

ICANN BOARD SUBMISSION NO. 2021.12.16.XX (CONFIDENTIAL)

TITLE: **Pre-Approval for Legal Expenditures Relating to
Dispute Resolution and Litigation**

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:
Privileged and Confidential

PROPOSED RESOLUTION:

Whereas, there has been, and will continue to be until conclusion, extensive activity in the Privileged and Confidential _____ resulting in significant outside legal counsel fees and IRP Panel fees.

Whereas, ICANN organization and the Board Accountability Mechanisms Committee have recommended that the Board approve a tranche of money in the amount of Privileged and Confidential _____ to pay upcoming outside legal invoices and IRP Panel fees, and authorize the President and CEO, or his designee(s), to make disbursements up to this amount.

Resolved (2021.12.16.xx), the Board hereby approves a tranche of money in the amount of Privileged and Confidential _____ to pay upcoming outside legal fees and IRP Panel fees, and authorizes the President and CEO, or his designee(s), to make disbursements up to this amount and of any amount of fees and costs that exceeds this tranche unless they exceed or are expected to exceed an additional US\$500,000 in the matters.

Resolved (2021.12.16.xx), specific items within this resolution shall remain confidential pursuant to Article 3, sections 3.5(b) and (d) of the ICANN Bylaws.

¹ Privileged and Confidential

PROPOSED RATIONALE:

When required, ICANN must engage outside legal counsel to help prepare for and defend against all types of disputes that are brought against ICANN. When those disputes become highly contentious, they often require significant involvement during a certain time period by outside counsel and that significant amount of time also results in significant fees and related expenses.

Per ICANN's Contracting and Disbursement policy (<https://www.icann.org/resources/pages/contracting-disbursement-policy-2015-08-25-en>), if any invoice calls for disbursement of more than \$500,000, Board approval is required to make the payment. In furtherance of the process for legal invoice approval developed to enhance transparency and predictability to the Board, the organization has provided the Board with an explanation of the upcoming activity in the Privileged and Confidential

, including anticipated workload and expected billing amounts for the remainder of the proceedings. Accordingly, the Board has been asked by the organization to approve a tranche of money to pay estimated upcoming outside legal fees and related expenses in the Privileged and Confidential

, which the Board Accountability Mechanisms Committee has reviewed and recommended. Since these matters are related to a new gTLD, the amounts paid for the fees and costs of these matters are covered by the new gTLD funds collected as part of the 2012 New gTLD Program application fees.

The Board is comfortable that ICANN organization, including ICANN's General Counsel's Office, is properly monitoring the work performed and expenses incurred by outside legal counsel to ensure that all fees and costs are appropriate under the given circumstances at any given time. Therefore, the Board is comfortable taking this decision.

Taking this Board action fits squarely within ICANN's mission and the public interest in that it ensures that payments of large amounts for one matter are reviewed and evaluated by the Board as appropriate in accordance with ICANN's Contracting and Disbursement Policy. This ensures that the Board is overseeing large disbursements and acting as proper stewards of the funding ICANN receives from the public.

While this will have a fiscal impact on ICANN, it is an impact that was contemplated in the FY22 budget and will be included in upcoming budgets as appropriate. This decision will not have an impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

Submitted By: Amy A. Stathos, Deputy General Counsel
Date Noted: 8 December 2021
Email: amy.stathos@icann.org

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Dispute Resolution and Litigation

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

Privileged and Confidential

PROPOSED RESOLUTION:

Whereas, there has been, and will continue to be until conclusion, extensive activity in the Privileged and Confidential _____, resulting in significant outside legal counsel fees and IRP Panel fees.

Whereas, ICANN organization and the Board Accountability Mechanisms Committee have recommended that the Board approve a tranche of money in the amount of Privileged and Confidential _____ to pay previously unanticipated outside counsel legal fees and IRP Panel fees, and authorize the President and CEO, or his designee(s), to make disbursements up to this amount.

Resolved (2021.12.16.xx), the Board hereby approves a tranche of money in the amount of Privileged and Confidential _____ to pay existing and upcoming outside counsel legal

² Privileged and Confidential

fees and IRP Panel fees, and authorizes the President and CEO, or his designee(s), to make disbursements up to this amount, and of any amount of fees and costs that exceeds this tranche unless they exceed or are expected to exceed an additional US\$500,000 in the matter.

Resolved (2021.12.16.xx), specific items within this resolution shall remain confidential pursuant to Article 3, sections 3.5(b) and (d) of the ICANN Bylaws.

PROPOSED RATIONALE:

When required, ICANN must engage outside legal counsel to help prepare for and defend against all types of disputes that are brought against ICANN. When those disputes become highly contentious, they often require significant involvement during a certain time period by outside counsel and that significant amount of time also results in significant fees and related expenses.

Per ICANN’s Contracting and Disbursement policy (<https://www.icann.org/resources/pages/contracting-disbursement-policy-2015-08-25-en>), if any invoice calls for disbursement of more than \$500,000, Board approval is required to make the payment. In furtherance of the process for legal invoice approval developed to enhance transparency and predictability to the Board, the organization has provided the Board with an explanation of the upcoming and previously unexpected activity in the Privileged and Confidential , including anticipated workload and expected fees for the remainder of the proceeding. Accordingly, the Board has been asked by the organization to approve another tranche of money to pay previously unexpected estimated upcoming outside legal fees and related expenses in the Privileged and Confidential , which the Board Accountability Mechanisms Committee has reviewed and recommended. Since this matter is related to a new gTLD, the amounts paid for the fees and costs of this matter are covered by the new gTLD funds collected as part of the 2012 New gTLD Program application fees.

The Board is comfortable that ICANN organization, including ICANN’s General Counsel’s Office, is properly monitoring the work performed and expenses incurred by outside legal counsel to ensure that all fees and costs are appropriate under the given circumstances at any given time. Therefore, the Board is comfortable taking this decision.

Taking this Board action fits squarely within ICANN's mission and the public interest in that it ensures that payments of large amounts for one matter are reviewed and evaluated by the Board as appropriate in accordance with ICANN's Contracting and Disbursement Policy. This ensures that the Board is overseeing large disbursements and acting as proper stewards of the funding ICANN receives from the public.

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This is an Organizational Administrative Function that does not require public comment.

Submitted By:	Amy A. Stathos, Deputy General Counsel
Date Noted:	8 December 2021
Email:	amy.stathos@icann.org