

## AGENDA – 25 JUNE 2016 REGULAR BOARD Meeting – 60 minutes

Last updated on 25 June 2016

Time, etc.	Agenda Item	Shepherd
<b>Assembly, Roll Call &amp; Consent Agenda Vote</b>	<b>1. Consent Agenda</b>	
10 min	1.a. Approval of Board Meeting Minutes from 19 April, 15 May and 27 May 2016	John Jeffrey
	1.b. Thank You from Security and Stability Advisory Committee to Matt Larson	Ram Mohan
<b>Discussion &amp; Decision</b>	<b>2. Main Agenda</b>	
	2.a. Delegation of the br (“bg”) domain representing Bulgaria in Cyrillic script to Imena.BG Plc (Names.BG Plc)	Kuo-Wei Wu
	2.b. FY17 Operating Plan and Budget	Asha Hemrajani Cherine Chalaby
50 min	2.c. Consideration of Independent Review Panel’s Final Declaration in the <i>Donuts Inc. v. ICANN</i> IRP	Steve Crocker Amy Stathos

## AGENDA – 25 JUNE 2016 REGULAR BOARD Meeting – 60 minutes

Last updated on 25 June 2016

<b>Time, etc.</b>	<b>Agenda Item</b>	<b>Shepherd</b>
	2.d. Independent Review of the Generic Names Supporting Organization Final Report and Recommendations	Rinalia Abdul Rahim
	2.e. Revised Expected Standards of Behavior	John Jeffrey / Amy Stathos
	2.f. New gTLD Program: Reviews and Future Path	Akram Atallah
	2.g. Review of .HOTEL Application Status	Amy Stathos Akram Atallah
	2.h. AOB	

**ICANN BOARD SUBMISSION NO. 2016.06.25.1b**

**TITLE:** **Thank You from Security and Stability Advisory Committee to Matt Larson**

**PROPOSED ACTION:** **For Board Approval**

**EXECUTIVE SUMMARY:**

On 26 June 2009 the ICANN Board approved the appointment of Matt Larson to the Security and Stability Advisory Committee (SSAC). On 05 August 2010 the ICANN Board approved Bylaws revisions that created three-year terms for SSAC members and assigned initial one-, two-, and three-year terms to all SSAC members. On 05 August 2010 Matt Larson was reappointed to a term beginning 01 January 2011 and ending on 31 December 2013. On 21 November 2013 the ICANN Board reappointed Matt Larson to the SSAC for a term beginning on 01 January 2014 and ending on 31 December 2016. On 18 May 2016 Matt Larson resigned the SSAC when he joined ICANN staff.

**COMMITTEE RECOMMENDATION:**

The Committee wishes to formally thank Matt Larson for his work while a member of the Security and Stability Advisory Committee.

**PROPOSED RESOLUTION:**

Whereas, the Board appointed Matt Larson to the SSAC on 26 June 2009.

Whereas, the Board reappointed Matt Larson to the SSAC on 05 August 2010 for a term beginning 01 January 2011 and ending on 31 December 2013.

Whereas, the Board reappointed Matt Larson on 21 November 2013 for a term beginning on 01 January 2014 and ending on 31 December 2016.

Whereas, Matt Larson resigned from the SSAC on 18 May 2016.

Whereas, ICANN wishes to acknowledge and thank Matt Larson for his service to the community by his membership on the SSAC.

Resolved (2016.06.25.xx), that Matt Larson has earned the deep appreciation of the Board for his service to ICANN by his membership on the SSAC, and that the Board wishes him well in all future endeavours.

**PROPOSED RATIONALE:**

It is the practice of the SSAC to seek Board recognition of the service of Committee members upon their departure.

Submitted by:	Ram Mohan
Position:	Liaison to the ICANN Board from the Security and Stability Advisory Committee
Date Noted:	31 May 2016
Email:	rmohan@afilias.info

**ICANN BOARD PAPER NO. 2016.06.25.1c**

**TITLE:** Delegation of the бr (“bg”) domain representing Bulgaria in Cyrillic script to Imena.BG Plc (Names.BG Plc)

**PROPOSED ACTION:** For Board Approval

**IANA REFERENCE:** 895217

**EXECUTIVE SUMMARY:**

As part of ICANN’s responsibilities under the IANA Functions Contract, ICANN has prepared a recommendation to authorize the delegation of the country-code top-level domain бr (“bg”), comprised of the IDN ccTLD Fast Track approved string representing Bulgaria, to Imena.BG Plc (Names.BG Plc).

Sensitive Delegation Information

**PROPOSED RESOLUTION:**

Resolved (2016.06.25.xx), as part of the exercise of its responsibilities under the IANA Functions Contract, ICANN has reviewed and evaluated the request to delegate the .br country-code top-level domain to Imena.BG Plc (Names.BG Plc). The documentation demonstrates that the proper procedures were followed in evaluating the request.

Resolved (2016.06.25.xx), the Board directs that pursuant to Article III, Section 5.2 of the

ICANN Bylaws, that certain portions of the rationale not appropriate for public distribution within the resolutions, preliminary report or minutes at this time due to contractual obligations, shall be withheld until public release is allowed pursuant to those contractual obligations.

## **PROPOSED RATIONALE:**

### **Why the Board is addressing the issue now?**

In accordance with the IANA Functions Contract, the ICANN staff has evaluated a request for ccTLD delegation and is presenting its report to the Board for review. This review by the Board is intended to ensure that ICANN staff has followed the proper procedures.

By way of background, the 6r (“bg”) string was able to proceed to the IANA delegation step following its completion of the IDN ccTLD Fast Track Process. The string was initially rejected by the IDN ccTLD Fast Track DNS Stability Panel based on possible string similarity concerns between the candidate string and entries on the ISO 3166-1 list. However, in October 2014, a second review panel called the Extended Process Similarity Review Panel (EPSRP) found that “the candidate string is not confusingly similar to any ISO 3166-1 entries”. The EPSRP report is available at: <https://www.icann.org/en/system/files/files/epsrp-bulgaria-30sep14-en.pdf>. The EPSRP findings allowed the string to successfully complete the IDN ccTLD Fast Track string evaluation process and proceed to the IANA delegation process.

### **What is the proposal being considered?**

The proposal is to approve a request to IANA to create the country-code top-level domain and assign the role of sponsoring organization (also known as the manager or trustee) to Imena.BG Plc (Names.BG Plc).

### **Which stakeholders or others were consulted?**

In the course of evaluating a delegation application, ICANN staff consults with the applicant and other interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD, and their applicability to their local Internet community.

### **What concerns or issues were raised by the community?**

Staff are not aware of any significant issues or concerns raised by the community in relation to this request.

**What significant materials did the Board review?**

Sensitive Delegation Information

**What factors the Board found to be significant?**

The Board did not identify any specific factors of concern with this request.

**Are there positive or negative community impacts?**

The timely approval of country-code domain name managers that meet the various public interest criteria is positive toward ICANN's overall mission, the local communities to which country- code top-level domains are designated to serve, and responsive to ICANN's obligations under the IANA Functions Contract.

**Are there financial impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?**

The administration of country-code delegations in the DNS root zone is part of the IANA functions, and the delegation action should not cause any significant variance on pre-planned expenditure. It is not the role of ICANN to assess the financial impact of the internal operations of country-code top-level domains within a country.

**Are there any security, stability or resiliency issues relating to the DNS?**

ICANN does not believe this request poses any notable risks to security, stability or resiliency.

This is an Organizational Administrative Function not requiring public comment.

**SIGNATURE BLOCK:**

Submitted by:	Naela Sarras
Position:	IANA Services Manager
Date Noted:	10 June 2016
Email:	naela.sarras@icann.org

## Sensitive Delegation Information

## **Report on the Delegation of the бг (“bg”) domain representing Bulgaria in Bulgarian language to Imena.BG Plc (Names.BG Plc)**

10 June 2016

This report is being provided under the contract for performance of the Internet Assigned Numbers Authority (IANA) function between the United States Government and the Internet Corporation for Assigned Names and Numbers (ICANN). Under that contract, ICANN performs the “IANA functions”, which include receiving delegation and redelegation requests concerning TLDs, investigating the circumstances pertinent to those requests, making its recommendations, and reporting actions undertaken in connection with processing such requests.

### **FACTUAL INFORMATION**

#### **Country**

The “BG” ISO 3166-1 code from which the application’s eligibility derives, is designated for use to represent Bulgaria.

#### **String**

The domain under consideration for the delegation at the DNS root level is “бг”. This is represented in ASCII-compatible encoding to the IDNA specification as “xn--90ae”. The individual Unicode code points that comprise this string are U+0431 U+0433.

In Bulgarian language, the string has a transliteration equivalent to “bg” in English.

#### **Chronology of events**

Following the launch of the Internationalized Domain Names (IDN) country-code top-level domain (ccTLD) Fast Track string selection process in 2009, the currently listed sponsoring organization for the .BG ccTLD, Register.BG, participated in multiple consultations with the Ministry of Transport, Information Technology and Communications (MTITC) regarding the selection of strings to be used for the Bulgarian domain.

During this time, a round table discussion was initiated by MTITC, where various stakeholders were invited to participate. The participants reached consensus that

the appropriate string to represent the Bulgarian IDN ccTLD is .бг (.xn--90ae). MTITC was also chosen to act as the applicant for this string.

On 19 February 2010, an application was made by MTITC to ICANN’s “IDN Fast Track” process to have the string “бг” recognized as representing Bulgaria in Cyrillic script.

The string was initially declined following the IDN ccTLD Fast Track DNS Stability Panel string review process. However, in October 2014, a second review panel called the Extended Process Similarity Review Panel (EPSRP) conducted another review of the proposed string and issued a [report](#) concluding that “The candidate string is not confusingly similar to any ISO 3166-1 entries.”

From October 2014 to March 2015, MTITC established a working group consisting of local Internet stakeholders to select the sponsoring organization for the .бг domain. A public expert council was also established to review and approve the decisions of the working group.

Subsequently on 1 July 2015, a call for applications to all interested parties to become the sponsoring organization for .бг was announced by the working group.

On 11 December 2015, Imena.BG Plc (Names.BG Plc) was established as a publicly limited company by several founding member organizations including Register.BG, the current sponsoring organization of the .bg ccTLD.

On 16 December 2015, MTITC informed Imena.BG Plc (Names.BG Plc) about the completion of the application evaluation process and that Imena.BG Plc (Names.BG Plc) was chosen to manage the .бг domain.

On 26 February 2016, Imena.BG Plc (Names.BG Plc) commenced a request to ICANN for the delegation of .бг as a top-level domain.

### **Proposed Sponsoring Organization and Contacts**

The proposed sponsoring organization is Imena.BG Plc (Names.BG Plc). It is a publicly limited company based in Bulgaria.

The proposed administrative contact is Dragomir Slavov, Chairman of the Board of Directors of Imena.BG Plc. The administrative contact is understood to be based in Bulgaria.

The proposed technical contact is Daniel Kalchev, Director of Imena.BG Plc.

### **EVALUATION OF THE REQUEST**

#### **String Eligibility**

The top-level domain is eligible for delegation under ICANN policy, as the string has been deemed an appropriate representation of Bulgaria through the ICANN Fast Track String Selection process, and Bulgaria is presently listed in the ISO 3166-1 standard.

### **Public Interest**

Government support was provided by Valery Borissov, Depute Minister of the Ministry of Transport, Information Technology and Communications.

Additional support letters were provided by the following:

- Justine Toms, Marketing and Sales Manager Europe, ABC Design & Communication
- Lyubomir Tanev, Managing Director, Best Partners Ltd.
- Elitsa Barakova, Executive Director, Bulgarian Charities Aid Foundation
- Ivo Dimitrov, Managing Director, Coolbox
- Hristo Takev, Executive Director, Evronet
- Dimitar Angelov, Chief Executive Officer, Global Communication Net AD
- Galina Momcheva - Gardeva, Associate Professor, ICT Cluster - Varna
- Georgi Stoyanov and Jordan Kolev, IEEE Bulgaria Section Chair, Institute of Electrical and Electronics Engineers
- Emiliya Milkova, Director, "Pencho Slaveykov" Public Library
- Jordan Kissjov, Chief Executive Officer, RISK Electronics Ltd.
- Vladimir Petrov, Chief Executive Officer, STRATEGMA Agency
- Dimitar Velev, Chief Executive Officer, Telnet OOD
- Dimitar Tonev, Executive Director, UNIQA Insurance Plc
- Teodora Bakardjieva, Professor, Varna Free University "Chernorizets Hrabar"
- Sheni Delcheva, Managing Director, Escom OOD
- Rosen Nikolov Vasilev, Professor, Technical University of Varna

The application is consistent with known applicable laws in Bulgaria. The proposed sponsoring organization undertakes responsibilities to operate the domain in a fair and equitable manner.

### **Based in country**

The proposed sponsoring organization is constituted in Bulgaria. The proposed administrative contact is understood to be a resident of Bulgaria. The registry is to be operated in Bulgaria.

### **Stability**

The application does not involve a transfer of domain operations from an existing domain registry, and therefore stability aspects relating to registry transfer have not been evaluated.

The application is not known to be contested.

## **Competency**

The application has provided information on the technical and operational infrastructures and expertise that will be used to operate the proposed new domain. One of the founding members of the proposed operator is the current manager of .BG country-code top-level domain for Bulgaria.

Proposed policies for management of the domain have also been tendered.

## **EVALUATION PROCEDURE**

ICANN is tasked with coordinating the Domain Name System root zone as part of a set of functions governed by a contract with the U.S. Government. This includes accepting and evaluating requests for delegation and redelegation of top-level domains.

A subset of top-level domains are designated for the local Internet communities in countries to operate in a way that best suits their local needs. These are known as country-code top-level domains (ccTLDs), and are assigned by ICANN to responsible trustees (known as “Sponsoring Organizations”) that meet a number of public-interest criteria for eligibility. These criteria largely relate to the level of support the trustee has from its local Internet community, its capacity to ensure stable operation of the domain, and its applicability under any relevant local laws.

Through ICANN’s IANA department, requests are received for delegating new ccTLDs, and redelegating or revoking existing ccTLDs. An investigation is performed on the circumstances pertinent to those requests, and, when appropriate, the requests are implemented and a recommendation for delegation or redelegation is made to the U.S. National Telecommunications and Information Administration (NTIA).

### **Purpose of evaluations**

The evaluation of eligibility for ccTLDs, and of evaluating responsible trustees charged with operating them, is guided by a number of principles. The objective of the assessment is that the action enhances the secure and stable operation of the Internet’s unique identifier systems.

In considering requests to delegate or redelegate ccTLDs, input is sought regarding the proposed new Sponsoring Organization, as well as from persons and organizations that may be significantly affected by the change, particularly those within the nation or territory to which the ccTLD is designated.

The assessment is focused on the capacity for the proposed sponsoring organization to meet the following criteria:

- The domain should be operated within the country, including having its sponsoring organization and administrative contact based in the country.
- The domain should be operated in a way that is fair and equitable to all groups in the local Internet community.
- Significantly interested parties in the domain should agree that the prospective trustee is the appropriate party to be responsible for the domain, with the desires of the national government taken very seriously.
- The domain must be operated competently, both technically and operationally. Management of the domain should adhere to relevant technical standards and community best practices.
- Risks to the stability of the Internet addressing system must be adequately considered and addressed, particularly with regard to how existing identifiers will continue to function.

### **Method of evaluation**

To assess these criteria, information is requested from the applicant regarding the proposed sponsoring organization and method of operation. In summary, a request template is sought specifying the exact details of the delegation being sought in the root zone. In addition, various documentation is sought describing: the views of the local internet community on the application; the competencies and skills of the trustee to operate the domain; the legal authenticity, status and character of the proposed trustee; and the nature of government support for the proposal. The view of any current trustee is obtained, and in the event of a redelegation, the transfer plan from the previous sponsoring organization to the new sponsoring organization is also assessed with a view to ensuring ongoing stable operation of the domain.

After receiving this documentation and input, it is analyzed in relation to existing root zone management procedures, seeking input from parties both related to as well as independent of the proposed sponsoring organization should the information provided in the original application be deficient. The applicant is given the opportunity to cure any deficiencies before a final assessment is made.

Once all the documentation has been received, various technical checks are performed on the proposed sponsoring organization's DNS infrastructure to ensure name servers are properly configured and are able to respond to queries correctly. Should any anomalies be detected, ICANN staff will work with the applicant to address the issues.

Assuming all issues are resolved, an assessment is compiled providing all relevant details regarding the proposed sponsoring organization and its suitability to operate the relevant top-level domain.

## **ICANN BOARD PAPER NO. 2016.06.25.1d**

**TITLE:** **FY17 Operating Plan and Budget**

**PROPOSED ACTION:** **For Board Approval**

### **EXECUTIVE SUMMARY:**

As required by the Article XVI, Section 4 of the ICANN Bylaws, the draft FY17 Operating Plan and Budget was posted for public comment on 05 March 2016. Since the initial posting, changes have been made to the draft FY17 Operating Plan and Budget, resulting from staff analysis and public input. In addition, other consultations were held with staff, Board and community members. All of the public comments have been taken into consideration, and where appropriate and feasible have been adopted, and a final FY17 Operating Plan and Budget has been developed. Per the Bylaws, the FY17 Operating Plan and Budget must be adopted by the Board and then posted on ICANN's website.

Further, per section 3.9 of each of the three currently operative Registrar Accreditation Agreements, and as needed to develop the budget, the Board must establish the Variable Accreditation Fee that the Registrars are required to pay. The Registrar Variable Fees are set forth in the FY17 Operating Plan and Budget.

### **BOARD FINANCE COMMITTEE (BFC) RECOMMENDATION:**

The BFC has recommended, after careful consideration of the public comments received and the corresponding responses, that the Board approve the FY17 Operating Plan and Budget (see Attachment A, the FY17 Operating Plan and Budget Final.pdf [Insert Link] and Attachment B, the FY17 Operating Plan and Budget – Public comment report final.pdf [Insert Link] to the Reference Materials for this Board Paper).

### **PROPOSED RESOLUTION:**

Whereas, the draft FY17 Operating Plan and Budget was posted for public comment in accordance with the Bylaws on 05 March 2016, which was based upon community consultations, and consultations with ICANN staff and the Board Finance Committee, during the current fiscal year.

Whereas, comments received from the public comment forum were discussed by Board members and staff during several calls with the representatives of the ICANN bodies that submitted them to help ensure the comments were adequately understood and appropriate consideration was given to them.

Whereas, the public comments received, as well as other solicited community feedback through conference calls, meetings in Marrakech and email communications, were taken into account to determine required revisions to the draft FY17 Operating Plan and Budget.

Whereas, the Board Finance Committee (BFC) has discussed, and guided staff on, the development of the FY17 Operating Plan and Budget at each of its recent regularly scheduled meetings.

Whereas, the BFC met on 09 June 2016 to review and discuss the suggested changes resulting from public comment, and the final FY17 Operating Plan and Budget, and recommended that the Board adopts the FY17 Operating Plan and Budget.

Whereas, per section 3.9 of the 2001, 2009 and 2013 Registrar Accreditation Agreements, respectively, the Board is to establish the Registrar Variable Accreditation Fees, which must be established in order to develop the annual budget.

Whereas, the description of the Registrar fees, including the recommended Registrar Variable Accreditation Fees, for FY17 has been included in the FY17 Operating Plan and Budget.

Resolved (2016.06.25.xx), the Board adopts the FY17 Operating Plan and Budget and in doing so establishes the Variable Accreditation Fees (per registrar and transaction) as set forth in the FY17 Operating Plan and Budget.

**PROPOSED RATIONALE:**

In accordance with Article XVI, Section 4 of the ICANN Bylaws, the Board is to adopt an annual budget and publish it on the ICANN website. On 05 March 2016, a draft of the FY17 Operating Plan and Budget was posted for public comment. This version was based on numerous discussions with members of the senior ICANN Management, and

extensive consultations with ICANN Supporting Organizations, Advisory Committees, and other stakeholder groups throughout the prior several months. Subsequent activities, including conference calls, face-to-face meetings in Marrakech and email communications, as well comments received through the public comment forum, resulted in some revisions to the 05 March 2016 draft FY17 Operating Plan and Budget. Notably the following activities were carried out:

- 6 March 2016: Task force on FY17 Budget assumptions (~15 community members, Board member attending: Asha Hemrajani, 4 staff members) – 4-hour meeting.
- 5 May 2016: Review/discussion of CWG-Stewardship public comments submitted on FY17 Operating Plan & Budget (Board members attending: Asha Hemrajani)
- 5 May 2016: Review/discussion of Registry SG public comments submitted on FY17 Operating Plan & Budget (Board member attending: Asha Hemrajani)
- 9 May 2016: Review/discussion of ALAC public comments submitted on FY17 Operating Plan & Budget (Board members attending: George Sadowsky, Rinalia Abdul Rahim)
- 9 May 2016: Review/discussion of BC/IPC/ISPCP public comments submitted on FY17 Operating Plan & Budget (Board members attending: Ron da Silva)
- 9 May 2016: Review/discussion of ccNSO SOP Working Group public comments submitted on FY17 Operating Plan & Budget (Board member attending: Asha Hemrajani)
- 10 May 2016: Review/discussion of GNSO Council public comments submitted on FY17 Operating Plan & Budget (Board member attending: none)

All comments received in all manners were considered in developing the final version of the FY17 Operating Plan and Budget, and where feasible and appropriate have been adopted.

In addition to the day-to-day operational requirements, the FY17 Operating Plan and Budget includes the FY17 new gTLD budget items and amounts allocated to various FY17 budget requests received from community leadership. The budget also sets forth the financial information on the new gTLD program, relative to expenses, revenues and

net remaining funds. Further, because the Registrar Variable Accreditation Fee is key to the development of the budget, the FY17 Operating Plan and Budget sets out and establishes those fees, which are consistent with recent years, and will be reviewed for approval by the Registrars.

This FY17 Operating Plan and Budget will have a positive impact in that it provides a proper framework pursuant to which ICANN will be operated. It also provides the basis for the organization to be held accountable in a transparent manner. This will have a fiscal impact on ICANN and the community as is intended. This should not have anything but a positive impact on the security, stability and resiliency of the domain name system (DNS) with respect to any funding that is dedicated to those aspects of the DNS.

This is an Organizational Administrative Function that has already been subject to public comment as noted above.

Submitted By:	Xavier Calvez, Chief Financial Officer
Date Noted:	14 June 2016
Email:	xavier.calvez@icann.org

**ICANN BOARD SUBMISSION NO. 2016.06.25.1e**

**TITLE:** **Consideration of Independent Review Panel’s Final Declaration in the *Donuts Inc. v. ICANN* IRP**

**PROPOSED ACTION:** **For Board Approval**

**EXECUTIVE SUMMARY:**

On 12 May 2016, the parties received the Independent Review Process (IRP) Panel’s (Panel’s) Final Declaration in the IRP filed by Donuts Inc. (Donuts) ([see Final Declaration](#), Attachment A to Reference Materials). The IRP challenged two expert determinations, each upholding community objections brought against Donuts’ applications for .SPORTS and .RUGBY, respectively.

In a 2-1 decision declaring ICANN to be the prevailing party, the Panel stated “Donuts has not met its burden to demonstrate action or inaction by the Board that violated ICANN’s Articles or its Bylaws.” (*Id.* at ¶ 225.) The Panel further declared that Donuts is to bear all the fees and expenses and “reimburse ICANN the sum of US\$83,067.66,” the portion of fees and expenses incurred by ICANN.” (*Id.* at ¶¶ 235-236.)

In addition, the Panel declared that: (i) an IRP panel is limited to declaring whether the Board has acted consistently with ICANN’s Articles and Bylaws (*id.* at ¶ 126), and since the actions of experts appointed by the International Chamber of Commerce (ICC) do not equate to Board action or inaction, they are not reviewable by an IRP panel (*id.* at ¶ 159); (ii) an IRP panel is not permitted to substitute its judgment for that of the Board (*id.* at ¶ 129); (iii) the time for challenging the community objection process has passed (*id.* at ¶¶ 136, 179); (iv) the “Board need not react merely because it has been petitioned to do so by a stakeholder, commentator or other observer” (*id.* at ¶ 170); (v) the Board is not required to, and has not represented that it would, institute training of the ICC-appointed experts (*id.* at ¶ 172); (vi) the lack of an appeal mechanism to contest the merits of expert determinations does not violate ICANN’s Articles or Bylaws (*id.* at ¶¶ 182-183); (vii) the Board has no affirmative duty to individually consider each and every new gTLD

application (*id.* at ¶¶ 185, 213); and (viii) ICANN did not discriminate against Donuts by not implementing a review mechanism of community objections in general or of the community objections at issue here (*id.* at ¶¶ 220-221).

The Panel also made some observations for the Board’s consideration. In particular, the Panel opined that “the community objection process might to [*sic*] advantage employ panels composed of three experts.” (*Id.* at ¶ 229.) The Panel also observed that since applicants may pursue standard applications for strings with relatively open registration policies but which could also be associated with one or more communities, there may be a “predictable conflict of expectations” and “the assumptions and policies that lead to this kind of tension warrant further study.” (*Id.* at ¶ 231.) The Panel further noted that “some sort of appeals mechanism [for community objection determinations] might add predictability of outcome and produce greater satisfaction with the process by some,” and “to do so in a sound fashion after careful study would be consistent with ICANN’s Articles and Bylaws.” (*Id.* at ¶ 181.) Finally, while the Panel did not suggest that ICANN provide for a re-review of SportAccord’s community objection to Donuts’ application for .SPORTS, the Panel did note its belief that a review by a different expert (or three experts) would not be inconsistent with ICANN’s values and principles. (*Id.* at ¶ 230.)

In accordance with Article IV, section 3.21, the Board is being asked to consider and adopt the findings of the Panel’s Final Declaration in the Donuts IRP. (*See* <https://www.icann.org/resources/pages/governance/bylaws-en/#IV>.)

**PROPOSED RESOLUTION:**

Whereas, in May 2016, an Independent Review Process (IRP) Panel (Panel) issued its Final Declaration in the IRP filed by Donuts Inc. (Donuts) against ICANN (Final Declaration).

Whereas, Donuts specifically challenged the determinations rendered by separate expert panels upholding community objections brought against Donuts’ applications for

.SPORTS (.SPORTS Expert Determination) and .RUGBY (collectively, Expert Determinations).

Whereas, the Panel declared ICANN to be the prevailing party in the IRP and, among other things, declared that the Board's actions or inactions did not in any way violate ICANN's Articles of Incorporation (Articles) or Bylaws. (*See* Final Declaration, ¶ 225, <https://www.icann.org/en/system/files/files/irp-donuts-final-declaration-05may16-en.pdf>.)

Whereas, the Panel further declared that Donuts shall bear all the fees and expenses and shall reimburse ICANN the sum of US\$83,067.66, and the parties shall each bear their own legal fees.

Whereas, the Panel further declared that: (i) IRPs are limited to evaluating action or inaction of the Board; (ii) actions of experts appointed by dispute resolution providers do not equate to Board action or inaction, and are therefore not reviewable by an IRP panel; (iii) an IRP panel is not allowed to base its determinations on what it, itself, might have done, had it been the Board; (iv) the time for challenging the community objection process has passed; (v) the Board need not react merely because it has been petitioned to do so; (vi) the Board is not required to, and has not represented that it would, train dispute resolution experts; (vii) the lack of an appeal mechanism does not violate ICANN's Articles or Bylaws; (viii) the Board has no affirmative duty to consider each and every new gTLD application; and (ix) ICANN did not discriminate against Donuts by not implementing a review mechanism of community objections in general or of the community objections at issue in the Donuts IRP.

Whereas, the Panel also observed the following: (i) the community objection proceedings might benefit from three-member expert panels; (ii) further study could be useful to understand the potential tension that could result from allowing standard applications for strings with relatively open registration policies that could be associated with one or more communities; and (iii) the Panel's belief that establishing an appeals

mechanism for community objection proceedings, after careful study, would not be inconsistent with ICANN's Articles and Bylaws.

Whereas, while the Panel declared that ICANN did not discriminate against Donuts and did not violate ICANN's Articles or Bylaws in not directing a re-evaluation of the community objections at issue in this IRP, the Panel opined that "it would not be inconsistent with ICANN's values and principles to provide for a rehearing of [the .SPORTS] objection, by a different expert (or three experts)."

Whereas, in accordance with Article IV, section 3.21 of ICANN's Bylaws, the Board has considered the Panel's Final Declaration.

Resolved (2016.06.25.xx), the Board accepts the following findings of the Panel's Final Declaration: (i) ICANN is the prevailing party in the *Donuts Inc. v. ICANN* IRP; (ii) the IRP Panel's analysis is limited to declaring whether the Board has acted consistently with the provisions of ICANN's Articles and Bylaws; (iii) the Board acted consistently with the Articles and Bylaws; (iv) an IRP panel is not allowed to substitute its own judgment for that of the Board; (v) the time for challenging the Guidebook's standard for community objections has passed; (vi) the Board need not react merely because it has been petitioned to do so; (vii) the Board is not required to, and has not represented that it would, train dispute resolution experts; (viii) the lack of an appeal mechanism to contest the merits of the Expert Determinations is not a violation of ICANN's Articles or Bylaws; (ix) the actions of the experts appointed by the ICC do not equate to Board action or inaction, and are therefore not reviewable by an IRP panel; (x) the Board has no affirmative duty to individually consider each and every new gTLD application; (xi) ICANN did not discriminate against Donuts by not implementing a review mechanism of community objections in general or of the community objections at issue here; (xii) Donuts shall bear all the fees and expenses, and shall reimburse ICANN the sum of US\$83,067.66; and (xiii) the parties shall each bear their own legal fees.

Resolved (2016.06.25.xx), the Board notes the Panel's observations with respect to the community objection process referenced in the Whereas clauses above, and directs the

President and CEO, or his designee(s), to ensure that the New gTLD Program Reviews take into consideration such issues raised by the Panel as they relate to the community objection process.

Resolved (2016.06.25.xx), as has been previously considered, the Board concludes that the .SPORTS Expert Determination is not sufficiently “inconsistent” or “unreasonable” such that the underlying community objection proceeding resulting in the .SPORTS Expert Determination warrants re-evaluation.

**PROPOSED RATIONALE:**

Donuts Inc. (Donuts) initiated Independent Review Process (IRP) proceedings challenging the separate expert determinations upholding community objections brought against Donuts’ applications for .SPORTS and .RUGBY.

With respect to .RUGBY, Donuts contended that the expert determination was the result of what Donuts portrayed as procedural irregularities. With respect to .SPORTS, Donuts contended that the expert determination was the result of bias on the part of the expert panelist (.SPORTS Expert) appointed by the International Chamber of Commerce (ICC). Donuts’ three primary arguments were as follows: (1) the .SPORTS Expert Determination “resulted from the objection panelist’s conflict of interest”; (2) the Board had an “obligation” to ensure consistent application by the ICC and its expert panels of ICANN’s Bylaws and the Guidebook; and (3) the Board failed to create a “review process” for objection determinations. The request for IRP (IRP Request) sought to compel the ICANN Board to reverse or vacate the community objection determinations, and reinstate Donuts’ applications for .SPORTS and .RUGBY.

The Final Declaration was circulated to the parties on 12 May 2016. After consideration and discussion, pursuant to Article IV, Section 3.21 of the ICANN Bylaws, the Board has determined to adopt the findings of the Panel, which are summarized below, and can be found in full at <https://www.icann.org/en/system/files/files/irp-donuts-final-declaration-05may16-en.pdf>.

The Panel found that it was charged with determining whether the Board’s actions are consistent with the Articles of Incorporation (Articles) and Bylaws, and that the Panel was “duty-bound to focus on [the] three questions” enumerated in Article IV, Section 3.4 as to whether the Board acted without conflict of interest, exercised due diligence, and exercised independent judgment. (Final Declaration at ¶ 126.) The Panel further stated that, in determining whether the Board acted consistently with the Articles and Bylaws, the Panel is “not allow[ed]...to base its determinations on what it, itself, might have done, had it been the Board.” (*Id.* at ¶ 133.)

Using the applicable standard of review, the Panel found that ICANN is the prevailing party in the *Donuts Inc. v. ICANN* IRP, and declared that “Donuts has not met its burden to demonstrate action or inaction by the Board that violated ICANN’s Articles or its Bylaws.” (*Id.* at ¶ 225.) The Panel further declared that “Donuts is to bear all the fees and expenses” and “shall reimburse ICANN the sum of US\$83,067.66, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by ICANN.” (*Id.* at ¶¶ 235-236.)

In addition, the Panel found that while the Guidebook permits the Board to individually consider new gTLD applications, the Board has no affirmative duty to do so in each and every case, *sua sponte*. (*Id.* at ¶¶ 185, 213.) “[A]t any given time the Board is confronted with [a] range of options and is entitled, indeed required, to balance the competing values listed in the Bylaws when deciding what, if anything, to do. The Board need not react merely because it has been petitioned to do so by a stakeholder, commentator or other observer.” (*Id.* at ¶ 170.) The Panel also found that the actions of the experts appointed by the ICC do not equate to Board action or inaction, and are therefore not reviewable by an IRP panel. (*Id.* at ¶¶ 142, 153, 156, 159, 187.) “This Panel concludes given the foregoing, and in accord with the reasoning of other Panels, that the relationship between ICANN and the ICC is not such as to allow an IR Panel ‘[to] review the actions or inactions of ICANN’s staff or any third parties, such as the [DRSP or objection experts] who provided services to ICANN.’” (*Id.* at ¶ 159.) The Panel further found that “the Board is not specifically required by any constituent

document known to the Panel to institute training [of the experts appointed by the ICC]; nor has it represented that it would perform such training.” (*Id.* at ¶ 172.)

The Panel also found that the time for challenging the community objection process as adopted has passed. (*Id.* at ¶¶ 136, 179.) The Panel also concluded that the lack of an appeal mechanism to contest the merits of the Expert Determinations is not a violation of ICANN’s Articles or Bylaws. (*Id.* at ¶¶ 182-183.)

The Panel also made some observations for the Board’s consideration. In particular, the Panel opined that “rather than using single expert panels, the community objection process might to [*sic*] advantage employ panels composed of three experts.” (*Id.* at ¶ 229.) The Panel also observed that since applicants may pursue standard applications for strings with relatively open registration policies but which could be associated with one or more communities, there may be a “predictable conflict of expectations” and “the assumptions and policies that lead to this kind of tension warrant further study.” (*Id.* at ¶ 231.) The Panel further noted that “some sort of appeals mechanism [for community objection determinations] might add predictability of outcome and produce greater satisfaction with the process by some,” and “to do so in a sound fashion after careful study would be consistent with ICANN’s Articles and Bylaws.” (*Id.* at ¶ 181.)

The Board acknowledges the foregoing important observations by the Panel. The Board has considered the observations and notes that it will ensure that the New gTLD Program Reviews take into consideration the issues raised by the Panel as they relate to the community objection process.

Donuts also claimed that ICANN discriminated against Donuts by implementing a review mechanism to address certain string confusion determinations, while not permitting the re-evaluation of the community objections against Donuts’ two applications. The Panel concluded that ICANN did not discriminate against Donuts by not implementing a review mechanism of community objections in general or of the community objections at issue here. (*Id.* at ¶¶ 220-221.) “The record does not allow the Panel to conclude that the considerable consistency issues raised in connection with the string similarity cases have emerged in connection with the community objection cases as a whole, or with respect to

the two expert decisions giving rise to this IR.” (*Id.* at ¶ 220.) While the Panel did not suggest that ICANN provide for a re-review of SportAccord’s community objection to Donuts’ application for .SPORTS, the Panel did note that “[c]oncerning the community objection proceeding brought by SportAccord in connection with .SPORTS, the [Panel] believes it would not be inconsistent with ICANN’s values and principles to provide for a rehearing of that objection, by a different expert (or three experts).” (*Id.* at ¶ 230.)

The Board acknowledges and has considered the foregoing, and concludes that the .SPORTS Expert Determination is not sufficiently “inconsistent” or “unreasonable” such that the underlying community objection proceeding resulting in the .SPORTS Expert Determination warrants re-evaluation. The SCO Final Review Mechanism was established by the NGPC on 12 October 2014, after consultation with the community, in order to address two SCO expert determinations that had conflicting expert determinations about the same strings issued by different expert panels, thus rendering their results to be so seemingly inconsistent and unreasonable as to warrant re-evaluation. (See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b>.) As part of its deliberations, the NGPC considered and determined that it was not appropriate to expand the scope of the proposed SCO Final Review Mechanism to include other expert determinations, such as expert determinations relating to community objections. Moreover, here, the expert determination with respect to Donuts’ application for .SPORTS is not contrary to or inconsistent with another determination. Rather, Donuts merely disagrees with the results of the .SPORTS Expert Determination. Such is not a justification for subjecting the underlying community objection to re-evaluation. The Board finds that ICANN’s Bylaws concerning core values and non-discriminatory treatment, and the particular circumstances and developments noted in the Final Declaration, do not support re-evaluation of the community objection proceeding leading to the .SPORTS Expert Determination.

As required, the Board has considered the Final Declaration. As this Board has previously indicated, the Board takes very seriously the results of one of ICANN’s long-standing accountability mechanisms. Accordingly, and for the reasons set forth in this Resolution and Rationale, the Board has accepted the Panel’s Final Declaration as

indicated above. Adopting the Panel's Final Declaration is not expected to have any direct financial impact on the organization or any direct 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: 10 June 2016  
Email: amy.stathos@icann.org

## ICANN BOARD SUBMISSION NO. 2016.06.25.2a

**TITLE:** **Independent Review of the Generic Names Supporting Organization Final Report and Recommendations**

**PROPOSED ACTION:** **For Board Approval**

### **EXECUTIVE SUMMARY:**

The [second GNSO Review](#) started in July 2014 as mandated by the ICANN Bylaws, [Article IV](#), Section 4.1. In September 2015, Westlake Governance (the appointed independent examiner) submitted its [Final Report](#) containing thirty-six (36) recommendations aimed at improving the GNSO and enhancing its effectiveness, transparency and accountability. The GNSO Review Working Party supported the entire process and served as the liaison between the independent examiner, the GNSO and the Organizational Effectiveness Committee of the ICANN Board (OEC), which is responsible for overseeing ICANN’s organizational reviews. In its response to the recommendations issued by the independent examiner, the Working Party prepared the “GNSO Review Working Party’s Feasibility and Prioritization Analysis of the GNSO Review Recommendations” (Analysis) - see summary of the Analysis in Exhibit A. In the Analysis, the Working Party recommended the adoption of all but three recommendations (21, 23, and 32). The GNSO Council adopted the Analysis, but amended it to support the implementation of recommendation 21, to which the Working Party in turn agreed.

The Organizational Effectiveness Committee of the ICANN Board (OEC) has considered all relevant documents, including the Final Report and the “GNSO Review Working Party’s Feasibility and Prioritization Analysis of the GNSO Review Recommendations”. The OEC recommends that the Board:

- Accept the Final Report issued by the independent examiner.

- Adopt the GNSO Review Recommendations, except recommendations 23 and 32 in line with the “GNSO Review Working Party’s Feasibility and Prioritization Analysis of the GNSO Review Recommendations”, as adopted by the GNSO Council.
- Direct the GNSO Council to draft an implementation plan for the adopted recommendations with a realistic timeline that takes into account the continuously high community workload and consideration of the prioritization proposed by the WP; publish the plan no later than six (6) months after the Board’s adoption of the GNSO Review recommendations; ensure that the implementation plan includes definitions of desired outcomes and a way to measure current state as well as progress toward the desired outcome, and report back regularly to the Board on its implementation progress.

## **Background**

The Generic Names Supporting Organization (GNSO) is responsible for developing and recommending to the ICANN Board policies relating to generic top-level domains (gTLDs). As mandated by the ICANN Bylaws, organizational reviews are performed on a five-year cycle and the last review of the GNSO started in 2006, with the independent examiner, the London School of Economics, publishing its Final Report in September 2006. The ICANN Board Governance Committee considered the independent examiner’s work and issued its recommendation to the ICANN Board in February 2008. The ICANN Board endorsed the recommendations in June 2008 and the improvement implementation work concluded in 2012.

This [second GNSO Review](#) commenced in July 2014 and the [independent examiner](#), Westlake Governance, published its [Draft Report](#) in May 2015. Following a [public comment](#) period, Westlake published its [Final Report](#) on 15 September 2015, with a [correction](#) to Recommendation 1 issued on 5 October 2015. The Final Report clearly assumes that the GNSO has a continued and important role to play within ICANN; and to that extent it contains thirty-six (36) recommendations for improving the effectiveness of the GNSO, organized into the following themes:

- Participation & Representation

- Continuous Development
- Transparency
- Alignment with ICANN's future

As one of several process improvements of this Review, the [GNSO Review Working Party](#) (WP) was assembled to function as a liaison between the GNSO, the independent examiner and the Organizational Effectiveness Committee of the ICANN Board (OEC). The WP provided input on review criteria and the survey, coordinated interviews, and supplied clarification and responses to Westlake's findings and recommendations.

The WP published the "GNSO Working Party's Feasibility and Prioritization Analysis of the GNSO Review Recommendations" (Analysis).<sup>\*</sup> The Analysis contains the WP's detailed and methodological assessment of each of the thirty-six recommendations with regard to: ease (or difficulty) of implementation; projected cost of implementation; its alignment with the GNSO's strategic plan; whether it impacts existing work, or is already part of an existing organizational improvement effort. The WP indicated its view of each of the recommendations with labels of 'agreed', 'work already underway', 'agreed with modifications', or 'did not agree'<sup>†</sup>. Finally, to help guide the implementation process, the WP assigned every recommendation an implementation prioritization of 'low', 'medium', or 'high'.

Of the thirty-six recommendations, the WP determined that three recommendations (21, 23, and 32) should not be implemented and provided the rationale for this determination. The GNSO Council adopted the "GNSO Review Working Party's Feasibility and Prioritization Analysis of the GNSO Review Recommendations", but with an amendment to implement Recommendation 21. The WP supported the Council's amendment, which resulted in only two recommendations labeled as 'did not agree' (23, 32) in the summary document (Exhibit A).

The OEC has considered the summary document in Exhibit A that includes the complete assessment contained in the "GNSO Working Party's Feasibility and Prioritization Analysis of

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<sup>\*</sup> A summary can be found in the Reference Materials.

<sup>†</sup> The Exhibit A document is color-coded: agreed = green; 'work already underway' = orange; 'agreed with modifications' = yellow; 'did not agree' = red.

the GNSO Review Recommendations”. The summary document also provided the OEC with an overview of GNSO Council comments as well as a staff-authored description of the status of work of recommendations labeled ‘already underway’.

### **Organizational Effectiveness Committee (OEC) Recommendations**

The OEC recommends that the Board accept the Final Report issued by the independent examiner. The OEC also recommends that the Board adopt the GNSO Review Recommendations, except recommendations 23 and 32 in line with the “GNSO Review Working Party’s Feasibility and Prioritization Analysis of the GNSO Review Recommendations”, as adopted by the GNSO Council. The following rationale for excluding the two recommendations has been provided by the GNSO Review Working Party, which the OEC finds to be reasonable and appropriate for the context of the GNSO:

Recommendation 23: In order to support ICANN's multistakeholder model, all Constituencies should have seats on the GNSO Council, allocated equally (as far as numerically practicable) by their Stakeholder Groups.

Working Party’s rationale on why not to implement: Would not work if any Stakeholder Group ever has more than six constituencies; assumes all constituencies are equal with respect to mission, member engagement and contributions to GNSO work; could incent groups to form constituencies simply in order to get seats on the Council; questionable rationale throughout conclusion in Final Report and this addition was made at the very end of the process without input or feedback from the Working Party.

Recommendation 32: That ICANN define “cultural diversity” (possibly by using birth language); and regularly publish this along with geographic, gender and age group metrics, at least for the GNSO Council, Stakeholder Groups, Constituencies and Working Groups.

Working Party’s rationale on why not to implement: Recommendation language is too broad. The Working Party agrees in principle with the concept of cultural diversity in ICANN, but was concerned about the way this recommendation was made, specifically:

- Cultural diversity should be defined for ICANN as a whole, not by GNSO alone;
- Not clear that it is feasible to reach a consensus on such a definition.

It may be more feasible to look for practical applications to ensure diversity and that such work may already be underway.

The OEC also recommends that the Board direct the GNSO Council to draft an implementation plan with a realistic timeline that takes into account the continuously high community workload and consideration of the prioritization proposed by the WP. The plan shall be published no later than six (6) months after the Board's adoption of the GNSO Review recommendations. The OEC further recommends that the implementation plan include definitions of desired outcomes and a way to measure current state as well as progress toward the desired outcome. Finally, the OEC recommends that the GNSO Council report back regularly to the Board on its implementation progress.

#### **PROPOSED RESOLUTION:**

Whereas, [ICANN Bylaws Article IV, Section 4.1](#) calls on the ICANN Board to “cause a periodic review of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.”

Whereas, the [second independent review of the GNSO](#) commenced in 2014.

Whereas, the independent examiner that conducted the GNSO Review produced a [Draft Report](#) that was published for [public comment](#) in May 2015.

Whereas, the independent examiner produced a [Final Report](#), containing thirty-six (36) recommendations in September 2015.

Whereas, the GNSO Review Working Party serving as a liaison between the GNSO, the independent examiner and the Organizational Effectiveness Committee of the Board assessed the implementation feasibility of all 36 recommendations and suggested a prioritization of recommendations.

Whereas, the GNSO Council adopted the GNSO Working Party's Feasibility and Prioritization Analysis of the GNSO Review Recommendations with a modification.

Whereas, the Organizational Effectiveness Committee of the Board concluded that the GNSO Working Party's Feasibility and Prioritization Analysis of the GNSO Review Recommendations as adopted by the GNSO Council, ought to guide the implementation process of the 36 recommendations.

Resolved (2016.06.25.xx), the Board acknowledges the independent examiner's hard work and thanks them for producing a comprehensive set of recommendations to improve the GNSO's effectiveness, transparency, and accountability.

Resolved (2016.06.25.xx), the Board acknowledges the work and support of the GNSO Review Working Party during the review process, as well as its insightful Feasibility and Prioritization Analysis that was [adopted](#) by the GNSO Council on 14 April 2016 and guided the OEC's recommendation to the Board. The Board thanks the GNSO Review Working Party for its efforts.

Resolved (2016.06.25.xx), the Board accepts the Final Report from the independent examiner.

Resolved (2016.06.25.xx), taking into account the GNSO Working Party's Feasibility and Prioritization Analysis of the GNSO Review Recommendations, adopted with modifications by the GNSO Council, the Board adopts thirty-four (34) recommendations of the Final Report, i.e. all recommendations excluding recommendations 23 and 32.

Resolved (2016.06.25.xx), the Board requests that the GNSO Council convene a group that oversees the implementation of Board-accepted recommendations. An implementation plan, containing a realistic timeline for the implementation, definition of desired outcomes and a way to measure current state as well as progress toward the desired outcome, shall be submitted to the Board as soon as possible, but no later than six (6) months after the adoption of this resolution.

Resolved (2016.06.25.xx), the Board directs the GNSO Council to provide the Board with regular reporting on the implementation efforts.

**PROPOSED RATIONALE:**

To ensure ICANN's multistakeholder model remains transparent and accountable, and to improve its performance, ICANN organizes independent reviews of its supporting organizations and advisory committees as prescribed in [Article IV Section 4.1](#) of the ICANN Bylaws. The second GNSO Review started in 2014 and the independent examiner presented its Final Report in September 2015.

The Board's action today is consistent with ICANN's commitment pursuant to section 9.1 of the Affirmation of Commitments (AoC) to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and that ICANN is accountable to all stakeholders.

The GNSO Review recommendations have the potential to advance ICANN's transparency and accountability objectives and have been considered carefully by the Board's Organizational Effectiveness Committee as well as by the full Board.

The Board resolution will have a positive impact on ICANN and especially the GNSO as it reinforces ICANN's and the GNSO's commitment to maintaining and improving its accountability, transparency and organizational effectiveness.

Development of implementation steps for the Board-adopted GNSO Review recommendations is not expected to have a considerable budgetary impact on the organization. However, implementation work may necessitate certain expenditures (including staff support) and may require a significant commitment of volunteer time. Volunteer workload and ICANN resources will be considered during the implementation planning and prioritization.

**Why is the Board addressing the issue?**

This resolution completes the second review of the GNSO and is based on the Final Report of the independent examiner, Westlake Governance, as well as the GNSO Review Working Party’s assessment of the recommendations as adopted by the GNSO Council. Following the assessment of all pertinent documents and community feedback by the Board’s Organizational Effectiveness Committee, the Board is now in a position to consider and act on the recommendations and instruct the GNSO to start the implementation process in due course.

**What is the proposal being considered?**

The proposal the Board is considering is the Final Report by the GNSO Review’s independent examiner in combination with “GNSO Review Working Party’s Feasibility and Prioritization Analysis of the GNSO Review Recommendations”, adopted by the GNSO Council, and considered by the Organizational Effectiveness Committee.

**What significant materials did the Board review?**

The Board reviewed the independent examiner’s [GNSO Review Final Report](#) containing 36 recommendations; the Board also reviewed the “GNSO Review Working Party’s Feasibility and Prioritization Assessment” as adopted by the GNSO Council, and it reviewed the considerations by the Organizational Effectiveness Committee with regard to both the Final Report and the Feasibility Assessment. Additionally, the Board considered the [Report of Public Comments](#) on the Independent Examiner’s Initial Report as well as the [overview of changes](#) that took place from the Initial to the Final Report as a result of this community feedback (see Reference Materials – Exhibit C).

**Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, or budget)?**

The work to improve the effectiveness of the GNSO organization may require additional resources beyond those included in the Board-approved FY17 Operating Plan and Budget, when adopted. This determination depends on the implementation planning and the definition of desired outcomes and prioritization. Additionally, implementation work should serve as an input into the next strategic planning cycle.

**Are there any security, stability or resiliency issues relating to the DNS?**

This action is not expected to have a direct impact on the security, stability or resiliency of the DNS. Still, once the improvements are implemented future policy-development will become more transparent and accountable, which in turn might indirectly impact the security, stability or resiliency of the DNS in a positive way.

**Is public comment required prior to Board action?**

A [Public Comment](#) was opened following the publication of the Draft Report in May 2015. As this is a result of a Bylaw-mandated organizational review, public comment is not necessary prior to implementation. It is important to note that throughout the GNSO Review process there has been extensive discussion and exchange of ideas and information between the independent examiner, the GNSO Review Working Party, the GNSO Community and the ICANN Board.

Signature Block:

Submitted by: Larisa Gurnick

Position: Senior Director, Multistakeholder  
Strategy and Strategic Initiatives

Date Noted: 9 June 2016

Email: [larsia.gurnick@icann.org](mailto:larsia.gurnick@icann.org)

**ICANN BOARD SUBMISSION NO. 2016.06.25.2b**

**TITLE:** **Revised Expected Standards of Behavior**

**PROPOSED ACTION:** **For Board Approval**

**EXECUTIVE SUMMARY:**

In mid-May 2016, the Board authorized the posting for public comment a revised version of the ICANN Expected Standards of Behavior (Standards). The revisions to the Standards reflect just one of the various actions ICANN has undertaken to address the issue of certain community-member conduct toward one another that was raised at and after ICANN 55. In posting the revised Standards immediately following the Amsterdam Board Retreat, the goal was for the Board to approve the revised version of the Standards, subject to consideration of public comments, just before the Helsinki meeting. The Board is now being asked to adopt the revised Standards as reflected in the Reference Materials document to this Board paper, subject to further revision if appropriate, following receipt of last minute comments.

**PUBLIC COMMENT SUMMARY:**

As of the drafting of this paper, we have received five comments. The Ombudsman, the Registry Stakeholder Group, and the Root Server System Advisory Committee all support the revisions to the Standards as posted for public comment. One individual, Luc Sufer, also agreed the modifications to the Standards fit the purpose, but suggested that the definition be more limited to account for cultural differences. Finally, another individual, Ricardo Holmquist, suggested reordering the first two lines of the newly proposed paragraph of the Standards.

Given that the majority of the commenters support the revisions as presented, and the goal is to be as broad in definition as possible to make clear that there is zero tolerance for the conduct addressed in the revised Standards, no further revisions are recommended at this time. The public comment forum closes on 25 June 2016, which is the date of the currently scheduled Board meeting. Staff will update the Board during the meeting to the extent additional comments are received, and in particular, if any substantive comments are received that may support further revisions.

**PROPOSED RESOLUTION:**

Whereas, during and after ICANN55, the issue of certain community-member conduct toward one another has been raised in various sessions and lists.

Whereas, among other activities to address this issue, the Board authorized the posting for public comment a revised Expected Standards of Behavior to more fully address the issues.

Whereas, all comments received to date generally support the revisions.

Resolved (2016.06.25.xx), the Board hereby adopts the revised Expected Standards of Behaviors as they were posted for public comment on 16 May 2016.

**PROPOSED RATIONALE:**

During and after ICANN55, the issue of certain community-member conduct toward one another has been raised in various sessions and lists, and the Board agreed to address this matter. In response, the Board confirmed and reiterated that ICANN's Board and staff take the issue of harassment or other improper conduct at its meetings very seriously. ICANN and members of the community share the goal of ensuring that ICANN community members are able to participate and contribute within an environment that does not tolerate discrimination and that remains free from harassment.

As an organization ICANN has robust internal policies regarding the issue, including mandatory training for staff and Board members. While ICANN community members are not bound to the same policies and rules as the ICANN Board and staff, ICANN does expect community members to adhere to certain Expected Standards of Behavior (Standards). The currently approved language of the Standards does not specifically address harassment, but does provide a set of high-level guidelines for interacting with one another.

The Board committed to look at whether the Standards could be revised to more directly address harassment. In furtherance of that commitment, the Board Governance Committee (BGC) proposed certain revisions to the language of the Standards, and the Board authorized those proposed revised Standards be posted for public comment. The public comment window opened on 16 May 2016 and will close on 25 June 2016.

As of the drafting of this paper, we have received five comments, which the Board has considered. The Ombudsman, the Registry Stakeholder Group, and the Root Server System Advisory Committee all support the revisions to the Standards as posted for public comment. One individual agreed the modifications to the Standards fit the purpose, but suggested that the definition be more limited to account for cultural differences. Another individual suggested reordering the first two lines of the newly proposed paragraph of the Standards.

The Board thanks the commenters for their views. Given that the majority of the commenters support the revisions as presented, and the goal is to be as broad in definition as possible to make clear that there is zero tolerance for the conduct addressed in the revised Standards, the Board has determined to adopt the revised Standards as they were posted for public comment, with one slight typo correction. With respect to the comment about accounting for cultural differences, the Board notes that this is an important consideration, and expects that any evaluation of conduct that might be challenged will certainly take those differences into account. The public comment forum closes on 25 June 2016, which is the date of the next scheduled Board meeting. Staff will update the Board during the meeting to the extent additional comments are received, and in particular, if any substantive comments are received that may support further revisions.

As a reminder, in parallel, the Board directed the President and CEO, or his designee(s), to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN Public meetings. The Board understands that this process is currently underway.

It is not anticipated that the decision to adopted revised Expected Standards of Behavior will have any fiscal impact on ICANN, and it will not have any impact on the security, stability or resiliency of the domain name system.

This decision is an Organizational Administrative Function that has already completed the public comment process.

Submitted By: Amy A. Stathos, Deputy General Counsel  
Dated Noted: 15 June 2016  
Email: amy.stathos@icann.org

**ICANN BOARD PAPER NO. 2016.06.25.2c**

**TITLE:** New gTLD Program: Reviews and Future Path  
**PROPOSED ACTION:** For Board Review, Discussion and Approval

Item Removed From Agenda

**ICANN BOARD SUBMISSION NO. 2016-06-XX-XX**

**TITLE:** **Consideration of Independent Review Panel’s Final Declaration in the *Donuts Inc. v. ICANN* IRP**

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

**EXECUTIVE SUMMARY:**

On 12 May 2016, the parties received the Independent Review Process (IRP) Panel’s (Panel’s) Final Declaration in the IRP filed by Donuts Inc. (Donuts) ([see Final Declaration](#), Attachment A to Reference Materials). The IRP challenged two expert determinations, each upholding community objections brought against Donuts’ applications for .SPORTS and .RUGBY, respectively.

In a 2-1 decision declaring ICANN to be the prevailing party, the Panel stated “Donuts has not met its burden to demonstrate action or inaction by the Board that violated ICANN’s Articles or its Bylaws.” (*Id.* at ¶ 225.) The Panel further declared that Donuts is to bear all the fees and expenses and “reimburse ICANN the sum of US\$83,067.66,” the portion of fees and expenses incurred by ICANN.” (*Id.* at ¶¶ 235-236.)

In addition, the Panel declared that: (i) an IRP panel is limited to declaring whether the Board has acted consistently with ICANN’s Articles and Bylaws (*id.* at ¶ 126), and since the actions of experts appointed by the International Chamber of Commerce (ICC) do not equate to Board action or inaction, they are not reviewable by an IRP panel (*id.* at ¶ 159); (ii) an IRP panel is not permitted to substitute its judgment for that of the Board (*id.* at ¶ 129); (iii) the time for challenging the community objection process has passed (*id.* at ¶¶ 136, 179); (iv) the “Board need not react merely because it has been petitioned to do so by a stakeholder, commentator or other observer” (*id.* at ¶ 170); (v) the Board is not required to, and has not represented that it would, institute training of the ICC-appointed experts (*id.* at ¶ 172); (vi) the lack of an appeal mechanism to contest the merits of expert determinations does not violate ICANN’s Articles or Bylaws (*id.* at ¶¶ 182-183); (vii) the Board has no affirmative duty to individually consider each and every new gTLD

application (*id.* at ¶¶ 185, 213); and (viii) ICANN did not discriminate against Donuts by not implementing a review mechanism of community objections in general or of the community objections at issue here (*id.* at ¶¶ 220-221).

The Panel also made some observations for the Board’s consideration. In particular, the Panel opined that “the community objection process might to [*sic*] advantage employ panels composed of three experts.” (*Id.* at ¶ 229.) The Panel also observed that since applicants may pursue standard applications for strings with relatively open registration policies but which could also be associated with one or more communities, there may be a “predictable conflict of expectations” and “the assumptions and policies that lead to this kind of tension warrant further study.” (*Id.* at ¶ 231.) The Panel further noted that “some sort of appeals mechanism [for community objection determinations] might add predictability of outcome and produce greater satisfaction with the process by some,” and “to do so in a sound fashion after careful study would be consistent with ICANN’s Articles and Bylaws.” (*Id.* at ¶ 181.) Finally, while the Panel did not suggest that ICANN provide for a re-review of SportAccord’s community objection to Donuts’ application for .SPORTS, the Panel did note its belief that a review by a different expert (or three experts) would not be inconsistent with ICANN’s values and principles. (*Id.* at ¶ 230.)

In accordance with Article IV, section 3.21, the Board is being asked to consider and adopt the findings of the Panel’s Final Declaration in the Donuts IRP. (*See* <https://www.icann.org/resources/pages/governance/bylaws-en/#IV>.)

**PROPOSED RESOLUTION:**

Whereas, in May 2016, an Independent Review Process (IRP) Panel (Panel) issued its Final Declaration in the IRP filed by Donuts Inc. (Donuts) against ICANN (Final Declaration).

Whereas, Donuts specifically challenged the determinations rendered by separate expert panels upholding community objections brought against Donuts’ applications for

.SPORTS (.SPORTS Expert Determination) and .RUGBY (collectively, Expert Determinations).

Whereas, the Panel declared ICANN to be the prevailing party in the IRP and, among other things, declared that the Board's actions or inactions did not in any way violate ICANN's Articles of Incorporation (Articles) or Bylaws. (See Final Declaration, ¶ 225, <https://www.icann.org/en/system/files/files/irp-donuts-final-declaration-05may16-en.pdf>.)

Whereas, the Panel further declared that Donuts shall bear all the fees and expenses and shall reimburse ICANN the sum of US\$83,067.66, and the parties shall each bear their own legal fees.

Whereas, the Panel further declared that: (i) IRPs are limited to evaluating action or inaction of the Board; (ii) actions of experts appointed by dispute resolution providers do not equate to Board action or inaction, and are therefore not reviewable by an IRP panel; (iii) an IRP panel is not allowed to base its determinations on what it, itself, might have done, had it been the Board; (iv) the time for challenging the community objection process has passed; (v) the Board need not react merely because it has been petitioned to do so; (vi) the Board is not required to, and has not represented that it would, train dispute resolution experts; (vii) the lack of an appeal mechanism does not violate ICANN's Articles or Bylaws; (viii) the Board has no affirmative duty to consider each and every new gTLD application; and (ix) ICANN did not discriminate against Donuts by not implementing a review mechanism of community objections in general or of the community objections at issue in the Donuts IRP.

Whereas, the Panel also observed the following: (i) the community objection proceedings might benefit from three-member expert panels; (ii) further study could be useful to understand the potential tension that could result from allowing standard applications for strings with relatively open registration policies that could be associated with one or more communities; and (iii) the Panel's belief that establishing an appeals

mechanism for community objection proceedings, after careful study, would not be inconsistent with ICANN's Articles and Bylaws.

Whereas, while the Panel declared that ICANN did not discriminate against Donuts and did not violate ICANN's Articles or Bylaws in not directing a re-evaluation of the community objections at issue in this IRP, the Panel opined that "it would not be inconsistent with ICANN's values and principles to provide for a rehearing of [the .SPORTS] objection, by a different expert (or three experts)."

Whereas, in accordance with Article IV, section 3.21 of ICANN's Bylaws, the Board has considered the Panel's Final Declaration.

Resolved (2016.06.25.xx), the Board accepts the following findings of the Panel's Final Declaration: (i) ICANN is the prevailing party in the *Donuts Inc. v. ICANN* IRP; (ii) the IRP Panel's analysis is limited to declaring whether the Board has acted consistently with the provisions of ICANN's Articles and Bylaws; (iii) the Board acted consistently with the Articles and Bylaws; (iv) an IRP panel is not allowed to substitute its own judgment for that of the Board; (v) the time for challenging the Guidebook's standard for community objections has passed; (vi) the Board need not react merely because it has been petitioned to do so; (vii) the Board is not required to, and has not represented that it would, train dispute resolution experts; (viii) the lack of an appeal mechanism to contest the merits of the Expert Determinations is not a violation of ICANN's Articles or Bylaws; (ix) the actions of the experts appointed by the ICC do not equate to Board action or inaction, and are therefore not reviewable by an IRP panel; (x) the Board has no affirmative duty to individually consider each and every new gTLD application; (xi) ICANN did not discriminate against Donuts by not implementing a review mechanism of community objections in general or of the community objections at issue here; (xii) Donuts shall bear all the fees and expenses, and shall reimburse ICANN the sum of US\$83,067.66; and (xiii) the parties shall each bear their own legal fees.

Resolved (2016.06.25.xx), the Board notes the Panel's observations with respect to the community objection process referenced in the Whereas clauses above, and directs the

President and CEO, or his designee(s), to ensure that the New gTLD Program Reviews take into consideration such issues raised by the Panel as they relate to the community objection process.

Resolved (2016.06.25.xx), the Board concludes that nothing in the Final Declaration supports re-review of the .SPORTS Expert Determination, nor is it sufficiently “inconsistent” or “unreasonable” such that it warrants re-evaluation.

### **PROPOSED RATIONALE:**

Donuts Inc. (Donuts) initiated Independent Review Process (IRP) proceedings challenging the separate expert determinations upholding community objections brought against Donuts’ applications for .SPORTS (.SPORTS Expert Determination) and .RUGBY (collectively, Expert Determinations).

With respect to .RUGBY, Donuts contended that the expert determination was the result of what Donuts portrayed as procedural irregularities. With respect to .SPORTS, Donuts contended that the expert determination was the result of bias on the part of the expert panelist (.SPORTS Expert) appointed by the International Chamber of Commerce (ICC). Donuts’ three primary arguments were as follows: (1) the .SPORTS Expert Determination “resulted from the objection panelist’s conflict of interest”; (2) the Board had an “obligation” to ensure consistent application by the ICC and its expert panels of ICANN’s Bylaws and the Guidebook; and (3) the Board failed to create a “review process” for objection determinations. The request for IRP (IRP Request) sought to compel the ICANN Board to reverse or vacate the community objection determinations, and reinstate Donuts’ applications for .SPORTS and .RUGBY.

The Final Declaration was circulated to the parties on 12 May 2016. After consideration and discussion, pursuant to Article IV, Section 3.21 of the ICANN Bylaws, the Board has determined to adopt the findings of the Panel, which are summarized below, and can be found in full at <https://www.icann.org/en/system/files/files/irp-donuts-final-declaration-05may16-en.pdf>.

The Panel found that it was charged with determining whether the Board’s actions are consistent with the Articles of Incorporation (Articles) and Bylaws, and that the Panel was “duty-bound to focus on [the] three questions” enumerated in Article IV, Section 3.4 as to whether the Board acted without conflict of interest, exercised due diligence, and exercised independent judgment. (Final Declaration at ¶ 126.) The Panel further stated that, in determining whether the Board acted consistently with the Articles and Bylaws, the Panel is “not allow[ed]...to base its determinations on what it, itself, might have done, had it been the Board.” (*Id.* at ¶ 133.)

Using the applicable standard of review, the Panel found that ICANN is the prevailing party in the *Donuts Inc. v. ICANN* IRP, and declared that “Donuts has not met its burden to demonstrate action or inaction by the Board that violated ICANN’s Articles or its Bylaws.” (*Id.* at ¶ 225.) The Panel further declared that “Donuts is to bear all the fees and expenses” and “shall reimburse ICANN the sum of US\$83,067.66, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by ICANN.” (*Id.* at ¶¶ 235-236.)

In addition, the Panel found that while the Guidebook permits the Board to individually consider new gTLD applications, the Board has no affirmative duty to do so in each and every case, *sua sponte*. (*Id.* at ¶¶ 185, 213.) “[A]t any given time the Board is confronted with [a] range of options and is entitled, indeed required, to balance the competing values listed in the Bylaws when deciding what, if anything, to do. The Board need not react merely because it has been petitioned to do so by a stakeholder, commentator or other observer.” (*Id.* at ¶ 170.) The Panel also found that the actions of the experts appointed by the ICC do not equate to Board action or inaction, and are therefore not reviewable by an IRP panel. (*Id.* at ¶¶ 142, 153, 156, 159, 187.) “This Panel concludes given the foregoing, and in accord with the reasoning of other Panels, that the relationship between ICANN and the ICC is not such as to allow an IR Panel ‘[to] review the actions or inactions of ICANN’s staff or any third parties, such as the [DRSP or objection experts] who provided services to ICANN.’” (*Id.* at ¶ 159.) The Panel further found that “the Board is not specifically required by any constituent

document known to the Panel to institute training [of the experts appointed by the ICC]; nor has it represented that it would perform such training.” (*Id.* at ¶ 172.)

The Panel also found that the time for challenging the community objection process as adopted has passed. (*Id.* at ¶¶ 136, 179.) The Panel also concluded that the lack of an appeal mechanism to contest the merits of the Expert Determinations is not a violation of ICANN’s Articles or Bylaws. (*Id.* at ¶¶ 182-183.)

The Panel also made some observations for the Board’s consideration. In particular, the Panel opined that “rather than using single expert panels, the community objection process might to [*sic*] advantage employ panels composed of three experts.” (*Id.* at ¶ 229.) The Panel also observed that since applicants may pursue standard applications for strings with relatively open registration policies but which could be associated with one or more communities, there may be a “predictable conflict of expectations” and “the assumptions and policies that lead to this kind of tension warrant further study.” (*Id.* at ¶ 231.) The Panel further noted that “some sort of appeals mechanism [for community objection determinations] might add predictability of outcome and produce greater satisfaction with the process by some,” and “to do so in a sound fashion after careful study would be consistent with ICANN’s Articles and Bylaws.” (*Id.* at ¶ 181.)

The Board acknowledges the foregoing important observations by the Panel. The Board has considered the observations and notes that it will ensure that the New gTLD Program Reviews take into consideration the issues raised by the Panel as they relate to the community objection process.

Donuts also claimed that ICANN discriminated against Donuts by implementing a review mechanism to address certain string confusion determinations, while not permitting the re-evaluation of the community objections against Donuts’ two applications. The Panel concluded that ICANN did not discriminate against Donuts by not implementing a review mechanism of community objections in general or of the community objections at issue here. (*Id.* at ¶¶ 220-221.) “The record does not allow the Panel to conclude that the considerable consistency issues raised in connection with the string similarity cases have emerged in connection with the community objection cases as a whole, or with respect to

the two expert decisions giving rise to this IR.” (*Id.* at ¶ 220.) While the Panel did not suggest that ICANN provide for a re-review of SportAccord’s community objection to Donuts’ application for .SPORTS, the Panel did note that “[c]oncerning the community objection proceeding brought by SportAccord in connection with .SPORTS, the [Panel] believes it would not be inconsistent with ICANN’s values and principles to provide for a rehearing of that objection, by a different expert (or three experts).” (*Id.* at ¶ 230.)

On 21 June 2016, Donuts’ counsel sent a letter to the Board requesting that the Board initiate a re-review of the community objection against Donuts’ .SPORTS application by a three-member panel. (*See* 21 June 2016 letter available at <https://www.icann.org/en/system/files/correspondence/genga-to-icann-board-21jun16-en.pdf>.) While Donuts’ letter suggests that the IRP Panel “recommended” that ICANN should conduct a re-hearing, that is not an accurate statement and is belied by the Final Declaration. The Panel merely stated that it “believes it would not be inconsistent with ICANN’s values and principles to provide for a rehearing of that objection, by a different expert (or three experts).” (Final Declaration at ¶ 230.) SportAccord later sent an email to the Board (see Attachment B to Reference Materials) pointing out, among other things, that “the majority panel ruled in ICANN’s favor and did not require any further action.”

The Board acknowledges and has considered the Panel Declaration, as well as Donuts’ 21 June 2016 letter and SportAccord’s subsequent email, and concludes that the Panel did not recommend that the Board take the action that Donuts is suggesting. Having considered the Declaration and the community objection proceeding at issue, the Board does not think that re-review of the objection is warranted based on any of the IRP Panel comments. Further, the Board determined that the .SPORTS Expert Determination is not sufficiently “inconsistent” or “unreasonable” such that the underlying community objection proceeding resulting in the .SPORTS Expert Determination warrants re-evaluation. The SCO Final Review Mechanism was established by the NGPC on 12 October 2014, after consultation with the community, in order to address two SCO expert determinations that had conflicting expert determinations about the same strings issued by different expert panels, thus rendering their results to be so seemingly inconsistent and unreasonable as to warrant re-evaluation. (*See* <https://www.icann.org/resources/board->

[material/resolutions-new-gtld-2014-10-12-en#2.b.](#)) As part of its deliberations, the NGPC considered and determined that it was not appropriate to expand the scope of the proposed SCO Final Review Mechanism to include other expert determinations, such as expert determinations relating to community objections. Moreover, here, the expert determination with respect to Donuts' application for .SPORTS is not contrary to or inconsistent with another determination. Rather, Donuts merely disagrees with the results of the .SPORTS Expert Determination. Such is not a justification for subjecting the underlying community objection to re-evaluation. The Board finds that ICANN's Bylaws concerning core values and non-discriminatory treatment, and the particular circumstances and developments noted in the Final Declaration, do not support re-evaluation of the community objection proceeding leading to the .SPORTS Expert Determination.

As required, the Board has considered the Final Declaration. As this Board has previously indicated, the Board takes very seriously the results of one of ICANN's long-standing accountability mechanisms. Accordingly, and for the reasons set forth in this Resolution and Rationale, the Board has accepted the Panel's Final Declaration as indicated above. Adopting the Panel's Final Declaration is not expected to have any direct financial impact on the organization or any direct 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: 10 June 2016  
Email: amy.stathos@icann.org

ICANN BOARD SUBMISSION NO. 2016-06-XX-XX

**TITLE:** **Consideration of Independent Review Panel's Final Declaration in the *Donuts Inc. v. ICANN* IRP**

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

**EXECUTIVE SUMMARY:**

On 12 May 2016, the parties received the Independent Review Process (IRP) Panel's (Panel's) Final Declaration in the IRP filed by Donuts Inc. (Donuts) (*see* [Final Declaration](#), Attachment A to Reference Materials). The IRP challenged two expert determinations, each upholding community objections brought against Donuts' applications for .SPORTS and .RUGBY, respectively.

In a 2-1 decision declaring ICANN to be the prevailing party, the Panel stated "Donuts has not met its burden to demonstrate action or inaction by the Board that violated ICANN's Articles or its Bylaws." (*Id.* at ¶ 225.) The Panel further declared that Donuts is to bear all the fees and expenses and "reimburse ICANN the sum of US\$83,067.66," the portion of fees and expenses incurred by ICANN." (*Id.* at ¶¶ 235-236.)

In addition, the Panel declared that: (i) an IRP panel is limited to declaring whether the Board has acted consistently with ICANN's Articles and Bylaws (*id.* at ¶ 126), and since the actions of experts appointed by the International Chamber of Commerce (ICC) do not equate to Board action or inaction, they are not reviewable by an IRP panel (*id.* at ¶ 159); (ii) an IRP panel is not permitted to substitute its judgment for that of the Board (*id.* at ¶ 129); (iii) the time for challenging the community objection process has passed (*id.* at ¶¶ 136, 179); (iv) the "Board need not react merely because it has been petitioned to do so by a stakeholder, commentator or other observer" (*id.* at ¶ 170); (v) the Board is not required to, and has not represented that it would, institute training of the ICC-appointed experts (*id.* at ¶ 172); (vi) the lack of an appeal mechanism to contest the merits of expert determinations does not violate ICANN's Articles or Bylaws (*id.* at ¶¶ 182-183); (vii) the Board has no affirmative duty to individually consider each and every new gTLD

application (*id.* at ¶¶ 185, 213); and (viii) ICANN did not discriminate against Donuts by not implementing a review mechanism of community objections in general or of the community objections at issue here (*id.* at ¶¶ 220-221).

The Panel also made some observations for the Board’s consideration. In particular, the Panel opined that “the community objection process might to [*sic*] advantage employ panels composed of three experts.” (*Id.* at ¶ 229.) The Panel also observed that since applicants may pursue standard applications for strings with relatively open registration policies but which could also be associated with one or more communities, there may be a “predictable conflict of expectations” and “the assumptions and policies that lead to this kind of tension warrant further study.” (*Id.* at ¶ 231.) The Panel further noted that “some sort of appeals mechanism [for community objection determinations] might add predictability of outcome and produce greater satisfaction with the process by some,” and “to do so in a sound fashion after careful study would be consistent with ICANN’s Articles and Bylaws.” (*Id.* at ¶ 181.) Finally, while the Panel did not suggest that ICANN provide for a re-review of SportAccord’s community objection to Donuts’ application for .SPORTS, the Panel did note its belief that a review by a different expert (or three experts) would not be inconsistent with ICANN’s values and principles. (*Id.* at ¶ 230.)

In accordance with Article IV, section 3.21, the Board is being asked to consider and adopt the findings of the Panel’s Final Declaration in the Donuts IRP. (*See* <https://www.icann.org/resources/pages/governance/bylaws-en/#IV>.)

**PROPOSED RESOLUTION:**

Whereas, in May 2016, an Independent Review Process (IRP) Panel (Panel) issued its Final Declaration in the IRP filed by Donuts Inc. (Donuts) against ICANN (Final Declaration).

Whereas, Donuts specifically challenged the determinations rendered by separate expert panels upholding community objections brought against Donuts’ applications for

.SPORTS (.SPORTS Expert Determination) and .RUGBY (collectively, Expert Determinations).

Whereas, the Panel declared ICANN to be the prevailing party in the IRP and, among other things, declared that the Board's actions or inactions did not in any way violate ICANN's Articles of Incorporation (Articles) or Bylaws. (See Final Declaration, ¶ 225, <https://www.icann.org/en/system/files/files/irp-donuts-final-declaration-05may16-en.pdf>.)

Whereas, the Panel further declared that Donuts shall bear all the fees and expenses and shall reimburse ICANN the sum of US\$83,067.66, and the parties shall each bear their own legal fees.

Whereas, the Panel further declared that: (i) IRPs are limited to evaluating action or inaction of the Board; (ii) actions of experts appointed by dispute resolution providers do not equate to Board action or inaction, and are therefore not reviewable by an IRP panel; (iii) an IRP panel is not allowed to base its determinations on what it, itself, might have done, had it been the Board; (iv) the time for challenging the community objection process has passed; (v) the Board need not react merely because it has been petitioned to do so; (vi) the Board is not required to, and has not represented that it would, train dispute resolution experts; (vii) the lack of an appeal mechanism does not violate ICANN's Articles or Bylaws; (viii) the Board has no affirmative duty to consider each and every new gTLD application; and (ix) ICANN did not discriminate against Donuts by not implementing a review mechanism of community objections in general or of the community objections at issue in the Donuts IRP.

Whereas, the Panel also observed the following: (i) the community objection proceedings might benefit from three-member expert panels; (ii) further study could be useful to understand the potential tension that could result from allowing standard applications for strings with relatively open registration policies that could be associated with one or more communities; and (iii) the Panel's belief that establishing an appeals

mechanism for community objection proceedings, after careful study, would not be inconsistent with ICANN's Articles and Bylaws.

Whereas, while the Panel declared that ICANN did not discriminate against Donuts and did not violate ICANN's Articles or Bylaws in not directing a re-evaluation of the community objections at issue in this IRP, the Panel opined that "it would not be inconsistent with ICANN's values and principles to provide for a rehearing of [the .SPORTS] objection, by a different expert (or three experts)."

Whereas, in accordance with Article IV, section 3.21 of ICANN's Bylaws, the Board has considered the Panel's Final Declaration.

Resolved (2016.06.XX.XX), the Board accepts the following findings of the Panel's Final Declaration: (i) ICANN is the prevailing party in the *Donuts Inc. v. ICANN* IRP; (ii) the IRP Panel's analysis is limited to declaring whether the Board has acted consistently with the provisions of ICANN's Articles and Bylaws; (iii) the Board acted consistently with the Articles and Bylaws; (iv) an IRP panel is not allowed to substitute its own judgment for that of the Board; (v) the time for challenging the Guidebook's standard for community objections has passed; (vi) the Board need not react merely because it has been petitioned to do so; (vii) the Board is not required to, and has not represented that it would, train dispute resolution experts; (viii) the lack of an appeal mechanism to contest the merits of the Expert Determinations is not a violation of ICANN's Articles or Bylaws; (ix) the actions of the experts appointed by the ICC do not equate to Board action or inaction, and are therefore not reviewable by an IRP panel; (x) the Board has no affirmative duty to individually consider each and every new gTLD application; (xi) ICANN did not discriminate against Donuts by not implementing a review mechanism of community objections in general or of the community objections at issue here; (xii) Donuts shall bear all the fees and expenses, and shall reimburse ICANN the sum of US\$83,067.66; and (xiii) the parties shall each bear their own legal fees.

Resolved (2016.06.XX.XX), the Board notes the Panel's observations with respect to the community objection process referenced in the Whereas clauses above, and directs the

President and CEO, or his designee(s), to ensure that the New gTLD Program Reviews take into consideration such issues raised by the Panel as they relate to the community objection process.

Resolved (2016.06.XX.XX), the Board concludes that nothing in the Final Declaration supports re-review of the .SPORTS Expert Determination, nor is it sufficiently “inconsistent” or “unreasonable” such that it warrants re-evaluation.

**PROPOSED RATIONALE:**

Donuts Inc. (Donuts) initiated Independent Review Process (IRP) proceedings challenging the separate expert determinations upholding community objections brought against Donuts’ applications for .SPORTS (.SPORTS Expert Determination) and .RUGBY (collectively, Expert Determinations).

With respect to .RUGBY, Donuts contended that the expert determination was the result of what Donuts portrayed as procedural irregularities. With respect to .SPORTS, Donuts contended that the expert determination was the result of bias on the part of the expert panelist (.SPORTS Expert) appointed by the International Chamber of Commerce (ICC). Donuts’ three primary arguments were as follows: (1) the .SPORTS Expert Determination “resulted from the objection panelist’s conflict of interest”; (2) the Board had an “obligation” to ensure consistent application by the ICC and its expert panels of ICANN’s Bylaws and the Guidebook; and (3) the Board failed to create a “review process” for objection determinations. The request for IRP (IRP Request) sought to compel the ICANN Board to reverse or vacate the community objection determinations, and reinstate Donuts’ applications for .SPORTS and .RUGBY.

The Final Declaration was circulated to the parties on 12 May 2016. After consideration and discussion, pursuant to Article IV, Section 3.21 of the ICANN Bylaws, the Board has determined to adopt the findings of the Panel, which are summarized below, and can be found in full at <https://www.icann.org/en/system/files/files/irp-donuts-final-declaration-05may16-en.pdf>.

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The Panel found that it was charged with determining whether the Board’s actions are consistent with the Articles of Incorporation (Articles) and Bylaws, and that the Panel was “duty-bound to focus on [the] three questions” enumerated in Article IV, Section 3.4 as to whether the Board acted without conflict of interest, exercised due diligence, and exercised independent judgment. (Final Declaration at ¶ 126.) The Panel further stated that, in determining whether the Board acted consistently with the Articles and Bylaws, the Panel is “not allow[ed]...to base its determinations on what it, itself, might have done, had it been the Board.” (*Id.* at ¶ 133.)

Using the applicable standard of review, the Panel found that ICANN is the prevailing party in the *Donuts Inc. v. ICANN* IRP, and declared that “Donuts has not met its burden to demonstrate action or inaction by the Board that violated ICANN’s Articles or its Bylaws.” (*Id.* at ¶ 225.) The Panel further declared that “Donuts is to bear all the fees and expenses” and “shall reimburse ICANN the sum of US\$83,067.66, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by ICANN.” (*Id.* at ¶¶ 235-236.)

In addition, the Panel found that while the Guidebook permits the Board to individually consider new gTLD applications, the Board has no affirmative duty to do so in each and every case, *sua sponte*. (*Id.* at ¶¶ 185, 213.) “[A]t any given time the Board is confronted with [a] range of options and is entitled, indeed required, to balance the competing values listed in the Bylaws when deciding what, if anything, to do. The Board need not react merely because it has been petitioned to do so by a stakeholder, commentator or other observer.” (*Id.* at ¶ 170.) The Panel also found that the actions of the experts appointed by the ICC do not equate to Board action or inaction, and are therefore not reviewable by an IRP panel. (*Id.* at ¶¶ 142, 153, 156, 159, 187.) “This Panel concludes given the foregoing, and in accord with the reasoning of other Panels, that the relationship between ICANN and the ICC is not such as to allow an IR Panel [to] review the actions or inactions of ICANN’s staff or any third parties, such as the [DRSP or objection experts] who provided services to ICANN.” (*Id.* at ¶ 159.) The Panel further found that “the Board is not specifically required by any constituent

document known to the Panel to institute training [of the experts appointed by the ICC]; nor has it represented that it would perform such training.” (*Id.* at ¶ 172.)

The Panel also found that the time for challenging the community objection process as adopted has passed. (*Id.* at ¶¶ 136, 179.) The Panel also concluded that the lack of an appeal mechanism to contest the merits of the Expert Determinations is not a violation of ICANN’s Articles or Bylaws. (*Id.* at ¶¶ 182-183.)

The Panel also made some observations for the Board’s consideration. In particular, the Panel opined that “rather than using single expert panels, the community objection process might to [*sic*] advantage employ panels composed of three experts.” (*Id.* at ¶ 229.) The Panel also observed that since applicants may pursue standard applications for strings with relatively open registration policies but which could be associated with one or more communities, there may be a “predictable conflict of expectations” and “the assumptions and policies that lead to this kind of tension warrant further study.” (*Id.* at ¶ 231.) The Panel further noted that “some sort of appeals mechanism [for community objection determinations] might add predictability of outcome and produce greater satisfaction with the process by some,” and “to do so in a sound fashion after careful study would be consistent with ICANN’s Articles and Bylaws.” (*Id.* at ¶ 181.)

The Board acknowledges the foregoing important observations by the Panel. The Board has considered the observations and notes that it will ensure that the New gTLD Program Reviews take into consideration the issues raised by the Panel as they relate to the community objection process.

Donuts also claimed that ICANN discriminated against Donuts by implementing a review mechanism to address certain string confusion determinations, while not permitting the re-evaluation of the community objections against Donuts’ two applications. The Panel concluded that ICANN did not discriminate against Donuts by not implementing a review mechanism of community objections in general or of the community objections at issue here. (*Id.* at ¶¶ 220-221.) “The record does not allow the Panel to conclude that the considerable consistency issues raised in connection with the string similarity cases have emerged in connection with the community objection cases as a whole, or with respect to

the two expert decisions giving rise to this IR.” (*Id.* at ¶ 220.) While the Panel did not suggest that ICANN provide for a re-review of SportAccord’s community objection to Donuts’ application for .SPORTS, the Panel did note that “[c]oncerning the community objection proceeding brought by SportAccord in connection with .SPORTS, the [Panel] believes it would not be inconsistent with ICANN’s values and principles to provide for a rehearing of that objection, by a different expert (or three experts).” (*Id.* at ¶ 230.)

On 21 June 2016, Donuts’ counsel sent a letter to the Board requesting that the Board initiate a re-review of the community objection against Donuts’ .SPORTS application by a three-member panel. (See 21 June 2016 letter available at <https://www.icann.org/en/system/files/correspondence/genga-to-icann-board-21jun16-en.pdf>.) While Donuts’ letter suggests that the IRP Panel “recommended” that ICANN should conduct a re-hearing, that is not an accurate statement and is belied by the Final Declaration. The Panel merely stated that it “believes it would not be inconsistent with ICANN’s values and principles to provide for a rehearing of that objection, by a different expert (or three experts).” (Final Declaration at ¶ 230.) SportAccord later sent an email to the Board (see Attachment B to Reference Materials) pointing out, among other things, that “the majority panel ruled in ICANN’s favor and did not require any further action.”

The Board acknowledges and has considered the Panel Declaration, as well as Donuts’ 21 June 2016 letter and SportAccord’s subsequent email, and concludes that the Panel did not recommend that the Board take the action that Donuts is suggesting. Having considered the Declaration and the community objection proceeding at issue, the Board does not think that re-review of the objection is warranted based on any of the IRP Panel comments. Further, the Board determined that the .SPORTS Expert Determination is not sufficiently “inconsistent” or “unreasonable” such that the underlying community objection proceeding resulting in the .SPORTS Expert Determination warrants re-evaluation. The SCO Final Review Mechanism was established by the NGPC on 12 October 2014, after consultation with the community, in order to address two SCO expert determinations that had conflicting expert determinations about the same strings issued by different expert panels, thus rendering their results to be so seemingly inconsistent and unreasonable as to warrant re-evaluation. (See <https://www.icann.org/resources/board->

[material/resolutions-new-gtld-2014-10-12-en#2.b](#).) As part of its deliberations, the NGPC considered and determined that it was not appropriate to expand the scope of the proposed SCO Final Review Mechanism to include other expert determinations, such as expert determinations relating to community objections. Moreover, here, the expert determination with respect to Donuts' application for .SPORTS is not contrary to or inconsistent with another determination. Rather, Donuts merely disagrees with the results of the .SPORTS Expert Determination. Such is not a justification for subjecting the underlying community objection to re-evaluation. The Board finds that ICANN's Bylaws concerning core values and non-discriminatory treatment, and the particular circumstances and developments noted in the Final Declaration, do not support re-evaluation of the community objection proceeding leading to the .SPORTS Expert Determination.

As required, the Board has considered the Final Declaration. As this Board has previously indicated, the Board takes very seriously the results of one of ICANN's long-standing accountability mechanisms. Accordingly, and for the reasons set forth in this Resolution and Rationale, the Board has accepted the Panel's Final Declaration as indicated above. Adopting the Panel's Final Declaration is not expected to have any direct financial impact on the organization or any direct 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: 10 June 2016  
Email: amy.stathos@icann.org

**ICANN BOARD SUBMISSION NO. 2016.06.25.2D**

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**ICANN BOARD SUBMISSION NO. 2016.06.xx.xx**

**TITLE:** **Revised Expected Standards of Behavior**  
**PROPOSED ACTION:** **For Board Approval**

**EXECUTIVE SUMMARY:**

In mid-May 2016, the Board authorized the posting for public comment a revised version of the ICANN Expected Standards of Behavior (Standards). The revisions to the Standards reflect just one of the various actions ICANN has undertaken to address the issue of certain community-member conduct toward one another that was raised at and after ICANN 55. In posting the revised Standards immediately following the Amsterdam Board Retreat, the goal was for the Board to approve the revised version of the Standards, subject to consideration of public comments, just before the Helsinki meeting. The Board is now being asked to adopt the revised Standards as reflected in the Reference Materials document to this Board paper, subject to further revision if appropriate, following receipt of last minute comments.

**PUBLIC COMMENT SUMMARY:**

As of the drafting of this paper, we have received five comments. The Ombudsman, the Registry Stakeholder Group, and the Root Server System Advisory Committee all support the revisions to the Standards as posted for public comment. One individual, Luc Sufer, also agreed the modifications to the Standards fit the purpose, but suggested that the definition be more limited to account for cultural differences. Finally, another individual, Ricardo Holmquist, suggested reordering the first two lines of the newly proposed paragraph of the Standards.

Given that the majority of the commenters support the revisions as presented, and the goal is to be as broad in definition as possible to make clear that there is zero tolerance for the conduct addressed in the revised Standards, no further revisions are recommended at this time. The public comment forum closes on 25 June 2016, which is the date of the currently scheduled Board meeting. Staff will update the Board during the meeting to the extent additional comments are received, and in particular, if any substantive comments are received that may support further revisions.

**PROPOSED RESOLUTION:**

Whereas, during and after ICANN55, the issue of certain community-member conduct toward one another has been raised in various sessions and lists.

Whereas, among other activities to address this issue, the Board authorized the posting for public comment a revised Expected Standards of Behavior to more fully address the issues.

Whereas, the majority of the comments received generally support the revisions.

Whereas, per resolution 2016-05-15, ICANN in the process of working to retain an expert with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN Public Meetings (see .)

Resolved (2016.06 xx xx), the Board hereby adopts the revised Expected Standards of Behaviors as they were posted for public comment on 16 May 2016, with slight modification for clarification.

**PROPOSED RATIONALE:**

During and after ICANN55, the issue of certain community-member conduct toward one another has been raised in various sessions and lists, and the Board agreed to address this matter. In response, the Board confirmed and reiterated that ICANN’s Board and staff take the issue of harassment or other improper conduct at its meetings very seriously. ICANN and members of the community share the goal of ensuring that ICANN community members are able to participate and contribute within an environment that does not tolerate discrimination and that remains free from harassment.

As an organization ICANN has robust internal policies regarding the issue, including mandatory training for staff and Board members. While ICANN community members are not bound to the same policies and rules as the ICANN Board and staff, ICANN does expect community members to adhere to certain Expected Standards of Behavior. The currently approved language of the Standards does not specifically address harassment, but does provide a set of high-level guidelines for interacting with one another.

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The Board committed to look at whether the Expect Standards of Behavior could be revised to more directly address harassment. In furtherance of that commitment, the Board Governance Committee (BGC) proposed certain revisions to the language of the Expect Standards of Behavior, and the Board authorized those proposed revised Standards be posted for public comment. The public comment window opened on 16 May 2016 and closed on 25 June 2016.

As of 25 June 2016, we have received ten comments, which the Board has considered (see <https://forum.icann.org/lists/comments-expected-standards-revisions-16may16/>). Below is a very brief summary of the comments that have been considered, which will be reflected in more detail in the Staff Report of Public Comment Proceeding, which will be posted shortly. In sum, six commenters support the revisions to the Expected Standards of Behavior as posted for public comment (although we note that one comment has not yet been ratified). One commenter agreed the modifications to the Standards fit the purpose, but suggested that the definition be more limited to account for cultural differences. Other commenters have identified various terms and phrases within the Standards that they believe could be better defined or clarified, or reordered. Three of the commenters have expressly encouraged ICANN to continue working on an anti-harassment policy/procedure for the community. Finally, one of the commenters has also indicated that it is important to provide clear information about where to report violations of the Expected Standards of Behavior and how those violations will be addressed, and to provide education on the Expected Standards of Behavior.

The Board thanks the commenters for their views. At the outset, the Board wants to remind community members that the Board has specifically directed the organization to work with the community to help develop an anti-harassment policy/procedure.

Resolved (2016.05.15.05), the Board hereby directs the President and CEO, or his designee(s), to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN Public Meetings, which could include items such as complaints handling and resolution and enforcement processes.

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See <https://www.icann.org/resources/board-material/resolutions-2016-05-15-en#1.d>. As directed, the ICANN staff is in the process of following the Board's direction. That work is in progress and it is anticipated that a proposal will be provided to the community for further discussion in the coming weeks.

Given that the majority of the commenters support the revisions to the Expected Standards of Behavior as presented, and the goal is to be as broad in definition as possible to make clear that there is zero tolerance for the conduct addressed in the revised Standards, the Board has determined to adopt the revised Standards as they were posted for public comment, with one slight clarification. The Board notes that the Expected Standards of Behavior are meant to be high level, and general statements about how ICANN participants should treat each other, and they are admittedly not meant to be formal policies of conduct with defined actionable consequences. However, the Board will evaluate the suggestion that there be clear direction on how and where to report any transgression to the Expected Standards of Behavior. Further, we expect that many of the comments indicating that some of the terms contained in the revised Expected Standards of Behavior could be better defined or clarified are better addressed in the policy that is still under development, as commenters have suggested, rather than in the Expected Standards of Behavior document itself. The Board will also look at whether to require folks to affirmatively agree to the Expected Standard of Behavior. However, the Board wants to emphasize that all who participate in ICANN activities are already subject to the Expected Standards of Behavior and the Board will look for ways to better socialize awareness of them.

With respect to the comment about accounting for cultural differences, the Board notes that this is an important consideration, and expects that any evaluation of conduct that might be challenged will certainly take those differences into account.

The public comment forum closed on 25 June 2016.

It is not anticipated that the decision to adopted revised Expected Standards of Behavior will have any fiscal impact on ICANN, and it will not have any impact on the security, stability or resiliency of the domain name system.

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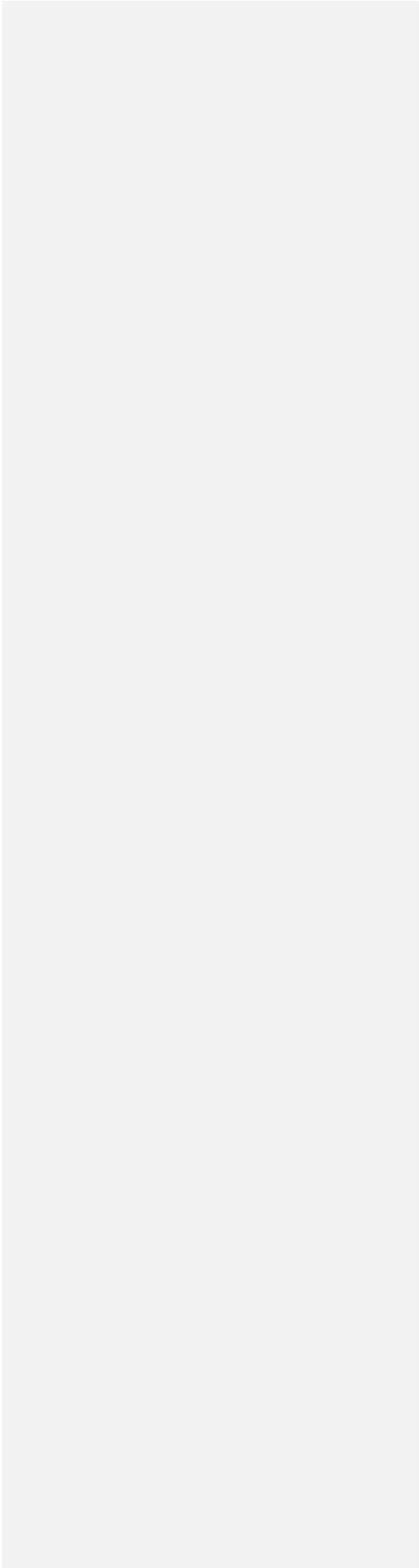
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**Deleted:** As a reminder, in parallel, the Board directed the President and CEO, or his designee(s), to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN Public meetings. The Board understands that this process is currently underway .

This decision is an Organizational Administrative Function that has already completed the public comment process.

Submitted By: Amy A. Stathos, Deputy General Counsel  
Dated Noted: 15 June 2016  
Email: amy.stathos@icann.org



**ICANN BOARD SUBMISSION NO. 2016.06.xx.xx**

**TITLE:** **Revised Expected Standards of Behavior**

**PROPOSED ACTION:** **For Board Approval**

**EXECUTIVE SUMMARY:**

In mid-May 2016, the Board authorized the posting for public comment a revised version of the ICANN Expected Standards of Behavior (Standards). The revisions to the Standards reflect just one of the various actions ICANN has undertaken to address the issue of certain community-member conduct toward one another that was raised at and after ICANN 55. In posting the revised Standards immediately following the Amsterdam Board Retreat, the goal was for the Board to approve the revised version of the Standards, subject to consideration of public comments, just before the Helsinki meeting. The Board is now being asked to adopt the revised Standards as reflected in the Reference Materials document to this Board paper, subject to further revision if appropriate, following receipt of last minute comments.

**PUBLIC COMMENT SUMMARY:**

As of the drafting of this paper, we have received five comments. The Ombudsman, the Registry Stakeholder Group, and the Root Server System Advisory Committee all support the revisions to the Standards as posted for public comment. One individual, Luc Sufer, also agreed the modifications to the Standards fit the purpose, but suggested that the definition be more limited to account for cultural differences. Finally, another individual, Ricardo Holmquist, suggested reordering the first two lines of the newly proposed paragraph of the Standards.

Given that the majority of the commenters support the revisions as presented, and the goal is to be as broad in definition as possible to make clear that there is zero tolerance for the conduct addressed in the revised Standards, no further revisions are recommended at this time. The public comment forum closes on 25 June 2016, which is the date of the currently scheduled Board meeting. Staff will update the Board during the meeting to the extent additional comments are received, and in particular, if any substantive comments are received that may support further revisions.

**PROPOSED RESOLUTION:**

Whereas, during and after ICANN55, the issue of certain community-member conduct toward one another has been raised in various sessions and lists.

Whereas, among other activities to address this issue, the Board authorized the posting for public comment a revised Expected Standards of Behavior to more fully address the issues.

Whereas, the majority of the comments received generally support the revisions.

Whereas, per resolution 2016-05-15, ICANN in the process of working to retain an expert with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN Public Meetings (see .)

Resolved (2016.06.xx.xx), the Board hereby adopts the revised Expected Standards of Behaviors as they were posted for public comment on 16 May 2016, with slight modification for clarification.

**PROPOSED RATIONALE:**

During and after ICANN55, the issue of certain community-member conduct toward one another has been raised in various sessions and lists, and the Board agreed to address this matter. In response, the Board confirmed and reiterated that ICANN's Board and staff take the issue of harassment or other improper conduct at its meetings very seriously. ICANN and members of the community share the goal of ensuring that ICANN community members are able to participate and contribute within an environment that does not tolerate discrimination and that remains free from harassment.

As an organization ICANN has robust internal policies regarding the issue, including mandatory training for staff and Board members. While ICANN community members are not bound to the same policies and rules as the ICANN Board and staff, ICANN does expect community members to adhere to certain Expected Standards of Behavior. The currently approved language of the Standards does not specifically address harassment, but does provide a set of high-level guidelines for interacting with one another.

The Board committed to look at whether the Expected Standards of Behavior could be revised to more directly address harassment. In furtherance of that commitment, the Board Governance Committee (BGC) proposed certain revisions to the language of the Expected Standards of Behavior, and the Board authorized those proposed revised Standards be posted for public comment. The public comment window opened on 16 May 2016 and closed on 25 June 2016.

As of 25 June 2016, we have received ten comments, which the Board has considered (see <https://forum.icann.org/lists/comments-expected-standards-revisions-16may16/>). Below is a very brief summary of the comments that have been considered, which will be reflected in more detail in the Staff Report of Public Comment Proceeding, which will be posted shortly. In sum, six commenters support the revisions to the Expected Standards of Behavior as posted for public comment (although we note that one comment has not yet been ratified). One commenter agreed the modifications to the Standards fit the purpose, but suggested that the definition be more limited to account for cultural differences. Other commenters have identified various terms and phrases within the Standards that they believe could be better defined or clarified, or reordered. Three of the commenters have expressly encouraged ICANN to continue working on an anti-harassment policy/procedure for the community. Finally, one of the commenters has also indicated that it is important to provide clear information about where to report violations of the Expected Standards of Behavior and how those violations will be addressed, and to provide education on the Expected Standards of Behavior.

The Board thanks the commenters for their views. At the outset, the Board wants to remind community members that the Board has specifically directed the organization to work with the community to help develop an anti-harassment policy/procedure.

Resolved (2016.05.15.05), the Board hereby directs the President and CEO, or his designee(s), to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN Public Meetings, which could include items such as complaints handling and resolution and enforcement processes.

See <https://www.icann.org/resources/board-material/resolutions-2016-05-15-en#1.d>. As directed, the ICANN staff is in the process of following the Board's direction. That work is in progress and it is anticipated that a proposal will be provided to the community for further discussion in the coming weeks.

Given that the majority of the commenters support the revisions to the Expected Standards of Behavior as presented, and the goal is to be as broad in definition as possible to make clear that there is zero tolerance for the conduct addressed in the revised Standards, the Board has determined to adopt the revised Standards as they were posted for public comment, with one slight clarification. The Board notes that the Expected Standards of Behavior are meant to be high level, and general statements about how ICANN participants should treat each other, and they are admittedly not meant to be formal policies of conduct with defined actionable consequences. However, the Board will evaluate the suggestion that there be clear direction on how and where to report any transgression to the Expected Standards of Behavior. Further, we expect that many of the comments indicating that some of the terms contained in the revised Expected Standards of Behavior could be better defined or clarified are better addressed in the policy that is still under development, as commenters have suggested, rather than in the Expected Standards of Behavior document itself. The Board will also look at whether to require folks to affirmatively agree to the Expected Standard of Behavior. However, the Board wants to emphasize that all who participate in ICANN activities are already subject to the Expected Standards of Behavior and the Board will look for ways to better socialize awareness of them.

With respect to the comment about accounting for cultural differences, the Board notes that this is an important consideration, and expects that any evaluation of conduct that might be challenged will certainly take those differences into account.

The public comment forum closed on 25 June 2016.

It is not anticipated that the decision to adopted revised Expected Standards of Behavior will have any fiscal impact on ICANN, and it will not have any impact on the security, stability or resiliency of the domain name system.

This decision is an Organizational Administrative Function that has already completed the public comment process.

Submitted By: Amy A. Stathos, Deputy General Counsel  
Dated Noted: 15 June 2016  
Email: amy.stathos@icann.org

**Directors and Liaisons,**

**Attached below please find Notice of date and time for a Regular Meeting of the ICANN Board.**

**25 June 2016 – Regular Meeting of the ICANN Board of Directors - at 15:00 UTC (6:00pm – 7:00pm in Helsinki). This Board meeting is estimated to last approximately 60 minutes.**

**<http://www.timeanddate.com/worldclock/fixedtime.html?msg=ICANN+Board+Meeting&iso=20160625T18&p1=101&ah=1>**

**Some other time zones:**

**25 June 2016 – 8:00am PDT Los Angeles**

**25 June 2016 – 11:00am EDT Washington, D.C.**

**25 June 2016 – 5:00pm CEST Brussels**

**25 June 2016 – 11:00pm CST Taipei**

**26 June 2016 – 1:00am AEST Sydney**

## **REGULAR MEETING OF THE ICANN BOARD**

### **Consent Agenda**

- Approval of Board Mtg Minutes from 19 April, 15 May and 27 May 2016
- Thank you from Security and Stability Advisory Committee
- Delegation of the бг (“bg”) domain representing Bulgaria in Cyrillic script to Imena.BG Plc (Names.BG Plc)
- FY17 Operating Plan and Budget
- Consideration of Independent Review Panel’s Final Declaration in the *Donuts Inc. v. ICANN* IRP

### **Main Agenda**

- Independent Review of the Generic Names Supporting Organization Final Report and Recommendations
- Revised Expected Standards of Behavior

- New gTLD Program: Reviews and Future Path
- Review of .HOTEL Application Status – for discussion
- AOB

**MATERIALS – You can access the Board Meeting materials in Google Drive here:**

Contact Information Redacted

**If you have trouble with access, please let us know and we will work with you to assure that you get access to the documents.**

**If call information is required, it will be distributed separately.**

**If you have any questions, or we can be of assistance to you, please let us know.**

**John Jeffrey**

**General Counsel & Secretary, ICANN**

**[John.Jeffrey@icann.org](mailto:John.Jeffrey@icann.org) <[John.Jeffrey@icann.org](mailto:John.Jeffrey@icann.org)>**

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