

Services Agreement

This Agreement is effective as of July 13, 2010, by and between the Internet Corporation for Assigned Names and Numbers ("ICANN"), a California public benefit non profit corporation, with its principal offices located at 4676 Admiralty Way, Suite 330, Marina del Rey, CA, USA 90292 and President and Fellows of Harvard College, a charitable, non-profit, educational institution, acting through The Berkman Center for Internet and Society at Harvard University, hereinafter referred to as "Harvard".

WHEREAS, Harvard is committed to the policy that ideas or creative works produced at Harvard should be used for the greatest public benefit, and believes that every reasonable incentive should be provided for the prompt introduction of such ideas into public use, all in a manner consistent with the public interest; and

WHEREAS, Harvard and ICANN desire to enter into an agreement for the performance by Harvard of certain academic consulting services in connection with activities being conducted by ICANN.

NOW THEREFORE, in consideration of the foregoing, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **SERVICES:** Harvard shall provide to ICANN such academic consulting services (the "Services") as are set forth in the "Specifications Attachment" (attached hereto as Exhibit "B"), which sets forth the manner of the work which will be provided to the Accountability and Transparency Review Team (AT-RT), which has been constituted in accordance with the Affirmation of Commitments (AoC) dated 30 September 2009 by and between the United States Department of Commerce and ICANN. The Services shall be provided pursuant to this Agreement, including all attachments hereto. Harvard may also, at its election, agree to provide additional Services, based upon request by ICANN after consulting with the Chair of the AT-RT (the "Additional Services"). Any such Additional Services shall be evidenced by an "Additional Services Exhibit" which shall set forth such Services and be attached to this Agreement as an amendment. Any Services provided hereunder shall be rendered by Harvard in a first class manner shall be provided in accordance with all applicable laws. The Services shall focus on ICANN's commitments in the Affirmation of Commitments (AoC) executed between ICANN and the U.S. Department of Commerce on September 30, 2010 and, specifically, will address the provisions of paragraph 9.1 of the AoC, which state that:

ICANN has committed to: maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by:

- a. Continually assessing and improving ICANN Board of Directors (Board) governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions;
- b. Assessing the role and effectiveness of the GAC and its interaction with the Board and making recommendations for improvement to ensure effective

consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS;

- c. Continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof);
- d. Continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and
- e. Assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development.

Harvard's services shall not be exclusive to ICANN, provided that during the term of Harvard's engagement hereunder, Harvard will not render services that prevent, interfere with or delay the prompt performance of Harvard's services hereunder.

2. TERM: Harvard shall render the Services on the date or dates set forth on the Specifications Attachment, attached hereto.

3. COMPENSATION: Subject to all the provisions of this Agreement and the execution of this Agreement, including, but not limited to, the "Supplemental Terms", "Specifications Attachment" (attached hereto as Exhibits "A", and "B"), ICANN agrees to pay Harvard, as full and complete consideration for Harvard's services hereunder, and Harvard agrees to accept, the sum as set out in Exhibit B, payable in US Dollars for the Services, which shall be paid in accordance with the payment schedule set forth in the Specifications Attachment.

4. RIGHTS: In Consideration of the Compensation, as set forth in paragraph 3 above, Harvard grants to ICANN, and its subsidiaries, successors, assigns and licensees a worldwide, non-exclusive, non-transferrable license, in perpetuity to use the results and proceeds of Harvard's Services (the "Products"), in any way and for any purpose without restriction, and without further required permission, approval or payment, except as limited below in this paragraph 4. The above license shall include any and all copyrights, and other proprietary or legal rights arising therefrom or relating thereto (collectively, the "Legal Rights"). Harvard shall retain for itself the ownership rights to the Products, but Harvard agrees to refrain from using such Products, including for purposes of academic publication and teaching, until December 31, 2010 when the AT-RT must submit its final recommendations to ICANN; Harvard will provide the ICANN Board a period of six months to act as set forth in the Affirmations of Commitments, through June 30, 2010, prior to providing any additional commentary on the AT-RT final recommendations and any ICANN implementation ("Exclusivity Period"). Notwithstanding the Exclusivity Period, Harvard shall be entitled to follow its standard process for vetting its work product and recommendations, which may include sharing working drafts of their memoranda and reports with colleagues, use of a peer review process, workshops, and possible solicitation of public comment on certain aspects of the work so long as it is clear that it is the work of Harvard, and not the AT-RT; any public comment sought by Harvard will take place and conclude prior to October 15, 2010. During the Exclusivity Period neither ICANN nor AT-RT may misrepresent the meaning of any report, Recommendations, Merits/Reasons written by Harvard pursuant to this Agreement. If the Parties disagree as to whether a public dissemination of materials constitutes a misrepresentation of Harvard's work, then ICANN shall publish alongside a disclaimer, in type size and font substantially similar to the statement in question, stating that

the statement in question “is not work product of Harvard University or The Berkman Center for the Internet and Society, nor is it endorsed by such entities.” Other than the Compensation set forth in paragraph 3 above, Harvard will not be entitled to any other compensation, such as royalties, commissions or other payments with respect to the Products or Legal Rights.

5. INDEPENDENT CONTRACTOR STATUS: Harvard acknowledges and agrees that Harvard is acting as an independent contractor under the Agreement and that Harvard’s employees or agents, if any, are not employees or agents of ICANN for any purpose, including but not limited to national or local withholding or employer taxation obligations. Harvard further acknowledges that it has no authority for or on behalf of ICANN to make, enter into or amend any contracts or agreements or to take any action which would impose liability on ICANN, without the express written consent of an authorized officer of ICANN. Harvard represents to ICANN that it is engaged in an independent calling and has complied with all laws regarding business permits and licenses that may be required to carry out Harvard’s independent calling, and that Harvard is a signatory company of/or a member in good standing of any guild, union or other professional organization, which may be necessary to carry out Harvard’s independent calling and the tasks to be performed under this Agreement.

6. IMMIGRATION LAW: With respect to each of Harvard's employees who render services to ICANN hereunder, Harvard shall be responsible for compliance with all applicable immigration laws, including the U.S. Immigration Reform and Control Act of 1986, and with all employment eligibility verification provisions required by law.

7. AGREEMENT: This Consulting Agreement, the Supplemental Terms (Exhibit “A”), and the Specifications Attachment (Exhibit “B” are hereby incorporated in and made a part of this Agreement (collectively referred to herein as the “Agreement”). In the event of a conflict between the Consulting Agreement and the Supplemental Terms or the Specifications Attachment, the terms of this Consulting Agreement shall prevail. All defined terms shall be used with the same meaning throughout the Consulting Agreement and all Exhibits.

8. ADDITIONAL SERVICES: The parties may by creation of Additional Exhibit B’s agree to contract for other services. Such additional projects may be reflected in a new Exhibit B, which must be signed by an appropriate signatory authority of both parties and such additional Exhibit B’s would be considered to be amendments to this agreement and all other terms herein shall apply.

9. SUPERVISION AND EVALUATION OF HARVARD. Subject to other provisions of the Agreement including, but not limited to, the grounds for termination of this Agreement, Harvard and ICANN agree that the AT-RT and not ICANN shall supervise Harvard’s delivery of the Services and all deliverables prepared and/or delivered in connection with the Services. If there is disagreement between ICANN and Harvard as to whether Harvard has satisfied all or any aspect of its performance under this Agreement, AT-RT shall decide the issue.

The parties shall indicate their acceptance of this entire Agreement by signing in the appropriate space provided below.

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

By: 
Signature

John O. Jeffrey, General Counsel
Print Name and Title & Secretary, ICANN

Date: 5 August 2010

AGREED AND ACCEPTED:
President and Fellows of Harvard College

By: 
Signature

University Director - Sponsored Research - Mark Beames
Print Name and Title

Date: 8/3/10

Taxpayer ID #: 04-2103580

Address: 1350 Massachusetts Ave., Ste. 711
Cambridge, MA 02138

Email: mark_beames@harvard.edu

Telephone: 617-496-8462

EXHIBIT A

SUPPLEMENTAL TERMS

Exhibit "A" to the consulting agreement effective July 13, 2010, between the Internet Corporation for Assigned Names and Numbers ("ICANN"), a California public benefit non profit corporation, with its principal offices located at 4676 Admiralty Way, Suite 330, Marina del Rey, CA, USA 90292 and President and Fellows of Harvard College, a charitable, non-profit, educational institution, acting through The Berkman Center for Internet and Society at Harvard University, hereinafter referred to as "Harvard".

1. ROLE OF AT-RT, TERMS OF REFERENCE AND METHODOLOGY; GUIDING PRINCIPLES

Harvard shall provide the Services and all deliverables to be provided in connection with the Services directly to the AT-RT, through the Chair and Vice-Chair of the AT-RT.

Harvard acknowledges that the AT-RT has undertaken to conduct its review, and agrees to provide its services in furtherance of, and, to the extent applicable, in a manner consistent with the AT-RT Terms of Reference and Methodology.

In addition, Harvard acknowledges and agrees to provide the Services in light of and, to the extent applicable, in a manner consistent with the following principles used by the AT-RT to guide its work:

- Recommendations will be fact-based, far from impressions or personal opinions. The team will be guided by a selected number of case-studies involving review of relevant events for each case study through 17 June, 2010 (the starting date of the ICANN Brussels meeting).
- The case-studies are based on cases which were suggested by the community during the AT-RT meetings in Brussels, namely new gTLDs, .xxx & DNS-CERT
- The case studies will be used to identify processes and decision-making that demonstrated ICANN's accountability and transparency, as well as processes and decision-making that could be modified to enhance ICANN's accountability and transparency.
- Recommendations would be future looking and would hence suggest improvements to the current process; recommendations are not for the purpose of altering any past decisions or influencing any ongoing processes.
- Merits/Reasons behind each recommendation would be also made public.

2. **FORCE MAJEURE:** In the event of an occurrence of an event of force majeure, as the term is generally understood within the industry, either party shall have the right to suspend this Agreement and shall have the right, but not the obligation, to extend this Agreement by the length of any such suspension. If an event of force majeure continues for eight (8) consecutive weeks, either party shall have the right to terminate this Agreement.

3. **WARRANTIES:** Harvard represents and warrants to ICANN as follows:

(a) Harvard is fully authorized to enter into, and perform its obligations under this Agreement. This Agreement creates lawful, valid, and binding obligations, enforceable against Harvard in accordance with its terms.

(b) Harvard has the right to grant all rights granted herein, including but not limited to all necessary literary, artistic, musical and/or intellectual property rights, and is free to enter into and fully perform this Agreement.

(c) The exercise of rights granted herein and the performance of Harvard's Services will not infringe on any rights of any third party, including but not limited to copyright, trademark, unfair competition, contract, defamation, privacy or publicity rights.

(d) Harvard has not entered and shall not enter into any arrangement or agreement that will interfere or conflict with the rights granted to ICANN hereunder. Nothing herein shall preclude any group of President and Fellows of Harvard College, except The Berkman Center for Internet and Society, from taking any contrary positions than those taken in furtherance of providing the Services provided under this Agreement.

4. INDEMNITY: Harvard shall defend, indemnify and hold harmless ICANN and its subsidiaries, affiliates, officers, directors, agents, and employees (collectively "Indemnified Parties") against any and all claims, actions, losses, liabilities, damages, costs or expenses (including reasonable attorneys' fees) arising out of the breach by Harvard of the warranties set forth in Section 3 above.

5. CONFIDENTIALITY: See Exhibit C: Confidentiality and Non-Disclosure Agreement.

6. SURVIVING OBLIGATIONS: The parties' representations, warranties, and indemnity shall remain in effect following the termination or expiration of this Agreement.

7. ASSIGNMENT: Neither party may assign this Agreement or any of its rights or obligations hereunder.

8. TERMINATION:

(a) Partial Termination / Termination upon Notice: Either party shall have the right to terminate any Services or Additional Services without terminating this Agreement, and (b) to terminate this Agreement, including any Services or Additional Services by giving twenty (20) days' written notice to the other party. Prior to termination pursuant to this sub-section, ICANN shall consult with the Chair of the AT-RT.

(b) Fraud, Embezzlement, Gross Misconduct: Either party shall have the right to terminate this Agreement if, based on the facts then available, the terminating party forms a good-faith belief that the other party has engaged in any of the following conduct: fraud, misappropriation or embezzlement of funds, or gross misconduct. Termination under this provision shall be effective immediately upon receipt of notice by Harvard.

(c) Termination Following Mid-Term Report. Within five (5) days of Harvard's delivery of the Mid-Term Report, as defined in Exhibit B (Specifications Attachment), at the written request of the AT-RT, or if deemed appropriate after consultation with the Chair of the AT-RT, ICANN shall have the right to terminate this Agreement for convenience. Within this same five (5) day period, Harvard may also elect to terminate the Agreement for convenience.

(d) ICANN's Financial Obligations Upon Early Termination. In the event of early termination of the project, including but not limited to termination under section 10 (c) above, ICANN shall pay Harvard in full for the costs incurred up to the date of such termination and costs incidental to

the orderly liquidation of its services, including those non-cancelable obligations properly incurred prior to the effective date of termination.

9. MISCELLANEOUS:

(a) No Implied Waiver: No failure on the part of either Party to exercise, and no delay in exercising, and no course of dealing with respect to any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude the exercise of any other right, power or privilege.

(b) Counterparts: This Agreement may be executed in two or more counterparts (and by different parties on separate counterparts) each of which shall be an original, but all of which together shall constitute one and the same instrument.

(c) No Violation of Law: If any provision of this Agreement shall be deemed invalid or unenforceable as written, it shall be construed, to the greatest extent possible, in a manner which shall render it valid and enforceable, and any limitations on the scope or duration of any such provision necessary to make it valid and enforceable shall be deemed to a part hereof; no invalidity or unenforceability shall affect any other portion of this Agreement.

(d) Choice of Law: This Agreement shall be governed by applicable U.S. federal law and by the laws of the State of New York.

(e) Paragraph Headings: Paragraph headings contained in this Agreement are for convenience and shall not be considered for any purpose in construing this Agreement.

10. ENTIRE AGREEMENT: This Agreement cancels and supersedes all prior negotiations and understandings between ICANN and Harvard relating hereto. This Agreement is not valid or binding unless and until in writing and signed by a duly authorized officer of ICANN and by Harvard. No amendment, modification, extension, release, discharge or waiver of this Agreement, or any provision hereof, shall be valid or binding unless in writing and signed by a duly authorized officer of ICANN and by Harvard. No oral agreement shall be binding on ICANN or Harvard unless and until reduced to writing and signed by a duly authorized officer of ICANN and Harvard.

EXHIBIT B

SPECIFICATIONS ATTACHMENT

Services: Study, as described below in Description of Tasks and Requirements

Job Title: Contractor - Harvard

Reporting to: Brian Cute and Manal Ismail, Chair and Vice-Chair of the AT-RT.

Dates of Performance: 13 July 2010 – 10 October 2010

Description of Tasks and Requirements:

1. Problem Statement:

ICANN has taken important actions – ranging from significant policy changes to formal reviews – in recent years to improve its accountability, transparency and the “quality” of its decision-making. Despite these efforts and improvements, ICANN arguably continues to have problems making decisions that the global Internet community can support. These perceived issues involve internal factors – how ICANN’s decision-making mechanisms have developed in response to its own internal processes and external feedback – and external factors – how stakeholders communicate with ICANN and respond to subsequent decisions, all of which occur within the context of ICANN’s unique institutional approach. The proposed exploratory study will develop a framework and methodology to analyze and understand this situation, ideally laying the groundwork for ICANN to address it realistically and effectively.

2. Scope of Proposed Study:

(a) Elements

The proposed study contains interacting elements carried out in three overlapping phases, with emphasis on Phases 1 and 3.

Phase 1 – Problem identification: Case Studies

This component is aimed at identifying key issues, challenges, and areas of disagreement related to recent decisions and actions by ICANN with particular focus on areas involving accountability and transparency. The case studies will be used to identify processes and decision-making that demonstrated ICANN’s accountability and transparency, as well as processes and decision-making that could be modified to enhance ICANN’s accountability and transparency.

The inventory of problems and case study selection will be based on a rapid review of related materials such as public comments submitted to ICANN (e.g. <http://brussels38.icann.org/node/12433>), media reports, and expert opinions through 17 June, 2010 (the starting date of the ICANN Brussels meeting).

Instead of engaging in an abstract analysis and theoretical evaluation of ICANN’s internal policies and processes, the proposed study starts with a bottom-up, perception- and problem-oriented analysis of a representative sample of materials in order to identify and map the

criticisms voiced by the Internet community. While Harvard and the AT-RT will consider additional/different case studies in response to the Harvard's inventory, the following thematic areas, based on input from the ICANN community, are currently intended to be used as case studies:

1. Introduction of new gTLDs
 - o Expression of interest proposal
 - o Implementation Recommendation Team
 - o Role of the Governmental Advisory Committee – GAC
 - o Vertical Integration
2. .xxx domain application and decision**
3. DNS-Cert Proposal

**Notwithstanding the AT-RT's use of this matter as a case study, neither the AT-RT nor Harvard shall be entitled to require or utilize any non-public information or documentation from any ICANN source that, in ICANN's discretion, might effect any potential disputes or negotiations with or involving ICM Registry. Further, neither the AT-RT nor Harvard shall be entitled to require or utilize any ICANN privileged, confidential or proprietary information from any source that, in ICANN's discretion, might effect any potential disputes or negotiations with or involving ICM Registry.

Phase 2 – Problem discussion and identification of potential solutions: Supplementary interviews and working meetings

In addition to the review of case studies and other materials mentioned above, Harvard will conduct interviews with select experts, staff members, and stakeholders to discuss the problem areas identified in phase 1 and to explore potential solutions. These interviews will focus primarily on the case studies from phase 1, but may also address other instances where a substantial proportion of ICANN stakeholders were dissatisfied with ICANN policy decisions. Likely areas of discussion will include issues related to:

- the consistency and predictability of ICANN decisions
- the ability to prioritize and focus attention on key issues
- the clarity and transparency of the decision-making process
- the responsiveness of ICANN to stakeholders
- planning.

Phase 2 will identify zones of convergence and divergence regarding both the perceived quality of ICANN's decisions along these various dimensions and potential solutions to deal with the underlying challenges.

Acknowledging the special institutional design and hybrid nature of ICANN, the AT-RT will host a series of informal working meetings with Harvard, members of which have work experience related to a range of institutional settings (including international NGOs). In these sessions, Harvard seeks to identify innovative responses to some of the challenges mentioned above, including institutional design, processes, and tools for improving transparency. Harvard will consider not only innovative approaches from the private sector (corporate governance) but also public decision-making processes and governance regimes (e.g. open government initiatives).

Phase 3 – Synthesis and recommendations: Evaluation and reconciliation

Based on a rich body of literature (including corporate governance literature, but also organizational psychology), the study will develop an exploratory model (or “framework”) intended to help examine the various factors that shape the perceived Issues concerning ICANN decision-making processes and to make visible the interplay among these variables (such as structure, procedures, information flows, etc.). In order to evaluate the influence of these dynamics, the diagnostic model will be constructed using the case studies from phase 1.

The diagnostic model will include a taxonomy of issues and challenges identified in phases 1 and 2. Basic categories of the envisioned taxonomy are 1) foundational – based on the perception that the wrong people are making the decisions; 2) procedural – critiques of the decision-making process itself, including lack of transparency and/or a perception that ICANN procedures were not adequately followed; and 3) substantive – where there is disagreement with ICANN decisions on substantive grounds suggesting a lack of accountability with ICANN’s global stakeholders.

In the light of this taxonomy and based on the map that shows the potential intervention points, we will propose a series of concrete, future-oriented recommendations in response to the challenges and problems identified in the earlier phases of the project. Harvard also seeks to identify corresponding benchmarks that would allow to measure “success” or “improvement”.

(b) Main Areas of Review

Against the backdrop of paragraph 9.1 of the Affirmation of Commitments (AOC) in general and in the light of this RFP in particular, Harvard understands and acknowledges that *Corporate Governance* as a field of research and (best) practice will play a very important role in the context of the proposed review process. Within the proposed study, issues related to corporate governance will be among the core areas of exploration, including the assessment of ICANN Board of Directors’ selection process, its performance, and the merits of the mechanisms in place to appeal Board decisions. The review of these areas will directly benefit from the extended team’s expertise in corporate governance matters, especially by way of providing an analytical toolset and normative benchmarks – in terms of best practice proxies – for evaluation, factoring in ICANN’s unique institutional design.

3. Methods:

The study will examine, in a case-study format, a select number of relevant procedural and substantive decisions by ICANN, focusing on the perceived divide between ICANN decision-makers and stakeholders, while seeking to identify specific steps designed to bridge those gaps. The study will map the arguments derived from the content analysis and interviews (phases 1 and 2) onto this taxonomy and identify the key factors that help explain the persistent issues mentioned in the problem statement. This structure will allow us to distinguish between variables that can be influenced (e.g. communication about processes or decisions) from other factors (e.g. the basic organization and U.S. base of the institutions) that are unlikely to be changed.

The main methods for the inquiry above can be summarized as follows:

(1) *Review of documents and other materials:* The inquiry considers three types of sources for review of the critique in the context of the case studies mentioned above:

First, public submissions from earlier processes addressing the questions of accountability and transparency, among others.

Second, an in-depth literature review of relevant academic articles and scholarly work in the field.

Third, a small sample of news coverage in foreign online media in several languages (likely including German, French, Spanish). The text analysis is based on standard content analysis methodology.

(2) *Expert interviews*: Harvard will draw upon people from various sectors and settings who operate inside and outside of ICANN and are deeply familiar with ICANN's activities and other relevant institutional models.

(3) *Building the model*: The method for constructing an exploratory model is qualitative in nature and is based on expert knowledge in areas such as law, business studies, new institutional economics, sociology, and psychology. Similar models have been developed and tested by the project team in other areas of research (including online aggression). In particular, the model would borrow from a rich body of scholarship on corporate governance principles and best practices.

Deliverables and Timeline:

The output is a 20-30 pages diagnostic report ("Final Report") that summarizes the findings of all three steps of the proposed study and concludes with a series of working hypotheses that explain the persistence of the critiques regarding the transparency, efficacy and accountability of ICANN decision-making processes and provides a series of recommendations.

Phase 1 will begin immediately, along with the preparations and necessary arrangements to implement the second phase; the first phase should be completed by the end of August 2010. At that time, Harvard will deliver to the AT-RT a Mid-Term Report. The Mid-Term Report will include a compilation of data gathered from interviews and document reviews and an initial analysis of the model that may be constructed to identify potential areas of maintenance or improvement in ICANN transparency and accountability mechanisms.

Phase 2 will move from preliminary foundational work and begin in earnest at this point, iterating with the final elements of phases of 1 and 2. Phase 3 will be Harvard's focus during the month of September 2010. The Final Report is expected to be delivered on 10 October 2010.

Fees and Expenses: \$70,000 shall be paid upon the date of signing of this Agreement. Thereafter, Harvard will invoice \$70,000.00 to ICANN upon delivery of the Mid-Term Report, and \$125,692.00 to ICANN upon delivery of the Final Report, which in each case shall be payable 30 days after ICANN's receipt of invoice.

| Category | Units/Months | Unit Cost | Total Expense |
|------------------------|---------------------|------------------|----------------------|
| <i>Salaries</i> | | | |
| Faculty Researchers | 4 | \$ 18,000 | \$ 72,000 |
| Principal Investigator | 2 | \$ 8,000 | \$ 16,000 |
| Research Director | 2 | \$ 4,000 | \$ 8,000 |
| Project Manager | 2 | \$ 3,500 | \$ 7,000 |

| | | | |
|-------------------------------|---|-----------|-------------------|
| Research Fellow | 2 | \$ 4,000 | \$ 8,000 |
| Student Researchers | 4 | \$ 5,000 | \$ 20,000 |
| <i>Fringe Benefits</i> | | | |
| Faculty Researcher Fringe | 4 | \$ 4,464 | \$ 17,856 |
| Staff Fringe | 2 | \$ 6,603 | \$ 13,206 |
| Research Fellow Fringe | 2 | \$ 988 | \$ 1,976 |
| <i>Other Project Expenses</i> | | | |
| Consultants | 2 | \$ 10,000 | \$ 20,000 |
| Translation | 2 | \$ 5,000 | \$ 10,000 |
| Travel | 8 | \$ 2,500 | \$ 20,000 |
| Workshops | 2 | \$ 12,500 | \$ 25,000 |
| Misc Project Expenses | 1 | \$ 2,500 | \$ 2,500 |
| <i>Subtotal</i> | | | \$ 241,538 |
| Overhead (10%) | | | \$ 24,154 |
| TOTAL | | | \$ 265,692 |

About Harvard's Berkman Center

The Berkman Center for Internet & Society at Harvard University is devoted to research and teaching on issues at the intersection of emerging technologies, law, public policy, industry, and education and to the development of dynamic approaches and rigorous scholarship that can affect and support the public interest.

The Berkman Center has sought to be an honest broker in conversations about the relationship between the Internet and related technologies and society. Our efforts are concentrated in three zones, united by the question of how the Internet can elicit the best from its users: (1) Law, Technology, Innovation, and Knowledge; (2) The Relationship between Internet and Civic Activity; (3) Technology, Law, and Development

In the field of intellectual property, we have sought to develop creative ways of resolving, in a rapidly changing technological environment, the tension between the need to stimulate innovation and the importance of providing broad public access to the fruits of that innovation. In our second core area, we see an enormous need to bring clarity to the conversation about the Internet's impact on democracy. As more activists are using the network as an essential toolkit for speaking out in democratic and non-democratic regimes alike, their personal security is increasingly threatened and their self-expression thwarted. In our third area of focus, we envision a growing opportunity to use Internet technologies to enhance economic and educational opportunities in developing countries, to improve the way that we teach and learn, and to make information accessible to citizens around the world who are not physically proximate to our libraries.

Principle Harvard Team Members

Harvard agrees that the team providing Services shall include the following principals. Harvard will notify the AT-RT of the substitution or addition of a principal and provide the AT-RT with the same level of information relating to the new principal's experience and expertise as provided for the following listed principals. The AT-RT may reject the substitution or addition of a principal within ten (10) days of receipt of notification if the AT-RT reasonably determines that

the new principal does not have sufficient experience or expertise to perform the Services called for under this Agreement.

Herbert Burkert: *Herbert Burkert is president of the Research Center for Information Law at the University of St. Gallen.*

In addition, Professor Burkert is a Senior Research Fellow of the Fraunhofer Institute for Intelligent Information and Analysis Systems (St. Augustin, Germany). Professor Burkert studied Law, Political Science and History at the University of Cologne and at University College Dublin. He had been a Volkswagenwerk Research Fellow at the University of Regensburg, Germany. He received his PhD from the University of Frankfurt at Main and his residency from University of St. Gallen.

John Coates: (Project's Special Advisor on Corporate Governance)

John F. Cogan Jr. Professor of Law and Economics at Harvard Law School John Coates joined the faculty in 1997 after private practice at the New York law firm of Wachtell, Lipton, Rosen & Katz, where he was a partner specializing in mergers and acquisitions, corporate and securities law, and the regulation of financial institutions. Before coming to HLS, he taught on the adjunct faculties of New York University School of Law and Boston University School of Law. He was promoted to Professor in 2001, and was named the John F. Cogan Jr. Professor of Law and Economics in 2006. His current research at Harvard empirical studies of the purchasing of legal services by S&P 500 companies, the causes and consequences of the completion or failure of M&A transactions, mutual funds and the effects of their regulation, and the causes and consequences of CEO and CLO turnover. He teaches courses on Mergers & Acquisitions, Financial Institutions Regulation, Contracts, Corporations, and the History of Capitalist Institutions. Professor Coates is a principal researcher on the Program's Corporate Purchasing Project, a quantitative and qualitative examination of how corporations purchase legal services. He also instructs at the Program's Executive Education course. Professor Coates is a frequent panelist and speaker on M&A, and a consultant to the SEC, law firms, mutual funds, hedge funds, and other participants in the M&A and capital markets. He also is a member of the Legal Advisory Committee of the New York Stock Exchange and is a director of the American Law and Economics Association. He is the author of numerous articles on corporate, securities, and financial institution law, and for seven years co-authored the leading annual survey of developments in financial institution M&A.

Robert Faris: *Research Director, Berkman Center for Internet & Society*

Robert Faris is the Research Director of the Berkman Center. His recent research includes Internet content regulation, state censorship and surveillance practices, broadband and infrastructure policy, and the interaction of new media, online speech, government regulation of the Internet and political processes. Rob is a contributor to the OpenNet Initiative, studying Internet censorship activities in over 60 countries around the world. He is currently working on the integration and comparison of analytical tools to better understand the structure of online communities and digital media content. Rob also teaches classes on Internet policy and the impact of the Internet on social and political change. Rob holds a M.A. and PhD. in International Relations from the Fletcher School of Law and Diplomacy at Tufts University and a B.A. in Anthropology from the University of Pennsylvania.

Urs Gasser: *Executive Director, Berkman Center for Internet & Society*

Urs Gasser is the Executive Director of the Berkman Center. He is the founder of the Research Center for Information Law and was an associate Professor at the University of St. Gallen (Switzerland). His research and teaching focuses on information law and policy and the interaction between law and innovation. Current research projects – several of them in

collaboration with leading research institutions in the U.S., Europe, and Asia – explore policy and educational challenges for the future generation of digital natives, the regulation of digital media and technology (with emphasis on IP law), ICT interoperability, legal and regulatory issues related to cloud computing, the institutional settings for fostering entrepreneurship, and the law's impact on innovation and risk in the ICT space.

Jack Goldsmith

*Henry L. Shattuck Professor of Law, Harvard Law School
Faculty Co-Director, Berkman Center for Internet & Society*

Jack Goldsmith specializes in international law, foreign affairs law, conflicts of law, and national security law. He is the author of dozens of articles on these and other subjects. His most recent publications are *The Terror Presidency: Law and Judgment Inside the Bush Administration* (Norton, 2007), *Who Controls the Internet? Illusions of a Borderless World* (Oxford University Press, 2006) (co-authored with Tim Wu) and (with Eric Posner) *The Limits of International Law* (Oxford University Press, 2005). Before coming to Harvard, he served as Assistant Attorney General in the Office of Legal Counsel from October 2003 through July 2004, and Special Counsel to the General Counsel to the Department of Defense from September 2002 through June 2003. Professor Goldsmith taught at the University of Chicago Law School from 1997 to 2002, and at the University of Virginia Law School from 1994 to 1997. His areas of interest at the Berkman Center lie in Internet governance and regulation, and Internet filtering.

Colin Maclay

Managing Director, Berkman Center for Internet & Society

Colin Maclay is the Managing Director of the Berkman Center, and has led the work of the Berkman Center on all areas of the Global Network Initiative (GNI), including in person negotiations, extensive communications with other stakeholders, and substantive research, in addition to coordination with other Berkman projects and leveraging our collective knowledge and expertise to inform the process. Colin's research focuses on effectively and appropriately integrating information and communication technologies (ICTs) with social and economic development, with attention to the changes Internet technologies foster in society, policy and institutions.

Laura Miyakawa: Project Manager, Berkman Center for Internet & Society

Laura Miyakawa is the Project Manager at Berkman. In this role, she directs the tactics and the long term strategy for Herdict.org, among other things. Prior to joining the Berkman Center, Laura worked with the Boston Consulting Group, developing strategies for high tech clients up and down the East coast. While at BCG, she had the opportunity to work in outback Australia on a Welfare Reform pilot. Recently, she worked as a commercialization associate at the University of Queensland in Brisbane, Australia, where she handled all patenting and licensing decisions for the School of Information Technology and Electrical Engineering. Laura holds bachelors and masters degrees in electrical engineering from Carnegie Mellon University and MIT, respectively.

John Palfrey: *Henry N. Ess III Professor of Law, Vice Dean, Library and Information Resources, Harvard Law School, Faculty Co-Director, Berkman Center for Internet & Society*
John Palfrey is Henry N. Ess Professor of Law and Vice Dean for Library and Information Resources at Harvard Law School. He is the co-author of *Born Digital: Understanding the First Generation of Digital Natives* (Basic Books, 2008) and *Access Denied: The Practice and Politics of Internet Filtering* (MIT Press, 2008). His research and teaching is focused on Internet law, intellectual property, and international law. He practiced intellectual property and corporate law at the law firm of Ropes & Gray and is currently a faculty co-director of the Berkman Center for

Internet & Society at Harvard University. Outside of Harvard Law School, he is a Venture Executive at Highland Capital Partners and serves on the board of several technology companies and nonprofits. John served as a special assistant at the US EPA during the Clinton Administration. He is a graduate of Harvard College, the University of Cambridge, and Harvard Law School.

Jonathan Zittrain: *Professor of Law, Harvard Law School, Harvard Kennedy School of Government Professor of Computer Science, Harvard School of Engineering and Applied Sciences Co-Founder and Faculty Co-Director, Berkman Center for Internet & Society*
Jonathan Zittrain is Professor of Law at Harvard Law School and the Kennedy School of Government, co-founder of the Berkman Center for Internet & Society, and Professor of Computer Science in the Harvard School of Engineering and Applied Sciences. He is a member of the Board of Trustees of the Internet Society and is on the board of advisors for Scientific American. Previously, he was Professor of Internet Governance and Regulation at Oxford University. He is a member of the Council on Foreign Relations and a Forum Fellow of the World Economic Forum, which has named him a Young Global Leader. His research interests include battles for control of digital property and content, cryptography, electronic privacy, the roles of intermediaries within Internet architecture, and the useful and unobtrusive deployment of technology in education. His book, *The Future of the Internet -- And How to Stop It*, focuses on the future of the now intertwined Internet and PC, and he has co-edited two studies of Internet filtering by national governments, including *Access Denied: The Practice and Policy of Global Internet Filtering*.

Exhibit C

ICANN CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (hereinafter "Agreement") effective on the first date of execution of this Agreement ("Effective Date") Between **Internet Corporation for Assigned Names and Numbers**, a California nonprofit public benefit corporation having its principal place of business at 4676 Admiralty Way, Suite 330, Marina del Rey, CA 90292, USA, on behalf of itself and the **Internet Assigned Numbers Authority** (hereinafter individually and collectively "ICANN" or "Discloser"); and President and Fellows of Harvard College, a charitable, non-profit, educational institution, acting through The Berkman Center for Internet and Society at Harvard University (hereinafter referred to as "Consultant," together with Consultant's parents, affiliates, subsidiaries, employees, agents, representatives and attorneys).

WHEREAS Discloser possesses certain ideas and information relating to its technical coordination activities that is confidential and proprietary to Discloser (hereinafter "Confidential Information"); and

WHEREAS Consultant is willing to receive disclosure of the Confidential Information pursuant to the terms of this Agreement for the purpose of providing consulting services;

NOW, THEREFORE, in consideration of the promises and mutual obligations contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

As used herein, the following terms and conditions and other capitalized words shall have the meanings ascribed to them.

"Affiliate" means, with respect to any Party to this Agreement, any person or entity directly or indirectly controlling, controlled by, or under common control with (e.g. the power to direct affairs by reason of stock ownership, contract, or otherwise) the Party and any member, director, officer, or employee of such Party.

"Confidential Information" means information, of any nature and in any form, whether disclosed in writing, orally, or electronically (including without limitation all writings, memoranda, copies, reports, records, papers, surveys, analyses, drawings, letters, computer printouts, computer programs, computer applications, specifications, customer data, research, business methods, business processes, business techniques, business plans, data, graphs, charts, sound recordings, pictorial representations, inventions, prototypes, samples, and trade secrets) that is identified by ICANN (hereinafter also referred to as the "Discloser") in writing at or within 21 business days after disclosure as confidential or proprietary pursuant to Section 3.1.

ARTICLE 2 CONFIDENTIALITY, DISCLOSURE, AND USE

2.1 Confidentiality Obligation. Consultant shall not transfer or disclose any Confidential Information to any entity or person. Except as otherwise provided in this Agreement, Consultant

shall utilize the degree of care used to safeguard Consultant's own similar information or material to avoid disclosing any Confidential Information to any person or entity.

Consultant shall use ICANN's Confidential Information only for the purposes of providing consulting services to ICANN. Any information disclosed by or to Consultant by ICANN that was protected by the attorney-client privilege or other legal privilege when first provided to or generated by ICANN shall remain and shall be deemed by the parties to be privileged and confidential. ICANN may rely on any such privilege and Consultant has an obligation to take all necessary steps to maintain such privilege. It is ICANN's obligation to identify to Consultant the information that is protected by privilege so that Harvard may recognize it as such and protect it as required by this Confidentiality Agreement.

2.2 Permitted Disclosures. Consultant may make ICANN's Confidential Information available to Consultant's directors, officers, employees, representatives, advisors or other third parties ("Permitted Disclosees") in order for such persons or entities to carry out their functions with respect to the consulting services. Prior to making Discloser's Confidential Information available to such Permitted Disclosees, Consultant shall:

2.2.1 Advise such Permitted Disclosees of the obligation of confidentiality hereunder;

2.2.2 Require that such Permitted Disclosees be bound by a written obligation to Consultant to maintain the confidentiality of such Confidential Information; and

2.2.3 Require that such Permitted Disclosees use the degree of care used to safeguard Consultant's own similar information or materials in preserving the confidentiality of Discloser's Confidential Information.

2.3 Required Disclosures. Should Consultant be put on notice that Consultant is required to disclose the Confidential Information received hereunder by statute, rule, regulation, order, or other requirement of a governmental agency, legislative body, court of competent jurisdiction, or binding arbitral body, Consultant shall notify the Discloser thereof within seven (7) days or as soon as practicable. Discloser may contest the disclosure, and, if time allows and upon Discloser's request, Consultant shall reasonably cooperate with the Discloser in contesting the disclosure. If, after such contest, disclosure is still required, then Consultant shall request appropriate confidential treatment of such information from the governmental agency, legislative body, court, or arbitral body. Except in connection with a failure to discharge the responsibilities set forth in the preceding sentence, Consultant shall not be liable for any disclosure pursuant to such governmental, legislative, judicial, or arbitral order, statute, rule, regulation, or other requirement.

2.4 Notification. If Consultant loses or makes unauthorized disclosure of Discloser's Confidential Information, Consultant shall notify Discloser immediately and take reasonable steps to retrieve the lost or improperly disclosed information.

ARTICLE 3 EXCEPTIONS TO CONFIDENTIALITY OBLIGATIONS

3.1 Information Not Subject to Confidentiality Obligation. Consultant's obligations pursuant to Article 2 shall not extend to Confidential Information that is:

3.1.1 Part of the public domain at the time of disclosure to Consultant or becomes part of the public domain, other than by breach of this Agreement, after disclosure to Consultant;

3.1.2 Known by Consultant at the time the Confidential Information is received from Discloser, as shown by Consultant's records;

3.1.3 Lawfully and independently received by Consultant from a third party, provided such third party is not, to Consultant's knowledge, in breach of any confidentiality obligation with respect to such information;

3.1.4 Developed by Consultant independently, as shown by Consultant's records, including but not limited to the Mid-Term Report, the Final Report, the Recommendations, and the Merits/Reasons behind the Recommendations that are prepared by Harvard;

3.1.5 Disclosed by Consultant as required by governmental, legislative, judicial, or arbitral order, statute, rule, regulation, or other requirement pursuant to Section 2.3; or

3.1.6 Disclosed by Consultant with Discloser's consent pursuant to Section 3.2.

3.2 Consent or Waiver. Any obligation imposed by Article 2 may be waived in writing (including by e-mail or other electronic means) by Discloser as to particular Confidential Information and to a particular use or disclosure of such information. Any such waiver shall be construed according to its terms and the surrounding circumstances under which such waiver is made, unless otherwise indicated by Discloser in writing.

ARTICLE 4 RETURN OF CONFIDENTIAL INFORMATION

All Confidential Information in tangible form of expression, which has been delivered or thereafter created by derivation or reproduction, shall be and remain the property of Discloser. With the exception of any Confidential Information or and reproductions thereof retained for the purposes of the consulting services, all Confidential Information and any and all copies, derivations, and reproductions thereof shall be, at the Discloser's discretion, either promptly returned to Discloser or destroyed within thirty (30) days after written request by Discloser. In the event of such requested destruction, Consultant shall provide to the Discloser, within thirty (30) days of such request, written certification of compliance.

ARTICLE 5 PROPRIETARY RIGHTS

The disclosure of Confidential Information pursuant to this Agreement shall not, by itself, be construed as granting a license of any patent, patent application, copyright, or trade secret or a grant of any other rights with respect to the Confidential Information, except those rights necessary for the consulting services.

ARTICLE 6 LIABILITIES, AND REMEDIES

6.1 Injunctive Relief. Consultant acknowledges that use or disclosure of the Confidential Information in breach of this Agreement may result in irreparable and continuing harm to Discloser for which there may be no adequate remedy at law. In the event of an actual,

threatened, or intended breach of this Agreement by Consultant, Discloser shall have the right to seek injunctive relief to prevent or restrain such actual, threatened, or intended use or disclosure in breach of this Agreement, in addition to all other remedies available to Discloser at law or inequity.

6.2 Limitation of Liability. Consultant's liability to Discloser shall not exceed the amount of fees paid by Discloser to Consultant.

ARTICLE 7 NO OTHER BUSINESS RELATIONSHIP

This Agreement does not represent nor imply:

- (a) A partnership, joint venture, or other commercial relationship between the Parties;
- (b) An authorization for either Party to act as the agent or representative of the other; or
- (c) An agreement or commitment by either Party to purchase, acquire, develop, or use the products or services of the other Party.

ARTICLE 8 TERM, TERMINATION, AND SURVIVAL

8.1 Term. This Agreement shall be effective as of the Effective Date above and shall remain in full force and effect until terminated by either Party upon thirty (30) days prior written notice.

8.2 Survival. The Parties' respective rights and obligations hereunder, with respect to any particular Confidential Information disclosed in accordance with and prior to termination of this Agreement, shall remain in full force and effect for a period of three (3) years after disclosure of such information, notwithstanding termination of the Agreement pursuant to Section 8.1.

ARTICLE 9 AMENDMENT, ASSIGNMENT, AND SEVERABILITY

9.1 Amendment. No addition or modification of this Agreement is valid unless made in writing and signed by both Parties hereto.

9.2 Assignment. This Agreement may not be assigned in whole or in part, by operation of law or otherwise, by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld. Consent for assignment is not required where the assignment occurs through a merger, consolidation, or sale of all or substantially all of the assets of the assigning Party. This Agreement shall benefit and be binding upon the successors and assigns of the Parties hereto.

9.3 Severability. If any provision of this agreement shall be found to be invalid, illegal, or unenforceable, then, notwithstanding such provision, all other provisions of this Agreement shall remain in full force or effect, unless deletion of the invalid, illegal, or unenforceable provision will defeat the essential purposes of this Agreement.

**ARTICLE 10
GOVERNING LAW**

This Agreement shall be governed and construed by and in accordance with the laws of the State of New York, without regard to principles of conflict of laws, and the applicable laws of the United States of America.



**ARTICLE 11
ENTIRE AGREEMENT**

This Agreement contains the entire agreement and understanding between the Parties with respect to the subject matter hereof and merges and supersedes all prior agreements, understandings, and representations with respect to such subject matter.

**ARTICLE 12
COUNTERPARTS**

This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and which will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their authorized representatives as of the day and year first above written.

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| <p>INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS</p> <p>Date: <u>5 August 2010</u></p> <p>By: <u></u> Signature</p> <p><u>John O. Jeffrey,</u> Name and Title <u>General Counsel and</u> <u>Secretary, ICANN</u></p> | <p>PRESIDENT AND FELLOWS OF HARVARD COLLEGE</p> <p>Date: <u>8/3/10</u></p> <p>By: <u></u> Signature</p> <p><u>University Director Sponsor</u> Name and Title <u>MARK BEAMES</u> <u>Mark</u></p> |
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