that the Guidebook and Auction Rules grant it significant discretion to determine whether a breach of their terms has occurred and the appropriate remedy, and that ICANN has not yet made that determination.²¹³ The Respondent maintains that it, and not the Panel, is in the best position to make a determination as to the propriety of the DAA, and its consistency with the Guidebook or Auction Rules.²¹⁴ According to the Respondent, its commitment to transparency and accountability is not relevant to the Claimant’s contention regarding NDC’s alleged violations.²¹⁵
236. The Respondent reiterates that the Board complied with ICANN’s obligations by deciding not to take any action regarding the .WEB contention set while accountability mechanisms were pending, and that the Panel should defer to this reasonable business judgment.²¹⁶ The Respondent adds that its obligations to act transparently did not require the Board to inform Afiliats of its 3 November 2016 decision. In that respect, the Respondent argues that the Claimant has not put forward a single piece of evidence suggesting that it would have acted differently had it known that the Board decided in November 2016 to take no action while the contention set remained on hold.²¹⁷
237. The Respondent takes the position that the Claimant has not properly challenged ICANN’s transmittal of a form registry agreement to NDC in June 2018 and, in any event, that in doing so it acted in accordance with Guidebook procedures and the Articles and Bylaws.²¹⁸
238. According to the Respondent, the Claimant’s claims that ICANN’s pre- and post- auction

²¹² Respondent’s PHB, para. 138.

²¹³ *Ibid.*, paras. 136-150.

²¹⁴ *Ibid.*, paras. 151-156.

²¹⁵ *Ibid.*, paras. 157-158.

²¹⁶ *Ibid.*, para. 159.

²¹⁷ *Ibid.*, paras. 182-189.

²¹⁸ *Ibid.*, paras. 190-197.

investigations violated the Articles and Bylaws have no merit and in any event are time-barred.²¹⁹

239. As regards the Rule 7 Claim, the Respondent submits that to the extent it is maintained, it must be rejected both as lacking merit and because there is no valid basis for an order shifting costs on the ground of Rule 7's alleged wrongful adoption.²²⁰

3. *Amici's* Post-Hearing Brief

240. In their joint Post-Hearing Brief dated 12 October 2020, the *Amici* submit that adverse inferences against the Claimant should be made with respect to every issue in the IRP based on "Afilias purposefully, voluntarily and knowingly withholding" evidence from the Panel. According to the *Amici*, the Claimant's executives whose witness statements were withdrawn had substantial direct personal knowledge and special industry expertise material to virtually every contested issue in the IRP.²²¹

241. The *Amici* argue that the Panel's jurisdiction is limited to declaring whether the Respondent violated its Bylaws, and does not extend to making findings of fact in relation to third-party claims or awarding relief contravening third party rights.²²² As a result, the *Amici* submit that the Panel lacks authority to find that the Domain Acquisition Agreement violates the Guidebook or that the *Amici* engaged in misconduct.²²³ According to the *Amici*, the Panel should limit its review to ICANN's decision making process and only make non-binding recommendations that relate to that process, as opposed to the decision ICANN should make.²²⁴

242. The *Amici* contend that a decision granting the Claimant's requested relief, or making findings on the Domain Acquisition Agreement or their conduct, would violate their due

²¹⁹ *Ibid*, paras. 198-217.

²²⁰ Respondent's PHB, paras. 218-231.

²²¹ *Ibid*, paras. 6 and 13-21.

²²² *Ibid*, paras. 22-49.

²²³ *Ibid*, paras. 62-67.

²²⁴ *Ibid*, paras. 68-81.

process rights because of their limited participation in the IRP.²²⁵

243. According to the *Amici*, the Domain Acquisition Agreement complies with the Guidebook. The *Amici* also allege that transactions comparable to the Domain Acquisition Agreement have regularly occurred as part of the gTLD Program, with ICANN's knowledge and approval and consistent with the Guidebook.²²⁶ They further urge that Section 10 of the Guidebook prohibits only the sale and transfer of an entire application, and does not prohibit agreements between an applicant and a third party to request ICANN to approve a future assignment of a registry agreement.²²⁷ The *Amici* aver that ICANN has approved many assignments of registry agreements under such circumstances.²²⁸
244. The *Amici* state that they did not seek to evade scrutiny by maintaining the Domain Acquisition Agreement confidential during the auction, and argue that the Guidebook did not require disclosure of that agreement prior to the auction. They note that the DAA was always intended to be, and will be subject to the same scrutiny as the numerous other post-delegation assignments of new gTLDs. In addition, the *Amici* deny that the confidentiality of the Domain Acquisition Agreement provided them with any undue advantage.²²⁹
245. The *Amici* argue that there is no evidence of anticompetitive intent or effect, and submit that Afilias has abandoned its competition claims. In addition, the *Amici* urge that ICANN is not an economic regulator, that competition is not a review criterion under the New gTLD Program, and that ICANN's competition mandate was fulfilled by the DOJ investigation.²³⁰
246. Finally, the *Amici* note that the Claimant never rebutted the evidence of its own violation of the Guidebook when a representative of the Claimant contacted NDC during

²²⁵ *Ibid*, paras. 82-86.

²²⁶ *Ibid*, paras. 8 and 87-123.

²²⁷ *Amici's* PHB, paras. 100-109.

²²⁸ *Ibid*, paras. 124-153.

²²⁹ *Ibid*, paras. 153-180.

²³⁰ *Ibid*, paras. 181-205.

the Blackout Period.²³¹

H. Submissions Regarding the Donuts Transaction

247. As noted in the History of the Proceedings' section of this Final Decision, the *Amici* have requested that the Panel take into consideration their submissions concerning the 29 December 2020 merger between Afilias, Inc. and Donuts, Inc. Those submissions, and that of the Parties, are summarized below.
248. In counsel's letter of 9 December 2020, the *Amici* described the contemplated transaction, based on publicly disclosed information, as a sale to Donuts of Afilias, Inc.'s entire existing registry business, with only the .WEB application itself being retained within an Afilias, Inc. shell. This, the *Amici* averred, is information that the Claimant ought to have disclosed to the Panel as it is inconsistent with the Claimant's claims and requested relief in this IRP. Moreover, the *Amici* contended that by withdrawing the witness statements of its party representatives in this IRP, the Claimant sought to prevent the Respondent and the *Amici* from eliciting this information.
249. In its response of 16 December 2020 to the *Amici*'s letter, the Claimant submitted that Afilias, Inc.'s arrangement with Donuts has no bearing on the issues in dispute in the IRP. The Claimant explained that the contemplated transaction concerned the registry business of Afilias, Inc., not its registrar business²³², and that the Claimant as an entity, as well as its .WEB application, had been carved out of the transaction. The Claimant added that after the transaction it will remain part of a group of companies that will control a significant registrar business. Accordingly, the Claimant averred that its new structure will not impact its ability to launch .WEB. Finally, the Claimant noted that it has informed the Respondent of a possible sale of its registry business back in September 2020.

²³¹ *Ibid*, paras. 206-214.

²³² Registry operators are parties to Registry Agreements with ICANN that set forth their rights, duties and obligations as operators. Companies known as "registrars" sell domain name registrations to entities and individuals within existing gTLDs. See Respondent's Rejoinder, 31 May 2019, paras. 17 and 23. As explained in the preamble of the Guidebook, Ex. C-3, "[e]ach of the gTLDs has a designated 'registry operator' and, in most cases, a Registry Agreement between the operator (or sponsor) and ICANN. The registry operator is responsible for the technical operation of the TLD, including all of the names registered in the TLD. The gTLDs are served by 900 registrars, who interact with registrants to perform domain name registration and other related services." (p. 2 of the PDF).

250. Also on 16 December 2020, the Respondent confirmed that it was aware that Afilias, Inc. and Donuts had entered into an agreement by which the latter would acquire the former's TLD registry business, excluding the Claimant's .WEB application. The Respondent submitted that these developments reinforced the importance for the Panel not to exceed its "limited jurisdiction to determine only whether a Covered Action by ICANN violated the Articles of Bylaws and to issue a declaration to that effect."
251. On 21 December 2020, with leave of the Panel, the *Amici* replied to the Parties' letters of 16 December 2020. According to the *Amici*, the Claimant's response only reinforced the "the inappropriateness and inadvisability of the Panel deciding allegations concerning the transactions at issue." That is because, according to the *Amici*, it is a fundamental principle and tenet of the Respondent's Bylaws and IRP procedures that matters involving multiple parties and interests such as the matters at issue in this case are to be addressed in the first instance by the Respondent. The *Amici* also reiterated their claim that the Claimant has not been transparent about its plans and that of Afilias, Inc. as they affected the Claimant's ability to execute on its proposed deployment of .WEB.
252. On 30 December 2020, the day after the closing of the Donuts transaction, Afilias responded to the *Amici*'s letter of 21 December 2020, stating that it "was yet another attempt to divert the Panel's attention from the relevant issue to be arbitrated in this IRP." The Claimant rejected the notion that the Donuts transaction, much like the other transactions the *Amici* had pointed to in their written submissions, bear any resemblance to the Domain Acquisition Agreement, and it listed what it considers are key differences between the two (2) situations.

V. ANALYSIS

A. Introduction

253. As the Panel observed in its Procedural Order No. 5, this IRP is an ICANN accountability mechanism, the Parties to which are the Claimant and the Respondent. As such, it is not the forum for the resolution of potential disputes between the Claimant and the *Amici*, two (2) non-parties that are participating in this IRP as *amici curiae*, or of divergence and

potential disputes between the *Amici* and the Respondent by reason of the latter's actions or inactions in addressing the question of whether the DAA complies with the New gTLD Program Rules.

254. The Claimant's core claims against the Respondent in this IRP arise from the Respondent's failure to reject NDC's application for .WEB, disqualify its bids at the auction, and deem NDC ineligible to enter into a registry agreement with the Respondent in relation to .WEB because of NDC's alleged breaches of the Guidebook and Auction Rules.²³³ The Respondent's impugned conduct engages its Staff's actions or inactions in relation to allegations of non-compliance with the Guidebook and Auction Rules on the part of NDC, communicated in correspondence to the Respondent in August and September 2016, and the Staff's decision to move to delegate .WEB to NDC in June 2018 by proceeding to execute a registry agreement in respect of .WEB with that company; as well as the Board's decision not to pronounce upon these allegations, first in November 2016, and again in June 2018 when, to the knowledge of the Board, the .WEB contention set was taken off hold and the Staff put in motion the process to delegate the .WEB gTLD to NDC.
255. As already noted, the Claimant's core claims serve to support the Claimant's requests that the Panel disqualify NDC's bid for .WEB and, in exchange for a bid price to be specified by the Panel and paid by the Claimant, order the Respondent to proceed with contracting the Registry Agreement for .WEB with the Claimant.
256. The Claimant's core claims have been articulated with increasing particulars as these proceedings progressed. This, in the opinion of the Panel, is understandable in light of the manner in which the Respondent's defences have themselves evolved, most particularly the defence based on the Board's 3 November 2016 decision to defer consideration of the issues raised in connection with .WEB. This reason alone justifies rejection of the Respondent's contention that the Claimant failed to sufficiently plead a violation of the Respondent's Articles and Bylaws in connection with ICANN's post-auction investigation of Afiliás' allegations that NDC violated the Guidebook and Auction Rules. In any event,

²³³ See Afiliás' PHB, para. 247. See also Claimant's Reply, para. 16, where the Claimant describes its "principal claim".

the Panel considers that the Claimant's core claims are comprised within the broad allegations of breach made in the Amended Request for IRP.²³⁴

257. The Respondent's main defences are, first, that the Claimant's claims regarding the Respondent's actions or inactions in 2016 are time-barred. While reserving its position about the propriety of the DAA under the New gTLD Program Rules, the Respondent also denies that it was obligated to disqualify NDC, whether it be by reason of its alleged competition mandate or as a necessary consequence of a violation of the Guidebook or Auction Rules. The Respondent also contends that it complied with its Articles and Bylaws when it decided not to take any action regarding the .WEB contention set while accountability mechanisms in relation to .WEB were pending, and that the Panel should defer to the Board's reasonable business judgment in coming to that decision. As noted, the Respondent rejects as unauthorized under the Bylaws, the Claimant's requests that the Respondent be ordered to proceed with contracting the Registry Agreement for .WEB with the Claimant, at a bid price to be specified by the Panel.
258. The Panel begins its analysis by considering the Respondent's time limitations defence. The Panel then addresses the standard by which the Respondent's actions or inactions should be reviewed. Thereafter, the Panel turns to examining the Respondent's conduct against the backdrop of the entire chronology of events, and considers whether it was open to the Respondent, both its Staff and its Board, not to pronounce upon the DAA's alleged non-compliance with the Guidebook and Auction Rules following the Claimant's complaints, an inaction that endures to this day. The Panel then considers, in turn, the Claimant's Rule 7 Claim, and the scope of the Panel's remedial authority in light of its findings that the Respondent, as set out in these reasons, violated its Articles and Bylaws. The Panel concludes its analysis by designating the prevailing party, as required by Section 4.3(r) of the Bylaws, and determining the Claimant's cost claim.

²³⁴ See, e.g., Amended Request for IRP, para. 2.

B. The Respondent's Time Limitations Defence

1. Applicable Time Limitations Rule

259. Three (3) successive limitations regimes have been referred to as potentially relevant to determining the timeliness of the Claimant's claims in this IRP.
260. Prior to 1 October 2016, at a time when only Board actions could be the subject of an IRP, the Bylaws required that a request for independent review be filed within thirty (30) days of the posting of the Board's minutes relating to the challenged Board decision.²³⁵
261. New ICANN Bylaws came into force as of 1 October 2016. However, these did not contain any provision setting a time limitation for the filing of an IRP. Since the supplementary rules for IRPs in force at the time did not contain a time limitation provision either, it is common ground that, during the period from 1 October 2016 to 25 October 2018, IRPs were subject neither to a limitation period nor to a repose period.
262. The Respondent's time limitations defence is based on Rule 4 of the Interim Procedures which, inclusive of the footnote that forms part of the Rule, reads as follows:

4. Time for Filing³

An INDEPENDENT REVIEW is commenced when CLAIMANT files a written statement of a DISPUTE. A CLAIMANT shall file a written statement of a DISPUTE with the ICDR no more than 120 days after a CLAIMANT becomes aware of the material effect of the action or inaction giving rise to the DISPUTE; provided, however, that a statement of a DISPUTE may not be filed more than twelve (12) months from the date of such action or inaction.

In order for an IRP to be deemed to have been timely filed, all fees must be paid to the ICDR within three business days (as measured by the ICDR) of the filing of the request with the ICDR.

³ The IOT recently sought additional public comment to consider the Time for Filing rule that will be recommended for inclusion in the final set of Supplementary Procedures. In the event that the final Time for Filing procedure allows additional time to file than this interim Supplementary Procedure allows, ICANN committed to the IOT that the final Supplementary Procedures will include transition language that provides potential claimants the benefit of that additional time, so as not to prejudice those potential claimants.

²³⁵ See Bylaws (as amended on 11 February 2016), Ex. C-23, Article IV, Section 3.3.

263. This Rule 4 came into being as part the new Interim Procedures adopted by the Board on 25 October 2018. As set out in some detail in the Panel’s Decision on Phase I, this was the culmination of a development process within ICANN’s IOT that began on 19 July 2016, with the circulation to IOT members of a first draft of proposed Updated Supplementary Procedures, and concluded on 22 October 2018, when draft Interim Supplementary Procedures were sent to the Board for adoption.²³⁶
264. While the Interim Procedures were adopted on 25 October 2018, the first paragraph of their preamble provides that “[t]hese procedures apply to all independent review process proceedings filed after 1 May 2018.” Rule 2 of the Interim Procedures confirms the retroactive application of the Interim Procedures in two (2) ways: first, by providing that they apply to IRPs submitted to the ICDR after the Interim Procedures “go onto effect”; and second, by providing that IRPs commenced prior to the Interim Procedures’ “adoption” (on 25 October 2018) shall be governed by the procedures “in effect at the time such IRPs were commenced”. For IRPs commenced after 1 May 2018, this would point to the Interim Procedures.
265. Ms. Eisner acknowledged in her evidence that Rule 4 was the subject of considerable debate within the IOT. She also confirmed that by October 2018, “ICANN org”²³⁷ was anxious to get a set of procedures in place. Indeed, Ms. Eisner had noted during the IOT meeting held of 11 October 2018 that “we at ICANN org are getting nervous about being on the precipice of having an IRP filed”.²³⁸ It is recalled that on 10 October 2018, the day prior to this meeting, the Claimant had, in the context of its pending CEP, provided the Respondent’s in-house counsel with a draft of the Claimant’s Request for an IRP in connection with .WEB.²³⁹
266. Underlying the footnote to Rule 4 is the fact that the Interim Procedures were conceived as a provisional instrument, designed to apply until the Respondent, in accordance with the

²³⁶ See Decision on Phase I, paras. 139-171.

²³⁷ “ICANN org” is an expression used to refer to ICANN’s Staff and organization, as opposed to ICANN’s Board or its supporting organizations and committees. See Merits hearing transcript, 4 August 2020, p. 391:6-15 (Ms. Burr).

²³⁸ Merits hearing transcript, 5 August 2020, pp. 495 and 498; see also pp. 479-480 (Ms. Eisner).

²³⁹ See Decision on Phase I, para. 151, and Merits hearing transcript, 5 August 2020, p. 494 (Ms. Eisner).

applicable governance processes, will come to develop and adopt final supplementary procedures for IRPs. Specifically in relation to the introduction of a “Time for Filing” provision in the Interim Procedures, Ms. Eisner explained that the IOT:

[...] agreed at some point and finalized language on a footnote that would confirm that if there was a future change in a deadline for time for filing, that ICANN would work to make sure no one was prejudiced by that. [...]

The footnote that was included in the Rule 4 was about the change between the -- we are putting the interim rules into effect. And then if in the future a discussion where people were suggesting that there should be basically no statute of limitations on the ability to challenge an act of ICANN, if that were to be the predominant view, and what the Board put into effect that there would be some sort of stopgap measure put in so that anyone who was not able to file under the interim rules and the timing set out there but could have filed if the other rules, the broader rules had been in effect, that we would put in a stopgap to make sure that no one was prejudiced by that differentiation because we had agreed on a different timing for the final set.²⁴⁰

267. In its Post-Hearing Brief dated 12 October 2020, the Respondent advised that as of that date, final Supplementary Procedures had not been completed or adopted.²⁴¹

268. Having identified and placed in context the rule on which the Respondent relies in support of its time limitations defence, the Panel turns to consider the merits of that defence.

2. Merits of the Respondent’s Time Limitations Defence

269. It is the Respondent’s contention that the Claimant’s claim that ICANN had an unqualified obligation to disqualify NDC upon receiving the DAA in August 2016 is barred by the repose period of Rule 4 because the Claimant challenges actions or inactions that occurred in 2016, more than two (2) years before the Claimant filed its IRP in November 2018. The Respondent adds that the limitations period of Rule 4 also bars the Claimant’s claims because the Claimant was aware of the material effect of the alleged actions or inactions of ICANN by August and September 2016, as evidenced by its letters of 8 August 2016 and 9 September 2016, demanding that ICANN disqualify NDC.

270. The Claimant’s position is that its claims against the Respondent for violating its Articles

²⁴⁰ Merits hearing transcript, 5 August 2020, pp. 496-498 (Ms. Eisner).

²⁴¹ Respondent’s PHB, fn 103, p. 38.

and Bylaws, as opposed to its claims that NDC had violated the New gTLD Program Rules, accrued no earlier than on 6 June 2018, when the Respondent proceeded with the delegation process for .WEB with NDC,²⁴² and that even if the time limitations and repose periods were applicable to its claims against the Respondent, which the Claimant contends they are not, they would have been tolled by its CEP that lasted from 18 June 2018 to 13 November 2018.

271. The Panel has carefully reviewed the Claimant's August and September 2016 correspondence relied upon by the Respondent, and cannot accept the latter's contention that the claims asserted by Afilias in its 2016 letters to ICANN are the same as the claims asserted by the Claimant in this IRP. Whereas the Claimant's 2016 letters sought to demonstrate NDC's alleged violations of the New gTLD Program Rules, the Claimant's IRP, using these violations as a predicate, impugns the conduct of the Respondent itself in response to NDC's conduct. Stated otherwise, the Claimant's claims in this IRP concern not NDC's conduct, but rather the Respondent's actions or inactions in response to NDC's conduct.²⁴³
272. As amplified later in these reasons, when the Panel considers the Respondent's handling of the Claimant's complaints, the Panel does not accept, as urged by the Respondent, that the Claimant can be faulted for having waited for some form of determination by the Respondent before alleging in an IRP that the Respondent's actions or inaction violated its Articles and Bylaws. The Panel recalls that, in its responses to the Claimant's letters of 8 August 2016 and 9 September 2016, the Staff indicated, on 16 September 2016, that ICANN would pursue "informed resolution" of the questions raised by the Claimant and Ruby Glen,²⁴⁴ and, in ICANN's letter of 30 September 2016, that it would "continue to take Afilias' comments, and other inputs that [it] ha[d] sought, into consideration as [it] consider[ed] this matter."²⁴⁵

²⁴² *Ibid*, para. 179.

²⁴³ Claimant's PHB, para. 182.

²⁴⁴ ICANN's letter to Mr. Kane dated 16 September 2016 and attached Questionnaire, Ex. C-50.

²⁴⁵ ICANN's letter to Mr. Hemphill dated 30 September 2016 and attached Questionnaire, Ex. C-61.

273. The first of these letters attached a detailed Questionnaire designed to assist ICANN in evaluating the concerns raised by Afiliias and Ruby Glen, and the second represented in no uncertain terms that the Respondent's consideration of this matter was continuing. In such circumstances, there is force to the Claimant's contention that commencing contentious dispute resolution proceedings at that time would have interfered with the "informed resolution" that ICANN had represented it would undertake, and would likely have attracted an objection of prematurity.
274. The Panel also recalls, a fact that is not in dispute, that the Respondent did not communicate to the Claimant any view or determination in respect of the many questions raised in the Questionnaire attached to the Respondent's letter of 16 September 2016. As for the Board's decision in November 2016 to defer consideration of the complaints raised in relation to NDC's conduct, it is common ground that it was never communicated to the Claimant or otherwise made public, and that it was disclosed for the first time upon the filing of the Respondent's Rejoinder in this case, on 1 June 2020.
275. From November 2016 to the beginning of the year 2018, as seen already, the .WEB contention set was on hold by reason of the pendency of an accountability mechanism and the DOJ investigation. The situation evolved with the DOJ's decision to close its investigation on 9 January 2018, the closure of Donuts' CEP on 30 January 2018, and the expiration on 14 February 2018 of the 14-day period given to Ruby Glen to file an IRP. Shortly thereafter, the Claimant, on 23 February 2018, formally requested an update on ICANN's investigation of the .WEB contention set and requested documents by way of its First DIDP Request.²⁴⁶ The Claimant also requested that the Respondent take no action in regard to .WEB pending conclusion of this DIDP Request.
276. The Claimant was notified on 6 June 2018 that the Respondent had removed the .WEB contention set from its on-hold status.²⁴⁷ While the Claimant was still ignorant of any determination by the Respondent in respect of the concerns raised in August and

²⁴⁶ Dechert's letter to the Board dated 23 February 2018, Ex. C-78.

²⁴⁷ ICANN Global Support's email to Mr. Kane dated 7 June 2018, Ex. C-62, p. 1. Mr. Kane was in Australia at the time, which is why the date on the Afiliias' copy is 7 June 2018, although ICANN sent it on 6 June 2018.

September 2016, which were the subject of the Respondent’s Questionnaire of 16 September 2016, a necessary implication of the Respondent’s decision was that these concerns did not stand – or no longer stood – in the way of the delegation of .WEB to NDC. In the Panel’s opinion, this is when the Claimant’s complaints about NDC’s conduct crystallized into a claim against the Respondent. To quote from Rule 4, but recalling that in June 2018 it had not yet been adopted, this is when the Claimant “[became] aware of the material effect of the action or inaction giving rise to the DISPUTE”.

277. The Claimant commenced its CEP on 18 June 2018, twelve days after the removal of the .WEB contention set from its on-hold status. As already explained, potential IRP claimants are “strongly encouraged” to engage in this non-binding process for the purpose of attempting to narrow the Dispute, and an additional incentive to do so resides in their exposure to a cost-shifting decision if they fail to partake in a CEP and ICANN prevails in the IRP.²⁴⁸
278. The rules applicable to a CEP are described in an ICANN document dated 11 April 2013 (**CEP Rules**).²⁴⁹ The CEP Rules provide that, if the parties have failed to agree a resolution of all issues in dispute upon conclusion of the CEP, the potential IRP claimant’s time to file a request for independent review shall be extended for each day of the CEP but in no event, absent agreement, for more than fourteen (14) days.
279. The Claimant’s CEP was terminated by the Respondent on 13 November 2018. Consistent with the CEP Rules, the Respondent informed the Claimant that “ICANN will grant Afiliis an extension of time to 27 November 2018 (14 days following the close of CEP) to file an IRP”, adding that “this extension will not alter any deadlines that may have expired before the initiation of the CEP”.²⁵⁰ The Claimant commenced its IRP the next day, on 14 November 2018.
280. The Respondent has not challenged the application of the CEP Rules to the Claimant’s

²⁴⁸ Bylaws, Ex. C-1, Article 4, Section 4.3(e)(i)-(ii).

²⁴⁹ Cooperative Engagement Process Rules, 11 April 2013, Ex. C-121.

²⁵⁰ Exchange of emails between ICANN and Dechert, Ex. C-54.

CEP and the time for the filing of its IRP. In response to the Claimant's argument that the retroactive time limitations period set out in Rule 4 was tolled from 18 June 2018 to 13 November 2018, while its CEP was pending, the Respondent argued that the tolling was irrelevant because the limitations period had already long expired based on its submission that the Claimant's claims had accrued in August/September 2016, a submission that this Panel has rejected.

281. In sum, the Panel finds that the Claimant's core claims against the Respondent, as summarized above in paragraph 251 of this Final Decision, only accrued on 6 June 2018. Since the Claimant's CEP had the effect of tolling the time available to the Claimant to file an IRP until 27 November 2018, fourteen (14) days after closure of the CEP, the Claimant's IRP was timely and the Respondent's time limitations defence insofar as the Claimant's core claims are concerned must be rejected.

282. The Claimant has accused the Respondent of having enacted Rule 4 and given it retroactive effect in order to retroactively time bar its claims in this IRP. In support of this contention, the Claimant advances the following factual allegations:

- The Respondent only launched the solicitation of public comments concerning the addition of timing requirements to the draft procedures governing IRPs on 22 June 2018, shortly after Afiliás filed its CEP;
- In spite of the fact that the public comment period on proposed Rule 4 remained open, Rule 4 was included in the proposed Interim Procedures presented to the Board for approval on 25 October 2018;
- Having received a draft of the Claimant's IRP in the context of its CEP on 10 October 2018, the Respondent decided to give retroactive effect to the Interim Procedures to 1 May 2018, six (6) weeks prior to the initiation of the Claimant's CEP, with no carve-out for pending CEPs (of which there were several) or IRPs

(of which there was none); and

- Having terminated the Claimant’s CEP on 13 November 2018, and received its IRP on 14 November 2018, the Respondent was able to rely on the retroactive application of the Interim Procedures to support its Rule 4 time limitations defence.

283. In light of the Panel’s finding as to the accrual date of the Claimant’s core claims, it is not necessary further to consider these allegations. However, the Panel does wish to record its view that, from a due process perspective, the retroactive application of a time limitations provision is inherently problematic. A retroactive law changes the legal consequences of acts committed or the legal status of facts and relationships prior to the enactment of the law.²⁵¹ The potential for unfairness is apparent and thus, in many legal systems, there are restrictions on, and presumptions against, giving legal rules a retroactive effect.

284. Between 1 October 2016 and 25 October 2018, there was no time limitation for the filing of an IRP in respect of the Respondent’s actions or failures to act. Yet an IRP timely filed under the Bylaws, say on 18 June 2018, would, if Rule 4 of the Interim Procedures were given effect to, retroactively be barred and the claims advanced therein defeated with no consideration of their merits because of the retroactive application of the Interim Procedures adopted on 25 October 2018. The fact that only a single case, the Claimant’s IRP, was in fact affected by the retroactive application of the Interim Procedures only heightens the due process concern. The Panel recalls that under Section 4.3(n)(i) of the Bylaws, the rules of procedure for the IRP to be developed by the IOT “should apply fairly to all parties”.

C. Standard of Review

285. The standard of review applicable to an IRP under the Bylaws is provided in Section 4.3(i) of the Bylaws and Rule 11 of the Interim Procedures, which are in substance identical.

²⁵¹ David P. Currie, *The Constitution in the Supreme Court: The First Hundred Years, 1789-1888*, p. 41. See also Black’s Law Online Dictionary, 2nd ed., s.v. “retroactive statute”: <https://thelawdictionary.org/retroactive-statute/> (consulted on 7 February 2021): “a law that imposes a new obligation on past things or a law that starts from a date in the past.”

Section 4.3(i) of the Bylaws reads in relevant parts as follows:

(i) Each IRP Panel shall conduct an objective, *de novo* examination of the Dispute.

(i) With respect to Covered Actions, the IRP Panel shall make findings of fact to determine whether the Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws.

(ii) All Disputes shall be decided in compliance with the Articles of Incorporation and Bylaws, as understood in the context of the norms of applicable law and prior relevant IRP decisions.

(iii) For Claims arising out of the Board's exercise of its fiduciary duties, the IRP Panel shall not replace the Board's reasonable judgment with its own so long as the Board's action or inaction is within the realm of reasonable business judgment.

286. It is common ground that, except for claims potentially falling under sub-paragraph (iii) of Section 4.3(i), the Panel must conduct an objective, *de novo* examination of claims that actions or failures to act on the part of the Respondent violate its Articles or Bylaws, and make appropriate findings of fact in light of the evidence. The Parties therefore agree that this is the standard applicable to the Panel's review of actions or failures to act on the part of the Respondent's Staff.

287. There is profound divergence between the Parties as to the import of sub-paragraph (iii) of Section 4.3(i), relating to Claims arising out of the Board's exercise of its fiduciary duties. The Respondent argues that the effect of this rule is to incorporate the "business judgment rule" into the independent review of ICANN's Board action, a doctrine which the Respondent avers is recognized in California²⁵² and, according to the California Supreme Court, which "exists in one form or another in every American jurisdiction".²⁵³ More specifically, the Parties diverge both as to the scope of the carve-out made in Section 4.3 (i)(iii), and the question of whether the Board actions and inactions that are impugned by the Claimant involve the Board's exercise of its fiduciary duties.

288. These questions are addressed when the Panel comes to consider the merits of the Claimant's claims. For present purposes, it is noted that the Parties agree that, to the extent

²⁵² Respondent's PHB, para. 50.

²⁵³ *Landen v. La Jolla Shores Clubdominium Homeowners Ass'n*, 21 Cal. 4th 249, 257 (1999) (quoting *Frances T. v. Vill. Green Owners Ass'n*, 42 Cal. 3d 490, 507 n.14 (1986), RLA-13).

the Panel finds that the business judgment rule as it may have been incorporated in Section 4.3(i)(iii) of the Bylaws has any application in the present case, it refers to a “judicial policy of deference to the business judgment of corporate directors in the exercise of their broad discretion in making corporate decisions.”²⁵⁴

D. Merits of the Claimant’s Core Claims

289. While the Panel has found that the Claimant’s core claims against the Respondent crystallized on 6 June 2018, the Panel’s view is that a proper analysis of the Claimant’s claims requires an examination of the Respondent’s conduct – that of its Board, individual Directors, Officers and Staff – against the backdrop of the entire chronology of events leading to the Respondent’s decision of 6 June 2018. Before embarking on this examination, however, the Panel considers it useful to recall the key standards against which the Respondent has determined that its conduct should be assessed.

1. Relevant Provisions of the Articles and Bylaws

290. Article 2, paragraph III of the Respondent’s Articles reads, in part, as follows:

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

291. Under its Bylaws, the Respondent has committed to “act in a manner that complies with and reflects ICANN’s Commitments and respects ICANN’s Core Values”.²⁵⁵

292. The Respondent’s Commitments that are relied upon by the Claimant or appear germane to its claims, are expressed as follows in the Bylaws:

In performing its Mission, ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and

²⁵⁴ *Lee v. Interinsurance Exch.*, 50 Cal. App. 4th 694, 711 (1996) (quoting *Barnes v. State Farm Mut. Auto Ins. Co.*, 16 Cal. App. 4th 365, 378 (1993)).

²⁵⁵ Bylaws, Ex. C-1, Section 1.2.

open entry in Internet-related markets. Specifically, ICANN commits to do the following (each, a "**Commitment**," and collectively, the "**Commitments**"):

[...]

(v) Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties); and

(vi) Remain accountable to the Internet community through mechanisms defined in these Bylaws that enhance ICANN's effectiveness.²⁵⁶

293. As for ICANN's Core Values, which are to "guide the decisions and actions" of the Respondent, they include:

(iv) Introducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process;

(v) Operating with efficiency and excellence, in a fiscally responsible and accountable manner and, where practicable and not inconsistent with ICANN's other obligations under these Bylaws, at a speed that is responsive to the needs of the global Internet community;²⁵⁷

294. The Bylaws further provide that ICANN's Commitments and Core Values "are intended to apply in the broadest possible range of circumstances".²⁵⁸

295. Finally, under Article 3 of the Bylaws, entitled Transparency, the Respondent has committed that it and its constituent bodies:

[...] shall operate to the maximum extent possible in an open and transparent manner and consistent with procedures designed to ensure fairness, [...]²⁵⁹

296. Bearing the standards set out in those commitments and core values in mind, the Panel turns to consider the Respondent's conduct, beginning with the Claimant's complaints about the Respondent's pre-auction investigation.

2. Pre-Auction Investigation

297. The Claimant has criticized the Respondent's pre-auction investigation of the allegation

²⁵⁶ Bylaws, Ex. C-1, Section 1.2(a)(v)(vi).

²⁵⁷ *Ibid*, Section 1.2 (b) (v) and (vi).

²⁵⁸ *Ibid*, Section 1.2 (b) (c).

²⁵⁹ *Ibid*, Section 3.1.

by Ruby Glen that NDC had failed properly to update its application following an alleged change of ownership or control of NDC. This allegation was prompted by Mr. Rasco's email of 7 June 2016 to Mr. Nevett, where he stated that the "powers that be" had indicated there was no change in position and that NDC would not be seeking an extension of the auction date. The Claimant strenuously argues that Mr. Rasco's representations, first to an employee of ICANN's New gTLD Operations section, Mr. Jared Erwin,²⁶⁰ and then to the Ombudsman,²⁶¹ were both misleading (in the first case) and erroneous (in the second).

298. As regards the Respondent's pre-auction investigation – on which, in the opinion of the Panel, very little turns insofar as the Claimant's core claims are concerned – the Panel accepts the evidence of Ms. Willett that prior to the auction, the Respondent was unaware of Verisign's involvement in NDC's application. Having considered the witness and documentary evidence on this question, which is preponderant, the Panel finds that the allegation presented to the Respondent was one of change of control within NDC, that it was promptly investigated by Ms. Willett's team and the Respondent's Ombudsman, and that in light of the representations made by Mr. Rasco, it was reasonable for the Respondent to conclude, as Ruby Glen and the other applicants in the contention set were advised in Ms. Willett's letter of 13 July 2016, that the Respondent "found no basis to initiate the application change request process or postpone the auction."²⁶² The Panel therefore rejects the Claimant's contention that the Respondent violated its Bylaws by the manner in which it investigated and resolved the pre-auction allegations of change of control within NDC.

3. Post-auction Actions or Inactions

(i) Overview

299. The evidence leads the Panel to a different conclusion insofar as the post-auction actions and inactions of the Respondent are concerned. What the evidence establishes is that upon it being revealed that Verisign had entered into an agreement with NDC and provided funds

²⁶⁰ Exchanges between Messrs. Erwin and Rasco, Ms. Willett's witness statement, 31 May 2019, Ex. B.

²⁶¹ Exchanges between Messrs. LaHatte and Rasco, Mr. Rasco's witness statement, 30 May 2020, Ex. N, [PDF] p. 2.

²⁶² Ms. Willett's letter to members of the .WEB/.WEBS contention set dated 13 July 2016, Ex. C-44.

in support of NDC's successful bid for .WEB, questions were immediately raised by two (2) members of the .WEB contention set as to the propriety of NDC's conduct as a gTLD applicant in light of the New gTLD Program Rules. As explained later in these reasons, the Panel accepts that these questions, including the fundamental question of whether or not the DAA violates the Guidebook and the Auction Rules, are better left, in the first instance, to the consideration of the Respondent's Staff and Board. However, it needs to be emphasized that this deference is necessarily predicated on the assumption that the Respondent will take ownership of these issues when they are raised and, subject to the ultimate independent review of an IRP Panel, will take a position as to whether the conduct complained of complies with the Guidebook and Auction Rules. After all, these instruments originate from the Respondent, and it is the Respondent that is entrusted with responsibility for the implementation of the gTLD Program in accordance with the New gTLD Program Rules, not only for the benefit of direct participants in the Program but also for the benefit of the wider Internet community.

300. The evidence in the present case shows that the Respondent, to this day, while acknowledging that the questions raised as to the propriety of NDC's and Verisign's conduct are legitimate, serious, and deserving of its careful attention, has nevertheless failed to address them. Moreover, the Respondent has adopted contradictory positions, including in these proceedings, that at least in appearance undermine the impartiality of its processes.
301. In the paragraphs below, the Panel sets out its reasons for making those findings and reaching this conclusion.

(ii) The Claimant's 8 August and 9 September 2016 Letters

302. In the first of these two (2) letters, Mr. Hemphill, at the time, Afilias' Vice President and General Counsel, makes clear that while he has not been able to review a copy of the agreement(s) between NDC and Verisign, what has been made public about the arrangements between the two (2) companies raises sufficient concerns for Afilias to "request that ICANN promptly undertake an investigation" and "take appropriate action against NDC and its .WEB application for violations of the Guidebook, as we had

requested". Mr. Hemphill concludes his letter by urging the Respondent to stay any further action in relation to .WEB and, in particular, not to act upon any request for NDC or Verisign to enter into a registry agreement for .WEB with the Respondent.²⁶³

303. The Claimant's 9 September 2016 letter, noting that the Respondent had not responded to its earlier letter of 8 August, reiterated the request that the Respondent take no steps in relation to .WEB until ICANN, its Ombudsman, or its Board had reviewed NDC's conduct and determined whether or not to disqualify NDC's bid and reject its application. The letter then proceeds to explain, in detail, the reasons why, in the opinion of Afilias, the Respondent was obliged to disqualify NDC's application and proceed to contract for .WEB with Afilias. Specifically, Afilias articulated, by reference to the New gTLD Program Rules, the Articles and the Bylaws, why it considered that NDC had violated the Guidebook and Auction Rules and why ICANN was under a duty to contract with the next highest bidder in the auction. The Claimant concluded its letter by requesting a response by no later than 16 September 2016.²⁶⁴
304. The Claimant is not the only member of the contention set that raised questions, after the auction, about the propriety of Verisign's involvement in, and support for, the application of NDC. Contemporaneously with the Claimant's letters just reviewed, on 8 August 2016 Ruby Glen filed an Amended Complaint in the proceedings it had commenced in the US District Court prior to the auction. In its Amended Complaint, Ruby Glen questioned the legality of the auction for .WEB and sought an order enjoining the execution of a registry agreement pending resolution of its claims.
305. Before coming to the Questionnaire that the Respondent sent out on 16 September 2016, in part in response to Afilias' two (2) letters, the Panel recalls that in the meantime the Respondent had initiated a dialogue directly with Verisign, when outside counsel for the Respondent communicated by telephone with Verisign's outside counsel. The exact request that was made of Verisign's counsel remains unknown. However, it is undisputed that it was prompted by the Claimant's and Ruby Glen's complaints about the propriety of

²⁶³ Afilias' letter to Mr. Atallah dated 8 August 2016, Ex. C-49, pp. 1 and 3-4.

²⁶⁴ Afilias' letter to Mr. Atallah dated 9 September 2016, Ex. C-103.

NDC's arrangements with Verisign. Why the Respondent chose to request assistance at that point directly from Verisign, a non-applicant, rather than from NDC, is a question that was largely left unaddressed apart from outside counsel for the Respondent explaining, during the hearing held in connection with Afiliás' Application of 29 April 2020, that counsel knew Verisign's lead counsel from prior cases, and therefore decided to contact him.²⁶⁵

306. On 23 August 2016, in response to this request, Verisign's and NDC's counsel, unbeknownst to the Claimant and likely to the other members of the contention set (except NDC), filed a submission with the Respondent on behalf of NDC and Verisign in the form of an eight (8) page letter and five (5) attachments, one of which was the DAA. The letter states that it is being submitted in response to the request by ICANN's counsel for information regarding the agreement between NDC and Verisign relating to .WEB. Redacted - Third Party Designated Confidential Information

²⁶⁶ The *Amici's* counsel's letter was marked as "Highly Confidential – Attorneys' Eyes Only", while the attached DAA, as already mentioned, was marked as "Confidential Business Information – Do Not Disclose". The letter of 23 August 2016 sent on behalf of the *Amici* was not posted on ICANN's website or disclosed to the Claimant because of its sender's request that it be kept confidential.²⁶⁷

(iii) The 16 September 2016 Questionnaire

307. Turning to the Respondent's Questionnaire of 16 September 2016, the evidence reveals that it resulted from a collaborative effort by and between Ms. Willett, who prepared a first

²⁶⁵ Transcript of the 11 May 2020 Hearing, Ex. R-29, p. 20:12-15 (Mr. Enson: "The lawyers ... -- ICANN and Verisign had been adverse to one another on a number of occasions. The lawyers know each other well and there is nothing extraordinary or sinister about me picking up the phone to call Mr. Johnston about an issue like this.") See also the response from counsel for the Claimant: Merits hearing transcript, 3 August 2020, p. 53:1-10 (Claimant's Opening).

²⁶⁶ Arnold & Porter's letter to Mr. Enson dated 23 August 2016, Ex. C-102.

²⁶⁷ See Merits hearing transcript, 6 August 2020, pp. 690-691 (Ms. Willett).

draft of the questions, and Respondent's counsel. At that time, Ms. Willett held the position of Vice-President, gTLD Operations, Global Division of ICANN, reporting directly to Mr. Atallah.²⁶⁸ The Questionnaire was sent out to Afilias, Ruby Glen, NDC, and Verisign, under cover of a letter of even date signed by Ms. Willett.²⁶⁹ Ms. Willett was asked why the Questionnaire was not sent to all members of the contention set, but the question was objected to on the ground of privilege.

308. The Panel has already noted that Ms. Willett's cover letter refers in introduction to questions having been raised in various fora about whether NDC should have participated in the 27-28 July 2016 auction, and whether NDC's application should have been rejected. The letter goes on to note:

To help facilitate informed resolution of these questions, ICANN would find it useful to have additional information.

Accordingly, ICANN invites Ruby Glen, NDC, Afilias, and Verisign, Inc. (Verisign) to provide information and comment on the topics listed in the attached. Please endeavor to respond to all of the topics/questions for which you have information to do so. To allow ICANN promptly to evaluate these matters, please provide response [...] no later than 7 October 2016.²⁷⁰

309. Ms. Willett was asked what she meant when she stated that the Respondent was seeking information to facilitate "informed resolution". It was put to her that this "sounds like an investigation at the end of which ICANN would resolve the questions that had been raised". In response, Ms. Willett denied that she was undertaking an investigation, and stated that the responses eventually received to the Questionnaire were simply passed on to counsel.²⁷¹
310. The Questionnaire is six (6) pages long and lists twenty (20) "topics" on which the entities to which it was addressed are invited to comment. The introductory paragraph echoes Ms. Willett's cover letter in stating that "all responses to these questions will be taken into

²⁶⁸ Merits hearing transcript, 5 August 2020, p. 545 (Ms. Willett). Ms. Willett left the employ of the Respondent in December 2019.

²⁶⁹ ICANN's letter to Mr. Kane dated 16 September 2016 and attached Questionnaire, Ex. C-50.

²⁷⁰ *Ibid.*, p. 1 [emphasis added].

²⁷¹ Merits hearing transcript, 6 August 2020, pp. 696-697 (Ms. Willett) : "[...] I was not undertaking an investigation. ICANN counsel handled and administered the CEP process. So the responses which I received to these letters I passed along to counsel."

consideration in ICANN’s evaluation of the issues raised [...]”.²⁷²

311. As already noted, while the Respondent, NDC and Verisign had knowledge of the terms of the DAA at that time, Afilias and Ruby Glen did not. It seems to the Panel evident that this asymmetry of information put Afilias and Ruby Glen at a significant disadvantage in addressing the topics listed in the Questionnaire in the context of “ICANN’s evaluation of the issues raised”. By way of example, the first topic asked for evidence regarding whether ownership or control of NDC changed after NDC applied for .WEB. The Respondent, NDC and Verisign were able to comment on the alleged change of ownership or control resulting from the contractual arrangements between the *Amici* by reference to the actual terms of the DAA. However, Afilias and Ruby Glen were not.
312. Other topics in the Questionnaire would attract very different answers depending on whether the responding party had knowledge of the terms of the DAA. By way of examples:

4. In his 8 August 2016, letter, Scott Hemphill stated: “A change in control can be effected by contract as well as by changes in equity ownership.” Do you think that an applicant’s making a contractual promise to conduct particular activities in which it is engaged in a particular manner constitutes a “change in control” of the applicant? Do you think that compliance with such a contractual promise constitutes such a change in control? Please give reasons.

5. Do you think that AGB Section 1.2.7 requires an applicant to disclose to ICANN all contractual commitments it makes to conduct its affairs in particular ways? If not, in what circumstances (if any) would disclosure be required? [...]

7. Do you think that changes to an applicant’s financial condition that do not negatively reflect on an applicant’s qualifications to operate the gTLD should be deemed material? If so, why? Do you think that an applicant’s obtaining a funding commitment from a third party to fund bidding at auction negatively affects that applicant’s qualifications to operate the gTLD? Please explain why, describing your view of the relevance of (a) the funding commitment the applicant received and (b) the consideration the applicant gave to obtain that commitment (e.g., a promise to repay; a promise to use a particular backend provider; an option to receive some ownership interest in the applicant in the future; some promise about how the gTLD will be operated).[...]

9. Do you think that requiring applicants to disclose funding commitments (whether through loans, contributions from affiliated companies, or otherwise) they obtain for auction bids would help or harm the auction process? Would a requirement that applicants disclose their funding arrangements create problems for applicants (for example, making funding commitments harder to obtain)? To what extent, if any, do you think scrutinizing such arrangements (beyond determining whether they negatively reflect on an applicant’s

²⁷² ICANN’s letter to Mr. Kane dated 16 September 2016 and attached Questionnaire, Ex. C-50, p. 2 [emphasis added].

qualifications) would be within ICANN's proper mission? Would required disclosure of applicants' funding sources pose any threat to robust competition?

313. Another noteworthy feature of the Questionnaire is that while it contains many references to Mr. Hemphill's letters, it does not refer to the letter of 23 August 2016 from counsel for the *Amici*, nor in terms to the DAA. This was because one and the other had been marked confidential when submitted to the Respondent. Ms. Willett was asked about ICANN's practice when presented with a request to keep correspondence confidential:

[...] our practice was that we respected those requests for confidentiality and we did not post those -- such correspondences, with one exception.

At some point if some other party asked for something to be published or it became desirable and relevant to something else, I recall, again, it's been years, so I don't recall a specific example, but as a general practice, I recall that ICANN might ask the sender if it would be possible to publish a letter, but we respected their requests for confidential correspondence.²⁷³

314. The Panel is of the view that the Respondent could have, and ought to have requested Verisign and NDC for authorization to disclose the DAA to the other addresses of its Questionnaire, be it on an "external counsel's eyes only" basis. There is no evidence that this possibility was explored. It seems to the Panel that in the context of an information gathering exercise such as that in which the Respondent chose to engage with its Questionnaire, it would have been, to quote Ms. Willett's evidence, both "desirable" and "relevant" to do so. The Panel also believes that ICANN's evaluation of the issues would have been better informed had Afiliias and Ruby Glen been given an opportunity to know, and address directly, the arguments advanced on behalf of the *Amici* in response to the concerns they had raised. At the very least, the Respondent could have disclosed that the Questionnaire had been prepared with knowledge of the terms of the DAA, which would have given interested parties an opportunity to seek to obtain a copy of the agreement, either voluntarily by requesting it from the *Amici*, or through compulsion by available legal means.
315. The foregoing leads the Panel to find that the preparation and issuance of the Respondent's Questionnaire in the circumstances just reviewed violated the Respondent's commitment,

²⁷³ Merits hearing transcript, 6 August 2020, pp. 690-691 (Ms. Willett).

under the Bylaws, to operate in an open and transparent manner and consistent with procedures designed to ensure fairness.

316. As noted, Afilias, NDC and Verisign forwarded responses to the Questionnaire, but Ruby Glen did not. Ms. Willett testified that she passed on the responses she received to ICANN's legal team, without undertaking her own analysis. She was not sure what counsel did with them.²⁷⁴ As for any external follow-up, it is common ground that no feedback whatsoever was given to the Claimant of the Respondent's evaluation of these responses.

(iv) The Respondent's Letter of 30 September 2016

317. In the meantime, on 30 September 2016, Mr. Atallah, on behalf of the Respondent, acknowledged receipt of Afilias' 8 August and 9 September 2016 letters and, as found by the Panel when considering the Respondent's time limitations defence, represented in explicit terms that the Respondent's consideration of this matter was continuing. It bears noting that in 2016, Mr. Atallah was President of the Respondent's Global Domains Division, reporting to the CEO, and was the person responsible for overseeing the administration of the New gTLD Program.²⁷⁵

(v) Findings as to the Seriousness of the Issues Raised by the Claimant, and the Respondent's Representation that It Would Evaluate Them

318. In the Panel's opinion, the implication of the Respondent's decision to prepare and send out its 16 September 2016 Questionnaire, and of Mr. Atallah's letter of 30 September 2016 in response to the Claimant's letters of 8 August and 9 September 2016, was that the questions raised by the Claimant and Ruby Glen in connection with NDC's conduct and the latter's arrangements with Verisign were serious and deserving of the Respondent's consideration. This was admitted by the Respondent in its pleadings in this IRP, where the

²⁷⁴ Merits hearing transcript, 6 August 2020, pp. 719-720 (Ms. Willett).

²⁷⁵ Merits hearing transcript, 7 August 2020, pp. 917-918 (Mr. Disspain).

Respondent averred:

[...] ...determining that NDC violated the Guidebook is not a simple analysis that is answered on the face of the Guidebook. There is no Guidebook provision that squarely addresses an arrangement like the DAA. A true determination of whether there was a breach of the Guidebook requires an in-depth analysis and interpretation of the Guidebook provisions at issue, their drafting history to the extent it exists, how ICANN has handled similar situations, and the terms of the DAA. This analysis must be done by those with the requisite knowledge, expertise, and experience, namely ICANN.²⁷⁶

319. In making its finding as to the seriousness of the questions raised by the Claimant, the Panel is mindful of Ms. Willett’s evidence when asked, in cross-examination, whether she considered that the concerns that Afiliis had raised were serious. Her answer was that she “considered them to be sour grapes”, and she admitted that she may have shared that view with others within ICANN.²⁷⁷ However, Ms. Willett having testified that she never even read the DAA when these events were unfolding, nor had she read the 23 August 2016 letter sent to the Respondent on behalf of the *Amici*, the Panel must conclude that her stated view was more in the nature of a personal impression than a considered opinion. Moreover, in all appearance her impression was not shared by those who invested time in assisting her preparing the Questionnaire, or by Mr. Atallah who subsequently confirmed that ICANN was continuing to consider the questions raised by the Claimant. In any event, and as just seen, it is not the position formally adopted by the Respondent in this IRP.
320. The questions raised by the Claimant that are, in the opinion of the Panel, serious and deserving of the Respondent’s consideration, include the following, which the Panel merely cites as examples:
- Whether, in entering into the DAA, NDC violated the Guidebook and, more particularly, the section providing that an “Applicant may not resell, assign, or transfer any of applicant’s rights or obligations in connection with the application”.
 - Whether the execution of the DAA by NDC constituted a “change in circumstances

²⁷⁶ Respondent’s Rejoinder, para. 82.

²⁷⁷ Merits hearing transcript, 6 August 2020, p. 746 (Ms. Willett).

that [rendered] any information provided in the application false and misleading”.

- Whether by entering into the DAA after the deadline for the submission of applications for new gTLDs, and by agreeing with NDC provisions designed to keep the DAA strictly confidential, Verisign impermissibly circumvented the “roadmap” provided for applicants under the New gTLD Program Rules, and in particular the public notice, comment and evaluation process contemplated by these Rules.

321. The Panel expresses no view on the answers that should be given to those questions and the other questions arising from the execution of the DAA by NDC and Verisign, other than to reiterate, as acknowledged by the Respondent, that they are deserving of careful consideration.

322. The Panel has no hesitation in finding, based on the above, that that the Respondent represented by its conduct that the questions raised by the Claimant and “others in the contention set” were worthy of the Respondent’s consideration, and that the Respondent would consider, evaluate, and seek informed resolution of the issues arising therefrom. By reason of this conduct on the part of the Respondent, the Panel cannot accept the Respondent’s contention that there was nothing for the Respondent to consider, decide or pronounce upon in the absence of a formal accountability mechanism having been commenced by the Claimant. The fact of the matter is that the Respondent *represented* that it would consider the matter, and made that representation at a time when Ms. Willett confirmed the Claimant had no pending accountability mechanism.²⁷⁸ Moreover, since the Respondent is responsible for the implementation of the New gTLD Program in accordance with the New gTLD Program Rules, it would seem to the Panel that the Respondent itself had an interest in ensuring that these questions, once raised, were addressed and resolved. This would be required not only to preserve and promote the integrity of the New gTLD

²⁷⁸ Merits hearing transcript, 6 August 2020, p. 745 (Ms. Willett).

Program, but also to disseminate the Respondent’s position on those questions within the Internet community and allow market participants to act accordingly.

(vi) The November 2016 Board Workshop

323. The Panel comes to the November 2016 Workshop session at which “the Board chose not to take any action at that time regarding .WEB because an Accountability Mechanism was pending regarding .WEB.”²⁷⁹
324. The existence of this November 2016 Workshop was revealed for the first time in the Respondent’s Rejoinder, filed on 1 June 2020. For example, no mention of it is made in the chronology of events contained in the Respondent’s Response,²⁸⁰ where it was merely pleaded, with no reference to the workshop session, that the Board had not yet had an opportunity to fully address the issues being pursued by Afiliis in this IRP and that “[d]eferring such consideration until this Panel renders its final decision is well within the realm of reasonable business judgment.”²⁸¹
325. The Panel had the benefit of hearing the evidence of two (2) witnesses who were in attendance at the November 2016 Workshop: Mr. Disspain, a long-standing member of ICANN’s Board, and Ms. Burr, who attended the workshop as an observer shortly before being herself appointed to the Board. Both of these witnesses are intimately familiar with the Respondent and its processes, and both testified openly and credibly.
326. This is how Mr. Disspain described the November 2016 Workshop session in his witness statement:

10. In November 2016, the Board received a briefing from ICANN counsel on the status of, and issues being raised regarding, .WEB. The communications during that session, in which ICANN’s counsel, John Jeffrey (ICANN’s General Counsel) and Amy Stathos (ICANN’s Deputy General Counsel), were integrally involved, are privileged and, thus, I will not disclose details of those discussions so as to avoid waiving the privilege. I recall that, prior to this session, the Board received Board briefing materials directly from ICANN’s counsel that set forth relevant information about the disputes regarding .WEB, the parties’ legal and factual contentions and a set of options the Board could consider.

²⁷⁹ Respondent’s Rejoinder, paras. 40-41.

²⁸⁰ Respondent’s Response, paras. 40-54.

²⁸¹ Respondent’s Response, para. 66.

During the session, Board members discussed these topics and asked questions of, and received information and advice from, ICANN’s counsel.

11. At the November 2016 session, the Board chose not to take any action at that time regarding the claims arising from the .WEB auction, including the claim that, by virtue of the agreement between Verisign and NDC, NDC had committed violations of the Applicant Guidebook which merited the disqualification of its application for .WEB and the rejection of its winning bid. Given the Accountability Mechanisms that had already been initiated over .WEB, and given the prospect of further Accountability Mechanisms and legal proceedings, the Board decided to await the results of such proceedings before considering and determining what action, if any, to take at that time. [...]

327. In the course of his cross-examination, Mr. Disspain had the opportunity to add the following to the evidence set out in his witness statement:

- The workshop session of 3 November 2016 was separate and distinct from the actual Board meeting, which took place on 5 November 2016.²⁸²
- The session was attended by a significant number of Board members, in his estimation more than 50%.²⁸³ Also in attendance were ICANN’s CEO, its in-house lawyers, and likely Mr. Atallah.²⁸⁴
- The letters that Afiliis had sent Mr. Atallah were known to those in attendance and “would have been part of the briefing”;²⁸⁵ the Questionnaire prepared by ICANN in response to these letters was also known.²⁸⁶ However, the DAA, the 23 August 2016 letter sent on behalf of the *Amici*, and the Questionnaire were not part of the briefing materials.²⁸⁷

²⁸² Merits hearing transcript, 7 August 2020, pp. 918-919 (Mr. Disspain).

²⁸³ *Ibid.*, p. 923 (Mr. Disspain).

²⁸⁴ Merits hearing transcript, 7 August 2020, p. 924 (Mr. Disspain).

²⁸⁵ Merits hearing transcript, 7 August 2020, p. 917 (Mr. Disspain).

²⁸⁶ Merits hearing transcript, 7 August 2020, p. 928 (Mr. Disspain).

²⁸⁷ Merits hearing transcript, 7 August 2020, pp. 930-931 (Mr. Disspain).

- There was a full and open discussion, that likely lasted more than fifteen (15) minutes.
- Rather than “proactively decide” or “agree” its course of action, the Board “made a choice” to follow its longstanding practice of not doing anything when there is a pending outstanding accountability mechanism.²⁸⁸
- The Board made this choice without the need for a vote, straw poll or show of hands.²⁸⁹

328. Ms. Burr explained that Board workshops are informal working sessions. A quorum is not required, attendance is not taken, nor are minutes prepared or resolutions passed.²⁹⁰

329. It is common ground that the choice, or decision, made by the Board at its November 2016 Workshop session was not communicated to Afilias or otherwise made public. In response to a question from the Panel, Mr. Disspain indicated that the question of whether the Board’s 3 November 2016 decision would or would not be communicated to the members of the .WEB contention set was not discussed at the workshop session.²⁹¹ Indeed, Mr. Disspain only became aware through his involvement in this IRP that the November 2016 Board decision to defer consideration of the issues raised in relation to .WEB was only communicated to the Claimant – and made public – when it was revealed in the Respondent’s Rejoinder.

330. Mr. Disspain was invited by the Panel to confirm that after the November 2016 Board workshop, he knew that the question of whether NDC’s bid was compliant with the New gTLD Program Rules had been raised by Afilias and was a “pending question, one on which the Board had not pronounced and had decided not to address.” [emphasis added]

²⁸⁸ Merits hearing transcript, 7 August 2020, pp. 938-939 (Mr. Disspain).

²⁸⁹ Merits hearing transcript, 7 August 2020, p. 935 (Mr. Disspain).

²⁹⁰ Merits hearing transcript, 4 August 2020, pp. 282-286 (Ms. Burr).

²⁹¹ Merits hearing transcript, 7 August 2020, p. 975 (Mr. Disspain).

Mr. Disspain provided this confirmation. The Panel can safely assume that what was true for Mr. Disspain was equally true for his fellow Board members who were in attendance at the workshop.

331. The Respondent urges that it was not a violation of the Respondent's Bylaws for the Board, on 3 November 2016, to defer consideration of the complaints that had been raised in relation to NDC's application and auction bids for .WEB. It is common ground that there were Accountability Mechanisms in relation to .WEB pending at the time, and it seems to the Panel reasonable for the Board to have decided to await the outcome of these proceedings before considering and determining what action, if any, it should take. The Panel notes that it reaches that conclusion without needing to rely on the provisions of Section 4.3(i)(iii) of the Bylaws, and determining whether or not that decision involved the Board's exercise of its fiduciary duties.
332. The Panel does find, however, that it was a violation of the commitment to operate "in an open and transparent manner and consistent with procedures to ensure fairness"²⁹² for the Respondent to have failed to communicate the Board's decision to the Claimant. As noted already, the Respondent had clearly represented in its letters of 16 and 30 September 2016 that it would evaluate the issues raised in connection with NDC's application and auction bids for .WEB. Since the Board's decision to defer consideration of these issues contradicted the Respondent's representations, it was incumbent upon the Respondent to communicate that decision to the Claimant.

(vii) The Respondent's Decision to Proceed with Delegation of .WEB to NDC in June 2018

333. Mr. Disspain confirmed that by early 2018, the situation as described in paragraph 327 above "remained unchanged."²⁹³ That is, the question of whether NDC's bid, post-DAA, was compliant with the New gTLD Program Rules had been raised and remained a pending question on which the Board had yet to pronounce. The extent to which the Respondent's

²⁹² See Bylaws Ex. C-1, Art. 3.

²⁹³ Merits hearing transcript, 7 August 2020, pp. 976-977 (Mr. Disspain).

Staff had, by early 2018, progressed in their consideration of the questions that had been raised by the Claimant, if at all, is unknown. However, the evidence establishes that no determination of these questions was communicated to the Claimant, and that neither those questions nor any Staff position in relation thereto were brought back to the Board for its consideration. Ms. Willett explained in the course of her cross-examination that the on-hold status of an application or contention set does not mean “that all work ceases”, or that the Respondent is prevented from continuing to gather information.²⁹⁴ Hence, the fact that the contention set was on hold throughout the period from November 2016 to June 2018 would not justify the lack of progress in evaluating the issues that had been raised in connection with .WEB.

334. This brings the Panel to considering the Respondent’s decision to put the .WEB contention set “off hold” on 6 June 2018, the day after Afiliat’s Reconsideration Request 18-7 was denied.²⁹⁵ As seen, this immediately set back in motion the Respondent’s internal process leading to the execution of a registry agreement. On 12 June 2018, Ms. Willett and other ICANN staff approved a draft registry agreement for .WEB; the registry agreement was forwarded for execution to NDC on 14 June 2018; the agreement was promptly signed and returned to ICANN and, on the same day, ICANN’s Staff approved executing the .WEB Registry Agreement with NDC on behalf of ICANN.
335. In the opinion of the Panel, the Respondent’s decision to move to delegation without having pronounced on the questions raised in relation to .WEB was inconsistent with the representations made in Ms. Willett’s letter of 16 September 2016, the text in the introduction to the attached Questionnaire,²⁹⁶ and Mr. Atallah’s letter of 30 September 2016.²⁹⁷ The Panel also finds this conduct to be inconsistent with the Board’s decision of 3 November 2016 which, while it deferred consideration of the .WEB issues, nevertheless acknowledged that they were deserving of consideration, a position reiterated

²⁹⁴ Merits hearing transcript, 6 August 2020, pp. 697-698 (Ms. Willett).

²⁹⁵ See above, para. 117.

²⁹⁶ ICANN’s letter to Mr. Kane dated 16 September 2016 and attached Questionnaire, Ex. C-50.

²⁹⁷ ICANN’s letter to Mr. Hemphill dated 30 September 2016, Ex. C-61.

by the Respondent in this IRP.

336. Mr. Disspain testified about the Respondent's decision to put the contention set off hold in June 2018. While he had made the point in his witness statement that this was a decision made by ICANN's Staff,²⁹⁸ he confirmed at the hearing that the Board was aware, ahead of time, that the .WEB contention set would be put off hold. He added, however, that he and his fellow Board members fully expected the Claimant to make good on its promise to initiate an IRP, which would result in the contention set being put back on hold.²⁹⁹
337. Mr. Disspain was asked by the Panel what would the Board have done had the Claimant, contrary to his and his colleagues' expectation, *not* initiated an IRP. Might that not have resulted in a registry agreement for .WEB being signed by the Staff on behalf of the Respondent without the Board having the opportunity to address the questions it had chosen to defer in November 2016? Mr. Disspain, understandably, did not want to speculate as to what the Board would have done.³⁰⁰ However, when shown internal correspondence evidencing that signature of the registry agreement for .WEB on behalf of ICANN had in fact been approved by ICANN's Staff after receipt of the executed copy of the agreement by NDC, he did confirm that Board approval is not required for the execution of a registry agreement by ICANN.³⁰¹ Thus, clearly, a registry agreement with NDC for .WEB could have been executed by ICANN's Staff and come into force without the Board having pronounced on the propriety of the DAA under the Guidebook and Auction Rules.
338. In the course of her examination, Ms. Willett was asked the following hypothetical question:

[PANEL MEMBER]: [...] If [...] an applicant had failed to respect the guidebook, but there had been no accountability mechanism to complain about that noncompliance, would you, by reason of the absence of an accountability mechanism, have sent a draft Registry Agreement for execution?

²⁹⁸ Mr. Disspain's witness statement, 1 June 2020, para. 13.

²⁹⁹ Merits hearing transcript, 7 August 2020, pp. 978-980 (Mr. Disspain).

³⁰⁰ *Ibid.*, pp. 981-982 (Mr. Disspain).

³⁰¹ *Ibid.*, pp. 1002-1004 (Mr. Disspain).

THE WITNESS: No, I don't believe we would have. If we determined that an applicant had violated the terms of the guidebook, I don't believe that my team and I would have given our approvals to proceed with contracting.³⁰²

339. In the Panel's view, Ms. Willett's evidence in answer to this question reflects the kind of ownership of compliance issues with the New gTLD Program Rules that the Respondent did not display in its dealing with the concerns raised in connection with NDC's arrangements with Verisign.
340. The Panel observes that the Respondent's Staff's failure to take a position on the question of whether the DAA complies with the New gTLD Program Rules before moving to delegation stands in contrast with the resolution that was brought to the pre-auction allegation of change of control within NDC, which had also been raised, initially, in correspondence. Ms. Willett confirmed in her evidence that the Respondent's pre-auction investigation was prompted by Ruby Glen's email of 23 June 2016.³⁰³ Once the investigation was completed, Ms. Willett informed Ruby Glen of ICANN's decision³⁰⁴ and advised Ruby Glen that if dissatisfied with the decision, it could invoke ICANN's accountability mechanisms.³⁰⁵ No such decision was made by ICANN's Staff in relation to the issues raised by the Claimant that could have formed the basis for a formal accountability mechanism, in the context of which positions would have been adopted, battle lines would have been drawn, and an adversarial process such as an IRP would have resulted in a reasoned decision binding on the parties.
341. What the Panel has described as a failure on the part of the Respondent to take ownership of the issues arising from the concerns raised by the Claimant and Ruby Glen finds expression in the Respondent's submission in this IRP that the dispute arising out of NDC's arrangement with Verisign is in reality a dispute between the Claimant and the *Amici*. For example, the Respondent writes in its Response:

³⁰² Merits hearing transcript, 6 August 2020, pp. 749-750 (Ms. Eisner).

³⁰³ Merits hearing transcript, 6 August 2020, p. 617 (Ms. Willett).

³⁰⁴ See Ms. Willett's letter to members of the .WEB/.WEBS contention set dated 13 July 2016, Ex. C-44.

³⁰⁵ Merits hearing transcript, 6 August 2020, pp. 621-622 (Ms. Willett).

[...] the Guidebook breaches that Afilias alleges are the subject of good faith dispute by NDC and Verisign, both of which are seeking to participate in this IRP pursuant to their *amicus* applications. [...] While Afilias' Amended IRP Request is notionally directed at ICANN, it is focused exclusively on the conduct of NDC and Verisign, to which NDC and Verisign have responses. [...]³⁰⁶

342. Another example can be found in the Respondent's post-hearing brief where it is stated:

The testimony at the hearing established that there is a good-faith and fundamental dispute between *Amici* and *Afilias* about whether the DAA violated the Guidebook or Auction Rules, meaning that reasonable minds could differ on whether NDC is in breach of either and, if so, whether this qualification is the appropriate remedy. Accordingly, Afilias' additional argument that ICANN can only exercise its discretion reasonably by disqualifying NDC must be rejected.³⁰⁷

343. It may be fair to say, as averred in the Respondent's Response, that "ICANN has been caught in the middle of this dispute between powerful and well-funded businesses".³⁰⁸ However, in the Panel's view, it is not open to the Respondent to add, as it does in the same sentence of its Response, "[and ICANN] has not taken sides", as if the Respondent had no responsibility in bringing about a resolution of the dispute by itself taking a position as to the propriety of NDC's arrangements with Verisign.

344. In the opinion of the Panel, there is an inherent contradiction between proceeding with the delegation of .WEB to NDC, as the Respondent was prepared to do in June 2018, and recognizing that issues raised in connection with NDC's arrangements with Verisign are serious, deserving of the Respondent's consideration, and remain to be addressed by the Respondent and its Board, as was determined by the Board in November 2016. A necessary implication of the Respondent's decision to proceed with the delegation of .WEB to NDC in June 2018 was some implicit finding that NDC was not in breach of the New gTLD Program Rules and, by way of consequence, the implicit rejection of the Claimant's allegations of non-compliance with the Guidebook and Auction Rules. This is difficult to reconcile with the submission that "ICANN has taken no position on

³⁰⁶ See Respondent's Response, para. 63.

³⁰⁷ Respondent's PHB, para. 90 [emphasis added].

³⁰⁸ Respondent's Response, para. 4.

whether NDC violated the Guidebook”.³⁰⁹

345. The same can be said of the Respondent taking the position, shortly after Afilias filed its IRP, that it would only keep the .WEB contention set on hold until 27 November 2018, so as to allow the Claimant to file a request for interim relief, barring which the Respondent would take the contention set off hold.³¹⁰ It seems to the Panel that the Respondent was once again adopting a position that could have resulted in .WEB being delegated to NDC without the Board having determined whether NDC’s arrangements with Verisign complied within the New gTLD Program Rules.
346. The Panel also finds it contradictory for the Respondent to assert in pleadings before this Panel that the Respondent has not yet considered the Claimant’s complaints, having represented to the Emergency Panelist earlier in these proceedings that ICANN “ha[d] evaluated these complaints” and that the “time ha[d] therefore come for the auction results to be finalized and for .WEB to be delegated so that it can be made available to consumers”.³¹¹
347. In sum, the Panel finds that it was inconsistent with the representations made to the Claimant by ICANN’s Staff, and the rationale of the Board’s decision, in November 2016, to defer consideration of the issues raised in relation to NDC’s application for .WEB, for the Respondent’s Staff, to the knowledge of the Respondent’s Board, to proceed to delegation without addressing the fundamental question of the propriety of the DAA under the New gTLD Program Rules. The Panel finds that in so doing, the Respondent has violated its commitment to make decisions by applying documented policies objectively and fairly.
348. As a direct result of the foregoing, the Panel has before it a party – the Claimant – attacking a decision – the Respondent’s failure to disqualify NDC’s application and auction bids – that the Respondent insists it has not yet taken. Moreover, the Panel finds itself in the

³⁰⁹ Respondent’s Rejoinder, para. 81.

³¹⁰ See Decision on Phase I, para. 40.

³¹¹ ICANN’s Opposition to Afilias Domains No. 3 LTD.’s Request for Emergency Panelist and Interim Measures of Protection, para. 3.

unenviable position of being presented with allegations of non-compliance with the New gTLD Program Rules in circumstances where the Respondent, the entity with primary responsibility for this Program, has made no first instance determination of these allegations, whether through actions of its Staff or Board, and declines to take a position as to the propriety of the DAA under the Guidebook and Auction Rules in this IRP. The Panel addresses these peculiar circumstances further in the section of this Final Decision addressing the proper relief to be granted.

(viii) Other Related Claims

349. In addition to what the Panel has described as the Claimant's core claims, the Claimant has advanced a number of related claims, including that the Respondent violated its Articles and Bylaws through its disparate treatment of Afilias and Verisign, and by failing to enable and promote competition in the DNS.
350. As regards the allegation of disparate treatment, it rests for the most part on facts already considered by the Panel in analysing the Claimant's core claims, such as turning to Verisign rather than NDC to obtain information about NDC's arrangements with Verisign, allowing for asymmetry of information to exist between the recipients of the 16 September 2016 Questionnaire, delaying providing a response to Afilias' letters of 8 August and 9 September 2016, submitting Rule 4 for adoption in spite of it being the subject of an ongoing public comment process, and making that rule retroactive so as to encompass the Claimant's claims within its reach. Accordingly, the Panel does not consider it necessary, based on the allegation of disparate treatment, to add to its findings in relation to the Claimant's core claims.
351. Turning to the claim that the Respondent failed to enable and promote competition in the DNS, it was summarized in the Claimant's PHB as the contention that "to the extent ICANN has discretion regarding the enforcement of the New gTLD Program Rules, ICANN may not exercise its discretion in a manner that would be inconsistent with its competition mandate (or with its other Articles and Bylaws)."³¹² As seen, the Respondent

³¹² Claimant's PHB, para. 145.

has not as yet exercised whatever discretion it may have in enforcing the New gTLD Program Rules in relation to .WEB, and therefore this claim, as just summarized, appears to the Panel to be premature.

352. For reasons expressed elsewhere in this Final Decision, the Panel is of the opinion that it is for the Respondent to decide, in the first instance, whether NDC violated the Guidebook and Auction Rules and, assuming the Respondent determines that it did, what consequences should follow. Likewise, the Respondent is invested with the authority to approve an eventual transfer of a possible registry agreement for .WEB from NDC to Verisign, which it may or may not be called upon to exercise depending on whether NDC's application is rejected and its bids disqualified. That said, and even though it is not strictly necessary to decide the question, the Panel accepts the submission that ICANN does not have the power, authority, or expertise to act as a competition regulator by challenging or policing anticompetitive transactions or conduct. Compelling evidence to that effect was presented by Ms. Burr and Mr. Kneuer, supported by Mr. Disspain, and it is consistent with a public statement once endorsed by the Claimant, in which it was asserted:

While ICANN's mission includes the promotion of competition, this role is best fulfilled through the measured expansion of the name space and the facilitation of innovative approaches to the delivery of domain name registry services. *Neither ICANN nor the GNSO have the authority or expertise to act as anti-trust regulators.* Fortunately, many governments around the world do have this expertise and authority, and do not hesitate to exercise it in appropriate circumstances.³¹³

353. As noted in the History of the Proceedings section of this Final Decision,³¹⁴ the Parties came to the understanding that it would be for this Panel to determine the Claimant's Request for Emergency Interim Relief upon the Respondent agreeing that the .WEB gTLD contention set would remain on hold until the conclusion of this IRP. For the reasons set out in the section of this Final Decision analysing the Claimant's cost claim,³¹⁵ the Panel is of the view that the Claimant's Request for Emergency Interim Relief was well founded, and that it should be granted with effect until such time as the Respondent has considered

³¹³ Registry Operators' Submission Re: Objections to the Proposed Versign Settlement, Ex. R-21, p. 8 [emphasis added].

³¹⁴ See above, para. 40.

³¹⁵ See below, paras. 402-407.

the present Final Decision.

354. As regards the Donuts transaction of 29 December 2020, the Panel does not consider it relevant to the issues determined in this Final Decision. It will be for the Respondent to consider, in the first instance, whether this transaction is of relevance to the Claimant's request that following a possible disqualification of NDC's bid for .WEB, the Respondent must, in accordance with the New gTLD Program Rules, contract the Registry Agreement for .WEB with the Claimant.

E. The Rule 7 Claim

355. The Panel recalls that the Rule 7 Claim was first raised as a defence to the *Amici*'s requests, based on Rule 7 of the Interim Procedures, to participate in this IRP as *amici curiae*. In its Decision on Phase I, the Panel granted the *Amici*'s requests – subject to modalities set out in that decision – and, to the extent the Claimant wished to maintain its Rule 7 Claim, joined those aspects of the claim over which the Panel found it has jurisdiction to the claims to be decided in Phase II. The *Amici* have since participated in this IRP to the full extent permitted by the Decision on Phase I, as described in earlier sections of this Final Decision.
356. The Panel included in its list of questions to be addressed in post-hearing briefs a request to the Claimant to clarify what remained to be decided in connection with its Rule 7 Claim given the Decision on Phase I and the conduct of the IRP in accordance with that ruling. The Claimant's response is that the Rule 7 Claim remains relevant to justify an award of costs in its favour.
357. As explained in the sections of this Final Decision dealing, respectively, with the designation of the prevailing party and the Claimant's cost claim, there is, in the opinion of the Panel, no basis on which the Claimant could be awarded costs in relation to Phase I or in relation to the outstanding aspects of the Rule 7 Claim. This being so, it is the Panel's opinion that no useful purpose would be served by the Rule 7 Claim being addressed beyond the findings and observations contained in the Panel's Decision on Phase I, which the Respondent's Board has no doubt reviewed and can act upon, as appropriate. The Panel wishes to make clear that in making this Final Decision, the Panel expresses no view on

the merit of those outstanding aspects of the Rule 7 Claim over which the Panel found that it has jurisdiction, beyond that expressed in paragraph 408 of these reasons.

F. Determining the Proper Relief

358. The remedial authority of IRP Panels is set out in Section 4.3(o) of the Bylaws, which reads as follows:

(o) Subject to the requirements of this Section 4.3, each IRP Panel shall have the authority to:

(i) Summarily dismiss Disputes that are brought without standing, lack substance, or are frivolous or vexatious;

(ii) Request additional written submissions from the Claimant or from other parties;

(iii) Declare whether a Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws, declare whether ICANN failed to enforce ICANN's contractual rights with respect to the IANA Naming Function Contract or resolve PTI service complaints by direct customers of the IANA naming functions, as applicable;

(iv) Recommend that ICANN stay any action or decision, or take necessary interim action, until such time as the opinion of the IRP Panel is considered;

(v) Consolidate Disputes if the facts and circumstances are sufficiently similar, and take such other actions as are necessary for the efficient resolution of Disputes;

(vi) Determine the timing for each IRP proceeding; and

(vii) Determine the shifting of IRP costs and expenses consistent with Section 4.3(r).

[emphasis in the original]

359. Of relevance to situating the remedial authority of IRP Panels in their proper context are the provisions of Section 4.3(x), which it is useful to cite in full:

(x) The IRP is intended as a final, binding arbitration process.

(i) IRP Panel decisions are binding final decisions to the extent allowed by law unless timely and properly appealed to the en banc Standing Panel. En banc Standing Panel decisions are binding final decisions to the extent allowed by law.

(ii) IRP Panel decisions and decisions of an en banc Standing Panel upon an appeal are intended to be enforceable in any court with jurisdiction over ICANN without a *de novo* review of the decision of the IRP Panel or en banc Standing Panel, as applicable, with respect to factual findings or conclusions of law.

(iii) ICANN intends, agrees, and consents to be bound by all IRP Panel decisions of Disputes of Covered Actions as a final, binding arbitration.

(A) Where feasible, the Board shall consider its response to IRP Panel decisions at the Board's next meeting, and shall affirm or reject compliance with the decision on the public record based on an expressed rationale. The decision of the IRP Panel, or en banc Standing Panel, shall be final regardless of such Board action, to the fullest extent allowed by law.

(B) If an IRP Panel decision in a Community IRP is in favor of the EC, the Board shall comply within 30 days of such IRP Panel decision.

(C) If the Board rejects an IRP Panel decision without undertaking an appeal to the en banc Standing Panel or rejects an en banc Standing Panel decision upon appeal, the Claimant or the EC may seek enforcement in a court of competent jurisdiction. In the case of the EC, the EC Administration may convene as soon as possible following such rejection and consider whether to authorize commencement of such an action.

(iv) By submitting a Claim to the IRP Panel, a Claimant thereby agrees that the IRP decision is intended to be a final, binding arbitration decision with respect to such Claimant. Any Claimant that does not consent to the IRP being a final, binding arbitration may initiate a non-binding IRP if ICANN agrees; provided that such a non-binding IRP decision is not intended to be and shall not be enforceable.

[italics in the original]

360. The Panel also notes the provisions of Section 4.3(t) which, among others, require each IRP Panel decision to “specifically designate the prevailing party as to each part of a Claim”.
361. In the opinion of the Panel, the Claimant is entitled to a declaration that the Respondent violated its Articles and Bylaws to the extent found by the Panel in the previous sections of this Final Decision, and to being designated the prevailing party in respect of the liability portion of its core claims.
362. As foreshadowed earlier in these reasons, the Panel is firmly of the view that it is for the Respondent, that has the requisite knowledge, expertise, and experience, to pronounce in the first instance on the propriety of the DAA under the New gTLD Program Rules, and on the question of whether NDC’s application should be rejected and its bids at the auction disqualified by reason of its alleged violations of the Guidebook and Auction Rules.
363. The Panel also accepts the Respondent’s submission that it would be improper for the Panel to dictate what should be the consequence of NDC’s violation of the New gTLD Program

Rules, assuming a violation is found. The Panel is mindful of the Claimant’s contention that whatever discretion the Respondent may have is necessarily constrained by the Respondent’s obligation to enforce the New gTLD Program Rules objectively and fairly. Nevertheless, the Respondent does enjoy some discretion in addressing violations of the Guidebook and Auction Rules and it is best that the Respondent first exercises its discretion before it is subject to review by an IRP Panel.

364. In the opinion of the Panel, the foregoing conclusions are consistent with the authority of IRP Panels under Section 4.3 (o) (iii) of the Bylaws, which grants the Panel authority to “declare” whether a Covered Action constituted an action or inaction that violated the Articles or Bylaws.

G. Designating the Prevailing Party

365. Section 4.3(t) of the Bylaws requires the Panel to designate the prevailing party “as to each part of a Claim”.³¹⁶ This designation has relevance, among others, to the Panel’s exercise of its authority under Section 4.3(r) of the Bylaws to shift costs by providing for the “losing party” to pay the administrative costs and/or fees of the “prevailing party” in the event the Panel identifies the losing party’s Claim or defence as frivolous or abusive.³¹⁷
366. The Panel has already determined that the Claimant is entitled to be designated as the prevailing party in relation to the liability portion of its core claims. In the opinion of the Panel, the Claimant should also be designated the prevailing party in relation to its Request for Emergency Interim Relief, insofar as the Respondent eventually agreed to keep .WEB on hold until this IRP is concluded, consistent with the rationale of the Board’s decision of November 2016 to defer consideration of the issues raised in relation to .WEB and the status of NDC’s application, post-DAA, while accountability mechanisms remained

³¹⁶ The equivalent provision in the Interim Procedures, Ex. C-59, Rule 13 b., differs slightly in that it requires the IRP Panel Decision to “specifically designate the prevailing party as to each Claim”.

³¹⁷ See also Section 4.3(e)(ii) of the Bylaws, which requires an IRP Panel to award to ICANN all reasonable fees and costs incurred by ICANN in the IRP in the event it is the prevailing party in a case in which the Claimant failed to participate in good faith in a CEP.

pending.

367. With respect to Phase I of this IRP, the Claimant has argued that the prevailing party remained to be determined depending on the outcome of Phase II.³¹⁸ This is correct in regard to those aspects of the Claimant's Rule 7 Claim that were joined to the Claimant's other claims in Phase II, pursuant to the Panel's Decision on Phase I. However, the Respondent prevailed in Phase I on the question of whether the Panel had jurisdiction over actions or failures to act committed by the IOT and, importantly, on the principle of the *Amici*'s requests to participate in the IRP as *amici curiae*. These requests were both granted, albeit with narrower participation rights than those advocated by the Respondent.³¹⁹ In light of the foregoing, the Panel does not consider that the Claimant can be designated as the prevailing party in respect of Phase I of the IRP.
368. Turning to the requests for relief sought by the Claimant, the Respondent must be designated as the prevailing party in regard to all aspects of the Claimant's requests for relief other than (a) the request for a declaration that ICANN acted inconsistently with its Articles and Bylaws as described, among others, in paragraph 8 of this Final Decision and the *Dispositif*, and (b) the outstanding aspects of the Rule 7 Claim. With regard to the latter, which the Panel has determined have become moot by the participation of the *Amici* in this IRP in accordance with the Panel's Decision on Phase I, the Claimant cannot be designated as the prevailing party either, the matter not having been adjudicated upon. For the reasons set out in next section of this Final Decision, however, the fact that those aspects of the Rule 7 Claim have become moot and are therefore not decided in this Final Decision is without consequence on the Claimant's cost claim in relation to the Rule 7 Claim because, in the opinion of the Panel, it simply cannot be argued that the Respondent's defence to the Rule 7 Claim was frivolous and abusive.

³¹⁸ See *Afilias' Reply Costs Submission*, para. 9.

³¹⁹ See *Decision on Phase I*, paras. 96-97.

VI. COSTS

A. Submissions on Costs

369. In its decision on Phase I, the Panel deferred to Phase II the determination of costs in relation to Phase I of this IRP.³²⁰ The Parties' submissions on costs therefore relate to both phases of the IRP.

1. Claimant's Submissions on Costs

370. The Claimant submitted its cost submissions in a brief separate from, but filed simultaneously with its PHB, on 12 October 2020.³²¹ The Claimant argues that it should be declared the prevailing party on all of its claims in the IRP. Relying on Section 4.3(r) of the Bylaws, the Claimant requests that the Panel shift all of its fees and costs to the Respondent on the ground that the Respondent's defences in the IRP were "frivolous or abusive". In the alternative, the Claimant argues that the Respondent should at least bear all of its costs and fees related to the participation of the *Amici* in the IRP and the Emergency Interim Relief proceedings.

371. The Claimant states that there was no need for this IRP to be as procedurally and substantively complicated as it has been.³²² First, the Claimant avers that the Respondent used the CEP as cover to push through "interim procedures" that would provide the Respondent with a limitations defence. Second, the Claimant argues that the Respondent ought not to have forced the Claimant to seek emergency interim relief to protect against the .WEB contention set being taken off hold. Third, the Claimant blames the Respondent's belated disclosure of the DAA for the need for it to have filed an Amended Request for IRP. Fourth, the Claimant reproaches the Respondent for pressing for the *Amici*'s participation in the IRP, particularly Verisign, which was not even a member of the contention set. Finally, the Claimant contends that the Respondent ought

³²⁰ Decision on Phase I, para. 205(c).

³²¹ The Claimant's Submissions on Costs were corrected on 16 October 2020 apparently due to a technical problem with Afiliast's exhibit management software.

³²² Claimant's Submissions on Costs, paras. 1-2.

not to have hidden its central defence – the Board’s decision of November 2016 – until the filing of its Rejoinder.

372. In the Claimant’s submission, the Respondent’s central defence in this IRP – articulated for the first time on 1 June 2020 and based on an alleged Board decision taken during the November 2016 Workshop – frivolously and abusively sought to immunize the Respondent from any accountability and to render the present IRP an empty shell.³²³ The Claimant argues that it was abusive for the Respondent to center its defence around a decision that had never been made public or disclosed to Afiliis prior to the Respondent’s Rejoinder.³²⁴
373. The Claimant also contends that the Respondent’s defence frivolously and abusively sought to deprive the Claimant of an effective forum. In that regard, the Claimant avers that ICANN’s enactment of the Interim Procedures, weeks before the Claimant filed its IRP, was frivolous and abusive because it allowed the Respondent to advance a time-limitation defence that would otherwise not have been available to it previously and to enable the participation of the *Amici* in the IRP. In the Claimant’s view, the circumstances in which ICANN enacted the Interim Procedures made it clear that they were specifically targeted to undermine the Claimant’s position in the present IRP.³²⁵
374. The Claimant submits that ICANN’s refusal to put .WEB on hold after the filing of the IRP was also frivolous and abusive and needlessly forced the Claimant to pursue a “costly, distracting, and unwarranted Emergency Interim Relief phase”. The Claimant avers that the Respondent’s action was frivolous and abusive because the Respondent later abandoned its refusal to put .WEB on hold – but only after the Claimant had incurred extensive fees and costs on the Request for Emergency Interim Relief.³²⁶
375. The Claimant argues as well that the Respondent must bear its costs and fees associated with the *Amici*’s participation in the IRP. This is so because, in the submission of

³²³ Claimant’s Submissions on Costs, para. 16.

³²⁴ *Ibid*, paras. 12-17.

³²⁵ *Ibid*, paras. 19-25.

³²⁶ *Ibid*, paras. 26-27.

the Claimant, the Respondent abusively included Rule 7 in the Interim Supplementary Procedures in view of the present IRP and then used the *Amici* as surrogates for its defence.

2. Respondent's Submissions on Costs

376. The Respondent's submissions on costs are set out in its PHB dated 12 October 2020.

377. The Respondent takes the position that the Bylaws and Interim Procedures authorize the Panel to shift costs only in the event of a finding that, when viewed in its entirety, a party's case was frivolous or abusive. The Respondent stresses that while this is an uncommonly high standard for international arbitration, it is more permissive than the "American rule" under which legal fees cannot ordinarily be shifted to the non-prevailing party. The Respondent also recalls that, under the Bylaws, it is the Respondent that bears all the administrative costs of maintaining the IRP mechanism, including the fees and expenses of the panelists and the ICDR.³²⁷

378. ICANN states that it does not view the Claimant's case as a whole to be frivolous or abusive, even though, in the Respondent's submission, the Claimant has from time to time employed abusive tactics and taken positions that clearly have no merit. The Respondent therefore does not seek an award for costs.

379. The Respondent argues that the Claimant cannot plausibly contend that ICANN's defence triggers the Panel's authority to allocate legal expenses in favour of the Claimant. For these reasons, ICANN contends that the Parties should bear their own legal expenses.³²⁸

3. Claimant's Reply Submission on Costs

380. In its Reply Costs Submissions dated 23 October 2020, the Claimant argues that the Panel is empowered to shift costs if any part of the Respondent's defence lacked merit or was otherwise improper. In the Claimant's view, the standard for cost shifting must be informed, not by the California Code of Civil Procedure, which is relied upon by

³²⁷ Respondent's PHB, paras. 232-234.

³²⁸ *Ibid*, paras. 235-240.

the Respondent, but by international arbitration norms and ICANN’s obligation to conduct its activities “consistently, neutrally, objectively, and fairly” and “transparently.”³²⁹

381. The Claimant avers that the Respondent’s PHB underscores that its defence has been frivolous and abusive, both in general and in its particulars.³³⁰ The Claimant argues that the three (3) main planks of ICANN’s substantive defence were each frivolous and abusive: the belatedly disclosed Board decision of November 2016,³³¹ the allegedly limited remedial jurisdiction of the Panel,³³² and the time bar defence, based on Rule 4, which was made applicable to this IRP by distorting the Respondent’s rule-making process and violating the “fundamental rule” against retroactivity.³³³ The Claimant also asserts that the Respondent’s alleged reliance on the *Amici* as a defensive tactic allegedly to deflect attention from its own conduct has been frivolous and abusive, “both in conception and execution” in that it was facilitated by improper collaboration with Verisign in the process of adoption of Rule 7, and by using the *Amici* participation as an excuse to avoid answering the Claimant’s claims.³³⁴

382. In light of the foregoing, the Claimant requests that the Panel order the Respondent to pay the Claimant: USD 11,291,997.13 in compensation for the total fees and costs incurred by the Claimant in this IRP; or, in the alternative: USD 2,383,703.11 for the Claimant’s fees and costs incurred in relation to the *Amici* participation; and USD 823,811.88 for the fees and costs incurred in relation to the Emergency Interim Relief phase, along with pre- and post-award interest “at a reasonable rate from the date of this filing”.³³⁵

4. Respondent’s Response Submission on Costs

383. In its 23 October 2020 Response to Afiliias’ Costs Submission, the Respondent contends

³²⁹ Claimant’s Reply Submissions on Costs, paras. 3-4.

³³⁰ *Ibid.*, para. 5.

³³¹ *Ibid.*, para. 6.

³³² *Ibid.*, para. 7.

³³³ *Ibid.*, para. 8.

³³⁴ *Ibid.*, para. 9.

³³⁵ *Ibid.*, paras. 10-11.

that the Claimant's request for an order requiring ICANN to pay all its costs and legal fees should be denied because it is legally and factually baseless. In the Respondent's submission, the Claimant applies an incorrect standard for cost shifting, since Section 4.3(r) of the Bylaws allows the Panel to shift legal expenses and costs only when a party's IRP Claim or defence as a whole is found to be frivolous or abusive.³³⁶ The Respondent further argues that the Claimant's cost-shifting arguments are misplaced and baseless since its arguments in defence were not frivolous or abusive.³³⁷ Finally, the Respondent avers that the Claimant's legal fees and costs are unreasonable as to both their total amount and their allocation as between the subject matters in relation to which separate cost shifting requests are made.³³⁸

384. For those reasons, the Respondent requests that the Claimant's request for an order requiring the Respondent to reimburse its costs and legal fees should be denied in its entirety.³³⁹

B. Analysis Regarding Costs

1. Applicable Provisions

385. The Panel begins its analysis by citing the provisions of the Bylaws and Interim Procedures that are relevant to the Claimant's cost claim.

386. Section 4.3(r) of the Bylaws reads as follows:

(r) ICANN shall bear all the administrative costs of maintaining the IRP mechanism, including compensation of Standing Panel members. Except as otherwise provided in Section 4.3(e)(ii), each party to an IRP proceeding shall bear its own legal expenses, except that ICANN shall bear all costs associated with a Community IRP, including the costs of all legal counsel and technical experts. Nevertheless, except with respect to a Community IRP, the IRP Panel may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in the event it identifies the losing party's Claim or defense as frivolous or abusive.

³³⁶ Respondent's Reply Submissions on Costs, paras. 4-8.

³³⁷ *Ibid*, paras. 9-24.

³³⁸ *Ibid*, paras. 25-28.

³³⁹ *Ibid*, para. 29.

387. Rule 15 of the Interim Procedures is to the same effect:

15. Costs

The IRP Panel shall fix costs in its IRP PANEL DECISION. Except as otherwise provided in Article 4, Section 4.3(e)(ii) of ICANN's Bylaws, each party to an IRP proceeding shall bear its own legal expenses, except that ICANN shall bear all costs associated with a Community IRP, as defined in Article 4, Section 4.3(d) of ICANN's Bylaws, including the costs of all legal counsel and technical experts.

Except with respect to a Community IRP, the IRP PANEL may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in the event it identifies the losing party's Claim or defense as frivolous or abusive.

388. As discussed in the previous section of this Final Decision, it is pursuant to the provisions of Section 4.3(t) that the Panel is required to designate the prevailing party "as to each part of a Claim".³⁴⁰

2. Discussion

389. A threshold issue that falls to be determined is whether the Respondent is correct in arguing that costs and legal expenses can only be shifted, pursuant to Section 4.3(r) and Rule 15, if a Claim as a whole, or an IRP defence as a whole, is found by the Panel to be frivolous or abusive. In support of its position, the Respondent relies on the definition of Claim in Section 4.3(d) of the Bylaws, which reads as follows:

(d) An IRP shall commence with the Claimant's filing of a written statement of a Dispute (a "**Claim**") with the IRP Provider (described in Section 4.3(m) below). For the EC to commence an IRP ("**Community IRP**"), the EC shall first comply with the procedures set forth in Section 4.2 of Annex D.

390. Based on this definition, the Respondent submits that "costs and legal expenses may be shifted onto the Claimant only if the Request for IRP as a whole is frivolous or abusive".³⁴¹ By parity of reasoning, the Respondent argues that the same standard must apply to the Panel's authority to shift legal expenses onto ICANN which, so the argument goes, can only be done if ICANN's defence as a whole is found to be frivolous or abusive.

391. The Panel cannot accept the Respondent's proposed interpretation of the Bylaws

³⁴⁰ Rule 13 b. of the Interim Procedures, Ex. C-59, requires the Panel to designate the prevailing party "as to each Claim".

³⁴¹ ICANN's Response to Afilias' Costs Submission, para. 5.

and Interim Procedures, which the Panel considers to be inconsistent with Section 4.3(t) of the Bylaws and Rule 13 b. of the Interim Procedures, and which would considerably restrict the scope of application of a carve-out that is already very narrow. The Panel's reasons in that respect are as follows.

392. The cost-shifting authority of IRP Panels is contingent upon two (2) findings. First, that the party claiming its costs be the prevailing party; and second, that the IRP Panel identify the losing party's Claim or defence as frivolous or abusive.
393. The Panel's obligation to designate the prevailing party is based on Section 4.3(t), which requires the Panel to make such a designation "as to each part of a Claim". It seems to the Panel that there would be no purpose in designating a prevailing party as to "each part of a Claim" if the Panel were required to consider "a Claim" as an indivisible whole for the purpose of the Panel's cost-shifting authority.
394. The Respondent's argument also fails if consideration is given to the slightly different wording used in Rule 13 b. of the Interim Procedures, which calls for the designation of the prevailing party "as to each Claim".
395. Finally, it would seem that the interpretation of the applicable provisions advocated by the Respondent would be unfair if it mandated that a single, isolated well-founded element of a Claim otherwise manifestly frivolous or abusive would suffice to save a Claimant from a potential cost-shifting order.
396. The better interpretation, one that harmonizes the provisions of Sections 4.3(r) and 4.3(t) of the Bylaws (that are clearly meant to operate in tandem) and reflects the practice of international arbitration, is the interpretation that allows IRP Panels to shift costs in relation to "parts" of the losing party's Claim or defence, which parts are the necessary reflection of the "parts" in respect of which the other party is designated as the prevailing party.
397. Applying the relevant provisions of the Bylaws and Interim Procedures, properly construed, to the facts of this IRP, the only parts of the Claimant's case as to which it has been designated as the prevailing party are the liability portion of its core claims and its Request for Emergency Interim Relief. This being so, those are the only parts of

the Claimant's case as to which the Panel needs to evaluate whether the Respondent's defence was frivolous or abusive.

398. While the Respondent has failed in its defence of the conduct of its Staff and Board in relation to the Claimant's core claims, the Panel cannot accept the Claimant's submission that ICANN's defence of its conduct in relation to these aspects of the case was frivolous or abusive.
399. To state the obvious, not every claim or defence that does not prevail in an IRP will result in an award of costs. The applicable cost shifting rule requires that the claim or defence be found to be frivolous or abusive. This standard binds the Parties as well as the Panel.
400. The Bylaws and Interim Procedures do not define the terms "frivolous" or "abusive". The Respondent has contended that they should be interpreted having regard to their well-established meaning under California law. The Panel agrees with the Claimant that there are good reasons not to seek guidance for the interpretation of those terms in a California statutory standard, which operates in an environment where the default rule is the so-called "American Rule" under which legal fees cannot ordinarily be shifted to the non-prevailing party.
401. In the opinion of the Panel, the terms "frivolous" and "abusive" as used in the Bylaws and Interim Procedures should be given their ordinary meanings. According to the Merriam-Webster Dictionary, "frivolous" means "of little weight or importance", "having no sound basis (as in fact or law)" or "lacking in seriousness".³⁴² According to Black's Law Dictionary, "[a]n answer or plea is called 'frivolous' when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the plaintiff."³⁴³ For its part, the term "abusive" is defined by the Merriam-Webster Dictionary as "characterized by wrong or improper use or action"³⁴⁴, while the term "abuse" is defined in Black's Law

³⁴² Merriam-Webster *s.v.* "frivolous": <https://www.merriam-webster.com/dictionary/frivolous> (consulted on 23 March 2021).

³⁴³ Black's Law Online Dictionary, 2nd ed., *s.v.* "frivolous": <https://thelawdictionary.org/frivolous/> (consulted on 23 March 2021).

³⁴⁴ Merriam-Webster *s.v.* "abusive": <https://www.merriam-webster.com/dictionary/abusive> (consulted on 23 March 2021).

Dictionary as a “misuse of anything”.³⁴⁵

402. In the case of the Claimant’s core claims, the Respondent’s defences consisted in the main of the time limitations defence, and the rejection of the Claimant’s arguments based on the Respondent’s so-called competition mandate and on the asserted manifest incompatibility of the DAA with the provisions of the Guidebook and Auction Rules. The Respondent also raised as a defence the deference owed to its Board’s business judgment when it decided to take no action regarding the .WEB contention set while a related accountability mechanism was pending.
403. The time limitations defence was asserted by the Respondent in circumstances where the validity of Rule 4, unlike that of Rule 7, had not been directly challenged by the Claimant. While the Panel has expressed concern as a matter of principle with the retroactive application of a time limitations rule, the Respondent’s reliance on a rule, the validity of which had not been challenged and that on its face appeared to provide a defence, was not, in the opinion of the Panel, abusive or frivolous.
404. As regards the Respondent’s other defences, the Panel does not accept that it was frivolous or abusive for the Respondent to argue that it was reasonable for its Board to defer consideration of the issues raised with .WEB while accountability mechanisms were pending; that the propriety of the DAA under the New gTLD Program Rules was a debatable issue requiring careful consideration by the Respondent’s Board; or that the Respondent did not have the “competition mandate” contended for by the Claimant. These were all defensible positions and there is no evidence that they were advanced for an improper purpose or in bad faith. While the Respondent did fail in its contention that there was nothing for its Staff or Board to pronounce upon in the absence of a formal accountability mechanism challenging their action or inaction in relation to .WEB, the Respondent’s position in this respect cannot, in the opinion of the Panel, be said to have been frivolous or abusive. Accordingly, the Claimant’s claim for reimbursement of its costs in relation to the liability portion of its core claims must be dismissed.

³⁴⁵ Black’s Law Online Dictionary, 2nd ed., s.v. “abuse”: <https://thelawdictionary.org/abuse/> (consulted on 23 March 2021).

405. The Panel does consider that the Claimant’s cost claim in relation to its Request for Emergency Interim Relief is meritorious. The Claimant was forced to introduce this request as a result of the Respondent’s refusal to keep the .WEB contention set on hold in spite of the Claimant having commenced an IRP upon the termination of its CEP. When this decision was made, the .WEB contention set had already been on hold for more than two (2) years, precisely because accountability mechanisms were pending. The Board’s decision to defer consideration of the questions raised in relation to .WEB in November 2016 was likewise based on the fact that accountability mechanisms were pending. This is how the Claimant describes the sequence of events in its Request for Emergency Interim Relief:

13. On 13 November 2018, Afilias and ICANN participated in a final CEP meeting, following which ICANN terminated the CEP. On 14 November 2018, Afilias filed its Request for IRP. Hours later, ICANN responded by informing Afilias that it intended to take the .WEB contention set “off hold” on 27 November 2018 even though Afilias had commenced an ICANN accountability procedure that follows-on from a failed CEP.³⁰ ICANN provided Afilias with no explanation justifying its decision.

14. On 20 November 2018, Afilias wrote to ICANN about its decision to proceed with the delegation of .WEB despite Afilias’ commencement of the IRP.³¹ In its letter, Afilias questioned ICANN’s motives for removing the hold on .WEB, given that ICANN had voluntarily delayed the delegation of .WEB for several years and the lack of any apparent harm to ICANN if the .WEB contention set were to remain on hold for the duration of the IRP. Afilias requested an explanation justifying what appeared to be rash and arbitrary conduct by ICANN in proceeding with delegation of .WEB at this time, as well as the production of relevant documents. Afilias wrote to ICANN again on 24 November 2018 requesting a response to its 20 November 2018 letter.

15. ICANN did not respond to Afilias’ letter until after 9:00 pm EDT on 26 November 2018—quite literally the eve of the deadline that ICANN previously set for Afilias to submit this Interim Request to prevent ICANN from taking the .WEB contention set “off hold.”³² ICANN noted in its response that ICANN’s practice is to remove the hold on contention sets following CEP, notwithstanding the pendency of an IRP and despite the unanimous criticism of this practice in previous IRPs. ICANN also rejected Afilias’ request to produce documents related to its dealings with NDC and VeriSign about .WEB. Instead, ICANN inexplicably offered to keep the .WEB contention set “on hold” for another two weeks, until 11 December 2018, something that Afilias had not requested and that did not remotely address any of the concerns Afilias had raised.³³

16. It is because of ICANN’s unreasonable conduct and refusal to act in a transparent manner—as required by its Articles and Bylaws—that Afilias has been forced to file, at significant cost and expense, this Interim Request.

³⁰ Email from Independent Review (ICANN) to A. Ali and R. Wong (Counsel for Afilias) (14 Nov. 2018), [Ex. C-64], p. 1.

³¹ Letter from A. Ali (Counsel for Afilias) to Independent Review (ICANN) (20 Nov. 2018), [Ex. C-65].

³² Letter from J. LeVee (Jones Day) to A. Ali (Counsel for Afiliias) (26 Nov. 2018), [Ex. C-66].

³³ Letter from J. LeVee (Jones Day) to A. Ali (Counsel for Afiliias) (26 Nov. 2018), [Ex. C-66], p. 1.

406. Having forced the Claimant to initiate emergency interim relief proceedings, the Respondent eventually changed course and agreed to keep .WEB on hold until the conclusion of this IRP.
407. In the opinion of the Panel, the Respondent's requirement, as part of its defence strategy, that the Claimant introduce a Request for Emergency Interim Relief at the outset of the IRP, failing which the Respondent would lift the "on hold" status of the .WEB contention set, was "abusive" within the meaning of the cost shifting provisions of the Bylaws and Interim Procedures, all the more so in light of the Respondent's subsequent decision to agree to keep the .WEB contention set on hold until the conclusion of this IRP. In the opinion of the Panel, this conduct on the part of the Respondent was unjustified and obliged the Claimant to incur wasted costs that it would be unfair for the Claimant to have to bear.
408. The Claimant has claimed in relation to its Request for Emergency Interim Relief an amount of USD 823,811.88. This is said to represent 50% of the Claimant legal fees from 14 November 2018 to 10 December 2018; 33% of the Claimant's total fees from 11 December 2018 through 31 March 2019; and 50% of its fees from 1 April 2019 through 14 May 2019.
409. The Respondent has challenged the reasonableness of the fees claimed by the Claimant in relation to its Request for Emergency Interim Relief, pointing out that it entailed the preparation and presentation of the request, one supporting brief, and requests for production of documents which were resolved by 12 December 2018.³⁴⁶ As noted in the History of the Proceedings' section of this Final Decision, the Parties asked the Emergency Panelist to postpone further activity in January 2019.

³⁴⁶ See ICANN's Response to Afiliias' costs Submission, para. 28.

410. The Panel has difficulty accepting that such a significant amount of fees as that claimed by the Claimant in regard to the Request for Emergency Interim Relief can reasonably be attributed to the preparation of this request and the subsequent proceedings before the Emergency Panelist. Exercising its discretion in relation to the fixing of the legal expenses reasonably incurred that may be ordered to be reimbursed pursuant to a cost-shifting decision, the Panel reduces the Claimant's claim on account of the Request for Emergency Interim Relief to USD 450,000, inclusive of pre-award interest.
411. This leaves for consideration the Claimant's cost claim in relation to the outstanding aspects of the Rule 7 Claim which, pursuant to the Panel's Decision on Phase I, were joined to the Claimant's other claims in Phase II, a cost claim that the Panel takes to have been subsumed in the Claimant's global cost claim in relation to the *Amici* participation. In the opinion of the Panel, it suffices to read the Panel's Decision on Phase I to conclude that it cannot seriously be argued that the Respondent's defence to the Rule 7 Claim was frivolous and abusive. It follows from this assessment of the Respondent's defence that the fact that those aspects of the Rule 7 Claim have been found by the Panel to have become moot and are therefore not decided in this Final Decision is without consequence on the Claimant's cost claim in relation to the Rule 7 Claim. In other words, the Panel has sufficient familiarity with the Parties' respective positions on the merits of the outstanding aspects of the Rule 7 Claim to know, and hereby to determine, that regardless of the outcome, the Panel would not have accepted the submission that the Respondent's defence to this claim was frivolous and abusive.
412. The ICDR has informed the Panel that the administrative fees of the ICDR and the fees and expenses of the Panelists, the Emergency Panelist, and the Procedures Officer in this IRP total USD 1,198,493.88. The ICDR has further advised that the Claimant has advanced, as part of its share of these non-party costs of the IRP, an amount of USD 479,458.27. In accordance with the general rule set out in Section 4.3(r) of the Bylaws, the Claimant is entitled to be reimbursed by the Respondent the share of the non-party costs of the IRP that it has incurred, in the amount of USD 479,458.27.

VII. *DISPOSITIF*

413. For the reasons set out in this Final Decision, the Panel unanimously decides as follows:

1. **Declares** that the Respondent has violated its *Amended and Restated Articles of Incorporation of Internet Corporation for Assigned Names and Numbers*, as approved by the ICANN Board on 9 August 2016, and filed on 3 October 2016 (**Articles**), and its *Bylaws for Internet Corporation for Assigned Names and Numbers*, as amended on 18 June 2018 (**Bylaws**), by (a) its staff (**Staff**) failing to pronounce on the question of whether the Domain Acquisition Agreement entered into between Nu DotCo, LLC (**NDC**) and Verisign Inc. (**Verisign**) on 25 August 2015, as amended and supplemented by the “Confirmation of Understanding” executed by these same parties on 26 July 2016 (**DAA**), complied with the New gTLD Program Rules following the Claimant’s complaints that it violated the Guidebook and Auction Rules, and, while these complaints remained unaddressed, by nevertheless moving to delegate .WEB to NDC in June 2018, upon the .WEB contention set being taken “off hold”; and (b) its Board, having deferred consideration of the Claimant’s complaints about the propriety of the DAA while accountability mechanisms in connection with .WEB remained pending, nevertheless (i) failing to prevent the Staff, in June 2018, from moving to delegate .WEB to NDC, and (ii) failing itself to pronounce on these complaints while taking the position in this IRP, an accountability mechanism in which these complaints were squarely raised, that the Panel should not pronounce on them out of respect for, and in order to give priority to the Board’s expertise and the discretion afforded to it in the management of the New gTLD Program;
2. **Declares** that in so doing, the Respondent violated its commitment to make decisions by applying documented policies objectively and fairly;
3. **Declares** that in preparing and issuing its questionnaire of 16 September 2016 (**Questionnaire**), and in failing to communicate to the Claimant the decision made by the Board on 3 November 2016, the Respondent has violated its commitment to operate in an open and transparent manner and consistent with procedures to ensure

fairness;

4. **Grants** in part the Claimant's Request for Emergency Interim Relief dated 27 November 2018, and directs the Respondent to stay any and all action or decision that would further the delegation of the .WEB gTLD until such time as the Respondent has considered the present Final Decision;
5. **Recommends** that the Respondent stay any and all action or decision that would further the delegation of the .WEB gTLD until such time as the Respondent's Board has considered the opinion of the Panel in this Final Decision, and, in particular (a) considered and pronounced upon the question of whether the DAA complied with the New gTLD Program Rules following the Claimant's complaints that it violated the Guidebook and Auction Rules and, as the case may be, (b) determined whether by reason of any violation of the Guidebook and Auction Rules, NDC's application for .WEB should be rejected and its bids at the auction disqualified;
6. **Designates** the Claimant as the prevailing party in relation to the above declarations, decisions, findings, and recommendations, which relate to the liability portion of the Claimant's core claims and the Claimant's Request for Emergency Interim Relief dated 27 November 2018;
7. **Dismisses** the Claimant's other requests for relief in connection with its core claims and, in particular, the Claimant's request that that the Respondent be ordered by the Panel to disqualify NDC's bid for .WEB, proceed with contracting the Registry Agreement for .WEB with the Claimant in accordance with the New gTLD Program Rules, and specify the bid price to be paid by the Claimant, all of which are premature pending consideration by the Respondent of the questions set out above in sub-paragraph 410 (5);
8. **Designates** the Respondent as the prevailing party in respect of the matters set out in the immediately preceding paragraph;
9. **Determines** that the outstanding aspects of the Rule 7 Claim that were joined to the Claimant's other claims in Phase II have become moot by the participation of

the *Amici* in this IRP in accordance with the Panel’s Decision on Phase I and, for that reason, decides that no useful purpose would be served by the Rule 7 Claim being addressed beyond the findings and observations contained in the Panel’s Decision of Phase I;

10. **Fixes** the total costs of this IRP, consisting of the administrative fees of the ICDR, and the fees and expenses of the Panelists, the Emergency Panelist, and the Procedures Officer at USD 1,198,493.88, and in accordance with the general rule set out in Section 4.3(r) of the Bylaws, **declares** that the Respondent shall reimburse the Claimant the full amount of the share of these costs that the Claimant has advanced, in the amount of USD 479,458.27;
11. **Finds** that the Respondent’s requirement, as part of its defence strategy, that the Claimant introduce a Request for Emergency Interim Relief at the outset of the IRP, failing which the Respondent would lift the “on hold” status of the .WEB contention set, was abusive within the meaning of the cost shifting provisions of the Bylaws and Interim Procedures in light of the Respondent’s subsequent decision to agree to keep the .WEB contention set on hold until the conclusion of this IRP; and, as a consequence of this finding,
12. **Grants** the Claimant’s request that the Panel shift liability for the Claimant’s legal fees in connection with its Request for Emergency Interim Relief, **fixes** at USD 450,000, inclusive of pre-award interest, the amount of the legal fees to be reimbursed to the Claimant on account of the Emergency Interim Relief proceedings, and **orders** the Respondent to pay this amount to the Claimant within thirty (30) days of the date of notification of this Final Decision, after which 30 day-period this amount shall bear interest at the rate of 10% *per annum*;
13. **Dismisses** the Claimant’s other requests for the shifting of its legal fees in connection with this IRP;
14. **Dismisses** all of the Parties’ other claims and requests for relief.

414. This Final Decision may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Place of the IRP: London, England

(s) Catherine Kessedjian

(s) Richard Chernick

Catherine Kessedjian

Richard Chernick

(s) Pierre Bienvenu

Pierre Bienvenu, Ad. E., Chair

Dated: 20 May 2021

Annex 9

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 9. Evidence Affected or Excluded by Extrinsic Policies (Refs & Annos)
Chapter 3. Other Evidence Affected or Excluded by Extrinsic Policies (Refs & Annos)

West's Ann.Cal.Evid.Code § 1152

§ 1152. Offers to compromise

Currentness

(a) Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money or any other thing, act, or service to another who has sustained or will sustain or claims that he or she has sustained or will sustain loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his or her liability for the loss or damage or any part of it.

(b) In the event that evidence of an offer to compromise is admitted in an action for breach of the covenant of good faith and fair dealing or violation of [subdivision \(h\) of Section 790.03 of the Insurance Code](#), then at the request of the party against whom the evidence is admitted, or at the request of the party who made the offer to compromise that was admitted, evidence relating to any other offer or counteroffer to compromise the same or substantially the same claimed loss or damage shall also be admissible for the same purpose as the initial evidence regarding settlement. Other than as may be admitted in an action for breach of the covenant of good faith and fair dealing or violation of [subdivision \(h\) of Section 790.03 of the Insurance Code](#), evidence of settlement offers shall not be admitted in a motion for a new trial, in any proceeding involving an additur or remittitur, or on appeal.

(c) This section does not affect the admissibility of evidence of any of the following:

(1) Partial satisfaction of an asserted claim or demand without questioning its validity when such evidence is offered to prove the validity of the claim.

(2) A debtor's payment or promise to pay all or a part of his or her preexisting debt when such evidence is offered to prove the creation of a new duty on his or her part or a revival of his or her preexisting duty.

Credits

(Stats.1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats.1967, c. 650, p. 2007, § 7; [Stats.1987, c. 496, § 1.](#))

Editors' Notes

LAW REVISION COMMISSION COMMENTS

1965 Enactment

Section 1152, like [Section 2078 of the Code of Civil Procedure](#) which it supersedes, declares that compromise offers are inadmissible to prove liability. Because of the particular wording of [Section 2078](#), an offer of compromise probably may not be considered as an admission even though admitted without objection. See Tentative Recommendation and a Study Relating to the Uniform Rules of Evidence (Article VI. Extrinsic Policies Affecting Admissibility), 6 Cal.Law Revision Comm'n, Rep., Rec. & Studies 601, 675-676 (1964). See also [Scott v. Wood](#), 81 Cal. 398, 405-406, 22 Pac. 871, 873 (1889). Under Section 1152, however, nothing prohibits the consideration of an offer of settlement on the issue of liability if the evidence is received without objection. This modest change in the law is desirable. An offer of compromise, like other incompetent evidence, should be considered to the extent that it is relevant when it is presented to the trier of fact without objection.

The words “as well as any conduct or statements made in negotiation thereof” make it clear that statements made by parties during negotiations for the settlement of a claim may not be used as admissions in later litigation. This language will change the existing law under which certain statements made during settlement negotiations may be used as admissions. [People v. Forster](#), 58 Cal.2d 257, 23 Cal.Rptr. 582, 373 P.2d 630 (1962). The rule excluding offers is based upon the public policy in favor of the settlement of disputes without litigation. The same public policy requires that admissions made during settlement negotiations also be excluded. The rule of the Forster case that permits such statements to be admitted places a premium on the form of the statement. The statement “Assuming, for the purposes of these negotiations, that I was negligent . . .” is inadmissible; but the statement “All right, I was negligent! Let's talk about damages . . .” may be admissible. See the discussion in [People v. Glen Arms Estate, Inc.](#), 230 Cal.App.2d 841, 863, 864, 41 Cal.Rptr. 303, 316 (1964). The rule of the Forster case is changed by Section 1152 because that rule prevents the complete candor between the parties that is most conducive to settlement. [7 Cal.L.Rev.Comm. Reports 1 (1965)].

1967 Amendment

The amendment to Section 1152 is intended to clarify the meaning of the section without changing its substantive effect. The words “or will sustain” have been added to make it clear that the section applies to statements made in the course of negotiations concerning future loss or damage as well as past loss or damage. Such negotiations might occur as a result of an alleged anticipatory breach of contract or as an incident of an eminent domain proceeding. [8 Cal.L.Rev.Comm. Reports 101 (1967)].

[Notes of Decisions \(91\)](#)

West's Ann. Cal. Evid. Code § 1152, CA EVID § 1152

Current with urgency legislation through Ch. 145 of 2021 Reg.Sess