

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
ICDR CASE NO. 01-20-0000-6787

NAMECHEAP, INC.

And

INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS

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RESPONSE TO NAMECHEAP'S REQUEST FOR INDEPENDENT REVIEW PROCESS**

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R-2	.info Unsponsored Registry Agreement Archive (11 May 2001)
R-3	.biz Unsponsored Registry Agreement Archive (11 May 2001)
R-4	Proposed Unsponsored TLD Agreement (11 May 2001)
R-5	Final Declaration, <i>Booking.com v. ICANN</i> , ICDR Case. No. 50-20-1400-0247 (3 March 2015)
R-6	Proposed Amendment 3 to the .COM Registry Agreement (3 January 2020)
R-7	Registry Agreement Assignment, Direct Changes of Control (1 January 2017)
R-8	.ORG Registry Agreement Proposal, Specification 11 - Public Interest Commitments (6 April 2020)

EX. R-1



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Details

ICANN Blog

Authors: By Göran Marby, ICANN President & CEO

27 Mar 2020

ICANN Decides on .COM Amendment and Proposed Binding Letter of Intent between ICANN and Verisign



With more than 145 million domains in the .COM registry, the .COM Registry Agreement (RA) is one of the most important contracts under ICANN's responsibility. Amendments to this Registry Agreement are carefully assessed and only approved after thorough analysis. This is not a one-input decision, but one based on ongoing feedback from the Internet community and in close consultation with the ICANN Board of Directors.

With that in mind, ICANN organization thoughtfully and thoroughly evaluated proposed Amendment 3 to the .COM RA and the proposed binding Letter of Intent, and consulted with the ICANN Board prior to negotiating and prior to completing the negotiations with Verisign. We also took public comments into consideration.

Representing ICANN org as President & CEO, I have decided to execute the amendment of the .COM Registry Agreement and the proposed binding Letter of Intent. I believe this decision is in the best interest of the continued security, stability, and resiliency of the Internet. The complete decision paper, which expands upon the information used to make the decision is available [here](#).

Overall, the decision to execute the .COM Registry Agreement amendment and the proposed binding Letter of Intent is of benefit to the Internet community.

For example, the terms of the Registry Agreement technical specifications will more closely align with those in the [Base gTLD Registry Agreement](#). These include a requirement for Verisign to add Domain Name System (DNS) anti-abuse measures to the domain – one of the most discussed topics within the ICANN community for years. Specifically, Verisign must now require its accredited registrars to include provisions prohibiting

domains from being used to perpetrate DNS security threats in the registration agreements. Verisign must also conduct scans of its zone to identify domains being used to perpetrate DNS security threats at least once per month.

The proposed binding Letter of Intent also provides that Verisign will contribute US\$20 million over five years, beginning on 1 January 2021, to support ICANN's initiatives to preserve and enhance the security, stability, and resiliency of the DNS. This includes activities related to root server system governance, mitigation of DNS security threats, promotion and/or facilitation of Domain Name System Security Extensions (DNSSEC) deployment, the mitigation of name collisions, and research into the operation of the DNS. ICANN org recognizes the request for accountability and transparency regarding how the funds are used and is committed to full transparency to provide the ICANN community the appropriate level of detail when available.

I also want to take this opportunity to clarify ICANN's role with respect to wholesale pricing of top-level domains. Let me be clear, ICANN org is not a competition authority or price regulator.

We have long-deferred to the U.S. Government Department of Commerce (DOC) and Department of Justice for the regulation of pricing for .COM registry services, as per the Cooperative Agreement between Verisign and the DOC. That hasn't changed. Verisign continues to be required to provide at least six months' notice to registrars of any .COM wholesale price increase. This allows registrars, on behalf of registrant customers, to register or renew .COM domain names during the notice period for up to a 10-year total registration term, at the then-current price, prior to any increase. This allows the ability to lock-in current wholesale prices for up to 10 years.

I encourage you to read the [decision paper](#) for additional information. Please stay safe and healthy in these uncertain times.

Comments

Bernardo Badilla Jr 10:18 UTC on 04 April 2020

How do I get verisign?

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EX. R-2

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.info Unsponsored Registry Agreement | Archive

11 May 2001

On 11 May 2001, [ICANN](#) and Afilias entered into an Unsponsored Registry Agreement under which Afilias operates the .info top-level domain. The .info Unsponsored Registry Agreement and its appendices may be viewed by following the links below:

Registry Agreements

- [HTML](#) (22 August 2013)
- [HTML](#) (15 September 2010)
- [HTML](#) (26 May 2010)
- [HTML](#) (8 December 2006)
- [HTML](#) (11 May 2001)

Amendments

- [Amendment No.5](#) (23 April 2019)
- [Amendment No.4](#) (21 September 2018)
- [Amendment No.3](#) (15 May 2017)
- [Amendment No.2](#) (12 September 2016)
- [Amendment No.1](#) (23 April 2014)

Appendices

- [Appendix 1: Data Escrow Specification](#) (22 August 2013)
- [Appendix 2: Registry Data Escrow Agreement](#) (22 August 2013)
- [Appendix 3: Zone File Access Agreement](#) (22 August 2013)

Domain Names	<ul style="list-style-type: none"> • Appendix 4: Registry Operator's Monthly Report (22 August 2013)
Universal Acceptance Initiative	<ul style="list-style-type: none"> • Appendix 5: Whois Specification (22 August 2013) • Appendix 6: List of Reserved TLD Strings (22 August 2013) • Appendix 7: Functional Specifications (22 August 2013) • Appendix 8: Registry-Registrar Agreement (22 August 2013) • Appendix 9: Approved Services (22 August 2013)
<input type="checkbox"/> Policy	
<input type="checkbox"/> Public Comment	
Root Zone KSK Rollover	<ul style="list-style-type: none"> • Appendix 10: Service Level Agreement (22 August 2013) • Appendix 12: Registry Operator Code of Conduct (22 August 2013) • Appendix 7: Functional and Performance Specifications (12 June 2009) • Appendix 7: Functional and Performance Specifications (16 May 2008)
<input type="checkbox"/> Technical Functions	
<input type="checkbox"/> Contact	
<input type="checkbox"/> Help	<ul style="list-style-type: none"> • Appendix 1: Data Escrow Specification (8 December 2006) • Appendix 2: Data Escrow Agreement (8 December 2006) • Appendix 3: Zone File Access Agreement (8 December 2006) • Appendix 4: Registry Operator's Monthly Report (8 December 2006) • Appendix 5: Whois Specifications (8 December 2006) • Appendix 6: Schedule of Reserved Names (8 December 2006) • Appendix 7: Functional and Performance Specifications (8 December 2006) • Appendix 8: Registry-Registrar Agreement (8 December 2006) • Appendix 9: Approved Services (8 December 2006) • Appendix 10: Service Level Agreement (8 December 2006)

Fee Notifications

- [INFO Fees](#) – Effective 1 September 2018 (Published 11 May 2018)

Proof of Concept Report

- [27 August 2002](#)

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EX. R-3

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Security, Stability
and Resiliency
\(OCTO IS-SSR\)](#) [ccTLDs](#) [Internationalized](#)

.biz Un-sponsored Registry Agreement | Archive

11 May 2001

On 11 May 2001, [ICANN](#) and NeuLevel entered into an Un-sponsored Registry Agreement under which NeuLevel operates the .biz top-level domain. The .biz Un-sponsored Registry Agreement and its appendices may be viewed by following the links below:

Registry Agreements

- [HTML](#) (22 August 2013)
- [HTML](#) (27 April 2010)
- [HTML](#) (8 December 2006)
- [HTML](#) (18 June 2003)

Assignment and Assumption Agreement(s)

- NeuStar, Inc. to Registry Services, LLC [PDF](#) | (08 August 2017)

Appendices

- [Appendix 1: Data Escrow Specification](#) (22 August 2013)
- [Appendix 2: Registry Data Escrow Agreement](#) (22 August 2013)
- [Appendix 3: Zone File Access Agreement](#) (22 August 2013)
- [Appendix 4: Registry Operator's Monthly Report](#) (22 August 2013)
- [Appendix 5: Whois Specification](#) (22 August 2013)
- [Appendix 6: List of Reserved TLD Strings](#) (22 August 2013)
- [Appendix 7: Functional Specifications](#) (22 August 2013)
- [Appendix 8: Registry-Registrar Agreement](#) (22 August 2013)

Domain Names	<ul style="list-style-type: none"> • Appendix 9: Approved Services (22 August 2013)
Universal Acceptance Initiative	<ul style="list-style-type: none"> • Appendix 10: Service Level Agreement (22 August 2013) • Appendix 11: Registration Restrictions (22 August 2013) • Appendix 12: Registry Operator Code of Conduct (22 August 2013)
<input type="checkbox"/> Policy	<ul style="list-style-type: none"> • Appendix 7: Functional and Performance Specifications (3 April 2008)
<input type="checkbox"/> Public Comment	<ul style="list-style-type: none"> • Appendix 7: Functional and Performance Specifications (29 June 2007)
Root Zone KSK Rollover	<ul style="list-style-type: none"> • Appendix 1: Data Escrow Specification (8 December 2006) • Appendix 2: Data Escrow Agreement (8 December 2006) • Appendix 3: Zone File Access Agreement (8 December 2006) • Appendix 4: Registry Operator's Monthly Report (8 December 2006) • Appendix 5: Whois Specifications (8 December 2006) • Appendix 6: List of Reserved TLD Strings (8 December 2006) • Appendix 7: Functional and Performance Specifications (8 December 2006) • Appendix 8: Registry-Registrar Agreement (8 December 2006) • Appendix 9: Approved Services (8 December 2006) • Appendix 10: Service Level Agreement (8 December 2006) • Appendix 11: .biz Registration Restrictions (8 December 2006)
<input type="checkbox"/> Technical Functions	
<input type="checkbox"/> Contact	
<input type="checkbox"/> Help	

Fee Notifications

- [BIZ Fees](#) – Effective 1 November 2015 (Published 28 January 2016)

Updates to General Notices Contact

- [PDF](#) (6 May 2019)
- [PDF](#) (19 December 2018)
- [PDF](#) (30 April 2018)

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Participate	Report Security Issues	Independent Review Process	Specific Reviews	Name Collision	Terms of Service
Groups	PGP Keys	Request for Reconsideration	Annual Report	Registrar Problems	Cookies Policy
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Ex. R-4



Proposed Un-sponsored TLD Agreement

(11 May 2001)

Registry Agreement

This REGISTRY AGREEMENT ("Agreement") is by and between the Internet Corporation for Assigned Names and Numbers, a not-for-profit corporation, and [insert Registry Operator's name], a [insert jurisdiction and type of organization].

1. DEFINITIONS. For purposes of this Agreement, the following definitions shall apply:

1.1. The "Authoritative Root-Server System" means the constellation of DNS root-nameservers specified, from time to time, in the file <ftp://ftp.internic.net/domain/named.root>.

1.2. The "Base Period," in the case of a TLD delegated within the Authoritative Root-Server System on the Effective Date, means a period beginning on the Commencement-of-Service Date and extending until the Expiration Date. In the case of a TLD not delegated within the Authoritative Root-Server System, the "Base Period" means a period beginning at the conclusion of the Ramp-Up Period and extending until the Expiration Date.

1.3. The "Commencement-of-Service Date" means the Effective Date, except that, in the case of a TLD not delegated within the Authoritative Root-Server System on the Effective Date, the Commencement-of-Service Date shall be the date on which the Registry TLD is first delegated within the Authoritative Root-Server System to nameservers designated by Registry Operator.

1.4. The "DNS" refers to the Internet domain-name system.

1.5. The "Effective Date" is the date on which this Agreement is first signed on behalf of both parties.

1.6. The "Expiration Date" is the date specified in Subsection 5.1.1, as it may be extended according to Subsection 5.1.2.

1.7. "ICANN" refers to the Internet Corporation for Assigned Names and Numbers, a party to this Agreement.

1.8. An "ICANN-Accredited Registrar" is an entity or person accredited by ICANN to act as a registrar for domain names within the domain of the Registry TLD.

1.9. "Personal Data" refers to data about any identified or identifiable natural person.

1.10. The "Ramp-Up Period," in the case of a TLD not delegated within the Authoritative

Root-Server System on the Effective Date, is the period beginning on the Commencement-of-Service Date and extending for one year.

1.11. "Registered Name" refers to a domain name within the domain of the Registry TLD, whether consisting of two or more (e.g., john.smith.name) levels, about which Registry Operator (or an affiliate engaged in providing Registry Services) maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. A name in a Registry Database may be a Registered Name even though it does not appear in a zone file (e.g., a registered but inactive name).

1.12. "Registry Data" means all Registry Database data maintained in electronic form, and shall include TLD Zone-File Data, all data used to provide Registry Services submitted by registrars in electronic form, and all other data used to provide Registry Services concerning particular domain name registrations or nameservers maintained in electronic form in the Registry Database.

1.13. "Registry Database" means a database comprised of data about one or more DNS domain names within the domain of the Registry TLD that is used to generate either DNS resource records that are published authoritatively or responses to domain-name availability lookup requests or Whois queries, for some or all of those names.

1.14. "Registry Operator" refers to [insert Registry Operator's name], a party to this Agreement, or any assignee of it under Subsection 5.11.

1.15. "Registry-Registrar Agreement" means an agreement between Registry Operator and an ICANN-Accredited Registrar with the provisions specified by Subsection 3.4.

1.16. "Registry Services" means services provided as an integral part of the operation of the Registry TLD, including all subdomains in which Registered Names are registered. In determining whether a service is integral to the operation of the Registry TLD, consideration will be given to the extent to which the Registry Operator has been materially advantaged in providing the service by its designation as such under this Agreement. The development of technology, expertise, systems, efficient operations, reputation (including identification as Registry Operator), financial strength, or relationships with registrars and third parties shall not be deemed an advantage arising from the designation. Registry Services include: receipt of data concerning registration of domain names and nameservers from registrars, provision to registrars of status information relating to the Registry TLD, dissemination of TLD zone files, operation of the Registry TLD zone servers, dissemination of contact and other information concerning domain-name and nameserver registrations in the Registry TLD, and such other services required by ICANN in the manner provided in Subsections 4.3 through 4.6. Registry Services shall not include the provision of nameservice for a domain used by a single entity under a Registered Name registered through an ICANN-Accredited Registrar.

1.17. "Registry TLD" refers to the [insert TLD label] TLD.

1.18. "Service Term" means that portion of the Term of this Agreement commencing on the Commencement-of-Service Date.

1.19. "Term of this Agreement" begins on the Effective Date and continues until the earlier of (a) the Expiration Date, or (b) termination of this Agreement.

1.20. "TLD" refers to a top-level domain in the DNS.

1.21. "TLD Zone-File Data" means all data contained in a DNS zone file for the Registry TLD, or for any subdomain for which Registry Services are provided and that contains Registered Names, as provided to nameservers on the Internet.

2. ICANN OBLIGATIONS.

2.1. General Obligations of ICANN. With respect to all matters that affect the rights, obligations, or role of Registry Operator, ICANN shall during the Term of this Agreement:

- 2.1.1. exercise its responsibilities in an open and transparent manner;
- 2.1.2. not unreasonably restrain competition and, to the extent feasible, promote and encourage robust competition;
- 2.1.3. not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause; and
- 2.1.4. ensure, through its reconsideration and independent review policies, adequate appeal procedures for Registry Operator, to the extent it is adversely affected by ICANN standards, policies, procedures or practices.

2.2. Designation of Registry Operator. ICANN hereby designates Registry Operator as the sole operator for the Registry TLD during the Term of this Agreement.

2.3. Recognition in Authoritative Root-Server System. During the Term of this Agreement, Registry Operator may, by notifying ICANN, request (a) delegation of the Registry TLD to specified DNS nameservers and (b) changes in that delegation. Any such request must be made in a format, and otherwise meet technical requirements, specified from time to time by ICANN. The initial format and technical requirements are set forth in Appendix A. Changes to the format and technical requirements may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6. ICANN will use commercially reasonable efforts to have such requests implemented in the Authoritative Root-Server System within five business days of the submission.

2.4. Recognition in the Root-Zone Contact Database. To the extent ICANN publishes contact data regarding TLDs, during the Term of this Agreement it will show the Registry TLD's operator as Registry Operator and the Registry TLD's administrative and technical contacts as requested from time to time by Registry Operator. Any such request must be made in a format, include the elements of contact data, and otherwise meet technical requirements, specified from time to time by ICANN. The initial requirements for these requests are set forth in Appendix B. Changes to the requirements for requests may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

2.5. Other Obligations of ICANN. During the Term of this Agreement, ICANN shall use commercially reasonable efforts to:

- 2.5.1. maintain, or cause to be maintained, a stable, secure, authoritative and

publicly available database of relevant information regarding the delegation of the Registry TLD;

2.5.2. generate, or cause to be generated, authoritative and accurate root zone information from such database and operate, or cause to be operated, the Authoritative Root-Server System in a stable and secure manner;

2.5.3. maintain, or cause to be maintained, authoritative records and an audit trail regarding delegations of the Registry TLD and records related to these delegations; and

2.5.4. inform Registry Operator in a timely manner of any changes to ICANN's contact information.

2.6. Use of ICANN Name, Logo, and Website. ICANN hereby grants to Registry Operator a non-exclusive, worldwide, royalty-free license during the Term of this Agreement (a) to state that it is designated by ICANN as the registry operator for the Registry TLD, (b) to use a logo specified by ICANN to signify that Registry Operator is an ICANN-designated registry operator, and (c) to link to pages and documents within the ICANN web site. No other use of ICANN's name or logo is licensed hereby. This license may not be assigned or sublicensed by Registry Operator.

3. REGISTRY OPERATOR OBLIGATIONS.

3.1. Obligation to Provide Registry Services. During the Service Term, Registry Operator shall operate, or cause to be operated, a registry of Registered Names that meets the functional specifications described by Subsection 3.2 and the performance specifications described by Subsection 3.3. Throughout the Term of this Agreement, Registry Operator shall be obligated to enter into a Registry-Registrar Agreement with any ICANN-Accredited Registrar seeking such an agreement on the terms specified by Subsection 3.4. Registry Operator shall commence providing Registry Services in the Registry TLD according to the registry start-up plan specified in Subsection 3.7 and, on the conclusion of that plan and throughout the remainder of the Term of this Agreement, shall continue providing Registry Services. Throughout the Service Term, Registry Operator shall provide Registry Services in compliance with any Registry-Registrar Agreement as provided in Subsection 3.4 that is then in effect.

3.2. Functional Specifications for Registry Services. All Registry Services provided by Registry Operator shall be provided under this Agreement and shall meet the functional specifications established by ICANN. The initial functional specifications are set forth in Appendix C. Non-material changes and additions to the functional specifications may be made by Registry Operator with prior written notice to ICANN and any affected ICANN-Accredited Registrars. All other changes and additions to the functional specifications may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.3. Performance Specifications for Registry Services. All Registry Services provided by Registry Operator shall meet the performance specifications and comply with the registrar service level agreement established by ICANN. The initial performance specifications are set forth in Appendix D and the initial service level agreement is set forth in Appendix E. Changes to the performance specifications or service level agreement may be made only

with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.4. Registry-Registrar Agreements. During the Term of this Agreement, Registry Operator shall enter a Registry-Registrar Agreement with any ICANN-Accredited Registrar desiring to enter such an agreement. All Registry Services provided by Registry Operator for the Registry TLD shall be provided strictly in accordance with that Registry-Registrar Agreement:

3.4.1. Initially, the form of the Registry-Registrar Agreement shall be that attached as Appendix F.

3.4.2. The form of the Registry-Registrar Agreement may be revised (a) by Registry Operator with the written consent of ICANN, (b) by ICANN in the manner provided in Subsections 4.3 through 4.6, provided that any additional terms are within the topics set forth in Subsection 4.2, or, (c) with respect to the price charged registrars by Registry Operator for Registry Services, according to Subsection 3.4.3.

3.4.3. Registry Operator may, at its option and with thirty days written notice to ICANN and to all ICANN-Accredited Registrars, revise the prices charged to registrars under the Registry-Registrar Agreement, provided that (a) the same price shall be charged for services charged to all ICANN-Accredited Registrars (provided that volume adjustments may be made if the same opportunity to qualify for those adjustments is available to all ICANN-Accredited Registrars) and (b) the prices shall not exceed those set forth in Appendix G, as adjusted according to Subsections 3.14.5 and 4.4. Registry Operator shall charge no fee to anyone for Registry Services if such fee is not listed on Appendix G. For Registry Services (a) listed on Appendix G without a stated price or (b) introduced more than six months after the Commencement-of-Service Date, Registry Operator may propose to ICANN, no later than thirty days before the commencement of that service, the inclusion in Appendix G of an offering price for the Registry Service. The offering price for the Registry Service shall be included in Appendix G only upon the written consent of ICANN, which shall not be unreasonably withheld or delayed (ordinarily 30 days or less).

3.5. Fair Treatment of ICANN-Accredited Registrars.

3.5.1. Registry Operator shall provide all ICANN-Accredited Registrars that have Registry-Registrar Agreements in effect, and that are in compliance with the terms of such agreements, equivalent access to Registry Operator's Registry Services, including to its shared registration system.

3.5.2. Registry Operator shall certify to ICANN every six months, using the objective criteria set forth in Appendix H, that Registry Operator is providing all such ICANN-Accredited Registrars with equivalent access to its Registry Services, including to its shared registration system.

3.5.3. Registry Operator shall not act as a registrar with respect to the Registry TLD. This shall not preclude Registry Operator from registering names within the domain of the Registry TLD in compliance with Subsection 3.6. This also shall not preclude an affiliate of Registry Operator from acting as a registrar with

respect to the Registry TLD, provided that Registry Operator complies with the provisions of Subsections 3.5.4 and 3.5.5.

3.5.4. Registry Operator shall comply with its Code of Conduct attached as Appendix I. Any changes to that Code of Conduct will require ICANN's written approval.

3.5.5. Registry Operator will ensure, in a form and through ways described in Appendix H, that the revenues and assets of Registry Operator are not utilized to advantage registrars that are affiliated with Registry Operator to the detriment of other ICANN-Accredited Registrars. The distribution of funds by Registry Operator to its debt or equity participants in accordance with their debt or equity participation shall not violate this Subsection 3.5.5.

3.5.6. With respect to its obligations under Subsections 3.5.1 through 3.5.5 and Appendices H and I, Registry Operator agrees to participate in and comply with the sanctions program described in Appendix Y, provided that all other registry operators having registry agreements with ICANN for the operation of unsponsored top-level domains (i.e. top-level domains, other than country-code and infrastructure domains, not having a sponsoring organization) are obligated to participate in and comply with a sanctions program with substantially the same provisions as Appendix Y. Registry Operator agrees that the sanctions program described in Appendix Y shall be a non-exclusive and additional option for ICANN to promote compliance with Subsections 3.5.1 through 3.5.5 and Appendices H and I, and that the availability of that option does not limit or affect in any way ICANN's ability to employ any other compliance measures or remedies available under this Agreement. In the event that the gTLD Constituency of the Domain Name Supporting Organization proposes a substitute Appendix Y at any time prior to 1 May 2002, and ICANN determines (following an appropriate process of public notice and comment) that substitution by that Appendix Y would serve the interests of the Internet community, the substitution shall be made.

3.6. Registrations Not Sponsored by Registrars Under Registry-Registrar Agreements. Registry Operator shall register domain names within the domain of the Registry TLD, other than on a request submitted by a registrar pursuant to that registrar's Registry-Registrar Agreement, only as follows:

3.6.1. Registry Operator may register the domain names listed on Appendix X (Part A) for its own use in operating the registry and providing Registry Services under this Agreement, provided the total number of domain names listed on Appendix X at any time does not exceed 5000. At the conclusion of its designation by ICANN as the operator for the Registry TLD, Registry Operator shall transfer all such domain-name registrations to the entity or person specified by ICANN. Appendix X may be revised upon the written notice by Registry Operator to ICANN and written consent by ICANN, which shall not be unreasonably withheld.

3.6.2. Registry Operator may register the domain names listed on Appendix X (Part B) for its own use, provided that the total number of domain names listed on Appendix X at any time does not exceed 5,000. Registry Operator may retain registration of those names at the conclusion of its designation by ICANN as the

operator for the Registry TLD, provided registration fees are paid and all other requirements for registration by third parties are met. Appendix X may be revised upon written notice by Registry Operator to ICANN and written consent by ICANN, which shall not be unreasonably withheld.

3.6.3. As instructed from time to time by ICANN, Registry Operator shall maintain the registration of up to 5000 domain names within the domain of the Registry TLD for use by ICANN and other organizations responsible for coordination of the Internet's infrastructure.

3.6.4. Subsection 3.6 shall not preclude Registry Operator from registering domain names within the domain of the Registry TLD through an ICANN-Accredited Registrar pursuant to that registrar's Registry-Registrar Agreement.

3.7. Registration Start-Up Plan. Registry Operator shall commence provision of Registry Services for the Registry TLD, including the provision of nameservice for the Registry TLD, according to the schedule and procedures set forth in the registration start-up plan in Appendix J to this Agreement.

3.8. Registration Restrictions Within Registry TLD.

3.8.1. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve from registration the domain names specified by a schedule established by ICANN. The initial schedule is attached as Appendix K. Changes to the schedule may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.8.2. Registry Operator shall apply, monitor, and enforce the restrictions on registration in the Registry TLD established by ICANN in the manner established by ICANN. Appendix L sets forth the restrictions to be applied initially and Appendix M sets forth the manner by which these restrictions shall be applied, monitored, and enforced. Changes to the restrictions and the manner of their application, monitoring, and enforcement may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6. [This Subsection applies to restricted TLDs only]

3.9. Bulk Access to TLD Zone Files. Registry Operator shall provide bulk access to the zone files for the Registry TLD as follows:

3.9.1. to third parties on the terms set forth in the TLD zone file access agreement established by ICANN. The initial terms of the agreement are set forth as Appendix N to this Agreement. Changes to the terms of the TLD zone file access agreement may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.9.2. to ICANN on a continuous basis in the manner which ICANN may from time to time specify.

3.10. Publication by Registry Operator of Registry Data.

3.10.1. At its expense, Registry Operator shall provide free public query-based access to up-to-date data concerning domain-name and nameserver registrations maintained by Registry Operator in connection with the Registry TLD. The data elements reported, format of responses to queries, data update frequency, query types supported, and protocols through which access is provided shall be as established by ICANN. The initial specification of the data elements reported, format of responses to queries, minimum data update frequency, query types supported, and protocols through which access is provided are set forth in Appendix O. Registry Operator may request supplementation of the specification to include additional data elements reported or query types supported, in which event ICANN shall act to supplement the specification in a reasonable manner within a reasonable time. Other changes to the specification may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.10.2. To ensure operational stability of the registry, Registry Operator may temporarily limit access under Subsection 3.10.1 in which case Registry Operator shall immediately notify ICANN of the nature of and reason for the limitation. Registry Operator shall not continue the limitation longer than a period established by ICANN if ICANN objects in writing, which objection shall not be unreasonably made. The period shall initially be five business days; changes to that period may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6. Such temporary limitations shall be applied in a non-arbitrary manner and shall apply fairly to all ICANN-Accredited Registrars.

3.10.3. In providing query-based public access to registration data as required by this Subsection 3.10, Registry Operator shall not impose terms and conditions on the use of the data provided, except as permitted by policy established by ICANN. Unless and until ICANN establishes a different policy, Registry Operator shall permit use of data it provides in response to queries for any lawful purposes except to: (a) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than the data recipient's own existing customers; or (b) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-Accredited Registrar, except as reasonably necessary to register domain names or modify existing registrations. Changes to that policy may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.10.4. To comply with applicable statutes and regulations and for other reasons, ICANN may from time to time establish policies in the manner described by Subsections 4.3 through 4.6 establishing limits on the data concerning registrations that Registry Operator may make available to the public through a public-access service described in this Subsection 3.10 and on the manner in which Registry Operator may make them available. In the event ICANN establishes any such policy, Registry Operator shall abide by it within

the time allowed by Subsection 4.5.

3.10.5. At its expense, Registry Operator shall provide bulk access to up-to-date data concerning domain-name and nameserver registrations maintained by Registry Operator in connection with the Registry TLD in the following two ways:

3.10.5.1. on a daily schedule, only for purposes of providing free public query-based access to up-to-date data concerning domain-name and nameserver registrations in multiple TLDs, to a party designated from time to time in writing by ICANN. The content and format of this data, and the procedures for providing access, shall be as established by ICANN. The initial content, format, and procedures are set forth in Appendix P. Changes to that content and format and those procedures may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.10.5.2. on a continuous basis, to ICANN in the manner which ICANN may from time to time reasonably specify, only for purposes of verifying and ensuring the operational stability of Registry Services, the DNS, and the Internet. The content and format of this data, and the procedures for providing access, shall be as established by ICANN. The initial content, format, and procedures are set forth in Appendix Q. Changes to that content and format and those procedures may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.11. Data Escrow. Registry Operator shall periodically deposit into escrow all Registry Data in an electronic format. The escrow shall be maintained, at Registry Operator's expense, by a reputable escrow agent mutually approved by Registry Operator and ICANN, such approval also not to be unreasonably withheld by either party. The schedule, content, format, and procedure for escrow deposits shall be as established by ICANN from time to time. The initial schedule, content, format, and procedure shall be as set forth in Appendix R. Changes to the schedule, content, format, and procedure may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6. The escrow shall be held under an agreement, substantially in the form of Appendix S, among ICANN, Registry Operator, and the escrow agent. In the event that, after a good-faith search by ICANN and Registry Operator, no mutually approved escrow agent agrees to the terms of Appendix S, ICANN and Registry Operator shall, in conjunction with a mutually approved escrow agent, negotiate in good faith for a substitute escrow agreement.

3.12. Registry Operator's Handling of Personal Data. Registry Operator shall notify registrars sponsoring registrations in the registry for the Registry TLD of the purposes for which Personal Data submitted to Registry Operator by registrars is collected, the intended recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of such Personal Data. Registry Operator shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way

that is incompatible with the notice provided to registrars.

3.13. Rights in Data. Except as permitted by the Registry-Registrar Agreement, Registry Operator shall not be entitled to claim any intellectual property rights in data supplied by or through registrars. In the event that Registry Data is released from escrow under Subsection 3.11, any rights held by Registry Operator in the data shall automatically be transferred on a non-exclusive, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.

3.14. Registry-Level Financial Support of ICANN. During the Term of this Agreement, Registry Operator shall pay to ICANN the following fees:

3.14.1. Fixed Registry-Level Fee. Registry Operator shall pay ICANN a quarterly Fixed Registry-Level Fee in an amount established by the ICANN Board of Directors, in conformity with the ICANN bylaws and articles of incorporation, not to exceed one quarter of the annual Fixed Registry-Level Fee Cap described in Subsection 3.14.4.

3.14.2. Variable Registry-Level Fee. Registry Operator shall pay ICANN a quarterly Variable Registry-Level Fee in an amount calculated according to a formula and method established from time to time by the ICANN Board of Directors, in conformity with the ICANN bylaws and articles of incorporation. The formula and method shall allocate the total variable fee among all TLDs sponsored or operated under a sponsorship or registry agreement with ICANN (whether the fee is collected at the registry or registrar level) based on the relative size of the registries for those TLDs. It shall be permissible for the formula and method so established to do any of the following: (a) to measure the size of a TLD's registry, at least once per year where feasible, by the number of names under administration within the TLD by the registry's operator, (b) to deem the number of domain names under administration within the Registry TLD to be the number of Registered Names, (c) to provide for a deduction in computing a sponsor's or operator's Variable Registry-Level Fee of some or all of that sponsor's or registry operator's Fixed Registry-Level Fee, and (d) to provide that the number of domain names under administration for the .com, .net, and .org TLDs is the number of second-level domains within those TLDs. It shall also be permissible for the formula and method to consider accreditation fees collected from registrars as a credit applied to the Variable Registry-Level Fee for the TLD to which the fees pertain. Groups of registries for two or more TLDs may, with the agreement of their sponsors or operators and ICANN, agree to allocate the variable fee collected from them in a manner not based on the relative size of the registries within the group, provided that the combined variable fees collected for all TLDs within the group is based on the combined size of the registries in the group.

3.14.3. Payments Must Be Timely. Registry Operator shall pay the quarterly Fixed and Variable Registry-Level Fees within thirty days after the date of ICANN's invoice for those fees. These payments shall be made in a timely manner throughout the Term of this Agreement and notwithstanding the pendency of any dispute between Registry Operator and ICANN. Registry Operator shall pay interest on payments not timely made at the rate of 1% per month or, if less, the maximum rate permitted by California law.

3.14.4. Fee Caps. The Fixed Registry-Level Fee Cap shall be [depends on TLD type: US\$100,000 for unrestricted and US\$80,000 for restricted] per year until and including 30 June 2002; shall automatically increase by 15% on July 1 of each year beginning in 2002; and may be increased by a greater amount in the manner provided by Subsection 4.3. The sum of the Fixed Registry-Level Fees and the Variable Registry-Level Fees due to be paid in any year ending on any 30 June during or within one year after the Term of this Agreement by all TLD sponsors and registry operators having sponsorship or registry agreements with ICANN shall not exceed the Total Registry-Level Fee Cap described in the following sentence. The Total Registry-Level Fee Cap shall be US\$5,500,000 for the fiscal year ending 30 June 2002; shall increase by 15% each fiscal year thereafter; and may be increased by a greater amount in the manner provided by Subsection 4.3.

3.14.5. Adjustments to Price. The maximum pricing for initial and renewal registrations set forth in Appendix G shall be adjusted at the beginning of each calendar quarter by adding, to the amount specified in that Appendix (after adjustment according to Subsection 4.4) as the applicable annual charge for initial or renewal registration of a domain name, an amount calculated according to the following three sentences. For calendar quarters in which the variable fee is collected at the registrar level, the amount shall be US\$0.00. For the first two calendar quarters during the Term of this Agreement in which the variable fee is collected at the registry level, the amount shall be four times the per-name variable accreditation fee charged to registrars for the quarter beginning six months earlier. For subsequent calendar quarters, the amount shall be four times the quarterly Variable Registry-Level Fee reflected in the invoice to Registry Operator for such a fee for the quarter beginning six months earlier divided by the number of Registered Names that the invoice shows was used to calculate that quarterly Variable Registry-Level Fee.

3.15. Reports Provided to ICANN. Registry Operator shall provide the following periodic written reports to ICANN regarding the following:

3.15.1. Monthly Reports on Registry Operations. Within twenty days after the end of each month during the Term of this Agreement, Registry Operator shall provide ICANN a written report, giving information specified by ICANN, on operation of the registry during the month. The initial specification of information is set forth in Appendix T. Changes to that specification may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.15.2. Data Related to Proof of Concept. Registry Operator shall, for the purpose of providing data concerning concepts to be proven by establishment of the Registry TLD, provide reports concerning the Registry TLD's operation on a schedule and with content specified in Appendix U.

4. PROCEDURES FOR ESTABLISHMENT OR REVISION OF SPECIFICATIONS AND POLICIES.

4.1. Registry Operator's Ongoing Obligation to Comply With New or Revised Specifications and Policies. During the Term of this Agreement, Registry Operator shall comply, in its provision of Registry Services, on the schedule provided in Subsection 4.5, with

4.1.1. new or revised specifications (including forms of agreement to which Registry Operator is a party) and policies established by ICANN as Consensus Policies in the manner described in Subsection 4.3,

4.1.2. in cases where:

4.1.2.1. this Agreement expressly provides for compliance with revised specifications or policies established in the manner set forth in one or more subsections of this Section 4; or

4.1.2.2. the specification or policy concerns one or more topics described in Subsection 4.2.

4.2. Topics for New and Revised Specifications and Policies. New and revised specifications and policies may be established on the following topics:

4.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, technical reliability, and/or operational stability of Registry Services, the DNS, or the Internet;

4.2.2. functional and performance specifications for the provision of Registry Services;

4.2.3. safety and integrity of the Registry Database;

4.2.4. procedures to avoid disruptions of registration due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving Registered Names affected by such a suspension or termination;

4.2.5. resolution of disputes regarding whether particular parties may register or maintain registration of particular domain names;

4.2.6. principles for allocation of Registered Names (e.g., first-come/first-served, timely renewal, holding period after expiration);

4.2.7. prohibitions on warehousing of or speculation in domain names by registries or registrars;

4.2.8. maintenance of and access to accurate and up-to-date contact information for domain-name registrants;

4.2.9. reservation of Registered Names that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and

4.2.10. registry policies reasonably necessary to implement Consensus Policies relating to registrars.

4.3. Manner of Establishment of New and Revised Specifications and Policies.

4.3.1. "Consensus Policies" are those specifications or policies established based on a consensus among Internet stakeholders represented in the ICANN process, as demonstrated by (a) action of the ICANN Board of Directors establishing the specification or policy, (b) a recommendation, adopted by at least a two-thirds vote of the council of the ICANN Supporting Organization to which the matter is delegated, that the specification or policy should be established, and (c) a written report and supporting materials (which must include all substantive submissions to the Supporting Organization relating to the proposal) that (i) documents the extent of agreement and disagreement among impacted groups, (ii) documents the outreach process used to seek to achieve adequate representation of the views of groups that are likely to be impacted, and (iii) documents the nature and intensity of reasoned support and opposition to the proposed policy.

4.3.2. In the event that Registry Operator disputes the presence of such a consensus, it shall seek review of that issue from an Independent Review Panel established under ICANN's bylaws. Such review must be sought within fifteen working days of the publication of the Board's action establishing the policy. The decision of the panel shall be based on the report and supporting materials required by Subsection 4.3.1. In the event that Registry Operator seeks review and the Independent Review Panel sustains the Board's determination that the policy is based on a consensus among Internet stakeholders represented in the ICANN process, then Registry Operator must implement such policy unless it promptly seeks and obtains a stay or injunctive relief under Subsection 5.9.

4.3.3. If, following a decision by the Independent Review Panel convened under Subsection 4.3.2, Registry Operator still disputes the presence of such a consensus, it may seek further review of that issue within fifteen working days of publication of the decision in accordance with the dispute resolution procedures set forth in Subsection 5.9; provided, however, that Registry Operator must continue to implement the policy unless it has obtained a stay or injunctive relief under Subsection 5.9 or a final decision is rendered in accordance with the provisions of Subsection 5.9 that relieves Registry Operator of such obligation. The decision in any such further review shall be based on the report and supporting materials required by Subsection 4.3.1.

4.3.4. A specification or policy established by the ICANN Board of Directors on a temporary basis, without a prior recommendation by the council of an ICANN Supporting Organization, shall also be considered to be a Consensus Policy if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the Board reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the operational stability of Registry Services, the DNS, or the Internet, and that the proposed specification or policy is as narrowly tailored as feasible to achieve those objectives. In establishing any specification or policy under this provision, the ICANN Board of Directors shall state the period of time for which the specification or policy is temporarily adopted and shall immediately refer the matter to the appropriate Supporting Organization for its evaluation and review with a detailed explanation of its reasons for establishing the temporary specification or policy and why the Board believes the policy should receive the consensus support of Internet stakeholders. If the period of time for which the

specification or policy is adopted exceeds ninety days, the Board shall reaffirm its temporary establishment every ninety days for a total period not to exceed one year, in order to maintain such specification or policy in effect until such time as it meets the standard set forth in Subsection 4.3.1. If the standard set forth in Subsection 4.3.1 is not met within the temporary period set by the Board, or the council of the Supporting Organization to which it has been referred votes to reject the temporary specification or policy, it will no longer be a "Consensus Policy."

4.3.5. For all purposes under this Agreement, the policies identified in Appendix V shall be treated in the same manner and have the same effect as "Consensus Policies."

4.3.6. In the event that, at the time the ICANN Board of Directors establishes a specification or policy under Subsection 4.3.1 during the Term of this Agreement, ICANN does not have in place an Independent Review Panel established under ICANN's bylaws, the fifteen-working-day period allowed under Subsection 4.3.2 to seek review shall be extended until fifteen working days after ICANN does have such an Independent Review Panel in place and Registry Operator shall not be obligated to comply ICANN with the specification or policy in the interim.

4.4. Pricing Adjustments Arising from New or Revised Specifications or Policies. The maximum prices stated in Appendix G shall be increased through an amendment to this Agreement as approved by ICANN and Registry Operator, such approval not to be unreasonably withheld, to reflect demonstrated increases in the net costs of providing Registry Services arising from (A) new or revised ICANN specifications or policies adopted after the Effective Date, or (B) legislation specifically applicable to the provision of Registry Services adopted after the Effective Date, to ensure that Registry Operator recovers such costs and a reasonable profit thereon; provided that such increases exceed any reductions in costs arising from (A) or (B) above.

4.5. Time Allowed for Compliance. Registry Operator shall be afforded a reasonable period of time (not to exceed four months unless the nature of the specification or policy established under Subsection 4.3 reasonably requires, as agreed to by ICANN and Registry Operator, a longer period) after receiving notice of the establishment of a specification or policy under Subsection 4.3 in which to comply with that specification or policy, taking into account any urgency involved.

4.6. Indemnification of Registry Operator. ICANN shall indemnify, defend, and hold harmless Registry Operator (including its directors, officers, employees, and agents) from and against any and all claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising solely from Registry Operator's compliance as required by this Agreement with an ICANN specification or policy (including, without limitation, a Consensus Policy) established after the Effective Date; except that Registry Operator shall not be indemnified or held harmless hereunder to the extent that the claims, damages or liabilities arise from the particular manner in which Registry Operator has chosen to comply with the specification or policy, where it was possible for Registry Operator to comply in a manner by which the claims, damages, or liabilities would not arise. As an alternative to providing the indemnity stated in this Subsection 4.6, ICANN may, at the time it establishes a specification or policy after the Effective Date giving rise to an indemnity obligation under this Subsection 4.6, state ICANN's election that the Registry

Operator shall bear the cost of insuring the claims, damages, liabilities, costs, and expenses that would otherwise be indemnified by ICANN under this Subsection 4.6, in which case the reasonable cost to Registry Operator of such insurance shall be treated under Subsection 4.4 as a cost of providing Registry Services arising from the newly established ICANN specification or policy.

5. MISCELLANEOUS PROVISIONS.

5.1. Expiration of this Agreement.

5.1.1. The initial Expiration Date shall be five years after the Commencement-of-Service Date, except that, in the case of a TLD not delegated within the Authoritative Root-Server System on the Effective Date, the initial Expiration Date shall be five years after the end of the Ramp-Up Period. The Expiration Date may be extended as provided in Section 5.1.2.

5.1.2. The initial Expiration Date shall be extended by one year in the event that, on the date one year before the initial Expiration Date, Registry Operator has under management within the Registry TLD at least 19,827,980 Registered Names.

5.1.3. Registry Operator acknowledges and agrees that upon the earlier of (i) the Expiration Date or (ii) termination of this Agreement by ICANN pursuant to Subsection 5.4, it will cease to be the operator of the Registry TLD unless ICANN and Registry Operator enter a new registry agreement continuing Registry Operator's status as operator of the Registry TLD.

5.1.4. Upon conclusion of its status as operator of the Registry TLD, Registry Operator shall make all commercially reasonable efforts to cooperate with ICANN, and with any party designated by ICANN as successor operator, to facilitate prompt and smooth transition of the operation of the Registry TLD.

5.1.5. Registry Operator acknowledges and agrees that, except as expressly provided by this Agreement, it shall not acquire any right in the Registry TLD by virtue of its operation of the Registry TLD or its provision of Registry Services hereunder.

5.2. Procedure for Subsequent Agreement.

5.2.1. Registry Operator may, no later than eighteen months prior to the initial Expiration Date, submit a written proposal to ICANN for the extension of this Agreement for an additional term (the "Renewal Proposal"). The Renewal Proposal shall contain a detailed report of the Registry Operator's operation of the Registry TLD and include a description of any additional Registry Services, proposed improvements to Registry Services, or changes in price or other terms of service. ICANN shall provide an initial response to the Renewal Proposal within thirty days of receiving it and, during a period of at least six months after receiving the Renewal Proposal, ICANN shall consider the Renewal Proposal and meet with Registry Operator to discuss the Renewal Proposal, but the decision whether to accept the Renewal Proposal shall be in ICANN's sole discretion.

5.2.2. Only after the six-month period described in Subsection 5.2.1 may ICANN call for competing proposals from potential successor registry operators for the Registry TLD. Registry Operator shall be eligible, to the same extent as similarly situated entities, to submit a proposal to such a call. To the extent that the Renewal Proposal demonstrates (i) substantial service in the interests of the Internet community, (ii) enhancement of competition for registration services, and (iii) enhancement of the utility of the DNS, such demonstration shall be among the specific factors considered in ICANN's evaluation of any competing proposals, but the choice from among competing proposals shall be in ICANN's sole discretion.

5.2.3. In the event a party other than the Registry Operator is selected as the successor registry operator for the Registry TLD upon the expiration of this Agreement, ICANN shall require the successor registry operator to pay to Registry Operator a Registry Operator Transfer Fee equal to the difference of:

5.2.3.1 the present value, at the Expiration Date (as extended, if applicable), computed using a discount rate equal to the London Inter-Bank Offer Rate ("LIBOR") (based on the term of renewal of the successor registry operator) plus three percent per annum, of the revenue stream that would be achieved by the successor registry operator from renewal fees during the term (not taking into account any extensions) of the successor registry operator's registry agreement for Registered Names on the Expiration Date that have not been continuously under registration during the entire Base Period, assuming that the domain-name registrations are renewed at the time of their expiration for a renewal term and at annual renewal fees and rates described in the next four sentences. The assumed renewal term, fees, and rates shall be based on actual experience within the Registry TLD during a period (the "Benchmark Period") consisting of the eighteen months immediately prior to the Expiration Date. The assumed renewal term shall be the average total term by which registrations of Registered Names scheduled for expiration during the Benchmark Period are extended by renewal during the Benchmark Period. The assumed renewal rate shall be the percentage of names scheduled for expiration during the Benchmark Period that are extended by renewal at least once during the Benchmark Period. The assumed annual renewal fee shall be the lesser of (i) the maximum annual renewal fee that the successor registry operator may charge under its registration agreement and (ii) the average of the annual renewal fees charged by Registry Operator during the Benchmark Period; less

5.2.3.2 the present value, at the Expiration Date, computed using a discount rate equal to the LIBOR (based on the term of renewal of the successor registry operator) plus three percent per annum, of the expense stream that would result during the term (not taking into account any extensions) of the successor registry operator's registry agreement from continued registration of the registrations at the Expiration Date, with the same assumptions regarding renewal rates and terms set forth in Subsection 5.2.3.1 above. For purposes of this

calculation, the annual expense of continued registration shall be assumed to be 45% of the assumed annual renewal fee stated in Subsection 5.2.3.1 above.

5.2.3.3 The calculation of present value shall be on a monthly basis with all renewals and expenses occurring in a given month assumed to occur at the end of the month. The Registry Operator Transfer Fee shall be paid, with interest per annum equal to the LIBOR plus three percent, from the Expiration Date, within nine months after the Expiration Date.

5.3. Condition to Performance. In the event that ICANN is unable, through use of commercially reasonable efforts, to have the Registry TLD delegated within the Authoritative Root-Server System to nameservers designated by Registry Operator within two years after the Effective Date, then this Agreement shall be automatically terminated without liability of either party to the other party and neither party shall have any further obligation hereunder. Thirty days in advance of such an automatic termination, either party may propose an extension of the time in which delegation must occur, and in that event the other party shall consult in good faith (but without obligation to agree) concerning the proposal. No extension of the time in which delegation must occur shall be effective unless embodied in a written amendment signed by authorized agents of both parties to this Agreement.

5.4. Termination by ICANN. This Agreement may be terminated before its expiration by ICANN in any of the following circumstances:

5.4.1. There was a material misrepresentation, material inaccuracy, or materially misleading statement, made with knowledge of its falsity, inaccuracy, or misleading nature or without reasonable cause to believe it was true, accurate, and not misleading, of then-existing fact or of Registry Operator's intention in its application for the Registry TLD or any written material provided to or disclosed to ICANN by the Registry Operator in connection with the application. The foregoing shall not apply to projections or forward-looking statements (other than statements, not made in good faith, about Registry Operator's intentions) in the application or materials.

5.4.2. Registry Operator:

5.4.2.1. is convicted by a court of competent jurisdiction of a felony or other serious offense related to financial activities, or is the subject of a determination by a court of competent jurisdiction that ICANN reasonably deems as the substantive equivalent of those offenses;
or

5.4.2.2. is disciplined by the government of its domicile for conduct involving dishonesty or misuse of funds of others.

5.4.3. Any officer or director of Registry Operator is convicted of a felony or of a misdemeanor related to financial activities, or is judged by a court to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these, and such officer or director is not immediately removed in such circumstances.

5.4.4. Registry Operator fails to cure any material breach of this Agreement (other than a failure to comply with a Consensus Policy adopted by ICANN during the Term of this Agreement as to which Registry Operator has obtained a stay under Subsection 5.9) within fifteen business days (or such longer reasonable period as may be necessary using best efforts to cure such breach) after ICANN gives Registry Operator written notice of the breach.

5.4.5. Registry Operator's action or failure to act has been determined by arbitration under Subsection 5.9 to be in violation of this Agreement and Registry Operator continues to act or fail to act in the manner that was determined to violate this Agreement for a period stated in the arbitration decision, or if no period is stated, fifteen business days.

5.4.6. Registry Operator acts or continues acting in a manner that ICANN has reasonably determined endangers the operational stability of Registry Services, the DNS, or the Internet after receiving three days notice of that determination.

5.4.7. Registry Operator fails to pay to ICANN the final amount of sanctions determined to be appropriate under the sanctions program described in Appendix Y within thirty days after the amount of sanctions is deemed final.

5.4.8. Registry Operator becomes bankrupt or insolvent.

This Agreement may be terminated in the circumstances described in Subsections 5.4.1 through 5.4.7 above only upon thirty calendar days written notice to Registry Operator (in the case of the circumstances described in Subsections 5.4.4, 5.4.5, and 5.4.6 occurring after Registry Operator's failure to cure), with Registry Operator being given an opportunity during that time to initiate arbitration under Subsection 5.9 to determine the appropriateness of termination under this Agreement. In the event Registry Operator initiates arbitration concerning the appropriateness of termination by ICANN, Registry Operator may at the same time request that the arbitration panel stay the termination until the arbitration decision is rendered, and that request shall have the effect of staying the termination until the decision or until the arbitration panel has granted an ICANN request for lifting of the stay. If Registry Operator acts in a manner that ICANN reasonably determines endangers the operational stability of Registry Services, the DNS, or the Internet and upon notice does not immediately cure, ICANN may suspend this Agreement for five calendar days pending ICANN's application for more extended injunctive relief under Subsection 5.9. This Agreement may be terminated immediately upon notice to Registry Operator in the circumstance described in Subsection 5.4.8.

5.5. Representations and Warranties of Registry Operator. Registry Operator represents and warrants to ICANN that:

5.5.1. it is a [insert Registry Operator's type of organization] duly organized, validly existing, and in good standing under the laws of [insert jurisdiction];

5.5.2. it has all requisite organizational power and authority to execute, deliver and perform its obligations under this Agreement;

5.5.3. the execution, performance and delivery of this Agreement has been duly authorized by Registry Operator; and

5.5.4. subject to Subsection 5.3, no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by Registry Operator in order for it to enter into and perform its obligations under this Agreement.

5.6. Additional Covenants of Registry Operator. Throughout the Term of the Agreement, Registry Operator shall comply, in all material respects, with the covenants contained in Appendix W.

5.7. Indemnification of ICANN. Registry Operator shall indemnify, defend, and hold harmless ICANN (including its directors, officers, employees, and agents) from and against any and all claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to: (a) the selection of Registry Operator to operate the Registry TLD; (b) the entry of this Agreement; (c) establishment or operation of the Registry TLD; (d) Registry Services; (e) collection or handling of Personal Data by Registry Operator; (f) any dispute concerning registration of a domain name within the domain of the Registry TLD; and (g) duties and obligations of Registry Operator in operating the Registry TLD; provided that, with respect to items (b) through (g) only, Registry Operator shall not be obligated to indemnify, defend, or hold harmless ICANN to the extent of ICANN's indemnification of Registry Operator under Subsection 4.6 and provided further that, with respect to item (g) only, Registry Operator shall not be obligated to indemnify, defend, or hold harmless ICANN to the extent the claim, damage, liability, cost, or expense arose due to a breach by ICANN of any obligation contained in this Agreement. For avoidance of doubt, nothing in this Subsection 5.7 shall be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for the costs associated with the negotiation or execution of this Agreement, or with the monitoring or management of the parties' respective obligations under this Agreement.

5.8. Indemnification Procedures. If any third-party claim is commenced that is indemnified under Subsections 4.6 or 5.7, notice thereof shall be given to the indemnifying party as promptly as practicable. If, after such notice, the indemnifying party acknowledges its obligation to indemnify with respect to such claim, then the indemnifying party shall be entitled, if it so elects, in a notice promptly delivered to the indemnified party, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to the indemnified party to handle and defend the same, at the indemnifying party's sole cost and expense, provided that in all events ICANN shall be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN policies or conduct. The indemnified party shall cooperate, at the cost of the indemnifying party, in all reasonable respects with the indemnifying party and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom; provided, however, that the indemnified party may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting the indemnifying party other than the payment of money in an amount that is indemnified shall be entered into without the consent of the indemnified party. If the indemnifying party does not assume full control over the defense of a claim subject to such defense in accordance with this Subsection, the indemnifying party may participate in such defense, at its sole cost and expense, and the indemnified party shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of the indemnifying party.

5.9. **Resolution of Disputes Under This Agreement.** Disputes arising under or in connection with this Agreement, including requests for specific performance, shall be resolved through binding arbitration conducted as provided in this Subsection 5.9 pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in the English language and shall occur in Los Angeles County, California, USA. There shall be three arbitrators: each party shall choose one arbitrator and, if the two arbitrators are not able to agree on a third arbitrator, the third shall be chosen by the ICC. The parties shall bear the costs of the arbitration in equal shares, subject to the right of the arbitrators to reallocate the costs in their award as provided in the ICC rules. The parties shall bear their own attorneys' fees in connection with the arbitration, and the arbitrators may not reallocate the attorneys' fees in conjunction with their award. The arbitrators shall render their decision within ninety days of the initiation of arbitration. In all litigation involving ICANN concerning this Agreement (as provided in the remainder of this Subsection), jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of the parties during the pendency of an arbitration, the parties shall have the right to seek a temporary stay or injunctive relief from the arbitration panel or a court located in Los Angeles, California, USA, which shall not be a waiver of this arbitration agreement.

5.10. **Limitation of Liability.** ICANN's aggregate monetary liability for violations of this Agreement shall not exceed the amount of Fixed or Variable Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period under Subsection 3.14. Registry Operator's aggregate monetary liability to ICANN for violations of this Agreement shall be limited to fees and monetary sanctions due and owing to ICANN under this Agreement. In no event shall either party be liable for special, indirect, incidental, punitive, exemplary, or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, REGISTRY OPERATOR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED BY ITSELF, ITS SERVANTS, OR ITS AGENTS OR THE RESULTS OBTAINED FROM THEIR WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

5.11. **Assignment.** Any assignment of this Agreement shall be effective only upon written agreement by the assignee with the other party to assume the assigning party's obligations under this Agreement. Moreover, neither party may assign this Agreement without the prior written approval of the other party. Notwithstanding the foregoing, a party may assign this Agreement by giving written notice to the other party in the following circumstances: (a) Registry Operator may assign this Agreement as part of the transfer of its registry business if such transfer and assignment are approved in advance by ICANN pursuant to its procedures, and (b) ICANN may assign this Agreement (i) in conjunction with a reorganization or re-incorporation of ICANN, to another non-profit corporation organized for the same or substantially the same purposes as ICANN or (ii) as required by Section 5 of Amendment 1 (dated 10 November 1999) to the 25 November 1998 Memorandum of Understanding between ICANN and the United States Department of Commerce.

5.12. **Subcontracting.** Registry Operator shall not subcontract portions of the technical operations of the Registry TLD accounting for more than 80% of the value of all Registry

TLD operations without ICANN's written consent. When ICANN's consent to subcontracting is requested, ICANN shall respond within fifteen business days, and the consent shall not be unreasonably withheld. In any subcontracting of the technical operations of the Registry TLD, the subcontract shall state that the subcontractor shall not acquire any right in the Registry TLD by virtue of its performance under the subcontract.

5.13. Force Majeure. Neither party shall be liable to the other for any loss or damage resulting from any cause beyond its reasonable control (a "Force Majeure Event") including, but not limited to, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government or other competent authority, compliance with any statutory obligation or executive order, industrial disputes of any kind (whether or not involving either party's employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, and acts or omissions of persons for whom neither party is responsible. Upon occurrence of a Force Majeure Event and to the extent such occurrence interferes with either party's performance of this Agreement, such party shall be excused from performance of its obligations (other than payment obligations) during the first six months of such interference, provided that such party uses best efforts to avoid or remove such causes of nonperformance as soon as possible.

5.14. No Third-Party Beneficiaries. This Agreement shall not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or Registered Name holder.

5.15. Notices, Designations, and Specifications. All notices (including determinations, designations, and specifications) to be given under this Agreement shall be given in writing at the address of the appropriate party as set forth below, unless that party has given a notice of change of address in writing. Any notice required by this Agreement shall be deemed to have been properly given when delivered in person, when sent by electronic facsimile, or when scheduled for delivery by an internationally recognized courier service. Designations and specifications by ICANN under this Agreement shall be effective when written notice of them is deemed given to Registry.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina Del Rey, California 90292
Telephone: 1/310/823-9358
Facsimile: 1/310/823-8649
Attention: Chief Executive Officer

If to Registry Operator, addressed to:

[_____]
Telephone: _____
Facsimile: _____
Attention: _____

5.16. Dates and Times. All dates and times relevant to this Agreement or its performance shall be computed based on the date and time observed in Los Angeles, California, USA.

5.17. Language. All notices, designations, determinations, and specifications made under

this Agreement shall be in the English language.

5.18. Amendments and Waivers. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

5.19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5.20. Entire Agreement. This Agreement (including its Appendices, which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the Registry TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject. In the event of a conflict between the provisions in the body of this Agreement (Section 1 to Subsection 5.20) and any provision in its Appendices, the provisions in the body of the Agreement shall control.

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

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
M. Stuart Lynn
President and CEO

Date:

[insert name of Registry Operator]

By: _____
[insert name of official]
[insert title of official]

Date:

Earlier drafts:

[26 April 2001](#)

[26 February 2001](#)

Comments concerning the layout, construction and functionality of this site
should be sent to webmaster@icann.org.

Page Updated 19-May-2001

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Ex. R-5

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

Independent Review Process Panel

In the Matter of an Independent Review Process

Between:

Booking.com B.V.

Applicant

-and-

ICDR Case No: 50-20-1400-0247

**Internet Corporation for Assigned Names
and Numbers (ICANN)**

Respondent

FINAL DECLARATION

The Panel:

Hon. A. Howard Matz

David H. Bernstein, Esq.

Stephen L. Drymer (Chair)

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DECLARATION

WE, THE UNDERSIGNED PANELISTS, members of the Independent Review Process Panel (“**IRP Panel**” or “**Panel**”), having been designated in accordance with ICANN Bylaws dated 11 April 2013, hereby issue the following Final Declaration (“**Declaration**”):¹

I. INTRODUCTION

1. This Declaration is issued in the context of an Independent Review Process (“**IRP**”) as provided for in Article IV, Section 3 of the Bylaws of the Internet Corporation for Assigned Names and Numbers (“**ICANN**”; “**ICANN Bylaws**” or “**Bylaws**”). In accordance with those Bylaws, the conduct of this IRP is governed by the International Arbitration Rules of the International Centre for Dispute Resolution as amended and in effect June 1, 2009 (“**ICDR**”; “**ICDR Rules**”) as supplemented by the Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process (“**Supplementary Procedures**”).
2. The subject matter of the dispute here concerns alleged conduct by the ICANN Board in relation to one particular facet of the process by which new generic top-level domains (“**gTLDs**”, also known as gTLD “**strings**”) are applied for, reviewed and delegated into the Internet’s domain name system (“**DNS**”) root zone.
3. As explained in this Declaration, the Applicant, Booking.com, alleges that, in establishing and overseeing the process by which so-called *string similarity reviews* are conducted, and in refusing to reconsider and overturn a decision to place Booking.com’s applied-for gTLD string .hotels in a so-called *string contention set*, the Board acted in a manner inconsistent with applicable policies, procedures and rules as set out in ICANN’s Articles of Incorporation, Bylaws and gTLD Applicant Guidebook (“**Guidebook**”).
4. Reading between the lines of the parties’ submissions, the Panel senses that both sides would welcome the opportunity to contribute to an exchange that might result in enabling disputants in future cases to avoid having to resort to an IRP to resolve issues such as have arisen here. Certainly the Panel considers that the present matter would ideally have been resolved amicably by the parties. This is particularly true given that the matter here concerns two of ICANN’s guiding principles – transparency and fairness – as applied to one of ICANN’s most essential activities – the delegation of new gTLDs² – in circumstances in which various members of the Internet community, including certain members of the ICANN Board’s New gTLD Program Committee, have expressed their own concerns regarding the string similarity review process. That being the case, though, the Panel does not shy away from the duty imposed by the Bylaws to address the questions before it and to render the

¹ As requested by the ICDR, the Declaration was provided to the ICDR in draft form on 26 January 2015 for non-substantive comments on the text (if any). It was returned to the Panel on 2 March 2015.

² As stated in the very first sentence of the Guidebook: “New gTLDs have been in the forefront of ICANN’s agenda since its creation.”

present Declaration, in accordance with, and within the constraints of the Bylaws, the ICDR Rules and the Supplementary Procedures.

II. THE PARTIES

A. The Applicant: Booking.com

5. The Applicant, Booking.com, is a limited liability company established under the law of the Netherlands. Booking.com describes itself as “the number one online hotel reservation service in the world, offering over 435,605 hotels and accommodations.”³ Booking.com’s primary focus is on the U.S. and other English-language markets.
6. Booking.com is represented in this IRP by Mr. Flip Petillion and Mr. Jan Janssen of the law firm *Crowell & Moring* in Brussels, Belgium.

B. The Respondent: ICANN

7. The Respondent, ICANN, is a California not-for-profit public benefit corporation, formed in 1998. As set forth in Article I, Section 1 of its Bylaws, ICANN’s mission is “to coordinate, at the overall level, the global Internet’s system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet’s unique identifier systems.” ICANN describes itself as “a complex organization that facilitates input from a wide variety of Internet stakeholders. ICANN has a Board of Directors and staff members from around the globe, as well as an Ombudsman. ICANN, however, is much more than just the corporation—it is a community of participants.”⁴
8. ICANN is represented in this IRP by Mr. Jeffrey A. LeVee, Esq. and Ms. Kate Wallace, Esq. of the law firm *Jones Day* in Los Angeles, California, USA.

III. FACTUAL AND PROCEDURAL BACKGROUND – IN BRIEF

9. We recount here certain uncontested elements of the factual and procedural background to the present IRP. Other facts are addressed in subsequent parts of the Declaration, where the parties’ respective claims and the Panel’s analysis are discussed.

A. ICANN’s Adoption of the New gTLD Program and the Applicant Guidebook

10. Even before the introduction of ICANN’s New gTLD Program (“**Program**”), in 2011, ICANN had, over time, gradually expanded the DNS from the original six gTLDs (.com; .edu; .gov; .mil; .net; .org) to 22 gTLDs and over 250 two-letter country-code TLDs.⁵ Indeed, as noted above, the introduction of new gTLDs has been “in the forefront of ICANN’s agenda” for as long as ICANN has existed.

³ Request, ¶ 10.

⁴ Response, ¶ 11-12.

⁵ Request, ¶ 12; see also Guidebook, *Preamble*.

11. The Program has its origins in what the Guidebook refers to as “carefully deliberated policy development work” by the ICANN community.⁶
12. In 2005, ICANN’s Generic Names Supporting Organization (“GNSO”), one of the groups that coordinates global Internet policy at ICANN, commenced a policy development process to consider the introduction of new gTLDs.⁷ As noted in the Guidebook:

Representatives from a wide variety of stakeholder groups – governments, individuals, civil society, business and intellectual property constituencies, and the technology community – were engaged in discussions for more than 18 months on such questions as the demand, benefits and risks of new gTLDs, the selection criteria that should be applied, how gTLDs should be allocated, and the contractual conditions that should be required for new gTLD registries going forward.
13. In October 2007, the GNSO formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations.
14. In June 2008, the ICANN Board decided to adopt the policies recommended by the GNSO.⁸ As explained in the Guidebook, ICANN’s work next focused on implementation of these recommendations, which it saw as “creating an application and evaluation process for new gTLDs that is aligned with the policy recommendations and provides a clear roadmap for applicants to reach delegation, including Board approval.”⁹
15. This process concluded with the decision by the ICANN Board in June 2011 to implement the New gTLD Program and its foundational instrument, the Guidebook.¹⁰
16. As described by ICANN in these proceedings, the Program “constitutes by far ICANN’s most ambitious expansion of the Internet’s naming system. The Program’s goals include

⁶ Guidebook, *Preamble*

⁷ Request, ¶ 13, Reference Material 7, “Public Comment Forum for Terms of Reference for New gTLDs (6 December 2005), <http://www.icann.org/en/news/announcements/announcement-06dec05-en.htm#TOR>; Reference Material 8, “GNSO Issues Report, Introduction of New Top-Level Domains (5 December 2005) at pp. 3-4. See also Guidebook, *Preamble*. Booking.com refers to the GNSO as “ICANN’s main policy-making body for generic top-level domains”. Article X of ICANN’s Articles of Incorporation provides: “There shall be a policy-development body known as the Generic Names Supporting Organization (GNSO), which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains” (Section 1); the GNSO shall consist of “a number of Constituencies” and “four Stakeholder Groups” (Section 2).

⁸ Guidebook, *Preamble*. A review of this policy process can be found at <http://qns0.icann.org/issues/new-gtlds> (last accessed on January 15, 2015).

⁹ Guidebook, *Preamble*: “This implementation work is reflected in the drafts of the applicant guidebook that were released for public comment, and in the explanatory papers giving insight into rationale behind some of the conclusions reached on specific topics. Meaningful community input has led to revisions of the draft applicant guidebook.”

¹⁰ RM 10 (ICANN resolution). The Guidebook (in its 30 May 2011 version) is one of seven “elements” of the Program implemented in 2011. The other elements were: a draft communications plan; “operational readiness activities”; a program to ensure support for applicants from developing countries; “a process for handling requests for removal of cross-ownership restrictions on operators of existing gTLDs who want to participate in the [Program]”; budgeted expenditures; and a timetable.

enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new gTLDs ...”¹¹

17. The Guidebook is “continuously iterated and revised”, and “provides details to gTLD applicants and forms the basis for ICANN’s evaluation of new gTLD applications.”¹² As noted by Booking.com, the Guidebook “is the crystallization of Board-approved consensus policy concerning the introduction of new gTLDs.”¹³

B. Booking.com’s Application for .hotels, and the Outcome

18. In accordance with the process set out in the Guidebook, Booking.com filed an application (Application ID 1-1016-75482) for the gTLD string .hotels.
19. At the same time, Despegar Online SRL (“Despegar”), a corporation established under the law of Uruguay, applied (Application ID 1-1249-87712) for the string .hoteis.
20. “Hoteis” is the Portuguese word for “hotels”.
21. According to Booking.com, Despegar is “a competitor of Booking.com”.¹⁴ Booking.com claims that it intends “to operate .hotels as a secure Internet environment providing hotel reservation services for consumers, hotels, and other stakeholders,”¹⁵ while Despegar similarly intends .hoteis to be dedicated primarily to “individuals that are interested in, and businesses that offer, hotel- and travel-related content.”¹⁶ That being said, a key difference between the two applications, as Booking.com acknowledges, is that Booking.com intends to focus the services it will offer under its proposed gTLD “on the U.S. (with its strongly Anglo-Saxon traditions) and other English-language markets,”¹⁷ whereas Despegar intends to target “Portuguese-speaking” markets.”¹⁸
22. As part of the Initial Evaluation to which all applied-for gTLDs were subject, .hotels and .hoteis were each required to undergo so-called *string review* in accordance with the Guidebook, the first component of which is a process known as *string similarity review*. As provided by the Guidebook, the string similarity review was conducted by an independent

¹¹ Response, ¶ 14.

¹² Response, ¶ 14. The resolution (RM 10) adopting the Guidebook explicitly “authorizes staff to make further updates and changes to the Applicant Guidebook as necessary and appropriate, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process, and to prominently publish notice of such changes.”

¹³ Request, ¶ 13. See also Guidebook, Module 1-2: “This Applicant Guidebook is the implementation of Board approved consensus policy concerning the introduction of new gTLDs, and has been revised extensively via public comment and consultation over a two-year period.”

¹⁴ Request, ¶ 17.

¹⁵ Request, ¶ 5.

¹⁶ Request, ¶ 17. See also Despegar Application for .hoteis (Request, Annex 2), § 18(a).

¹⁷ Request, ¶ 16.

¹⁸ Request, ¶ 17. See also Despegar Application for .hoteis (Request, Annex 2), § 18(a).

String Similarity Panel (“SSP”) selected and engaged by ICANN for this purpose. (Extracts of the relevant provisions of the Guidebook can be found below, at Part IV of this Declaration.) ICANN engaged InterConnect Communications Ltd. (“ICC”), a company registered under the law of England and Wales, specializing in communications sector strategy, policy and associated regulatory frameworks,¹⁹ in cooperation with University College London, to act as the SSP.

23. On 26 February 2013 ICANN published the results of all of the string similarity reviews for all of the applications for new gTLDs submitted as part of the Program. The announcement revealed, among other things, that two “non-exact match” contention sets had been created: .hotels & .hoteis; and .unicorn & .unicom.²⁰ Booking.com’s applied for string .hotels (as well as the .hoteis, .uncorn and .unicom strings) had thus failed the string similarity review.
24. The results of the string similarity review were notified to Booking.com by ICANN that same day. In its letter of 26 February 2013 ICANN wrote:

After careful consideration and extensive review performed against the criteria in Section 2.2.1.1 of the Applicant Guidebook, the String Similarity Panel has found that the applied-for string (.hotels) is visually similar to another applied-for string (.hoteis), creating a probability of user confusion.

Due to this finding, the ... two strings have been placed in a contention set.²¹

25. The impact of being put into a contention set is that the proposed strings in the set will not be delegated in the root zone unless and until the applicants reach agreement on which single string should proceed (with the other proposed string therefore rejected), or until after an auction is conducted, with the highest bidder being given the right to proceed to the next step in the review process.

C. DIDP Request and Request for Reconsideration

26. On 28 March 2013 Booking.com submitted a request for information under ICANN’s Documentary Information Disclosure Policy (“**DIDP Request**”) asking for “all documents directly and indirectly relating to (1) the standard used to determine whether gTLD strings are confusingly similar, and (2) the specific determination that .hotels and .hoteis are confusingly similar.”²²
27. On the same date, Booking.com also filed a formal Request for Reconsideration (“**Request for Reconsideration**”). The “specific action(s)” that Booking.com asked to be reconsidered were: the decision to place .hotels and .hoteis in a contention set; and the decision not to

¹⁹ See <http://www.icc-uk.com/>

²⁰ Request, Annex 3. ICANN published document dated 26 February 2013. As its name suggests, a “non-exact match” connotes a determination that two different (non-identical) strings are visually similar within the meaning of the Guidebook. Another 752 applied-for gTLDs were put into 230 identical contention sets.

²¹ Request, Annex 3, ICANN letter dated 26 February 2013.

²² Request, ¶ 30 and Annex 3.

provide a “detailed analysis or a reasoned basis” for the decision to place .hotels in contention.²³

28. ICANN responded to the DIDP Request on 27 April 2013. Although ICANN provided certain information regarding the review process, in its response to the DIDP Request, ICANN also noted:

*The SSP is responsible for the development of its own process documentation and methodology for performing the string similarity review, and is also responsible for the maintenance of its own work papers. Many of the items that are sought from ICANN within the [DIDP] Request are therefore not in existence within ICANN and cannot be provided in response to the DIDP Request. ICANN will, however, shortly be posting the SSP’s String Similarity Process and Workflow on the New gTLD microsite ...*²⁴

29. By letter dated 9 May 2013 Booking.com replied to ICANN, writing that “ICANN’s response fails to provide any additional information or address any of Booking.com’s concerns as conveyed in its DIDP Request or Request for Reconsideration.”²⁵ On 14 May 2013, ICANN answered that it “intends to post the string similarity process documentation on or before ... 17 May 2013.”²⁶ ICANN further informed Booking.com that “ICANN will afford you 30 days from the posting of the process document for the submission of a revised Request for Reconsideration.”²⁷
30. On 7 June 2013, ICANN published the “String Similarity New gTLD Evaluation Panel [i.e., the SSP] – Process Description” (“**SSP Process Description**”).²⁸
31. On 26 June 2013 Booking.com wrote to ICANN regarding both its DIDP Request and its 28 March 2013 Request for Reconsideration. In its letter, Booking.com noted among other things that “the generalized information ICANN thus far has provided does not explain a rationale for or analysis for the decision to put .hotels and .hoteis in a contention set and therefore does not allow Booking.com to appropriately amend its Request for Reconsideration.” The letter concluded by stating: “Considering ICANN’s obligations of transparency and accountability, there cannot be any ‘compelling reason for confidentiality’.

²³ Request, Annex 12, §3. The Request for Reconsideration (which appears to be in the form of a template) expressly states at §2 that it is a “Request for Reconsideration of ... Staff [vs. Board] action/inaction.” The cover letter attaching the Request states that, “[d]espite the fact that the origin of the decisions is unclear, this Reconsideration Request is being submitted as a reconsideration of a ‘Staff action’. In the event that the decisions referenced above are determined to be a ‘Board action’, this request may be amended.” As explained below, the Request for Reconsideration was amended on 7 July 2013. That amendment did not alter the stated nature of the request in §2 or the description of the specific actions that Booking.com sought to have reconsidered (§3). Unless otherwise indicated, all further references in this Declaration to the Request for Reconsideration are understood to be the *amended* Request for Reconsideration.

²⁴ Request, Annex 5.

²⁵ Request, Annex 6.

²⁶ Request, Annex 7.

²⁷ Request, Annex 7.

²⁸ Request, Annex 8.

And ... there are numerous compelling reasons for publication of [the information requested by Booking.com].”²⁹

32. ICANN responded on 25 July 2013, explaining among other things that “the evaluation of the .hotels string by the SSP panel was performed according to the [SSP Process Description] ...” and “[t]he SSP’s work was subjected to quality review, as has been publicly discussed.”³⁰ Approximately six months later, on 9 January 2014, ICANN posted a letter dated 18 December 2013 addressed to ICANN by the SSP Manager at ICC (Mr. Mark McFadden) providing a further “summary of the process, quality control mechanisms and some considerations surrounding the non-exact contention sets for the string similarity evaluation ...” (“**SSP Manager’s Letter**”).³¹ According to that Letter:

When ALL of the following features of a pairwise comparison [of non-exact match strings] are evident the evaluators found the string pair to be confusingly similar:

- *Strings of similar visual length on the page;*
- *Strings within +/- 1 character of each other;*
- *Strings where the majority of characters are the same and in the same position in each string; and*
- *The two strings possess letter combinations that visually appear similar to other letters in the same position in each string*

o For example m~m & l~i

33. Meanwhile, on 7 July 2013 Booking.com had submitted its amended Request for Reconsideration. In its letter attaching the amended Request for Reconsideration, Booking.com stated: “Booking.com reserves the right to further amend its Request for Reconsideration upon receipt of the information it previously requested and urges ICANN to publish the requested information as specified in our letter of 26 June 2013.”³²
34. By virtue of Article IV, Section 3 of the Bylaws, ICANN’s Board Governance Committee (“**BGC**”) is charged with evaluating and making recommendation to the Board with respect to requests for reconsideration. The Board’s New gTLD Program Committee (“**NGPC**”) receives and acts on such recommendations on behalf of the ICANN Board. In accordance with this procedure, Booking.com’s Request for Reconsideration was evaluated by the BGC. In a detailed analysis dated 1 August 2013, the BGC “conclude[d] that Booking.com has not

²⁹ Request, Annex 9.

³⁰ Request, Annex 10.

³¹ Request, Annex 11.

³² Request, Annex 13.

stated proper grounds for reconsideration and we therefor recommend that Booking.com's request be denied" ("**BGC Recommendation**").³³

35. At a telephone meeting held on 10 September 2013 the NGPC, "bestowed with the powers of the Board", considered, discussed and accepted the BGC Recommendation. Booking.com's Request for Reconsideration was denied.³⁴

D. The Cooperative Engagement Process

36. Booking.com thereafter filed a request for a Cooperative Engagement Process ("**CEP**") on 25 September 2013, with a view to attempting to reach an amicable resolution of its dispute with ICANN. In its CEP request, Booking.com wrote:

*Booking.com is of the opinion that Resolution 2013.09.10.NG02 [the Board resolution denying its Request for Reconsideration] violates various provisions of ICANN's Bylaws and Articles of Incorporation. In particular Booking.com considers that ICANN's adoption of [the Resolution] is in violation of Articles I, II(3), II and IV of the ICANN Bylaws as well as Article 4 of ICANN's Articles of Incorporation. In addition, Booking.com considers that ICANN has acted in violation of Articles 3, 5, 7 and 9 of ICANN's Affirmation of Commitment ...*³⁵

37. The CEP ultimately did not result in a resolution, and Booking.com duly commenced the present IRP.
38. One further point should be made, here, prior to describing the commencement and conduct of the present IRP proceedings: The determination by the SSP that .hotels and .hoteis are so visually similar as to give rise to the probability of user confusion, and the resulting placement of those applied-for strings into a contention set, does *not* mean that Booking.com's application for .hotels has been denied or that .hotels will not proceed to delegation to the root zone. Rather, as noted above and explained in the extracts from the Guidebook reproduced below, the Guidebook establishes a process for resolving such contention, under which the applicants for the contending strings in the set – here, Booking.com and Despegar – may resolve the contention by negotiation, failing which the matter will proceed to auction. Ultimately, no matter the outcome of these IRP proceedings, Booking.com may yet be successful and .hotels may yet be delegated into the Internet root zone. However, the fact that .hotels has been put into a contention set does raise the risk that .hotels may never be delegated into the root zone, or that it may be more costly for Booking.com to obtain approval of its proposed string. It also has caused a significant delay in the potential delegation of the string into the root zone (which could prove to be detrimental to the ultimate success of Booking.com's proposed string if other applicants

³³ Request, Annex 14, BGC Recommendation dated 1 August 2013, p.9. See also Request, Annex 15, NGPC Resolution dated 10 September 2013. As noted in footnote 1 to the BGC Recommendation, the Recommendation was ultimately finalized and submitted for posting on 21 August 2013.

³⁴ Request, Annex 15, NGPC Resolution dated 10 September 2013.

³⁵ Request, Annex 17.

whose strings were not put into a contention set are able to establish themselves as pioneer providers of hotel- and travel-related services under a different new gTLD).

E. The IRP Proceedings

39. On 19 March 2014, Booking.com submitted a Notice of Independent Review, dated 18 March 2014, as well as a Request for Independent Review Process (“**Request**”) accompanied by numerous supporting documents and reference materials.
40. In accordance with Article IV, Section 3(9) of the ICANN Bylaws, Booking.com requested that a three-member IRP panel be constituted to consider and determine the Request. As the omnibus standing panel referred to in Article IV, Section 3(6) of the ICANN Bylaws had yet to be established, Booking.com further proposed, in accordance with Article 6 of the ICDR Rules, that each party appoint one panelist, with the third (the Chair of the panel) to be appointed by the two party-appointed panelists.
41. On 25 April 2014, ICANN submitted a Response to ICANN’s Request with supporting documents (“**Response**”).
42. The parties having thereafter agreed on the number of panelists and the method of their appointment, David H. Bernstein, Esq. was duly appointed as panelist by Booking.com on 1 May 2014, and the Hon. A Howard Matz was duly appointed as panelist by ICANN on 30 May 2014.
43. On 17 July 2014, the ICDR notified the parties that Mr. Stephen L. Drymer had been duly nominated by the two party-appointed panelists as Chair of the Panel. Mr. Drymer’s appointment became effective and the Panel was duly constituted as of 1 August 2014.
44. On 21 August 2014, further to consultations among the panelists and between the Panel and the parties, the Panel convened a preparatory conference with the parties (by telephone) for the purpose of discussing organizational matters, including a timetable for any further written statements or oral argument. Both parties requested the opportunity to make supplemental submissions and to present oral argument.
45. On 22 August 2014 the Panel issued Procedural Order No. 1 in which, among other things, it established a Procedural Timetable for the IRP. As specifically requested by the parties, the Procedural Order and Timetable provided for the submission of additional written statements by the parties as well as for a brief oral hearing to take place by telephone, all on dates proposed by and agreed between the parties.³⁶
46. In accordance with the Procedural Timetable, on 6 October 2014 Booking.com submitted its Reply to ICANN’s Response, accompanied by additional documents (“**Reply**”).

³⁶ Paragraph 6 of Procedural Order No. 1 provided that, in its forthcoming Reply to ICANN’s Response, “Booking.com shall only address two issues raised in Respondent’s Response: (1) the nature and scope of the IRP requested; (2) the nature of the relief sought by Claimant.” Paragraph 7 of Procedural Order No. 1 provided that “Respondent’s Sur-Reply ... shall address only the issues raised in the Reply.”

47. In accordance with the Procedural Timetable, ICANN submitted a Sur-Reply on 20 November 2014 (“**Sur-Reply**”).

F. The Hearing

48. As provided by Procedural Order No. 1 and the Procedural Timetable, a hearing was held (by telephone) on 10 December 2011, commencing at 9:00 PST/18:00 CET.
49. In the light of the significance of the issues raised by the parties, and given the many questions prompted by those issues and by the parties’ extensive written submissions and supporting materials, the Panel indicated that it would allow the hearing to continue beyond the approximately one hour originally envisaged. The hearing ultimately lasted two and one-half hours. Counsel for each party made extensive oral submissions, including rebuttal and sur-rebuttal submissions, and responded to the panelists’ questions.
50. Prior to the close of the hearing each party declared that it had no objection concerning the conduct of the proceedings, that it had no further oral submissions that it wished to make, and that it considered that it had had a full opportunity to present its case and to be heard.
51. As agreed and ordered prior to the close of the hearing, the parties were provided the opportunity to file limited additional materials post-hearing, in relation to a certain question asked of them by the Panel. This was done, and, on 13 December 2014, the proceedings were declared closed.

IV. ICANN ARTICLES, BYLAWS AND POLICIES – KEY ELEMENTS

52. We set out here the key elements of ICANN’s Articles of Association, Bylaws and policies on which the parties rely in their submissions and to which the Panel will refer later in this Declaration.

A. Articles of Association

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

[Underlining added]

B. Bylaws

ARTICLE I: MISSION AND CORE VALUES

Section 1. MISSION

The mission of The Internet Corporation for Assigned Names and Numbers (“ICANN”) 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.

[..]

Section 2. CORE VALUES

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

- 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's activities to those matters within ICANN'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'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

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 III: TRANSPARENCY

Section 1. PURPOSE

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

[...]

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 1. PURPOSE

In carrying out its mission as set out in these Bylaws, ICANN 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 actions and periodic review of ICANN'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 shall have in place a process by which any person or entity materially affected by an action of ICANN 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 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 policy(ies); or
 - b. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
 - c. one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.
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.*

[...]

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. *In addition to the reconsideration process described in Section 2 of this Article, ICANN 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 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 [ICANN]?*

[...]

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, 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.

[...]

14. Prior to initiating a request for independent review, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. [...]

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. [...]

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

[...]

18. The 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.

[Underlining added]

53. Lest there be any misunderstanding as regards the proper subject matter of IRP proceedings or the role of the Panel, we note that, as was clearly established during the hearing, it is common ground between the parties that the term "action" (or "actions") as used in Article IV, Section 3 of the Bylaws is to be understood as action(s) or inaction(s) by the ICANN Board. The Panel observes that this understanding comports not only with the provisions of Article

IV, Section 2 of the Bylaws concerning “Reconsideration”, which expressly refer to “actions or inactions of the ICANN Board”, but with the clear intent of Section 3 itself, which stipulates at sub-section 11 that “[t]he IRP Panel shall have the authority to: ... (c) declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws.”

C. The gTLD Applicant Guidebook

54. As noted above and as understood by all, the Guidebook is (to borrow Booking.com's phrase) “the crystallization of Board-approved consensus policy concerning the introduction of new gTLDs.”³⁷
55. The Guidebook is divided into “Modules”, each of which contains various sections and sub-sections. The three Modules of primary relevance here are Modules 1, 2 and 4. Module 1, titled “Introduction to the gTLD Application Process,” provides an “overview of the process for applying for a new generic top-level domains.”³⁸ Module 2, titled “Evaluation Procedures,” describes the “evaluation procedures and criteria used to determine whether applied-for gTLDs are approved for delegation.”³⁹ Module 4, titled “String Contention Procedures,” concerns “situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.”

(i) *Initial Evaluation*

56. As explained in Module 1, “[i]mmediately following the close of the application submission period, ICANN will begin checking all applications for completeness.”⁴⁰ Initial Evaluation begins “immediately after the administrative completeness check concludes. All complete applications will be reviewed during Initial Evaluation.”⁴¹
57. Initial Evaluation is comprised of two main elements or types of review: *string review*, which concerns the applied-for gTLD string; and *applicant review*, which concerns the entity applying for the gTLD and its proposed registry services. It is the first of these – string review, including more specifically the component known as *string similarity review* – that is particularly relevant.

(ii) *String Review, including String Similarity Review*

58. String review is itself comprised of several components, each of which constitutes a separate assessment or review of the applied-for gTLD string, conducted by a separate reviewing body or panel. As explained in Module 2:

The following assessments are performed in the Initial Evaluation:

³⁷ Request, ¶ 13.

³⁸ Module 1-2. Each Module of the Guidebook is paginated separately. “Module 1-2” refers to Guidebook Module 1, page 2.

³⁹ Module 2-2.

⁴⁰ Guidebook, §1.1.2.2: “Administrative Completeness Check”, Module 1-5.

⁴¹ Guidebook, §1.1.2.5: “Initial Evaluation”, Module 1-8 (underlining added).

- *String Reviews*
 - *String similarity*
 - *Reserved names*
 - *DNS stability*
 - *Geographic names*

[...]

*An application must pass all these reviews to pass the Initial Evaluation. Failure to pass any one of these reviews will result in a failure to pass the Initial Evaluation.*⁴²

59. As indicated, all complete applications are subject to Initial Evaluation, which means that all applied-for gTLD strings are subject to string review. String review is further described in Module 2 as follows:

[String review] focuses on the applied-for gTLD string to test:

- *Whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion;*
- *Whether the applied-for gTLD string might adversely affect DNS security or stability; and*
- *Whether evidence of requisite government approval is provided in the case of certain geographic names.*⁴³

60. The various assessments or reviews (i.e., string similarity, reserved names, DNS stability, etc.) that comprise string review are elaborated at Section 2.2.1 of Module 2. As mentioned, the most relevant of these reviews for our purposes is *string similarity review*, which is described in detail at Section 2.2.1.1. Because of the central importance of the string similarity review process in the context of the present dispute, this section of the Guidebook is reproduced here at some length:

2.2.1.1 String Similarity Review

This review involves a preliminary comparison of each applied-for gTLD string against existing TLDs, Reserved Names (see subsection 2.2.1.2), and other applied-for strings. The objective of this review is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings.

Note: In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

⁴² Module 2-2. The same is true of applicant review, which is also comprised of various assessments concerning the applicant entity.

⁴³ Guidebook, §2.2: “Initial Evaluation”, Module 2-4 (underlining added). See also Module 1-9: “String reviews include a determination that the applied-for gTLD string is not likely to cause security or stability problems in the DNS ...”

The visual similarity check that occurs during Initial Evaluation is intended to augment the objection and dispute resolution process (see Module 3, Dispute Resolution Procedures) that addresses all types of similarity.

This similarity review will be conducted by an independent String Similarity Panel.

2.2.1.1.1 Reviews Performed

The String Similarity Panel's task is to identify visual string similarities that would create a probability of user confusion.

The panel performs this task of assessing similarities that would lead to user confusion in four sets of circumstances, when comparing:

[...]

- Applied-for gTLD strings against other applied-for gTLD strings;

[...]

Similarity to Other Applied-for gTLD Strings (String Contention Sets) – All applied-for gTLD strings will be reviewed against one another to identify any similar strings. In performing this review, the String Similarity Panel will create contention sets that may be used in later stages of evaluation.

A contention set contains at least two applied-for strings identical or similar to one another. Refer to Module 4, String Contention Procedures, for more information on contention sets and contention resolution.

[...]

2.2.1.1.2 Review Methodology

The String Similarity Panel is informed in part by an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs and reserved names. The score will provide one objective measure for consideration by the panel, as part of the process of identifying strings likely to result in user confusion. In general, applicants should expect that a higher visual similarity score suggests a higher probability that the application will not pass the String Similarity review. However, it should be noted that the score is only indicative and that the final determination of similarity is entirely up to the Panel's judgment.

The algorithm, user guidelines, and additional background information are available to applicants for testing and informational purposes. [footnote in the original: See <http://icann.sword-group.com/algorithm/>] Applicants will have the ability to test their strings and obtain algorithmic results through the application system prior to submission of an application.

[...]

The panel will examine all the algorithm data and perform its own review of similarities between strings and whether they rise to the level of string confusion. In cases of strings in scripts not yet supported by the algorithm, the panel's assessment process is entirely manual.

The panel will use a common standard to test for whether string confusion exists, as follows:

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

2.2.1.1.3 Outcomes of the String Similarity Review

An application that fails the String Similarity review due to similarity to an existing TLD will not pass the Initial Evaluation, and no further reviews will be available. Where an application does not pass the String Similarity review, the applicant will be notified as soon as the review is completed.

An application for a string that is found too similar to another applied-for gTLD string will be placed in a contention set.⁴⁴

[Underlining added]

61. Module 4 of the Guidebook, as mentioned, concerns “situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.” As explained in Module 4:

4.1 String Contention

String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called *contending strings*. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.

⁴⁴ Module 2-5 to 2-9. As regards the concept of string contention, see also Guidebook, §1.1.2.10: “String Contention”, Module 1-13: “String contention applies only when there is more than one qualified application for the same or similar gTLD strings. String contention refers to the scenario in which there is more than one qualified application for the identical gTLD string or for similar gTLD strings. In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.”

(In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.)

4.1.1 Identification of Contention Sets

Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

Applications for identical gTLD strings will be automatically assigned to a contention set.

[...]

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets ...

[...]

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation [NB: community priority evaluation applies only to so-called “community” applications; it is not relevant here] or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

[...]

62. As provided in Module 4, the two methods relevant to resolving a contention such as between .hotels and .hoteis are *self-resolution* (i.e., an agreement between the two applicants for the contending strings) and *auction*:

4.1.3 Self-Resolution of String Contention

Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications.

[...]

4.3 Auction: Mechanism of Last Resort

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.

63. Module 5 of the Guidebook, titled *Transition to Delegation*, describes “the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone.”⁴⁵ Section 5.1 states:

*ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.*⁴⁶

[Underlining added]

V. SUMMARY OF THE PARTIES' POSITIONS

64. The following brief summary of the parties' respective positions is provided with a view solely to assisting the reader to understand the present Declaration. It is *not* intended to recapitulate – and it does not recapitulate – the entirety of the parties' allegations and arguments. Additional references to the parties' positions, including submissions made by them in the course of the proceedings, are contained in the discussion at Part VI below.

A. Booking.com's position

(i) *The Panel's Authority*

65. Booking.com submits that the mandate of the Panel is “to determine whether the contested actions of the ICANN Board are consistent with applicable rules”.⁴⁷ According to Booking.com:

*The set of rules against which the actions of the ICANN Board must be assessed includes: (i) ICANN's Articles of Incorporation and Bylaws – both of which must be interpreted in light of ICANN's Affirmation of Commitments, and both of which require compliance with inter alia International law and generally accepted good governance principles – and (ii) secondary rules created by ICANN, such as the Applicant Guidebook. In setting up, implementing and supervising its policies and processes, the Board must comply with the fundamental principles embodied in these rules. That obligation includes a duty to ensure compliance with its obligations to act in good faith, transparently, fairly, and in a manner that is non-discriminatory and ensures due process.*⁴⁸

⁴⁵ Module 5-2.

⁴⁶ Module 5-4.

⁴⁷ Reply, ¶ 3.

⁴⁸ Reply, ¶ 3.

66. Booking.com submits that IRP panels have broad authority to evaluate actions of the ICANN Board. An overly restrictive interpretation of the standard of review, such as proposed by ICANN in these proceedings, would, says Booking.com, “fail to ensure accountability on the part of ICANN and would be incompatible with ICANN’s commitment to maintain (and improve) robust mechanisms for accountability, as required by Article 9.1 of ICANN’s Affirmation of Commitments and ICANN’s core values.”⁴⁹

(ii) Booking.com’s Claims

67. The purpose of the IRP initiated by Booking.com is, in its own words, “to challenge the ICANN Board’s handling of Booking.com’s application for the new gTLD .hotels.”⁵⁰ This includes the determination of the SSP to place .hotels and .hoteis in contention and the refusal of the Board (and its committees) to revise that determination. Elsewhere in its submissions, Booking.com makes an even broader claim; it asserts that it challenges the conduct of the ICANN Board in relation to what Booking.com refers to as the *setting up, implementation, supervision and review* of the entire of string similarity review process, and the Board’s alleged failure “to ensure due process and to respect its fundamental obligations to ensure good faith, transparency, fairness and non-discrimination” throughout.⁵¹
68. In effect, Booking.com’s specific claims can be divided into two broad categories: claims related to the string similarity review process generally; and claims related to the particular case of .hotels.
69. Booking.com professes that this case “is not about challenging a decision on the merits [i.e., the decision to place .hotels in contention]”; it is about “ICANN’s failure to respect fundamental [procedural] rights and principles in handling New gTLD applications, in particular in the context of String Similarity Review.”⁵²
70. Booking.com also repeatedly emphasizes – and this is crucial – that *it does not challenge the validity or fairness of the process as set out in the Guidebook*. Rather, as indicated, it contests “the way in which that process was established, implemented and supervised by (or under the authority of) the ICANN Board.”⁵³ Equally crucial, as will be seen, is Booking.com’s acknowledgment that *the established process was followed* in the case of the review of .hotels.

a. The string similarity review process

71. According to Booking.com, the problem began when the ICANN Board failed to “provide transparency in the SSP selection process,” in particular by failing “to make clear how

⁴⁹ Reply, ¶ 6.

⁵⁰ Reply, ¶ 7.

⁵¹ Reply, ¶ 15.

⁵² Reply, ¶ 14.

⁵³ Reply, ¶ 17.

[ICANN] would evaluate candidate responses or how it ultimately did so.”⁵⁴ The problem was compounded by the selection of ICC/University College London to perform string similarity reviews as the independent SSP. In Booking.com’s words:

*[T]he identities of the unsuccessful candidates (if any) to perform the String Similarity Review remain unknown. Applicants have never been given any information in relation to the candidate responses that were submitted. ... There is no indication that any other candidate expressed an interest in performing the String Similarity Review. No information has been provided as to the steps (if any) taken by ICANN to reach out to other potential candidates. Numerous questions remain: How did ICANN deal with the situation if there was only one (or only a very few) respondent(s) wishing to perform the String Similarity Review? How did this impact on the discussions with InterConnect Communications? What are the terms of ICANN’s contract with InterConnect Communications?*⁵⁵

72. Booking.com also faults ICANN for “allowing the appointed SSP to develop and perform an unfair and arbitrary review process”, specifically, by allowing the SSP “to perform the String Similarity Review (i) without any (documented) plan or methodology ... (ii) without providing any transparency regarding the evaluators or the evaluation criteria ... and (iii) without informing applicants of its reasoning ...”.⁵⁶
73. Among other things, Booking.com takes ICANN to task for establishing and posting the SSP Process Description and the SSP Manager’s Letter (see Part III.C above) only long after the string similarity review process had ended.⁵⁷
74. It also alleges that the factors identified in the SSP Manager’s Letter are “arbitrary and baseless ... not supported by any methodology capable of producing compelling and defensible conclusions ... [which] has allowed applications with at least equally serious visual string similarity concerns – such as .parts/.paris, .maif/.mail, .srt/.srl, .vote/.voto and .date/.data ... – to proceed while singling out .hotels/.hoteis.”⁵⁸ According to Booking.com: “The failure to take actual human performance into account is at odds with the standard for assessment, *i.e.*, the likelihood of confusion on the part of the average Internet user. Hence, the approach is directly contrary to ICANN’s own policy.”⁵⁹
75. Booking.com further contends that the SSP process is unfair and non-transparent due to the fact that the identity of SSP members has never been publicly disclosed.⁶⁰
76. Further, Booking.com argues that the process is unfair, non-transparent and arbitrary – and thus violates ICANN policy – for failing to provide for a “well-documented rationale” for each

⁵⁴ Reply, ¶ 20.

⁵⁵ Reply, ¶ 20.

⁵⁶ Reply, ¶ 23.

⁵⁷ Reply, ¶ 24.

⁵⁸ Reply, ¶ 25.

⁵⁹ Reply, ¶ 25.

⁶⁰ Reply, ¶ 26-27.

SSP determination. In the absence of reasons for each string similarity determination, says Booking.com, “there is no basis on which decisions can be evaluated and, where appropriate, challenged.”⁶¹

77. Another ground for Booking.com’s challenge is the alleged failure by the ICANN Board to providing “effective supervision or quality control” of the SSP: “If nobody but the evaluator has any insight into how the evaluation was carried out, no effective quality control can be performed.”⁶² Nor, according to Booking.com, does the quality review of the SSP’s work supposedly performed by JAS Advisers (the independent consultant engaged by ICANN for this purpose) overcome the problem of a lack of transparency:

*Booking.com is not aware that any selection process was put in place in relation to the appointment of JAS Advisors to perform the String Similarity Review quality control. No criteria for performing the quality control were published. When ICANN was looking for evaluators, no call for expressions of interest or similar document was issued for the selection of quality controllers.*⁶³

78. In any case, says Booking.com, the “quality control review over a random sampling of applications to, among other things, test whether the process [set out in the Guidebook] was followed,” which ICANN claims was performed on the SSP’s work,⁶⁴ could not provide adequate quality control of the string similarity review process.⁶⁵ Finally, Booking.com argues that the arbitrary and unfair result of the string similarity review concerning .hotels – i.e., the decision to place .hotels and .hoteis in contention – demonstrates that, “whatever quality control review ICANN may have engaged in ... must therefore have been deficient.”⁶⁶

b. The case of .hotels

79. Booking.com argues, in part on the basis of expert evidence which it adduces in this IRP proceeding,⁶⁷ that “[t]here is no probability of user confusion if both .hotels and .hoteis were delegated as gTLD strings into the Internet root zone ... The SSP could not have reasonably found that the average reasonable Internet user is likely to be confused between the two strings.”⁶⁸ It continues:

⁶¹ Reply, ¶ 28-29.

⁶² Reply, ¶ 30.

⁶³ Reply, ¶ 31. Booking.com states that it “doubts” that any quality review was in fact performed, whether by JAS Advisers or any other entity.

⁶⁴ Response, ¶ 30.

⁶⁵ Reply, ¶ 34.

⁶⁶ Reply, ¶ 38.

⁶⁷ Request, Annex 20, Expert Report of Prof. Dr. Piet Desmet of the Faculty of Arts, Department of Linguistics of Leuven University, dated 10 March 2014. Portions of the work underlying Prof. Desmet’s report were performed by Dr. Emmanuel Keuleers, Research Fellow in the Department of Experimental Psychology at Ghent University.

⁶⁸ Request, ¶ 58.

Since .hotels and .hoteis are not confusingly similar, the determination that they are is contradictory to ICANN policy as established in the Applicant Guidebook. Acceptance of the determination, and repeated failure to remedy the wrongful determination, is a failure to act with due diligence and independent judgment, and a failure to neutrally and fairly apply established policies as required by Bylaws and Articles of Incorporation.⁶⁹

80. According to Booking.com, the Board should have acted to overturn the determination of the SSP either in the context of the Request for Reconsideration or under the authority accorded it by Module 5-4 of the Guidebook to “individually consider a gTLD application”.⁷⁰
81. Booking.com claims that its DIDP Request alerted the Board to the need to intervene to “correct the errors in the process” related to .hotels, and that its Request for Reconsideration of the SSP determination further informed the Board of the many errors in the SSP’s review of .hotels, “giving the Board ample opportunity to correct those errors.”⁷¹ Booking.com claims that the Board’s failure, when responding to the DIDP Request, “to offer any insight into the SSP’s reasoning”, its refusal to reconsider and overturn the SSP determination regarding .hotels on the sole ground (says Booking.com) that “the Reconsideration process ‘is not available as a mechanism to re-try the decisions of evaluation panels’”, and its failure to investigate Booking.com’s complaints of a lack of fairness and transparency in the SSP process, constitute violations of ICANN’s governing rules regarding string similarity review.⁷²
82. According to Booking.com, among the most compelling evidence of ICANN’s failure in this regard are the statements made on the record by several members of the NGPC during its 10 September 2013 meeting at which Booking.com’s Request for Reconsideration was denied.⁷³ Given the importance that the Panel attaches to these statements, they are addressed in some detail in the Analysis in Part VI, below.
83. In its written submissions Booking.com asks the Panel to grant the following relief:

Finding that ICANN breached its Articles of Incorporation, its Bylaws, and the gTLD Applicant Guidebook;

Requiring that ICANN reject the determination that .hotels and .hoteis are confusingly similar and disregard the resulting contention set;

Awarding Booking.com its costs in this proceeding; and

⁶⁹ Request, ¶ 59.

⁷⁰ Reply, ¶ 39.

⁷¹ Reply, ¶ 41.

⁷² Reply, ¶ 41. In the passage of Booking.com’s submissions referred to here (as elsewhere), Booking.com speaks of violations of ICANN’s obligations of “due process”, which, it says, comprise concepts such as the right to be heard, the right to receive reasons for decisions, publicity, etc. For reasons explained in Part VI, below, the Panel prefers to use the terms *fairness* and *transparency* to connote the essence of ICANN’s obligations under review in this IRP.

⁷³ See Part II.C, above.

Awarding such other relief as the Panel may find appropriate or Booking.com may request.

84. At the hearing Booking.com *further* requested that the Panel not only require ICANN to disregard the SSP determination regarding .hotels/.hoteis, but also order ICANN to “delegate both .hotels and .hoteis.”

B. ICANN's position

85. ICANN's position is best summed up by ICANN itself:

Booking.com's IRP Request is really about Booking.com's disagreement with the merits of the String Similarity Panel's conclusion that .hotels and .hoteis are confusingly similar. But the Panel's determination does not constitute Board action, and the Independent Review Process is not available as a mechanism to re-try the decisions of an independent evaluation panel. The IRP Panel is tasked only with comparing contested actions of the ICANN Board to ICANN's Bylaws and Articles of Incorporation; it is not within the IRP Panel's mandate to evaluate whether the String Similarity Panel's conclusion that .hotels and .hoteis are confusingly similar was wrong.⁷⁴

86. According to ICANN, the Board “did exactly what it was supposed to do under its Bylaws, its Articles of Incorporation, and the Guidebook.”⁷⁵

(i) The Panel's Authority

87. Throughout its submissions ICANN repeatedly stresses what it says is the very limited authority enjoyed by IRP panels.
88. As provided in Article IV, Section 3(4) of ICANN's Bylaws, ICANN observes that this Panel (as all IRP panels) is charged only 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.”⁷⁶
89. ICANN notes that, in undertaking this *compare-and-declare* mission, the Panel is further constrained to apply the very specific “standard of review” set out in Bylaw Article IV, Section 3(4), which requires the Panel to focus on three particular questions: “did the Board act without conflict of interest in taking its decision?”; “did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?”; and “did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company [ICANN]?”⁷⁷

⁷⁴ Response, ¶ 9.

⁷⁵ Response, ¶ 8. Both parties agree that, as submitted by Booking.com, the “rules” at issue, against which the conduct of the ICANN Board is to be assessed, include the relevant provisions of the Guidebook.

⁷⁶ See for example Response, ¶2, ¶ 9.

⁷⁷ Response, ¶ 2.

90. ICANN further asserts that the IRP process “is not available as a mechanism to challenge the actions or inactions of ICANN staff or third parties that may be involved in ICANN activities,”⁷⁸ such as the action of the SSP which resulted in .hotels and .hoteis being placed in contention. Nor, says ICANN, may the IRP process be used as an “appeal mechanism” by which to overturn substantive decisions – such as the determination that .hotels and .hoteis are confusingly visually similar – with which an applicant may disagree.⁷⁹
91. In this regard ICANN states that the affirmative relief sought by Booking.com – specifically, a declaration requiring that ICANN “reject the determination that .hotels and .hoteis are confusingly similar and disregard the resulting contention set” and (as requested at the hearing) that ICANN “delegate both .hotels and .hoteis” – exceeds the authority of the Panel.⁸⁰

(ii) ICANN's Response to Booking.com's Claims

a. The string similarity review process

92. According to ICANN, “[e]arly on in the iterations of the Guidebook, it was determined that, in the initial evaluation stage, the String Similarity Panel would only examine strings for visual confusion;” and “[i]f applied-for strings are determined to so nearly resemble each other visually that it is likely to deceive or cause confusion, the string will be placed in a contention set, which is then resolved pursuant to the contention set resolution processes in Module 4 of the Guidebook.”⁸¹
93. According to ICANN, it was also determined early on that, as stated in Section 2.2.1.1 of the Guidebook, “[t]his similarity review will be conducted by an independent String Similarity Panel,” not by ICANN itself. ICC was duly selected to perform the string similarity review further to “an open and public request for proposals,” pursuant to which, as the successful bidder, “ICC was responsible for the development of its own process documents and methodology for performing the String Similarity Review consistent with the provisions of the Guidebook.”⁸² ICANN emphasizes that “the Guidebook does not provide for any process by which ICANN (or anyone else) may conduct a substantive review of ICC’s results.”⁸³
94. In ICANN’s submission, the alternative proposed by Booking.com, that “the ICANN Board – and the ICANN Board alone – was obligated to perform the String Similarity Review for the more than 1,900 new gTLD applications submitted,” is “untenable and is not supported by ICANN’s Bylaws or Articles.”⁸⁴ As noted by ICANN, the Guidebook defines six distinct

⁷⁸ Response, ¶ 3.

⁷⁹ Response, ¶ 49.

⁸⁰ Response, ¶ 55.

⁸¹ Response, ¶ 15 (underlining in original).

⁸² Response, ¶ 16.

⁸³ Response, ¶ 17.

⁸⁴ Sur-Reply, ¶ 7.

review processes that every gTLD application is required to go through, including string similarity review; each of those review processes was conducted by independent experts specifically engaged by ICANN staff for the purpose.

95. ICANN submits that “there simply is no requirement – under ICANN’s governing documents or imposed by law – that would mandate that the ICANN Board inject itself into the day-to-day affairs of the evaluation process in the manner Booking.com proposes.”⁸⁵ It asserts that, consistent with well-settled legal principles, “neither ICANN’s Bylaws, nor the Articles, nor the Guidebook requires the ICANN Board to conduct any analysis of the decisions of third party experts retained to evaluate string similarity.”⁸⁶
96. Moreover, ICANN asserts that “[s]imply because the ICANN Board has the discretion [under Section 5.1 (Module 5-4) of the Guidebook] to consider individual applications does not mean it is required to do so or that it should do so, particularly at an initial evaluation stage.”⁸⁷
97. ICANN claims that that Booking.com’s repeated invocation of the Board’s so-called obligation to ensure “due process” in the administration of the New gTLD Program is misplaced. First, neither applicable California law nor any provision of the Bylaws, Articles of Incorporation or Guidebook “specifically affords any gTLD applicant a right to procedural ‘due process’ similar to that which is afforded in courts of law.”⁸⁸ Second, because ICANN conducts its activities in the public interest it nevertheless provides “more opportunity for parties to be heard and to dispute actions taken”⁸⁹ than most private corporate entities. Third, the “decision to proceed with the New gTLD Program followed many years of discussion, debate and deliberation within the ICANN community, including participation from end users, civil society, technical experts, business groups, governments and others.”⁹⁰ Fourth, and perhaps most importantly, “ICANN adhered to the policies and procedures articulated in its Bylaws, Articles of Incorporation, and the Guidebook, the latter of which was adopted only after being publicly vetted with ICANN’s stakeholders and the broader Internet community.”⁹¹
98. ICANN’s response to Booking.com’s various allegations regarding particular elements of the string similarity review process – including for example the selection of the SSP, the publication of the SSP’s methodology, the anonymity of the individuals SSP members, the supposed lack of quality control – is essentially three-fold: first, the actions challenged by Booking.com are *not Board actions*, but actions of ICANN staff or third parties, which cannot

⁸⁵ Sur-Reply, ¶ 10.

⁸⁶ Sur-Reply, ¶ 10.

⁸⁷ Sur-Reply, ¶ 11. It was established during the hearing that the several references to this discretionary authority in ICANN’s written and oral submissions refer specifically to the authority conferred by Section 5.1 (Module 5-4) of the Guidebook.

⁸⁸ Sur-Reply, ¶ 18.

⁸⁹ Sur-Reply, ¶ 18.

⁹⁰ Sur-Reply, ¶ 18, fn 18.

⁹¹ Sur-Reply, ¶ 18, fn 18.

be challenged by means of IRP proceedings; second, in any case, Booking.com's claims are *factually incorrect*, and there has been no violation of the Bylaws, Articles of Incorporation or Guidebook; third, Booking.com's claims are *time-barred* given that Article IV, Section 3(3) of the Bylaws requires that IRP requests "must be filed within thirty days of the posting of the minutes of the Board meeting ... that the requesting party contends demonstrates that ICANN violated its Bylaws or Articles of Incorporation."⁹²

b. The case of .hotels

99. ICANN's position as regards the determination to place .hotels and .hoteis in contention is similar in many respects to its position regarding the string similarity review process generally. ICANN argues that the Board played no role whatsoever in performing the review of .hotels; that the SSP's determination was in any event well supported and there was no violation of applicable rules; and that the Guidebook does not provide for any process by which ICANN (or any other body, including an IRP panel) may conduct a substantive review of a string similarity determination.
100. In any event, ICANN asserts that .hotels and .hoteis in fact meet every one of the visual similarity criteria applied by the SSP, as set out in the SSP Manager's Letter. Moreover, .hotels and .hoteis scored a stunning 99% for visual similarity under the publicly available SWORD algorithm which, as provided by Section 2.2.1.1.2 (Module 2-7) of the Guidebook, establishes "one objective measure for consideration by the [SSP]". According to ICANN (in response to a question posed by the Panel during the hearing), this was the highest algorithmic score among the comparison of all non-identical pairs within the 1917 new gTLD applications received by ICANN;⁹³ the only other pair of non-exact match strings found to be confusingly visually similar – .unicorn and .unicom – scored only 94%.⁹⁴
101. According to ICANN, "it was not clearly 'wrong,' as Booking.com argues, for the [SSP] to find that .hotels/.hoteis are confusingly similar."⁹⁵
102. In conclusion, ICANN states that its conduct with respect to Booking.com's application for .hotels, including in evaluating Booking.com's Request for Reconsideration, was fully consistent with ICANN's Articles of Incorporation, its Bylaws and the procedures established in the Guidebook; and the fact that Booking.com disagrees with the SSP's determination to put .hotels and .hoteis in a contention set does not give rise to an IRP.
103. ICANN asks the Panel to deny Booking.com's IRP Request.

VI. ANALYSIS

A. The Panel's Authority

⁹² Sur-Reply, ¶¶ 20-42.

⁹³ A number of these applications were subsequently withdrawn.

⁹⁴ Identical pairs, of course, received a score of 100% for visual similarity under the SWORD algorithm.

⁹⁵ Response, ¶¶ 53.

104. The jurisdiction and authority of an IRP panel is expressly prescribed – and expressly limited – by the ICANN Bylaws. To recap, Article IV, Section 3 of the Bylaws provides:

4. [The IRP Panel] 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 [ICANN]?*

[...]

- 11. The IRP Panel shall have the authority to:*

[...]

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;

[...]

18. [...] The IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties [...]

[Underlining added]

105. Similarly, Article 8 of the Supplementary Procedures reads:

8. Standard of Review

The IRP is subject to the following standard of review: (i) did the ICANN Board act without conflict of interest in taking its decision; (ii) did the ICANN Board exercise due diligence and care in having sufficient facts in front of them; (iii) did the ICANN Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

If a requestor demonstrates that the ICANN Board did not make a reasonable inquiry to determine it had sufficient facts available, ICANN Board members had a conflict of interest in participating in the decision, or the decision was not an exercise in independent judgment, believed by the ICANN Board to be in the best interests of the company, after taking account of the Internet community and the global public interest, the requestor will have established proper grounds for review.

106. There is no dispute as regards the Panel's duty to compare the actions of the Board to ICANN's Articles of Incorporation and Bylaws (and, in this case, Guidebook) with a view to

declaring whether those actions are inconsistent with applicable policies. Where the parties disagree is with respect to the standard of review to be applied by the Panel in assessing Board conduct.

107. ICANN submits that its Bylaws “specify that a deferential standard of review be applied when evaluating the actions of the ICANN Board ... the rules are clear that the appointed IRP Panel is neither asked to, nor allowed to, substitute its judgment for that of the Board.”⁹⁶ Booking.com argues that this “is simply wrong. No such specification is made in ICANN’s Bylaws or elsewhere, and a restrictive interpretation of the standard of review would ... fail to ensure accountability on the part of ICANN and would be incompatible with ICANN’s commitment to maintain (and improve) robust mechanisms for accountability.”⁹⁷
108. In the opinion of the Panel, there can be no question but that the provisions of the ICANN Bylaws establishing the Independent Review Process and defining the role of an IRP panel specify that the ICANN Board enjoys a large degree of discretion in its decisions and actions. So long as the Board acts without conflict of interest and with due care, it is entitled – indeed, required – to exercise its independent judgment in acting in what it believes to be the best interests of ICANN. The only substantive check on the conduct of the ICANN Board is that such conduct may not be inconsistent with the Articles of Incorporation or Bylaws – or, the parties agree, with the Guidebook. In that connection, the Panel notes that Article 1, Section 2 of the Bylaws also clearly states that in exercising its judgment, the Board (indeed “[a]ny ICANN body making a recommendation or decision”) shall itself “determine which core values are most relevant and how they apply to the specific circumstances of the case at hand.”
109. In other words, in making decisions the Board is required to conduct itself reasonably in what it considers to be ICANN’s best interests; where it does so, the only question is whether its actions are or are not consistent with the Articles, Bylaws and, in this case, with the policies and procedures established in the Guidebook.
110. There is also no question but that the authority of an IRP panel to compare contested actions of the Board to the Articles of Incorporation and Bylaws, and to declare whether the Board has acted consistently with the Articles and Bylaws, does not extend to opining on the nature of those instruments. Nor, in this case, does our authority extend to opining on the nature of the policies or procedures established in the Guidebook. In this regard it is recalled that Booking.com itself repeatedly stresses that it does not contest the validity or fairness of the string similarity review process as set out in the Guidebook, but merely whether ICANN’s actions were consistent with various elements of that process. Stated differently, our role in this IRP includes assessing whether the applicable rules – in this case, the rules regarding string similarity review – were followed, not whether such rules are appropriate or advisable.
111. Nevertheless, this does not mean that the IRP Panel may only review ICANN Board actions or inactions under the deferential standard advocated by ICANN in these proceedings. Rather, as explained below, the IRP Panel is charged with “objectively” determining whether

⁹⁶ Response, ¶ 24.

⁹⁷ Reply, ¶ 6.

or not the Board's actions are in fact consistent with the Articles, Bylaws and Guidebook, which the Panel understands as requiring that the Board's conduct be appraised independently, and without any presumption of correctness.

112. In the only other IRP of which the Panel is aware in which such questions were addressed in a published decision, the distinguished members of the IRP panel had this to say about the role of an IRP panel, and the applicable standard of review, in appraising Board action:

The Internet Corporation for Assigned Names and Numbers is a not-for profit corporation established under the law of the State of California. That law embodies the 'business judgment rule'. Section 309 of the California Corporations Code provides that a director must act 'in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders...' and shields from liability directors who follow its provisions. However ICANN is no ordinary non-profit California corporation. The Government of the United States vested regulatory authority of vast dimension and pervasive global reach in ICANN. In 'recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization' – including ICANN -- ICANN is charged with 'promoting the global public interest in the operational stability of the Internet...' ICANN 'shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law...' Thus, while a California corporation, it is governed particularly by the terms of its Articles of Incorporation and Bylaws, as the law of California allows. Those Articles and Bylaws, which require ICANN to carry out its activities in conformity with relevant principles of international law, do not specify or imply that the International [sic] Review Process provided for shall (or shall not) accord deference to the decisions of the ICANN Board. The fact that the Board is empowered to exercise its judgment in the application of ICANN's sometimes competing core values does not necessarily import that that judgment must be treated deferentially by the IRP. In the view of the Panel, the judgments of the ICANN Board are to be reviewed and appraised by the Panel objectively, not deferentially. The business judgment rule of the law of California, applicable to directors of California corporations, profit and nonprofit, in the case of ICANN is to be treated as a default rule that might be called upon in the absence of relevant provisions of ICANN's Articles and Bylaws and of specific representations of ICANN ... that bear on the propriety of its conduct. In the instant case, it is those Articles and Bylaws, and those representations, measured against the facts as the Panel finds them, which are determinative.⁹⁸

[Underlining added.]

113. While on no way bound by that decision, we agree with its conclusions in this respect.
114. At the end of the day we fail to see any significant difference between the parties' positions in this regard. The process is clear, and both parties acknowledge, that the Panel is tasked with determining whether or not the Board's actions are consistent with ICANN's Articles of Incorporation, Bylaws and the Guidebook. Such a determination calls for what the panel in

⁹⁸ ICDR Case No. 50 117 T 00224 08, *ICM Registry, LLC v. ICANN*, Declaration dated 19 February 2010 ("*ICM Registry*"), ¶ 136.

the *ICM Registry* matter called an “objective” appraisal of Board conduct as measured against the policies and rules set out in those instruments; all agree that it is the Articles, Bylaws and Guidebook which are determinative.

115. That being said, we also agree with ICANN to the extent that, in determining the consistency of Board action with the Articles, Bylaws and Guidebook, an “IRP Panel is neither asked to, nor allowed to, substitute its judgment for that of the Board.” In other words, it is not for the Panel to opine on whether the Board could have acted differently than it did; rather, our role is to assess whether the Board’s action was consistent with applicable rules found in the Articles, Bylaws and Guidebook. Nor, as stated, is it for us to purport to appraise the policies and procedures established by ICANN in the Guidebook (since, again, this IRP is not a challenge to those policies and procedures themselves⁹⁹), but merely to apply them to the facts.
116. With the foregoing firmly in mind, the Panel turns now to the issues to be determined in order to resolve the present dispute.

B. The String Similarity Review Process

117. The Panel is not unsympathetic to Booking.com’s complaints regarding the string similarity review process as established by the Guidebook. There is no question but that that process lacks certain elements of transparency and certain practices that are widely associated with requirements of fairness. For example, the Guidebook provides no means for applicants to provide evidence or make submissions to the SSP (or any other ICANN body) and so be fully “heard” on the substantive question of the similarity of their applied-for gTLD strings to others.
118. Indeed, as stated at the outset of this Declaration, these observations and the concerns that they engender were voiced by several members of the ICANN Board’s New gTLD Program Committee which voted to accept the BGC’s Recommendation to deny Booking.com’s Request for Reconsideration. The Panel can do no better than reproduce the statements made by the NGPC members in this respect, as recorded in the minutes of the NGPC’s 10 September 2013 meeting.¹⁰⁰

⁹⁹ As discussed in more detail in the following section (at para. 117 and following) and again at Part IV of this Declaration, the important questions that Booking.com highlights in its pleadings, as to whether the string similarity review process is consistent with ICANN’s guiding principles of transparency and fairness, and regarding the published views of various members of ICANN’s NGPC in this respect, are matters which the ICANN Board, in its discretion, may wish to consider on its own motion in the context of the present case, in accordance with its authority under Section 5.1 (Module 5-4) of the Guidebook, or when it issues the Guidebook for round two of the New gTLD Program. Those questions include a lack of clarity surrounding the way in which the string similarity review is conducted by the SSP, and the absence of any means for applicants to be heard in the string similarity review process where they may have evidence to adduce or arguments to make (such as the evidence and arguments presented by Booking.com to this Panel), which could in fact be relevant to the SSP’s determination.

¹⁰⁰ Request, Annex 16.

- Mr. George Sadowski stated his intention to abstain from the vote because, although “he understood that the BGC did the right thing, [he] thought the end result that was contrary to ICANN’s ... and the user’s best interests.”
 - Ms. Olga Madruga-Forti also stated her intention to abstain from voting on the BGC recommendation “because there was not sufficient rationale provided for why the string similarity review panel made its determination.”
 - In response to a comment by the Chair that the Request for Reconsideration deserved to be denied “[b]ecause the process was followed,” Mr. Ray Plzak “agreed that the process was followed, but noted that the process needs to be reviewed to potentially add a mechanism that would allow persons who don’t agree with the outcome to make an objection, other than using a Reconsideration Request.”
 - Mr. Plzak “recommended the Committee send a strong signal to the BGC, or adopt a resolution recommending that the BGC consider development of a different mechanism to provide an avenue for the community to appeal the outcome of a decision based on the merits.”
 - Ms. Madruga-Forti agreed and “recommended that in the future, a remand or appeals mechanism may help alleviate the concerns noted.”
 - Mr. Bill Graham also agreed with Mr. Plzak’s suggestion, and noted that “generally, there is a considerable level of discomfort and dissatisfaction with the process as expressed by Committee members.”
 - The Chair “agreed with [Mr. Graham’s] sentiment.”
 - The General Counsel and Secretary noted that ICANN ... “has tried to encourage more use of the ombudsman, or other accountability mechanisms for these types of concerns.”
119. Ultimately, five members of the NGPC voted in favour of the resolution accepting the BGC’s Recommendation; two members were unavailable to vote; and four members abstained. The abstaining members offered the following voting statements:
- Mr. Plzak stated that he abstained from voting “because he is disappointed in what is being done to remedy the situation. [He] would like to see more resolve to fix the process.”
 - Ms. Madruga-Forti stated that:

[T]he BGC has done an appropriate job of applying a limited review standard to the application for reconsideration, but unfortunately, in this circumstance, to apply that limited review accompanied by a lack of information regarding the rationale of the string similarity review panel is not possible in a logical and fair manner. The public interest would not be served by applying the limited review standard without proper information on the basis and reasoning for the decision of the panel. In my opinion, the public interest would be better served by abstaining and continuing to explore ways to

establish a better record of the rationale of the string similarity review panel in circumstances such as this.

- Mr. Kuo-Wei Wu agreed with Ms. Madruga-Forti's and Mr. Plzak's voting statements.
- Mr. Sadowsky provided the following detailed statement:

I have a strong concern regarding the ratification of the BGC recommendation to deny the reconsideration request regarding string contention between .hoteis and .hotels, and I therefore have therefore abstained when the vote on this issue was taken.

The reconsideration process is a very narrowly focused instrument, relying solely upon investigating deviations from established and agreed upon process. As such, it can be useful, but it is limited in scope. In particular, it does not address situations where process has in fact been followed, but the results of such process have been regarded, sometimes quite widely, as being contrary to what might be best for significant or all segments of the ... community and/or Internet users in general.

The rationale underlying the rejection of the reconsideration claim is essentially that the string similarity process found that there was likely to be substantial confusion between the two, and that therefore they belonged in a contention set. Furthermore, no process has been identified as having been violated and therefore there is nothing to reconsider. As a Board member who is aware of ICANN's ... Bylaws, I cannot vote against the motion to deny reconsideration. The motion appears to be correct based upon the criteria in the Bylaws that define the reconsideration process and the facts in this particular case. However, I am increasingly disturbed by the growing sequence of decisions that are based upon a criterion for user confusion that, in my opinion, is not only both incomplete and flawed, but appears to work directly against the concept that users should not be confused. I am persuaded by the argument made by the proponents of reconsideration in this case that users will in fact not be confused by .hoteis and .hotels, since if they enter the wrong name, they are very likely to be immediately confronted by information in a language that they did not anticipate.

Confusion is a perceptual issue. String similarity is only one consideration in thinking about perceptual confusion and in fact it is not always an issue. In my opinion, much more perceptual confusion will arise between .hotel and .hotels than between .hotels and .hoteis. Yet if we adhere strictly to the Guidebook and whatever instructions have or have not been given to string similarity experts, it is my position that we work against implementing decisions that assist in avoiding user confusion, and we work in favor of decisions that are based upon an incorrect, incomplete and flawed ex ante analysis of the ICANN Network real issues with respect to user confusion.

The goal of the string similarity process is the minimization of user confusion and ensuring user trust in using the DNS ... The string similarity exercise is one of the means in the new gTLD ... process to minimize such confusion and to strengthen user trust. In placing our emphasis, and in fact our decisions, on string similarity only, we are unwittingly substituting the means for the goal, and making decisions regarding the goal on the basis of a means test. This is a disservice to the Internet user community.

I cannot and will not vote in favor of a motion that reflects, directly or indirectly, an unwillingness to depart from what I see as such a flawed position and which does not reflect in my opinion an understanding of the current reality of the situation.

120. These statements reflect to an important degree the Panel's own analysis.
121. The elements of the string similarity review process were established and widely published several years ago, after extensive consultation and debate among ICANN stakeholders and the Internet community. Booking.com correctly describes the process established (or "crystallized") in the Guidebook as a component of "a consensus policy" concerning the introduction of new gTLDs.¹⁰¹
122. The Guidebook makes clear that, as part of the initial evaluation to which all applied-for gTLDs are subject, each string would be reviewed for a number of factors, one of which is "string similarity", which involves a determination of "whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion"¹⁰². The term "user" is elaborated elsewhere in the Guidebook, which speaks of confusion arising "in the mind of the average, reasonable Internet user."¹⁰³
123. The Guidebook explains that string similarity review comprises merely a "visual similarity check",¹⁰⁴ with a view to identifying only "visual string similarities that would create a probability of user confusion."¹⁰⁵
124. The Guidebook makes clear that string similarity reviews would be conducted by an independent third party – the SSP – that would have wide (though not complete) discretion both in formulating its methodology and in determining string similarity on the basis of that methodology.
125. Section 2.2.1.1.2 of the Guidebook, titled "Review Methodology", provides that the SSP "is informed in part by an algorithmic score for ... visual similarity," which "will provide one objective measure for consideration by the [SSP]." Section 2.2.1.1.2 further states that, in addition to "examin[ing] all the algorithm data," the SSP will "perform its own review of similarities between strings and whether they rise to the level of string confusion." It is noted that the objective algorithmic score is to be treated as "only indicative". Crucially, "the final determination of similarity is entirely up to the [SSP's] judgment." (Underlining added)
126. In sum, the Guidebook calls for the SSP to determine whether two strings are so "visually similar" as to create a "probability of confusion" in the mind of an "average, reasonable Internet user." In making this determination, the SSP is informed by an "algorithmic score", to ensure that the process comprises at least one "objective measure". However, the algorithmic score is not determinative. The SSP also develops and performs "its own review". At the end of the day, the determination is entirely a matter of "the [SSP's] judgment."

¹⁰¹ Request, ¶ 13.

¹⁰² Guidebook, §2.2 (Module 2-4).

¹⁰³ Guidebook, §2.2.1.1.2. (Underlining added)

¹⁰⁴ Guidebook, §2.2.1.1. (Underlining added)

¹⁰⁵ Guidebook, §2.2.1.1.1. (Underlining added)

127. By its very nature this process is highly discretionary. It is also, to an important degree, subjective. The Guidebook provides no definition of “visual similarity”, nor any indication of how such similarity is to be objectively measured other than by means of the SWORD algorithm. The Guidebook provides no definition of “confusion,” nor any definition or description of an “average, reasonable Internet user.” As Mr. Sadowski of the NGPC put it: “Confusion is a perceptual issue.” (Mr. Sadowski further noted: “String similarity is only one consideration in thinking about perceptual confusion, and in fact it is not always an issue.) The Guidebook mandates the SSP to develop and apply “its own review” of visual similarity and “whether similarities rise to the level of user confusion”, in addition to SWORD algorithm, which is intended to be merely “indicative”, yet provides no substantive guidelines in this respect.
128. Nor does the process as it exists provide for gTLD applicants to benefit from the sort of procedural mechanisms – for example, to inform the SSP’s review, to receive reasoned determinations from the SSP, or to appeal the merits of those determinations – which Booking.com claims are required under the applicable rules. Clearly, certain ICANN NGPC members themselves consider that such input would be desirable and that changes to the process are required in order for the string similarity review process to attain its true goal, which Mr. Sadowski referred to as “the minimization of user confusion and ensuring user trust in using the DNS”. However, as even the abstaining members of the NGPC conceded, the fact is that the sort of mechanisms that Booking.com asserts are required (and which those NGPC members believe should be required) are simply not part of the string similarity review process as currently established. As to whether they *should* be, it is not our place to express an opinion, though we note that such additional mechanisms surely would be consistent with the principles of transparency and fairness.
129. We add that we agree with ICANN that the time has long since passed for Booking.com or any other interested party to ask an IRP panel to review the actions of the ICANN Board in relation to the establishment of the string similarity review process, including Booking.com’s claims that specific elements of the process and the Board decisions to implement those elements are inconsistent with ICANN’s Articles and Bylaws. Any such claims, even if they had any merit, are long since time-barred by the 30-day limitation period set out in Article IV, Section 3(3) of the Bylaws. As ICANN expressed during the hearing, if Booking.com believed that there were problems with the Guidebook, it should have objected at the time the Guidebook was first implemented.
130. When asked during the hearing about its failure to object timely, Booking.com argued that it could not have known how the Board’s actions – that is, how the process established in the Guidebook – would affect it prior to the submission of its application for .hotels. However, that is not a persuasive or meritorious answer. As did all stakeholders, Booking.com had the opportunity to challenge the Board’s adoption of the Guidebook, at the time, if it considered any of its elements to be inconsistent with ICANN’s Articles of Incorporation or Bylaws.

C. The Case of .hotels

131. In the light of the preceding analysis of Booking.com’s challenge concerning the ICANN Board’s actions in relation to the string similarity review process generally, the Panel is not

persuaded by its challenge concerning the Board's conduct in relation to the review of .hotels specifically.

132. There are two principal elements to this part of Booking.com's case: a challenge in relation to the process followed by the SSP; and a challenge in relation to the Board's handling of Booking.com's Request for Reconsideration of the SSP's determination. However, the fundamental obstacle to Booking.com's case is that *the established process was followed in all respects*.
133. Booking.com itself acknowledges that "the process was followed" by the SSP, which determined that .hotels and .hoteis were so visually similar as to warrant being placed in a contention set. So too did all of the NGPC members who commented on the matter recognize that "the process was followed" – for all their stated misgivings concerning the outcome of the process.
134. The same is true of the Request for Reconsideration. The Panel is struck by the extent and thoughtfulness not only of the NGPC's consideration of the issue, certain aspects of which are discussed above, but of the BGC's detailed analysis and its Recommendation to the NGPC, on the basis of which Booking.com's Request for Reconsideration was denied. Contrary to Booking.com's allegations, in neither instance was this merely a blind acceptance of a decision of a subordinate body. In fact, the reconsideration process itself, however limited and perhaps imperfect it may be, is inconsistent with Booking.com's claims of lack of "due process".
135. Although not addressed in great detail by the parties, the Panel considers several observations made by the BGC in its 1 August 2013 Recommendation to be particularly apposite:
 - *These standing requirements [for Requests for Reconsideration] are intended to protect the reconsideration process from abuse and to ensure that it is not used as a mechanism simply to challenge an action with which someone disagrees, but that it is limited to situations where the staff [for the Board] acted in contravention of established policies.*¹⁰⁶
 - *Although the String Similarity Review was performed by a third party, ICANN has determined that the Reconsideration process can properly be invoked for challenges of the third party's decisions where it can be stated that either the vendor failed to follow its process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision.*¹⁰⁷
 - *Booking.com does not suggest that the process for String Similarity Review set out in the Applicant Guidebook was not followed, or that ICANN staff violated any established ICANN policy in accepting the [SSP] decision on placing .hotels and .hoteis in contention sets. Instead, Booking.com is supplanting what it believes the review*

¹⁰⁶ BGC Recommendation, p. 2.

¹⁰⁷ BGC Recommendation, p. 4. The BGC explains that "Because the basis for the Request is not Board conduct, regardless of whether the 20 December 2012 version, or the 11 April 2013 version, of the Reconsideration Bylaws is operative, the BGC's analysis and recommendation below would not change."

methodology for assessing visual similarity should have been, as opposed to the methodology set out at Section 2.2.1.1.2 of the Applicant Guidebook. In asserting a new review methodology, Booking.com is asking the BGC (and the Board through the New gTLD Program Committee (NGPC)) to make a substantive evaluation of the confusability of the strings and to reverse the decision. In the context of the New gTLD Program, the Reconsideration process is not however intended for the Board to perform a substantive review of [SSP] decisions. While Booking.com may have multiple reasons as to why it believes that its application for .hotels should not be in contention set with .hoteis, Reconsideration is not available as a mechanism to re-try the decisions of the evaluation panels.¹⁰⁸

▪ *Booking.com also claims that its assertions regarding the non-confusability of the .hotels and .hoteis strings demonstrate that “it is contrary to ICANN policy to put them in a contention set.” (Request, pages 6-7.) This is just a differently worded attempt to reverse the decision of the [SSP]. No actual policy or process is cited by Booking.com, only the suggestion that – according to Booking.com – the standards within the Applicant Guidebook on visual similarity should have resulted in a different outcome for the .hotels string. This is not enough for Reconsideration.¹⁰⁹*

▪ *Booking.com argues that the contention set decision was taken without material information, including Booking.com’s linguistic expert’s opinion, or other “information that would refute the mistaken contention that there is likely to be consumer confusion between ‘.hotels’ and ‘.hoteis.’” (Request, page 7.) However, there is no process point in the String Similarity Review for applicants to submit additional information. This is in stark contrast to the reviews set out in Section 2.2.2 of the Applicant Guidebook, including the Technical/Operational review and the Financial Review, which allow for the evaluators to seek clarification or additional information through the issuance of clarifying questions. (AGB, Section 2.2.2.3 (Evaluation Methodology).)¹¹⁰*

▪ *Just as the process does not call for additional applicant inputs into the visual similarity review, Booking.com’s call for further information on the decision to place .hotels and .hoteis in a contention set ... is similarly not rooted in any established ICANN process at issue.[...] While applicants may avail themselves of accountability mechanism to challenge decisions, the use of an accountability mechanism when there is no proper ground to bring a request for review under the selected mechanism does not then provide opportunity for additional substantive review of decisions already taken.¹¹¹*

▪ *[W]hile we understand the impact that Booking.com faces by being put in a contention set, and that it wishes for more narrative information regarding the [SSP’s] decision, no such narrative is called for in the process.¹¹²*

▪ *The Applicant Guidebook sets out the methodology used when evaluating visual similarity of strings. The process documentation provided by the String Similarity Review Panel describes the steps followed by the [SSP] in applying the methodology*

¹⁰⁸ BGC Recommendation, p. 5.

¹⁰⁹ BGC Recommendation, p. 6.

¹¹⁰ BGC Recommendation, p. 6.

¹¹¹ BGC Recommendation, pp. 6-7.

¹¹² BGC Recommendation, p. 7.

set out in the Applicant Guidebook. ICANN then coordinates a quality assurance review over a random selection of [SSP's] reviews to gain confidence that the methodology and process were followed. That is the process used for a making and assessing a determination of visual similarity. Booking.com's disagreement as to whether the methodology should have resulted in a finding of visual similarity does not mean that ICANN (including the third party vendors performing String Similarity Review) violated any policy in reaching the decision (nor does it support a conclusion that the decision was actually wrong).¹¹³

▪ *The [SSP] reviewed all applied for strings according to the standards and methodology of the visual string similarity review set out in the Applicant Guidebook. The Guidebook clarifies that once contention sets are formed by the [SSP], ICANN will notify the applicants and will publish results on its website. (AGB, Section 2.2.1.1.1.) That the [SSP] considered its output as "advice" to ICANN (as stated in its process documentation) is not the end of the story. Whether the results are transmitted as "advice" or "outcomes" or "reports", the important query is what ICANN was expected to do with that advice once it was received. ICANN had always made clear that it would rely on the advice of its evaluators in the initial evaluation stage of the New gTLD Program, subject to quality assurance measures. Therefore, Booking.com is actually proposing a new and different process when it suggests that ICANN should perform substantive review (instead of process testing) over the results of the String Similarity Review Panel's outcomes prior to the finalization of contention sets.¹¹⁴*

▪ *As there is no indication that either the [SSP] or ICANN staff violated any established ICANN policy in reaching or accepting the decision on the placement of .hotels and .hotelis in a non-exact contention set, this Request should not proceed.¹¹⁵*

136. These excerpts of the BGC Recommendation not only illustrate the seriousness with which Booking.com's Request for Reconsideration was heard, they mirror considerations to which we fully subscribe and which we find apply as well, with equal force and effect, in the context of Booking.com's IRP Request.
137. It simply cannot be said – indeed, it is not even alleged by Booking.com – that the established process was not followed by the ICANN Board or any third party either in the initial string similarity review of .hotels or in the reconsideration process.
138. Booking.com was asked at the hearing to identify *with particularity* the ICANN Board's actions (including inactions) in this case that it claims are inconsistent with ICANN's Articles of Incorporation, Bylaws or the Guidebook and regarding which it asks the Panel to render a declaration. It identified four:
- The Board's adoption of certain provisions of the Guidebook, including the allegedly ill-defined, unfair and non-transparent procedures for selecting the SSP and supervising the SSP's performance of the string similarity review process. As discussed, any claims in this regard are time-barred.

¹¹³ BGC Recommendation, p. 7.

¹¹⁴ BGC Recommendation, p. 8.

¹¹⁵ BGC Recommendation, p. 10.

- The Board’s acceptance of the SSP determination. As ICANN argues, there was no action (or inaction) by the Board here, no decision made (or not made) by the Board or any other body to accept the SSP’s determination. The Guidebook provides that applied-for strings “will be placed in contention set” where the SSP determines the existence of visual similarity likely to give rise to user confusion. Simply put, under the Guidebook the Board is neither required nor entitled to intervene at this stage to accept or not accept the SSP’s determination. Booking.com is correct that the Board could nevertheless have stepped in and reversed the SSP determination under Section 5.1 (Module 5-4) of the Guidebook, but did not do so; that inaction is addressed below.
 - The Board’s denial of Booking.com’s Request for Reconsideration. As discussed above, there is nothing in the evidence that even remotely suggests that ICANN’s conduct in this regard was inconsistent with its Articles, Bylaws or the Guidebook. On the contrary, we have already stated that the detailed analysis performed by the BGC and the extensive consideration of the BGC Recommendation by the NGCP undermine any claim that ICANN failed to exercise due care and independent judgment, or that its handling of the Request for Reconsideration was inconsistent with applicable rules or policy. As discussed above, just as in the present IRP, the question in the reconsideration process is whether the established process was followed. This was the question that the BGC and NGPC asked themselves in considering Booking.com’s Request for Reconsideration, and which they properly answered in the affirmative in denying Booking.com’s request.
 - The Board’s refusal to “step in” and exercise its authority under Section 5.1 (Module 5-4) of the Guidebook to “individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community.” As pointed out by ICANN during the hearing, the fact that the ICANN Board enjoys such discretion and may choose to exercise it any time does not mean that it is bound to exercise it, let alone at the time and in the manner demanded by Booking.com. In any case, the Panel does not believe that the Board’s inaction in this respect was inconsistent with ICANN’s Articles of Incorporation or Bylaws or indeed with ICANN’s guiding principles of transparency and fairness, given (1) Booking.com’s concession that the string similarity review process was followed; (2) the indisputable conclusion that any challenge to the adoption of the SSP process itself is time-barred; (3) the manifestly thoughtful consideration given to Booking.com’s Request for Reconsideration by the BGC; and (4), the fact that, notwithstanding its protestations to the contrary, Booking.com’s real dispute seems to be with the process itself rather than how the process was applied in this case (given that, as noted, Booking.com concedes that the process was indeed followed).
139. The Panel further considers that these – in addition to any and all other potential (and allegedly reviewable) actions identified by Booking.com during the course of these proceedings – fail on the basis of Booking.com’s dual acknowledgement that it does not challenge the validity or fairness of the string similarity review process, and that that process was duly followed in this case.

140. Finally, the panel notes that Booking.com's claim – largely muted during the hearing – regarding alleged "discrimination" as regards the treatment of its application for .hotels also founders on the same ground. Booking.com acknowledges that the established string similarity review process was followed; and there is absolutely no evidence whatsoever that .hotels was treated any differently than any other applied-for gTLD string in this respect. The mere fact that the *result* of the string similarity review of .hotels differed from the results of the reviews of the vast majority of other applied-for strings does not suggest discriminatory treatment. In any event, the Panel cannot but note the obvious, which is that .hotels is not alone in having been placed in contention by the SSP. So too was .hoteis; and so too were .unicom and .unicorn. Moreover, and once again, it is recalled that Booking.com does not claim to challenge the merits of the string similarity review, that is, the determination that .hotels and .hoteis are so visually similar as to warrant placement in a contention set.

D. Conclusion

141. In launching this IRP, Booking.com no doubt realized that it faced an uphill battle. The very limited nature of IRP proceedings is such that any IRP applicant will face significant obstacles in establishing that the ICANN Board acted inconsistently with ICANN's Articles of Incorporation or Bylaws. In fact, Booking.com acknowledges those obstacles, albeit inconsistently and at times indirectly.
142. Booking.com purports to challenge "the way in which the [string similarity review] process was established, implemented and supervised by (or under the authority of) the ICANN Board"; yet it also claims that it *does not challenge the validity or fairness of the string similarity review process as set out in the Guidebook*. It asks the Panel to overturn the SSP's determination in this case and to substitute an alternate result, in part on the basis of its own "expert evidence" regarding similarity and the probability of user confusion as between .hotels and .hoteis; yet it claims that it *does not challenge the merits of the SSP determination and it acknowledges that the process set out in the Guidebook was duly followed* in the case of its application for .hotels.
143. In sum, Booking.com has failed to overcome the very obstacles that it recognizes exist.
144. The Panel finds that Booking.com has failed to identify any instance of Board action or inaction, including any action or inaction of ICANN staff or a third party (such as ICC, acting as the SSP), that could be considered to be inconsistent with ICANN's Articles of Incorporation or Bylaws or with the policies and procedures established in the Guidebook. This includes the challenged actions of the Board (or any staff or third party) in relation to what Booking.com calls the implementation and supervision of the string similarity review process generally, as well as the challenged actions of the Board (or any staff or third party) in relation to the string similarity review of .hotels in particular.
145. More particularly, the Panel finds that the string similarity review performed in the case of .hotels was not inconsistent with the Articles or Bylaws or with what Booking.com refers to as the "applicable rules" as set out in the Guidebook.
146. To the extent that the Board's adoption and implementation of specific elements of the new gTLD Program and Guidebook, including the string similarity review process, could

potentially be said to be inconsistent with the principles of transparency or fairness that underlie ICANN's Articles and Incorporation and Bylaws (which the Panel does not say is the case), the time to challenge such action has long since passed.

147. Booking.com's IRP Request must be denied.

VII. THE PREVAILING PARTY; COSTS


148. Article IV, Section 3(18) of the Bylaws requires that the Panel "specifically designate the prevailing party." This designation is germane to the allocation of costs, given that Article IV, Section 3(18) provides that the "party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider."
149. The same provision of the Bylaws also states that "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."
150. Similarly, the Supplementary Procedures state, at Article 11:
- The IRP PANEL shall fix costs in its DECLARATION. The party not prevailing in an IRP shall ordinarily be responsible for bearing all costs of the proceedings, but under extraordinary circumstances the IRP PANEL may allocate up to half of the costs to the prevailing party, taking into account the circumstances of the case, including the reasonableness of the parties' positions and their contribution to the public interest.*
- In the event the Requestor has not availed itself, in good faith, of the cooperative engagement or conciliation process, and the requestor is not successful in the Independent Review, the IRP PANEL must award ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.*
151. The "IRP Provider" is the ICDR, and, in accordance with the ICDR Rules, the costs to be allocated between the parties – what the Bylaws call the "costs of the IRP Provider", and the Supplementary Procedures call the "costs of the proceedings" – include the fees and expenses of the Panel members and of the ICDR (we refer to all of these costs as "**IRP costs**").
152. ICANN is undoubtedly the prevailing party in this case. That being said, the Panel considers that the nature and significance of the issues raised by Booking.com, and the contribution to the "public interest" of its submissions, are such that it is appropriate and reasonable that the IRP costs be shared equally by the parties. We consider that the extraordinary circumstances of case – in which some members of ICANN's New gTLD Program Committee have publicly declared that, in their view, the rules on the basis of which Booking.com's claims fail should be reconsidered by ICANN – warrants such a holding.
153. The Panel cannot grant Booking.com the relief that it seeks. A panel such as ours can only declare whether, on the facts as we find them, the challenged actions of ICANN are

or are not inconsistent with ICANN's Articles of Incorporation and Bylaws. We have found that the actions in question are not inconsistent with those instruments. The process established by ICANN under its Articles of Incorporation and Bylaws and set out in the Guidebook was followed, and the time to challenge that process (which Booking.com asserts is not its intention in these proceedings in any event) has long passed.

154. However, we can – and we do – acknowledge certain legitimate concerns regarding the string similarity review process raised by Booking.com, discussed above, which are evidently shared by a number of prominent and experienced ICANN NGPC members. And we can, and do, encourage ICANN to consider whether it wishes to address these issues in an appropriate manner and forum, for example, when drafting the Guidebook for round two of the New gTLD Program or, more immediately, in the exercise of its authority under Section 5.1 (Module 5-4) of the Guidebook (which it may choose to exercise at any time, in its discretion) to consider whether, notwithstanding the result of the string similarity review of .hotels and .hoteis, approval of both of Booking.com's and Despegar's proposed strings would be in the best interest of the Internet community.

FOR THE FOREGOING REASONS, the Panel hereby declares:

- (1) Booking.com's IRP Request is denied;
- (2) ICANN is the prevailing party;
- (3) In view of the circumstances, each party shall bear one-half of the costs of the IRP Provider, including the fees and expenses of the Panel members and the fees and expenses of the ICDR. As a result, the administrative fees and expenses of the ICDR, totaling US\$4,600.00, as well as the compensation and expenses of the Panelists totaling US\$163,010.05 are to be borne equally. Therefore, ICANN shall pay to Booking.com the amount of US\$2,300.00 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Booking.com
- (4) This Final Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute the Final Declaration of this IRP Panel.



Hon. A. Howard Matz
Date: March 2, 2015

David H. Bernstein
Date:

Stephen L. Drymer,
Chair of the IRP Panel
Date:

I, Hon. A. Howard Matz, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

March 2, 2015
Date


Hon. A. Howard Matz

I, David H, Bernstein, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

David H, Bernstein

I, Stephen L. Drymer, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

Stephen L. Drymer


or are not inconsistent with ICANN's Articles of Incorporation and Bylaws. We have found that the actions in question are not inconsistent with those instruments. The process established by ICANN under its Articles of Incorporation and Bylaws and set out in the Guidebook was followed, and the time to challenge that process (which Booking.com asserts is not its intention in these proceedings in any event) has long passed.

154. However, we can – and we do – acknowledge certain legitimate concerns regarding the string similarity review process raised by Booking.com, discussed above, which are evidently shared by a number of prominent and experienced ICANN NGPC members. And we can, and do, encourage ICANN to consider whether it wishes to address these issues in an appropriate manner and forum, for example, when drafting the Guidebook for round two of the New gTLD Program or, more immediately, in the exercise of its authority under Section 5.1 (Module 5-4) of the Guidebook (which it may choose to exercise at any time, in its discretion) to consider whether, notwithstanding the result of the string similarity review of .hotels and .hoteis, approval of both of Booking.com's and Despegar's proposed strings would be in the best interest of the Internet community.

FOR THE FOREGOING REASONS, the Panel hereby declares:

- (1) Booking.com's IRP Request is denied;
- (2) ICANN is the prevailing party;
- (3) In view of the circumstances, each party shall bear one-half of the costs of the IRP Provider, including the fees and expenses of the Panel members and the fees and expenses of the ICDR. As a result, the administrative fees and expenses of the ICDR, totaling US\$4,600.00, as well as the compensation and expenses of the Panelists totaling US\$163,010.05 are to be borne equally. Therefore, ICANN shall pay to Booking.com the amount of US\$2,300.00 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Booking.com
- (4) This Final Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute the Final Declaration of this IRP Panel.

Hon. A. Howard Matz
Date:



David H. Bernstein
Date: March 2, 2015

Stephen L. Drymer,
Chair of the IRP Panel
Date:

I, Hon. A. Howard Matz, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

Hon. A. Howard Matz

I, David H, Bernstein, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

March 2, 2015
Date



David H, Bernstein

I, Stephen L. Drymer, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

Stephen L. Drymer

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FOR THE FOREGOING REASONS, the Panel hereby declares:

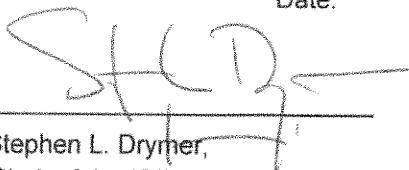
- (1) Booking.com's IRP Request is denied;
- (2) ICANN is the prevailing party;
- (3) In view of the circumstances, each party shall bear one-half of the costs of the IRP Provider, including the fees and expenses of the Panel members and the fees and expenses of the ICDR. As a result, the administrative fees and expenses of the ICDR, totaling US\$4,600.00, as well as the compensation and expenses of the Panelists totaling US\$163,010.05 are to be borne equally. Therefore, ICANN shall pay to Booking.com the amount of US\$2,300.00 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Booking.com
- (4) This Final Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute the Final Declaration of this IRP Panel.

Hon. A. Howard Matz

Date:

David H. Bernstein

Date:



Stephen L. Drymer,
Chair of the IRP Panel

Date: 3 March 2015

I, Hon. A. Howard Matz, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

Hon. A. Howard Matz

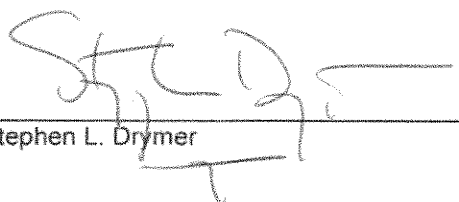
I, David H. Bernstein, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

David H. Bernstein

I, Stephen L. Drymer, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

3 March 2015
Date



Stephen L. Drymer

Ex. R-6

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Proposed Amendment 3 to the .COM Registry Agreement

Open Date

3 Jan 2020 23:59 UTC

Close Date

14 Feb 2020 23:59 UTC

Staff Report Due

26 Mar 2020 23:59 UTC


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Originating Organization

Global Domains Division

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globalsupport@icann.org

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Brief Overview

Purpose: This public comment proceeding is to obtain community input on the proposed amendment No. 3 to the .COM Registry Agreement (Amendment 3), and accompanying framework for ICANN org and VeriSign, Inc. (Verisign) to work together on additional initiatives related to enhancing the security, stability, and resiliency of the Domain Name System (DNS). This framework is set forth in a proposed binding Letter of Intent (LOI) between ICANN and Verisign.

Current Status: Verisign is the registry operator of the .COM top-level domain (TLD). In addition to the .COM Registry Agreement (RA) between ICANN and Verisign, the United States Department of Commerce (DOC) and Verisign maintain "the Cooperative Agreement" for Verisign's operation of the .COM TLD.

On 26 October 2018, following a review and deliberation by the U.S. Government, Verisign and the DOC entered into Amendment 35 of the Cooperative Agreement (Amendment 35). In addition to extending the Cooperative Agreement, Amendment 35 permitted Verisign to seek certain changes to the .COM Registry Agreement that are set forth in the proposed Amendment 3.

The proposed Amendment 3 and the proposed LOI arise from obligations in amendment [No. 1 to the .COM RA \(Amendment 1\)](#), dated 20 October 2016. Amendment 1 required the parties to cooperate and negotiate in good faith to amend the .COM RA if and when the DOC and Verisign made changes to the Cooperative Agreement, to ensure those changes were reflected in the .COM RA and to amend the terms to preserve and enhance the security and stability of the Internet or the .COM TLD.

Together, the proposed Amendment 3 and the proposed binding LOI satisfy the parties' obligations under Amendment 1.

Next Steps: Following review of all of the public comments received, ICANN org will prepare and publish a summary and analysis report of the comments received. The report will be provided to the ICANN Board of Directors, and in consultation with the Board, ICANN org will make a decision regarding the proposed Amendment 3 and the proposed binding Letter of Intent between ICANN and Verisign.

[Report of Public Comments](#)

Section I: Description and Explanation

The proposed Amendment 3 to the .COM Registry Agreement (Amendment 3) and the proposed binding Letter of Intent (LOI) satisfy the party's agreement to negotiate certain terms described in the first amendment to the .COM Registry Agreement (Amendment 1), dated 20 October 2016. Under Amendment 1, the parties agreed to cooperate and negotiate in good faith to amend the .COM Registry Agreement (RA) as necessary to reflect changes made to Verisign's Cooperative Agreement with the U.S. Department of Commerce (DOC), and to amend the terms to preserve and enhance the security and stability of the Internet or the .COM top-level domain (TLD).

The [proposed Amendment 3](#), along with the proposed [binding LOI](#), satisfy these obligations. Together, the two documents accomplish five primary objectives:

- Alignment of certain terms of the .com RA with Amendment 35 to the Cooperative Agreement, including the .COM maximum pricing provision for registry services
- Alignment of certain technical and reporting obligations for the

.COM TLD with those in the Base gTLD Registry Agreement

- Incorporation of commitments related to the implementation of the Registration Data Access Protocol (RDAP)
- Formalization of a framework by which ICANN and Verisign will work together to support additional enhancements to security and stability of the DNS, including to help combat DNS security threats
- Additional funding to ICANN to continue to conduct, facilitate and support activities that preserve and enhance the security, stability and resiliency of the DNS, in support of Verisign's and ICANN's longstanding commitment in this area and ICANN's core mission to ensure the stable and secure operation of the Internet's unique identifier systems

Alignment with Amendment 35 of the Cooperative Agreement

The price for .COM Registry Services has been static at \$7.85 since 2012. This price freeze was established in Amendment 32 of the Cooperative Agreement. Under Amendment 35, the DOC noted that the domain name marketplace had grown more dynamic and concluded that it was in the public interest that, among other things, Verisign and ICANN may agree to amend the .COM Registry Agreement to permit an increase to the price for .COM registry services, up to a maximum of 7 percent in each of the final four years of each six-year period (the first six-year period commenced on October 26, 2018). The proposed Amendment 3 to the .COM RA reflects this change, essentially restoring the pricing structure from the 2006 .COM Registry Agreement.

In addition, under the proposed Amendment 3, the parties also agreed to restrict price increases due to a new consensus policy or documented extraordinary expense resulting from an attack on the security or stability of the DNS, to a maximum of seven percent annually, but only in those years when no other price increase is taken (Policy/S&S Increase).

ICANN org's mission is to ensure the security and stability of the Internet's unique identifier systems. ICANN org is not a price regulator and will defer to the expertise of relevant competition authorities. As such, ICANN has long-deferred to the DOC and the United States Department of Justice (DOJ) for the regulation of

pricing for .COM registry services.

Given the restrictions under the proposed Amendment 3 on the *wholesale* price charged by Verisign to registrars for .COM registry services, if all price increases are taken (excluding Policy/S&S Increases), the initial and renewal price for a .COM domain name registration cannot exceed \$10.26 (US) until October 2026.

The proposed Amendment 3 retains built-in registrant protection. As the registry operator, Verisign continues to be required to provide at least six months' notice to registrars of any price increase. This allows registrars, on behalf of their registrant customers, to register or renew .COM domain names during the notice period for up to a 10-year total registration term, at the then-current price, prior to any increase. This allows for the ability to lock-in current wholesale prices for up to 10 years.

In addition, the proposed Amendment 3 reflects language in Amendment 35 to the Cooperative Agreement clarifying that the restrictions on Verisign's ownership of ICANN-accredited registrars in the .COM RA are intended to apply solely to the .COM TLD.

Alignment of Certain Technical and Reporting Requirements with the Base RA

The [Base gTLD Registry Agreement](#) ("Base RA") was developed to support the 1200+ new gTLD Registries created under the 2012 New gTLD Program. It contains standardized technical and reporting obligations for registry operators of new gTLDs. Over time, ICANN has been working to standardize the technical and reporting requirements across all gTLDs to the extent possible and practical to ensure technical and operational consistency across the gTLDs.

The proposed Amendment 3 to the .COM RA includes updates to the following technical and reporting specifications to bring certain requirements more in line with those of the Base RA:

- Registry Data Escrow (Appendix 1A & 2A)
 - The updated Appendix 1A is similar to [Part A of Specification 2 of the Base RA](#).
 - These changes will take effect following an update to the three-party data escrow agreement among Verisign, the data escrow provider, and ICANN org, targeted for 120 days following the execution of proposed Amendment 3.

- Registration Data Publication Services (Appendix 5A)
 - The updated Appendix 5A is based on Sections 1 and 3 of [Specification 4 of the Base RA](#).
 - These changes will take effect 120 days after the proposed Amendment 3 is executed.
- Zone File Access (Appendix 3A)
 - This updated Appendix 3A is based on [Specification 4, Section 2 of the Base RA](#).
 - These changes will take effect 120 days after the proposed Amendment 3 is executed.
- Registry Reporting (Appendix 4A)
 - This updated Appendix 4A is based on [Specification 3 of the Base RA](#)
 - These changes will be reflected for the May 2020 reporting month in the report provided by 20 June 2020.
 - [ICANN](#) and Verisign also agreed to add two new reporting fields to the Per-Registrar Transactions Report to record the usage of the "Consolidate/Sync Service" offered by Verisign as transactions. The Consolidate/Sync Service, authorized since 2003, allows registrants to extend the term of their registration expiration dates via their registrar. In addition to adding the reporting, the parties also agreed to modify Section 7.2(a) (Registry Level Fees) of the [.COM RA](#) to include these transactions in the Registry-Level Transaction Fee in a prorated manner based on the standard per year transaction fee of \$0.25. This treatment is consistent with other gTLDs which are approved for a similar service.

Incorporation of Commitments related to the Implementation of the Registration Data Access Protocol (RDAP)

[ICANN](#) org recently entered into [negotiations](#) with the gTLD Registries Stakeholder Group ([RySG](#)) and the Registrars Stakeholder Group ([RrSG](#)) to define contractual requirements for RDAP comparable to [WHOIS](#) and to define the transition of technology for delivering Registration Data Directory Services (RDDS) from the

WHOIS protocol to RDAP for the Base RA and 2013 Registrar Accreditation Agreement (RAA).

The proposed Amendment 3 includes provisions related to the implementation of RDAP. ICANN and Verisign have agreed to an initial set of requirements for the RDAP Service Specification based on discussions with a working group of registries and registrars focused on RDAP. Given that the negotiations with the stakeholder groups are on-going, ICANN and Verisign have also agreed under the proposed Amendment 3 to work together in good faith to amend the .COM Registry Agreement in the future as may be necessary and appropriate to align the requirements with those resulting from the negotiation between ICANN and the RySG for the Base RA as it relates to RDDS.

DNS Security

ICANN's mission is to ensure the stable and secure operation of the Internet's unique identifier systems. Verisign has a long history of helping to protect the security of the Internet and promoting activities that preserve and enhance the security and stability of the DNS. ICANN and Verisign have a shared interest in combating DNS security threats such as phishing, malware distribution and botnets. As part of this commitment, Appendix 11 (Public Interest Commitments) of the proposed Amendment 3, contains certain commitments that directly relate to the mitigation of DNS security threats. The requirements are based on [Specification 11](#), Sections 3A and 3B of the Base RA.

In addition to the contractual requirements in the proposed Amendment 3, ICANN and Verisign have agreed on a framework for working together to support additional enhancements to the security, stability, and resiliency of the DNS, including to help combat DNS security threats. This agreement is in the form of a proposed binding LOI between Verisign and ICANN.

Under the LOI, Verisign and ICANN agree to work in good faith with the ICANN community and within ICANN processes to develop best practices for ICANN's contracted parties that can be used to create potential new contractual obligations, tools, methods and metrics to help measure and mitigate DNS security threats.

Funding to Support ICANN's Initiatives

The proposed LOI also provides that Verisign will contribute U.S. \$20 million dollars over five years, beginning on 1 January 2021, to support ICANN's initiatives to preserve and enhance the security, stability and resiliency of the DNS, including root server system governance, mitigation of DNS security threats, promotion and/or facilitation of DNSSEC deployment, the mitigation of name collisions, and research into the operation of the DNS.

Next Steps

The proposed Amendment 3 includes an updated Registry-Registrar Agreement (RRA) as Appendix 8A, based on several of the proposed changes to the registry agreement and for consistency with other RRAs. For added transparency, the proposed changes to the RRA are included in redline format to simplify comparison with the current RRA. In parallel with this public comment period, the proposed RRA will be processed in accordance with the [RRA Amendment Procedure](#).

Following review of all of the public comments received, ICANN org will prepare and publish a summary and analysis report of the comments received. The report will be provided to the ICANN Board of Directors, and in consultation with the Board, ICANN org will make a decision regarding the proposed Amendment 3 to the .COM Registry Agreement and the proposed binding LOI between ICANN and Verisign.

Section II: Background

ICANN and Verisign entered into the current [.COM Registry Agreement \(RA\)](#) for the operation of the .COM top-level domain (TLD) on 1 December 2012 with a term of six years. In October 2016, ICANN org and Verisign agreed to [Amendment No. 1](#) of the .COM Registry Agreement, which extended the then-current term of the Registry Agreement to 30 November 2024 (Amendment 1).

In addition to the RA between ICANN and Verisign, the U.S. Department of Commerce's (DOC) and Verisign maintain "the [Cooperative Agreement](#)" for Verisign's operation of the .COM TLD.

The following provision was set forth in Amendment 1 to the .COM RA between Verisign and ICANN:

The parties shall cooperate and negotiate in good faith to amend the terms of the Agreement (a) by the second anniversary of the Amendment Effective Date, to preserve and enhance the security and stability of the Internet or the TLD, and (b) as may be necessary for consistency with changes to, or the termination or expiration of, the Cooperative Agreement between Registry Operator and the Department of Commerce.

Amendment 1 was negotiated in parallel with the creation of the Root Zone Maintainer Service Agreement (RZMA) between ICANN and Verisign, which was a key element of the transition of the stewardship of the IANA functions from the DOC to ICANN, which was completed in 2016. The extension of the term of the .COM RA provided in Amendment 1 was set to match the term of the newly created RZMA contract between ICANN and Verisign. This was intended to maintain stable, secure, and reliable operations of the root zone not only for direct root zone management service customers (registry operators, registrars and root server operators), but also to maintain the security and stability of the Internet's domain name system. For more information, see ICANN's blog from 28 June 2016:

<https://www.icann.org/news/blog/root-zone-management-transition-update-preservation-of-security-stability-and-resiliency>.

Section III: Relevant Resources

- [Proposed Amendment 3 to the .COM Registry Agreement](#)
- [Proposed binding Letter of Intent between ICANN and Verisign](#)

Section IV: Additional Information

- [3 January 2020 Announcement of proposed Amendment 3 and proposed binding LOI](#)
- 2012 .COM Registry Agreement:
<https://www.icann.org/resources/agreement/com-2012-12-01-en>
- 2016 Amendment No. 1 to .COM Registry Agreement:
<https://www.icann.org/sites/default/files/tlds/com/com-amend-1-pdf-20oct16-en.pdf>
- Department of Commerce's Verisign Cooperative Agreement:

<https://www.ntia.doc.gov/page/verisign-cooperative-agreement>

- 1 November 2018 NTIA Statement on Amendment 35 to the Cooperative Agreement with Verisign:
<https://www.ntia.doc.gov/press-release/2018/ntia-statement-amendment-35-cooperative-agreement-verisign>
- 2018 Amendment 35 to the Cooperative Agreement:
https://www.ntia.doc.gov/files/ntia/publications/amendment_35.pdf
- Base gTLD Registry Agreement:
<https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html>

Section V: Reports

- [Report](#)

Who We Are	Contact Us	Accountability & Transparency	Governance	Help	Data Protection
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Learning	Global Support	Independent Review Process	Agreements	Domain Name Dispute Resolution	Privacy Policy
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President's Corner	Registry Liaison		Document Disclosure		
Staff	Specific Reviews		Planning		
Careers	Organizational Reviews		Accountability Indicators		
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	Request a Speaker		Litigation		
	For Journalists		Correspondence		

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Registry Agreement Assignment

In accordance with ICANN's commitment to be open and transparent, this webpage provides a consolidated list of completed Registry Agreement Direct Changes of Control. Direct Changes of Control typically involve a transfer of responsibility for the Registry Agreement between two entities.

For more information on the Assignment process, visit the [Assignment main page](#).

More information about each transaction is available on the Registry Agreement page for the [TLD](#).

TLD	Assignor	Assignee	Date
xn--4gbrim	Suhub Electronic Establishment	Fans TLD Limited	18-Jan-20
amazon	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	14-Feb-20
xn--jlq480n2rg	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	14-Feb-20
xn--cckwcxetd	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	14-Feb-20
xn--otu796d	Internet DotTrademark Organisation Limited	Jiang Yu Liang Cai Technology Company Limited	15-Nov-19
beauty	L'Oréal	XYZ.COM LLC	10-Jan-20

<input type="checkbox"/> Assignment of Registry Agreements <input type="checkbox"/> Registry Operator Change of Control	hair	L'Oréal	XYZ.COM LLC	10-Jan-20
	makeup	L'Oréal	XYZ.COM LLC	10-Jan-20
	skin	L'Oréal	XYZ.COM LLC	10-Jan-20
Completed Direct Change of Control	cyou	Beijing Gamease Age Digital Technology Co., Ltd.	ShortDot SA	8-Nov-19
Material Subcontracting Arrangement	avianca	Aerovias del Continente Americano S.A. Avianca	Avianca Holdings S.A.	7-Nov-19
Continued Operations Instrument (COI)	yandex	YANDEX, LLC	Yandex Europe B.V.	8-Oct-19
Centralized Zone Data Service (CZDS)	quest	Quest ION Limited	XYZ.COM LLC,	11-Nov-19
Community gTLD Change Requests	gmo	GMO Internet PTE. LTD.	GMO Internet, Inc.	28-Oct-19
Expedited Registry Security Request (ERSR) Process	xn--3ds443g	TLD Registry Limited	TLD Registry Limited OY	23-Oct-19
	xn--fiq228c5hs	TLD Registry Limited	TLD Registry Limited OY	23-Oct-19
Registry Agreement Termination Service	uno	Dot Latin LLC	DotSite Inc.	9-Sep-19
Registry Operator Name Change	ren	Beijing Qianxiang Wangjing Technology Development Co., Ltd.	ZDNS International Limited	28-Jul-19
<input type="checkbox"/> RSEP Process	select	iSelect Ltd	Registry Services, LLC	30-Jun-19

<input type="checkbox"/> Registry Transition Processes	compare	iSelect Ltd	Registry Services, LLC	30-Jun-19
<input type="checkbox"/> Removal of Cross-Ownership Restrictions	fans	Fans TLD Limited	ZDNS International Limited	28-Jun-19
<input type="checkbox"/> Reserved Names	bond	Bond University Limited	ShortDot SA	29-Mar-19
<input type="checkbox"/> RRA Amendment	contact	Top Level Spectrum, Inc.	Dog Beach, LLC	08-Apr-19
<input type="checkbox"/> Rights Protection Mechanisms & Dispute Resolution Procedures	ovh	OVH SAS	MédiaBC	21-Sep-19
<hr/>	baby	Johnson & Johnson Services, Inc.	XYZ.COM LLC	19-Nov-18
<input type="checkbox"/> Domain Name Registrants	monster	Monster Worldwide, Inc.,	XYZ.COM LLC	24-Oct-18
<hr/>	dealer	Dealer Dot Com, Inc.	Intericap Holdings Inc.	12-Oct-18
GDD Metrics	fans	Asiamix Digital Limited	Fans TLD Limited	20-Aug-18
<input type="checkbox"/> Identifier Systems Security, Stability and Resiliency (OCTO IS-SSR)	dvr	Hughes Satellite Systems Corporation	DISH Technologies L.L.C.	28-Feb-17
<hr/>	sling	Hughes Satellite Systems Corporation	DISH Technologies L.L.C.	28-Feb-17
<input type="checkbox"/> ccTLDs	charity	Corn Lake, LLC	Binky Moon, LLC	11-Jul-18
<input type="checkbox"/> Internationalized Domain Names	fan	Asiamix Digital Limited	Dog Beach, LLC	01-Jun-18
<hr/>	inc	GTLD Limited	Intericap Holdings Inc.	26-May-
Universal Acceptance Initiative				
<input type="checkbox"/> Policy				
<input type="checkbox"/> Public Comment				
<hr/>				
Root Zone KSK Rollover				

Technical Functions

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law	Minds + Machines Group Limited	LW TLD Limited	19-Apr-18
cologne	punkt.wien GmbH	dotKoeln GmbH	31-Mar-18
koeln	punkt.wien GmbH	dotKoeln GmbH	31-Mar-18
jio	Affinity Names, Inc.	Reliance Industries Limited	21-Feb-18
travel	Tralliance Registry Management Company, LLC	Dog Beach, LLC	12-Feb-18
cologne	NetCologne Gesellschaft für Telekommunikation mbH	punkt.wien GmbH	30-Jan-18
koeln	NetCologne Gesellschaft für Telekommunikation mbH	Punkt.wien GmbH	30-Jan-18
actor	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
airforce	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
army	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
attorney	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
auction	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18

band	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
consulting	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
dance	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
degree	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
democrat	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
dentist	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
engineer	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
family	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
forsale	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
futbol	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
games	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
gives	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
haus	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
immobilien	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
kaufen	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
lawyer	United TLD Holco Ltd	Dog Beach, LLC	05-

	Ltd		Jan-18
live	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
market	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
moda	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
mortgage	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
navy	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
news	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
ninja	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
pub	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
rehab	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
republican	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
reviews	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
rip	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
rocks	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
sale	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
social	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18

software	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
studio	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
vet	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
video	United TLD Holco Ltd	Dog Beach, LLC	05-Jan-18
country	Minds + Machines Group Limited	DotCountry LLC	01-Jan-18
icu	One.com A/S	ShortDot SA	12-Dec-17
academy	Half Oaks, LLC	Binky Moon, LLC	29-Nov-17
accountants	Knob Town, LLC	Binky Moon, LLC	29-Nov-17
agency	Steel Falls, LLC	Binky Moon, LLC	29-Nov-17
apartments	June Maple, LLC	Binky Moon, LLC	29-Nov-17
associates	Baxter Hill, LLC	Binky Moon, LLC	29-Nov-17
bargains	Half Hollow, LLC	Binky Moon, LLC	29-Nov-17
bike	Grand Hollow, LLC	Binky Moon, LLC	29-Nov-17

bingo	Sand Cedar, LLC	Binky Moon, LLC	29-Nov-17
boutique	Over Galley, LLC	Binky Moon, LLC	29-Nov-17
builders	Atomic Madison, LLC	Binky Moon, LLC	29-Nov-17
business	Spring Cross, LLC	Binky Moon, LLC	29-Nov-17
cab	Half Sunset, LLC	Binky Moon, LLC	29-Nov-17
cafe	Pioneer Canyon, LLC	Binky Moon, LLC	29-Nov-17
camera	Atomic Maple, LLC	Binky Moon, LLC	29-Nov-17
camp	Delta Dynamite, LLC	Binky Moon, LLC	29-Nov-17
capital	Delta Mill, LLC	Binky Moon, LLC	29-Nov-17
cards	Foggy Hollow, LLC	Binky Moon, LLC	29-Nov-17
care	Goose Cross, LLC	Binky Moon, LLC	29-Nov-17
careers	Wild Corner, LLC	Binky Moon, LLC	29-Nov-17

cash	Delta Lake, LLC	Binky Moon, LLC	29-Nov-17
casino	Binky Sky, LLC	Binky Moon, LLC	29-Nov-17
catering	New Falls, LLC	Binky Moon, LLC	29-Nov-17
center	Tin Mill, LLC	Binky Moon, LLC	29-Nov-17
chat	Sand Fields, LLC	Binky Moon, LLC	29-Nov-17
cheap	Sand Cover, LLC	Binky Moon, LLC	29-Nov-17
church	Holly Fields, LLC	Binky Moon, LLC	29-Nov-17
city	Snow Sky, LLC	Binky Moon, LLC	29-Nov-17
claims	Black Corner, LLC	Binky Moon, LLC	29-Nov-17
cleaning	Fox Shadow, LLC	Binky Moon, LLC	29-Nov-17
clinic	Goose Park, LLC	Binky Moon, LLC	29-Nov-17
clothing	Steel Lake, LLC	Binky Moon, LLC	29-Nov-

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coach	Koko Island, LLC	Binky Moon, LLC	29-Nov-17
codes	Puff Willow, LLC	Binky Moon, LLC	29-Nov-17
coffee	Trixy Cover, LLC	Binky Moon, LLC	29-Nov-17
community	Fox Orchard, LLC	Binky Moon, LLC	29-Nov-17
company	Silver Avenue, LLC	Binky Moon, LLC	29-Nov-17
computer	Pine Mill, LLC	Binky Moon, LLC	29-Nov-17
condos	Pine House, LLC	Binky Moon, LLC	29-Nov-17
construction	Fox Dynamite, LLC	Binky Moon, LLC	29-Nov-17
contractors	Magic Woods, LLC	Binky Moon, LLC	29-Nov-17
cool	Koko Lake, LLC	Binky Moon, LLC	29-Nov-17
coupons	Black Island, LLC	Binky Moon, LLC	29-Nov-17
credit	Snow Shadow,	Binky Moon, LLC	29-

	LLC		Nov-17
creditcard	Binky Frostbite, LLC	Binky Moon, LLC	29-Nov-17
cruises	Spring Way, LLC	Binky Moon, LLC	29-Nov-17
dating	Pine Fest, LLC	Binky Moon, LLC	29-Nov-17
deals	Sand Sunset, LLC	Binky Moon, LLC	29-Nov-17
delivery	Steel Station, LLC	Binky Moon, LLC	29-Nov-17
dental	Tin Birch, LLC	Binky Moon, LLC	29-Nov-17
diamonds	John Edge, LLC	Binky Moon, LLC	29-Nov-17
digital	Dash Park, LLC	Binky Moon, LLC	29-Nov-17
direct	Half Trail, LLC	Binky Moon, LLC	29-Nov-17
directory	Extra Madison, LLC	Binky Moon, LLC	29-Nov-17
discount	Holly Hill, LLC	Binky Moon, LLC	29-Nov-17

doctor	Brice Trail, LLC	Binky Moon, LLC	29-Nov-17
dog	Koko Mill, LLC	Binky Moon, LLC	29-Nov-17
domains	Sugar Cross, LLC	Binky Moon, LLC	29-Nov-17
education	Brice Way, LLC	Binky Moon, LLC	29-Nov-17
email	Spring Madison, LLC	Binky Moon, LLC	29-Nov-17
energy	Binky Birch, LLC	Binky Moon, LLC	29-Nov-17
engineering	Romeo Canyon, LLC	Binky Moon, LLC	29-Nov-17
enterprises	Snow Oaks, LLC	Binky Moon, LLC	29-Nov-17
equipment	Corn Station, LLC	Binky Moon, LLC	29-Nov-17
estate	Trixy Park, LLC	Binky Moon, LLC	29-Nov-17
events	Pioneer Maple, LLC	Binky Moon, LLC	29-Nov-17
exchange	Spring Falls, LLC	Binky Moon, LLC	29-Nov-17

expert	Magic Pass, LLC	Binky Moon, LLC	29-Nov-17
exposed	Victor Beach, LLC	Binky Moon, LLC	29-Nov-17
express	Sea Sunset, LLC	Binky Moon, LLC	29-Nov-17
fail	Atomic Pipe, LLC	Binky Moon, LLC	29-Nov-17
farm	Just Maple, LLC	Binky Moon, LLC	29-Nov-17
finance	Cotton Cypress, LLC	Binky Moon, LLC	29-Nov-17
financial	Just Cover, LLC	Binky Moon, LLC	29-Nov-17
fish	Fox Woods, LLC	Binky Moon, LLC	29-Nov-17
fitness	Brice Orchard, LLC	Binky Moon, LLC	29-Nov-17
flights	Fox Station, LLC	Binky Moon, LLC	29-Nov-17
florist	Half Cypress, LLC	Binky Moon, LLC	29-Nov-17
football	Foggy Farms, LLC	Binky Moon, LLC	29-Nov-17

foundation	John Dale, LLC	Binky Moon, LLC	29-Nov-17
fund	John Castle, LLC	Binky Moon, LLC	29-Nov-17
furniture	Lone Fields, LLC	Binky Moon, LLC	29-Nov-17
fyi	Silver Tigers, LLC	Binky Moon, LLC	29-Nov-17
gallery	Sugar House, LLC	Binky Moon, LLC	29-Nov-17
gifts	Goose Sky, LLC	Binky Moon, LLC	29-Nov-17
glass	Black Cover, LLC	Binky Moon, LLC	29-Nov-17
gmbh	Extra Dynamite, LLC	Binky Moon, LLC	29-Nov-17
gold	June Edge, LLC	Binky Moon, LLC	29-Nov-17
golf	Lone Falls, LLC	Binky Moon, LLC	29-Nov-17
graphics	Over Madison, LLC	Binky Moon, LLC	29-Nov-17
gratis	Pioneer Tigers, LLC	Binky Moon, LLC	29-Nov-

			17
gripe	Corn Sunset, LLC	Binky Moon, LLC	29-Nov-17
group	Romeo Town, LLC	Binky Moon, LLC	29-Nov-17
guide	Snow Moon, LLC	Binky Moon, LLC	29-Nov-17
guru	Pioneer Cypress, LLC	Binky Moon, LLC	29-Nov-17
healthcare	Silver Glen, LLC	Binky Moon, LLC	29-Nov-17
hockey	Half Willow, LLC	Binky Moon, LLC	29-Nov-17
holdings	John Madison, LLC	Binky Moon, LLC	29-Nov-17
holiday	Goose Woods, LLC	Binky Moon, LLC	29-Nov-17
hospital	Ruby Pike, LLC	Binky Moon, LLC	29-Nov-17
house	Sugar Park, LLC	Binky Moon, LLC	29-Nov-17
immo	Auburn Bloom, LLC	Binky Moon, LLC	29-Nov-17
industries	Outer House, LLC	Binky Moon, LLC	29-

			Nov-17
institute	Outer Maple, LLC	Binky Moon, LLC	29-Nov-17
insure	Pioneer Willow, LLC	Binky Moon, LLC	29-Nov-17
international	Wild Way, LLC	Binky Moon, LLC	29-Nov-17
investments	Holly Glen, LLC	Binky Moon, LLC	29-Nov-17
irish	Tin Mill, LLC	Binky Moon, LLC	29-Nov-17
jetzt	Wild Frostbite, LLC	Binky Moon, LLC	29-Nov-17
jewelry	Wild Bloom, LLC	Binky Moon, LLC	29-Nov-17
kitchen	Just Goodbye, LLC	Binky Moon, LLC	29-Nov-17
land	Pine Moon, LLC	Binky Moon, LLC	29-Nov-17
lease	Victor Trail, LLC	Binky Moon, LLC	29-Nov-17
legal	Blue Falls, LLC	Binky Moon, LLC	29-Nov-17

life	Trixy Oaks, LLC	Binky Moon, LLC	29-Nov-17
lighting	John McCook, LLC	Binky Moon, LLC	29-Nov-17
limited	Big Fest, LLC	Binky Moon, LLC	29-Nov-17
limo	Hidden Frostbite, LLC	Binky Moon, LLC	29-Nov-17
loans	June Woods, LLC	Binky Moon, LLC	29-Nov-17
ltd	Over Corner, LLC	Binky Moon, LLC	29-Nov-17
maison	Victor Frostbite, LLC	Binky Moon, LLC	29-Nov-17
management	John Goodbye, LLC	Binky Moon, LLC	29-Nov-17
marketing	Fern Pass, LLC	Binky Moon, LLC	29-Nov-17
mba	Lone Hollow, LLC	Binky Moon, LLC	29-Nov-17
media	Grand Glen, LLC	Binky Moon, LLC	29-Nov-17
money	Outer McCook, LLC	Binky Moon, LLC	29-Nov-17

movie	New Frostbite, LLC	Binky Moon, LLC	29-Nov-17
network	Trixy Manor, LLC	Binky Moon, LLC	29-Nov-17
partners	Magic Glen, LLC	Binky Moon, LLC	29-Nov-17
parts	Sea Goodbye, LLC	Binky Moon, LLC	29-Nov-17
photography	Sugar Glen, LLC	Binky Moon, LLC	29-Nov-17
photos	Sea Corner, LLC	Binky Moon, LLC	29-Nov-17
pictures	Foggy Sky, LLC	Binky Moon, LLC	29-Nov-17
pizza	Foggy Moon, LLC	Binky Moon, LLC	29-Nov-17
place	Snow Galley, LLC	Binky Moon, LLC	29-Nov-17
plumbing	Spring Tigers, LLC	Binky Moon, LLC	29-Nov-17
plus	Sugar Mill, LLC	Binky Moon, LLC	29-Nov-17
productions	Magic Birch, LLC	Binky Moon, LLC	29-Nov-17

properties	Big Pass, LLC	Binky Moon, LLC	29-Nov-17
recipes	Grand Island, LLC	Binky Moon, LLC	29-Nov-17
reise	Foggy Way, LLC	Binky Moon, LLC	29-Nov-17
reisen	New Cypress, LLC	Binky Moon, LLC	29-Nov-17
rentals	Big Hollow, LLC	Binky Moon, LLC	29-Nov-17
repair	Lone Sunset, LLC	Binky Moon, LLC	29-Nov-17
report	Binky Glen, LLC	Binky Moon, LLC	29-Nov-17
restaurant	Snow Avenue, LLC	Binky Moon, LLC	29-Nov-17
run	Snow Park, LLC	Binky Moon, LLC	29-Nov-17
salon	Outer Orchard, LLC	Binky Moon, LLC	29-Nov-17
sarl	Delta Orchard, LLC	Binky Moon, LLC	29-Nov-17
school	Little Galley, LLC	Binky Moon, LLC	29-Nov-

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schule	Outer Moon, LLC	Binky Moon, LLC	29-Nov-17
services	Fox Castle, LLC	Binky Moon, LLC	29-Nov-17
shoes	Binky Galley, LLC	Binky Moon, LLC	29-Nov-17
shopping	Over Keep, LLC	Binky Moon, LLC	29-Nov-17
show	Snow Beach, LLC	Binky Moon, LLC	29-Nov-17
singles	Fern Madison, LLC	Binky Moon, LLC	29-Nov-17
soccer	Foggy Shadow, LLC	Binky Moon, LLC	29-Nov-17
solar	Ruby Town, LLC	Binky Moon, LLC	29-Nov-17
solutions	Silver Cover, LLC	Binky Moon, LLC	29-Nov-17
supplies	Atomic Fields, LLC	Binky Moon, LLC	29-Nov-17
supply	Half Falls, LLC	Binky Moon, LLC	29-Nov-17
support	Grand Orchard,	Binky Moon, LLC	29-

	LLC		Nov-17
surgery	Tin Avenue, LLC	Binky Moon, LLC	29-Nov-17
systems	Dash Cypress, LLC	Binky Moon, LLC	29-Nov-17
tax	Storm Orchard, LLC	Binky Moon, LLC	29-Nov-17
taxi	Pine Falls, LLC	Binky Moon, LLC	29-Nov-17
team	Atomic Lake, LLC	Binky Moon, LLC	29-Nov-17
technology	Auburn Falls, LLC	Binky Moon, LLC	29-Nov-17
tennis	Cotton Bloom, LLC	Binky Moon, LLC	29-Nov-17
theater	Blue Tigers, LLC	Binky Moon, LLC	29-Nov-17
tienda	Victor Manor, LLC	Binky Moon, LLC	29-Nov-17
tips	Corn Willow, LLC	Binky Moon, LLC	29-Nov-17
tires	Dog Edge, LLC	Binky Moon, LLC	29-Nov-17

today	Pearl Woods, LLC	Binky Moon, LLC	29-Nov-17
tools	Pioneer North, LLC	Binky Moon, LLC	29-Nov-17
tours	Sugar Station, LLC	Binky Moon, LLC	29-Nov-17
town	Koko Moon, LLC	Binky Moon, LLC	29-Nov-17
toys	Pioneer Orchard, LLC	Binky Moon, LLC	29-Nov-17
training	Wild Willow, LLC	Binky Moon, LLC	29-Nov-17
university	Little Station, LLC	Binky Moon, LLC	29-Nov-17
vacations	Atomic Tigers, LLC	Binky Moon, LLC	29-Nov-17
ventures	Binky Lake, LLC	Binky Moon, LLC	29-Nov-17
viajes	Black Madison, LLC	Binky Moon, LLC	29-Nov-17
villas	New Sky, LLC	Binky Moon, LLC	29-Nov-17
vin	Holly Shadow, LLC	Binky Moon, LLC	29-Nov-17

vision	Koko Station, LLC	Binky Moon, LLC	29-Nov-17
voyage	Ruby House, LLC	Binky Moon, LLC	29-Nov-17
watch	Sand Shadow, LLC	Binky Moon, LLC	29-Nov-17
wine	June Station, LLC	Binky Moon, LLC	29-Nov-17
works	Little Dynamite, LLC	Binky Moon, LLC	29-Nov-17
world	Bitter Fields, LLC	Binky Moon, LLC	29-Nov-17
wtf	Hidden Way, LLC	Binky Moon, LLC	29-Nov-17
zone	Outer Falls, LLC	Binky Moon, LLC	29-Nov-17
xn--vhquv	Dash McCook, LLC	Binky Moon, LLC	29-Nov-17
xn--czrs0t	Wild Island, LLC	Binky Moon, LLC	29-Nov-17
xn--fq720a	Will Bloom, LLC	Binky Moon, LLC	29-Nov-17
xn--unup4y	Spring Fields, LLC	Binky Moon, LLC	29-Nov-17

box	NS1 Limited	.BOX INC.	01- Oct-17
bofa	NMS Services, Inc.	Bank of America Corporation	23- Aug- 17
biz	NeuStar, Inc.	Registry Services, LLC	08- Aug- 17
neustar	NeuStar, Inc.	Registry Services, LLC	08- Aug- 17
archi	Starting Dot Limited	Afilias plc	31- March- 17
bio	Starting Dot Limited	Afilias plc	31- March- 17
ski	Starting Dot Limited	Afilias plc	31- March- 17
storage	Self Storage Company LLC	XYZ.COM LLC	18- Apr-17
xn--efvy88h	Xinhua News Agency Guangdong Branch	Guangzhou YU Wei Information Technology Co., Ltd.	01- Apr-17
tel	Telnic Limited	Telnames Limited	28- Feb- 17
irish	Dot-Irish LLC	Tin Mill, LLC	21- Feb- 17
osaka	Interlink Co., Ltd.	Osaka Registry Co., Ltd.	08- Feb- 17

green	DotGreen Registry Limited	Afilias plc	31-Dec-16
homedepot	Homer TLC, Inc.	Home Depot Product Authority, LLC	28-Dec-16
thd	Homer TLC, Inc.	Home Depot Product Authority, LLC	28-Dec-16
versicherung	dotversicherung-registry GmbH	TLD-BOX Registrydienstleistungen GmbH	1-Nov-16
hsbc	HSBC Holdings PLC	HSBC Global Services (UK) Limited	6-Oct-16
fun	Oriental Trading Company, Inc.	DotSpace, Inc.	4-Oct-16
alsace	REGION D ALSACE	Region Grand Est	28-Sep-16
moto	Charleston Road Registry Inc.	Motorola Trademark Holdings, LLC	19-Aug-16
boston	Boston Globe Media Partners, LLC	Boston TLD Management, LLC	9-Aug-16
observer	Guardian News and Media Limited	Top Level Spectrum, Inc.	4-Jul-16
weatherchannel	Weather Group Television, LLC	International Business Machines Corporation	10-Jun-16
weather	Weather Group Television, LLC	International Business Machines Corporation	10-Jun-16
firestone	Bridgestone Corporation	Bridgestone Licensing Services, Inc.	30-May-16

orientexpress	Belmond Ltd.	ORIENT EXPRESS	12-May-16
blog	PRIMER NIVEL S.A.	Knock Knock WHOIS There, LLC	29-Apr-16
shopping	Uniregistry, Corp.	Over Keep, LLC	28-Apr-16
jetzt	New TLD Company AB	Wild Frostbite, LLC	27-Apr-16
games	Foggy Beach, LLC	United TLD Holdco Ltd.	29-Mar-16
ryukyu	BusinessRalliant Inc.	BRregistry, Inc.	7-Mar-16
okinawa	BusinessRalliant Inc.	BRregistry, Inc.	7-Mar-16
jpmorgan	JPMorgan Chase & Co.	JPMorgan Chase Bank, National Association	3-Mar-16
chase	JPMorgan Chase & Co.	JPMorgan Chase Bank, National Association	3-Mar-16
free	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	4-Jan-16
promo	Play.PROMO Oy	Afilias plc	14-Dec-15
hiv	dotHIV gemeinnuetziger e.V.	Uniregistry, Corp.	20-Nov-15
xn--gk3at1e	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	3-Nov-15
wow	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	3-Nov-15

pro	Registry Services Corporation	Afilias plc	1-Nov-15
secure	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	11-Sep-15
pay	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	11-Sep-15
hot	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	11-Sep-15
book	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	11-Sep-15
zappos	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	4-Aug-15
silk	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	4-Aug-15
prime	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	4-Aug-15
kindle	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	4-Aug-15
imdb	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	4-Aug-15
fire	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	4-Aug-15
audible	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	4-Aug-15
aws	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	4-Aug-15
cloud	Aruba S.p.A.	Aruba PEC S.p.A.	3-Aug-15

save	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	7-Jul-15
now	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	7-Jul-15
deal	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	7-Jul-15
wang	Zodiac Registry Limited	Zodiac Wang Limited	1-Jul-15
security	Symantec Corporation	XYZ.COM LLC	11-Jun-15
cars	Uniregistry, Corp.	Cars Registry Limited	11-Jun-15
auto	Uniregistry, Corp.	Cars Registry Limited	11-Jun-15
theatre	KBE gTLD Holding Inc	XYZ.COM LLC	5-Jun-15
protection	Symantec Corporation	XYZ.COM LLC	2-Jun-15
srl	mySRL GmbH	InterNetX, Corp.	15-May-15
gent	COMBELL GROUP NV/SA	COMBELL NV	11-May-15
reise	dotreise GmbH	Foggy Way, LLC	4-May-15
studio	Spring Goodbye, LLC	United TLD Holdco Ltd.	22-Apr-15
live	Half Woods, LLC	United TLD Holdco Ltd.	22-Apr-15
family	Bitter Galley, LLC	United TLD Holdco Ltd.	22-Apr-15

car	Charleston Road Registry Inc.	Cars Registry Limited	21-Apr-15
you	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	20-Apr-15
xn--fct429k	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	20-Apr-15
talk	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	20-Apr-15
active	The Active Network, Inc	Active Network, LLC	15-Apr-15
tech	Dot Tech LLC	Personals TLD Inc.	15-Apr-15
sucks	Vox Populi Registry Inc.	Vox Populi Registry Ltd.	30-Mar-15
xn--rovu88b	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	13-Mar-15
xn--jvr189m	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	13-Mar-15
xn--gckr3f0f	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	13-Mar-15
xn--cck2b3b	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	13-Mar-15
xn--bck1b9a5dre4c	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	13-Mar-15
xn--1ck2e1b	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	13-Mar-15

tunes	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	13-Mar-15
spot	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	13-Mar-15
song	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	13-Mar-15
coupon	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	13-Mar-15
rent	DERRent, LLC	XYZ.com LLC	10-Mar-15
gift	Uniregistry, Corp.	DotGift, LLC	3-Mar-15
poker	Afilias Domains No. 5 Limited	Afilias plc	1-Mar-15
news	Hidden Bloom, LLC	United TLD Holdco Ltd.	12-Feb-15
meet	Afilias Limited	Charleston Road Registry, Inc. d/b/a Google Registry	6-Feb-15
fan	United TLD Holdco Ltd.	Asiamix Digital Ltd.	7-Jan-15
sky	Sky IP International Ltd, a company incorporated in England and Wales, operating via its registered Swiss branch	Sky International AG	6-Jan-15
zero	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-

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yamaxun	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
xn--eckvdtc9d	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
wanggou	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
tushu	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
smile	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
safe	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
room	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
read	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
pin	Amazon EU S.à r.l.	Amazon Registry Services, Inc..	23-Dec-14
like	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
joy	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
jot	Amazon EU S.à r.l.	Amazon Registry	23-

		Services, Inc.	Dec-14
got	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
fast	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
circle	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
call	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
buy	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
bot	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
author	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
moi	Amazon EU S.à r.l.	Amazon Registry Services, Inc.	23-Dec-14
trading	IG Group Holdings PLC	Dottrading Registry Limited	16-Dec-14
spreadbetting	IG Group Holdings PLC	Dotspreadbetting Registry Limited	16-Dec-14
nadex	IG Group Holdings PLC	Nadex Domains, Inc.	16-Dec-14

markets	IG Group Holdings PLC	Dotmarkets Registry Limited	16-Dec-14
forex	IG Group Holdings PLC	Dotforex Registry Limited	16-Dec-14
cfid	IG Group Holdings PLC	DotCFD Registry Limited	16-Dec-14
broker	IG Group Holdings PLC	Dotbroker Registry Limited	16-Dec-14
xn--45q11c	Zodiac Scorpio Limited	Zodiac Gemini Ltd.	10-Dec-14
xn--ses554g	HU YI GLOBAL INFORMATION RESOURCES (HOLDING) COMPANY. HONGKONG LIMITED	KNET Co., Ltd.	3-Dec-14
video	Lone Tigers, LLC	United TLD Holdco Ltd.	2-Dec-14
sale	Half Bloom, LLC	United TLD Holdco Ltd.	2-Dec-14
green	Afilias Limited	DotGreen Registry Limited	6-Nov-14
trust	Deutsche Post AG	Artemis Internet Inc.	30-Oct-14
gmo	GMO Internet, Inc.	GMO Internet Pte. Ltd.	29-Aug-14
band	Auburn Hollow, LLC	United TLD Holdco Ltd.	28-Aug-14

xn--hxt814e	Zodiac Libra Limited	Zodiac Taurus Limited	4-Aug-14
auction	Sand Galley, LLC	United TLD Holdco Ltd.	29-Jul-14
global	Dot Global AS	Dot Global Domain Registry Limited	15-Jul-14
forsale	Sea Oaks, LLC	United TLD Holdco Ltd.	14-Jul-14
ltda	Domain Robot Servicos de Hospedagem Na Internet Ltda	InterNetX Corp	2-Jun-14
xn--czru2d	Zodiac Capricorn Limited	Zodiac Aquarius Limited	28-May-14
lawyer	Atomic Station, LLC	United TLD Holdco Ltd.	7-May-14
software	Over Birch, LLC	United TLD Holdco Ltd.	7-May-14
mortgage	Outer Gardens, LLC	United TLD Holdco Ltd.	7-May-14
attorney	Victor North, LLC	United TLD Holdco Ltd.	7-May-14
dentist	Outer Lake, LLC	United TLD Holdco Ltd.	7-May-14
vet	Wild Dale, LLC	United TLD Holdco Ltd.	7-May-14
market	Victor Way, LLC	United TLD Holdco Ltd.	7-May-14
degree	Puff House, LLC	United TLD Holdco Ltd.	7-May-14
fan	Goose Glen, LLC	United TLD Holdco Ltd.	18-

			Apr-14
wang	Zodiac Leo Limited	Zodiac Registry Limited	14-Feb-14
rocks	Ruby Moon, LLC	United TLD Holdco Ltd.	28-Jan-14
consulting	Pixie Station, LLC	United TLD Holdco Ltd.	28-Jan-14
haus	Pixie Edge, LLC	United TLD Holdco Ltd.	28-Jan-14
reviews	Extra Cover, LLC	United TLD Holdco Ltd.	20-Dec-13
futbol	Atomic Falls, LLC	United TLD Holdco Ltd.	20-Dec-13

Who We Are

Get Started
Learning
Participate
Groups
Board
President's Corner
Staff
Careers
Public Responsibility

Contact Us

Locations
Global Support
Report Security Issues
PGP Keys
Certificate Authority
Registry Liaison
Specific Reviews
Organizational Reviews
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Ex. R-8

SPECIFICATION 11

PUBLIC INTEREST COMMITMENTS

The following provisions are proposed to be added to the .ORG Registry Agreement in a new Section 4 of Specification 11.

4. Registry Operator agrees to perform the following specific public interest commitments, which commitments shall be enforceable by ICANN and through the PICDRP. Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination. Nothing in Section 4 of this Specification shall limit any obligations of Registry Operator under this Specification. In the event Section 4 of this Specification conflicts with the requirements of any other provision of the Registry Agreement (including any Section of this Specification), such other provision shall govern.
- i. **Affordability.** As of the Effective Date (June 30, 2019), the price Registry Operator charges to ICANN-accredited registrars for .ORG initial domain name registrations or renewal(s) of domain name registrations is US\$9.93 (the "Service Fee"). At all times during the period ending eight (8) years following the Effective Date, the maximum allowable Service Fee (the "Applicable Maximum Fee") that Registry Operator may charge to registrars for .ORG initial domain name registrations or renewal(s) of domain name registrations shall be calculated in United States dollars rounded to the nearest cent according to the following formula:

$$\text{Applicable Maximum Fee} = \$9.93 \times (1.10^n)$$

Where n is equal to the whole number of years elapsed since the Effective Date (by way of example, at December 31, 2019, n = 0; at June 30, 2020, n = 1; at June 30, 2021, n = 2).

To provide a worked example calculation, as of June 30, 2021, the Applicable Maximum Fee shall be calculated as:

$$\$9.93 \times (1.10^2) = \$12.02$$

By way of further clarification and example, the Applicable Maximum Fee during any applicable time period shall be as follows:

Applicable Maximum Fee	Time Period
\$9.93	June 30, 2019 to June 29, 2020
\$10.92	June 30, 2020 to June 29, 2021
\$12.02	June 30, 2021 to June 29, 2022
\$13.22	June 30, 2022 to June 29, 2023

\$14.54	June 30, 2023 to June 29, 2024
\$15.99	June 30, 2024 to June 29, 2025
\$17.59	June 30, 2025 to June 29, 2026
\$19.35	June 30, 2026 to June 29, 2027

ii. **.ORG Stewardship Council.**

- a. Within six months following the date this version of the Specification is appended to the Registry Agreement and becomes effective, Registry Operator will maintain a body to provide strategic advice and oversight regarding certain key policies and functions of Registry Operator affecting .ORG and its community (the “.ORG Stewardship Council”). No person who is a Registry Operator employee, officer, director, LLC member or equity owner (or immediate family member of any of the foregoing) shall serve on the .ORG Stewardship Council. The .ORG Stewardship Council will have authority to provide independent advice on and a binding right to veto modifications proposed by Registry Operator to Registry Operator’s policies in the .ORG domain name space regarding: (x) censorship and freedom of expression; and (y) use of .ORG registrant and user data (the “Designated Policies”), in each case in accordance with the .ORG Stewardship Council charter (the “Charter”). Notwithstanding the foregoing, Registry Operator reserves the right at all times to ensure compliance in its sole judgment with applicable laws, regulations and ICANN policies.
- b. The initial Charter has been established by Registry Operator’s board of managers. Any proposed amendment to the Charter that diminishes the .ORG Stewardship Council’s right to provide advice on and veto modifications to the Designated Policies shall be submitted to a vote by the .ORG Stewardship Council, and, if such proposed amendment is rejected by a vote of two thirds or more of all members of the .ORG Stewardship Council, Registry Operator will not implement such amendment.

iii. **Community Enablement Fund.** Within 90-days following the date this version of the Specification is appended to the Registry Agreement and becomes effective, Registry Operator will establish a “Community Enablement Fund” to provide support for initiatives benefitting .ORG registrants and approved by the .ORG Stewardship Council. The commission, charter, and funding of the Community Enablement Fund will be established by Registry Operator’s board of managers with input from the .ORG Stewardship Council. The .ORG Stewardship Council will be responsible for providing recommendations and advice regarding the Community Enablement Fund. Appropriations from the .ORG Community Enablement Fund will be subject to approval of the PIR Board.

iv. **Annual Public Report.** Registry Operator will produce and publish annually a report that assesses Registry Operator’s compliance with Section 4 of these Public Interest Commitments and the ways in which Registry Operator pursued activities for the benefit of the registrants of .ORG domain names during the

preceding year. This report will also include a transparency report setting forth the number of .ORG domain name registrations that have been suspended or terminated by Registry Operator during the preceding year under Registry Operator's Anti-Abuse Policy or pursuant to court order.

- v. **Revisions to PIC.** Any proposed amendment to the provisions of this Specification 11(4) must be subject to the ICANN public comment process then applicable to amending Public Interest Commitments made pursuant to Specification 11 of ICANN Registry Agreements.