

Annex 1



New gTLD Application Submitted to ICANN by: GCCIX WLL

String: GCC

Originally Posted: 13 June 2012

Application ID: 1-1936-21010

Applicant Information

1. Full legal name

GCCIX WLL

2. Address of the principal place of business

Contact Information Redacted

3. Phone number

Contact Information Redacted

4. Fax number

Contact Information Redacted

5. If applicable, website or URL

<http://www.gccix.net>

Primary Contact

6(a). Name

Mr. Fahad Al Shirawi

6(b). Title

CEO

6(c). Address

6(d). Phone Number

Contact Information Redacted

6(e). Fax Number

6(f). Email Address

Contact Information Redacted

Secondary Contact

7(a). Name

Mr. Mark Dranse

7(b). Title

Chief Technical Officer

7(c). Address

7(d). Phone Number

Contact Information Redacted

7(e). Fax Number

Contact Information Redacted

7(f). Email Address

Contact Information Redacted

Proof of Legal Establishment

8(a). Legal form of the Applicant

WLL (With Limited Liability, Bahraini LLC)

8(b). State the specific national or other jurisdiction that defines the type of entity identified in 8(a).

Bahrain

8(c). Attach evidence of the applicant's establishment.

Attachments are not displayed on this form.

9(a). If applying company is publicly traded, provide the exchange and symbol.

9(b). If the applying entity is a subsidiary, provide the parent company.

9(c). If the applying entity is a joint venture, list all joint venture partners.

Applicant Background

11(a). Name(s) and position(s) of all directors

Fahad Abdulmonem Mohamed Alshirawi	Chairman
Mazen Abdulelah A.Rahim Alkooheji	Board Member
Omran Abedali Hasan Alaradi	Board Member

11(b). Name(s) and position(s) of all officers and partners

Fahad Abdulmonem Mohamed Alshirawi	CEO and Managing Director
Ijaz Samuel Fiaz	CFO
Mark Dranse	CTO
Mohammed Al Khalifa	Business Development Director

11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares

Fahad Abdulmonem Mohamed Alshirawi	CEO and Managing Director
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11(d). For an applying entity that does not have directors, officers, partners, or shareholders: Name(s) and position(s) of all individuals having legal or executive responsibility

Applied-for gTLD string

13. Provide the applied-for gTLD string. If an IDN, provide the U-label.

GCC

14(a). If an IDN, provide the A-label (beginning with "xn--").

14(b). If an IDN, provide the meaning or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.

14(c). If an IDN, provide the language of the label (in English).

14(c). If an IDN, provide the language of the label (as referenced by ISO-639-1).

14(d). If an IDN, provide the script of the label (in English).

14(d). If an IDN, provide the script of the label (as referenced by ISO 15924).

14(e). If an IDN, list all code points contained in the U-label according to Unicode form.

15(a). If an IDN, Attach IDN Tables for the proposed registry.

Attachments are not displayed on this form.

15(b). Describe the process used for development of the IDN tables submitted, including consultations and sources used.

15(c). List any variant strings to the applied-for gTLD string according to the relevant IDN tables.

16. Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.

There are no known issues, specific operational or rendering issues with the applied for string. It is a Latin alphabet based string that conforms to the specifications laid out in RFC 1035.

As with all new TLDs there is the potential for legacy applications to fail to recognize the new TLD string. Some older applications may have hardcoded lists of "valid" TLDs or, worst case, assume anything that isn't ".com", ".net" or ".org" is not valid. There are existing initiatives, including The Public Suffix List operated by the Mozilla Foundation, which we will work with to help educate the broader Internet Community.

17. (OPTIONAL) Provide a representation of the label according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>).

Mission/Purpose

18(a). Describe the mission/purpose of your proposed gTLD.

Model: .GCC is an open Top Level Domain (TLD) created specifically to enhance and develop the provision of Internet services for users in the Gulf and Middle East region.

.GCC will be marketed globally to provide a competitive alternative to existing generic TLDs, regional country code TLDs and to other new TLDs. .GCC will be operated as a commercial for-profit venture with a network of registrars and a low-cost platform for ongoing management.

Mission:

GCCIX intends to position the .GCC TLD as a broadly distributed alternative to .COM, .NET and .BIZ and other widely used TLDs and ccTLDs such as the existing regional ccTLD offerings. Our goal is bring to the region a top-level domain that operates to the highest international standards of registry practices and services. We are committed to providing exemplary functional utility as well as an opportunity for Internet users with a connection to the Gulf and Middle East to secure a domain name in a new, innovative and competitive TLD.

The clearly expressed goal of ICANN is that the Internet should operate as a universal resource, equally accessible and operable by all, irrespective of language, location or culture. It is equally clear that the starting point of the Internet has naturally favored an embedded culture of English usage and preferences.

This round of development is a clear reassertion of ICANN's goals and enables the opportunity to address embedded imbalances to open access for communities of current and potential users. Moreover, ICANN has recognized that the overwhelming dominance of .COM has perpetually advantaged those who had the opportunity for early registration. New communities of users are effectively excluded from the benefits of registration in .COM by the overpopulation of the DNS, and are unable to rebalance their lack of opportunity without preferential access to newly created TLDs that have the potential to be as influential as .COM in their own sphere of interest (whether geographic or topical).

.GCC will create a region-specific new TLD that allows previously excluded and disadvantaged

users to take a stake in a meaningful cultural and economic tool that is specifically designed to respond to their linguistic, cultural and specific business needs. GCC refers generally, but not exclusively, to the Cooperation Council for the Arab States of the Gulf. Formed in May 1981 as a regional organization, it consists of six Gulf countries including Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates. Its main objectives are to enhance coordination, integration and inter-connection between its members in different spheres. This application is not connected with or sponsored by the Council. .GCC does not purport to represent the Council. However, the term "GCC" has become commonly used to refer generally to the countries and people of the Gulf and Middle East region. It is expected that the general usage and understanding of the region encapsulated by the term "GCC" will continue to grow. The generally accepted broad usage of "GCC" allows for a generic TLD that creates a logical and easily identifiable connection for registrants and Internet users who share common interests in the region, not dissimilar to the development of the European Union which has been served for many years by the .eu domain.

.GCC will:

- * Create a viable, innovative and competitive alternative to existing gTLDs and regional ccTLDs
- * Demarcate a clear identity on the Internet for registrants who see value in establishing a domain under .GCC
- * Significantly enhance existing Internet and TLD services in the region using the Arabic language and script
- * Offer new opportunities for Internet user communities and migrating registrants to secure domain names that are relevant to their activities and (trading) name(s) in a new, innovative, and competitive TLD
- * Establish high level registry and registrar protocols for the benefit of consumers
- * Support stakeholders in the region in beginning to compete globally in an economy increasingly driven by Internet business and communication
- * Comply with all requirements of the laws of the Kingdom of Bahrain & other member states
- * Demonstrate exemplary standards of community commitment and leading corporate social responsibility leadership to the operation of a TLD registry
- * Operate the TLD with respect for cultural sensitivities

Mission in Context:

ICANN has set out a number of goals regarding the introduction of new generic top-level domains (gTLDs). Among the most important of these are the following:

1. The need to maintain the Internet's stability and especially the protection of domain name holders from the effects of registry or registration-system failure.
2. The extent to which approval of the application would lead to an effective proof of concept concerning the expansion of the number of top level domains including:
 - * the diversity the proposed TLD would bring to the top level of the Internet to include fully open top level domains, restricted and chartered domains with limited scope, commercial domains, and personal domains
 - * support of a variety of business models and geographic locations.
3. The enhancement of competition for registration services at the registry and registrar level.
4. The enhancement of the utility of the DNS.
5. The extent to which the proposal would meet previously unmet needs.
6. The importance of appropriate protections of the rights of others, including intellectual property rights in connection with the operation of the TLD, especially during the start-up phases.

Purpose:

The purpose of this TLD is to:

- * Advance the goals of ICANN as set out above
- * Fulfill the TLD's mission as stated above

18(b). How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

i. goal in terms of specialty, service levels, reputation

Definitions:

Registrants: Registrants includes all those who register a domain name in the TLD and who act in accordance with the stated user policies.

Users: Users includes the broader Internet community of users who interact with the TLD.

Others: Others whose interest is relevant to this application includes regulators, policy makers and other public authorities

Specialty experience

The Registry operations team brings considerable specialty experience in the Internet industry both in relation to high-level policy development, launch, operation and management practice in the region and globally. These experiences include managing domain name operations at the UK's first consumer ISP, running a globally distributed DNS monitoring platform used by numerous Root Server and TLD registry operators, founding an ISP-telecommunications company and a regional Internet Exchange, and serving as Founding Chairman of the Middle East Network Operators Group (MENOG). In addition, there is experience operating at executive board and management levels within the Regional Internet Registry that serves the Middle East. Significant marketing resources together with registrar partnerships and technical facilities enable the Registry to specialise in the provision of a competitive TLD that is an alternative to existing TLDs.

The Registry's services will be driven by customer focus, liberal policies balanced by cultural sensitivity, technological innovation and channel management expertise. The cultural backgrounds and participation of the online community are key drivers of the services provided by GCCIX. GCCIX is mindful of the importance of confidence in the operation of the Internet. It is core to the application to be a Registry that is a leading model for Internet stability and security.

Service Levels

In order to advance its mission as stated above, GCCIX has brought together a team with expertise, experience and technical capacity to ensure that the TLD is operated to the best industry standards, in compliance with ICANN's registry contract. The Registry will provide substantial network infrastructure that can guarantee maximum performance and reliability as well as scale seamlessly to meet variations in demand.

Reputation

GCCIX is committed to ensuring that the reputation of .GCC is enhanced by this delegation. The services and operability of .GCC have been designed with the specific policy goals of ICANN in mind.

GCCIX believes that its responsibility as a registry extends beyond registrants and users of the Internet. Our credentials as an organization motivated to provide high-level public services are well established. GCCIX was created in August 2011 as the Gulf's first truly independent Internet Exchange Point, entirely free of any carrier or government involvement. GCCIX has also facilitated the expansion of the CDN and DNS Root Server regional footprint. Our commitment to the development of Internet services in the region rests on the fundamental belief that the Internet must continue as an open resource that advances universal benefits.

Our intention is to support the goals of ICANN and the original concept of the Internet as a universal resource by acting philanthropically and inspirationally in the dedication of our services. We have made significant investment in the above-mentioned developments with neither the expectation nor motivation of profit. The return and value creation we seek is developing the Internet as a tool that will stimulate economic growth, development and benefit to all users. Our participation in the region enables us to understand the historic context, the contemporary needs, and the future potential for the region to flourish as part of the international Internet community. Our application for the .GCC TLD represents a logical extension of our endeavors.

ii.

Context for Competition

Statistical evidence demonstrates the continued expansion of Internet registrations. The number of domains in the current generic TLD space (for example.COM, .NET, .ORG, .INFO, .BIZ and . US) is in excess of 135 million (see <http://www.whois.sc/internet-statistics>) and there are over 215 million registered domain names in all TLDs. In the second quarter of 2011 more than five million domain names were added to the Internet, marking a growth rate of 2.5% over the first quarter.

The .COM and .NET TLDs experienced aggregate growth, surpassing a combined total of 110

million names in the second quarter of 2011, representing a 1.8 percent increase in the base over the first quarter of 2011 and an 8.3 percent increase over the same quarter in 2010. In the same period, 2.9 million ccTLD domain names were added, bringing total ccTLD registrations to approximately 84.6 million. This is an increase of approximately 6.6 million domain names, or 8.4 percent from a year ago.

The enthusiastic take-up rate is evidence of the positive impact of increased TLD opportunities. While .COM will continue for some time to be dominant in the domain name market, there is clear evidence that consumers seek TLD innovation and differentiation.

In particular, the following issues arise in the current environment:

- * challenges for registrants to secure a unique and appropriate name within a heavily populated gTLD space
- * challenges for users to locate authentic sources of information
- * cybersquatting and entrenched inactive ownership of domain names

Competition

Research indicates that, in contrast to the global context described above, the GCC regional ccTLD market has had slow growth, and for the most part, this is due to a lack of competition, high prices, restrictive policies, manual processing of applications and long delegation delays.

With 40 million inhabitants, the region has an estimated combined total of just 200,000 registrations across six country codes, five of which require proof of a local presence to register a domain name. Registration times are much longer than in registries that use standard EPP systems. This is largely true because of manual processes in place that mandate the manual verification of presence requirements. Registration fees in these regionally focused domains are multiple times that of broadly available TLDs. Unsurprisingly, many registrants prefer to use the established gTLDs even though this means settling for a less appropriate name.

.GCC represents a strong competitive alternative to existing regional ccTLDs by providing instant registration and delegation under the most liberal framework permitted by law, within a TLD which has local significance. The advantage over generic TLDs is that .GCC will provide more 'first choice' labels while respecting important local cultural considerations. We believe that introducing such competition will stimulate other TLDs within the region.

.GCC will be a valuable digital asset dedicated residents living and working in the region. Registrants will have the opportunity to create and control an online identity reflective of their culture and society and with the potential to help fuel greater Internet use across the region. GCCIX's proposal is founded on the belief that competition in the marketplace makes for stronger, more innovative and more creative alternatives for the consumer.

Like other actions that remove artificial barriers to entry, the likely effect of the expansion of this TLD is to increase innovation and lower prices over the longer term. GCCIX has allocated appropriate funding to ensure the long-term viability and stability of its proposed registry. We believe that standards and services in the technical solution are paramount for delivering optimal service.

Differentiation

The differentiation of this registry from existing market offerings is key to competition. .GCC is explicitly by:

- * A unique and meaningful three letter string
- * The most liberal policies of any TLD in the region whilst maintaining respect for cultural sensitivities
- * Preferential opportunities for registration, described launch policies below
- * The opportunity to self-select a regional affiliation that reaches past jurisdictional boundaries. Previously, entities in the area were caught between narrow ccTLD presence requirements on one side and an undifferentiated global registration pool in the gTLD marketplace on the other.

GCCIX has a rich understanding of the needs of the global and local Internet community and is committed to building a domain name system that grows with and responds to the needs for services, products and information sought by the local community. A steady, secure and responsive service that offers users a competitively priced and distinctive service will enable the TLD to operate as a genuine and enduring alternative to existing TLDs.

Future opportunities for differentiation

GCCIX is committed to providing IDN support at the second level in the future, once registry operations are stable. Whereas the primary language of the region is Arabic, half of the registries serving the region only permit registrations using ASCII characters. GCCIX believe that it is fundamentally important to support Arabic script if .GCC is to succeed. We observe that there are significant number of groups within the GCC region that use other non-roman, non-Arabic scripts (for example the Indian and Filipino communities). We will gauge community demand with respect to supporting additional character sets.

Innovation

GCCIX believes that in a vital public and business service such as the Internet, innovation must be founded on the critical requirements of DNS stability & security. Policies for the .GCC registry have been developed to extend and enhance existing procedures in an incremental and cooperative manner.

iii.

We aim to ensure that the user experience achieves the following outcomes:

- a) Customer Service: rapid, responsive and reliable customer service using leading technology supporting the registrant from registration onward
- b) Accessibility: preferential registration opportunities to support policies of regional access to a new attractive TLD
- c) Robust neutrality, data security and privacy
- d) Robust data escrow
- e) Internet standards regarding naming and reserved names
- f) Liberal, yet culturally sensitive standards of acceptable-use policy and registrar agreements
- g) Leading protocols on Technology, Anti- Cybersquatting and WHOIS.

iv.

GCCIX has developed the following explicit policies to support the user-experience goals enunciated in above.

(a) Customer service

There is strong evidence that Internet registration and usage grows where service quality is enhanced. One regional ccTLD adopted EPP and rapidly represented approximately 45% (approximately 90,000 of 200,000) of the regional non-generic registrations. Unfortunately, this benefit was only available to users of that ccTLD. The untapped potential in the region of the Internet as an accessible resource for business and communication will be addressed by the introduction of the .GCC TLD.

The development of a clear channel to market for new second level registrations is critical to the success of any TLD. Strong cooperative relationships with local registrars will be forged.. GCCIX has committed funding, focused management of TLD programs across registrars, and registrar participation in program management.

(b) Accessibility

In order to compete with existing generic TLDs, .GCC will offer unrestricted access to registrants subject to comprehensive ICANN approved privacy and trademark protections. Our sunrise and landrush policies will enable early opportunities for entities in the region to secure their preferred domain name in the .GCC space.

GCCIX is committed to the operation and development of an outstanding registry that expands the accessibility and function of the Internet to new communities. A commitment to leading Internet corporate citizenship remains a critical element of the financial and policy platform.

GCCIX has focused particularly on policies and procedures that enhance the external benefits of .GCC. More particularly the facilitation of trademark protection both before and after domain name registration, sunrise service, trademark claims service and opportunities for entry after landrush.

We believe that an immediate benefit to the Internet community is the open access to a new gTLD that will relieve name scarcity and offer new and fair opportunities to acquire domain names. As new Internet communities are established, the issue of name scarcity becomes both more pressing and emphasizes the entry disadvantages to new registrants. The "level playing field" created by .GCC enables users to establish a meaningful Internet presence with a registry that is committed to strong marketing strategies to support the value, trust, and credibility of the TLD name.

(c) Robust Neutrality

The Registry will be operated on best industry and ICANN practices to ensure that it is a trusted, unbiased provider of core Internet DNS functionality while providing consistent and stable operation of a new TLD.

(d) Robust Data Security & Privacy

The Registry, as a neutral and trusted registry, must maintain the trust of the registrars and the consumers. Therefore, the Registry will not market in any way the registrant information obtained from registrars for purposes of running the registry nor will it share that data with any unrelated third parties.

The Registry will provide registrars with a mechanism for accessing and correcting personal data and will take reasonable steps to protect personal data from loss, misuse, unauthorized disclosure, alteration or destruction.

In addition, as part of the Registrar Code of Conduct, registrars will be required to abide by all applicable international, national, and local laws regarding data privacy and information collection.

(e) Robust Data Escrow: The Registry will follow all data escrow requirements mandated by ICANN and work with an ICANN accredited Data Escrow provider.

(f) Internet Standards Regarding Naming & Reserved Names

The Registry will reserve and block the registration of names as specified in Schedule 5 of the Registry Agreement. The Registry will reserve for itself a small number of names necessary for the secure operational and technical functions of the registry.

(g) Acceptable Use Policy and Registrar Agreements

The policy of the Registry and contracted registrars relating to the computer systems, hardware, servers, bandwidth, telecommunications transport and e-mail routing provided by the Registry and Domain Provider(s) will promote the integrity, security, reliability and privacy of the Registry Network and the Registrar(s).

The Registry's policy will follow leading industry standards that support the free flow of information over the Internet and inhibit the transmission of materials that offend relevant laws, rights, interests and codes of conduct. The policy will provide a complaints procedure and enforcement mechanisms.

The Registry and Domain Provider(s) and/or the Registrar may at its sole discretion remove any content or material or services such as URL forwarding, Email forwarding, DNS hosting, WHOIS protection and proxy privacy services from its servers, or terminate access to the Registry Network where it has been determined by the Registry and Domain Provider(s) and/or the Registrar that a registrant has violated the Acceptable Use Policy.

(h) Leading Protocols on Technology, Anti-Cybersquatting & WHOIS

The Registry will adhere to all existing ICANN policies as well as commit to further evolution of TLD policies that advance ICANN's core principles in the operation of the Internet. While this round of applications for new TLDs may revolutionize the Internet, the Registry believes that such revolution be supported by evolutionary development of operational rules. The Registry is committed to a full and cooperative partnership with ICANN in the growth of Internet services on a secure and sustained basis through, for example, Generic Names Supporting Organisation policy development processes.

v.

GCCIX recognizes the importance of balancing individual privacy rights with the rights of intellectual property owners, law enforcement and other interested third parties who have

access to WHOIS data for legitimate uses. Comprehensive privacy and authentication rules are built into the operation of .GCC consistent with requirements under the Registry Agreement.

As privacy and confidentiality of personal information are key elements in the provision of a positive user experience, the Registry will take all reasonable steps to protect personal data from loss, misuse, unauthorized disclosure, alteration or destruction. The Registry will also comply, in accordance with the Registry Agreement, with all existing and future consensus policies as formally adopted by ICANN.

The Registry will operate a WHOIS service in accordance with Specification 4 of the Registry Agreement, in full compliance with applicable privacy laws or policies. The Registry will also implement appropriate measures to avoid abuse of WHOIS in order that access is restricted to legitimate authorized users. As the Registry will only use ICANN-accredited registrars, the registrars will be required to implement the data privacy policies as defined in the Registrar Accreditation Agreement.

vi. Describe whether and in what ways outreach and communications will help to achieve your projected benefits

Context for Projected Benefits

It is clear from historic data relating both to registrations in.COM and other generic TLDs, as well as industry specific and country-code registrations, that the demand for unrestricted domain names has grown exponentially. The number of registrations in the.COM TLD far outstrips all of the other TLDs. There are no indications that there will be any slowing of this trend and demand is expected to continue to grow as the needs of new generations of Internet users evolve.

Registrant < User Outreach and Communication

GCCIX will communicate to users through wide public and industry channels. While accurate predictions of the initial volume of registration requests can only be speculative, GCCIX will ensure that it is able to provide contingencies for the case where demand greatly exceeds predictions. Through its appointed marketing partners, the Registry will market and brand.GCC in the target region and worldwide. Through these marketing efforts, the Registry acts to fulfill ICANN's mission to enhance the functionality and usability of the Internet on a global basis.

Registrar Outreach and Communication

The Registry will undertake a pro-active educational campaign with registrars to quantify the opportunity for Internet end-users. This will involve a systematic information drive and personal contact from the registry customer support staff and account managers.

Registry Outreach and Communication

The Registry will allocate resources to fund and support collaboration, knowledge sharing, and adoption of best practices among all TLD operators in the GCC region.

User Outreach and Communication

GCCIX will actively seek opportunities to promote awareness of and activities to combat issues such as online threats, phishing and cybercrime. These opportunities may be pursued as annual awards, educational initiatives at all levels of the Internet's user population including at educational establishments, and participation in conferences, and other similar activities.

18(c). What operating rules will you adopt to eliminate or minimize social costs?

i. resolving competing applications

Policy Context

The Registry is committed to the broad policy goals expressed by ICANN in the evolution of this round of expansion of TLDs. Consistent with those policies, it is committed to providing a scalable, comprehensive and stable addition to the DNS.

Registry choice and consumers

A key consumer benefit will flow from the right selection of Registrars. The Registry will select ICANN-accredited registrar(s) that wish to enter into an agreement to register domain names in the TLD. As part of the selection process, the Registry will evaluate each registrar on a case-by-case basis, weighing the following characteristics:

- Thorough understanding of the principles and intentions underlying the registration policies;
- Geographic and language diversity reflecting the diversity of the region
- Dedicated willingness and ability to propagate and enforce specifications or policies in an observant and diligent manner and in accordance with policies and procedures prescribed by Registry Operator;
- Demonstrated willingness and ability to publicize and market .GCC, and to use .GCC marketing materials as appropriate;
- Demonstration that sufficient staff resources are available and that the ability to interface with automated and manual elements of the TLD registry process is inbuilt;
- Demonstrated systems designed to avoid submission of clearly inappropriate applicants and
- Demonstrated systems designed to avoid any disputes regarding transfers among registrars.

In order to ensure a fair and open opportunity to enter into a registry-registrar agreement, the Registry will review and revise our selection of registrars and registrar criteria from time to time.

Competing Applications and Intellectual Property Protection - Sunrise

In relation to contention that involve intellectual property, The Registry will minimise costs to consumers in protecting their intellectual property through the following mechanisms:

- (i) implementation of the Schedule of Reserved Names set out in Specification 5 of the Registry Agreement
- (ii) implementation and adherence to rights protection mechanisms that may be mandated from time to time by ICANN, including all mechanisms mandated in Specification 7 of the Registry Agreement
- (iii) implementation in accordance with the requirements established by ICANN of each of the mandatory rights protection mechanisms set forth in the Trademark Clearinghouse
- (iv) compliance with ICANN rules on dispute resolution mechanism as they may be revised from time to time, including the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) when the final procedure is adopted
- (v) compliance with the Uniform Rapid Suspension system (URS)
- (vi) Sunrise registration services in accordance with the Registry Agreement. The Sunrise period will be in place for at least a 30 day period to allow eligible rights holders to register names in the TLD. A Sunrise A will be for eligible trademarks compliant with the Registry Policy. Sunrise B will be used for all other eligible trademarks. Clear rules for the Sunrise policy and processes will be published well ahead of Registry launch. There will be a Sunrise Dispute Resolution Policy.
- (vii) A Notification service to trade mark owners who have registered in the Trademark Clearinghouse that someone else is applying for a Sunrise registration for an exact match.
- (viii) A Trademark Claims service (for at least 60 days) to provides notice to potential registrants of existing trademark rights that are registered in the Trademark Clearinghouse (that is, a warning to not register a name that might infringe).

Competing Applications - Landrush and General Availability

GCCIX is dedicated to ensuring a fair opportunity for all users to register a domain name to which they are legally entitled.

- (i) The Sunrise policy focuses on fulfilling the objectives of the Registry and is described in the answer to question 29.
- (ii) Following the Sunrise period the Registry will operate a Landrush to allocate premium names.
- (iii) At the close of Landrush, General Availability will start. This will be on a first-come first-served model.
- (iv) Expired names: The Registry believes that all domain name registrants should be on an equal footing in terms of securing an expired domain name. For this reason the registry will establish reasonable polices and take practical actions to discourage the acquisition of

expiring domain names by secondary market aggregators for auction, arbitrage or other re-sale that reduces available domains at the normal market price.

(v) Speculative registrations: The .GCC namespace is intended to be a current and relevant group of registrations that is active and not stifled by speculative or abusive registrations. GCCIX will establish reasonable policies and take practical actions to discourage speculative and unused registration of domains.

Full details of the Sunrise and Landrush policies and processes will be made available in due course.

ii. Explain any cost benefits for registrants you intend to implement (eg advantageous pricing, introductory discounts, bulk registration discounts)

GCCIX is committed to a pricing policy that advances its mission. Consistent with this policy, the Registry will implement the following.

Billing and Collection Procedures

The Registry's billing and collections procedures will be consistent with existing industry procedures. All payments for new TLD registrations will be on an upfront payment basis. No registration will be completed until the registry receives payment. Because registry services to the registrant will be provided through the registrars, all billing and collections policy matters with respect to the registrant will be the responsibility of the registrars.

Registration Prices

Registration prices will be at the discretion of individual accredited registrars. It will be in the interests of Registrars to price registration competitively and offer attractive additional services in order to maximize the number of registrations they secure.

The Registry will set a fixed price to the Registrar for each domain name registration per year.

Registrars will be required to register each domain name for a period of one to ten years.

Registrars will be required to remit a registration to the Registry for the exact period of the Registry-Registrant agreement.

For domain name renewal fees, the Registry will similarly charge a fixed price to Registrars for each renewal year.

The Registry has chosen a flat annual registration and renewal fee structure so that it reduces costs to the Internet user community.

The Registry will consistently support the investigation and adoption of new and approved technologies that contribute to the stability and robustness of the Internet (e.g. DNSSEC, IPv6, etc) at the appropriate times. Further, GCCIX will investigate the use of incentives at the Registrar and Registrant levels to encourage the use of these consensus best practices.

iii. price increase policy?

Price increase policy

In conformity with the Registry Agreement, the Registry will provide advance written notice to Registrars of price increases. GCCIX is mindful of the diverse stakeholder input during the development of the New gTLD Registry Agreement. Consistent with support of ICANN's policy on the expansion of the DNS, it will give full consideration to the enduring diverse and communal interests if and when price escalation is initiated. While the Registry does not plan to execute a contractual agreement with Registrars relating to price increase or escalation, it will only make such increases in line with equitable and non-discriminatory policies.

The Registry commits not to increase prices during the first three years of operation.

The Registry commits not to increase prices more than once in any 12 month period.

The Registry commits to honour the price paid for multi-year registrations in the event that

prices are increased during the initial term. Renewals and extensions will always be processed at the prevailing prices.

Community-based Designation

19. Is the application for a community-based TLD?

No

20(a). Provide the name and full description of the community that the applicant is committing to serve.

20(b). Explain the applicant's relationship to the community identified in 20(a).

20(c). Provide a description of the community-based purpose of the applied-for gTLD.

20(d). Explain the relationship between the applied-for gTLD string and the community identified in 20(a).

20(e). Provide a description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD.

20(f). Attach any written endorsements from institutions/groups representative of the community identified in 20(a).

Attachments are not displayed on this form.

Geographic Names

21(a). Is the application for a geographic name?

No

Protection of Geographic Names

22. Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD.

(Note Specification 5 of Registry Agreement)

The Registry is cognizant of the GAC advice in their management of second level domain name registrations as well as Specification 5 of the Registry Agreement.

Specification 5 of the New gTLD Registry Agreement initially reserves at the 2nd and all other levels within the TLD:

- * Country and territory names contained on the ISO 3166-1 list
- * UN Group of Experts on Geographical Names, Technical Reference Manual for the Standardisation of Geographical Names, Part II Names of Countries of the World, and
- * The list of UN member states in 6 official UN languages prepared by the Working Group on Country Names of the UN Conference on the Standardization of Geographical Names

In accordance with the provisions contained in Specification 5, such names may be released if the Registry Operator reaches agreement with the applicable government and/or the Registry Operator proposes release of the reserved name(s) subject to review by GAC and subsequent approval by ICANN.

Registry Services

23. Provide name and full description of all the Registry Services to be provided.

Throughout the technical portion (#23 - #44) of this application, answers are provided directly from Afiliias, the back-end provider of registry services for this TLD. The Applicant chose Afiliias as its back-end provider because Afiliias has more experience successfully applying to ICANN and launching new TLDs than any other provider. Afiliias is the ICANN-contracted the registry operator of the .INFO and .MOBI TLDs, and Afiliias is the back-end registry services provider for other ICANN TLDs including .ORG, .ASIA, .AERO, and .XXX.

Registry services for this TLD will be performed by Afiliias in the same responsible manner used to support 16 top level domains today. Afiliias supports more ICANN-contracted TLDs (6) than any other provider currently. Afiliias' primary corporate mission is to deliver secure, stable and reliable registry services. This TLD will utilize an existing, proven team and platform for registry services with:

- A stable and secure, state-of-the-art, EPP-based SRS with ample storage capacity, data security provisions and scalability that is proven with registrars who account for over 95% of all gTLD domain name registration activity (over 375 registrars);
- A reliable, 100% available DNS service (zone file generation, publication and

dissemination) tested to withstand severe DDoS attacks and dramatic growth in Internet use;

- A WHOIS service that is flexible and standards compliant, with search capabilities to address both registrar and end-user needs; includes consideration for evolving standards, such as RESTful, or draft-kucherawy-wierds;
- Experience introducing IDNs in the following languages: German (DE), Spanish (ES), Polish (PL), Swedish (SV), Danish (DA), Hungarian (HU), Icelandic (IS), Latvian (LV), Lithuanian (LT), Korean (KO), Simplified and Traditional Chinese (CN), Devanagari (HI-DEVA), Russian (RU), Belarusian (BE), Ukrainian (UK), Bosnian (BS), Serbian (SR), Macedonian (MK) and Bulgarian (BG) across the TLDs it serves;
- A registry platform that is both IPv6 and DNSSEC enabled;
- An experienced, respected team of professionals active in standards development of innovative services such as DNSSEC and IDN support;
- Methods to limit domain abuse, remove outdated and inaccurate data, and ensure the integrity of the SRS, and;
- Customer support and reporting capabilities to meet financial and administrative needs, e.g., 24x7 call center support, integration support, billing, and daily, weekly, and monthly reporting.

Afilias will support this TLD in accordance with the specific policies and procedures of The Applicant (the "registry operator"), leveraging a proven registry infrastructure that is fully operational, staffed with professionals, massively provisioned, and immediately ready to launch and maintain this TLD.

The below response includes a description of the registry services to be provided for this TLD, additional services provided to support registry operations, and an overview of Afilias' approach to registry management.

Registry services to be provided

To support this TLD, The Applicant and Afilias will offer the following registry services, all in accordance with relevant technical standards and policies:

- Receipt of data from registrars concerning registration for domain names and nameservers, and provision to registrars of status information relating to the EPP-based domain services for registration, queries, updates, transfers, renewals, and other domain management functions. Please see our responses to questions #24, #25, and #27 for full details, which we request be incorporated here by reference.
- Operation of the registry DNS servers: The Afilias DNS system, run and managed by Afilias, is a massively provisioned DNS infrastructure that utilizes among the most sophisticated DNS architecture, hardware, software and redundant design created. Afilias' industry-leading system works in a seamless way to incorporate nameservers from any number of other secondary DNS service vendors. Please see our response to question #35 for full details, which we request be incorporated here by reference.
- Dissemination of TLD zone files: Afilias' distinctive architecture allows for real-time updates and maximum stability for zone file generation, publication and dissemination. Please see our response to question #34 for full details, which we request be incorporated here by reference.
- Dissemination of contact or other information concerning domain registrations: A port 43 WHOIS service with basic and expanded search capabilities with requisite measures to prevent abuse. Please see our response to question #26 for full details, which we request be incorporated here by reference.
- Internationalized Domain Names (IDNs): Ability to support all Unicode characters at every level of the TLD, including alphabetic, ideographic and right-to-left scripts. Please see our response to question #44 for full details, which we request be incorporated here by reference.
- DNS Security Extensions (DNSSEC): A fully DNSSEC-enabled registry, with a stable and efficient means of signing and managing zones. This includes the ability to safeguard keys and manage keys completely. Please see our response to question #43 for full details, which we request be incorporated here by reference.

Each service will meet or exceed the contract service level agreement. All registry services for this TLD will be provided in a standards-compliant manner.

Security

Afilias addresses security in every significant aspect - physical, data and network as well as process. Afilias' approach to security permeates every aspect of the registry services provided. A dedicated security function exists within the company to continually identify

existing and potential threats, and to put in place comprehensive mitigation plans for each identified threat. In addition, a rapid security response plan exists to respond comprehensively to unknown or unidentified threats. The specific threats and Afiliias mitigation plans are defined in our response to question #30(b); please see that response for complete information. In short, Afiliias is committed to ensuring the confidentiality, integrity, and availability of all information.

New registry services

No new registry services are planned for the launch of this TLD.

Additional services to support registry operation

Numerous supporting services and functions facilitate effective management of the TLD. These support services are also supported by Afiliias, including:

- Customer support: 24x7 live phone and e-mail support for customers to address any access, update or other issues they may encounter. This includes assisting the customer identification of the problem as well as solving it. Customers include registrars and the registry operator, but not registrants except in unusual circumstances. Customers have access to a web-based portal for a rapid and transparent view of the status of pending issues.
- Financial services: billing and account reconciliation for all registry services according to pricing established in respective agreements.

Reporting is an important component of supporting registry operations. Afiliias will provide reporting to the registry operator and registrars, and financial reporting.

Reporting provided to the registry operator

Afiliias provides an extensive suite of reports to the registry operator, including daily, weekly and monthly reports with data at the transaction level that enable the registry operator to track and reconcile at whatever level of detail preferred. Afiliias provides the exact data required by ICANN in the required format to enable the registry operator to meet its technical reporting requirements to ICANN.

In addition, Afiliias offers access to a data warehouse capability that will enable near real-time data to be available 24x7. This can be arranged by informing the Afiliias Account Manager regarding who should have access. Afiliias' data warehouse capability enables drill-down analytics all the way to the transaction level.

Reporting available to registrars

Afiliias provides an extensive suite of reporting to registrars and has been doing so in an exemplary manner for more than ten years. Specifically, Afiliias provides daily, weekly and monthly reports with detail at the transaction level to enable registrars to track and reconcile at whatever level of detail they prefer.

Reports are provided in standard formats, facilitating import for use by virtually any registrar analytical tool. Registrar reports are available for download via a secure administrative interface. A given registrar will only have access to its own reports. These include the following:

- Daily Reports: Transaction Report, Billable Transactions Report, and Transfer Reports;
- Weekly: Domain Status and Nameserver Report, Weekly Nameserver Report, Domains Hosted by Nameserver Weekly Report, and;
- Monthly: Billing Report and Monthly Expiring Domains Report.

Weekly registrar reports are maintained for each registrar for four weeks. Weekly reports older than four weeks will be archived for a period of six months, after which they will be deleted.

Financial reporting

Registrar account balances are updated real-time when payments and withdrawals are posted to the registrars' accounts. In addition, the registrar account balances are updated as and when they perform billable transactions at the registry level.

Afiliias provides Deposit-Withdrawal Reports that are updated periodically to reflect payments received or credits and withdrawals posted to the registrar accounts.

The following reports are also available: a) Daily Billable Transaction Report, containing

details of all the billable transactions performed by all the registrars in the SRS, b) daily e-mail reports containing the number of domains in the registry and a summary of the number and types of billable transactions performed by the registrars, and c) registry operator versions of most registrar reports (for example, a daily Transfer Report that details all transfer activity between all of the registrars in the SRS).

Afilias approach to registry support

Afilias, the back end registry services provider for this TLD, is dedicated to managing the technical operations and support of this TLD in a secure, stable and reliable manner. With over a decade of registry experience, Afilias has the depth and breadth of experience that ensure existing and new needs are addressed, all while meeting or exceeding service level requirements and customer expectations. This is evident in Afilias' participation in business, policy and technical organizations supporting registry and Internet technology within ICANN and related organizations. This allows Afilias to be at the forefront of security initiatives such as: DNSSEC, wherein Afilias worked with Public Interest Registry (PIR) to make the .ORG registry the first DNSSEC enabled gTLD and the largest TLD enabled at the time; in enhancing the Internet experience for users across the globe by leading development of IDNs; in pioneering the use of open-source technologies by its usage of PostgreSQL, and; being the first to offer near-real-time dissemination of DNS zone data.

Demonstration of Technical & Operational Capability

24. Shared Registration System (SRS) Performance

THE RESPONSE FOR THIS QUESTION USES ANGLE BRACKETS (THE " <" and ">" CHARACTERS, or < and >), WHICH ICANN INFORMS US (CASE ID 11027) CANNOT BE PROPERLY RENDERED IN TAS DUE TO SECURITY CONCERNS. HENCE, THE ANSWER BELOW AS DISPLAYED IN TAS MAY NOT RENDER THE FULL RESPONSE AS INTENDED. THEREFORE, THE FULL ANSWER TO THIS QUESTION IS ALSO ATTACHED AS A PDF FILE, ACCORDING TO SPECIFIC GUIDANCE FROM ICANN UNDER CASE ID 11027.

24 SRS Performance

Answers for this question (#24) are provided directly from Afilias, the back-end provider of registry services for this TLD.

Afilias operates a state-of-the-art EPP-based Shared Registration System (SRS) that is secure, stable and reliable. The SRS is a critical component of registry operations that must balance the business requirements for the registry and its customers, such as numerous domain acquisition and management functions. The SRS meets or exceeds all ICANN requirements given that Afilias:

- Operates a secure, stable and reliable SRS which updates in real-time and in full compliance with Specification 6 of the new gTLD Registry Agreement;
- Is committed to continuously enhancing our SRS to meet existing and future needs;
- Currently exceeds contractual requirements and will perform in compliance with Specification 10 of the new gTLD Registry Agreement;
- Provides SRS functionality and staff, financial, and other resources to more than adequately meet the technical needs of this TLD, and;
- Manages the SRS with a team of experienced technical professionals who can seamlessly integrate this TLD into the Afilias registry platform and support the TLD in a secure, stable and reliable manner.

Description of operation of the SRS, including diagrams

Afilias' SRS provides the same advanced functionality as that used in the .INFO and .ORG registries, as well as the fourteen other TLDs currently supported by Afilias. The Afilias registry system is standards-compliant and utilizes proven technology, ensuring global familiarity for registrars, and it is protected by our massively provisioned infrastructure that mitigates the risk of disaster.

EPP functionality is described fully in our response to question #25; please consider those answers incorporated here by reference. An abbreviated list of Afiliias SRS functionality includes:

- Domain registration: Afiliias provides registration of names in the TLD, in both ASCII and IDN forms, to accredited registrars via EPP and a web-based administration tool.
- Domain renewal: Afiliias provides services that allow registrars the ability to renew domains under sponsorship at any time. Further, the registry performs the automated renewal of all domain names at the expiration of their term, and allows registrars to rescind automatic renewals within a specified number of days after the transaction for a full refund.
- Transfer: Afiliias provides efficient and automated procedures to facilitate the transfer of sponsorship of a domain name between accredited registrars. Further, the registry enables bulk transfers of domains under the provisions of the Registry-Registrar Agreement.
- RGP and restoring deleted domain registrations: Afiliias provides support for the Redemption Grace Period (RGP) as needed, enabling the restoration of deleted registrations.
- Other grace periods and conformance with ICANN guidelines: Afiliias provides support for other grace periods that are evolving as standard practice inside the ICANN community. In addition, the Afiliias registry system supports the evolving ICANN guidelines on IDNs.

Afiliias also supports the basic check, delete, and modify commands.

As required for all new gTLDs, Afiliias provides "thick" registry system functionality. In this model, all key contact details for each domain are stored in the registry. This allows better access to domain data and provides uniformity in storing the information.

Afiliias' SRS complies today and will continue to comply with global best practices including relevant RFCs, ICANN requirements, and this TLD's respective domain policies. With over a decade of experience, Afiliias has fully documented and tested policies and procedures, and our highly skilled team members are active participants of the major relevant technology and standards organizations, so ICANN can be assured that SRS performance and compliance are met. Full details regarding the SRS system and network architecture are provided in responses to questions #31 and #32; please consider those answers incorporated here by reference.

SRS servers and software

All applications and databases for this TLD will run in a virtual environment currently hosted by a cluster of servers equipped with the latest Intel Westmere multi-core processors. (It is possible that by the time this application is evaluated and systems deployed, Westmere processors may no longer be the "latest"; the Afiliias policy is to use the most advanced, stable technology available at the time of deployment.) The data for the registry will be stored on storage arrays of solid state drives shared over a fast storage area network. The virtual environment allows the infrastructure to easily scale both vertically and horizontally to cater to changing demand. It also facilitates effective utilization of system resources, thus reducing energy consumption and carbon footprint.

The network firewalls, routers and switches support all applications and servers. Hardware traffic shapers are used to enforce an equitable access policy for connections coming from registrars. The registry system accommodates both IPv4 and IPv6 addresses. Hardware load balancers accelerate TLS-SSL handshaking and distribute load among a pool of application servers.

Each of the servers and network devices are equipped with redundant, hot-swappable components and multiple connections to ancillary systems. Additionally, 24x7 support agreements with a four-hour response time at all our data centers guarantee replacement of failed parts in the shortest time possible.

Examples of current system and network devices used are:

- Servers: Cisco UCS B230 blade servers
- SAN storage arrays: IBM Storwize V7000 with Solid State Drives
- SAN switches: Brocade 5100
- Firewalls: Cisco ASA 5585-X
- Load balancers: F5 Big-IP 6900
- Traffic shapers: Procera PacketLogic PL8720
- Routers: Juniper MX40 3D
- Network switches: Cisco Nexus 7010, Nexus 5548, Nexus 2232

These system components are upgraded and updated as required, and have usage and performance

thresholds which trigger upgrade review points. In each data center, there is a minimum of two of each network component, a minimum of 25 servers, and a minimum of two storage arrays.

Technical components of the SRS include the following items, continually checked and upgraded as needed: SRS, WHOIS, web admin tool, DNS, DNS distributor, reporting, invoicing tools, and deferred revenue system (as needed).

All hardware is massively provisioned to ensure stability under all forecast volumes from launch through "normal" operations of average daily and peak capacities. Each and every system application, server, storage and network device is continuously monitored by the Afilias Network Operations Center for performance and availability. The data gathered is used by dynamic predictive analysis tools in real-time to raise alerts for unusual resource demands. Should any volumes exceed established thresholds, a capacity planning review is instituted which will address the need for additions well in advance of their actual need.

SRS diagram and interconnectivity description

As with all core registry services, the SRS is run from a global cluster of registry system data centers, located in geographic centers with high Internet bandwidth, power, redundancy and availability. All of the registry systems will be run in a (n+1) setup, with a primary data center and a secondary data center. For detailed site information, please see our responses to questions #32 and #35. Registrars access the SRS in real-time using EPP.

A sample of the Afilias SRS technical and operational capabilities (displayed in Figure 24-a) include:

- Geographically diverse redundant registry systems;
- Load balancing implemented for all registry services (e.g. EPP, WHOIS, web admin) ensuring equal experience for all customers and easy horizontal scalability;
- Disaster Recovery Point objective for the registry is within one minute of the loss of the primary system;
- Detailed and tested contingency plan, in case of primary site failure, and;
- Daily reports, with secure access for confidentiality protection.

As evidenced in Figure 24-a, the SRS contains several components of the registry system. The interconnectivity ensures near-real-time distribution of the data throughout the registry infrastructure, timely backups, and up-to-date billing information.

The WHOIS servers are directly connected to the registry database and provide real-time responses to queries using the most up-to-date information present in the registry.

Committed DNS-related EPP objects in the database are made available to the DNS Distributor via a dedicated set of connections. The DNS Distributor extracts committed DNS-related EPP objects in real time and immediately inserts them into the zone for dissemination.

The Afilias system is architected such that read-only database connections are executed on database replicas and connections to the database master (where write-access is executed) are carefully protected to ensure high availability.

This interconnectivity is monitored, as is the entire registry system, according to the plans detailed in our response to question #42.

Synchronization scheme

Registry databases are synchronized both within the same data center and in the backup data center using a database application called Slony. For further details, please see the responses to questions #33 and #37. Slony replication of transactions from the publisher (master) database to its subscribers (replicas) works continuously to ensure the publisher and its subscribers remain synchronized. When the publisher database completes a transaction the Slony replication system ensures that each replica also processes the transaction. When there are no transactions to process, Slony "sleeps" until a transaction arrives or for one minute, whichever comes first. Slony "wakes up" each minute to confirm with the publisher that there has not been a transaction and thus ensures subscribers are synchronized and the replication time lag is minimized. The typical replication time lag between the publisher and subscribers depends on the topology of the replication cluster, specifically the location of the subscribers relative to the publisher. Subscribers located in the same data center as the publisher are typically updated within a couple of seconds, and subscribers located in a secondary data center are typically updated in less than ten seconds. This ensures real-time

or near-real-time synchronization between all databases, and in the case where the secondary data center needs to be activated, it can be done with minimal disruption to registrars.

SRS SLA performance compliance

Afilias has a ten-year record of delivering on the demanding ICANN SLAs, and will continue to provide secure, stable and reliable service in compliance with SLA requirements as specified in the new gTLD Registry Agreement, Specification 10, as presented in Figure 24-b.

The Afilias SRS currently handles over 200 million EPP transactions per month for just .INFO and .ORG. Overall, the Afilias SRS manages over 700 million EPP transactions per month for all TLDs under management.

Given this robust functionality, and more than a decade of experience supporting a thick TLD registry with a strong performance history, Afilias, on behalf of Applicant, will meet or exceed the performance metrics in Specification 10 of the new gTLD Registry Agreement. The Afilias services and infrastructure are designed to scale both vertically and horizontally without any downtime to provide consistent performance as this TLD grows. The Afilias architecture is also massively provisioned to meet seasonal demands and marketing campaigns. Afilias' experience also gives high confidence in the ability to scale and grow registry operations for this TLD in a secure, stable and reliable manner.

SRS resourcing plans

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way.

Over 100 Afilias team members contribute to the management of the SRS code and network that will support this TLD. The SRS team is composed of Software Engineers, Quality Assurance Analysts, Application Administrators, System Administrators, Storage Administrators, Network Administrators, Database Administrators, and Security Analysts located at three geographically separate Afilias facilities. The systems and services set up and administered by these team members are monitored 24x7 by skilled analysts at two NOCs located in Toronto, Ontario (Canada) and Horsham, Pennsylvania (USA). In addition to these team members, Afilias also utilizes trained project management staff to maintain various calendars, work breakdown schedules, utilization and resource schedules and other tools to support the technical and management staff. It is this team who will both deploy this TLD on the Afilias infrastructure, and maintain it. Together, the Afilias team has managed 11 registry transitions and six new TLD launches, which illustrate its ability to securely and reliably deliver regularly scheduled updates as well as a secure, stable and reliable SRS service for this TLD.

25. Extensible Provisioning Protocol (EPP)

THE RESPONSE FOR THIS QUESTION USES ANGLE BRACKETS (THE " <" and "> " CHARACTERS, or < and >), WHICH ICANN INFORMS US (CASE ID 11027) CANNOT BE PROPERLY RENDERED IN TAS DUE TO SECURITY CONCERNS. HENCE, THE ANSWER BELOW AS DISPLAYED IN TAS MAY NOT RENDER THE FULL RESPONSE AS INTENDED. THEREFORE, THE FULL ANSWER TO THIS QUESTION IS ALSO ATTACHED AS A PDF FILE, ACCORDING TO SPECIFIC GUIDANCE FROM ICANN UNDER CASE ID 11027.

25 EPP

Answers for this question (#25) are provided by Afilias, the back-end provider of registry services for this TLD.

Afilias has been a pioneer and innovator in the use of EPP. .INFO was the first EPP-based

gTLD registry and launched on EPP version 02-00. Afiliias has a track record of supporting TLDs on standards-compliant versions of EPP. Afiliias will operate the EPP registrar interface as well as a web-based interface for this TLD in accordance with RFCs and global best practices. In addition, Afiliias will maintain a proper OT&E (Operational Testing and Evaluation) environment to facilitate registrar system development and testing.

Afiliias' EPP technical performance meets or exceeds all ICANN requirements as demonstrated by:

- A completely functional, state-of-the-art, EPP-based SRS that currently meets the needs of various gTLDs and will meet this new TLD's needs;
- A track record of success in developing extensions to meet client and registrar business requirements such as multi-script support for IDNs;
- Supporting six ICANN gTLDs on EPP: .INFO, .ORG, .MOBI, .AERO, .ASIA and .XXX
- EPP software that is operating today and has been fully tested to be standards-compliant;
- Proven interoperability of existing EPP software with ICANN-accredited registrars, and;
- An SRS that currently processes over 200 million EPP transactions per month for both .INFO and .ORG. Overall, Afiliias processes over 700 million EPP transactions per month for all 16 TLDs under management.

The EPP service is offered in accordance with the performance specifications defined in the new gTLD Registry Agreement, Specification 10.

EPP Standards

The Afiliias registry system complies with the following revised versions of the RFCs and operates multiple ICANN TLDs on these standards, including .INFO, .ORG, .MOBI, .ASIA and .XXX. The systems have been tested by our Quality Assurance ("QA") team for RFC compliance, and have been used by registrars for an extended period of time:

- 3735 - Guidelines for Extending EPP
- 3915 - Domain Registry Grace Period Mapping
- 5730 - Extensible Provisioning Protocol (EPP)
- 5731 - Domain Name Mapping
- 5732 - Host Mapping
- 5733 - Contact Mapping
- 5734 - Transport Over TCP
- 5910 - Domain Name System (DNS) Security Extensions Mapping for the Extensible Provisioning Protocol (EPP)

This TLD will support all valid EPP commands. The following EPP commands are in operation today and will be made available for this TLD. See attachment #25a for the base set of EPP commands and copies of Afiliias XSD schema files, which define all the rules of valid, RFC compliant EPP commands and responses that Afiliias supports. Any customized EPP extensions, if necessary, will also conform to relevant RFCs.

Afiliias staff members actively participated in the Internet Engineering Task Force (IETF) process that finalized the new standards for EPP. Afiliias will continue to actively participate in the IETF and will stay abreast of any updates to the EPP standards.

EPP software interface and functionality

Afiliias will provide all registrars with a free open-source EPP toolkit. Afiliias provides this software for use with both Microsoft Windows and Unix/Linux operating systems. This software, which includes all relevant templates and schema defined in the RFCs, is available on sourceforge.net and will be available through the registry operator's website.

Afiliias' SRS EPP software complies with all relevant RFCs and includes the following functionality:

- EPP Greeting: A response to a successful connection returns a greeting to the client. Information exchanged can include: name of server, server date and time in UTC, server features, e.g., protocol versions supported, languages for the text response supported, and one or more elements which identify the objects that the server is capable of managing;
- Session management controls: (login) to establish a connection with a server, and (logout) to end a session;
- EPP Objects: Domain, Host and Contact for respective mapping functions;
- EPP Object Query Commands: Info, Check, and Transfer (query) commands to retrieve object information, and;

- EPP Object Transform Commands: five commands to transform objects: `<create>` to create an instance of an object, `<delete>` to remove an instance of an object, `<renew>` to extend the validity period of an object, `<update>` to change information associated with an object, and `<transfer>` to manage changes in client sponsorship of a known object.

Currently, 100% of the top domain name registrars in the world have software that has already been tested and certified to be compatible with the Afiliias SRS registry. In total, over 375 registrars, representing over 95% of all registration volume worldwide, operate software that has been certified compatible with the Afiliias SRS registry. Afiliias' EPP Registrar Acceptance Criteria are available in attachment #25b, EPP OT&E Criteria.

Free EPP software support

Afiliias analyzes and diagnoses registrar EPP activity log files as needed and is available to assist registrars who may require technical guidance regarding how to fix repetitive errors or exceptions caused by misconfigured client software.

Registrars are responsible for acquiring a TLS-SSL certificate from an approved certificate authority, as the registry-registrar communication channel requires mutual authentication; Afiliias will acquire and maintain the server-side TLS-SSL certificate. The registrar is responsible for developing support for TLS-SSL in their client application. Afiliias will provide free guidance for registrars unfamiliar with this requirement.

Registrar data synchronization

There are two methods available for registrars to synchronize their data with the registry:

- Automated synchronization: Registrars can, at any time, use the EPP `<info>` command to obtain definitive data from the registry for a known object, including domains, hosts (nameservers) and contacts.
- Personalized synchronization: A registrar may contact technical support and request a data file containing all domains (and associated host (nameserver) and contact information) registered by that registrar, within a specified time interval. The data will be formatted as a comma separated values (CSV) file and made available for download using a secure server.

EPP modifications

There are no unique EPP modifications planned for this TLD.

All ICANN TLDs must offer a Sunrise as part of a rights protection program. Afiliias uses EPP extensions that allow registrars to submit trademark and other intellectual property rights (IPR) data to the registry. These extensions are:

- An `<ipr:name>` element that indicates the name of Registered Mark.
- An `<ipr:number>` element that indicates the registration number of the IPR.
- An `<ipr:ccLocality>` element that indicates the origin for which the IPR is established (a national or international trademark registry).
- An `<ipr:entitlement>` element that indicates whether the applicant holds the trademark as the original "OWNER", "CO-OWNER" or "ASSIGNEE".
- An `<ipr:appDate>` element that indicates the date the Registered Mark was applied for.
- An `<ipr:regDate>` element that indicates the date the Registered Mark was issued and registered.
- An `<ipr:class>` element that indicates the class of the registered mark.
- An `<ipr:type>` element that indicates the Sunrise phase the application applies for.

Note that some of these extensions might be subject to change based on ICANN-developed requirements for the Trademark Clearinghouse.

EPP resourcing plans

Since its founding, Afiliias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afiliias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afiliias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afiliias project management methodology allows efficient and effective use of our staff in a focused

way.

108 Afiliias team members directly contribute to the management and development of the EPP based registry systems. As previously noted, Afiliias is an active member of IETF and has a long documented history developing and enhancing EPP. These contributors include 11 developers and 14 QA engineers focused on maintaining and enhancing EPP server side software. These engineers work directly with business staff to timely address existing needs and forecast registry-registrar needs to ensure the Afiliias EPP software is effective today and into the future. A team of eight data analysts work with the EPP software system to ensure that the data flowing through EPP is securely and reliably stored in replicated database systems. In addition to the EPP developers, QA engineers, and data analysts, other EPP contributors at Afiliias include: Technical Analysts, the Network Operations Center and Data Services team members.

26. Whois

Answers for this question (#26) are provided by Afiliias, the back-end provider of registry services for this TLD.

Afiliias operates the WHOIS (registration data directory service) infrastructure in accordance with RFCs and global best practices, as it does for the 16 TLDs it currently supports. Designed to be robust and scalable, Afiliias' WHOIS service has exceeded all contractual requirements for over a decade. It has extended search capabilities, and methods of limiting abuse.

The WHOIS service operated by Afiliias meets and exceeds ICANN's requirements. Specifically, Afiliias will:

- Offer a WHOIS service made available on port 43 that is flexible and standards-compliant;
- Comply with all ICANN policies, and meeting or exceeding WHOIS performance requirements in Specification 10 of the new gTLD Registry Agreement;
- Enable a Searchable WHOIS with extensive search capabilities that offers ease of use while enforcing measures to mitigate access abuse, and;
- Employ a team with significant experience managing a compliant WHOIS service.

Such extensive knowledge and experience managing a WHOIS service enables Afiliias to offer a comprehensive plan for this TLD that meets the needs of constituents of the domain name industry and Internet users. The service has been tested by our QA team for RFC compliance, and has been used by registrars and many other parties for an extended period of time. Afiliias' WHOIS service currently serves almost 500 million WHOIS queries per month, with the capacity already built in to handle an order of magnitude increase in WHOIS queries, and the ability to smoothly scale should greater growth be needed.

WHOIS system description and diagram

The Afiliias WHOIS system, depicted in figure 26-a, is designed with robustness, availability, compliance, and performance in mind. Additionally, the system has provisions for detecting abusive usage (e.g., excessive numbers of queries from one source). The WHOIS system is generally intended as a publicly available single object lookup system. Afiliias uses an advanced, persistent caching system to ensure extremely fast query response times.

Afiliias will develop restricted WHOIS functions based on specific domain policy and regulatory requirements as needed for operating the business (as long as they are standards compliant). It will also be possible for contact and registrant information to be returned according to regulatory requirements. The WHOIS database supports multiple string and field searching through a reliable, free, secure web-based interface.

Data objects, interfaces, access and lookups

Registrars can provide an input form on their public websites through which a visitor is able to perform WHOIS queries. The registry operator can also provide a Web-based search on its site. The input form must accept the string to query, along with the necessary input elements to select the object type and interpretation controls. This input form sends its data to the Afiliias port 43 WHOIS server. The results from the WHOIS query are returned by

the server and displayed in the visitor's Web browser. The sole purpose of the Web interface is to provide a user-friendly interface for WHOIS queries.

Afilias will provide WHOIS output as per Specification 4 of the new gTLD Registry Agreement. The output for domain records generally consists of the following elements:

- The name of the domain registered and the sponsoring registrar;
- The names of the primary and secondary nameserver(s) for the registered domain name;
- The creation date, registration status and expiration date of the registration;
- The name, postal address, e-mail address, and telephone and fax numbers of the domain name holder;
- The name, postal address, e-mail address, and telephone and fax numbers of the technical contact for the domain name holder;
- The name, postal address, e-mail address, and telephone and fax numbers of the administrative contact for the domain name holder, and;
- The name, postal address, e-mail address, and telephone and fax numbers of the billing contact for the domain name holder.

The following additional features are also present in Afilias' WHOIS service:

- Support for IDNs, including the language tag and the Punycode representation of the IDN in addition to Unicode Hex and Unicode HTML formats;
- Enhanced support for privacy protection relative to the display of confidential information.

Afilias will also provide sophisticated WHOIS search functionality that includes the ability to conduct multiple string and field searches.

Query controls

For all WHOIS queries, a user is required to enter the character string representing the information for which they want to search. The object type and interpretation control parameters to limit the search may also be specified. If object type or interpretation control parameter is not specified, WHOIS will search for the character string in the Name field of the Domain object.

WHOIS queries are required to be either an "exact search" or a "partial search," both of which are insensitive to the case of the input string.

An exact search specifies the full string to search for in the database field. An exact match between the input string and the field value is required.

A partial search specifies the start of the string to search for in the database field. Every record with a search field that starts with the input string is considered a match. By default, if multiple matches are found for a query, then a summary containing up to 50 matching results is presented. A second query is required to retrieve the specific details of one of the matching records.

If only a single match is found, then full details will be provided. Full detail consists of the data in the matching object as well as the data in any associated objects. For example: a query that results in a domain object includes the data from the associated host and contact objects.

WHOIS query controls fall into two categories: those that specify the type of field, and those that modify the interpretation of the input or determine the level of output to provide. Each is described below.

The following keywords restrict a search to a specific object type:

- **Domain:** Searches only domain objects. The input string is searched in the Name field.
- **Host:** Searches only nameserver objects. The input string is searched in the Name field and the IP Address field.
- **Contact:** Searches only contact objects. The input string is searched in the ID field.
- **Registrar:** Searches only registrar objects. The input string is searched in the Name field.

By default, if no object type control is specified, then the Name field of the Domain object is searched.

In addition, Afilias WHOIS systems can perform and respond to WHOIS searches by registrant name, postal address and contact names. Deployment of these features is provided as an option to the registry operator, based upon registry policy and business decision making.

Figure 26-b presents the keywords that modify the interpretation of the input or determine the level of output to provide.

By default, if no interpretation control keywords are used, the output will include full details if a single match is found and a summary if multiple matches are found.

Unique TLD requirements

There are no unique WHOIS requirements for this TLD.

Sunrise WHOIS processes

All ICANN TLDs must offer a Sunrise as part of a rights protection program. Afiliias uses EPP extensions that allow registrars to submit trademark and other intellectual property rights (IPR) data to the registry. The following corresponding data will be displayed in WHOIS for relevant domains:

- Trademark Name: element that indicates the name of the Registered Mark.
- Trademark Number: element that indicates the registration number of the IPR.
- Trademark Locality: element that indicates the origin for which the IPR is established (a national or international trademark registry).
- Trademark Entitlement: element that indicates whether the Applicant holds the trademark as the original "OWNER", "CO-OWNER" or "ASSIGNEE".
 - Trademark Application Date: element that indicates the date the Registered Mark was applied for.
 - Trademark Registration Date: element that indicates the date the Registered Mark was issued and registered.
- Trademark Class: element that indicates the class of the Registered Mark.
- IPR Type: element that indicates the Sunrise phase the application applies for.

IT and infrastructure resources

All the applications and databases for this TLD will run in a virtual environment hosted by a cluster of servers equipped with the latest Intel Westmere multi-core processors (or a more advanced, stable technology available at the time of deployment). The registry data will be stored on storage arrays of solid-state drives shared over a fast storage area network. The virtual environment allows the infrastructure to easily scale both vertically and horizontally to cater to changing demand. It also facilitates effective utilization of system resources thus reducing energy consumption and carbon footprint.

The applications and servers are supported by network firewalls, routers and switches. The WHOIS system accommodates both IPv4 and IPv6 addresses.

Each of the servers and network devices are equipped with redundant hot-swappable components and multiple connections to ancillary systems. Additionally, 24x7 support agreements with our hardware vendor with a 4-hour response time at all our data centers guarantees replacement of failed parts in the shortest time possible.

Models of system and network devices used are:

- Servers: Cisco UCS B230 blade servers
- SAN storage arrays: IBM Storwize V7000 with Solid State Drives
- Firewalls: Cisco ASA 5585-X
- Load balancers: F5 Big-IP 6900
- Traffic shapers: Procera PacketLogic PL8720
- Routers: Juniper MX40 3D
- Network switches: Cisco Nexus 7010, Nexus 5548, Nexus 2232

There will be at least four virtual machines (VMs) offering WHOIS service. Each VM will run at least two WHOIS server instances - one for registrars and one for the public. All instances of the WHOIS service is made available to registrars and the public are rate limited to mitigate abusive behavior.

Frequency of synchronization between servers

Registration data records from the EPP publisher database will be replicated to the WHOIS system database on a near-real-time basis whenever an update occurs.

Specifications 4 and 10 compliance

The WHOIS service for this TLD will meet or exceed the performance requirements in the new

gTLD Registry Agreement, Specification 10. Figure 26-c provides the exact measurements and commitments. Afiliias has a 10 year track record of exceeding WHOIS performance and a skilled team to ensure this continues for all TLDs under management.

The WHOIS service for this TLD will meet or exceed the requirements in the new gTLD Registry Agreement, Specification 4.

RFC 3912 compliance

Afiliias will operate the WHOIS infrastructure in compliance with RFCs and global best practices, as it does with the 16 TLDs Afiliias currently supports.

Afiliias maintains a registry-level centralized WHOIS database that contains information for every registered domain and for all host and contact objects. The WHOIS service will be available on the Internet standard WHOIS port (port 43) in compliance with RFC 3912. The WHOIS service contains data submitted by registrars during the registration process. Changes made to the data by a registrant are submitted to Afiliias by the registrar and are reflected in the WHOIS database and service in near-real-time, by the instance running at the primary data center, and in under ten seconds by the instance running at the secondary data center, thus providing all interested parties with up-to-date information for every domain. This service is compliant with the new gTLD Registry Agreement, Specification 4.

The WHOIS service maintained by Afiliias will be authoritative and complete, as this will be a "thick" registry (detailed domain contact WHOIS is all held at the registry); users do not have to query different registrars for WHOIS information, as there is one central WHOIS system. Additionally, visibility of different types of data is configurable to meet the registry operator's needs.

Searchable WHOIS

Afiliias offers a searchable WHOIS on a web-based Directory Service. Partial match capabilities are offered on the following fields: domain name, registrar ID, and IP address. In addition, Afiliias WHOIS systems can perform and respond to WHOIS searches by registrant name, postal address and contact names.

Providing the ability to search important and high-value fields such as registrant name, address and contact names increases the probability of abusive behavior. An abusive user could script a set of queries to the WHOIS service and access contact data in order to create or sell a list of names and addresses of registrants in this TLD. Making the WHOIS machine readable, while preventing harvesting and mining of WHOIS data, is a key requirement integrated into the Afiliias WHOIS systems. For instance, Afiliias limits search returns to 50 records at a time. If bulk queries were ever necessary (e.g., to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process), Afiliias makes such query responses available to carefully screened and limited staff members at the registry operator (and customer support staff) via an internal data warehouse. The Afiliias WHOIS system accommodates anonymous access as well as pre-identified and profile-defined uses, with full audit and log capabilities.

The WHOIS service has the ability to tag query responses with labels such as "Do not redistribute" or "Special access granted". This may allow for tiered response and reply scenarios. Further, the WHOIS service is configurable in parameters and fields returned, which allow for flexibility in compliance with various jurisdictions, regulations or laws.

Afiliias offers exact-match capabilities on the following fields: registrar ID, nameserver name, and nameserver's IP address (only applies to IP addresses stored by the registry, i.e., glue records). Search capabilities are fully available, and results include domain names matching the search criteria (including IDN variants). Afiliias manages abuse prevention through rate limiting and CAPTCHA (described below). Queries do not require specialized transformations of internationalized domain names or internationalized data fields

Please see "Query Controls" above for details about search options and capabilities.

Deterring WHOIS abuse

Afiliias has adopted two best practices to prevent abuse of the WHOIS service: rate limiting and CAPTCHA.

Abuse of WHOIS services on port 43 and via the Web is subject to an automated rate-limiting

system. This ensures that uniformity of service to users is unaffected by a few parties whose activities abuse or otherwise might threaten to overload the WHOIS system.

Abuse of web-based public WHOIS services is subject to the use of CAPTCHA (Completely Automated Public Turing test to tell Computers and Humans Apart) technology. The use of CAPTCHA ensures that uniformity of service to users is unaffected by a few parties whose activities abuse or otherwise might threaten to overload the WHOIS system. The registry operator will adopt a CAPTCHA on its Web-based WHOIS.

Data mining of any sort on the WHOIS system is strictly prohibited, and this prohibition is published in WHOIS output and in terms of service.

For rate limiting on IPv4, there are configurable limits per IP and subnet. For IPv6, the traditional limitations do not apply. Whenever a unique IPv6 IP address exceeds the limit of WHOIS queries per minute, the same rate-limit for the given 64 bits of network prefix that the offending IPv6 IP address falls into will be applied. At the same time, a timer will start and rate-limit validation logic will identify if there are any other IPv6 address within the original 80-bit (~48) prefix. If another offending IPv6 address does fall into the ~48 prefix then rate-limit validation logic will penalize any other IPv6 addresses that fall into that given 80-bit (~48) network. As a security precaution, Afiliias will not disclose these limits.

Pre-identified and profile-driven role access allows greater granularity and configurability in both access to the WHOIS service, and in volume-frequency of responses returned for queries.

Afiliias staff are key participants in the ICANN Security & Stability Advisory Committee's deliberations and outputs on WHOIS, including SAC003, SAC027, SAC033, SAC037, SAC040, and SAC051. Afiliias staff are active participants in both technical and policy decision making in ICANN, aimed at restricting abusive behavior.

WHOIS staff resourcing plans

Since its founding, Afiliias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afiliias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afiliias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afiliias project management methodology allows efficient and effective use of our staff in a focused way.

Within Afiliias, there are 11 staff members who develop and maintain the compliant WHOIS systems. They keep pace with access requirements, thwart abuse, and continually develop software. Of these resources, approximately two staffers are typically required for WHOIS-related code customization. Other resources provide quality assurance, and operations personnel maintain the WHOIS system itself. This team will be responsible for the implementation and on-going maintenance of the new TLD WHOIS service.

27. Registration Life Cycle

THE RESPONSE FOR THIS QUESTION USES ANGLE BRACKETS (THE " <" and ">" CHARACTERS, or < and >), WHICH ICANN INFORMS US (CASE ID 11027) CANNOT BE PROPERLY RENDERED IN TAS DUE TO SECURITY CONCERNS. HENCE, THE ANSWER BELOW AS DISPLAYED IN TAS MAY NOT RENDER THE FULL RESPONSE AS INTENDED. THEREFORE, THE FULL ANSWER TO THIS QUESTION IS ALSO ATTACHED AS A PDF FILE, ACCORDING TO SPECIFIC GUIDANCE FROM ICANN UNDER CASE ID 11027.

27 Registration Lifecycle

Answers for this question (#27) are provided by Afiliias, the back-end provider of registry services for this TLD.

Afilias has been managing registrations for over a decade. Afilias has had experience managing registrations for over a decade and supports comprehensive registration lifecycle services including the registration states, all standard grace periods, and can address any modifications required with the introduction of any new ICANN policies.

This TLD will follow the ICANN standard domain lifecycle, as is currently implemented in TLDs such as .ORG and .INFO. The below response includes: a diagram and description of the lifecycle of a domain name in this TLD, including domain creation, transfer protocols, grace period implementation and the respective time frames for each; and the existing resources to support the complete lifecycle of a domain.

As depicted in Figure 27-a, prior to the beginning of the Trademark Claims Service or Sunrise IP protection program[s], Afilias will support the reservation of names in accordance with the new gTLD Registry Agreement, Specification 5.

Registration period

After the IP protection programs and the general launch, eligible registrants may choose an accredited registrar to register a domain name. The registrar will check availability on the requested domain name and if available, will collect specific objects such as, the required contact and host information from the registrant. The registrar will then provision the information into the registry system using standard Extensible Provisioning Protocol ("EPP") commands through a secure connection to the registry backend service provider.

When the domain is created, the standard five day Add Grace Period begins, the domain and contact information are available in WHOIS, and normal operating EPP domain statuses will apply. Other specifics regarding registration rules for an active domain include:

- The domain must be unique;
- Restricted or reserved domains cannot be registered;
- The domain can be registered from 1-10 years;
- The domain can be renewed at any time for 1-10 years, but cannot exceed 10 years;
- The domain can be explicitly deleted at any time;
- The domain can be transferred from one registrar to another except during the first 60 days following a successful registration or within 60 days following a transfer; and, Contacts and hosts can be modified at any time.

The following describe the domain status values recognized in WHOIS when using the EPP protocol following RFC 5731.

- OK or Active: This is the normal status for a domain that has no pending operations or restrictions.
- Inactive: The domain has no delegated name servers.
- Locked: No action can be taken on the domain. The domain cannot be renewed, transferred, updated, or deleted. No objects such as contacts or hosts can be associated to, or disassociated from the domain. This status includes: Delete Prohibited < Server Delete Prohibited, Update Prohibited < Server Update Prohibited, Transfer Prohibited, Server Transfer Prohibited, Renew Prohibited, Server Renew Prohibited.
- Hold: The domain will not be included in the zone. This status includes: Client Hold, Server Hold.
- Transfer Prohibited: The domain cannot be transferred away from the sponsoring registrar. This status includes: Client Transfer Prohibited, Server Transfer Prohibited.

The following describe the registration operations that apply to the domain name during the registration period.

a. Domain modifications: This operation allows for modifications or updates to the domain attributes to include:

- i. Registrant Contact
- ii. Admin Contact
- iii. Technical Contact
- iv. Billing Contact
- v. Host or nameservers
- vi. Authorization information
- vii. Associated status values

A domain with the EPP status of Client Update Prohibited or Server Update Prohibited may not be modified until the status is removed.

b. Domain renewals: This operation extends the registration period of a domain by changing the expiration date. The following rules apply:

- i. A domain can be renewed at any time during its registration term,
- ii. The registration term cannot exceed a total of 10 years.

A domain with the EPP status of Client Renew Prohibited or Server Renew Prohibited cannot be renewed.

c. Domain deletions: This operation deletes the domain from the Shared Registry Services (SRS). The following rules apply:

i. A domain can be deleted at any time during its registration term, if the domain is deleted during the Add Grace Period or the Renew/Extend Grace Period, the sponsoring registrar will receive a credit,

ii. A domain cannot be deleted if it has "child" nameservers that are associated to other domains.

A domain with the EPP status of Client Delete Prohibited or Server Delete Prohibited cannot be deleted.

d. Domain transfers: A transfer of the domain from one registrar to another is conducted by following the steps below.

i. The registrant must obtain the applicable `<authInfo>` code from the sponsoring (losing) registrar.

- Every domain name has an authInfo code as per EPP RFC 5731. The authInfo code is a six- to 16-character code assigned by the registrar at the time the name was created. Its purpose is to aid identification of the domain owner so proper authority can be established (it is the "password" to the domain).

- Under the Registry-Registrar Agreement, registrars will be required to provide a copy of the authInfo code to the domain registrant upon his or her request.

ii. The registrant must provide the authInfo code to the new (gaining) registrar, who will then initiate a domain transfer request. A transfer cannot be initiated without the authInfo code.

- Every EPP `<transfer>` command must contain the authInfo code or the request will fail. The authInfo code represents authority to the registry to initiate a transfer.

iii. Upon receipt of a valid transfer request, the registry automatically asks the sponsoring (losing) registrar to approve the request within five calendar days.

- When a registry receives a transfer request the domain cannot be modified, renewed or deleted until the request has been processed. This status must not be combined with either Client Transfer Prohibited or Server Transfer Prohibited status.

- If the sponsoring (losing) registrar rejects the transfer within five days, the transfer request is cancelled. A new domain transfer request will be required to reinitiate the process.

- If the sponsoring (losing) registrar does not approve or reject the transfer within five days, the registry automatically approves the request.

iv. After a successful transfer, it is strongly recommended that registrars change the authInfo code, so that the prior registrar or registrant cannot use it anymore.

v. Registrars must retain all transaction identifiers and codes associated with successful domain object transfers and protect them from disclosure.

vi. Once a domain is successfully transferred the status of TRANSFERPERIOD is added to the domain for a period of five days.

vii. Successful transfers will result in a one year term extension (resulting in a maximum total of 10 years), which will be charged to the gaining registrar.

e. Bulk transfer: Afilias, supports bulk transfer functionality within the SRS for situations where ICANN may request the registry to perform a transfer of some or all registered objects (includes domain, contact and host objects) from one registrar to another registrar. Once a bulk transfer has been executed, expiry dates for all domain objects remain the same, and all relevant states of each object type are preserved. In some cases the gaining and the losing registrar as well as the registry must approved bulk transfers. A detailed log is captured for each bulk transfer process and is archived for audit purposes. Applicant will support ICANN's Transfer Dispute Resolution Process. Applicant will work with Afilias to respond to Requests for Enforcement (law enforcement or court orders) and will follow that process.

1. Auto-renew grace period

The Auto-Renew Grace Period displays as AUTORENEWPERIOD in WHOIS. An auto-renew must be requested by the registrant through the sponsoring registrar and occurs if a domain name registration is not explicitly renewed or deleted by the expiration date and is set to a maximum of 45 calendar days. In this circumstance the registration will be automatically renewed by the registry system the first day after the expiration date. If a Delete, Extend, or Transfer occurs within the AUTORENEWPERIOD the following rules apply:

i. Delete. If a domain is deleted the sponsoring registrar at the time of the deletion

receives a credit for the auto-renew fee. The domain then moves into the Redemption Grace Period with a status of PENDING DELETE RESTORABLE.

ii. Renew-Extend. A domain can be renewed as long as the total term does not exceed 10 years. The account of the sponsoring registrar at the time of the extension will be charged for the additional number of years the registration is renewed.

iii. Transfer (other than ICANN-approved bulk transfer). If a domain is transferred, the losing registrar is credited for the auto-renew fee, and the year added by the operation is cancelled. As a result of the transfer, the expiration date of the domain is extended by minimum of one year as long as the total term does not exceed 10 years. The gaining registrar is charged for the additional transfer year(s) even in cases where a full year is not added because of the maximum 10 year registration restriction.

2. Redemption grace period

During this period, a domain name is placed in the PENDING DELETE RESTORABLE status when a registrar requests the deletion of a domain that is not within the Add Grace Period. A domain can remain in this state for up to 30 days and will not be included in the zone file. The only action a registrar can take on a domain is to request that it be restored. Any other registrar requests to modify or otherwise update the domain will be rejected. If the domain is restored it moves into PENDING RESTORE and then OK. After 30 days if the domain is not restored it moves into PENDING DELETE SCHEDULED FOR RELEASE before the domain is released back into the pool of available domains.

3. Pending delete

During this period, a domain name is placed in PENDING DELETE SCHEDULED FOR RELEASE status for five days, and all Internet services associated with the domain will remain disabled and domain cannot be restored. After five days the domain is released back into the pool of available domains.

Other grace periods

All ICANN required grace periods will be implemented in the registry backend service provider's system including the Add Grace Period (AGP), Renew-Extend Grace Period (EGP), Transfer Grace Period (TGP), Auto-Renew Grace Period (ARGP), and Redemption Grace Period (RGP). The lengths of grace periods are configurable in the registry system. At this time, the grace periods will be implemented following other gTLDs such as .ORG. More than one of these grace periods may be in effect at any one time. The following are accompanying grace periods to the registration lifecycle.

Add grace period

The Add Grace Period displays as ADDPERIOD in WHOIS and is set to five calendar days following the initial registration of a domain. If the domain is deleted by the registrar during this period, the registry provides a credit to the registrar for the cost of the registration. If a Delete, Renew-Extend, or Transfer operation occurs within the five calendar days, the following rules apply.

i. Delete. If a domain is deleted within this period the sponsoring registrar at the time of the deletion is credited for the amount of the registration. The domain is deleted from the registry backend service provider's database and is released back into the pool of available domains.

ii. Renew-Extend. If the domain is renewed within this period and then deleted, the sponsoring registrar will receive a credit for both the registration and the extended amounts. The account of the sponsoring registrar at the time of the renewal will be charged for the initial registration plus the number of years the registration is extended. The expiration date of the domain registration is extended by that number of years as long as the total term does not exceed 10 years.

iii. Transfer (other than ICANN-approved bulk transfer). Transfers under Part A of the ICANN Policy on Transfer of Registrations between registrars may not occur during the ADDPERIOD or at any other time within the first 60 days after the initial registration. Enforcement is the responsibility of the registrar sponsoring the domain name registration and is enforced by the SRS.

Renew / extend grace period

The Renew / Extend Grace Period displays as RENEWPERIOD in WHOIS and is set to five calendar days following an explicit renewal on the domain by the registrar. If a Delete, Extend, or Transfer occurs within the five calendar days, the following rules apply:

i. Delete. If a domain is deleted within this period the sponsoring registrar at the time of the deletion receives a credit for the renewal fee. The domain then moves into the Redemption

Grace Period with a status of PENDING DELETE RESTORABLE.

- ii. Renew-Extend. A domain registration can be renewed within this period as long as the total term does not exceed 10 years. The account of the sponsoring registrar at the time of the extension will be charged for the additional number of years the registration is renewed.
- iii. Transfer (other than ICANN-approved bulk transfer). If a domain is transferred within the Renew-Extend Grace Period, there is no credit to the losing registrar for the renewal fee. As a result of the transfer, the expiration date of the domain registration is extended by a minimum of one year as long as the total term for the domain does not exceed 10 years. If a domain is auto-renewed, then extended, and then deleted within the Renew-Extend Grace Period, the registrar will be credited for any auto-renew fee charged and the number of years for the extension. The years that were added to the domain's expiration as a result of the auto-renewal and extension are removed. The deleted domain is moved to the Redemption Grace Period with a status of PENDING DELETE RESTORABLE.

Transfer Grace Period

The Transfer Grace period displays as TRANSFERPERIOD in WHOIS and is set to five calendar days after the successful transfer of domain name registration from one registrar to another registrar. Transfers under Part A of the ICANN Policy on Transfer of Registrations between registrars may not occur during the TRANSFERPERIOD or within the first 60 days after the transfer. If a Delete or Renew-Extend occurs within that five calendar days, the following rules apply:

- i. Delete. If the domain is deleted by the new sponsoring registrar during this period, the registry provides a credit to the registrar for the cost of the transfer. The domain then moves into the Redemption Grace Period with a status of PENDING DELETE RESTORABLE.
- ii. Renew-Extend. If a domain registration is renewed within the Transfer Grace Period, there is no credit for the transfer. The registrar's account will be charged for the number of years the registration is renewed. The expiration date of the domain registration is extended by the renewal years as long as the total term does not exceed 10 years.

Special considerations

For any community TLD with a domain challenge process note the process is described in 20(e). Else, delete.

For TLD with auctions: This TLD will conduct an auction for certain domain names. Afilias will manage the domain name auction using existing technology. Upon the completion of the auction, any domain name acquired will then follow the standard lifecycle of a domain.

Registration lifecycle resources

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way. Virtually all Afilias resource are involved in the registration lifecycle of domains.

There are a few areas where registry staff devote resources to registration lifecycle issues:

- a. Supporting Registrar Transfer Disputes. The registry operator will have a compliance staffer handle these disputes as they arise; they are very rare in the existing gTLDs.
- b. Afilias has its development and quality assurance departments on hand to modify the grace period functionality as needed, if ICANN issues new Consensus Policies or the RFCs change.

Afilias has more than 30 staff members in these departments.

28. Abuse Prevention and Mitigation

The registry operator, working with Afiliias, will take the requisite operational and technical steps to promote WHOIS data accuracy, limit domain abuse, remove outdated and inaccurate data, and other security measures to ensure the integrity of the TLD. The specific measures include, but are not limited to:

- Posting a TLD Anti-Abuse Policy that clearly defines abuse, and provide point-of-contact information for reporting suspected abuse;
- Committing to rapid identification and resolution of abuse, including suspensions;
- Ensuring completeness of WHOIS information at the time of registration;
- Publishing and maintaining procedures for removing orphan glue records for names removed from the zone, and;
- Establishing measures to deter WHOIS abuse, including rate-limiting, determining data syntax validity, and implementing and enforcing requirements from the Registry-Registrar Agreement.

Abuse policy

The Anti-Abuse Policy stated below will be enacted under the contractual authority of the registry operator through the Registry-Registrar Agreement, and the obligations will be passed on to and made binding upon registrants. This policy will be posted on the TLD web site along with contact information for registrants or users to report suspected abuse.

The policy is designed to address the malicious use of domain names. The registry operator and its registrars will make reasonable attempts to limit significant harm to Internet users. This policy is not intended to take the place of the Uniform Domain Name Dispute Resolution Policy (UDRP) or the Uniform Rapid Suspension System (URS), and it is not to be used as an alternate form of dispute resolution or as a brand protection mechanism. Its intent is not to burden law-abiding or innocent registrants and domain users; rather, the intent is to deter those who use domain names maliciously by engaging in illegal or fraudulent activity.

Repeat violations of the abuse policy will result in a case-by-case review of the abuser(s), and the registry operator reserves the right to escalate the issue, with the intent of levying sanctions that are allowed under the TLD anti-abuse policy.

The below policy is a recent version of the policy that has been used by the .INFO registry since 2008, and the .ORG registry since 2009. It has proven to be an effective and flexible tool. Though the final process of protecting against abuse may differ in some elements, the intent, issues addressed and level of care will be similar to the outline below.

.TLD Anti-Abuse Policy

The following Anti-Abuse Policy is effective upon launch of the TLD. Malicious use of domain names will not be tolerated. The nature of such abuses creates security and stability issues for the registry, registrars, and registrants, as well as for users of the Internet in general. The registry operator definition of abusive use of a domain includes, without limitation, the following:

- Illegal or fraudulent actions;
- Spam: The use of electronic messaging systems to send unsolicited bulk messages. The term applies to email spam and similar abuses such as instant messaging spam, mobile messaging spam, and the spamming of web sites and Internet forums;
- Phishing: The use of counterfeit web pages that are designed to trick recipients into divulging sensitive data such as personally identifying information, usernames, passwords, or financial data;
- Pharming: The redirecting of unknowing users to fraudulent sites or services, typically through, but not limited to, DNS hijacking or poisoning;
- Willful distribution of malware: The dissemination of software designed to infiltrate or damage a computer system without the owner's informed consent. Examples include, without limitation, computer viruses, worms, keyloggers, and Trojan horses.
- Malicious fast-flux hosting: Use of fast-flux techniques with a botnet to disguise the location of web sites or other Internet services, or to avoid detection and mitigation efforts, or to host illegal activities.
- Botnet command and control: Services run on a domain name that are used to control a collection of compromised computers or "zombies," or to direct distributed denial-of-service attacks (DDoS attacks);
- Illegal Access to Other Computers or Networks: Illegally accessing computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another individual's system (often known as "hacking"). Also, any activity that might be used as a precursor to an attempted system penetration (e.g., port scan, stealth scan, or other

information gathering activity).

Pursuant to the Registry-Registrar Agreement, registry operator reserves the right at its sole discretion to deny, cancel, or transfer any registration or transaction, or place any domain name(s) on registry lock, hold, or similar status, that it deems necessary: (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of registry operator, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration agreement and this Anti-Abuse Policy, or (5) to correct mistakes made by registry operator or any registrar in connection with a domain name registration. Registry operator also reserves the right to place upon registry lock, hold, or similar status a domain name during resolution of a dispute.

The policy stated above will be accompanied by notes about how to submit a report to the registry operator's abuse point of contact, and how to report an orphan glue record suspected of being used in connection with malicious conduct (see below).

Abuse point of contact and procedures for handling abuse complaints

The registry operator will establish an abuse point of contact. This contact will be a role-based e-mail address of the form "abuse@registry.TLD". This e-mail address will allow multiple staff members to monitor abuse reports on a 24x7 basis, and then work toward closure of cases as each situation calls for. For tracking purposes, the registry operator will have a ticketing system with which all complaints will be tracked internally. The reporter will be provided with the ticket reference identifier for potential follow-up. Afilias will integrate its existing ticketing system with the registry operator's to ensure uniform tracking and handling of the complaint. This role-based approach has been used successfully by ISPs, e-mail service providers, and registrars for many years, and is considered a global best practice.

The registry operator's designated abuse handlers will then evaluate complaints received via the abuse system address. They will decide whether a particular issue is of concern, and decide what action, if any, is appropriate.

In general, the registry operator will find itself receiving abuse reports from a wide variety of parties, including security researchers and Internet security companies, financial institutions such as banks, Internet users, and law enforcement agencies among others. Some of these parties may provide good forensic data or supporting evidence of the malicious behavior. In other cases, the party reporting an issue may not be familiar with how to provide such data or proof of malicious behavior. It is expected that a percentage of abuse reports to the registry operator will not be actionable, because there will not be enough evidence to support the complaint (even after investigation), and because some reports or reporters will simply not be credible.

The security function includes a communication and outreach function, with information sharing with industry partners regarding malicious or abusive behavior, in order to ensure coordinated abuse mitigation across multiple TLDs.

Assessing abuse reports requires great care, and the registry operator will rely upon professional, trained investigators who are versed in such matters. The goals are accuracy, good record-keeping, and a zero false-positive rate so as not to harm innocent registrants.

Different types of malicious activities require different methods of investigation and documentation. Further, the registry operator expects to face unexpected or complex situations that call for professional advice, and will rely upon professional, trained investigators as needed.

In general, there are two types of domain abuse that must be addressed:

a) Compromised domains. These domains have been hacked or otherwise compromised by criminals, and the registrant is not responsible for the malicious activity taking place on the domain. For example, the majority of domain names that host phishing sites are compromised. The goal in such cases is to get word to the registrant (usually via the registrar) that there is a problem that needs attention with the expectation that the registrant will address the problem in a timely manner. Ideally such domains do not get suspended, since suspension would disrupt legitimate activity on the domain.

b) Malicious registrations. These domains are registered by malefactors for the purpose of abuse. Such domains are generally targets for suspension, since they have no legitimate use.

The standard procedure is that the registry operator will forward a credible alleged case of malicious domain name use to the domain's sponsoring registrar with a request that the registrar investigate the case and act appropriately. The registrar will be provided evidence collected as a result of the investigation conducted by the trained abuse handlers. As part of the investigation, if inaccurate or false WHOIS registrant information is detected, the registrar is notified about this. The registrar is the party with a direct relationship with—and a direct contract with—the registrant. The registrar will also have vital information that the registry operator will not, such as:

- Details about the domain purchase, such as the payment method used (credit card, PayPal, etc.);
- The identity of a proxy-protected registrant;
- The purchaser's IP address;
- Whether there is a reseller involved, and;
- The registrant's past sales history and purchases in other TLDs (insofar as the registrar can determine this).

Registrars do not share the above information with registry operators due to privacy and liability concerns, among others. Because they have more information with which to continue the investigation, and because they have a direct relationship with the registrant, the registrar is in the best position to evaluate alleged abuse. The registrar can determine if the use violates the registrar's legal terms of service or the registry Anti-Abuse Policy, and can decide whether or not to take any action. While the language and terms vary, registrars will be expected to include language in their registrar-registrant contracts that indemnifies the registrar if it takes action, and allows the registrar to suspend or cancel a domain name; this will be in addition to the registry Anti-Abuse Policy. Generally, registrars can act if the registrant violates the registrar's terms of service, or violates ICANN policy, or if illegal activity is involved, or if the use violates the registry's Anti-Abuse Policy.

If a registrar does not take action within a time period indicated by the registry operator (usually 24 hours), the registry operator might then decide to take action itself. At all times, the registry operator reserves the right to act directly and immediately if the potential harm to Internet users seems significant or imminent, with or without notice to the sponsoring registrar.

The registry operator will be prepared to call upon relevant law enforcement bodies as needed. There are certain cases, for example, illegal pharmacy domains, where the registry operator will contact the Law Enforcement Agencies to share information about these domains, provide all the evidence collected and work closely with them before any action will be taken for suspension. The specific action is often dependent upon the jurisdiction of which the registry operator, although the operator in all cases will adhere to applicable laws and regulations.

When valid court orders or seizure warrants are received from courts or law enforcement agencies of relevant jurisdiction, the registry operator will order execution in an expedited fashion. Compliance with these will be a top priority and will be completed as soon as possible and within the defined timelines of the order. There are certain cases where Law Enforcement Agencies request information about a domain including but not limited to:

- Registration information
- History of a domain, including recent updates made
- Other domains associated with a registrant's account
- Patterns of registrant portfolio

Requests for such information is handled on a priority basis and sent back to the requestor as soon as possible. Afilias sets a goal to respond to such requests within 24 hours.

The registry operator may also engage in proactive screening of its zone for malicious use of the domains in the TLD, and report problems to the sponsoring registrars. The registry operator could take advantage of a combination of the following resources, among others:

- Blocklists of domain names and nameservers published by organizations such as SURBL and Spamhaus.
- Anti-phishing feeds, which will provide URLs of compromised and maliciously registered

domains being used for phishing.

- Analysis of registration or DNS query data [DNS query data received by the TLD nameservers.]

The registry operator will keep records and track metrics regarding abuse and abuse reports. These will include:

- Number of abuse reports received by the registry's abuse point of contact described above;
- Number of cases and domains referred to registrars for resolution;
- Number of cases and domains where the registry took direct action;
- Resolution times;
- Number of domains in the TLD that have been blacklisted by major anti-spam blocklist providers, and;
- Phishing site uptimes in the TLD.

Removal of orphan glue records

By definition, orphan glue records used to be glue records. Glue records are related to delegations and are necessary to guide iterative resolvers to delegated nameservers. A glue record becomes an orphan when its parent nameserver record is removed without also removing the corresponding glue record. (Please reference the ICANN SSAC paper SAC048 at: <http://www.icann.org/en/committees/security/sac048.pdf>.) Orphan glue records may be created when a domain (example.tld) is placed on EPP ServerHold or ClientHold status. When placed on Hold, the domain is removed from the zone and will stop resolving. However, any child nameservers (now orphan glue) of that domain (e.g., ns1.example.tld) are left in the zone. It is important to keep these orphan glue records in the zone so that any innocent sites using that nameserver will continue to resolve. This use of Hold status is an essential tool for suspending malicious domains.

Afilias observes the following procedures, which are being followed by other registries and are generally accepted as DNS best practices. These procedures are also in keeping with ICANN SSAC recommendations.

When a request to delete a domain is received from a registrar, the registry first checks for the existence of glue records. If glue records exist, the registry will check to see if other domains in the registry are using the glue records. If other domains in the registry are using the glue records then the request to delete the domain will fail until no other domains are using the glue records. If no other domains in the registry are using the glue records then the glue records will be removed before the request to delete the domain is satisfied. If no glue records exist then the request to delete the domain will be satisfied.

If a registrar cannot delete a domain because of the existence of glue records that are being used by other domains, then the registrar may refer to the zone file or the "weekly domain hosted by nameserver report" to find out which domains are using the nameserver in question and attempt to contact the corresponding registrar to request that they stop using the nameserver in the glue record. The registry operator does not plan on performing mass updates of the associated DNS records.

The registry operator will accept, evaluate, and respond appropriately to complaints that orphan glue is being used maliciously. Such reports should be made in writing to the registry operator, and may be submitted to the registry's abuse point-of-contact. If it is confirmed that an orphan glue record is being used in connection with malicious conduct, the registry operator will have the orphan glue record removed from the zone file. Afilias has the technical ability to execute such requests as needed.

Methods to promote WHOIS accuracy

The creation and maintenance of accurate WHOIS records is an important part of registry management. As described in our response to question #26, WHOIS, the registry operator will manage a secure, robust and searchable WHOIS service for this TLD.

WHOIS data accuracy

The registry operator will offer a "thick" registry system. In this model, all key contact details for each domain name will be stored in a central location by the registry. This allows better access to domain data, and provides uniformity in storing the information. The registry operator will ensure that the required fields for WHOIS data (as per the defined policies for the TLD) are enforced at the registry level. This ensures that the registrars are providing required domain registration data. Fields defined by the registry policy to be

mandatory are documented as such and must be submitted by registrars. The Afiliias registry system verifies formats for relevant individual data fields (e.g. e-mail, and phone/fax numbers). Only valid country codes are allowed as defined by the ISO 3166 code list. The Afiliias WHOIS system is extensible, and is capable of using the VAULT system, described further below.

Similar to the centralized abuse point of contact described above, the registry operator can institute a contact email address which could be utilized by third parties to submit complaints for inaccurate or false WHOIS data detected. This information will be processed by Afiliias' support department and forwarded to the registrars. The registrars can work with the registrants of those domains to address these complaints. Afiliias will audit registrars on a yearly basis to verify whether the complaints being forwarded are being addressed or not. This functionality, available to all registry operators, is activated based on the registry operator's business policy.

Afiliias also incorporates a spot-check verification system where a randomly selected set of domain names are checked periodically for accuracy of WHOIS data. Afiliias' .PRO registry system incorporates such a verification system whereby 1% of total registrations or 100 domains, whichever number is larger, are spot-checked every month to verify the domain name registrant's critical information provided with the domain registration data. With both a highly qualified corps of engineers and a 24x7 staffed support function, Afiliias has the capacity to integrate such spot-check functionality into this TLD, based on the registry operator's business policy. Note: This functionality will not work for proxy protected WHOIS information, where registrars or their resellers have the actual registrant data. The solution to that problem lies with either registry or registrar policy, or a change in the general marketplace practices with respect to proxy registrations.

Finally, Afiliias' registry systems have a sophisticated set of billing and pricing functionality which aids registry operators who decide to provide a set of financial incentives to registrars for maintaining or improving WHOIS accuracy. For instance, it is conceivable that the registry operator may decide to provide a discount for the domain registration or renewal fees for validated registrants, or levy a larger cost for the domain registration or renewal of proxy domain names. The Afiliias system has the capability to support such incentives on a configurable basis, towards the goal of promoting better WHOIS accuracy.

Role of registrars

As part of the RRA (Registry Registrar Agreement), the registry operator will require the registrar to be responsible for ensuring the input of accurate WHOIS data by their registrants. The Registrar-Registered Name Holder Agreement will include a specific clause to ensure accuracy of WHOIS data, and to give the registrar rights to cancel or suspend registrations if the Registered Name Holder fails to respond to the registrar's query regarding accuracy of data. ICANN's WHOIS Data Problem Reporting System (WDPRS) will be available to those who wish to file WHOIS inaccuracy reports, as per ICANN policy (<http://wdprs.internic.net>).

Controls to ensure proper access to domain functions

Several measures are in place in the Afiliias registry system to ensure proper access to domain functions, including authentication provisions in the RRA relative to notification and contact updates via use of AUTH-INFO codes.

IP address access control lists, TLS-SSL certificates and proper authentication are used to control access to the registry system. Registrars are only given access to perform operations on the objects they sponsor.

Every domain will have a unique AUTH-INFO code. The AUTH-INFO code is a 6- to 16-character code assigned by the registrar at the time the name is created. Its purpose is to aid identification of the domain owner so proper authority can be established. It is the "password" to the domain name. Registrars must use the domain's password in order to initiate a registrar-to-registrar transfer. It is used to ensure that domain updates (update contact information, transfer, or deletion) are undertaken by the proper registrant, and that this registrant is adequately notified of domain update activity. Only the sponsoring registrar of a domain has access to the domain's AUTH-INFO code stored in the registry, and this is accessible only via encrypted, password-protected channels.

Information about other registry security measures such as encryption and security of registrar channels are confidential to ensure the security of the registry system. The details can be found in the response to question #30b.

Validation and abuse mitigation mechanisms

Afilias has developed advanced validation and abuse mitigation mechanisms. These capabilities and mechanisms are described below. These services and capabilities are discretionary and may be utilized by the registry operator based on their policy and business need.

Afilias has the ability to analyze the registration data for known patterns at the time of registration. A database of these known patterns is developed from domains and other associated objects (e.g., contact information) which have been previously detected and suspended after being flagged as abusive. Any domains matching the defined criteria can be flagged for investigation. Once analyzed and confirmed by the domain anti-abuse team members, these domains may be suspended. This provides proactive detection of abusive domains.

Provisions are available to enable the registry operator to only allow registrations by pre-authorized and verified contacts. These verified contacts are given a unique code that can be used for registration of new domains.

Registrant pre-verification and authentication

One of the systems that could be used for validity and identity authentication is VAULT (Validation and Authentication Universal Lookup). It utilizes information obtained from a series of trusted data sources with access to billions of records containing data about individuals for the purpose of providing independent age and id verification as well as the ability to incorporate additional public or private data sources as required. At present it has the following: US Residential Coverage - 90% of Adult Population and also International Coverage - Varies from Country to Country with a minimum of 80% coverage (24 countries, mostly European).

Various verification elements can be used. Examples might include applicant data such as name, address, phone, etc. Multiple methods could be used for verification include integrated solutions utilizing API (XML Application Programming Interface) or sending batches of requests.

- Verification and Authentication requirements would be based on TLD operator requirements or specific criteria.
- Based on required WHOIS Data; registrant contact details (name, address, phone)
- If address-ZIP can be validated by VAULT, the validation process can continue (North America +25 International countries)
- If in-line processing and registration and EPP-API call would go to the verification clearinghouse and return up to 4 challenge questions.
- If two-step registration is required, then registrants would get a link to complete the verification at a separate time. The link could be specific to a domain registration and pre-populated with data about the registrant.
- If WHOIS data is validated a token would be generated and could be given back to the registrar which registered the domain.
- WHOIS data would reflect the Validated Data or some subset, i.e., fields displayed could be first initial and last name, country of registrant and date validated. Other fields could be generic validation fields much like a "privacy service".
- A "Validation Icon" customized script would be sent to the registrants email address. This could be displayed on the website and would be dynamically generated to avoid unauthorized use of the Icon. When clicked on the Icon would should limited WHOIS details i.e. Registrant: jdoe, Country: USA, Date Validated: March 29, 2011, as well as legal disclaimers.
- Validation would be annually renewed, and validation date displayed in the WHOIS.

Abuse prevention resourcing plans

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias

project management methodology allows efficient and effective use of our staff in a focused way. Abuse prevention and detection is a function that is staffed across the various groups inside Afiliias, and requires a team effort when abuse is either well hidden or widespread, or both. While all of Afiliias' 200+ employees are charged with responsibility to report any detected abuse, the engineering and analysis teams, numbering over 30, provide specific support based on the type of abuse and volume and frequency of analysis required. The Afiliias security and support teams have the authority to initiate mitigation.

Afiliias has developed advanced validation and abuse mitigation mechanisms. These capabilities and mechanisms are described below. These services and capabilities are discretionary and may be utilized by the registry operator based on their policy and business need.

This TLD's anticipated volume of registrations in the first three years of operations is listed in response #46. Afiliias and the registry operator's anti-abuse function anticipates the expected volume and type of registrations, and together will adequately cover the staffing needs for this TLD. The registry operator will maintain an abuse response team, which may be a combination of internal staff and outside specialty contractors, adjusting to the needs of the size and type of TLD. The team structure planned for this TLD is based on several years of experience responding to, mitigating, and managing abuse for TLDs of various sizes. The team will generally consist of abuse handlers (probably internal), a junior analyst, (either internal or external), and a senior security consultant (likely an external resource providing the registry operator with extra expertise as needed). These responders will be specially trained in the investigation of abuse complaints, and will have the latitude to act expeditiously to suspend domain names (or apply other remedies) when called for.

The exact resources required to maintain an abuse response team must change with the size and registration procedures of the TLD. An initial abuse handler is necessary as a point of contact for reports, even if a part-time responsibility. The abuse handlers monitor the abuse email address for complaints and evaluate incoming reports from a variety of sources. A large percentage of abuse reports to the registry operator may be unsolicited commercial email. The designated abuse handlers can identify legitimate reports and then decide what action is appropriate, either to act upon them, escalate to a security analyst for closer investigation, or refer them to registrars as per the above-described procedures. A TLD with rare cases of abuse would conform to this structure.

If multiple cases of abuse within the same week occur regularly, the registry operator will consider staffing internally a security analyst to investigate the complaints as they become more frequent. Training an abuse analyst requires 3-6 months and likely requires the active guidance of an experienced senior security analyst for guidance and verification of assessments and recommendations being made.

If this TLD were to regularly experience multiple cases of abuse within the same day, a full-time senior security analyst would likely be necessary. A senior security analyst capable of fulfilling this role should have several years of experience and able to manage and train the internal abuse response team.

The abuse response team will also maintain subscriptions for several security information services, including the blocklists from organizations like SURBL and Spamhaus and anti-phishing and other domain related abuse (malware, fast-flux etc.) feeds. The pricing structure of these services may depend on the size of the domain and some services will include a number of rapid suspension requests for use as needed.

For a large TLD, regular audits of the registry data are required to maintain control over abusive registrations. When a registrar with a significant number of registrations has been compromised or acted maliciously, the registry operator may need to analyze a set of registration or DNS query data. A scan of all the domains of a registrar is conducted only as needed. Scanning and analysis for a large registrar may require as much as a week of full-time effort for a dedicated machine and team.

29. Rights Protection Mechanisms

Rights protection is a core responsibility of the TLD operator, and is supported by a fully-developed plan for rights protection that includes:

- Establishing mechanisms to prevent unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies);
- Implementing a robust Sunrise program, utilizing the Trademark Clearinghouse, the services of one of ICANN's approved dispute resolution providers, a trademark validation agent, and drawing upon sunrise policies and rules used successfully in previous gTLD launches;
- Implementing a professional trademark claims program that utilizes the Trademark Clearinghouse, and drawing upon models of similar programs used successfully in previous TLD launches;
- Complying with the URS requirements;
- Complying with the UDRP;
- Complying with the PDDRP, and;
- Including all ICANN-mandated and independently developed rights protection mechanisms ("RPMs") in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD.

The response below details the rights protection mechanisms at the launch of the TLD (Sunrise and Trademark Claims Service) which comply with rights protection policies (URS, UDRP, PDDRP, and other ICANN RPMs), outlines additional provisions made for rights protection, and provides the resourcing plans.

Safeguards for rights protection at the launch of the TLD

The launch of this TLD will include the operation of a trademark claims service according to the defined ICANN processes for checking a registration request and alerting trademark holders of potential rights infringement.

The Sunrise Period will be an exclusive period of time, prior to the opening of public registration, when trademark holders will be able to reserve eligible marks that correspond with domain name. Following the Sunrise Period, registration will open to qualified applicants.

Afiilas will support handling data from the outcomes of the sunrise and land-rush periods.

The Registry intends to offer the following launch model.

Certain names will be RESERVED NAMES.

Sunrise A	(favouring trademarks of the countries of the GCC)
Sunrise B	(favouring trademarks generally)
Sunrise C	(favouring entities operating in countries of the GCC)
Landrush	(seeking to sell premium names)
General Availability	(steady state pricing)

Sunrise

The Sunrise process is separated into three phases:

- Sunrise A allows eligible trademark owners to obtain domains corresponding to trademarks registered in the COUNTRIES OF THE GCC.
- Sunrise B allows eligible trademark owners to obtain domains corresponding to the trademarks they own.
- Sunrise C allows the COMPETENT AUTHORITY (such as government or local government or equivalent) or the ELIGIBLE SUNRISE C OWNER to obtain domains corresponding to entities or individuals associated with the COUNTRIES OF THE GCC.

There is no priority during the Sunrise periods. A batching system is used for identical competing applications which are then allocated by auction.

The Registry will publish full details of its Sunrise policy and eligibility. What follows is an outline of the policy with some key definitions.

To be eligible to submit a REGISTRATION REQUEST under Sunrise, a Sunrise APPLICANT must:

- (a) comply with the relevant SUNRISE ELIGIBILITY REQUIREMENTS; and
- (b) be related to the POLICY of the REGISTRY; and
- (c) AFFIRM COMPLIANCE with the POLICY of the REGISTRY.

Sunrise definitions

The policy will be based inter alia upon the following key definitions.

COMPETENT AUTHORITY.

An APPLICANT who is the competent authority (such as government, local government or equivalent) of the relevant entity associated with the COUNTRIES OF THE GCC.

COUNTRIES OF THE GCC

Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates.

ELIGIBLE SUNRISE C OWNER

This is a broad list that will be published by the Registry after delegation and includes non-exhaustively: government and local government entities, businesses, not for profits, non-governmental organisations, eminent individuals, clubs and societies.

OWNERSHIP.

Ownership of an eligible trademark may mean owner, co-owner or assignee.

For an assignee, the PROVIDER may request appropriate evidence that the assignment has taken place, and meets the legal requirements to be an effective assignment in the jurisdiction in which the mark is registered.

For a co-owner, the PROVIDER may request appropriate evidence that the co-owners have joined in the application.

Any dispute will be decided upon by the PROVIDER.

PROVIDER.

An independent entity or entities appointed by the Registry to provide certain rights protection services which may include inter alia verification, validation, and dispute resolution related to eligibility of trademarks.

REGISTRATION REQUEST.

An application submitted by an ACCREDITED REGISTRAR on behalf of an APPLICANT to register a name in the TLD.

RESERVED NAME

A Registration Request that is a match with the names listed in the ".GCC Reserve List" being a listing of geographical and other names related to the public sector or other entities or individuals related to the policy of the Registry. Reserved names may be released by the Registry according to the rules of the Reserved Name Release Policy, which will be published after delegation.

SUNRISE DISPUTE RESOLUTION POLICY.

The REGISTRY will operate a Sunrise Dispute Resolution Policy either itself or via the PROVIDER full details and the fees for which will be published on the REGISTRY WEBSITE.

The policy will allow challenges based on the following grounds:

(a) at the time the challenged domain name was registered, the domain name REGISTRANT did not hold an ELIGIBLE trademark;

(b) the trademark registration or other grounds on which the domain name REGISTRANT based its Sunrise registration is not ELIGIBLE;

(c) the domain name is not identical to the trademark or entity on which the domain name REGISTRANT based its Sunrise registration;

(d) the REGISTRATION REQUEST which led to the award of the domain name was in some way incorrect, misleading or fraudulent.

SUNRISE A ELIGIBILITY REQUIREMENTS.

These are cumulative.

(a) OWNERSHIP of a word mark of national effect registered in one of the COUNTRIES OF THE GCC;

(b - n) of the SUNRISE B ELIGIBILITY REQUIREMENTS;

(m) is not a match to a RESERVED NAME.

SUNRISE B ELIGIBILITY REQUIREMENTS.

These are cumulative.

- (a) OWNERSHIP of a word mark registered in the Trademark Clearinghouse;
OR OWNERSHIP of a word mark of national or regional or international effect registered in one of the states or entities in the WIPO Standard ST.3, that is in full force and effect at the time of submission of the REGISTRATION REQUEST, and at the time of Registration of any awarded name, and for which acceptable evidence of USE in the class for which it is registered is provided;
OR OWNERSHIP of a word mark that has been court-validated;
OR OWNERSHIP of a word mark that is specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008;
- (b) a word mark which directly corresponds to the name in the REGISTRATION REQUEST;
- (c) a statutory declaration or an affidavit signed by the APPLICANT:
 - (i) that the information provided is true, correct and complete;
 - (ii) that no pertinent information has been withheld;
 - (iii) that acknowledges the fact that if there is any information withheld, that it automatically results in the loss of rights in any domain name(s) acquired, or the loss of the right to seek to register same;
 - (iv) that the application is compliant with the relevant Sunrise requirements;
- (d) provision of data conforming to the SUNRISE INFORMATION REQUIREMENTS sufficient to document rights in the trademark;
- (e) is not a word mark that includes the STRING as a portion of the trademark;
- (f) is not a trademark for which an application for registration has been filed, but is not actually registered;
- (g) is not a trademark for which an application has lapsed, been withdrawn, revoked, or cancelled;
- (h) is not an unregistered trademark including such common law marks;
- (i) is not a U.S. state trademark or service mark or a U.S. supplemental registration;
- (j) is not an international application for the registration of trademarks, made through the Madrid system, unless based on or have resulted in a registered trademark of national effect;
- (k) is not intellectual property other than a word mark such as rights in a sign or name, including domain names, trade names, and appellations of origin.
- (l) is not a trademark registration that came into full effect after the effective date of the Registry Agreement;
- (m) is not a trademark registration that was applied for after the 1 May 2012.
- (n) is not a trademark that matches a RESERVED NAME.

One key objective of the SERs is to facilitate marks registered and used in good faith and not merely as a means to register a domain name.

SUNRISE C ELIGIBILITY REQUIREMENTS.

These are cumulative.

- (a) the COMPETENT AUTHORITY for, or the ELIGIBLE SUNRISE C OWNER of, an entity associated with the COUNTRIES OF THE GCC;
- (b) provision of data sufficient to document the competence of the authority or the eligibility of the owner;
- (c) is not a match to a RESERVED NAME.

SUNRISE INFORMATION REQUIREMENTS.

APPLICANTS in Sunrise A and B must submit the following information, either in an ACCEPTABLE ELECTRONIC FORMAT or via a link to the relevant database of the trademark registry, as part of a REGISTRATION REQUEST:

EITHER 1: the Trademark name and its corresponding Trademark Clearing House identity number;

OR 2 all of the following:

- (a) the trademark corresponding to the name to be Registered;
- (b) the country, region, or organization found in WIPO STANDARD ST.3 in which the trademark is registered;
- (c) the current registration number of the trademark;
- (d) the date on which the trademark application was submitted
- (e) the date on which the trademark was registered;
- (f) the class or classes under the latest publication of the Nice system (or its equivalent) for with the trademark is registered; and
- (g) the status of the APPLICANT being one of owner, co-owner, or assignee of the trademark.

USE. Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use in the relevant jurisdiction, provided in an ACCEPTABLE ELECTRONIC FORMAT.

The form of the signed declaration will be as follows.

"I-We [name of applicant] declare that I-we have used the trademark [name of work mark] since [date] in [country] on [state goods or services] and attach a sample of [type of sample] as evidence."

Ongoing rights protection mechanisms

Several mechanisms will be in place to protect rights in this TLD. As described in our responses to questions #27 and #28, measures are in place to ensure domain transfers and updates are only initiated by the appropriate domain holder, and an experienced team is available to respond to legal actions by law enforcement or court orders.

This TLD will conform to all ICANN RPMs including URS (defined below), UDRP, PDDRP, and all measures defined in Specification 7 of the new TLD agreement.

Uniform Rapid Suspension (URS)

The registry operator will implement decisions rendered under the URS on an ongoing basis. Per the URS policy posted on ICANN's Web site as of this writing, the registry operator will receive notice of URS actions from the ICANN-approved URS providers. These emails will be directed immediately to the registry operator's support staff, which is on duty 24x7. The support staff will be responsible for creating a ticket for each case, and for executing the directives from the URS provider. All support staff will receive pertinent training.

As per ICANN's URS guidelines, within 24 hours of receipt of the notice of complaint from the URS provider, the registry operator shall "lock" the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will remain in the TLD DNS zone file and will thus continue to resolve. The support staff will "lock" the domain by associating the following EPP statuses with the domain and relevant contact objects:

- ServerUpdateProhibited, with an EPP reason code of "URS"
- ServerDeleteProhibited, with an EPP reason code of "URS"
- ServerTransferProhibited, with an EPP reason code of "URS"
- The registry operator's support staff will then notify the URS provider immediately upon locking the domain name, via email.

The registry operator's support staff will retain all copies of emails from the URS providers, assign them a tracking or ticket number, and will track the status of each opened URS case through to resolution via spreadsheet or database.

The registry operator's support staff will execute further operations upon notice from the URS providers. The URS provider is required to specify the remedy and required actions of the registry operator, with notification to the registrant, the complainant, and the registrar.

As per the URS guidelines, if the complainant prevails, the "registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS provider about the URS. The WHOIS for the domain name shall continue to display all of the information of the original registrant except for the redirection of the nameservers. In addition, the WHOIS shall reflect that the domain name

will not be able to be transferred, deleted or modified for the life of the registration.”

Community TLD considerations

This is not a Community TLD.

Rights protection via the RRA

The following will be memorialized and be made binding via the Registry-Registrar and Registrar-Registrant Agreements:

- The registry may reject a registration request or a reservation request, or may delete, revoke, suspend, cancel, or transfer a registration or reservation under the following criteria:
 - a. to enforce registry policies and ICANN requirements; each as amended from time to time;
 - b. that is not accompanied by complete and accurate information as required by ICANN requirements and/or registry policies or where required information is not updated and/or corrected as required by ICANN requirements and/or registry policies;
 - c. to protect the integrity and stability of the registry, its operations, and the TLD system;
 - d. to comply with any applicable law, regulation, holding, order, or decision issued by a court, administrative authority, or dispute resolution service provider with jurisdiction over the registry;
 - e. to establish, assert, or defend the legal rights of the registry or a third party or to avoid any civil or criminal liability on the part of the registry and/or its affiliates, subsidiaries, officers, directors, representatives, employees, contractors, and stockholders;
 - f. to correct mistakes made by the registry or any accredited registrar in connection with a registration; or
 - g. as otherwise provided in the Registry-Registrar Agreement and/or the Registrar-Registrant Agreement.

Reducing opportunities for behaviors such as phishing or pharming

In our response to question #28, the registry operator has described its anti-abuse program. Rather than repeating the policies and procedures here, please see our response to question #28 for full details.

With specific respect to phishing and pharming, it should be noted by ICANN that this will be a single entity TLD in which the Applicant has direct control over each registrant (they are typically on staff or otherwise contractually bound) and how each registration may be used. Further, there will be no open registration period for this TLD, as it will never be an “open” TLD. Since all criminal activity (such as phishing and pharming) is precluded by the mission, values and policies of the registry operator (and its parent organization), criminal activity is not expected to be a problem. If such activity occurs due to hacking or other compromises, the registry operator will take prompt and effective steps to eliminate the activity.

In the case of this TLD, the Applicant will apply an approach that addresses registered domain names (rather than potentially registered domains). This approach will not infringe upon the rights of eligible registrants to register domains, and allows the Applicant internal controls, as well as community-developed UDRP and URS policies and procedures if needed, to deal with complaints, should there be any.

Afilias is a member of various security fora which provide access to lists of names in each TLD which may be used for malicious purposes. Such identified names will be subject to the TLD anti-abuse policy, including rapid suspensions after due process.

Rights protection resourcing plans

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way.

Supporting RPMs requires several departments within the registry operator as well as within Afilias. The implementation of Sunrise and the Trademark Claims service and on-going RPM activities will pull from the 102 Afilias staff members of the engineering, product management, development, security and policy teams at Afilias and the support staff of the registry operator, which is on duty 24x7. A trademark validator will also be assigned within the registry operator, whose responsibilities may require as much as 50% of full-time employment if the domains under management were to exceed several million. No additional hardware or software resources are required to support this as Afilias has fully-operational capabilities to manage abuse today.

30(a). Security Policy: Summary of the security policy for the proposed registry

The answer to question #30a is provided by Afilias, the back-end provider of registry services for this TLD.

Afilias aggressively and actively protects the registry system from known threats and vulnerabilities, and has deployed an extensive set of security protocols, policies and procedures to thwart compromise. Afilias' robust and detailed plans are continually updated and tested to ensure new threats are mitigated prior to becoming issues. Afilias will continue these rigorous security measures, which include:

- Multiple layers of security and access controls throughout registry and support systems;
- 24x7 monitoring of all registry and DNS systems, support systems and facilities;
- Unique, proven registry design that ensures data integrity by granting only authorized access to the registry system, all while meeting performance requirements;
- Detailed incident and problem management processes for rapid review, communications, and problem resolution, and;
- Yearly external audits by independent, industry-leading firms, as well as twice-yearly internal audits.

Security policies and protocols

Afilias has included security in every element of its service, including facilities, hardware, equipment, connectivity, Internet services, systems, computer systems, organizational security, outage prevention, monitoring, disaster mitigation, and escrow-insurance, from the original design, through development, and finally as part of production deployment. Examples of threats and the confidential and proprietary mitigation procedures are detailed in our response to question #30(b).

There are several important aspects of the security policies and procedures to note:

- Afilias hosts domains in data centers around the world that meet or exceed global best practices.
- Afilias' DNS infrastructure is massively provisioned as part of its DDoS mitigation strategy, thus ensuring sufficient capacity and redundancy to support new gTLDs.
- Diversity is an integral part of all of our software and hardware stability and robustness plan, thus avoiding any single points of failure in our infrastructure.
- Access to any element of our service (applications, infrastructure and data) is only provided on an as-needed basis to employees and a limited set of others to fulfill their job functions. The principle of least privilege is applied.
- All registry components - critical and non-critical - are monitored 24x7 by staff at our NOCs, and the technical staff has detailed plans and procedures that have stood the test of time for addressing even the smallest anomaly. Well-documented incident management procedures are in place to quickly involve the on-call technical and management staff members to address any issues.

Afilias follows the guidelines from the ISO 27001 Information Security Standard (Reference: http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=42103) for the management and implementation of its Information Security Management System. Afilias also utilizes the COBIT IT governance framework to facilitate policy development and enable controls for appropriate management of risk (Reference: <http://www.isaca.org/cobit>). Best practices defined in ISO 27002 are followed for defining the security controls within the organization. Afilias continually looks to improve the efficiency and effectiveness of our processes, and follows industry best practices as defined by the IT Infrastructure Library,

or ITIL (Reference: <http://www.ityl-officialsite.com/>).

The Afiliias registry system is located within secure data centers that implement a multitude of security measures both to minimize any potential points of vulnerability and to limit any damage should there be a breach. The characteristics of these data centers are described fully in our response to question #30(b).

The Afiliias registry system employs a number of multi-layered measures to prevent unauthorized access to its network and internal systems. Before reaching the registry network, all traffic is required to pass through a firewall system. Packets passing to and from the Internet are inspected, and unauthorized or unexpected attempts to connect to the registry servers are both logged and denied. Management processes are in place to ensure each request is tracked and documented, and regular firewall audits are performed to ensure proper operation. 24x7 monitoring is in place and, if potential malicious activity is detected, appropriate personnel are notified immediately.

Afiliias employs a set of security procedures to ensure maximum security on each of its servers, including disabling all unnecessary services and processes and regular application of security-related patches to the operating system and critical system applications. Regular external vulnerability scans are performed to verify that only services intended to be available are accessible.

Regular detailed audits of the server configuration are performed to verify that the configurations comply with current best security practices. Passwords and other access means are changed on a regular schedule and are revoked whenever a staff member's employment is terminated.

Access to registry system

Access to all production systems and software is strictly limited to authorized operations staff members. Access to technical support and network operations teams where necessary are read only and limited only to components required to help troubleshoot customer issues and perform routine checks. Strict change control procedures are in place and are followed each time a change is required to the production hardware/application. User rights are kept to a minimum at all times. In the event of a staff member's employment termination, all access is removed immediately.

Afiliias applications use encrypted network communications. Access to the registry server is controlled. Afiliias allows access to an authorized registrar only if each of the authentication factors matches the specific requirements of the requested authorization. These mechanisms are also used to secure any web-based tools that allow authorized registrars to access the registry. Additionally, all write transactions in the registry (whether conducted by authorized registrars or the registry's own personnel) are logged.

EPP connections are encrypted using TLS/SSL, and mutually authenticated using both certificate checks and login/password combinations. Web connections are encrypted using TLS/SSL for an encrypted tunnel to the browser, and authenticated to the EPP server using login/password combinations.

All systems are monitored for security breaches from within the data center and without, using both system-based and network-based testing tools. Operations staff also monitor systems for security-related performance anomalies. Triple-redundant continual monitoring ensures multiple detection paths for any potential incident or problem. Details are provided in our response to questions #30(b) and #42. Network Operations and Security Operations teams perform regular audits in search of any potential vulnerability.

To ensure that registrar hosts configured erroneously or maliciously cannot deny service to other registrars, Afiliias uses traffic shaping technologies to prevent attacks from any single registrar account, IP address, or subnet. This additional layer of security reduces the likelihood of performance degradation for all registrars, even in the case of a security compromise at a subset of registrars.

There is a clear accountability policy that defines what behaviors are acceptable and unacceptable on the part of non-staff users, staff users, and management. Periodic audits of policies and procedures are performed to ensure that any weaknesses are discovered and addressed. Aggressive escalation procedures and well-defined Incident Response management

procedures ensure that decision makers are involved at early stages of any event.

In short, security is a consideration in every aspect of business at Afilias, and this is evidenced in a track record of a decade of secure, stable and reliable service.

Independent assessment

Supporting operational excellence as an example of security practices, Afilias performs a number of internal and external security audits each year of the existing policies, procedures and practices for:

- Access control;
- Security policies;
- Production change control;
- Backups and restores;
- Batch monitoring;
- Intrusion detection, and
- Physical security.

Afilias has an annual Type 2 SSAE 16 audit performed by PricewaterhouseCoopers (PwC). Further, PwC performs testing of the general information technology controls in support of the financial statement audit. A Type 2 report opinion under SSAE 16 covers whether the controls were properly designed, were in place, and operating effectively during the audit period (calendar year). This SSAE 16 audit includes testing of internal controls relevant to Afilias' domain registry system and processes. The report includes testing of key controls related to the following control objectives:

- Controls provide reasonable assurance that registrar account balances and changes to the registrar account balances are authorized, complete, accurate and timely.
- Controls provide reasonable assurance that billable transactions are recorded in the Shared Registry System (SRS) in a complete, accurate and timely manner.
- Controls provide reasonable assurance that revenue is systemically calculated by the Deferred Revenue System (DRS) in a complete, accurate and timely manner.
- Controls provide reasonable assurance that the summary and detail reports, invoices, statements, registrar and registry billing data files, and ICANN transactional reports provided to the Registry Operator(s) are complete, accurate and timely.
- Controls provide reasonable assurance that new applications and changes to existing applications are authorized, tested, approved, properly implemented and documented.
- Controls provide reasonable assurance that changes to existing system software and implementation of new system software are authorized, tested, approved, properly implemented and documented.
- Controls provide reasonable assurance that physical access to data centers is restricted to properly authorized individuals.
- Controls provide reasonable assurance that logical access to system resources is restricted to properly authorized individuals.
- Controls provide reasonable assurance that processing and backups are appropriately authorized and scheduled and that deviations from scheduled processing and backups are identified and resolved.

The last Type 2 report issued was for the year 2010, and it was unqualified, i.e., all systems were evaluated with no material problems found.

During each year, Afilias monitors the key controls related to the SSAE controls. Changes or additions to the control objectives or activities can result due to deployment of new services, software enhancements, infrastructure changes or process enhancements. These are noted and after internal review and approval, adjustments are made for the next review.

In addition to the PricewaterhouseCoopers engagement, Afilias performs internal security audits twice a year. These assessments are constantly being expanded based on risk assessments and changes in business or technology.

Additionally, Afilias engages an independent third-party security organization, PivotPoint Security, to perform external vulnerability assessments and penetration tests on the sites hosting and managing the Registry infrastructure. These assessments are performed with major infrastructure changes, release of new services or major software enhancements. These independent assessments are performed at least annually. A report from a recent assessment is attached with our response to question #30(b).

Afilias has engaged with security companies specializing in application and web security testing to ensure the security of web-based applications offered by Afilias, such as the Web Admin Tool (WAT) for registrars and registry operators.

Finally, Afilias has engaged IBM's Security services division to perform ISO 27002 gap assessment studies so as to review alignment of Afilias' procedures and policies with the ISO 27002 standard. Afilias has since made adjustments to its security procedures and policies based on the recommendations by IBM.

Special TLD considerations

Afilias' rigorous security practices are regularly reviewed; if there is a need to alter or augment procedures for this TLD, they will be done so in a planned and deliberate manner.

Commitments to registrant protection

With over a decade of experience protecting domain registration data, Afilias understands registrant security concerns. Afilias supports a "thick" registry system in which data for all objects are stored in the registry database that is the centralized authoritative source of information. As an active member of IETF (Internet Engineering Task Force), ICANN's SSAC (Security & Stability Advisory Committee), APWG (Anti-Phishing Working Group), MAAWG (Messaging Anti-Abuse Working Group), USENIX, and ISACA (Information Systems Audits and Controls Association), the Afilias team is highly attuned to the potential threats and leading tools and procedures for mitigating threats. As such, registrants should be confident that:

- Any confidential information stored within the registry will remain confidential;
- The interaction between their registrar and Afilias is secure;
- The Afilias DNS system will be reliable and accessible from any location;
- The registry system will abide by all polices, including those that address registrant data;
- Afilias will not introduce any features or implement technologies that compromise access to the registry system or that compromise registrant security.

Afilias has directly contributed to the development of the documents listed below and we have implemented them where appropriate. All of these have helped improve registrants' ability to protect their domains name(s) during the domain name lifecycle.

- [SAC049]: SSAC Report on DNS Zone Risk Assessment and Management (03 June 2011)
- [SAC044]: A Registrant's Guide to Protecting Domain Name Registration Accounts (05 November 2010)
- [SAC040]: Measures to Protect Domain Registration Services Against Exploitation or Misuse (19 August 2009)
- [SAC028]: SSAC Advisory on Registrar Impersonation Phishing Attacks (26 May 2008)
- [SAC024]: Report on Domain Name Front Running (February 2008)
- [SAC022]: Domain Name Front Running (SAC022, SAC024) (20 October 2007)
- [SAC011]: Problems caused by the non-renewal of a domain name associated with a DNS Name Server (7 July 2006)
- [SAC010]: Renewal Considerations for Domain Name Registrants (29 June 2006)
- [SAC007]: Domain Name Hijacking Report (SAC007) (12 July 2005)

To protect any unauthorized modification of registrant data, Afilias mandates TLS-SSL transport (per RFC 5246) and authentication methodologies for access to the registry applications. Authorized registrars are required to supply a list of specific individuals (five to ten people) who are authorized to contact the registry. Each such individual is assigned a pass phrase. Any support requests made by an authorized registrar to registry customer service are authenticated by registry customer service. All failed authentications are logged and reviewed regularly for potential malicious activity. This prevents unauthorized changes or access to registrant data by individuals posing to be registrars or their authorized contacts.

These items reflect an understanding of the importance of balancing data privacy and access for registrants, both individually and as a collective, worldwide user base.

The Afilias 24-7 Customer Service Center consists of highly trained staff who collectively are proficient in 15 languages, and who are capable of responding to queries from registrants whose domain name security has been compromised - for example, a victim of domain name hijacking. Afilias provides specialized registrant assistance guides, including specific hand-holding and follow-through in these kinds of commonly occurring circumstances, which can

be highly distressing to registrants

Security resourcing plans

Please refer to our response to question #30b for security resourcing plans.

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Annex 2

New gTLD Program
Initial Evaluation Report
 Report Date: 31 May 2013

App cat on D:	1-1936-21010
App ed for Str ng:	GCC
Pr or ty Number:	594
App cant Name:	GCCIX WLL

Overall Initial Evaluation Summary

Initial Evaluation Result	Pass
<p>Congratu at ons!</p> <p>Based on the rev ew of your app cat on aga nst the re evant cr ter a n the App cant Gu debook (nc ud ng re ated supp ementa notes and adv sor es), your app cat on has passed In t a Eva uat on.</p>	

Background Screening Summary

Background Screening	Eligible
<p>Based on rev ew performed to-date, the app cat on s e g b e to proceed to the next step n the Program. ICANN reserves the r ght to perform add t ona background screen ng and research, to seek add t ona nformat on from the app cant, and to reassess and change e g b ty up unt the execut on of the Reg stry Agreement.</p>	

Panel Summary

String Similarity	Pass - No Contention																								
<p>The Str ng S m ar ty Pane has determ ned that your app cat on s cons stent w th the requ rements n Sect ons 2.2.1.1 and 2.2.1.2 of the App cant Gu debook, and your app ed-for str ng s not n content on w th any other app ed-for str ngs.</p>																									
DNS Stability	Pass																								
<p>The DNS Stab ty Pane has determ ned that your app cat on s cons stent w th the requ rements n Sect on 2.2.1.3 of the App cant Gu debook.</p>																									
Geographic Names	Not a Geographic Name - Pass																								
<p>The Geograph c Names Pane has determ ned that your app cat on does not fa w th n the cr ter a for a geograph c name conta ned n the App cant Gu debook Sect on 2.2.1.4.</p>																									
Registry Services	Pass																								
<p>The Reg stry Serv ces Pane has determ ned that the proposed reg stry serv ces do not requ re further rev ew.</p>																									
Technical & Operational Capability	Pass																								
<p>The Techn ca & Operat ona Capab ty Pane determ ned that:</p> <p>Your app cat on meets the Techn ca & Operat ona Capab ty cr ter a spec f ed n the App cant Gu debook.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Quest on</th> <th style="text-align: right;">Score</th> </tr> </thead> <tbody> <tr> <td>24: SRS</td> <td style="text-align: right;">1</td> </tr> <tr> <td>25: EPP</td> <td style="text-align: right;">1</td> </tr> <tr> <td>26: Who s</td> <td style="text-align: right;">2</td> </tr> <tr> <td>27: Reg strat on L fe Cyc e</td> <td style="text-align: right;">1</td> </tr> <tr> <td>28: Abuse Prevent on and M t gat on</td> <td style="text-align: right;">1</td> </tr> <tr> <td>29: R ghts Protect on Mechan sm</td> <td style="text-align: right;">2</td> </tr> <tr> <td>30: Secur ty Po cy</td> <td style="text-align: right;">2</td> </tr> <tr> <td>31: Techn ca Overv ew of Reg stry</td> <td style="text-align: right;">1</td> </tr> <tr> <td>32: Arch tecture</td> <td style="text-align: right;">2</td> </tr> <tr> <td>33: Database Capab t es</td> <td style="text-align: right;">2</td> </tr> <tr> <td>34: Geograph c D vers ty</td> <td style="text-align: right;">2</td> </tr> </tbody> </table>		Quest on	Score	24: SRS	1	25: EPP	1	26: Who s	2	27: Reg strat on L fe Cyc e	1	28: Abuse Prevent on and M t gat on	1	29: R ghts Protect on Mechan sm	2	30: Secur ty Po cy	2	31: Techn ca Overv ew of Reg stry	1	32: Arch tecture	2	33: Database Capab t es	2	34: Geograph c D vers ty	2
Quest on	Score																								
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33: Database Capab t es	2																								
34: Geograph c D vers ty	2																								

35: DNS Service	1
36: IPv6 Reachability	1
37: Data Backup Policies & Procedures	1
38: Data Escrow	1
39: Registry Continuity	2
40: Registry Transition	1
41: Failover Testing	1
42: Monitoring and Fault Escalation	2
43: DNSSEC	1
44: IDNs (Optional)	0
<hr/>	
Tota	28
Minimum Required Total Score to Pass*	22

**No zero score allowed except on optional Q44*

Financial Capability Pass

The Financial Capability Panel determined that:

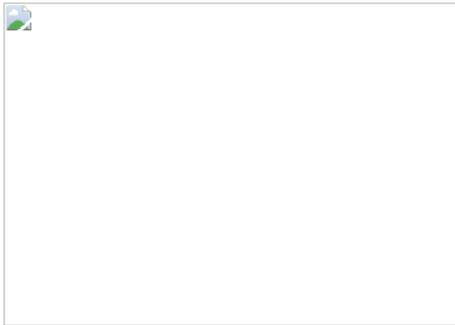
Your application meets the Financial Capability criteria specified in the Applicant Guidebook.

Question	Score
45: Financial Statements	1
46: Projects Template	1
47: Costs and Capital Expenditures	1
48: Funding and Revenue	2
49: Contingency Planning	2
50: Funding Criteria Registry Functions	1
<hr/>	
Tota	8
Minimum Required Total Score to Pass**	8

***No zero score allowed on any question*

Disclaimer: Please note that these Initial Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. All applications are subjected to due diligence at contracting time, which may include an additional review of the Continued Operations Instrument for conformance to Specification 8 of the Registry Agreement with ICANN. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs marketplace at <newgtlds.icann.org>.

Annex 3



Independent Objector

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Contact

Pr. Alain Pellet
Independent Objector

During his review of the application for the new gTLD “.GCC”, the Independent Objector (IO) has noted that numerous comments have been posted on the public comments webpage of ICANN. To ensure transparency and address public concerns on this controversial application, the hereunder comment aims at informing the public of the reasons why the IO does not consider, in principle, filing an objection.

Although finalized after an exchange of views with the applicant, this comment is still preliminary and does not prejudge the IO’s final decision to file an objection against the application or not.

Controversial Applications

· .GCC - GCCIX WLL

Overview of the comments against the controversial applications

The application for the new gTLD string “.GCC” has given rise to numerous comments on the public comments webpage of ICANN. Most of the comments against the application raise identical issues.

Opponents to the launch of the gTLD underline that the acronym “GCC” stands for Gulf Cooperation Council and directly refers to the intergovernmental organization of the same name. The applicant did not receive support from the Gulf Cooperation Council to submit this application on its behalf and did not consult the targeted community. Therefore, ICANN should not authorize the launch of a gTLD which targets an intergovernmental Organization and its community without its prior approval and should, on the contrary, protect the interests, goals and mission of the Gulf Cooperation Council.

The Independent Objector’s position

In the present case, the IO, eager to lead a fair and transparent assessment, first expressed his concerns, regarding certain issues raised by the application, to the applicant through the initial notice procedure. Indeed, as encouraged but not required by ICANN, both parties are given the choice to participate in mediation or negotiation processes. The Initial Notice procedure opened up an opportunity for settling the pending issues.

Julien Boissise
Legal Assistant to the Independent Objector

Email:
Contact@Independent-Objector-newgtlds.org

You can also use our
Contact Form.

A detailed note, including the reasons why the IO considered that an objection against the application might be warranted, has been sent to the applicant in order to give them the opportunity to react to the IO's first assessment. It is only after careful review of their comments and feedbacks that the IO conducted a second assessment of the application. Still for the sake of transparency, to which the IO is fully committed, the present comment aims at informing the public of the results of the IO's second evaluation of the application, including the reasons why the IO first considered that an objection could be warranted and why he finally considers that in principle it is not the case.

As he is acting in the best interests of the public using the Internet, the IO is convinced that the public should know about the subject matter and extent of his exchanges with the applicant. Indeed, it is important that all relevant facts are known in case his final decision is to not object to an application against which he first considered that an objection could be warranted. Therefore, the applicant's response is attached to the present comment.

It should be noted that, acting in the interests of global Internet users, the IO has the possibility to file objections against applications on the community and limited public interest grounds.

Limited Public Interest Objection

When assessing whether an objection against an application would be warranted on the limited public interest ground, the IO examines if the applied-for gTLD string is contrary to generally accepted "legal norms of morality" and public order that are recognized under fundamental principles of international law.

1. The IO acknowledges that the applied-for gTLD string "GCC" is the acronym for the Intergovernmental Organization named the Gulf Cooperation Council. The applicant explicitly recognizes it in its application. Indeed, it is stated that "GCC refers generally, but not exclusively, to the Cooperation Council for the Arab States of the Gulf".
2. The Charter of that Organization was signed on 25 May 1981 in Abu Dhabi City by the United Arab Emirates, the State of Bahrain, the Kingdom of Saudi Arabia, the Sultanate of Oman, the State of Qatar and the State of Kuwait. According to Article 1 of the Charter, Member States agreed on the establishment of the Council "to be named The Cooperation Council for the Arab States of the Gulf (...) referred to as the Cooperation Council (GCC)". Article 4 of the Charter defines the Organization's mission which is to "effect coordination, integration and inter-connection between Member States in all fields in order to achieve unity between them. To deepen and strengthen relations, links and areas of cooperation now prevailing between their peoples in various fields. To formulate similar regulations in various fields including the following: economic and financial affairs, commerce, customs and communications, education and culture. To stimulate scientific and technological progress in the fields of industry, mining, agriculture, water and animal resources; to establish scientific research; to establish joint ventures and encourage cooperation by the private sector for the good of their peoples".

3. The IO notes that the Cooperation Council for the Arab States of the Gulf has its headquarters in Riyadh, Saudi Arabia, and an organizational structure composed of the Supreme Council, the Ministerial Council and the Secretariat General. The Organization's website states that "while, on one hand, the GCC is a continuation, evolution and institutionalisation of old prevailing realities, it is, on the other, a practical answer to the challenges of security and economic development in the area. It is also a fulfilment of the aspirations of its citizens towards some sort of Arab regional unity".
4. In public international law, legal experts tend to agree with the definition of an international organization given by Sir Gerald Fitzmaurice and which states that "the term 'international organization' means a collectivity of States established by treaty, with a constitution and common organs, having a personality distinct from that of its member States, and being a subject of international law with treaty-making capacity". This definition has the merit of gathering all essential elements which are the conventional basis, the institutionalisation and the distinct nature of the organization.
5. For its part, the International Law Commission of the United Nations notes that "the term "international organization" refers to an organization which includes States among its members insofar it exercises in its own capacity certain governmental functions".
6. Therefore, the IO notes that the Charter of the Gulf Cooperation Council is a multilateral treaty, which is a classic source of international law, that has "certain special characteristics", as recognized for the Charter of the United Nations by the International Court of Justice in its advisory opinion of 20 July 1962, and which institutes the present and targeted international organization. International organizations are, like States, subjects of international law. As an international organization, the GCC is endowed with international legal personality, which is in line with the needs expressed by Member States at its creation. This position is based in particular on the advisory opinion of the International Court of Justice of 11 April 1949, "*Reparation for injuries suffered in the service of the United Nations*", in which the Court says about the goals and mission of the United Nations that, "to achieve these ends the attribution of international personality is indispensable". Such needs are also reflected in Article 17 of the Charter on privileges and immunities of the GCC, which states that "the Cooperation Council and its organizations shall enjoy on the territories of all member states such legal competence, privileges and immunities as are required to realize their objectives and carry out their functions".
7. For the purpose of the present review, the IO notes that international organizations have tasks and purposes of a fundamental importance for the international society, including *inter alia* international peace and security, public health, sustainable economic and social development, children and women's rights, protection of minorities and refugees or peacekeeping operations. These missions are delegated to them by their sovereign Member States. Major international organizations and institutions use the Internet as an indispensable tool to communicate and promote their mission. The first source of information for people on those fundamental issues is undeniably the Internet.

8. In view of the origin and importance of their missions, it is the IO's considered view that international (intergovernmental) organizations should be entitled to special protection, in particular regarding their communications tools. Indeed, a misuse of the Internet as a communication tool, notably through the direct reference to the acronym of an international organization, could harm the causes advanced by these organizations.

9. When reviewing applications, the IO makes his assessment in the light of international legal norms protecting the superior interests of Internet users. For the purpose of this evaluation, the IO is of the opinion that applications for a ".GCC" gTLD could raise problems with regards to international public order and legal norms of morality.

10. Indeed, the IO notes in particular that international legal instruments set the framework for the protection of names and acronyms of international organizations. The most important and relevant provision for the present review is contained in Article 6 *ter* of the Paris Convention for the protection of industrial property, entitled "*Marks: Prohibitions concerning State Emblems, Official Hallmarks, and Emblems of Intergovernmental Organizations*". The IO notes that the Convention gathers 174 Contracting Parties. It is stated in Article 6^{ter} that "(1) (a) The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view. (b) The provisions of subparagraph (a), above, shall apply equally to armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection".

11. Other key international legal norms of a particular relevance for the present review are:

- Article 2 (1) of the World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights, which states that "in respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967)".
- Article 16 of the Trademark Law Treaty which stipulates that "Any Contracting Party shall register service marks and apply to such marks the provisions of the Paris Convention which concern trademarks".

12. Moreover, the IO notes that names of international organizations enjoy special protections in numerous national laws, in particular regarding trademark laws. Thus, the law stipulates that international organizations' names cannot be registered as trademarks. For instance:

- In China, Article 10 of Trademark Law of the People's Republic of China states that "none of the following signs may be used as trademarks: (3) those

identical with or similar to the names, flags or emblems of international intergovernmental organizations, with the exception of those the use of which is permitted by the organization concerned or is not liable to mislead the public”.

- Article L711-4 of the French Intellectual Property Code states that “The following may not be adopted as a mark or an element of a mark: a) Signs excluded by Article 6ter of the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised or by paragraph 2 of Article 23 of Annex 1C to the Agreement Establishing the World Trade Organization”.
- Article 4 of the Trademark Law of Georgia stipulates that “A sign, or combination of signs shall not be registered as a trademark where it: completely or in any of its constituent elements coincides with the national emblems or the flags, emblem or full or abbreviated names of foreign states; the emblems of intergovernmental or other international organizations or their abbreviated or full names”.
- In India, Section 3 of the 1950 Emblems and Names (Prevention of Improper Use) Act states that “Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government use, or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or design, any name or emblem specified in the Schedule or, any colorable imitation thereof without the previous permission of the Central Government or of such officer of Government as may be authorized in this behalf by the Central Government”.
- In Lesotho, Article 26 (2) of the Industrial Property Order of 1989 states that “A mark cannot be validly registered, if it is identical with, or is an imitation of, or contains as an element, an armorial bearing, flag and other emblem, a name or abbreviation or initial of the name of, or official sign or hallmark adopted by, a State, intergovernmental organization created by an international convention, unless authorized by the competent authority of that State or organization”.
- In Paraguay, Law No. 1.294/1998 on Trademarks, Chapter 1, §2, states that “armorial bearings, distinguishing marks, emblems, names, whose use is reserved to the State, other legal persons under public law or international organizations, unless they themselves apply for the mark” may not be registered as trademarks.
- In Saudi Arabia, the law of Trademarks of 7 August 2002 stipulates in its Article 2 that “The following signs, emblems, flags and others as listed below shall not be considered or registered as trademarks: Public emblems, flags and other signs, names or denominations pertaining to the Kingdom or pertaining to one of the countries with which it has reciprocal treatment or pertaining to one of the countries being a member of a multi-lateral international treaty in which the Kingdom is a party or pertaining to an international or governmental organization and also any imitation to these emblems, flags, symbols, names and denominations unless permitted by such owner”.

- In the United States of America, US Code 15 (Lanham Trademark Act), §1052, stipulates that “No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute”.

13. In the light of the above, it is reasonable to assume that the use and management of the acronym of an international organization, in this case the Gulf Cooperation Council, by a third party which did not receive the endorsement from the said organization could have adverse effects on the mission pursued by the organization. Because this mission has been explicitly conferred to the organization by its Member States in its Charter which is a binding international norm for its signatories, it should have the full capacity to implement it. Thus, the launch of the gTLD “.GCC” without the prior approval of the targeted organization could harm the causes defined in Article 4 of the Charter of the GCC and defended by this international organization. Therefore, the IO is of the opinion that the application is contrary to international public order.

FIRST ASSESSMENT: For all these reasons and foremost because names and abbreviations of international organizations receive a special protection in international law, the IO was of the opinion that an objection against the gTLD “.GCC” on the limited public interest ground could have been warranted.

APPLICANT’S RESPONSE:

GCCIX WLL argued that “There is a degree of confusion as to the correct legal form of this IGO, the root of which is almost certainly the disparity between versions of the official treaty as published by the CCASG and the UN” but recognized that “the string ‘GCC’ is used informally in the public domain in reference to the ‘CCASG’”.

GCCIX WLL added that the acronym “GCC” does not fall within the scope of the ICANN’s procedure for the protection of the legally registered names and acronyms of IGOs and other formal and official bodies, nor it is “registered under article 6ter of the Paris Convention whose protections *‘shall only apply to [...] abbreviations or titles of international organizations that the latter have communicated to the countries of the Union through the International Bureau’*”.

With these elements in mind, the IO reviewed the applicant’s feedbacks on his comment for a community objection. It is only after having carefully considered all elements of response that the IO made his final assessment.

Although he has not been convinced by the applicant’s arguments, the IO is, in principle, not decided to lodge an objection for the reasons exposed below.

Community Objection

For the IO to consider filing a community objection, there must be a substantial opposition to the gTLD application from a representative portion of the community to which the gTLD string may be explicitly or implicitly targeted. Therefore, the community named by the IO must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection.

When assessing whether a community objection is warranted, the IO bases his review on four preliminary tests.

1. As for the first test, (*the IO determines if the community invoked is a clearly delineated community*), the IO notes that the notion of “community” is wide and broad, and is not precisely defined by ICANN’s guidebook for the new gTLD program. It can include a community of interests, as well as a particular ethnical, religious, linguistic or similar community. Moreover, communities can also be classified in sub-communities (i.e. the Jewish community in New York or the Italian community on Facebook). However, beyond the diversity of communities, there are common definitional elements.

For the IO, a community is a group of individuals who have something in common (which can include their nationality or place of residence – i.e. the French, South-East Asian or Brazilian community – or a common characteristic – i.e. the disability community), or share common values, interests or goals (i.e. the health, legal, internet or ICANN community). For the purpose of the IO evaluation, it is clear that what matters is that the community invoked can be clearly delineated, enjoys a certain level of public recognition and encompasses a certain number of people and/or entities.

In the present case, the IO first notes that public comments made on the community ground try to prove the existence of such a community, being the community of Arab States of the Gulf. It can be sustained that, beyond their common geographical features, Arab States of the Gulf share common goals and interests which notably led to the creation of an International Organization, the Gulf Cooperation Council. In particular, the IO notes that the Charter of the Organization puts the emphasize on these close bonds in its preamble which underlines that the Arab States of the Gulf are “fully aware of the ties of special relations, common characteristics and similar systems founded on the creed of Islam which bind them”. Therefore, there is no doubt for the IO that the United Arab Emirates, the State of Bahrain, he Kingdom of Saudi Arabia, the Sultanate of Oman, the State of Qatar, the State of Kuwait and the peoples and citizens of those territories form a clearly delineated community, being the community of the Arab States of the Gulf.

2. As for the second and third tests, (*The IO verifies if there is a substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted*), the IO notes that the application for the new gTLD string “.GCC” has been the subject of widespread comments and discussion and shows a substantial opposition to the gTLD application from the community in question. In particular, the IO notes with interest that governments of Bahrain, Oman, Qatar and the United Arab Emirates as well as the Gulf Cooperation Council itself issued an early warning “to express its serious concerns toward ‘.GCC’”. They argue that the gTLD is a “known abbreviation for Gulf Cooperation Council” and that “the GCC is

considered an Intergovernmental Organization and it meets the eligibility criteria for .int top level domain as it has been established through a treaty registered by United Nations and recognized to have independent international legal personality. The GCC has permanent headquarter (GCC Secretariat General) in Riyadh, Saudi Arabia. Furthermore, the GCC has received a standing invitation to participate as observer in the sessions and the work of the UN General Assembly and maintaining permanent offices at Headquarters". According to the notice and "in line with new gTLD program Applicant Guidebook provisions concerning protection of IGOs, the name "GCC" should not be allowed to be registered as a gTLD unless sufficient approvals are obtained from the IGO". Moreover, they underline that "the applicant did not consult the targeted community in regards to launch of the proposed TLD, its strategy and policies. The applicant did not obtain any endorsement from the GCC Secretariat General or any of its organizations, or any governmental or nongovernmental organization within the GCC member states. The applicant did not present any endorsement or support letters in its application".

The IO also takes into account public comments posted on the public comments' webpage of ICANN's website. In particular, he notes that the Secretariat General of the Cooperation Council for the Arab States of the Gulf, the Telecommunications Regulatory Authority (TRA) of the Kingdom of Bahrain on behalf of the government of the Kingdom, the Communications and Information Technology Commission (CITC) of the Kingdom of Saudi Arabia and the Telecommunications Regulatory Authority (TRA) on behalf of the federal government of the United Arab Emirates (UAE) have reaffirmed their non-endorsement of the application through this means. Therefore, noting that five of the six governments as well as the international organization directly targeted by the gTLD expressed their disagreement with the application, it must be considered that there is an obvious and substantial opposition from a significant portion of the community.

Also, as recalled in the early warning and by the applicant itself, "GCC refers generally, but not exclusively, to the Cooperation Council for the Arab States of the Gulf. Formed in May 1981 as a regional organization, it consists of six Gulf countries including Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates. Its main objectives are to enhance coordination, integration and inter-connection between its members in different spheres. This application is not connected with or sponsored by the Council. GCC does not purport to represent the Council. However, the term 'GCC' has become commonly used to refer generally to the countries and people of the Gulf and Middle East region". The IO is thus of the opinion that, the applied for gTLD string explicitly targets the community of the Arab States of the Gulf, even if the applicant indicates that the application does not intend to represent the international organization itself.

3. Finally and as the fourth test (*the IO conducts when assessing whether an objection is warranted or not, the application for the Top-Level Domain name must create a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted*), it can be considered that the targeted community and in particular the international organization itself has interests in benefiting of a gTLD string bearing the name or the acronym of their organization. Such a gTLD string could for example help for the promotion of their mission and mandate.

Consequently, it can be considered that the launch of a gTLD “.GCC” could interfere with the legitimate interests of the community of the Arab States of the Gulf, especially since the gTLD is not expected to be managed on behalf of the organization and its interests.

FIRST ASSESSMENT: Therefore, as for his possibility to object on the community ground, the IO was of the opinion that an objection against the gTLD “.GCC” could have been warranted.

APPLICANT’S RESPONSE:

In their response, GCCIX WLL notably emphasized that they “repudiate claims of the formal existence of a “Gulf Cooperation Council”, or that any one entity has any rights, let alone exclusively, over the string “GCC”, as having no rational or legal basis”.

GCCIX WLL added that “the official list of permanent observers to the United Nations includes the CCASG, but does not include any entity named the ‘Gulf Cooperation Council’ or bearing the acronym ‘GCC’”.

On the question to know whether there is a likelihood of material detriment to the rights or legitimate interests of a significant portion of the targeted community, the applicant intends to demonstrate that their “pool of potential registrants first and foremost identifies with the string as a broad regional identifier”.

They continue with a comparison with the “.Eu” model and argue that “the EU holds its own EU.INT name (whereas the CCASG do not hold any .INT name), however they have eschewed this since 2006 when they migrated to EUROPA.EU. Many millions of domain names operate alongside official EU entities within the open .EU TLD without any confusion or chaos, and there is no reason why .GCC and CCASG.INT cannot also peacefully cohabit within the global namespace”.

FINAL ASSESSMENT:

None of the arguments raised by GCCIX WLL has genuinely convinced the IO that an objection was not warranted against their application.

However, after having closely examined the applicant guidebook for ICANN New gTLDs Program, the IO still notes the particular relevance of the “Legal Rights Objection”. As described in Section 3.5.2 of the guidebook, “In interpreting and giving meaning to GNSO Recommendation 3 (“Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law”), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector’s registered or unregistered trademark or service mark (“mark”) or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector’s mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the

objector's mark or IGO name or acronym". It is added in Section 3.2.2.2 that "An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name: a) An international treaty between or among national governments must have established the organization; and b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law. The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria".

It therefore seems that the above procedure is a significant opportunity given to the Gulf Cooperation Council to file an objection, if deemed appropriate, against the application.

Moreover, as for his possibility to object on the community ground, it is the public policy of the IO not to make an objection when a single established institution representing and associated with the community having an interest in an objection can lodge such an objection directly. This does not exclude that the IO deems it nevertheless appropriate to file a community objection in exceptional circumstances, in particular if the established institution representing and associated with the community has compelling reasons not to do so, or if several institutions could represent a single community and are in the same interest so that an application could raise issues of priority, or in respect to the modalities of the objection.

In the present case, the IO is of the opinion that the Gulf Cooperation Council is an established institution representing and associated with a significant part of the targeted community. The Gulf Cooperation Council is already fully aware of the controversial issues and is better placed than the IO to file an objection, if it deems it appropriate.

Therefore, the IO who is primarily acting as a "safety net", does not, in principle, intend to file an objection on the community or limited public interest ground.

Applicant's Response to the Independent Objector's Initial Notice



GCCIX WLL

Response to the IO's Initial Notice
GCCIX WLL Response to the IO .pdf
Document Adobe Acrobat [122.9 KB]

Annex 4

Response to IO initial comments regarding the application for .GCC

Introduction

In order to fully respond to the IO's observations, we would first like to provide additional background information on GCCIX, and expand on the overall context behind the application for the GCC string.

The Gulf and Middle East region was a relative latecomer to the 'Internet boom'. This part of the world has fewer allocated IP resources and a far less mature Internet infrastructure than many of its peers in the same RIR service region. There are two significant barriers to growth:

1. There is very poor IP peering and interconnectivity between countries around the Gulf and in the Middle east, meaning that a substantial proportion of Internet traffic between countries, and even between ISPs in the same country, travels to the major European Internet Exchange Points (IXPs) and back. The GCC Internet Exchange (GCCIX), the first neutral IXP in the region, was founded in 2011 with the goal of keeping IP traffic local, contributing to lower bandwidth costs, reduced latency, and therefore creating a better overall online experience for individuals and businesses alike. GCCIX have made a positive impact on the interconnectivity options and content availability in our territory, and have operated since inception without objection from any party.
2. The Country Code Top Level Domain (ccTLD) market around the Gulf and the Middle East is heavily regulated, and this is as a direct result of national registries being run, almost without exception, either within or by the national Governments (usually under the auspices of the local Telecoms Regulatory Authority or TRA). Such control has not proven to be conducive to competition or innovation, and the ccTLD market is resultantly quite stagnant. Manual processes associated with the application of strict regulations and the physical verification of identity give rise to annual fees of up to \$200 and delegation lead times that can, in cases, be measured in weeks.

The practices of requiring a local presence and physically proving registrant identity have been deprecated by a significant number of ccTLD registries, and the inevitable result of retaining such constraints here is an incredibly low number of registered names in the ccTLDs of the Gulf and Middle East. GCCIX estimate that the total cumulative regional registry size is ~200k names, which is broadly comparable to the number of names registered within .UK every two months.

Because of the relative inaccessibility of ccTLD domain names, registrants instead tend towards the gTLD pool where, as relative latecomers, they face a significant reduction in consumer choice, as it is rare for their name still to be available. Users therefore settle for less attractive names (e.g. by adding suffixes to their company name) when in many cases their primary choice of name remains unregistered within their local ccTLD.

Some observed examples from Bahrain, where only 87% of companies trading on the stock exchange use a gTLD rather than a .BH domain name:

- AFT, a Bahrain travel agency, using aftbahrain.com
- The Ministry of Culture using springofculture.org for a season of cultural events
- The National Bank of Bahrain using nbbonline.com
- Bahrain Air, a (now defunct) regional airline, using bahrainair.net

Consumers should, of course, be free to choose a gTLD over their local ccTLD, however in this region it is evident that the difficulty in registering ccTLD names leaves registrants with no choice but to use far less attractive gTLD labels.

GCCIX additionally observe the proliferation of suffixes such as “ME” (Middle East) or “Arabia” when foreign companies that do business with and in the Gulf and Middle East register company or brand names (e.g. disneyME.com, mcdonaldsME.com, MTVarabia.com). This is clearly born of the obvious need and market demand for a TLD which represents more than one of the economies in the region. A comparable situation exists in Europe where the introduction of .EU saw two million registrations in the first six months and has resulted in .EU becoming the third largest European registry by volume.

GCCIX believes that the provision of a supra-national TLD string will unquestionably stimulate online commerce, competition, and innovation, and provide greater consumer choice for Internet users in and around the Gulf and Middle East region.

Regarding public comments to the GCCIX application

GCCIX would like to thank all those who have taken the time to comment on our application, either with messages of support or concern, and we appreciate the opportunity that these comments afford us to discuss and explain the details of our application in an open and transparent manner.

We are especially grateful to all of the representatives of the TRAs and ccTLD registries of Saudi Arabia, Bahrain, the UAE and Jordan for contributing the majority of comments. It is without question that these individuals have an enviable breadth of experience in the domain name industry, and it is clear from the unified message they send that registry operators around the Gulf and Middle East have many common interests.

Although GCCIX will be in direct competition with the incumbent registries if our application is successful, we have no reason to imagine that this is the basis for any objection, and we strongly encourage the IO to fully satisfy himself of the same before drawing any final conclusions with regards to the comments received.

In assessing public comments, the salient point is neither the volume nor manner in which they have been made, but whether the points highlighted are valid or specious, and whether or not any potential objections are credible and valid. GCCIX are happy

to present verifiable facts in response to some of the material that has been propagated in the public domain.

Limited Public Interest Objection

There exists in the Middle East an IGO comprised of the states of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE, whose legal form is the Cooperation Council for the Arab States of the Gulf (hereinafter referred to as the CCASG).

There is a degree of confusion as to the correct legal form of this IGO, the root of which is almost certainly the disparity between versions of the official treaty as published by the CCASG and the UN:

From <http://www.gcc-sg.org/eng/indexfc7a.html?action=Sec-Show&ID=1>

ARTICLE ONE

The Establishment of the Council

A council shall be established hereby to be named the Cooperation Council for the Arab States of the Gulf hereinafter referred to as the Cooperation Council (GCC).

From [http://treaties.un.org/doc/Publication/UNTS/Volume 1288/volume-1288-I-21244-English.pdf](http://treaties.un.org/doc/Publication/UNTS/Volume%201288/volume-1288-I-21244-English.pdf)

Article One. ESTABLISHMENT OF Council

A council shall be established hereby to be named the Cooperation Council for the Arab States of the Gulf, hereinafter referred to as Cooperation Council.

- Both versions agree that a “Cooperation Council for the Arab States of the Gulf” is to be formed, and correctly use the term ‘hereinafter’ (adverb: further on *in this document*) to establish a shorthand name – “Cooperation Council” – which is then used almost exclusively throughout both documents
- The CCASG version incongruously proffers “GCC” as an abbreviation for “Cooperation Council” within the document, but makes use of it only once in Article 12 (where the UN version instead uses the term “member states”)
- Neither version of the treaty makes any reference to a “Gulf Cooperation Council”

Although the string “GCC” is used informally in the public domain in reference to the CCASG, neither the acronym nor its expanded version “Gulf Cooperation Council” are referred to in the CCASG charter as recorded at the United Nations. ICANN go into the subject of IGOs in the applicants’ handbook sections 3.2.2.2, 3.5.1 and 3.5.2, where there is very clear reference to “IGO name or acronym (*as identified in the treaty establishing the organization*)”, and the string “GCC” unequivocally does not meet that criterion.

Furthermore, ICANN have not identified the string “GCC” as a Reserved Name, despite the recent expansion of protection for IGO names activities, and although ICANN has now issued Clarifying Questions for the .GCC application, none relate to any concerns regarding the string itself or any potential perceived geographic confusion.

Furthermore, the “GCC” string is not present on any other restricted or reserved lists (e.g. ISO), nor is it registered under article 6ter of the Paris Convention whose protections “*shall only apply to [...] abbreviations or titles of international organizations that the latter have communicated to the countries of the Union through the International Bureau*”.

We note that the “Grace Community Church” continues to host its website at <http://www.gcc.org> 16 years after registering the name, despite their activities not being aligned with the “creed of Islam” referred to by the CCASG. GCCIX’s IXP work and our vision to stimulate regional commerce via the TLD namespace *are* aligned with the aims of the CCASG, yet only the latter has ever been objected to.

As explained in our introduction, there is a clearly perceived need for a TLD string that all users across the Gulf and Middle East can easily identify with. The string “GCC” is the obvious choice for this because it is a label that has been adopted as the broad regional identifier among commerce and society. The “GCC” string is not the sole preserve of the CCASG, and has myriad other unchallenged uses across the Gulf and Middle East as well as around the world. The CCASG have not sought to protect the string through any formal process recognized in international law, and ICANN have accordingly not afforded it any protections under the new gTLD application process.

GCCIX respect international law and the conventions thereof, and fully support the protection of the legally registered names and acronyms of IGOs and other formal and official bodies.

Community Objection

As the IO observes, there are many ways to identify and define a ‘community’. GCCIX have made it very clear who we believe our target audience to be through the explicit wording found throughout our application. We quote the following excerpts by way of clarity:

“users in the Gulf and Middle East region” *[In addition to CCASG members, the term “Middle East” includes Cyprus, Egypt, Iran, Iraq, Israel, Jordan, Lebanon, Palestine, Syria, Turkey and Yemen]*

“.gcc will be marketed globally”

“Internet users with an interest in or connection with the Gulf and Middle East”

“the term GCC has become commonly used to refer generally to the countries and people of the Gulf and Middle East region”

In response to IO paragraphs headed ‘1’:

First and foremost, .GCC has not been applied for as a community string, and GCCIX do not believe it to be a community string.

GCCIX view our very broad pool of potential registrants as “individuals and businesses who reside in, or deal with, or who have an interest in, individuals or businesses in the Gulf and Middle East region”. While our definition is fully inclusive in the broadest sense of the word, GCCIX note that the CCASG does not represent two “Arab States of the Gulf” – namely Iraq and Iran.

GCCIX repudiate claims of the formal existence of a “Gulf Cooperation Council”, or that any one entity has any rights, let alone exclusively, over the string “GCC”, as having no rational or legal basis.

In response to IO paragraphs headed ‘2’:

The official list of permanent observers to the United Nations includes the CCASG, but does not include any entity named the “Gulf Cooperation Council” or bearing the acronym “GCC”.

The wording of the GAC early warning, which you quote in part, and whose message is reiterated and amplified as the core avenue of concern in the public comments, contains unverifiable assertions as to the legal status of what the text refers to as the “GCC”. The sources that are repeatedly cited unequivocally do not corroborate the assertions made in the warning or in the comments.

Assertions, no matter how strongly or frequently made do not become fact simply as a by-product of who said them, no matter what their credentials. If there were a clear legal basis for the argument against GCCIX’s use of the “GCC” string, then we would expect it to be clearly stated in a manner that does not rely on unsubstantiated or unverifiable statements.

The “GCC” string has a great many demonstrable and uncontested uses and applications all around the Gulf and Middle East, as well as globally, and the vast majority of individuals and businesses identify with it first and foremost as a broad regional identifier. Although used by the CCASG, the string is by no means their exclusive preserve and is seen in almost innumerable other contexts – not least our own company name, as registered with the Bahrain Ministry of Commerce.

In response to IO paragraphs headed ‘3’

GCCIX do not perceive any likelihood of material detriment to the rights of the CCASG through the provision of domain name registration services using the “GCC” string. We believe that our pool of potential registrants first and foremost identifies with the string as a broad regional identifier.

In our application, we compare .GCC to .EU. The EU holds its own EU.INT name (whereas the CCASG do not hold any .INT name), however they have eschewed this since 2006 when they migrated to EUROPA.EU. Many millions of domain names operate alongside official EU entities within the open .EU TLD without any confusion or chaos, and there is no reason why .GCC and CCASG.INT cannot also peacefully cohabit within the global namespace.

Although the likelihood of any confusion is unimaginable, our application makes specific allowances for potential sensitivities by allowing for the reservation of certain labels (e.g. SECRETARIAT.GCC) for the exclusive use of the CCASG Secretariat. In addition to this, it remains a stated policy commitment that the .GCC registry will be run subject to the laws of the Kingdom of Bahrain, and with full consideration for regional cultural norms. GCCIX have neither the desire nor the intention to impinge on the legitimate rights of anyone or anything.

Furthermore, we have invited the concerned GAC members and the CCASG to contribute their input to our future registry policies and procedures, in order to thoroughly ensure that the gTLD is run in accordance with their wishes, to the benefit of themselves, and their constituents as well as ours, but unfortunately they have chosen not to collaborate with us in this process. Nonetheless, we will endeavor to run the registry in a responsible manner, and remain open open to dialogue with the GAC, CCASG, or indeed any other stakeholder, at such time as they see fit to engage with us.

Legal Rights Objection

As neither “Gulf Cooperation Council” nor “GCC” are identified as legal forms for the CCASG in its establishing treaty, GCCIX do not anticipate a legal rights objection citing these as bona fide IGO names.

GCCIX are not aware of any precedent in the 32 year history of the CCASG where it has attempted to defend or protect the “GCC” string, which is used in almost innumerable situations and contexts, including in commerce, sport, and the media, where it is clear that neither the CCASG itself, nor its secretariat, are being referred to.

It is worth examining the entries in the following (very much non-exhaustive) list, none of which are affiliated with or endorsed by the CCASG, *nor interfered with by them*:

- Fermacell GCC, registered with the Dubai Chamber of Commerce
- Mars GCC FZE, Mars Inc’s Dubai subsidiary
- GCC Exchange, a Gulf targeted money exchange business registered with Companies House in the UK
- The “Global GCC Real Estate Fund”, offered by the Kuwaiti registered Global Investment House
- The “Al Rayan GCC Fund”, a sharia compliant investment fund for Qatari investors offered by Masraf Al Rayan
- The “GCC Private Banking Conference” hosted in Bahrain in 2012 by London based financial market information company, Euromoney

- The “City and GCC Countries Conference” hosted in London by the Middle East Association and City of London Corporation
- The “GCC Bowling Championships” held in Bahrain in 2012

Annex 5

Redacted - Third Party Confidential Information

Annex 6

Redacted - Third Party Confidential Information

Annex 7

Final Report on the Protection of IGO and INGO Identifiers in All gTLDs Policy Development Process

STATUS OF THIS DOCUMENT

This is the Final Report on the Protection of IGO and INGO Identifiers in all gTLDs, prepared by ICANN staff and the Working Group. It contains policy recommendations from the PDP Working Group (“WG”). This Final Report was submitted to the GNSO Council on 10 November, 2013 for their consideration.

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1. Executive Summary

1.1 Working Group Recommendations

This section contains the Working Group's (WG) recommendations on the protections of IGO-INGO identifiers in all gTLDs. Each recommendation is presented per organization type [i.e. Red Cross Red Crescent (RCRC), International Olympic Committee (IOC), other International Non-Governmental Organizations (INGO), and International Governmental Organization (IGO)]. A set of general recommendations not attributed to any specific organization is also included. Within each organization type, the WG considered varying levels of protection independently. Given the complexity of identifiers and the scope of the protections considered, the recommendations are presented in a chart for ease of review. A set of definitions, consensus scale per Working Group Guidelines, and Consensus Call legends are also listed below and should be considered when reviewing the chart of recommendations.

There are well over 20 total proposed policy recommendations that are presented in detail within Section 3. For each recommendation, the level of consensus agreed upon by the WG is also identified according to the GNSO Working Group Guidelines.

Supplements to this report - Given the amount of content associated with deliberating this issue of protections for international organizations, a series of supplements are provided with this report to minimize the length of the Final Report:

- [A - IGO-INGO Minority Positions](#)
- [B - IGO-INGO FinalReport ConsensusCall](#)
- [C - IGO-INGO PCRT FinalReport](#)
- [D - IGO-INGO Identifier List RCRC](#)

1.2 Deliberations of the Working Group

The Protection of IGO, INGO, IOC and RCRC Identifiers in All gTLDs Working Group started its deliberations on 31 October 2012 where it was decided to continue the work primarily through weekly conference calls, in addition to e-mail exchanges.

Section 4 provides an overview of the deliberations of the Working Group conducted both by conference calls as well as e-mail threads.

Section 4 also includes a brief summary of the ICANN General Counsel's survey of the protections provided to certain international organizations under international treaties and a sampling of national jurisdictions, prepared in response to specific questions submitted by the Working Group regarding whether there were any treaties or national laws that would prohibit the domain name registration of RCRC, IOC, IGO and/or INGO identifiers.

1.3 Background

Providing special protections for the names and acronyms of the RCRC, IOC, other INGOs, and for IGOs and from third party domain name registrations at the top and second levels of new gTLDs has been a long-standing issue over the course of the New gTLD Program.

The GAC has advised the ICANN Board to provide special permanent protections for the RCRC and IOC names at the top and second levels of new gTLDs, and special protections against inappropriate third party registration for the names and acronyms of IGOs at the second level of new gTLDs and at the top level in any future new gTLD rounds. In the case of IGOs, the GAC has further advised that the IGO names and acronyms "may not be acquired by any third party as a domain name at either the top or the second level unless express written permission is obtained from the IGO concerned¹."

A GNSO Issue Report was prepared by staff as a result of a recommendation from an IOC/ RCRC Drafting Team² formed to develop a possible response to the GAC about GNSO policy implications for granting protections of names.

¹ See Letter and Annexes from Heather Dryden to Steve Crocker and Cherine Chalaby:
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-22mar13-en>
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex1-22mar13-en.pdf>
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex2-22mar13-en.pdf>

² IOC / RCRC Protection DT Archive: <http://gns0.icann.org/en/group-activities/active/ioc-rcrc>

The GNSO Council considered the Final GNSO Issue Report on the Protection of International Organization Names in New gTLDs, and approved a motion to initiate a Policy Development Process (“PDP”) for the protection of certain international organization names and acronyms in all gTLDs. The Working Group (“WG”) was formed on 31 October 2012 and the WG Charter was approved by the GNSO Council on 15 November 2012. The decision was taken in this context to subsume the issues of the IOC and of the Red Cross and Red Crescent designations and names under the new Working Group and PDP process.

On 14 June 2013, the IGO-INGO Working Group submitted its Initial Report on the protection of IGO-INGO identifiers for a 42 day public comment period. While the Working Group (WG) received several comments on the topic of protections for certain organizations, all the contributions received were from members of the IGO-INGO WG and as such the nature of those comments had already been discussed within the WG.

Prior to and in parallel to the IGO-INGO WG, the NGPC adopted a series of resolutions to provide protections for the IOC and RCRC identifiers in Specification 5 of the approved Registry Agreement for New gTLDs following the GAC advice until any policy recommendations from the GNSO would require further and/or different action. A temporary placement of IGO identifiers, as supplied by the GAC, was also placed into Specification 5 of the agreement until further deliberations at the Buenos Aires meeting in Nov 2013 can occur.

1.4 Stakeholder Group / Constituency Statements & Public Comment Periods

The WG requested input from the GNSO Stakeholder Groups and Constituencies, as well as other ICANN Supporting Organizations and Advisory Committees. Further information on the community input received, as well as a brief summary of the positions submitted by IGOs and INGOs is available in Section 6.

1.5 Conclusions and Next Steps

This Final Report is being submitted to the GNSO Council for their consideration to determine what further actions to take. The IGO-INGO WG will follow the directions of the Council if any additional work is needed and/or if an Implementation Review Team is formed.

2. Objective

This Final Report on the Protection of IGO, INGO, IOC and RCRC Identifiers in all gTLDs PDP is being published pursuant to the GNSO Policy Development Process set forth under the ICANN Bylaws (see <http://www.icann.org/general/bylaws.htm#AnnexA>). The proposed policy recommendations for the protection of IGO and INGO (including RCRC and IOC) identifiers in all gTLDs presented in this Final Report also contain the Working Group Chair's assessment on the levels of consensus. The objective of this Final Report is to present the policy recommendations to the GNSO Council for further consideration and action.

3. Working Group Recommendations

This section contains the Working Group's (WG) recommendations on the protections of IGO-INGO identifiers in all gTLDs. Each recommendation is presented per organization type [i.e. Red Cross Red Crescent (RCRC), International Olympic Committee (IOC), other International Non-Governmental Organizations (INGO), and International Governmental Organization (IGO)]. A set of general recommendations not attributed to any specific organization is also included. Within each organization type, the WG considered varying levels of protection independently. Given the complexity of identifiers and the scope of the protections considered, the recommendations are presented in a chart for ease of review. A set of definitions, consensus scale per Working Group Guidelines, and Consensus Call legends are also listed below and should be considered when reviewing the chart of recommendations.

Identifier Definitions:

- **Identifier** - The full name or acronym used by the organization seeking protection; its eligibility is established by an approved list.
- **Scope** – the limited list of eligible identifiers distinguished by type (name or acronym) or by additional designations as agreed upon and indicated in the text below; may also include lists approved by the GAC (where this is the case it is expressly indicated as such in the text below).
- **Language** – The scope of languages for which a Latin-script identifier is to be protected.

Consensus Scale:

Each recommendation will include a corresponding level of consensus as agreed to by the WG. The consensus scale documented here is an extract from the GNSO Working Group Guidelines³.

- **Full Consensus** - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as Unanimous Consensus.
- **Consensus** - a position where only a small minority disagrees, but most agree. **
- **Strong Support but Significant Opposition** - a position where, while most of the group supports a recommendation, there are a significant number of those who do not support it. **
- **Divergence** (also referred to as No Consensus) - a position where there isn't strong support for any particular position, but many (two or more) different points of view. Sometimes this

³ GNSO WG Guidelines: <http://gns0.icann.org/council/annex-1-gns0-wg-guidelines-08apr11-en.pdf>

is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is worth listing the issue in the report nonetheless.**

****Minority View** - refers to a proposal where a small number of people support the recommendation. This can happen in response to a Consensus, Strong support but significant opposition, and Divergence (i.e., No Consensus); or, it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

Note: The WG decided to only include recommendations that received at least ‘strong support but significant opposition’ in its recommendations in Sections 3.1 to 3.5. Unsupported proposals (i.e., those where there was divergence of support or no consensus) are shown in Section 3.6.

Consensus Call Submissions Legend:

The following legend shows the individuals and groups that participated in the WG’s final consensus call. For each recommendation in Sections 3.1 to 3.5, GNSO Groups that did not support the recommendation are names and in some cases their rationale is provided. Consensus call detailed responses can be found in the [Consensus Call Supplement](#) (PDF) provided with this report⁴.

- PI (individual): Submitted by Poncelet Ileleji – 27 Aug 2013
- ISO,IEC: Submitted by Claudia MacMaster Tamarit – 28 Aug 2013
- IGOs: Submitted by Sam Paltridge – 3 Sep 2013
- RCRC: Submitted by Stephane Hankins – 3 Sep 2013
- IOC: Submitted by James Bikoff – 3 Sep 2013
- RL (individual): Submitted by Mike Rodenbaugh – 3 Sep 2013
- ALAC: Submitted by Alan Greenberg – 3 Sep 2013
- RySG: Submitted by David Maher – 3 Sep 2013
- NCSG: Submitted by Avri Doria – 3 Sep 2013
- IPC: Submitted by Greg Shatan – 4 Sep 2013
- ISPCP: Submitted by Osvaldo Novoa – 11 Sep 2013
- RrSG: Did not submit
- CBUC: Submitted by Steve DelBianco – 2 Nov 2013

⁴ At the time of writing this report, the final URL for the Final Report had not been established. Additional supplements to this report are also provided in PDF format and can be found in the IGO-INGO webpage: <http://gns0.icann.org/en/group-activities/active/igo-ingo>

Minority Positions:

Several minority statements were filed for this set of recommendations and they can be found as supplement PDFs provided with this Final Report. The minority position statements are provided as supplements⁵ to allow stakeholders additional time in which to submit new statements or revisions due to the deadline for submitting motions and documents to the GNSO Council. Each minority position filed lists the group represented and the person that filed it.

Minority Positions Filed as PDF Supplements to this Final Report:

- [A - IGO-INGO Minority Positions](#)

Summary Positions for the four organization types are also included in Section 6.4 of this Report:

- Red Cross and Red Crescent, P.64, 65
- International Olympic Committee P.65
- International Governmental Organizations P.65
- International Non-Governmental Organizations P.65, 66

⁵ At the time of writing this report, the final URL for the Final Report had not been established. Additional supplements to this report are also provided in PDF format and can be found in the IGO-INGO webpage: <http://gnso.icann.org/en/group-activities/active/igo-ingo>

3.1 Red Cross Red Crescent Movement (RCRC) Recommendations⁶

#	Recommendation	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers⁷: "Red Cross", "Red Crescent", "Red Lion and Sun" and "Red Crystal" (Language: UN6) ○ Scope 2 Identifiers⁸: 189 recognized National Red Cross and Red Crescent Societies; International Committee of the Red Cross; International Federation of Red Cross and Red Crescent Societies; ICRC, CICR, CICV, MKKK, IFRC, FICR (Language: in English, as well as in their respective national languages; ICRC & IFRC protected in UN6)^{***} 	
1	Top-Level protections of <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Consensus NCSG does not support
2	For <i>Red Cross Red Crescent Movement</i> identifiers, if placed in the Applicant Guidebook as ineligible for delegation at the Top-Level , an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Top-Level ⁹	Consensus NCSG does not support
3	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in Specification 5 of the Registry Agreement	Consensus NCSG does not support
4	For <i>Red Cross Red Crescent Movement</i> identifiers, if placed in Specification 5 of the Registry Agreement, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Second-Level ¹⁰	Consensus NCSG does not support
5	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are bulk added as a single list to the Trademark Clearinghouse (TMCH)**	Consensus NCSG supports, but with some opposition within the SG

⁶ The RCRC provided a minority position statement regarding recommendations that did not achieve a level of consensus. The statement is provided as a PDF supplement to this report labeled, "[A - IGO-INGO Minority Positions](#)".

⁷ The Scope 1 identifiers for RCRC are already placed on the reserved list: <http://www.icann.org/sites/default/files/packages/reserved-names/ReservedNames.xml>

⁸ The RCRC has provided a list of the Scope 2 identifiers via a supplement to this final report. See the "[D - IGO-INGO Identifier List RCRC](#)"

⁹ This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

¹⁰ This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

#	Recommendation	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers⁷: "Red Cross", "Red Crescent", "Red Lion and Sun" and "Red Crystal" (Language: UN6) ○ Scope 2 Identifiers⁸: 189 recognized National Red Cross and Red Crescent Societies; International Committee of the Red Cross; International Federation of Red Cross and Red Crescent Societies; ICRC, CICR, CICV, MKKK, IFRC, FICR (Language: in English, as well as in their respective national languages; ICRC & IFRC protected in UN6)^{***} 	
6	<p>Second-Level protections of only <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are bulk added as a single list to the Trademark Clearinghouse**</p>	<p>Consensus NCSG supports, but with some opposition within the SG</p>
7	<p><i>Red Cross Red Crescent Movement</i> Scope 2 identifiers, if added to the TMCH, allowed to participate in <u>Sunrise</u> phase of each new gTLD launch</p>	<p>Strong Support but Significant Opposition RySG, does not support; NCSG supports, but with some opposition within the SG</p>
8	<p><i>Red Cross Red Crescent Movement</i> Scope 2 identifiers, if added to the TMCH, allowed to participate in <u>90 Day Claims Notification</u>¹¹ phase of each new gTLD launch for Second-Level registrations</p>	<p>Consensus NCSG supports, but with some opposition within the SG</p>

** Because of support to reserve Scope 1 names at the top and second levels, it is not necessary to list Scope 1 names for any of the TMCH recommendations for second level protections.

*** Scope 2 Identifiers contain both full name and acronyms. The distinction is that Scope 1 identifiers are based on a list provided by GAC advice, while Scope 2 names were additionally requested by the RCRC.

¹¹ If IGO-INGO identifiers are to utilize the Claims service, both WG deliberation and public comments noted that a separate claims notice, as distinct from the Trademark notices, may be required.

3.2 International Olympic Committee (IOC) Recommendations

#	Recommendation	Level of Support
○ Scope 1 Identifiers: olympic, olympiad (Language: UN6, + German, Greek, and Korean)**		
1	Top-Level protections of <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Olympic Committee</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Consensus ALAC, NCSG do not support
2	For <i>International Olympic Committee</i> identifiers, if placed in the Applicant Guidebook as ineligible for delegation at the Top-Level , an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Top-Level ¹²	Consensus ALAC, NCSG do not support
3	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Olympic Committee</i> are placed in Specification 5 of the Registry Agreement	Consensus ALAC, NCSG do not support
4	For <i>International Olympic Committee</i> identifiers, if placed in Specification 5 of the Registry Agreement, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Second-Level ¹³	Consensus ALAC, NCSG do not support

** Note that the IOC did not request protections for acronyms and therefore no recommendations are included within this set.

¹² This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

¹³ This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

3.3 International Governmental Organization (IGO) Recommendations¹⁴

#	Recommendation	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: GAC List¹⁵ (22 March 2013) - Full Name (Language: Up to two languages¹⁶) ○ Scope 2 Identifiers: GAC List (22 March 2013) - Acronym (Language: Up to two languages) 	
1	Top-Level protections of <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Governmental Organizations</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Consensus NCSG does not support
2	For <i>International Governmental Organizations</i> Identifiers, if placed in the Applicant Guidebook as ineligible for delegation at the Top-Level , an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Top-Level ¹⁷	Consensus ALAC, NCSG do not support
3	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Governmental Organizations</i> are placed in Specification 5 of the Registry Agreement	Consensus NCSG does not support
4	For <i>International Governmental Organizations</i> identifiers, if placed in Specification 5 of the Registry Agreement, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Second-Level ¹⁸	Consensus NCSG does not support
5	Second-Level protections of only <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>International Governmental Organizations</i> are bulk added as a single list to the Trademark Clearinghouse	Strong Support but Significant Opposition NCSG does not support; IPC only support where acronym is primary identifier for the entity

¹⁴ The IGO coalition has provided a minority position statement regarding recommendations that did not achieve a level of consensus. The statement is provided as a PDF supplement to this report labeled, "[A - IGO-INGO Minority Positions](#)".

¹⁵ List of IGO Identifiers from GAC Advice: <http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex2-22mar13-en.pdf>

¹⁶ The IGO Representatives collaborating with the GAC shall provide a list of the two languages each organization prefers because ICANN may not be in a position to determine which languages to be reserved for each 190+ organizations. UN6 is the standard scope for which ICANN conducts translations.

¹⁷ This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

¹⁸ This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

#	Recommendation	Level of Support
<ul style="list-style-type: none"> ○ Scope 1 Identifiers: GAC List¹⁵ (22 March 2013) - Full Name (Language: Up to two languages¹⁶) ○ Scope 2 Identifiers: GAC List (22 March 2013) - Acronym (Language: Up to two languages) 		
6	<i>International Governmental Organizations</i> Scope 2 identifiers, if added to the TMCH, allowed to participate in <u>Sunrise</u> phase of each new gTLD launch	Strong Support but Significant Opposition RySG, does not support; NCSG supports, but with some opposition within the SG
7	<i>International Governmental Organizations</i> Scope 2 identifiers, if added to the TMCH, allowed to participate in <u>90 Day Claims Notification</u> ¹⁹ phase of each new gTLD launch for Second-Level registrations**	Consensus NCSG, IGOs do not support

** Because of support to reserve Scope 1 names at the top and second levels, it is not necessary to list Scope 1 names for any of the TMCH recommendations for second level protections.

¹⁹ If IGO-INGO identifiers are to utilize the Claims service, both WG deliberation and public comments noted that a separate claims notice as distinct from the Trademark notices may be required.

3.4 International Non-Governmental Organizations (INGO) Recommendations²⁰

#	Recommendation	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: ECOSOC List²¹ (General Consultative Status) (Language: English only) ○ Scope 2 Identifiers: ECOSOC List (Special Consultative Status) (Language: English only) <p>***Note, this list of Identifiers are INGOs other than the RCRC and IOC See http://csonet.org/content/documents/E2011INF4.pdf</p>	
1	Top-Level protections of <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Non-Governmental Organizations</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Consensus NCSG, CBUC do not support
2	For <i>International Non-Governmental Organizations</i> Identifiers, if placed in the Applicant Guidebook as ineligible for delegation at the Top-Level , an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Top-Level ²²	Consensus NCSG does not support
3	For <i>International Non-Governmental Organizations</i> identifiers, if placed in Specification 5 of the Registry Agreement, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Second-Level ²³	Consensus NCSG does not support
4	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 (unless otherwise reserve protected) & Scope 2 identifiers of the <i>International Non-Governmental Organizations</i> are bulk added as a single list to the Trademark Clearinghouse (TMCH) ²⁴	Consensus NCSG supports, but with some opposition within the SG

²⁰ The INGOs provided a minority position statement regarding recommendations that did not achieve a level of consensus. The statement is provided as a PDF supplement to this report labeled, "[A - IGO-INGO Minority Positions](#)".

²¹ The IRT will need to determine how this list is managed as new organizations enter the list. How will ICANN be notified of changes? How is the protection implemented when an organization's string exceeds 63 characters?

²² This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

²³ This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

²⁴ The concept of bulk addition into the TMCH was to minimize cost associated with entry and validation. However, the Scope 2 names exceed 2000+ organizations. The IRT will need to determine how contact

#	Recommendation	Level of Support
<ul style="list-style-type: none"> ○ Scope 1 Identifiers: ECOSOC List²¹ (General Consultative Status) (Language: English only) ○ Scope 2 Identifiers: ECOSOC List (Special Consultative Status) (Language: English only) <p>***Note, this list of Identifiers are INGOs other than the RCRC and IOC See http://csonet.org/content/documents/E2011INF4.pdf</p>		
5	<i>International Non-Governmental Organizations</i> Scope 2 identifiers, if added to the TMCH, allowed to participate in <u>Sunrise</u> phase of each new gTLD launch	Strong Support but Significant Opposition RySG, does not support; NCSG supports, but with some opposition within the SG
6	<i>International Non-Governmental Organizations</i> Scope 1 (unless otherwise protected) & Scope 2 identifiers, if added to the TMCH, allowed to participate in <u>90 Day Claims Notification</u> ²⁵ phase of each new gTLD launch for Second-Level registrations	Consensus ISPCP support scope 1 only; NCSG support, but with some opposition within the SG

information required for TMCH forms be acquired and validated for bulk entry. Note that voluntary submission requests into TMCH will require backend validation of eligibility.

²⁵ If IGO-INGO identifiers are to utilize the Claims service, both WG deliberation and public comments noted that a separate claims notice as distinct from the Trademark notices may be required.

3.5 General Recommendations

The following general recommendations are not attributed to any particular organization seeking protection, but rather they are presented to apply to all organizations seeking protection as applicable.

#	Recommendation	Level of Support
1	Top-Level protections of Exact Match, Acronym identifiers are placed in Applicant Guidebook section 2.2.1.2.3, of the Applicant Guidebook, Strings "Ineligible for Delegation"	Consensus Against ²⁶ (refer to rec#4) IGO supports ²⁷ ; BC Supports for RCRC
2	Second-Level protections of Exact Match, Acronym identifiers are placed in Specification 5 of Registry Agreement	Consensus Against (refer to rec#4) IGO supports
3	The WG recommends that the respective policies are amended so that curative rights of the UDRP and URS can be used by those organizations that are granted protections based on their identified designations.	Consensus NCSG supports, but with some opposition within the SG
4	The WG recommends that the GNSO Council task the Standing Committee on Improvements (SCI) to review the Consensus levels as defined in the Working Group Guidelines ²⁸ .	Full Consensus

²⁶ It was decided that this level of designation be used for recommendations 1 & 2 because a specific action will be required to remove acronyms of RCRC and IGO identifiers from the current Specification of 5 of the new gTLD Registry Agreement.

²⁷ The WG participants that supported this proposal represent a number of additional IGOs that favor this position; for further reference, see the IGO's Minority Statement in the Minority Positions supplement ([A-IGO-INGO Minority Positions](#)).

²⁸ This WG experienced a possible limitation in the currently defined Consensus Levels when assigning "Divergence" to recommendations regarding acronym protections (see recs. #1 and #2 of the General Recommendations now assigned with "Consensus Against"). The use of "Divergence" did not adequately represent the lack of support for the proposed recommendation when said recommendation was stated in the affirmative, for example "Do you support..?". The Chair was equally concerned about not adhering to current Working Group Guidelines could introduce risk to the process, because "Consensus Against" is not formally defined. Note this recommendation for an SCI review was not part of the formal consensus call within the WG, but full support was determined via WG conference calls.

3.6 Unsupported Proposals

The following protection proposals did not achieve a sufficient level of support among the WG (i.e., did not receive at least ‘strong support with significant opposition’). A rationale is provided for each.

On the next few pages, the proposals listed per organization seeking protection were originally used during the consensus call and did not receive adequate support to submit as a recommendation. Essentially, any of the proposals that refer to acronym protection are addressed within the first and second General Recommendations (#1 & #2) in Section 3.5. They are placed here as an aid to consider all the protections considered for each organization. The IOC is not listed because their set of recommendations received consensus levels of support.

3.6.1 Red Cross Red Crescent Movement:

#	Proposal	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: "Red Cross", "Red Crescent", "Red Lion and Sun" and "Red Crystal" (Language: UN6) ○ Scope 2 Identifiers: 189 recognized National Red Cross and Red Crescent Societies; International Committee of the Red Cross; International Federation of Red Cross and Red Crescent Societies; ICRC, CICR, CICV, MKKK, IFRC, FICR (Language: in English, as well as in their respective national languages; ICRC & IFRC protected in UN6)*** 	
1	<p>Top-Level protections of <u>Exact Match, Full Name</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"</p>	<p>Divergence²⁹</p> <p>The WG had established the eligibility criteria as based on the GAC advice and thus defined the the Scope 2 names which were not included within GAC advice</p>
2	<p>Top-Level protections of <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"</p>	<p>Divergence</p> <p>ISO, ALAC, RySG, NCSG, IPC, ISPCP do not support</p> <p>Addressed via 3.5 General Recommendations #1&2 with "Consensus Against" on reservation protections of acronyms at top and second levels.</p>
3	<p>Second-Level protections of only <u>Exact Match, Full Name</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in Specification 5 of the Registry Agreement</p>	<p>Divergence³⁰</p> <p>The WG had established the eligibility criteria as based on the GAC advice and thus defined the the Scope 2 names which were not included within GAC advice</p>

²⁹ This specific recommendation was not a part of the formal consensus call because consensus was gauged from a general recommendation on acronyms and scope 2 identifiers.

³⁰ This specific recommendation was not a part of the formal consensus call because consensus was gauged from a general recommendation on acronyms and scope 2 identifiers.

#	Proposal	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: "Red Cross", "Red Crescent", "Red Lion and Sun" and "Red Crystal" (Language: UN6) ○ Scope 2 Identifiers: 189 recognized National Red Cross and Red Crescent Societies; International Committee of the Red Cross; International Federation of Red Cross and Red Crescent Societies; ICRC, CICR, CICV, MKKK, IFRC, FICR (Language: in English, as well as in their respective national languages; ICRC & IFRC protected in UN6)*** 	
4	<p>Second-Level protections of only <u>Exact Match</u>, <u>Acronym</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in Specification 5 of the Registry Agreement</p>	<p>Divergence ISO, ALAC, RySG, NCSG, IPC, ISPCP do not support</p> <p>Addressed via 3.5 General Recommendations #1&2 with "Consensus Against" on reservation protections of acronyms at top and second levels.</p>

3.6.2 International Olympic Committee:

All four recommendations for the IOC achieved consensus by the WG

3.6.3 International Governmental Organizations:

#	Proposal	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: GAC List³¹ (22 March 2013) - Full Name (Language: Up to two languages) ○ Scope 2 Identifiers: GAC List (22 March 2013) - Acronym (Language: Up to two languages) 	
1	<p>Top-Level protections of <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>International Governmental Organizations</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"</p>	<p>Divergence ISO, ALAC, RySG, NCSG, IPC, ISPCP, CBUC do not support</p> <p>The WG determined that reservation of acronyms would grant a right superior to that of non-governmental organizations or individuals.</p>
2	<p>Second-Level protections of only <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>International Governmental Organizations</i> are placed in Specification 5 of the Registry Agreement</p>	<p>Divergence ISO, ALAC, RySG, NCSG, IPC, ISPCP, CBUC do not support</p> <p>The WG determined that reservation of acronyms would grant a right superior to that of non-governmental organizations or individuals.</p>

³¹ List of IGO Identifiers from GAC Advice: <http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex2-22mar13-en.pdf>

3.6.4 International Non-Governmental Organizations:

#	Proposal	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: ECOSOC List (General Consultative Status) (Language: English only) ○ Scope 2 Identifiers: ECOSOC List (Special Consultative Status) (Language: English only) <p>***Note, this list of Identifiers are INGOs other than the RCRC and IOC See http://csonet.org/content/documents/E2011INF4.pdf</p>	
1	Top-Level protections of <u>Exact Match, Full Name</u> Scope 2 identifiers of the <i>International Non-Governmental Organizations</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Divergence ³²
2	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Non-Governmental Organizations</i> are placed in Specification 5 of the Registry Agreement	Divergence RySG, NCSG, IPC do not support
3	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 2 identifiers of the <i>International Non-Governmental Organizations</i> are placed in Specification 5 of the Registry Agreement	Divergence ³³
4	Second-Level protections of only <u>Exact Match, Acronym</u> Scope 1 (unless otherwise protected) & Scope 2 identifiers of the <i>International Non-Governmental Organizations</i> are bulk added as a single list to the Trademark Clearinghouse	Divergence RySG, IPC, ISPCP do not support; NCSG supports, but with some opposition within SG The WG had established the eligibility criteria as based on the GAC advice and thus defined the Scope 2 names which were not included within GAC advice

³² This specific recommendation was not a part of the formal consensus call because consensus was gauged from a general recommendation on acronyms and scope 2 identifiers.

³³ This specific recommendation was not a part of the formal consensus call because consensus was gauged from a general recommendation on acronyms and scope 2 identifiers.

Alternative Qualification Criteria for INGOs (not including RCRC and IOC) that was considered but not adopted by the WG:

The following criteria were considered as possible qualification criteria for INGOs which can demonstrate being granted privileges, immunities, or other protections in law on the basis of their quasi-governmental international status, public missions and legal protection for their names.

While there was some support, the WG did not adopt these criteria. Some reasons included issues of potential subjectivity and the need for case-by-case evaluation.

1. The INGO benefits from some privileges, immunities or other protections in law on the basis of the INGO's proven (quasi-governmental) international status;
2. The INGO enjoys existing legal protection (including trademark protection) for its name/acronym in over 50+ countries or in three (of five) ICANN regions or alternatively using a percentage: more than 50% of the countries;
3. The INGO engages in recognized global public work shown by:
 - a. inclusion on the General Consultative Status of the UN ECOSOC list, or
 - b. membership of 50+ national representative entities, which themselves are governmental/ public agencies or non-governmental organizations that each fully and solely represent their respective national interests in the INGO's work and governance.

3.6.5 General Proposals:

#	Proposal	Level of Support
1	IGO-INGO organizations be granted a fee waiver (or funding) for objections filed against applied-for gTLDs at the Top-Level	<p>Divergence RySG, IPC, ISPCP, BC do not support; NCSG supports, but with some opposition with the SG</p> <p>In general, opposition to this proposal recognized that the GAC will be able to file objections on behalf of IGOs, RCRC and IOC. It was also determined that if fee waivers were granted, other stakeholders will still subsidize the cost.</p>
2	Fee waivers or reduced pricing (or limited subsidies) for registering into the Trademark Clearinghouse the identifiers of IGO-INGO organizations	<p>Divergence IGO, ALAC, RySG, IPC, ISPCP do not support; NCSG Support, but with opposition</p> <p>The support for the recommendation(s) to bulk-add protected organizations into the TMCH reduced the need for this recommendation. Further, subsidy of pricing extended an additional right over other TMCH participants.</p>
3	IGO-INGOs allowed to participate in <u>permanent Claims Notification</u> ³⁴ of each gTLD launch	<p>Divergence IGO, ALAC, RySG, NCSG, IPC, ISPCP do not support</p> <p>Many members of the WG felt that extending permanent claims protections to IGO-INGOs granted additional rights.</p>
4	Fee waivers or reduced pricing for IGO-INGOs filing a URS or UDRP action	<p>Divergence ALAC, RySG, IPC, ISPCP do not support; NCSG supports, but with some opposition within SG</p> <p>Subsidy of pricing extended an additional right over other TMCH participants.</p>

³⁴ Present TMCH implementation of the Claims Notification service is defined to last for at least a 90 day period. WG deliberations considered, but eventually reject the notion of a permanent notification service to compensate where a reserved name protection may not be granted. Permanent notification is defined as a notification services that exists indefinitely.

3.7 Implementation Considerations of Recommendations on Incumbent gTLDs

This section suggests some implementation principles for gTLDs delegated prior to 2012 if there are any consensus policies approved from this PDP.

From IGO-INGO Charter:

“...determine how incumbent registries should meet the new policy recommendations, if any.”

Scope and Assumptions:

- Existing gTLDs Only (Delegation pre-2012)
- Only second-level proposed protection recommendations apply
- Assumes that the present WG recommendations are supported and adopted for new gTLDs

Principles of Implementation³⁵:

- Any policies adopted for new gTLDs shall apply equally to existing gTLDs to the extent they are relevant (for example second-level IGO-INGO protections utilizing TMCH, sunrise, claims will not apply) and do not infringe on the existing rights of others.
- An Implementation Review Team (IRT) should be formed to collaborate as required with ICANN staff and the GNSO Community to implement applicable consensus policies for incumbent gTLDs.
- For clarification purposes, second-level names matching a protected identifier, as identified via any consensus policies defined here, and that are not registered within an existing gTLD, shall be immediately reserved from registration in the same manner as for new gTLDs.
- Due to the time lag between the date the Working Group and GNSO Council adopts recommendations, if any, and the date the recommendations are implemented, there is a possibility of front-running, whereby some identifiers not previously registered could be registered by parties before the policy is in effect. A mechanism to guard against front-running should be defined, such as establishing the date these recommendations were adopted by the Working Group or GNSO Council as the measurement date that determines how a domain name matching a protected identifier is treated. This should be implemented as soon as practically possible.
- A second-level registration within an existing gTLD that matches a protected identifier, as identified via any consensus policies defined here, and the registration of said name, if registered prior to implementation of protections or any such cutoff date as may be determined, shall be handled like any existing registered name within the incumbent gTLD regarding renewals, transfers, sale, change of registrant, etc.

³⁵ At the time of this report, the WG awaits specific feedback with regards to the principle of implementation. To make at the specific deadline, the WG agrees to refer these principles to the Implementation Review Team.

- The previous point notwithstanding, if a second-level name that matches a protected identifier, as identified via any consensus policies defined here, it may not be transferred to a new registrant after expiration under registration agreement terms which would otherwise allow a registrar to, on its own accord, auction, sell or otherwise effect a change of registrant. Such registrations, if not renewed by the Registrant at Expiration (as defined in the Expired Registration Recovery Policy) must be deleted by the registrar after the termination of any renewal grace periods. At the time the name completes eligible grace periods and becomes eligible for deletion, the name shall not be reallocated by the Registry and shall be deemed ineligible for registration per the defined policy.
- Where policy changes to recover protected identifiers of registered second-level names within an existing gTLD deviate from current policy, registry & registrar indemnification should be considered.
- For clarification purposes, second-level names matching a protected identifier that are also registered by a party other than the protected organization and bad faith use vis-à-vis the protected organization is suspected, the protected organization may have access to RPMs like the UDRP, pending a PDP to address how the IGO-INGO organizations may access RPMs.

3.8 Proposed Options for Exception Procedure

The WG developed two high-level options for exception procedures that are not necessarily mutually exclusive and requested feedback on these options in the public comment period.

Option 1

Goal: Where a potential registrant claims a legitimate interest in a second-level domain name that is reserved from registration in the Registry Agreement, the goal is to provide a procedure for determining whether the application should proceed to registration³⁶.

General Principles - The procedure must:

- Provide immediate notification to the applicant and the protected organization when a registration request is refused registration because an identifier is protected;
- Provide a channel of communication between the applicant and the protected organization, including for purposes of any assessment an agreement which may be forthcoming from the protected organization itself at first instance;
- Provide an objective, expeditious, and inexpensive process for determining if the applicant has a legitimate interest so that its registration request can proceed to registration;
- Use existing dispute resolution procedures where possible.

Outline of Proposed Procedure:

This procedure had been developed at a time when the WG's recommendations were not formulated. The WG notes that implementation of an exception procedure will require further development that aligns with any adopted recommendations for protection.

1. Notification of Conditional Refusal Based on Protected Name.

The potential registrant and protected organization will receive immediate electronic notification if an applied-for second level domain is conditionally refused registration because of a Protected Name on a Modified Reserved list or in the Clearinghouse if applicable.

2. Declaration of Legitimate Use.

Each protected organization must record and maintain accurate contact information with the Clearinghouse (or other coordinating body) designating a recipient and email address to be notified electronically.

³⁶ Some members have expressed concern with the operability of process-heavy exemption procedures that may have a great potential to impede rights and legitimate interests unduly. Further, misuse of licensing opportunities could be a potential issue as well.

- Within ten (10) days of receiving a conditional refusal, an applicant may file a declaration with the Registry. The declaration must identify the potential registrant accurately, provide accurate contact information, and state that the potential registrant has a good faith, legitimate interest in using the domain name that does not violate any treaties, national laws or other legal entitlement of the protected organization. A standard form will be provided. The protected organization will receive a copy of the declaration electronically at its given address when the declaration is filed with the Registry.
- If, within ten (10) days after receipt of the above declaration, the protected organization does not file an objection with the Registry, the subject application will proceed to registration.
- If, within ten (10) days after receipt of the above declaration, the protected organization files an objection with the Registry, the conditional refusal will be reviewed by an independent examiner (definition and implementation still to be considered).

3. Examination.

The examination procedure must comply with the principles above. It must:

- Be objective;
- Give both parties the opportunity to be heard;
- Be expeditious; and
- Be inexpensive; and
- Use existing processes whenever possible.

Option 2

Goal: Where a potential registrant claims a legitimate interest in a second-level domain name that is reserved from registration in the Registry Agreement, the goal is to provide a procedure for determining whether the application should proceed to registration.

General Principles: The procedure must:

- Provide immediate notification to the potential registrant and the protected organization when a registration request is refused registration because a name is protected;
- Provide a channel of communication between the potential registrant and the protected organization, including for purposes of any assessment an agreement which may be forthcoming from the protected organization itself at first instance;
- Provide an objective, expeditious, and inexpensive process for determining if the applicant has a legitimate interest so that its registration request can proceed to registration;
- Use existing dispute resolution procedures where possible.

Outline of Proposed Procedure:

An entity with a name in the Clearinghouse Model could be allowed to register that name if the entity committed to prevent confusion with the corresponding protected IGO/INGO identifier.

4. Deliberations of the Working Group

The Protection of IGO and INGO Identifiers in all gTLDs WG began its deliberations on 31 October 2012 by reviewing the WG Charter which is included in Annex 1 of this report. The team also prepared a work plan³⁷, which was reviewed on a regular basis. It outlines key deliverable work products used in research and analysis of the issues defined in the charter as well as how charter issues were handled. In order to facilitate the work of the constituencies and stakeholder groups, a template was developed that was used to provide input in response to the request for constituency and stakeholder group statements (see Annex 3). This template was also used to solicit input from other ICANN Supporting Organizations and Advisory Committees early on in the process. Section 5 of this report provides the community input responses and a short summary.

4.1 Initial Fact-Finding and Research

In addition to soliciting community input, the WG formed five sub-teams to conduct an analysis of the nature of the problem, qualification criteria, eligibility process, admissions, and protections. A matrix³⁸ was developed to document the attributes of each analysis with comparisons across the four groups of organizations (i.e., IGOs, RCRC, IOC, and other INGOs) seeking protection. In addition, ICANN's General Counsel Office (GCO) was requested to research and report whether it is aware of possible legal prohibitions with respect to registration of domains using the identifiers of these organizations. The next five sub-sections will provide details of each sub-team's findings followed by a summary from the GCO.

4.1.1 Nature of the Problem

This sub-team's task was to review the specific problems that would be addressed if any protections were to be implemented. Sub-topics reviewed included costs of combating infringement and abuse, infringement on public good, discussion of existing Rights Protection Mechanisms (RPMs) and/or due process in applicable law. In principle, it is understood by all WG members that use of domain

³⁷ IGO-INGO WG Work Plan: <https://community.icann.org/display/GWGTCT/Work+Plan+Drafts>

³⁸ Analysis Matrix: <https://community.icann.org/display/GWGTCT/IGO-INGO+Work+Package+Drafts>

names with malicious intent is a recognized problem within the DNS. However, views on the degrees of harm suffered by the organizations seeking protection varied in the WG's deliberations. One view discussed whether such harm needed to be first proved prior to granting any protections or whether it was sufficient to only presume harm. Conversely, views were expressed that whether the harms exists is not relevant, but when harm is detected, resources that would otherwise be earmarked for an organization's public interest mission are otherwise diverted to deal with such harm.

As mandated by the Charter and in order to provide more information to aid the WG's deliberations for this issue of establishing qualification criteria for special protection of international organization identifiers, the WG asked representatives from the IOC, RCRC and IGOs to provide evidence of abuse of their respective organization's identifiers by third-party domain name registrations. A series of content sources came from prior policy reports, direct submissions from organizations seeking protection and WG analysis tools. Links to the submissions reviewed can be found at the IGO-INGO Wiki Page³⁹. Concurrently, ICANN staff also compiled a sampling of domain name registrations⁴⁰ of RCRC, IOC and IGO identifiers.

4.1.2 Qualification Criteria

The Qualification Criteria (QC) sub-team reviewed qualitative and quantitative attributes of how organization(s) may qualify for protections of their respective identifiers. Such attributes include how the organizations in question are protected by treaty or national law, and whether the quantity of jurisdictions providing protection had relevance to the scope and limitations of protection mechanisms. Access to current RPMs, not-for-profit status, nature of public mission, and duration of existence were other attributes explored.

The overall intent of the WG was to establish a set of objective criteria that was also stringent enough to appropriately limit the number of organizations that may qualify. WG deliberations

³⁹ Abuse evidence: <http://community.icann.org/pages/viewpage.action?pageId=40931994>

⁴⁰ Sampling of registrations: <http://community.icann.org/display/GWGTCT/IGO-INGO+Registration+Evaluation+Tool>

regarding qualification criteria confirmed that it was not possible to develop a single set of criteria applicable to all four types of organizations that most WG members would support. While being different from each other in many respects, the IOC and RCRC may be differentiated from other INGOs on the basis of the unique legal protections they and their respective designations are afforded under a framework of international treaties and national laws in multiple jurisdictions. IGOs have been differentiated from INGOs on the basis of the types of legal protections they are afforded.

With the GAC's advice in its Beijing Communiqué, the scope of special protections for IGOs combined with the special protections previously provided to the IOC and RCRC became much more defined. However, as of the date of the Beijing Communiqué, the issue of possible special protections for INGOs other than the RCRC and IOC had not been addressed outside of the PDP WG and so, as mandated by the WG Charter, it was deliberated on. Entry on the Economic and Social Council (ECOSOC) list was the latest criterion considered for recommendations by the WG; all alternatives are provided later in this report.

4.1.3 Eligibility Process

The Eligibility Process sub-team sought to delineate and understand who would be tasked with determining whether an organization seeking special protections would meet the specified qualification criteria, and how this process would take place. Initial discussions leaned toward a neutral entity that would make such determinations, but the sub-group again stressed the importance of an objective set of qualification criteria. Ultimately it was determined, eligibility for protections was tightly coupled with qualification criteria and, if any special protections were to be implemented, likely exception procedures would have to be created.

4.1.4 Admissions

Essentially, the Admissions sub-team was tasked to determine if additional criteria to be afforded protections were needed after an organization met the qualification criteria and eligibility checks. Deliberations among the sub-team revealed the challenge of balancing various criteria versus categories of criteria defined in the previous sections. The sub-team concluded that admissions are

tightly coupled to qualification criteria and the eligibility process and noted this distinction was not necessary.

4.1.5 Protections

The last sub-team was formed to review the types of protections that may be available to IGOs and INGOs. The following preventative and curative protection mechanisms were reviewed:

- Reserved Names list: is classified as a preventative mechanism whereby predetermined strings are placed on a list from which no such string is available for registration. Existing registry agreements have varying rules of reservation within the Schedules of Reserved Names. The New gTLD Registry Agreement contains a Specification 5, also titled “Schedule of Reserved Names,” that was established as a reserved names template for the large quantity of new gTLDs anticipated for delegation. With respect to reservations at the top-level, the Applicant Guidebook also contains a series of strings that are reserved or ineligible for delegation.
- Modified Reserved Names list: is essentially the same as the Reserved Names list mentioned above, however, an exemption procedure at both the top and second levels may be required to allow for registration by the organization seeking protection or a legitimate rights holder to the same string. The nomenclature of “Modified Reserved Names list” is a concept not currently implemented as it is used in this context. However, for the gTLDs that are already delegated and that have a Schedule of Reserved Names, the Registry Services Evaluation Process (RSEP) can be utilized to gain approval for allowing registration of a string, resulting in this modified list. Additionally, existing registry agreements have an exception procedure for 2-character second-level names, which also utilizes the RSEP.
- Trademark Clearinghouse, Sunrise, and Claims: are a series of new Rights Protection Mechanisms (RPMs) designed for the New gTLD Program. They are viewed as preventative measures in protecting word marks. These are currently being implemented to support second-level registration of strings upon a new gTLD’s delegation. Note that as part of the recommendation options presented in this Initial Report, the term “Clearinghouse Model” is used in the context of the likely need for similar features of the TMCH, but also available for use by IGOs and INGOs that typically do not have registered trademark names.

- UDRP and URS: Uniform Dispute Resolution Process (UDRP) and Uniform Rapid Suspension (URS) are additional RPMs that are considered curative measures and used only after the registration of a domain name. Both RPM mechanisms will be available with the new gTLDs.
- Do not sell lists: contain names blocked from registration according to the internally defined policy of the Registry Operator of a given gTLD. Some applicants are choosing to deploy additional protections for certain types of names, but only as defined by their respective Registry policies.
- Limited Preventative Registrations: a proposed mechanism that has been considered for trademark owners to prevent second-level registration of their marks (exact matches, plus character strings previously determined to have been abusively registered or used) across all gTLD registries, upon payment of a reasonable fee, with appropriate safeguards for registrants with a legitimate right or interest.

4.1.6 Summary of ICANN's General Counsel's Office Survey

Parallel with the activities mentioned above, the Charter required the WG to evaluate the scope of existing protections under international treaties and national laws for IGO, INGO, RCRC and IOC Names. In order to do so, the WG requested ICANN's General Counsel to conduct research and report on whether ICANN is aware of any jurisdiction in which a statute, treaty or other applicable law prohibits either or both of the following actions by or under the authority of ICANN:

- a) the assignment by ICANN at the top level, or
- b) the registration by a registry or a registrar accredited by ICANN of a domain name requested by any party at the second level, of the name or acronym of an intergovernmental organization (IGO) or an international non-governmental organization (INGO) receiving protections under treaties and statutes under multiple jurisdictions

The WG requested the General Counsel to specify the jurisdiction(s) and cite the law if the answer to either of these questions was affirmative.

Eleven jurisdictions from around the globe were surveyed, representing jurisdictions from all five ICANN geographic regions. The trend found in the General Counsel's Research Report is that "there are few, if any, jurisdictions sampled that have specific laws addressing ICANN, a registry or a registrar's role in the delegation of top-level domains or in the registration of second-level domains.

Only one jurisdiction (Brazil) was found to have a statute that placed a direct prohibition on the registration of IOC- or FIFA-related domain names, though the roles of gTLD registries/registrar are not specifically identified in the statute. However, the fact that statutes do not directly mention domain names cannot be taken to mean that ICANN, a registry or a registrar is exempt from liability if there is an unauthorized delegation at the top-level or registration at the second-level of a domain name using the name or acronym of the International Olympic Committee (IOC), the Red Cross/Red Crescent movement (RCRC), or Intergovernmental Organizations (IGOs) that are provided protection within each jurisdiction.”

The research also found that, “nearly all of the sampled jurisdictions (representing all ICANN geographic regions) provide protections to the IOC and/or the RCRC for the use of their names and acronyms, and those protections are often understood to apply to domain names. The exact terms that are protected in each jurisdiction vary. While it appears rare (other than in the case of Brazil) to have a specific prohibition for domain name registration enumerated, there does seem to be potential bases for challenges to be brought with respect to domain name registration, including potential challenges to registry operators or registrars for their roles in the registration chain.”

“For the names and acronyms of IGOs, ICANN’s research focused on whether any special status afforded to those names and acronyms by virtue of the protection granted by Article 6ter(1)(b) of the Paris Convention could serve as a basis for liability. While this focus of research may not identify if there are individual IGOs for which a country has elected to provide heightened protections (outside of their 6ter status), this research provides insight to the status afforded to IGOs that can be objectively identified by virtue of their inclusion on the 6ter list. Many countries afford special protection to those IGOs listed on the 6ter, though there is often a registration, notice process, or member state limitation required through which each jurisdiction develops a list of the specific IGOs that it will recognize for protection. Therefore, among the jurisdictions where IGOs are provided heightened protection, the list of IGOs eligible for protections may not be uniform. With regard to our research related to IGOs and INGOs other than the RCRC and IOC, the research did not identify any universal protections that could be made applicable for IGOs or INGOs.”

“In nearly every jurisdiction, whether or not special protection exists for the IOC, RCRC or IGOs, there always remains the possibility that general unfair competition or trademark laws can serve as

a basis for challenge to a specific delegation of a top-level name or the registration of a second-level domain name at any level of the registration chain.”

A copy of the General Counsel’s Research Report is included in Annex 5.

4.2 Working Group Charter Deliberations

Charter Issue 1

Whether there is a need for special protections at the top and second level in all existing and new gTLDs for the names and acronyms of the following types of international organizations:

International Governmental Organizations (IGOs) protected by international law and multiple domestic statutes, International Non-Governmental Organizations (INGOs) receiving protections under treaties and statutes under multiple jurisdictions, specifically including the Red Cross/Red Crescent Movement (RCRC), and as the International Olympic Committee (IOC). In deliberating this issue, the WG should consider the following elements:

- Quantifying the Entities to be Considered for Special Protection
- Evaluating the Scope of Existing Protections under International Treaties/National Laws for IGO, RCRC and IOC Names
- Establishing Qualification Criteria for Special Protection of International Organization Names
- Distinguishing Any Substantive Differences Between the RCRC and IOC From Other International Organizations

This issue was first addressed by the request for legal research as noted in Section 4.1 and Annex 5. Secondly, the WG performed the critical task of reviewing the qualification criteria which is documented in the work package mentioned in Section 4.1. It became evident from the WG deliberations that it was not possible to develop a single framework of qualification criteria that most of the WG would support given the different nature of IGOs, the RCRC, IOC and other INGOs. Further, the WG determined that the IOC and RCRC did differ from other INGOs given their unique legal standing compared to other INGOs. The scope of the qualification criteria for IGOs became defined and quantified by the list of IGO organizations eligible for protection submitted by the GAC; and for the RCRC and IOC by both the GAC’s and ICANN Board’s recognition of the international

legal protections for the IOC and RCRC. Conversely, as noted in the proposed recommendations, other INGO organizations have a set of proposed qualification criteria that relate to the ECOSOC list.

Charter Issue 2

If there is a need for special protections at the top and second level in all existing and new gTLDs for certain international organization names and acronyms, the PDP WG is expected to develop policy recommendations for such protections. Specifically, the PDP WG should:

- Determine whether the current special protections being provided to RCRC and IOC names at the top and second level of the initial round of new gTLDs should be made permanent for RCRC and IOC names in all gTLDs and if not, develop specific recommendations for the appropriate special protections for these names.
- Develop specific recommendations for appropriate special protections for the names and acronyms of all other qualifying international organizations.

This charter issue has been addressed by the WG's creation and deliberation about the issues identified in the IGO-INGO Protection Matrix tool⁴¹ and using other work products which can be found on the ICANN Wiki. Details of the proposed recommendation options can be found in Sections 5 below.

⁴¹ IGO-INGO Protection Matrix: <https://community.icann.org/display/GWGTCT/IGO-INGO+Protections+Matrix>

5. Background

This section contains a sequential description of the key events of the IGO-INGO WG. For a detailed background and history of the issue prior to the initiation of this PDP, please see the Final GNSO Issue Report on the Protection of International Organization Names in New gTLDs⁴² (“Final Issue Report”). The Issue Report was initiated as a result of a recommendation by a 2012 Drafting Team formed to provide a GNSO response to the GAC request on the Protection of IOC and RCRC names⁴³. After community review, the scope of the Final Issue Report included an evaluation of whether to protect the names of both intergovernmental and non-governmental organizations at the top level and second level in all gTLDs.

Upon receiving the Final Issue Report, the GNSO Council approved a motion to initiate a Policy Development Process for the protection of certain International Organization Names in all gTLDs. The PDP Working Group was formed 31 October 2012 and its Charter was approved by the GNSO Council on 17 November 2012.⁴⁴

At its 26 November 2012 meeting, the ICANN Board’s New gTLD Program Committee (“NGPC”) adopted a resolution to protect, on an interim basis, certain IGO names and acronyms based on .int registration criteria at the second level of the initial round of new gTLDs, by including these names on the Reserved Names list; and for the GNSO to continue its policy development efforts on the protection of IGO names. It also requested advice from the GNSO Council about whether to include second-level protections for certain IGO names and acronyms by inclusion on a Reserved Names List as presented in section 2.2.1.2.3 of the Applicant Guidebook for the initial round of new gTLDs.⁴⁵

⁴² Final Issue Report: <http://gns0.icann.org/en/node/34529>. Further background information in this regard may be found in the various submissions made to the Working Group by various IGOs, the IOC and the RCRC

⁴³ IOC / RCRC Protection DT Archive: <http://gns0.icann.org/en/group-activities/active/ioc-rcrc>

⁴⁴ The GNSO Council Resolution for IGO-INGO PDP initiation:
<http://gns0.icann.org/en/council/resolutions#20121017-2>

⁴⁵ The ICANN Board Resolution and Rationale for the Protection of IGO names are posted at:
<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-26nov12-en.htm>

At the same meeting, the NGPC also adopted a resolution regarding the protection of RCRC and IOC names. The NGPC resolved that restrictions on the registration of RCRC and IOC names for new gTLDs at the second level (i.e., the IOC and RCRC names listed in the Reserved Names List under section 2.2.1.2.3 of the Applicant Guidebook applicable in all new gTLD registries approved in the first round of the New gTLD Program) will be in place until such time as a policy is adopted that may require further action.⁴⁶

On 20 December 2012, the GNSO Council adopted a resolution accepting the Drafting Team's recommendation to provide special protection for RCRC and IOC names at the second level of the initial round of new gTLDs in a manner consistent with the Board resolution to protect such names.⁴⁷

In response to the ICANN Board's request for advice on the protection of IOC/RCRC names, on 31 January 2013 the GNSO Council Chair sent a letter with its advice on this issue⁴⁸ to the ICANN Board and GAC. Although the GNSO Council did not dispute the advice provided by the GAC, it also recognized that the issue exceeded the scope of implementation by ICANN and required further policy development for a long-term approach/solution.

On 28 February 2013, the GNSO Council sent a letter⁴⁹ to the ICANN Board in response to the Board's request for advice on the temporary protection of IGO and INGO names in the first round. The GNSO Council made reference to the temporary protections of the IOC and RCRC names, and noted that the IGO-INGO PDP WG had not completed its work. The letter also noted a minority position that the global public interest could possibly be harmed by such temporary protections for IGO identifiers. The Council advised that the Working Group assigned to this issue will maintain its

⁴⁶ The ICANN Board Resolution and Rationale for the Protection of IOC/RCRC names are posted at: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-26nov12-en.htm#1>

⁴⁷ The GNSO Council Resolution for the Protection of IOC/RCRC names: <http://gns0.icann.org/en/council/resolutions#201212>

⁴⁸ GNSO Council letter of advice to the ICANN Board and GAC: <http://gns0.icann.org/en/correspondence/robinson-to-dryden-31jan13-en.pdf>

⁴⁹ GNSO Council letter of advice to the ICANN Board: <http://gns0.icann.org/en/correspondence/robinson-to-crocker-chalaby-28feb13-en.pdf>

sense of urgency to develop policy recommendations which the GNSO can provide to the ICANN Board with respect to the protection of names and identifiers of IGOs.

On 22 March 2013, the GAC submitted to the Board a list of 195 IGO names and acronyms to be protected at the second level in the first round of new gTLDs, and also indicated that the scope of languages for the names and acronyms to be protected remained to be determined.⁵⁰

During the ICANN Board/GAC joint session on 9 April 2013 in Beijing, the Board flagged a number of issues still to be addressed with regard to the protection of IGO identifiers, including languages to be protected and the mechanism envisaged for any periodic review of the list. The Board also expressed concern that certain acronyms listed for special protection include common words, trademarked terms, acronyms used by multiple organizations, and acronyms that are problematic for other reasons. The Board requested that the GAC clarify its advice with regard to the specific languages to be protected and the mechanism envisaged for any periodic review of the list, and flagged for consideration the issue of acronyms for which there may be competing claims. The Board indicated that clarification would be required to permit the Board to implement the GAC advice.⁵¹

In its 11 April 2013 Beijing GAC Communiqué, the GAC reiterated its advice to the ICANN Board that “appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch,” and noted that it “is mindful of outstanding implementation issues and commits to actively working with IGOs, the Board, and ICANN staff to find a workable and timely way forward pending the resolution of these implementation issues.”

With regard to the RCRC and IOC names, the GAC advised the ICANN Board to amend the provisions

⁵⁰ See Letter and Annexes from Heather Dryden to Steve Crocker and Cherine Chalaby:
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-22mar13-en>
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex1-22mar13-en.pdf>
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex2-22mar13-en.pdf>

⁵¹ See Letter from Steve Crocker to Heather Dryden on IGO Name Protection:
<http://www.icann.org/en/news/correspondence/crocker-to-dryden-01apr13-en.pdf>

in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs⁵². The New gTLD Program Committee accepted the GAC advice. The proposed final version of the Registry Agreement, adopted 2 July 2013, included protection for an indefinite duration for IOC/RCRC names. Specification 5 of the Registry Agreement includes a list of names (provided by the IOC and RCRC Movement) that "shall be withheld from registration or allocated to Registry Operator at the second level within the TLD."

On 14 June 2013, the IGO-INGO Working Group submitted its Initial Report⁵³ on the protection of IGO-INGO identifiers for a 42 day public comment period. While the Working Group (WG) received several comments on the topic of protections for certain organizations, all the contributions received were from members of the IGO-INGO WG and as such the nature of those comments had already been discussed within the WG. The WG agreed that a review of the submissions, as shown in the public comment review tool, did not add new information to what was already considered by the members. Further, the Initial Report did not contain any formal policy recommendations and it was understood that a public comment period would be opened for the draft Final Report. Therefore, no summary of comments was provided for the IGO-INGO Initial Report. For an accurate reflection of positions submitted by WG members, please see their response in the archive.⁵⁴

In parallel to the public comment period for the Initial Report, the IGO-INGO WG hosted two face-to-face sessions in Durban for the ICANN 47 meeting (mid-July 2013). These WG meetings were used to discuss issues uncovered since the submission of the Initial Report and to also prepare for a session which utilized professional facilitators to conduct a planned interactive session to discuss the remaining critical issues that the WG faced. This session was intended to 1) raise awareness of why this issue is important and provide transparency on WG deliberations/contrasting positions to date;

⁵² Beijing GAC Communiqué:

https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2

⁵³ IGO-INGO Initial Report: <http://gnso.icann.org/en/issues/igo-ingo-initial-14jun13-en.pdf>

⁵⁴ Initial Report – Public Comment Page: <http://www.icann.org/en/news/public-comment/igo-ingo-initial-14jun13-en.htm>

and 2) facilitate interactive discussion and solicit feedback from the community on key outstanding issues to help guide the WG in moving forward. However, very few community members participated in the interactive session thus producing little new information or suggestions to advance the WG's deliberations. As a result, the WG continued to refine its recommendations in preparation of the draft Final Report.

Prior to the Durban meeting in July 2013, the NGPC passed a resolution⁵⁵ that confirmed that appropriate preventive initial protection for the IGO identifiers, as a response to the GAC advice will continue to be provided as presented in the New gTLD Registry Agreement. Since then, the Registry Agreement⁵⁶ for New gTLDs has been approved by the NGPC and it can be found on the new gTLD site. The Registry Agreement continues to include a reference in Specification 5 to the reservations of IOC, RCRC, and IGO names, noting that the list of the reserved names is located in the Registries⁵⁷ section of ICANN.org. It should also be noted that the NGPC passed another resolution⁵⁸ extending these initial protections until the first meeting of the NGPC following the ICANN 48 Meeting in Buenos Aires or until the NGPC makes a further determination on the IGO GAC Advice, whichever is earlier.

The NGPC adopted temporary protections for acronyms of the International Committee of the Red Cross (ICRC/CICR) and the International Federation of Red Cross and Red Crescent Societies (IFRC/FICR) at its most recent meeting on 10 September 2013. Also at the meeting, the NGPC agreed to accept the GAC's advice to continue working on a mechanism to protect the IGO acronyms. Refer to the [Durban Scorecard](#)⁵⁹.

⁵⁵ NGPC Resolution 2 July 2013: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en.htm>

⁵⁶ New gTLD RA: <http://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting>

⁵⁷ IOC, RCRC, IGO Reservation list: <http://www.icann.org/en/resources/registries/reserved>

⁵⁸ NGPC Resolution 17 Jul 2013: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-17jul13-en.htm>

⁵⁹ Durban Scorecard: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-10sep13-en.pdf>

The IGO-INGO WG submitted for [public comment its draft Final Report](#)⁶⁰ which contained the proposed recommendations and the WG's Chair assessment on the levels of consensus. Upon closure of the public comment period (1 Nov 2013), the WG review the public comments and determined changes to the Final Report as approved by the WG.

On 2 October 2013, the NGPC sent a [letter](#)⁶¹ to the GAC Chair regarding the GAC advice on the protection of IGO acronyms. The letter responded to GAC advice about a cost-neutral mechanism that would provide notification to an IGO when a Registrant registered a domain name matching the protected acronym identifier and to allow for a third party review of such a registration request. The draft proposal submitted to the GAC contained reference to designated acronyms being entered into the Trademark Clearinghouse and use of the 90 day Claims Notification Service. The proposal also discussed the use of a dispute resolution mechanism, the URS.

The IGO Coalition sent a [response](#)⁶² to the GAC about the NGPC proposal on 4 November 2013. The letter expressed reservations about the NGPC proposal stating that it did not create a presumption of protection and at best only curative and not preventative.

⁶⁰ IGO-INGO WG Draft Final Report PC: <http://www.icann.org/en/news/public-comment/igo-ingo-final-20sep13-en.htm>

⁶¹ NGPC Letter to GAC Chair: <http://www.icann.org/en/news/correspondence/crocker-to-dryden-02oct13-en.pdf>

⁶² IGO Coalition Letter to GAC: <http://www.icann.org/en/news/correspondence/igo-coalition-to-gac-01nov13-en.pdf>

5.1 Protections Available to IGOs and INGOs Under the Current Version of the Applicant Guidebook (AGB)

In addition to the protections adopted by the ICANN Board for the IOC and RCRC names at the top level under section 2.2.1.2.3 of the Applicant Guidebook, there are existing protections available to other entities under the New gTLD Program which may also be available to international organizations.⁶³ In providing further details below, it is noted that some of these existing protections may not be applicable or satisfactory for all international organizations.

Top-Level Protections

Information on applied-for strings was made publicly available after the close of the application window for the initial round of new gTLDs. Any party, including international organizations, had the ability to review the applied-for strings to determine if any raise concerns, and had the opportunity to avail themselves of the objection processes if the applied-for string infringed on specific interests set out in the Applicant Guidebook “AGB”, which include:

- Infringement of legal rights, particularly intellectual property rights;
- Approval of new TLDs that are contrary to generally accepted legal norms of morality and public order as recognized under principles of international law; and
- Misappropriation of community names or labels.

In addition, an Independent Objector was appointed, and had the ability to file objections in certain cases where an objection was not already made to an application that might infringe on the latter two interests listed above. The goal was for the Independent Objector to act solely in the best interest of the public. The Independent Objector did not, however, have the ability to bring an objection on the grounds of infringement of intellectual property rights.

⁶³ The latest Guidebook is posted at: <http://newgtlds.icann.org/en/applicants/agb> Supporting documentation is available through the “New Generic Top Level Domains” button at www.icann.org

The legal rights objection includes a specific ground for objection that may be applicable to many IGOs. An IGO was eligible to file a legal rights objection if it meets the criteria for registration of an .INT domain name. See Applicant Guidebook, section 3.2.2.2⁶⁴. Those criteria include:

- a) An international treaty between or among national governments must have established the organization; and
- b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting these criteria. In addition, going forward, if a holder of a mark can demonstrate that its mark is protected by statute or treaty, the mark holder may also avail itself of the Post-Delegation Dispute Resolution Procedure (PDDRP) in cases where it appears that a registry (at the top level) is affirmatively infringing the complainant's mark. It should be noted that IGO names and acronyms may or may not be considered a mark that would meet the eligibility requirements to utilize the PDDRP. More information on the PDDRP is available in the Applicant Guidebook.⁶⁵

Second-Level Protections

Through the Trademark Clearinghouse, mark holders will have the opportunity to register their marks in a single repository that will serve all new gTLDs. Currently, trademark holders go through similar rights authentication processes for each separate top-level domain that launches.

New gTLD registries are required to use the Trademark Clearinghouse in two ways. First, they must offer a "sunrise" period – a pre-launch opportunity for rights holders to register names in the new gTLD prior to general registration. Second, a Trademark Claims service will notify rights holders of domain name registrations that match records in the Clearinghouse for a period of time at the beginning of general registration.

⁶⁴ Applicant Guidebook: <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>

⁶⁵ PDDRP Section of Applicant Guidebook: <http://newgtlds.icann.org/en/applicants/agb/pddrp-04jun12-en.pdf>

Word marks that are protected by a statute or treaty are eligible for protection through the mandatory Trademark Claims process and Sunrise protections in the New gTLD Program under the Trademark Clearinghouse. In addition, any word mark that has been validated through a court of law or other judicial proceeding is also eligible.

The Trademark Clearinghouse will support increased protections, as well as reduce costs for mark holders. In the case of IGOs and INGOs, to the extent they are not considered word mark holders, any such benefits of the Trademark Clearinghouse may not apply. The PDDRP also affords protection for activity at the second level. At the second level the PDDRP provides an avenue whereby mark holders can file a dispute against a registry, rather than a registrant, if through a registry's affirmative conduct there is a pattern or practice of the registry's bad faith intent to profit from the sale of infringing names and the registry's bad faith intent to profit from systematic registration of names infringing the complainant's mark.

The New gTLD Program also affords mark holders a new form of alternative dispute resolution for clear-cut cases of abuse by domain name registrants. The Uniform Rapid Suspension System (URS) is a streamlined version of the Uniform Domain Name Dispute Resolution Policy (UDRP) process, providing trademark holders a quicker and simpler process through which infringing registrations at the second level can be "taken down." IGOs, which are in general not "trademark holders", do not generally benefit from access to this mechanism, except in cases where their names are trademarked.

6. Community Input

6.1 Request for input from GNSO Stakeholder Groups and Constituencies

As required by the GNSO PDP Manual, a request for input was sent to all GNSO Stakeholder Groups and Constituencies at the end of January 2013. Contributions were received from the Non-Commercial Stakeholder Group, Registries Stakeholder Group and Internet Service Providers and Connectivity Constituency. Complete responses can be found at the IGO-INGO WIKI page:

<https://community.icann.org/pages/viewpage.action?pageId=40175441>

6.2 Request for input from other ICANN Supporting Organizations and Advisory Committees

A request for input was sent to all ICANN Supporting Organizations and Advisory Committees at the end of January 2013. One contribution was received from the At-Large Advisory Committee.

Complete responses can be found at the IGO-INGO WIKI page:

<https://community.icann.org/pages/viewpage.action?pageId=40175441>

6.3 Summary of Community Input

Among the responses received, there was general agreement that there are substantive differences among the RCRC, the IOC, IGOs and other INGOs, as well as between IGOs and INGOs, which should be taken into account for determining what, if any, type of special protections are necessary and if so, what the qualifying criteria should be. With the exception of the NCSG, the other contributors generally agreed that amendments or modifications to existing Rights Protection Mechanisms (e.g. UDRP, URS) available under the new gTLD Program are probably necessary to adequately protect the interests of IGOs and INGOs in their identifiers. The NCSG believes that the existing RPMs are adequate in regard to demonstrated need.

The ALAC believes in general that if any special protections for IGOs and INGOs are to be provided, there must be real harms if the protections are not provided, and that the protections will actually help prevent such harms. In its response, the ALAC stated that special protection at the top level is generally not needed, and that if necessary, the current objection process could be modified to provide sufficient protection for IGOs and INGOs. With regard to the second level, the ALAC

believes that any protections at this level must be restricted to organizations that: 1) can demonstrate they have been subject to harms due to bad-faith attempts to use their names at the second level of existing TLDs; and 2) can demonstrate substantive harm to the public interest if their names are not protected in the future.

In its response the RySG stated the basic premise of the majority view that beyond the special protections for the RCRC and IOC adopted by the GNSO in its 20 December resolution, any other special protections are “inappropriate” for any select group of entities, and that existing RPMs along with any necessary modifications to make them available for IGOs and INGOs are sufficient.

The RySG response also included a Minority Position submitted by the Universal Postal Union, an IGO, which reflects and reiterates prior submissions made on behalf of IGOs. The Minority Position believes that special protections should be provided to the names and acronyms of IGOs because in their view: 1) IGOs are protected under international and domestic laws; 2) IGOs have a public mission and are funded by public money – therefore, any abuse of IGO names and acronyms that are remedied by fee-based curative mechanisms rather than preventive, comes at a cost to the public missions of IGOs; 3) existing RPMs which are trademark-based are insufficient in providing adequate protection for IGO identifiers; 4) GAC advice to protect IGO identifiers should be given appropriate weight and consideration.

The NCSG’s position is that special protections should only be provided to those groups that are legitimately entitled to have a preference over other users of a domain name and are not able to protect their interest through existing measures because they lack legal protections. At the time the NCSG submitted its response, it believed that no specific harm has been demonstrated to a group that is unique to that group and therefore, no special protections should be provided.

The ISPCP stated its general position of not being in favour of “special protections,” but recognized the GAC advice and therefore accepts that some type of protection may be granted. The ISPCP believes that no special protections are necessary at the top level. At the second level, the ISPCP’s position is that only the exact match of an identifier in different languages should be protected for IGOs and INGOs created under an international treaty and ratified by a sufficient number of

countries. Such protections should be granted in all gTLDs, and there should be some mechanisms to allow legitimate right holders to register such identifiers.

6.4 Summary of International Organizations' Positions

The RCRC, IOC, and IGOs have well-documented their positions and respective rationales for providing protection to their identifiers in the top and second levels of gTLDs. These positions are summarized in the Final GNSO Issue Report on the Protection of International Organization Names in New gTLDs, and have been further elaborated upon through the mailing list of the PDP WG. Their respective positions are briefly summarized below.

6.4.1 Red Cross and Red Crescent

The RCRC cites the protection granted to the Red Cross and Red Crescent designations and names under universally agreed international humanitarian law treaties (the Geneva Conventions of 1949 and their Additional Protocols) and under the domestic laws in force in multiple jurisdictions, as establishing a *sui generis* case for permanent protection of the RCRC designations and names from third party registration at both the top and second level in all gTLDs. While expressing appreciation for the work produced by the WG, the RCRC maintain that the recommendations of the WG are insufficient and should be complemented.

The RCRC notably underlines that the existing protections, as currently defined in the Applicant Guidebook and in Specification 5 of the revised Registry Agreement, are not sufficient and should be made to expressly extend to (in the WG's own categorization: Scope 2 names or identifiers):

- the names of the respective components of the International Red Cross and Red Crescent Movement (i.e. the 189 recognized National Red Cross or Red Crescent Societies - e.g. German Red Cross, Afghan Red Crescent, Red Star of David, etc.). This protection is called for in both English and in the national and official languages of the National Societies concerned;
- the names of the two international components - the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRC) in the six UN languages, as well as the acronyms of the two Organizations in their commonly used translations.

- In as much, the RCRC have suggested that the recommendations of the Working Group be amended and revised to expressly foresee that
 - Top-Level protections of Exact Match, Full Name Scope 2 identifiers of the Red Cross Red Crescent Movement are placed in the Applicant Guidebook section 2.2.1.2.3 as Strings "Ineligible for Delegation";
 - Second-Level protections of only Exact Match, Full Name Scope 2 identifiers of the Red Cross Red Crescent Movement are placed in Specification 5 of the Registry Agreement;
 - For RCRC Scope 2 identifiers, if placed in the Applicant Guidebook or in Specification 5 of the Registry Agreement as strings "Ineligible for Delegation" at top or second levels, an exception procedure be created for cases where a protected organization wishes to apply for a protected string.

While the RCRC have taken note of the proposed recommendation to add the so-called Scope 2 names or identifiers to the Trademark Clearinghouse (TMCH), they have consistently maintained that this would not meet the requirements for protection under the law and would be liable to place an undue burden on the RCRC organisations to monitor and activate existing reactive procedures and mechanisms. They have also underlined that should the TMCH option be considered, a waiver of fees should be duly foreseen and the standing of the RCRC organizations in existing remedial mechanisms confirmed.

Finally, while citing the express prohibition on imitations of the Red Cross, Red Crescent and Red Crystal designations and names under international law and under the laws in force in multiple jurisdictions, the RCRC have expressed their continued support for the establishment of a mechanism or procedure to effectively address the issue of strings confusingly similar or liable to confusion with, or including, either of the RCRC designations or names.

6.4.2 International Olympic Committee

The IOC⁶⁶ also cites the *sui generis* protection granted to IOC identifiers under national laws in multiple jurisdictions (recognized by the GAC and the ICANN Board) as justification for establishing special permanent protection from third party registration of the IOC designations at both the top and second levels in all gTLDs; and that the IOC designations be available for registration by the IOC or its authorized international and national organizations through a Modified Reserved Names list.

6.4.3 International Governmental Organizations

The position of IGOs that special protections should be provided for IGO names and acronyms at both the top and second levels is summarized above in the Minority Position of the RySG submission. It is consistent with GAC advice on the need for protection of IGO names and acronyms against inappropriate third party registration, and with the Board's acknowledged need for appropriately implemented interim protection being in place before any new gTLDs would launch. IGOs do not believe finalization of the Working Group's deliberations, or any other Working Group which may be required to consider granting IGOs access to UDRP, URS, TMCH or other ICANN mechanisms would remain on-going.

6.4.4 International Non-Governmental Organizations

Some members of the WG have also advocated protections for certain INGOs (other than the IOC and the RCRC) that have recognized global public missions, extensively legally protected names, and protections in law granted on the basis of their (quasi-governmental) international status⁶⁷. The International Organization for Standardization (ISO) has formally advocated that certain INGOs and IGOs with global public missions need special protection to counter the increasing potential for and on-going impact of cybersquatting; and thus there is a need to establish objective, non-discriminatory criteria for granting special protection which would also avoid unduly restricting rights and legitimate rights.

6.5 Public Comment Period – IGO-INGO WG Initial Report

⁶⁶ IOC 3029 Nov 2012: <http://forum.icann.org/lists/gnso-igo-ingo/msg00133.html>

⁶⁷ ISO Letter to Stephen Crocker 13 May 2013: <http://forum.icann.org/lists/gnso-igo-ingo/msg00616.html>

The IGO-INGO WG completed its Initial Report and submitted it for [public comment on 14 June 2013](#)⁶⁸. Because consensus within the WG could not be easily determined at the time, the WG sought community input on the possible recommendations options listed in the Initial Report. It was understood that an additional comment period would be required for the WG's Final Report.

A total of ten comments were submitted. However, none of the comments submitted were external to the IGO-INGO WG meaning that the WG did not receive feedback from other stakeholders of the community. Having performed a cursory review of the comments, the WG determined that each comment essentially restated a position that was already well deliberated within the WG and that no new suggestions for protections were offered. A public comment review document was created and the Report of Public Comments was also created.

6.6 Public Comment Period – IGO-INGO WG Draft Final Report

The IGO-INGO WG completed its Draft Final Report and submitted it for [public comment on 20 September 2013](#)⁶⁹. In preparation of the Final Report, a formal consensus call was performed outlining each of the stakeholders support or lack of support for the recommendations, which are presented in Section 3 of this report.

A total of twenty comments and two replies were submitted. The WG reviewed each of the comments extensively, especially with regards to the themes that the community did not generally support protections of acronyms and that deployment of these policies within incumbent gTLDs should not trump existing property rights of others. A Public Comment Review Tool (PCRT) document was created that outlines the WG's dialogue and any recommended actions to take on the Final Report. At the time of publication of this report, the Report of Public Comments was not created, but a link of it will exist within the Public Comment area foot-noted below.

⁶⁸ IGO-INGO Initial Report Public Comment: <http://www.icann.org/en/news/public-comment/igo-ingo-initial-14jun13-en.htm>

⁶⁹ IGO-INGO Draft Final Report Public Comment: <http://www.icann.org/en/news/public-comment/igo-ingo-final-20sep13-en.htm>

7. Next Steps

This Final Report is being submitted to the GNSO Council for their consideration and to determine what further actions to take. The IGO-INGO WG will follow the directions of the Council if any additional work is needed and/or if an Implementation Review Team is formed.

Annex 1 – PDP WG Charter

WG Name:	IGO-INGO Protection PDP Working Group	
Section I: Working Group Identification		
Chartering Organization(s):	GNSO Council	
Charter Approval Date:	15 November 2012	
Name of WG Chair:	Thomas Rickert	
Name(s) of Appointed Liaison(s):	Jeff Neuman	
WG Workspace URL:	http://gnso.icann.org/en/group-activities/protection-igo-names.htm	
WG Mailing List:	gnso-igo-ingo@icann.org	
GNSO Council Resolution:	Title:	Motion on the Initiation of a Policy Development Process on the Protection of Certain International Organization Names in all GTLDs.
	Ref # & Link:	20121017-2 http://gnso.icann.org/en/resolutions#201210
Important Document Links:	<ul style="list-style-type: none"> • Protection of International Organization Names Final Issue Report (http://gnso.icann.org/en/issues/protection-igo-names-final-issue-report-01oct12-en.pdf) • IOC/RC Drafting Team Recommendations Report (http://gnso.icann.org/en/issues/ioc-rcrc-recommendations-28sep12-en.pdf) • GNSO Working Group Guidelines (http://gnso.icann.org/council/annex-1-gnso-wg-guidelines-08apr11-en.pdf) • GNSO PDP Manual (http://gnso.icann.org/council/annex-2-pdp-manual-16dec11-en.pdf) • Annex A – GNSO Policy Development Process of the ICANN Bylaws (http://www.icann.org/en/about/governance/bylaws#AnnexA) 	
Section II: Mission, Purpose, and Deliverables		
Mission & Scope:		
Background		
<p>The ICANN Board has requested policy advice from the GNSO Council and the GAC on whether special protections should be afforded for the names and acronyms of the Red Cross/Red Crescent Movement (“RCRC”), the International Olympic Committee (“IOC”) and/or International Government</p>		

Organizations (“IGOs”).

In September 2011, the GAC sent advice to the GNSO with a proposal for granting second level protections based upon the protections afforded to IOC/RCRC at the first level during the initial round of new gTLD applications, and that such protections are permanent. As a result of the GAC proposal submitted to the GNSO, the GNSO IOC/RCRC Drafting Team was formed and created a set of recommendations for protecting the IOC/RCRC names at the second level of the initial round new gTLDs, including the initiation of an “expedited PDP” to determine appropriate permanent protections for the RCRC and IOC names.

The latest inquiry to examine the issue of protecting IGO names emerged as a result of a request from the ICANN Board in response to letters received from the OECD and other IGOs in December 2011. Specifically, IGOs are seeking ICANN approval of protections at the top level that, at a minimum, are similar to those afforded to the RCRC and IOC in the Applicant Guidebook. In addition, IGOs are seeking a pre-emptive mechanism to protect their names at the second level. On 11 March 2012, the ICANN Board formally requested that the GNSO Council and the GAC provide policy advice on the IGO’s request.

Mission and Scope

The PDP Working Group is tasked to provide the GNSO Council with a policy recommendation as to whether there is a need for special protections at the top and second level in **all** existing and new gTLDs for the names and acronyms of the following types of international organizations: International Governmental Organizations (IGOs) and international non-governmental organizations (INGOs) receiving protections under treaties and statutes under multiple jurisdictions, specifically including the Red Cross/Red Crescent Movement (RCRC) and the International Olympic Committee (IOC), and (ii) if so, is tasked to develop policy recommendations for such protections.

As part of its deliberations on the first issue as to whether there is a need for special protections for certain international organizations at the top and second level in all gTLDs, the PDP WG should, at a minimum, consider the following elements as detailed in the Final Issue Report:

- Quantifying the Entities to be Considered for Special Protection
- Evaluating the Scope of Existing Protections under International Treaties/Laws for IGO, RCRC and IOC Names
- Establishing Qualification Criteria for Special Protection of International Organization Names
- Distinguishing Any Substantive Differences Between the RCRC and IOC From Other International Organizations

Should the PDP WG reach consensus on a recommendation that there is a need for special protections at the top and second level in all existing and new gTLDs for certain international organization names and acronyms, the PDP WG is expected to:

- Determine the appropriate protection for RCRC and IOC names at the second level for the initial round of new gTLDs.
- Determine whether the current special protections being provided to RCRC and IOC names at the top and second level of the initial round of new gTLDs should be made permanent for RCRC and IOC names in all gTLDs and if not, develop specific recommendations for appropriate special protections for these names.
- Develop specific recommendations for appropriate special protections for the names and acronyms of all other qualifying international organizations.

The PDP WG is also expected to consider any information and advice provided by other ICANN Supporting Organizations and Advisory Committees on this topic. The WG is strongly encouraged to reach out to these groups for collaboration at the initial stage of its deliberations, to ensure that their concerns and positions are considered in a timely manner.

Objectives & Goals:

To develop, at a minimum, an Initial Report and a Final Report regarding whether any special protections should be provided for certain IGO and INGO names and if so, recommendations for specific special protections, to be delivered to the GNSO Council, following the processes described in Annex A of the ICANN Bylaws and the GNSO PDP Manual.

Possible tasks that the WG may consider:

- establish the bases under which ICANN should expand its reserved names list, or to create a special reserved names list, to include IOC, IFRC, RCRC, IGO, and INGO related names.
- decide on whether the names should be added to the existing reserved names list or a new list(s) should be created.
- develop a policy recommendation on how determinations can be made concerning which organizations meet the bases recommended above.
- perform an impact analysis on each of the recommendations, if any, for rights, competition etc. as defined in the PDP
- determine how incumbent registries should meet the new policy recommendations, if any.

** Given the commitment to expedite the PDP process, the WG will consider the work and documents used by the IOC-RCRC DT with regard to the IOC-RCRC terms.

Deliverables & Timeframes:

The WG shall respect the timelines and deliverables as outlined in Annex A of the ICANN Bylaws and

the PDP Manual and, as requested by the GNSO Council in its motion initiating this PDP, shall strive to fulfill this PDP's requirements "in an expedited manner."

Specifically:

- 1) The PDP WG shall assume that the GNSO Council will approve the IOC/RC DT recommendations regarding interim protections of GAC specified IOC/RC second-level names in the initial round of new gTLDs in case any policy recommendations are not approved in time for the introduction of new gTLDs.
- 2) To allow the GNSO Council to meet the ICANN Board's requested deadline of 31 January 2013, the WG shall exert its best efforts to produce interim recommendations with regard to the protection of IGO names at the second level that may meet some to-be-determined criteria for special protection in the initial round of new gTLDs in case any policy recommendations are not approved in time for the introduction of new gTLDs; WG recommendations in this regard should be communicated to the GNSO Council with sufficient lead time before the January 2013 Council meeting to allow the Council to take action in that meeting.
- 3) The WG shall strive to produce final PDP recommendations for all intergovernmental organizations that could result in the implementation of a second level protection policy recommendation before the delegation of new gTLD strings from the initial round, and a top-level policy recommendation before the opening of the second round of new gTLD applications.

As per the GNSO Working Group Guidelines, the WG shall develop a suggested work plan as soon as possible that outlines the necessary steps and expected timing in order to achieve the milestones of the PDP as set out in this Charter and consistent with Annex A of the ICANN Bylaws and the PDP Manual; and submit this to the GNSO Council.

Section III: Formation, Staffing, and Organization

Membership Criteria:

The Working Group will be open to all interested in participating. New members who join after certain parts of work has been completed are expected to review previous documents and meeting transcripts.

Group Formation, Dependencies, & Dissolution:

This WG shall be a standard GNSO PDP Working Group. The GNSO Secretariat should circulate a 'Call For Volunteers' as widely as possible in order to ensure broad representation and participation in the Working Group, including:

- Publication of announcement on relevant ICANN web sites including but not limited to the GNSO and other Supporting Organizations and Advisory Committee web pages; and
- Distribution of the announcement to GNSO Stakeholder Groups, Constituencies and other

<p>ICANN Supporting Organizations and Advisory Committees</p> <ul style="list-style-type: none"> - Distribution of the announcement to appropriate representatives of IGOs, the RCRC and IOC.
<p>Working Group Roles, Functions, & Duties:</p> <p>The ICANN Staff assigned to the WG will fully support the work of the Working Group as requested by the Chair including meeting support, document drafting, editing and distribution and other substantive contributions when deemed appropriate.</p> <p>Staff assignments to the Working Group:</p> <ul style="list-style-type: none"> • GNSO Secretariat • 2 ICANN policy staff members (Brian Peck, Berry Cobb) <p>The standard WG roles, functions & duties shall be applicable as specified in Section 2.2 of the Working Group Guidelines.</p>
<p>Statements of Interest (SOI) Guidelines:</p> <p>Each member of the Working Group is required to submit an SOI in accordance with Section 5 of the GNSO Operating Procedures.</p>
<p>Section IV: Rules of Engagement</p>
<p>Decision-Making Methodologies:</p> <p><i>{Note: The following material was extracted from the Working Group Guidelines, Section 3.6. If a Chartering Organization wishes to deviate from the standard methodology for making decisions or empower the WG to decide its own decision-making methodology, this section should be amended as appropriate}.</i></p> <p>The Chair will be responsible for designating each position as having one of the following designations:</p> <ul style="list-style-type: none"> • Full consensus - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as Unanimous Consensus. • Consensus - a position where only a small minority disagrees, but most agree. <i>[Note: For those that are unfamiliar with ICANN usage, you may associate the definition of 'Consensus' with other definitions and terms of art such as rough consensus or near consensus. It should be noted, however, that in the case of a GNSO PDP originated Working Group, all reports, especially Final Reports, must restrict themselves to the term 'Consensus' as this may have legal implications.]</i> • Strong support but significant opposition - a position where, while most of the group supports a recommendation, there are a significant number of those who do not support it. • Divergence (also referred to as No Consensus) - a position where there isn't strong support for any particular position, but many different points of view. Sometimes this is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is worth listing the issue in the report nonetheless.

- **Minority View** - refers to a proposal where a small number of people support the recommendation. This can happen in response to a **Consensus**, **Strong support but significant opposition**, and **No Consensus**; or, it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

In cases of **Consensus**, **Strong support but significant opposition**, and **No Consensus**, an effort should be made to document that variance in viewpoint and to present any **Minority View** recommendations that may have been made. Documentation of **Minority View** recommendations normally depends on text offered by the proponent(s). In all cases of **Divergence**, the WG Chair should encourage the submission of minority viewpoint(s).

The recommended method for discovering the consensus level designation on recommendations should work as follows:

- i. After the group has discussed an issue long enough for all issues to have been raised, understood and discussed, the Chair, or Co-Chairs, make an evaluation of the designation and publish it for the group to review.
- ii. After the group has discussed the Chair's estimation of designation, the Chair, or Co-Chairs, should reevaluate and publish an updated evaluation.
- iii. Steps (i) and (ii) should continue until the Chair/Co-Chairs make an evaluation that is accepted by the group.
- iv. In rare case, a Chair may decide that the use of polls is reasonable. Some of the reasons for this might be:
 - A decision needs to be made within a time frame that does not allow for the natural process of iteration and settling on a designation to occur.
 - It becomes obvious after several iterations that it is impossible to arrive at a designation. This will happen most often when trying to discriminate between **Consensus** and **Strong support but Significant Opposition** or between **Strong support but Significant Opposition** and **Divergence**.

Care should be taken in using polls that they do not become votes. A liability with the use of polls is that, in situations where there is **Divergence** or **Strong Opposition**, there are often disagreements about the meanings of the poll questions or of the poll results.

Based upon the WG's needs, the Chair may direct that WG participants do not have to have their name explicitly associated with any Full Consensus or Consensus view/position. However, in all other cases and in those cases where a group member represents the minority viewpoint, their name must be explicitly linked, especially in those cases where polls were taken.

Consensus calls should always involve the entire Working Group and, for this reason, should take place on the designated mailing list to ensure that all Working Group members have the opportunity to fully participate in the consensus process. It is the role of the Chair to designate which level of consensus is reached and announce this designation to the Working Group. Member(s) of the

Working Group should be able to challenge the designation of the Chair as part of the Working Group discussion. However, if disagreement persists, members of the WG may use the process set forth below to challenge the designation.

If several participants (see Note 1 below) in a WG disagree with the designation given to a position by the Chair or any other consensus call, they may follow these steps sequentially:

- Send email to the Chair, copying the WG explaining why the decision is believed to be in error.
- If the Chair still disagrees with the complainants, the Chair will forward the appeal to the CO liaison(s). The Chair must explain his or her reasoning in the response to the complainants and in the submission to the liaison. If the liaison(s) supports the Chair's position, the liaison(s) will provide their response to the complainants. The liaison(s) must explain their reasoning in the response. If the CO liaison disagrees with the Chair, the liaison will forward the appeal to the CO. Should the complainants disagree with the liaison support of the Chair's determination, the complainants may appeal to the Chair of the CO or their designated representative. If the CO agrees with the complainants' position, the CO should recommend remedial action to the Chair.
- In the event of any appeal, the CO will attach a statement of the appeal to the WG and/or Board report. This statement should include all of the documentation from all steps in the appeals process and should include a statement from the CO (see Note 2 below).

Note 1: Any Working Group member may raise an issue for reconsideration; however, a formal appeal will require that a single member demonstrates a sufficient amount of support before a formal appeal process can be invoked. In those cases where a single Working Group member is seeking reconsideration, the member will advise the Chair and/or Liaison of their issue and the Chair and/or Liaison will work with the dissenting member to investigate the issue and to determine if there is sufficient support for the reconsideration to initial a formal appeal process.

Note 2: It should be noted that ICANN also has other conflict resolution mechanisms available that could be considered in case any of the parties are dissatisfied with the outcome of this process.

Status Reporting:

As requested by the GNSO Council, taking into account the recommendation of the Council liaison to this group.

Problem/Issue Escalation & Resolution Processes:

{Note: the following material was extracted from Sections 3.4, 3.5, and 3.7 of the Working Group Guidelines and may be modified by the Chartering Organization at its discretion}

The WG will adhere to ICANN's Expected Standards of Behavior as documented in Section F of the ICANN Accountability and Transparency Frameworks and Principles, January 2008.

If a WG member feels that these standards are being abused, the affected party should appeal first to the Chair and Liaison and, if unsatisfactorily resolved, to the Chair of the Chartering Organization or

their designated representative. It is important to emphasize that expressed disagreement is not, by itself, grounds for abusive behavior. It should also be taken into account that as a result of cultural differences and language barriers, statements may appear disrespectful or inappropriate to some but are not necessarily intended as such. However, it is expected that WG members make every effort to respect the principles outlined in ICANN’s Expected Standards of Behavior as referenced above.

The Chair, in consultation with the Chartering Organization liaison(s), is empowered to restrict the participation of someone who seriously disrupts the Working Group. Any such restriction will be reviewed by the Chartering Organization. Generally, the participant should first be warned privately, and then warned publicly before such a restriction is put into place. In extreme circumstances, this requirement may be bypassed.

Any WG member that believes that his/her contributions are being systematically ignored or discounted or wants to appeal a decision of the WG or CO should first discuss the circumstances with the WG Chair. In the event that the matter cannot be resolved satisfactorily, the WG member should request an opportunity to discuss the situation with the Chair of the Chartering Organization or their designated representative.

In addition, if any member of the WG is of the opinion that someone is not performing their role according to the criteria outlined in this Charter, the same appeals process may be invoked.

Closure & Working Group Self-Assessment:

The WG will close upon the delivery of the Final Report, unless assigned additional tasks or follow-up by the GNSO Council.

Section V: Charter Document History

Version	Date	Description
1.0	25 October 2012	First draft submitted by staff for consideration by WG

Staff Contact:	Brian Peck, Berry Cobb	Email:	Policy-staff@icann.org
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Annex 2 – Working Group Members and Attendance

IGO-INGO Protections Policy Development Process (PDP) WG	Affiliation	SOI
Wilson Abigagba	NCUC	SOI
Lanre Ajayi	NCA	SOI
Iliya Bazlyankov	RrSG	SOI
Grit-Maren Beer		SOI
Alain Berranger	NPOC	SOI
Jim Bikoff	IPC/IOC	SOI
Hago Dafalla	NCUC	SOI
Avri Doria	NCSG	SOI
Bret Fauset	RySG	SOI
Elizabeth Finberg	RySG	SOI
Guilaine Fournet	International Electrotechnical Commission (IEC)	SOI
Chuck Gomes	RySG	SOI
Alan Greenberg	ALAC	SOI
Catherine Gribbin	Red Cross Red Crescent (Canadian Red Cross)	SOI
Ricardo Guilherme	RySG / UPU	SOI
Stephane Hankins	Red Cross Red Crescent (International Committee of the Red Cross)	SOI
David Heasley	IPC/IOC	SOI
Debra Hughes	Red Cross Red Crescent (American Red Cross)NPOC	SOI
Poncelet Ileleji	NPOC	SOI
Zahid Jamil	CBUC	SOI

IGO-INGO Protections Policy Development Process (PDP) WG	Affiliation	SOI
Wolfgang Kleinwaechter	NCSG	SOI
Christopher Lamb	Red Cross Red Crescent (Australian Red Cross)	SOI
Evan Leibovitch	ALAC (Vice-chair)/NARALO	SOI
Berly Lelievre-Acosta	WIPO	SOI
Claudia MacMaster Tamarit	International Organization for Standardization	SOI
David Maher	RySG	SOI
Kiran Malancharuvil	IPC	SOI
Judd Lauter	IPC/IOC	SOI
Jeff Neuman	RySG	SOI
Osvaldo Novoa	ISPCP	SOI
David Opderbeck	IPC	SOI
Sam Paltridge	OECD	SOI
Christopher Rassi	Red Cross Red Crescent (International Federation of Red Cross and Red Crescent Societies)	SOI
Thomas Rickert	NCA	SOI
Mike Rodenbaugh	IPC	SOI
Greg Shatan	IPC	SOI
Cintra Sooknanan	NPOC	SOI
Ken Stubbs	RySG	SOI
Joanne Teng	WIPO	SOI
Liz Williams	Individual	SOI
Giacomo Mazzone		SOI
Observers		

IGO-INGO Protections Policy Development Process (PDP) WG	Affiliation	SOI
Jonathan Robinson- GNSO Council Chair	RySG	SOI
Wolf-Ulrich Knohen - GNSO Council vice chair	ISPCP	SOI
Mason Cole - GNSO Council vice chair	RrSG	SOI
Staff		
Marika Konings		
Berry Cobb		
David Olive		
Mary Wong		
Glen de Saint Géry		
Gisella Gruber		
Nathalie Peregrine		
Julia Charvolen		

**** Observer**

- The attendance records can be found at <https://community.icann.org/display/GWGTCT/IGO-INGO+Attendance+Chart>.
- The email archives can be found at <http://forum.icann.org/lists/gnso-igo-ingo/>.

RrSG – Registrar Stakeholder Group

RySG – Registry Stakeholder Group

CBUC – Commercial and Business Users Constituency

NCUC – Non Commercial Users Constituency

IPC – Intellectual Property Constituency

ISPCP – Internet Service and Connection Providers Constituency

NPOC – Not-for-Profit Operational Concerns Constituency

Annex 3 – Community Input Statement Request Template

[Stakeholder Group / Constituency / Supporting Organization / Advisory Committees] Input Protection of IGO and INGO Identifiers in all gTLDs Working Group

PLEASE SUBMIT YOUR RESPONSE AT THE LATEST BY **15 January 2013** TO THE GNSO SECRETARIAT (gnsso.secretariat@gnsso.icann.org), which will forward your statement to the Working Group. The GNSO Council has formed a Working Group of interested stakeholders and Stakeholder Group / Constituency representatives, to collaborate broadly with knowledgeable individuals and organizations, in order to consider recommendations in relation to the protection of names, designations and acronyms, hereinafter referred to as “identifiers”, of intergovernmental organizations (IGO’s) and international non-governmental organizations (INGO’s) receiving protections under treaties and statutes under multiple jurisdictions.

Part of the Working Group’s effort will be to incorporate ideas and suggestions gathered from Stakeholder Groups and Constituencies through this template Statement. Inserting your response in this form will make it much easier for the Working Group to summarize the responses for analysis. This information is helpful to the community in understanding the points of view of various stakeholders. However, you should feel free to add any information you deem important to inform the Working Group’s deliberations, even if this does not fit into any of the questions listed below.

For further information, please visit the WG Webpage and Workspace:

- <http://community.icann.org/display/GWGTCT/>
- <http://gnsso.icann.org/en/group-activities/protection-igo-names.htm>

Process

- Please identify the member(s) of your Stakeholder Group / Constituency who is (are) participating in this Working Group
- Please identify the members of your Stakeholder Group / Constituency who participated in developing the perspective(s) set forth below
- Please describe the process by which your Stakeholder Group / Constituency arrived at the perspective(s) set forth below

Below are elements of the approved charter that the WG has been tasked to address:

As part of its deliberations on the first issue as to whether there is a need for special protections for IGO and INGO organizations at the top and second level in all gTLDs (existing and new), the PDP WG should, at a minimum, consider the following elements as detailed in the Final Issue Report:

- Quantifying the Entities whose names may be Considered for Special Protection
- Evaluating the Scope of Existing Protections under International Treaties/Laws for the IGO-INGO organizations concerned;
- Establishing Qualification Criteria for Special Protection of names of the IGO and INGO organizations concerned;

- Distinguishing any Substantive Differences between the RCRC and IOC designations from those of other IGO-INGO Organizations.

Should the PDP WG reach consensus on a recommendation that there is a need for special protections at the top and second levels in all existing and new gTLDs for IGO and INGO organization identifiers; the PDP WG is expected to:

- Develop specific recommendations for appropriate special protections, if any, for the identifiers of any or all IGO and INGO organizations at the first and second levels.
- Determine the appropriate protections, if any, for RCRC and IOC names at the second level for the initial round of new gTLDs and make recommendations on the implementation of such protection.
- Determine whether the current special protections being provided to RCRC and IOC names at the top and second level of the initial round of new gTLDs should be made permanent for RCRC and IOC names in all gTLDs; if so, determine whether the existing protections are sufficient and comprehensive; if not, develop specific recommendations for appropriate special protections (if any) for these identifiers.

Questions to Consider:

1. What kinds of entities should be considered for Special Protections at the top and second level in all gTLDs (existing and new)?
Group View:
2. What facts or law are you aware of which might form an objective basis for Special Protections under International Treaties/Domestic Laws for IGOs, INGOs as they may relate to gTLDs and the DNS?
Group View:
3. Do you have opinions about what criteria should be used for Special Protection of the IGO and INGO identifiers?
Group View:
4. Do you think there are substantive differences between the RCRC/IOC and IGOs and INGOs?
Group View:
5. Should appropriate Special Protections at the top and second level for the identifiers of IGOs and INGOs be made?
Group View:
6. In addition, should Special Protections for the identifiers of IGOs and INGOs at the second level be in place for the initial round of new gTLDs?
Group View:
7. Should the current Special Protections provided to the RCRC and IOC names at the top and second level of the initial round for new gTLDs be made permanent in all gTLDs and if not, what specific recommendations for appropriate Special Protections (if any) do you have?
Group View:

8. Do you feel existing RPMs or proposed RPMs for the new gTLD program are adequate to offer protections to IGO and INGOs (understanding that UDRP and TMCH may not be eligible for all IGOs and INGOs)?

Group View:

For further background information on the WG's activities to date, please see:

- [Protections of IGO and INGO identifiers in all gTLDs web page](http://gnso.icann.org/en/group-activities/protection-igo-names.htm) (see <http://gnso.icann.org/en/group-activities/protection-igo-names.htm>).
- Protection of International Organization Names Final Issue Report, for insight into the current practices and issues experienced (see <http://gnso.icann.org/en/issues/protection-igo-names-final-issue-report-01oct12-en.pdf>).
- The IOC/RCRC DT page is also a good reference for how those efforts were combined with this PDP (see <http://gnso.icann.org/en/group-activities/red-cross-ioc.htm>).

Annex 4 – Issue Report Template Request Form

<u>QUESTIONS</u>	<u>ANSWERS</u>
1) Name of Requester:	IGO-INGO WG
2) Enter the name of your Stakeholder Group (SG), Constituency, or Advisory Committee (AC) supporting this request: <i>(Please enter "Not Applicable" if appropriate).</i>	Not Applicable
3) Briefly identify (or name) the Issue:	IGO-INGO Access to Curative Dispute Resolution Mechanisms (i.e. UDRP & URS)
4) Explain how this Issue affects the organization provided in Question #2 above:	Not Applicable
5) Provide rationale for policy development:	The two current domain name dispute resolution mechanisms (UDRP & URS) are premised on the complainant's legally owning trademark rights to the domain name(s) in question. With recommendations that IGOs and INGOs should also be able to utilize these mechanisms, the current UDRP & URS policy needs to be amended to allow these organizations similar access as trademark owners but without creating new or additional trademark or other legal rights.
6) Describe problems raised by the Issue including quantification to the extent known:	<p>Amending UDRP and URS policy to allow IGOs and INGO access to these mechanisms would amount to extending the scope of these dispute resolution processes beyond pure trademark disputes. Care should be taken to not expand their workings beyond what is necessary to ensure IGO and INGO protections tailored specifically to the WG's recommendations.</p> <p>The Council should take note that the scope of any PDP created as a result of this Issue Report will not impact the scope of the RPM (UDRP/URS) Review PDP that is presently on-hold at the GNSO Council. It is likely not to be started until 2015 and that this PDP on access for IGO-INGOs should begin as soon as possible.</p>
7) What is the economic impact of the Issue and/or its effect upon competition, consumer trust, privacy, or other rights:	The WG's recommendations are intended to ensure that costs of engaging in the UDRP and URS curative processes for protected IGOs and INGOs are measurable

	and reasonable, as compared to having to file territorial-based lawsuits in national courts against cyber-squatters.
7-A) Provide supporting evidence for Question #7 to the extent known: <i>(Enter "None" if unavailable)</i>	See documentation and information produced by certain IGOs and INGOs during the WG's deliberations.
8) How does this Issue relate to provisions of the ICANN Bylaws, Affirmation of Commitments, and/or ICANN Articles of Incorporation:	Per Section 1.3 of the ICANN Bylaws, resolving this issue is "reasonably and appropriately related" to ICANN's mandate. As the UDRP and URS are mandatory policies to be implemented by contracted registries and registrars, a PDP to resolve this issue will provide a stable and clear framework for the operation of the domain name system, in line with ICANN's Core Values in Section 2 of the Bylaws.
9) Provide any suggestions you have concerning specific items to be addressed in the Issue Report: <i>(Enter "None" if appropriate)</i>	Existing providers of UDRP and URS providers, as well as registries and registrars who will need to implement the amended policies, will need to be consulted and involved in the PDP. The GNSO Council should also consider to add a request for ICANN staff to produce a draft Charter as part of the Issue Report.
10) Date request is submitted (e.g., 10-Nov-2013):	10-Nov-2013
11) Expected completion date (e.g., 31-Jan-2014):	31-Jan-2014

Annex 5 – ICANN General Counsel Office Research Report

As of 31 May 2013

To: GNSO Drafting Team on Protection of IGO-INGO Names

From: Office of ICANN's General Counsel

Research Requested from the WG

With respect to the question of securing legal advice regarding the protection of IGO-INGO names, the WG should request from the office of the ICANN General Counsel an answer to the following question:

Is ICANN aware of any jurisdiction in which a statute, treaty or other applicable law prohibits either or both of the following actions by or under the authority of ICANN:

- (a) the assignment by ICANN at the top level, or
- (b) the registration by a registry or a registrar accredited by ICANN of a domain name requested by any party at the second level, of the name or acronym of an intergovernmental organization (IGO) or an international non-governmental organization receiving protections under treaties and statutes under multiple jurisdictions (INGO)?

If the answer is affirmative, please specify the jurisdiction(s) and cite the law.

Research Performed

Given our understanding that the WG is looking at the International Olympic Committee (IOC), the Red Cross/Red Crescent Movement (RCRC) as well as intergovernmental organizations (IGO) and other international non-governmental organization (INGOs), it was important to scope the research into a manageable format. Therefore, the research was broken into two parts, one as it related to the IOC and RCRC (as major INGOs that are the most likely to have special protections afforded, based on prior research performed) and the second part on IGOs. For IGOs, the research focused upon whether the jurisdictions

afforded heightened protections through recognition of the Paris Convention and its Article 6(1)(b) (the “6ter”). This method seemed to provide a broad and objective measure for identifying protections afforded to IGOs. As requested, the review was not focused on the potential prohibitions for or liabilities of registrants in domain name registration, rather the broader question of prohibitions that could attach up the registration chain (to registries and registrars). However, the research presented does not discuss ICANN’s potential for liability. Eleven jurisdictions from around the globe were surveyed, representing jurisdictions from every geographic region. ICANN interpreted the term “assignment” to mean the approval for delegation of a top-level domain.

Executive Summary

As noted in the interim reporting provided on this research, the trend is that there are few, if any, jurisdictions sampled that have specific laws addressing ICANN, a registry or a registrar’s role in the delegation of top-level domains or in the registration of second-level domains. Only one jurisdiction (Brazil) was found to have a statute that placed a direct prohibition on the registration of IOC- or FIFA-related domain names, though the roles of gTLD registries/registrars are not specifically identified in the statute. However, the fact that statutes do not directly mention domain names cannot be taken to mean that ICANN, a registry or a registrar is exempt from liability if there is an unauthorized delegation at the top-level or registration at the second-level of a domain name using the name or acronym of the International Olympic Committee (IOC), the Red Cross/Red Crescent movement (RCRC), or Intergovernmental Organizations (IGOs) that are provided protection within each jurisdiction.

As seen in the survey below, nearly all of the sampled jurisdictions (representing all geographic regions) provide protections to the IOC and/or the RCRC for the use of their names and acronyms, and those protections are often understood to apply to domain

names. The exact terms that are protected in each jurisdiction vary, and ICANN has not engaged in an exercise to compare the scope of the protected terms requested by the IOC and the RCRC within the New gTLD Program, as this research was not undertaken to produce a list of names or acronyms recommended for protection. While it appears rare (other than in the case of Brazil) to have a specific prohibition for domain name registration enumerated, there does seem to be potential bases for challenges to be brought with respect to domain name registration, including potential challenges to registry operators or registrars for their roles in the registration chain.

For the names and acronyms of IGOs, ICANN's research focused on whether any special status afforded to those names and acronyms by virtue of the protection granted by Article 6ter(1)(b) of the Paris Convention could serve as a basis for liability. While this focus of research may not identify if there are individual IGOs for which a country has elected to provide heightened protections (outside of their 6ter status), this research provides insight to the status afforded to IGOs that can be objectively identified by virtue of their inclusion on the 6ter list. Many countries afford special protection to those IGOs listed on the 6ter, though there is often a registration, notice process, or member state limitation required through which each jurisdiction develops a list of the specific IGOs that it will recognize for protection. Therefore, among the jurisdictions where IGOs are provided heightened protection, the list of IGOs eligible for protections may not be uniform. With regard to our research related to IGOs and INGOs other than the RCRC and IOC, the research did not identify any universal protections that could be made applicable for IGOs or INGOs.

In nearly every jurisdiction, whether or not special protection exists for the IOC, RCRC or IGOs, there always remains the possibility that general unfair competition or trademark laws can serve as a basis for challenge to a specific delegation of a top-level name or the registration of a second-level domain name at any level of the registration chain. This survey does not assess the likelihood of whether liability would attach in those

circumstances. The potential for liability could factor in many issues, such as knowledge of potential infringement or improper use, the location of the registry or registrar, or the familiarity of the jurisdiction with the IGO at issue, as three examples.

Each registry operator and registrar has an independent obligation to abide by applicable laws. If registry operators or registrars have concerns about the potential for liability for its role in the delegation of a top-level domain or in the registration of a second-level domain within a particular jurisdiction, the responsibility for identifying the scope of that liability lies with the registry operator or registrar. Therefore, to avoid any suggestion that ICANN is providing legal advice to any of its contracted parties, the survey provided below notes the areas where the potential for liability could lie, but does not provide an assessment of the likelihood of that liability attaching.

When reviewing this survey, it is important to keep two items in mind. First, the suggestion that a registry or registrar could bear some liability for their role in domain name registrations is a broad concept, and the presentation of this survey is in no way suggesting that registries or registrars are at newfound risk of liability for all domain registrations within their registry or sponsorship. The presentation of this survey is looking at where certain entities (IGOs and INGOs) could be afforded heightened protections from use of associated names or acronyms within domain names because acts and laws already provide for heightened protections for the use of their names and acronyms. Second, the term “liability” is used broadly here. There are many factors that have to be considered for liability to attach to a registry or registrar, including the extent to which a jurisdiction recognizes “accessories” to acts of dilution or infringement, or how a jurisdiction defines a duty of care and the registry or registrar’s role in the registration chain. The term “liability” is not used here to indicate that there is certainty that a registry or registrar will (or should) face any challenge due to the registration of a domain name for which heightened protections may be claimed.

Survey of Jurisdictions

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
Australia	<p>While there are no specific prohibitions for the use of names related to the IOC at the top-level or second-level, the <i>Olympic Insignia Protection Act 1987</i> (Cth) provides broad protections for the terms which could extend to domain names. The level of protection afforded to domain names appears to depend on how closely the domain name matches a protected Olympic expression. There may be exclusions based on prior registration of marks using some of the Olympic names.</p> <p>For RCRC names, the <i>Geneva Conventions Act 1957</i> (Cth) prevents any unauthorized use of specific RC related expressions, which would arguably apply to domain names at any level.</p>	<p>The <i>International Organisations (Privileges and Immunities) Act 1963</i> (Cth) gives effect to the 6ter list and prohibits the use of an IGO's name (or acronym) in connection with a trade, business, profession, calling or occupation. The IGO must, however, also be specifically made a subject of legislation or regulations by the Australian Government to be afforded the protections of the Act. For the qualifying IGOs, there is the potential for liability through the registration chain where the use of an IGO name/acronym in a domain name is in contravention of the Act.</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
Brazil	<p>The Olympic Act, Law No. 12.035/2009 could be used to impose liability for the approval/registration of a TLD or second-level domain name, and explicitly mentions domain web sites as one of the areas of protections for marks related to the 2016 Olympic Games.</p> <p>Prior approval is needed for any usage.</p> <p>Certain Red Cross marks are protected under Decree 2380/1910. The 1910 decree does not mention domain names.</p> <p>Brazilian Civil Law Code could possibly be used as a basis for liability as well.</p>	<p>FIFA has similar protections to the Olympics Law under the ““General World Cup Law” (Law no. 12.663/2012), and expressly directs NIC.br to reject “domain name registrations which utilizes identical or similar expressions / terms to FIFA’s trademarks.”</p> <p>More generally, Brazil has ratified the Paris Convention, however there are no specific provisions of law that relate to the protections of abbreviations and names of IGOs in Brazil. However, the fact of ratification could make attempts to bar delegation/registration at the top- or second-level, more successful in the country, however, the success of the challenge would vary from case to case.</p>
Canada	<p><i>Trade-marks Act</i>, R.S.C., 1985, c. T-13, Subsection (9)(1)(f) protects certain emblems and marks related to the Red Cross. The <i>Olympic and Paralympic Marks Act</i>, S.C. 2007, c. 25 (“OPMA”) protects marks related to the</p>	<p>The <i>Trade-marks Act</i>, at Subsections 9(1)(i.3) and 9(1)(m) provides protections for names of organizations appearing on the 6ter list, as well as for the United Nations. For names on the 6ter list, there is a requirement for entities on the 6ter to</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>IOC (including translations). Some of the marks are also protected as official marks that are registered in Canada.</p> <p>While the statutes do not mention domain name registration, there is the possibility that the use of a name or acronym associated with these marks at the top-level or second-level could violate Canadian law.</p>	<p>communicate to the government which names are intended for protection. The use of those protected names or acronyms at the top-level or second-level (each without consent) could be a foul of the <i>Trade-marks Act</i>, though domain names are not specifically mentioned in the law.</p>
<p>China</p>	<p>Certain Olympic-related names and acronyms are provided protection under the Regulations on the Protection of Olympic Symbols ("Regulations"), which require the permission of the owner of the Olympic symbols to provide permission for their use. This is the one area where any heightened potential for liability for the delegation of a top-level domain was identified. Registrations of second-level domains could also be impacted under this provision. The domain name</p>	<p>Article 2(2) of the Notice Regarding the Implementation Solution of .CN Second Level Domain Name Registration specifically restricts the registration of the acronyms of 31 Inter-Governmental Organizations ("IGOs") as second level domain names to entities with the relevant authorities</p> <p>It is unknown how this restriction would be expanded into TLDs outside of the .CN registry.</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>registration policies that exist within TLDs that are administered by CNNIC are subject to modification and broadening. Some second-level registrations for the RCRC are afforded some protections under these policies.</p>	
<p>France</p>	<p>Article L. 141-5 of the French Code of Sports provides protections to certain words and marks associated with the IOC, and has been used with: (i) Article L. 711-3 b) of the French Intellectual Property Code and/or (ii) Article L. 45-2 of the French Code of Posts and Electronic Communications to require cancellation of domain names bearing the protected words.</p> <p>Article 1 of French law dated July 24, 1913, as amended by French law dated July 4, 1939, implementing the provisions of the Geneva Convention for the Amelioration of the Condition of</p>	<p>Under French law, the Paris Convention is directly applicable (that is, an action can validly be grounded on such International treaty). Yet, Article 6ter(1)(b) of the Paris Convention does only provide for the prohibition to “use [IGOs], without authorization by the competent authorities, either as <u>trademarks</u> or as <i>elements of trademarks</i>”.</p> <p>Because of the status of the protection, liability could attach as a result of trademark law violations/unfair use of an IGO’s name or acronym as part of a domain name. There is also the potential for criminal liability based upon the unlawful use of an insignia regulated by a public authority. Notably, some</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>the Wounded and Sick in Armies in the Field, dated July 6, 1906, provides protections for certain words and marks associated with the RCRC in France. While domain names are not specifically listed in the law, the broad language of the law has been used to prohibit registration of domain names using the restricted names.</p> <p>The improper delegation/registration or use of these names at the top- or second-level could possibly serve as a basis of liability.</p>	<p>IGOs could be provided with stronger protections than others by virtue of appearance on a list referred to in Article 3 of French Ministerial Order dated February 19, 2010.</p>
<p>Germ any</p>	<p>Certain Olympic designations are protected under the Olympic Emblem and Olympic Designations Protection Act (OlympSchG), a national statutory law.</p> <p>According to section 125 OWiG (Ordnungswidrigkeitengesetz - Administrative</p>	<p>There are no statutes that provide protection to IGOs on the basis of inclusion on the 6ter list.</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>Offences Act), an administrative offence is deemed committed by any person who has used the symbol of the Red Cross, respectively the designations “Red Cross” or “Geneva Cross”, as well as any symbol or designation confusingly similar without authorization. The same applies to symbols and certain designations representing the Red Cross under provisions of international law (i.e. the Red Crescent).</p> <p>For either of these provisions, while domain name registrations are not specifically identified, those who are on notice of the infringing use of a name or acronym at the top or the second level could be held liable under the laws.</p>	
Japan	<p>The Unfair Competition Prevention Law (hereinafter referred to as “UCPL”) (Law No. 47 of 1993, as amended) prohibits unauthorized use of the names of international</p>	<p>While there are no direct legal barriers to the delegation of a top level domain or the registration of a second level domain name that matches a mark or acronym of an IGO that is defined under the Ministry</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>intergovernmental organizations (“IGOs”) as trademark (Article 17 of the UCPL). This provision corresponds to Article 6^{ter} (1) (b) and (c) of the Paris Convention for the Protection of Industrial Property (the “Paris Convention”).</p> <p>Specific IGOs that are protected under this statute are defined by ordinance of the Ministry of Economy, Trade and Industry. The IOC has specific names and acronyms protected under this provision.</p> <p>The name and mark of the Red Cross are already protected under the Law Regarding Restriction of Use of Mark and Name, Etc. of the Red Cross (Law No. 159 of 1947, as amended).</p> <p>While the laws do not directly address domain names at the top or the second level, the use of the IOC or</p>	<p>of Trade and Industry ordinance, the use of such words in a way that is found to be misleading can serve as grounds for liability, just as the use of IOC names or acronyms would.</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>the RCRC names or acronyms at the top or second level (by entities other than the IOC/RCRC) could serve as grounds for liability under the laws.</p>	
<p>Mexico</p>	<p>The use of Red Cross and Red Crescent names is covered by 2007 law, which includes domain names.</p> <p>Mexico is a member of the Nairobi Treaty for the Protection of the Olympic Symbol, and affords the rights provided under that treaty. Article 71, General Law of Physical Culture and Sport (Published in the Official Journal of the Federation on February 24, 2003) provides protection for words associated with the Olympics, including Olimpico and Olimpiada.</p>	<p>Under Article 213 VII and IX of the Industrial Property Law and Article 90 VII of the Industrial Property Law, neither of which specifically mention domain names, the use of a name of an IGO in which Mexico takes part could serve as a basis for liability if evidence of authorization for the registration is not received.</p>
<p>South Africa</p>	<p>South African Red Cross has protection under a specific statute, the South African Red Cross Society and Legal Protections of Certain Emblems Act no. 10 of 2007.</p>	<p>Through the Trade Marks Act no 194 of 1993, Sections 10(8), 34, and 35, well-known marks appearing on the 6ter list are entitled to protection under trademark laws, even without registration, though there is a</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>There is no specific protection in South Africa for IOC names, but the IOC does have registered marks in here that are afford protections under the Trade Mark Act discussed under the IGO section. Unregistered abbreviations may not be subject to protection.</p> <p>These protections could exist at the top- and second-level for domain names, though not specifically enumerated.</p>	<p>requirement to apply to South Africa for protection. Comparisons need to made about the class of service offered.</p> <p>IGO names could also be protected under the Prohibition of the Use of Certain Marks, Emblems and Words published under GN 873 in GG 5999 of 28 April 1978, as well as the Merchandise Marks Act no. 17 of 1941.</p> <p>None of these acts specifically mention domain names, though the use of the protected marks in top- or second-level domain names may serve as a basis for liability thereunder.</p> <p>The potential for liability arising out of domain name registrations can be seen in the Electronic Communications and Transactions Act no. 25 of 2002, which is applicable to the .za Domain Name Authority.</p>
South	Article 12(1) of the Korean Internet Address	Article 3(1) of the Korean Unfair Competition

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
Korea	<p>Resources Act (KIARA) states:</p> <p>“No one shall obstruct the registration of any domain name, etc. of persons who have a legitimate source of authority, or register, possess or use domain name for unlawful purposes, such as reaping illegal profits from persons who have a legitimate source of authority. “</p> <p>There are not statutes that appear to protect the top-level delegation or usage of a term related to the IOC/RCRC, unless those terms have the protection of the trademark laws or the protection of the KIARA. Second-level registrations are more likely to pose liability under the trademark laws or the KIARA. The laws do not specifically contemplate that entities other than the registrant would have liability, though there is no guarantee that none would attach.</p>	<p>Prevention and Trade Secret Prevention Act (KUCP & TSPA) prohibits use of marks of international organizations, and specifically references international organizations and the Paris Convention.</p> <p>For use within a second-level domain name, the general KIARA, combined with the KUCP & TSPA, provide the most likely sources of liability. The delegation of top-level domains containing these names and acronyms is less likely to be viewed as problematic under these statutes.</p>
U.S.	<p>There are two statutes that are relevant to the protection afforded to names or acronyms of</p>	<p>The US Patent and Trademark Office is required to refuse registrations of marks that conflict with</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>the IOC in the United States: (1) 36 U.S.C. §§ 220501 <i>et seq.</i>, the Ted Stevens Olympic and Amateur Sports Act (the “Stevens Act”); and (2) 15 U.S.C. §§ 1051 <i>et seq.</i> (the Lanham Act). Specific words and combinations related to the Olympics and the Olympic Committee are protected from use, but the use of the word “Olympic” to identify a business or goods or services is permitted if it does not combine with any of the intellectual property references. The scope of protection provided, while it does not directly mention domain name registration at the top- or second-level, could be used as a bar to potentially infringing registration.</p> <p>The Red Cross is also afforded protection under the Lanham Act and is protected pursuant to 18 U.S.C. §§</p>	<p>registered marks of IGOs, so no registration is possible (once the marks are identified to the USPTO by a member country of the Paris Convention). No special protection seems to exist to bar the delegation of top- or registration of second-level domains containing the IGO names or acronyms by ICANN, a registry or registrar.</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	706, 706a, and 917. Allowing use of the protected terms at the top- or second- level – while not fully defined in the statutes and not addressing domain name registrations – could be used to impose liability.	

Annex 8

Dr. Stephen D. Crocker
Chair, ICANN Board of Directors

Internet Corporation for Assigned Names and Numbers (ICANN)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094
USA

Sent by email to steve.crocker@icann.org

June 19, 2013

Re: ICANN Board action following the GAC's Advice on our application for Dot GCC

Dear Mr Chairman,

I wanted to reach out and provide you with an update on our application for what we see as a crucial TLD for Internet users in the Persian Gulf and Greater Middle East regions. Dot GCC has been the subject of much controversy in the past few months and as CEO of the organisation applying for this TLD, I am keen to ensure that the GAC, as a whole, has reliable and factually correct information about our application.

First some basic facts. We are the sole applicant for Dot GCC. Our application (number 1-1936-21010) has prioritization number 594. It has passed Initial Evaluation. In its Beijing Communiqué providing the ICANN Board with Advice on new gTLD applications, the GAC listed Dot GCC as one of only two applications on which it had reached consensus on the basis of Applicant Guidebook Module 3.1, part 1. Without explanation, the GAC has advised the Board to reject our application. In its June 4 scorecard approved at its June 4 meeting, ICANN's New gTLD Program Committee responding to the GAC's Advice by accepting it.

Although the GAC has not provided rationale for its inclusion of our application in its Beijing Communiqué, leaving us in the dark as to the committee's exact reasons for doing so, over the last few months Dot GCC has been the target of concentrated attacks from one specific organisation. It has submitted a GAC Early Warning and filed a Legal Rights Objection with WIPO, and now has successfully lobbied the GAC to include our application in its formal advice delivered through the Beijing Communiqué.

The organisation in question is the Cooperation Council for the Arab States of the Gulf (or CCASG for short). Clearly, this entity has been successful in convincing the GAC that Dot GCC should be rejected, though we are uncertain on what basis the GAC has acted. The Early

Warning mentioned both purported legal rights in the GCC acronym, and purported lack of community support. We feel that neither basis could be further from the truth, and that the CCASG efforts represent their misguided attempt to apply artificial controls on the Internet namespace, where no such controls exist in the physical world.

Whilst, as an applicant, our focus over the past year has been in finalising our application and meeting (and indeed exceeding) ICANN's criteria for the administrative, technical and financial operations of a TLD, the CCASG has been concentrating on lobbying against Dot GCC. As an applicant, we had not expected politics to play such an important role in the potential approval, or rejection, of our TLD. We expected Dot GCC to be judged solely on its merits, in accord with the rules as set forth in the Applicant Guidebook, as promised by ICANN.

CCASG has filed a Legal Rights Objection against our application. At least in doing so, it was working within the confines of the new gTLD program's rules and procedures as set out in the Applicant Guidebook. In our response to this Objection, we contend that it is unfounded and that the objector does not even have standing to be making it. CCASG has provided no proof of any legal right in the acronym GCC. The treaty that established the CCASG bears no mention of a GCC or Gulf Cooperation Council. No treaty exists establishing any "GCC" entity. For the CCASG to claim that it is commonly known as GCC does not make it true, and does not give it any legal right over the three letters "GCC". We are confident that the WIPO arbitrator will find in our favor. We are happy to provide the complete set of documents filed by both sides with respect to the Legal Rights Objection, if the Board would like to review these.

The CCASG apparently shared our confidence that it will not be successful in objecting to our application on legal grounds, and instead has lobbied the GAC to block Dot GCC before the objection procedure had even gotten under way. No entity should be able to circumvent the established procedures in this manner. It particularly should not be allowed within the GAC, where we have had no formal opportunity to be heard, deliberations have been in secret, and any rationale for the rejection has been neither explained nor justified.

Not only does the CCASG not have any rights to the "GCC" acronym, but the ICANN Board has recently informed the GAC that protection of IGO acronyms at the top-level of the DNS is not feasible given the many others with competing rights to such acronyms. The Board specifically referred to Dot GCC and provided more than a dozen other legitimate users, and specifically so as not to give IGO's greater trademark rights via the TLD program than they otherwise possess. Furthermore, consensus that IGO acronyms should not be reserved at the top-level seems to be emerging in the Working Group tasked by the GNSO to work on protections for IGO names. The work of this specifically-chartered GNSO Working Group should not be short-circuited by unilateral, back room lobbying.

So clearly, formal GAC Advice against Dot GCC at this stage risks undermining both the new gTLD program's carefully crafted objection procedures and ICANN's multi-stakeholder process as a whole.

This becomes even more evident when the new gTLD program Independent Objector's (IO) consideration of the Dot GCC application is taken into account. The IO examined whether filing a Limited Public Interest Objection or a Community Objection against Dot GCC was warranted. In both cases, the IO determined that it was not, encouraging the CCASG to file such objections if it deemed doing so appropriate. The IO's message was the same as ours. The processes established for the new gTLD program, of which the objection process is one, should be allowed to function and not be short-circuited.

GCC IX was pleased to see the IO resist outside pressures for him to do just that. We feel it is a great pity that the GAC were unable to resist those same pressures, and chose to request that the plug be pulled on our application before the objection process had been allowed to work.

The work of the ICANN community should not be pushed aside before it is even finished. IGOs should not be afforded greater protections on the Internet than they enjoy in law. In particular, the CCASG has never before in its history sought to protect the GCC acronym as its exclusive property. GCC has become a common term in the region, used by many companies and entities, as proved by a study we commissioned, which has been supplied to the WIPO arbitration panel.

GCC was not on ICANN's exhaustive list of prohibited geographic terms, and thus was permitted to be the subject of our TLD application. The requirement for a predictable and dependable framework of rules should not be ignored because one organisation has decided to pull every string it can to get what it wants. There is a due process for new gTLD applications, and that process must be protected if the program is to have any credibility with the world outside of ICANN. There is no legitimate reason for the rejection or withdrawal of our application, and so we refuse to withdraw it.

Through the operation of Dot GCC, our mission is to promote and support Internet growth and development in the Gulf and Middle East region. Our company was created in August 2011, registered with the Bahrain Ministry of Industry and Commerce, and has operated since its inception without any objection from the CCASG. They claim that national laws protect against use of their name, yet neither CCASG nor anyone else has brought any national law proceedings against our application for Dot GCC. We can only assume the reason for that is the CCASG's recognition that such proceedings would be thrown out of any court.

The study we commissioned demonstrated that the acronym GCC in the Gulf region is separate from the CCASG organisation. It shows widespread, long established and general use for "GCC". There are numerous examples of companies using the GCC initials as part of the branding for products and services aimed at the Gulf market. The study shows that the use of the GCC acronym in the media and by academics, consultants, analysts and think tanks -- as referring broadly to the region rather than specifically to the CCASG -- is so widespread as to be impossible to quantify.

In all these cases, throughout the use of the GCC acronym as a popular term in the Gulf region, the CCASG has never once objected to its use. Further, the term GCC was not

included in any list of reserved terms under the new gTLD program rules. As an applicant, we have therefore applied for a term on which we, contrary to the CCASG, have a right (Danish trademark number VR 2013 00642 registered in the Danish Register of Trade Marks) and the use of which the CCASG has never opposed anywhere else or by anyone else.

In a sense, it is a pity they have not. If such a precedent had existed, we might have been able to anticipate that they would warp the GAC Advice procedure to attempt to block our application. This might have enabled us to have a full picture of the potential political pressures we might be a victim of, before investing significant time and resources (in excess of USD 400,000) to play by the Applicant Guidebook's rules, contract with a registry services provider (Afilias) and a data escrow agent (NCC Group), and go through ICANN's application procedure.

We did so in good faith, based upon the guidelines set out in the Applicant Guidebook. We did not deviate from these guidelines in any way. We therefore urge you not to let the process be usurped now. Dot GCC should be allowed to proceed through both the ICANN evaluation process and the new gTLD program objection procedure.

We cannot accept the CCASG's attempt to usurp the new gTLD process to mount a double-pronged attack on our application, without proper grounds for doing so. We urge the Board to show its faith in the new gTLD program and the bottom-up, consensus-driven, multi-stakeholder policy development process that led to its creation.

If the CCASG is shown to have no right to the string GCC, then our application should be allowed to proceed. We have faith in the WIPO objection procedure and confidence that this is what it will show. We ask that you show the same faith and not prevent the Dot GCC application from being given a fair hearing in accord with the rules of the new gTLD program.

We are committed to improving the ability of people in the region to get online and use the Internet. The name of our company, GCC IX, means "the GCC Internet eXchange". An Internet eXchange Point (IX or IXP) is a physical infrastructure through which Internet Service Providers (ISPs) exchange traffic between their networks. IXs underpin smooth and reliable Internet operation by reducing the cost of interconnects as well as the latency of user connections.

Internet eXchanges have been commonplace in the west since the mid-1990s, but almost non-existent in our region. GCC IX was the first independent, carrier-neutral IX in the Gulf. Carrier neutrality provides a level playing field for all Internet providers, not just those who take services from the incumbent telecommunications company in any given territory. This promotes competition and innovation, which in turn stimulates economic growth.

Our Internet eXchange has been in operation since 2011, and we have invested in excess of 1M Bahraini dinars (approximately USD 2.7M) in our network across the Gulf. We have contracts in place with a number of national-level telecoms operators in the Gulf region, as well as with the GCC Interconnection Authority (GCCIA). We are a Local Internet Registry, registered with the RIPE NCC, which exists within the ICANN/IANA framework as the RIR for Europe and the Middle East. We have recruited key staff from across the globe, with a

permanent headcount of four, as well as employing the services of highly qualified consultants. Our staff attends and presents at, and we have sponsored, major regional Internet industry conferences.

Having made a positive impact on interconnectivity options and content availability in our service region, we identified that the local domain name market was immature when compared to Europe or Asia. Around the Gulf, ccTLD names are generally costly and onerous to register, with many applications being processed manually. As a result of national registries in the region almost all being run either within or by the national governments, access to the region's ccTLDs is heavily regulated, with the application of strict regulations and the physical verification of identity. This control has tended to limit competition or innovation, drive domain prices up with fees sometimes as high as \$200 a year, and yield delegation times which can sometimes be measured in weeks.

We estimate that the total cumulative regional registry size in the Gulf and Middle East region is around two hundred thousand names. According to German registry Denic's latest 2013 stats, the .DE namespace grows by that much every six months!

Because of the relative inaccessibility of ccTLD domain names, registrants instead tend to gravitate towards the gTLD pool where, as relative latecomers, they face a significant reduction in consumer choice, as it is rare for their name still to be available. Users therefore settle for less attractive gTLD names (e.g. by adding suffixes to their company name) when in many cases their primary choice of name remains unregistered within their local ccTLD.

With the opening of New gTLD applications by ICANN, we see a real opportunity to make a tangible improvement to this state of affairs by offering a gTLD with a true local feel, with which local users and business could easily identify, and where first-choice names would be available. We set out with the intention to offer the best in industry standard registration processes, while maintaining respect for local cultural and social norms. We undertook this ambitious and wide-reaching project confident that the rules set out by ICANN and its community through the GNSO PDP that led to the new gTLD program made it possible for us to apply and be judged impartially, through a predictable process, on our technical and operational merits as an applicant, rather than see our hopes for a Gulf region focused TLD dashed by a one-sided political decision.

In response to updated ICANN requirements, we have submitted a set of Public Interest Commitments (PIC). We note that not all applicants have done so and feel that this should further serve to highlight the deep responsibility we feel to serve and uphold the public interest through our Dot GCC application.

I hope this letter has provided you with a better insight into our application, the rationale behind it, the political situation surrounding it and the hopes for our region's Internet emancipation that it carries.

In order not to dash those hopes, I would ask that ICANN stick to the due process for its new gTLD program as described in the Applicant Guidebook. The GAC has provided no rationale for its Beijing Communiqué Advice on Dot GCC. The Board has provided no rationale for its

New gTLD Program Committee's decision to accept the GAC Advice on our application as explained in the NGPC scorecard. Both these groups seem to hold no faith in the ongoing objection process, even though that process is being handled by WIPO. The experience and expertise of WIPO in handling dispute resolution processes is clear. Yet ICANN does not seem to have faith in the body it has itself selected to handle Limited Right Objections under the new gTLD program.

As GCC IX CEO, I therefore make the following requests:

- That the Board provide us with its rationale for accepting this advice (I will also be writing to the GAC Chair to ask the committee provide us with the rational for its Beijing Communiqué Advice).
- That we be given a chance, once this rationale is known, to address the concerns expressed via Reconsideration Request and cooperative engagement as set forth in ICANN's Bylaws, Art. IV.
- That the ongoing WIPO Legal Rights Objection procedure, which affords us the right to respond to objections made against our application – a right which we have so far not been given by the GAC or the Board -- be allowed to run its course before any decision to terminate our Dot GCC application is taken.

I look forward to your positive response to these requests.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Fahad', written over a horizontal line.

Fahad Al Shirawi
Chief Executive Officer
GCCIX WLL
Bahrain

Annex 9



The Internet Corporation for Assigned Names and Numbers

5 September 2013

Mr. Fahad Al Shirawi
Chief Executive Officer
GCCIX WLL

Re: ICANN Board Action following the GAC's Advice on our application for Dot GCC

Dear Mr. Fahad Al Shirawi:

We received your letter dated 19 June 2013 providing an update on the New gTLD Program application for .GCC. I apologize for the delayed nature of this response.

As you are aware, the ICANN Board New gTLD Program Committee (NGPC) took action to accept the GAC's advice on the .GCC application at its 4 June 2013 meeting <<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm#1.a>>. The GAC's advice created a strong presumption for the NGPC that your application should not be approved. At that time, the NGPC directed staff that pursuant to the GAC advice and Section 2.1 of the Applicant Guidebook (AGB) the application for .GCC (Application ID 1-1936-2101) will not be approved.

With regard to your concerns about the NGPC not providing a rationale for its decision, you should consider that the NGPC reviewed applicant comments on the GAC's advice, including your response dated 18 April 2013. The NGPC provided a rationale for accepting the GAC's advice <<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm>>, and made available to the community the briefing documents it reviewed when considering its decision <<http://www.icann.org/en/groups/board/documents/briefing-materials-3-04jun13-en.pdf>> to provide transparency in the process. The documents are available for your review at any time on ICANN's website.

Regarding the Legal Rights Objection filed by CCASG

Module 3 of the AGB provides the objection procedures for applications, and provides for two types of mechanisms that may affect an application's ability to continue to move forward: (1) GAC advice, and (2) the dispute resolution procedure. Applicants are on notice that the GAC may provide advice directly to the ICANN Board on any application as provided in the AGB. The GAC's objection to your application is separate and distinct from the Legal Rights Objection filed by CCASG. While I acknowledge your concern about the Legal Rights Objection to your application, the NGPC had an obligation to consider the GAC's advice and decided not to act inconsistently with the advice. Please be advised that the WIPO proceeding for the Legal Rights Objection is not moving forward based on the NGPC's action on 4 June 2013.

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Washington



Regarding Protections for IGO Acronyms

As to your concerns about the GAC's advice against .GCC undermining the ongoing work in the community on the protection of IGO names and acronyms, you should note that the NGPC adopted a resolution on 2 July 2013 to require registry operators to implement temporary protections for the IGO names and acronyms on the GAC's IGO List dated 22/03/2013 while the GAC and NGPC work through implementation issues. This list previously established by the GAC includes the name "Cooperation Council for the Arab States of the Gulf," and its acronym "GCC"

<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en.htm#1.b>. The process is not undermined because the NGPC's action respects the ongoing work in the community on the issue and the continuing dialogue it will have with the GAC on protection of IGO identifiers.

Please use the New gTLD Customer Service Center Portal <myicann.secure.force.com> for any further communications to ICANN concerning the New gTLD Program. Applicants can use the portal to view and correspond with the New gTLD Customer Service Center on currently open cases, and submit new cases.

You are reminded that you can withdraw the application for .GCC pursuant to AGB § 1.5.1, or seek relief according to ICANN's accountability mechanisms in the ICANN Bylaws, Articles IV and V, subject to the appropriate standing and procedural requirements.

Thank you again for your participation in the New gTLD Program.

Sincerely,

A handwritten signature in black ink, appearing to read "Christine A. Willett", written in a cursive style.

Christine A. Willett
Vice President, gTLD Operations

Annex 10



September 25, 2013

Ms. Christine A. Willett
ICANN -- Vice President, gTLD Operations
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Via Salesforce CRM and Email

Re: GCCIX response to ICANN letter dated September 5, 2013, re rejection of .GCC.

Ms. Willett,

This firm represents GCCIX, W.L.L., applicant for the .GCC new gTLD. Thank you for your letter dated September 5, 2013, purportedly in response to GCCIX' letter dated June 19, 2013. Unfortunately, despite the ten weeks taken to prepare and forward a response, ICANN still has not addressed in any meaningful way GCCIX' direct questions about ICANN's purported rejection of the .GCC new gTLD application.

No rationale for GAC and NGPC rejection of .GCC application.

We have carefully reviewed the documents linked within your letter, which you claim to provide rationale for ICANN's purported rejection of the application -- specifically the two documents at these links:

<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm>
<http://www.icann.org/en/groups/board/documents/briefing-materials-3-04jun13-en>

The Briefing Materials provide no rationale from the GAC or ICANN Board, but only include GCCIX' response to the GAC Advice. The NGPC resolution makes no mention of the .GCC application whatsoever, nor any effort to explain its rejection. The NGPC resolution adopts the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué" (4 June 2013), attached as Annex 1 to the Resolution. That document, in turn, states only the following with respect to the .GCC application:

Summary of GAC Advice: The GAC Advises the ICANN Board that it has reached consensus on GAC Objection Advice according to Module 3.1 part I of



the Applicant Guidebook on the following application: .gcc (application number 1-1936-2101).

NGPC Response: The NGPC accepts this advice. The AGB provides that if “GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.” (AGB § 3.1) The NGPC directs staff that pursuant to the GAC Advice and Section 3.1, of the Applicant Guidebook, Application number 1-1936-2101 for .gcc will not be approved. In accordance with the AGB the applicant may withdraw ... or seek relief according to ICANN’s accountability mechanisms

In turn, the GAC Advice stated within the Beijing Communique dated April 11, 2013, simply stated that the GAC had reached consensus to reject the .GCC application, without any explanation whatsoever. The GAC meetings in Beijing were closed to the public and to GCCIX, and the GAC made no public effort to explain its decision as to .GCC.

Clearly, GCCIX has not been provided any rationale whatsoever for the GAC’s or the NGPC’s purported rejection of the .GCC application. GCCIX knew this in June, when it specifically asked ICANN for such rationale. ICANN still has failed to provide it, some ten weeks later. We again reiterate the request for written documentation of the rationale for this critical decision, which if ultimately implemented will cost GCCIX hundreds of thousands of dollars in lost investment, and millions of dollars in lost business opportunity.

No rationale for disregarding Legal Rights Objection process.

ICANN has also failed to provide any rationale for stopping the Legal Rights Objection process initiated with respect to the .GCC application, even though that Objection was fully briefed by the Objector and the Applicant, and fees paid to the ICDR to adjudicate the dispute. The Applicant Guidebook, §3.1 re GAC Advice, specifically provides: “The ICANN Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.”

ICANN has not provided any rationale for failing to allow the independent expert to hear the Legal Rights Objection, even though the issues raised in the GAC advice appear to be pertinent to that Objection. Of course it is hard to determine whether it is pertinent, as the GAC has not provided any rationale for its decision. But GCCIX has been informed



by GAC members that the Objector, Cooperation Council for the Arab States of the Gulf (“CCASG”), was the prime instigator of the GAC advice to reject the .GCC application. Any reasoning of the GAC, if any, remains a closely guarded secret within the GAC and ICANN. But the CCASG’s public Objection indicates that its opposition to the application is based upon CCASG’s purported legal rights to the GCC acronym.

So, it defies common sense that the ICANN Board would fail to allow an independent expert to provide its opinion on the application; particularly when the governmental entity behind the GAC advice has participated in the Objection process, and the applicant has invested heavily in its Response. The ICANN Board cannot reasonably address whether it should disregard the “strong presumption” to accept GAC advice, if it fails to consider the expert determination on the issue which is specifically contemplated in §3.1 of the Applicant Guidebook. Therefore, GCCIX reiterates its request that ICANN direct the ICDR to continue to decide the Objection, and that the ICANN Board consider the decision of the independent ICDR expert.

No rationale for disregarding GNSO input re protection of IGO identifiers.

You state that:

[T]he NGPC adopted a resolution on 2 July 2013 to require registry operators to implement temporary protections for the IGO names and acronyms on the GAC’s IGO List dated 22/03/2013 while the GAC and NGPC work through the implementation issues. This list previously established by the GAC includes the name “Cooperation Council for the Arab States of the Gulf,” and its acronym “GCC”. <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en.htm#1.b>

However, the NGPC resolution only addresses acronym protection at the second level of new gTLDs. This is clear from your letter, referring to a requirement of registry operators, and from the resolution itself which refers to Specification 5 of the draft Registry Agreement. The NGPC resolution does not address IGO acronym protection at the top level. Furthermore, the GAC List provides no rationale for including GCC as the purported acronym of the CCASG.

The GNSO Working Group on Protection of IGO Names is about to issue its Final Report to the GNSO Council. The undersigned counsel participates as a member of that Working Group. That Working Group has reached broad consensus – of all stakeholders other than IGO representatives – that IGO acronyms shall not be protected at the top-level. Given the level of consensus within the Working Group, it is likely that a Supermajority of the GNSO Council will approve this recommendation, which per the



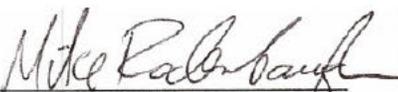
ICANN Bylaws (§3.9.i and Annex A, §9.a) “shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN.”

ICANN has given no rationale for disregarding the pending final recommendation of this Working Group, or for circumventing the GNSO PDP process and ICANN Bylaws provisions which likely will require the Board to approve that recommendation. At minimum, ICANN should allow the GNSO process to complete, and the Board to act on the GNSO Council recommendations, before rejecting the .GCC application on the purported ground that GCC is an acronym of the CCASG. Such rejection would run directly counter to the GNSO PDP recommendation on this point.

Conclusion.

GCCIX once again requests that ICANN provide rationale as to the NGPC decisions referenced above, and then further considers the ICDR independent expert’s determination of the Legal Rights Objection and the GNSO Council recommendation not to protect IGO acronyms at the top-level. If ICANN is unable or unwilling to provide any further rationale, or to suspend its decision until those ancillary processes are complete, then GCCIX requests prompt initiation of the Reconsideration Request process described in ICANN’s Bylaws, Art. IV, including “cooperative engagement” with GCCIX as soon as possible. We respectfully request a prompt response to these requests.

Kind regards,

By: 
Mike Rodenaugh
RODENAUGH LAW

Attorneys for GCCIX, W.L.L.

Cc: John Jeffrey, Esq.
Dr. Steve Crocker
Mr. Fahad Al Shirawi

Annex 11

Redacted -Confidential Information

Annex 12

Redacted -Confidential Information

Annex 13

Redacted -Confidential Information

Annex 14

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
Independent Review Panel**

CASE #50 2013 001083

FINAL DECLARATION

In the matter of an Independent Review Process (IRP) pursuant to the Internet Corporation For Assigned Names and Number's (ICANN's) Bylaws, the *International Dispute Resolution Procedures* (ICDR Rules) and the *Supplementary Procedures for ICANN Independent Review Process* of the International Centre for Dispute Resolution (ICDR),

Between: DotConnectAfrica Trust;
("Claimant" or "DCA Trust")

Represented by Mr. Arif H. Ali, Ms. Meredith Craven, Ms. Erin Yates and Mr. Ricardo Ampudia of Weil, Gotshal & Manges, LLP located at 1300 Eye Street, NW, Suite 900, Washington, DC 20005, U.S.A.

And

Internet Corporation for Assigned Names and Numbers (ICANN);
("Respondent" or "ICANN")

Represented by Mr. Jeffrey A. LeVee and Ms. Rachel Zernik of Jones Day, LLP located at 555 South Flower Street, Fiftieth Floor, Los Angeles, CA 90071, U.S.A.

Claimant and Respondent will together be referred to as "Parties".

IRP Panel

**Prof. Catherine Kessedjian
Hon. William J. Cahill (Ret.)
Babak Barin, *President***

I. BACKGROUND

1. DCA Trust is non-profit organization established under the laws of the Republic of Mauritius on 15 July 2010 with its registry operation – DCA Registry Services (Kenya) Limited – as its principal place of business in Nairobi, Kenya.
2. DCA Trust was formed with the charitable purpose of, among other things, advancing information technology education in Africa and providing a continental Internet domain name to provide access to internet services for the people of Africa and not for the public good.
3. In March 2012, DCA Trust applied to ICANN for the delegation of the .AFRICA top-level domain name in its 2012 General Top-Level Domains (“gTLD”) Internet Expansion Program (the “New gTLD Program”), an internet resource available for delegation under that program.
4. ICANN is a non-profit corporation established on 30 September 1998 under the laws of the State of California, and headquartered in Marina del Rey, California, U.S.A. According to its Articles of Incorporation, ICANN was established for the benefit of the Internet community as a whole and is tasked with carrying out its activities in conformity with relevant principles of international law, international conventions and local law.
5. On 4 June 2013, the ICANN Board New gTLD Program Committee (“NGPC”) posted a notice that it had decided not to accept DCA Trust’s application.
6. On 19 June 2013, DCA Trust filed a request for reconsideration by the ICANN Board Governance Committee (“BGC”), which denied the request on 1 August 2013.
7. On 19 August 2013, DCA Trust informed ICANN of its intention to seek relief before an Independent Review Panel under ICANN’s Bylaws. Between August and October 2013, DCA Trust and ICANN participated in a Cooperative Engagement Process (“CEP”) to try and resolve the issues relating to DCA Trust’s application. Despite several meetings, no resolution was reached.
8. On 24 October 2013, DCA Trust filed a Notice of Independent Review Process with the ICDR in accordance with Article IV, Section 3 of ICANN’s Bylaws.

9. In an effort to safeguard its rights pending the ongoing constitution of the IRP Panel, on 22 January 2014, DCA Trust wrote to ICANN requesting that it immediately cease any further processing of all applications for the delegation of the .AFRICA gTLD, failing which DCA Trust would seek emergency relief under Article 37 of the ICDR Rules.
10. DCA Trust also indicated that it believed it had the right to seek such relief because there was no standing panel as anticipated in the Supplementary Procedures for ICANN Independent Review Process (“Supplementary Procedures”), which could otherwise hear requests for emergency relief.
11. In response, on 5 February 2014, ICANN wrote:

Although ICANN typically is refraining from further processing activities in conjunction with pending gTLD applications where a competing applicant has a pending reconsideration request, ICANN does not intend to refrain from further processing of applications that relate in some way to pending independent review proceedings. In this particular instance, ICANN believes that the grounds for DCA’s IRP are exceedingly weak, and that the decision to refrain from the further processing of other applications on the basis of the pending IRP would be unfair to others.
12. In its Request for Emergency Arbitrator and Interim Measures of Protection subsequently submitted on 28 March 2014, DCA Trust pleaded, *inter alia*, that, in an effort to preserve its rights, in January 2014, DCA requested that ICANN suspend its processing of applications for .AFRICA during the pendency of this proceeding. ICANN, however, summarily refused to do so.
13. DCA Trust also submitted that “on 23 March 2014, DCA became aware that ICANN intended to sign an agreement with DCA’s competitor (a South African company called ZACR) on 26 March 2014 in Beijing [...] Immediately upon receiving this information, DCA contacted ICANN and asked it to refrain from signing the agreement with ZACR in light of the fact that this proceeding was still pending. Instead, according to ICANN’s website, ICANN *signed its agreement with ZACR the very next day, two days ahead of plan, on 24 March instead of 26 March.*”
14. According to DCA Trust, that same day, “ICANN then responded to DCA’s request by presenting the execution of the contract as a *fait accompli*, arguing that DCA should have sought to stop ICANN from proceeding with ZACR’s application, as ICANN had already informed DCA of its intention [to] ignore its obligations to participate in this proceeding in good faith.”

15. DCA Trust also submitted that on 25 March 2014, as per ICANN's email to the ICDR, "ICANN for the first time informed DCA that it would accept the application of Article 37 of the ICDR Rules to this proceeding contrary to the express provisions of the Supplementary Procedures of ICANN has put in place for the IRP Process."
16. In its Request, DCA Trust argued that it "is entitled to an accountability proceeding with legitimacy and integrity, with the capacity to provide a meaningful remedy. [...] DCA has requested the opportunity to compete for rights to .AFRICA pursuant to the rules that ICANN put into place. Allowing ICANN to delegate .AFRICA to DCA's only competitor – which took actions that were instrumental in the process leading to ICANN's decision to reject DCA's application – would eviscerate the very purpose of this proceeding and deprive DCA of its rights under ICANN's own constitutive instruments and international law."
17. Finally, among other things, DCA Trust requested the following interim relief:
 - a. An order compelling *ICANN to refrain from any further steps toward delegation of the .AFRICA gTLD*, including but not limited to execution or assessment of pre-delegation testing, negotiations or discussions relating to delegation with the entity ZACR or any of its officers or agents; [...]
18. On 24 April and 12 May 2014, the Panel issued Procedural Order No. 1, a Decision on Interim Measures of Protection, and a list of questions for the Parties to answer.
19. In its 12 May 2014 Decision on Interim Measures of Protection, the Panel required ICANN to "immediately refrain from any further processing of any application for .AFRICA until [the Panel] heard the merits of DCA Trust's Notice of Independent Review Process and issued its conclusions regarding the same".
20. In the Panel's unanimous view, among other reasons, it would have been "unfair and unjust to deny DCA Trust's request for interim relief when the need for such a relief...[arose] out of ICANN's failure to follow its own Bylaws and procedures." The Panel also reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.
21. On 27 May and 4 June 2015, the Panel issued Procedural Order No. 2 and a Decision on ICANN's request for Partial Reconsideration of certain portions of its Decision on Interim Measures of Protection.

22. In its 4 June 2014 Decision on ICANN's request for Partial Reconsideration, the Panel unanimously concluded that ICANN's request must be denied. In that Decision, the Panel observed:

9. After careful consideration of the Parties' respective submissions, the Panel is of the unanimous view that ICANN's Request must be denied for two reasons.

10. First, there is nothing in ICANN's Bylaws, the International Dispute Resolution Procedures of the ICDR effective as at 1 June 2009 or the Supplementary Procedures for ICANN Independent Review Process that in any way address the Panel's ability to address ICANN's Request. The Panel has not been able to find any relevant guidance in this regard in any of the above instruments and ICANN has not pointed to any relevant provision or rule that would support its argument that the Panel has the authority to reconsider its Decision of 12 May 2014.

11. Moreover, ICANN has not pointed to any clerical, typographical or computation error or shortcoming in the Panel's Decision and it has not requested an interpretation of the Panel's Decision based on any ambiguity or vagueness. To the contrary, ICANN has asked the Panel to reconsider its prior findings with respect to certain references in its Decision that ICANN disagrees with, on the basis that those references are in ICANN's view, inaccurate.

12. Second, even if the Panel were to reconsider based on any provision or rule available, its findings with respect to those passages complained of by ICANN as being inaccurate in its Decision – namely paragraphs 29 to 33 – after deliberation, the Panel would still conclude that ICANN has failed to follow its own Bylaws as more specifically explained in the above paragraphs, in the context of addressing which of the Parties should be viewed as responsible for the delays associated with DCA Trust's Request for Interim Measures of Protection. It is not reasonable to construe the By-law proviso for consideration by a provider-appointed *ad hoc* panel when a standing panel is not in place as relieving ICANN indefinitely of forming the required standing panel. Instead, the provider appointed panel is properly viewed as an interim procedure to be used before ICANN has a chance to form a standing panel. Here, more than a year has elapsed, and ICANN has offered no explanation why the standing panel has not been formed, nor indeed any indication that formation of that panel is in process, or has begun, or indeed even is planned to begin at some point.

The Panel also reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

23. On 14 August 2014, the Panel issued a Declaration on the IRP Procedure ("2014 Declaration") pursuant to which it (1) ordered a reasonable documentary exchange, (2) permitted the Parties to benefit from additional filings and supplementary briefing, (3) allowed a video hearing, and (4) permitted both Parties at the hearing to

challenge and test the veracity of any written statements made by witnesses.

The Panel also concluded that its Declaration on the IRP and its future Declaration on the Merits of the case were binding on the Parties. In particular, the Panel decided:

98. Various provisions of ICANN's Bylaws and the Supplementary Procedures support the conclusion that the Panel's decisions, opinions and declarations are binding. There is certainly nothing in the Supplementary Rules that renders the decisions, opinions and declarations of the Panel either advisory or non-binding.

[...]

100. Section 10 of the Supplementary Procedures resembles Article 27 of the ICDR Rules. Whereas Article 27 refers to "Awards", section 10 refers to "Declarations". Section 10 of the Supplementary Procedures, however, is silent on whether Declarations made by the IRP Panel are "final and binding" on the parties.

101. As explained earlier, as per Article IV, Section 3, paragraph 8 of the Bylaws, the Board of Directors of ICANN has given its approval to the ICDR to establish a set of operating rules and procedures for the conduct of the IRP set out in section 3. The operating rules and procedures established by the ICDR are the ICDR Rules as referred to in the preamble of the Supplementary Procedures. These Rules have been supplemented with the Supplementary Procedures.

102. This is clear from two different parts of the Supplementary Procedures. First, in the preamble, where the Supplementary Procedures state that: "These procedures supplement the International Centre for Dispute Resolution's International Arbitration Rules in accordance with the independent review procedures set forth in Article IV, Section 3 of the ICANN Bylaws".

103. And second, under section 2 entitled (Scope), that states that the "ICDR will apply these Supplementary Procedures, in addition to the INTERNATIONAL DISPUTE RESOLUTION PROCEDURES, in all cases submitted to the ICDR in connection with the Article IV, Section 3(4) of the ICANN Bylaws". It is therefore clear that ICANN intended the operating rules and procedures for the independent review to be an international set of arbitration rules supplemented by a particular set of additional rules.

104. There is also nothing inconsistent between section 10 of the Supplementary Procedures and Article 27 of the ICDR Rules.

105. One of the hallmarks of international arbitration is the binding and final nature of the decisions made by the adjudicators. Binding arbitration is the essence of what the ICDR Rules, the ICDR itself and its parent, the American Arbitration Association, offer. The selection of the ICDR Rules as the baseline set of procedures for IRP's, therefore, points to a binding adjudicative process.

106. Furthermore, the process adopted in the Supplementary Procedures is an adversarial one where counsel for the parties present competing evidence and arguments, and a panel decides who prevails, when and in what circumstances. The panellists who adjudicate the parties' claims are also selected from among experienced arbitrators, whose usual charter is to make binding decisions.

107. The above is further supported by the language and spirit of section 11 of ICANN's Bylaws. Pursuant to that section, the IRP Panel has the authority to summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious. Surely, such a decision, opinion or declaration on the part of the Panel would not be considered advisory.

[...]

110. ICANN points to the extensive public and expert input that preceded the formulation of the Supplementary Procedures. The Panel would have expected, were a mere advisory decision, opinion or declaration the objective of the IRP, that this intent be clearly articulated somewhere in the Bylaws or the Supplementary Procedures. In the Panel's view, this could have easily been done.

111. The force of the foregoing textual and construction considerations as pointing to the binding effect of the Panel's decisions and declarations are reinforced by two factors: 1) the exclusive nature of the IRP whereby the non-binding argument would be clearly in contradiction with such a factor; and, 2) the special, unique, and publicly important function of ICANN. As explained before, ICANN is not an ordinary private non-profit entity deciding for its own sake who it wishes to conduct business with, and who it does not. ICANN rather, is the steward of a highly valuable and important international resource.

[...]

115. Moreover, assuming for the sake of argument that it is acceptable for ICANN to adopt a remedial scheme with no teeth, the Panel is of the opinion that, at a minimum, the IRP should forthrightly explain and acknowledge that the process is merely advisory. This would at least let parties know before embarking on a potentially expensive process that a victory before the IRP panel may be ignored by ICANN. And, a straightforward acknowledgment that the IRP process is intended to be merely advisory might lead to a legislative or executive initiative to create a truly independent compulsory process. The Panel seriously doubts that the Senators questioning former ICANN President Stuart Lynn in 2002 would have been satisfied had they understood that a) ICANN had imposed on all applicants a waiver of all judicial remedies, *and* b) the IRP process touted by ICANN as the "ultimate guarantor" of ICANN accountability was only an advisory process, the benefit of which accrued only to ICANN. [Underlining is from the original decision.]

The Panel also reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

24. On 5 September and 25 September 2014, the Panel issued Procedural Orders No. 3 and No. 4. In Procedural Order No. 3, the Panel notably required the Parties to complete their respective filing of briefs in accordance with the IRP Procedure Guidelines by 3 November 2014 for DCA Trust and 3 December 2014 for ICANN.
25. In Procedural Order No. 4 dated 25 September 2014, the Panel reached a decision regarding document production issues.
26. On 3 November 2014 and 3 December 2014, the Parties filed their Memorial and Response Memorial on the Merits in accordance with the timetable set out in Procedural Order No. 3.
27. On 26 February 2015, following the passing away of the Hon. Richard C. Neal (Ret.) and confirmation by the ICDR of his replacement arbitrator, the Hon. William J. Cahill (Ret.), ICANN requested that this Panel consider revisiting the part of this IRP relating to the issue of hearing witnesses addressed in the Panel's 2014 Declaration.
28. In particular, ICANN submitted that given the replacement of Justice Neal, Article 15.2 of the ICDR Rules together with the Supplementary Procedures permitted this IRP to in its sole discretion, determine "whether all or part" of this IRP should be repeated.
29. According to ICANN, while it was not necessary to repeat all of this IRP, since the Panel here had exceeded its authority under the Supplementary Procedures when it held in its 2014 Declaration that it could order live testimony of witnesses, the Panel should then at a minimum consider revisiting that issue.
30. According to ICANN, panelists derived "their powers and authority from the relevant applicable rules, the parties' requests, and the contractual provisions agreed to by the Parties (in this instance, ICANN's Bylaws, which establish the process of independent review). The authority of panelists is limited by such rules, submissions and agreements."
31. ICANN emphasized that "compliance with the Supplementary Procedures [was] critical to ensure predictability for ICANN, applicants for and objectors to gTLD applications, and the entire ICANN community...", and while "ICANN [was] committed to fairness and accessibility...ICANN [was] also committed to predictability and the like treatment of all applicants. For this Panel to change the rules

for this single applicant [did] not encourage any of these commitments.”

32. ICANN also pleaded that, DCA specifically agreed to be bound by the Supplementary Procedures when it initially submitted its application, the Supplementary Procedures apply to both ICANN and DCA alike, ICANN is now in the same position when it comes to testing witness declarations and finally, in alternative dispute resolution proceedings where cross examination of witnesses is allowed, parties often waive cross-examination.

33. Finally, ICANN advanced that:

[T]he Independent Review process is an alternative dispute resolution procedure adapted to the specific issues to be addressed pursuant to ICANN’s Bylaws. The process cannot be transformed into a full-fledged trial without amending ICANN’s Bylaws and the Supplementary Procedures, which specifically provide for a hearing that includes counsel argument only. Accordingly, ICANN strongly urges the Panel to follow the rules for this proceeding and to declare that the hearing in May will be limited to argument of counsel.

34. On 24 March 2015, the Panel issued its Declaration on ICANN’s Request for Revisiting of the 14 August Declaration on the IRP Procedure following the Replacement of Panel Member. In that Declaration, the newly constituted Panel unanimously concluded that it was not necessary for it to reconsider or revisit its 2014 Declaration.

35. In passing and not at all as a result of any intended or inadvertent reconsideration or revisiting of its 2014 Declaration, the Panel referred to Articles III and IV of ICANN’s Bylaws and concluded:

Under the general heading, Transparency, and title “Purpose”, Section 1 of Article III states: “ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.” Under the general heading, Accountability and Review, and title “Purpose”, Section 1 of Article IV reads: “In carrying out its mission as set out in these Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in Article I of these Bylaws.” In light of the above, and again in passing only, it is the Panel’s unanimous view, that the filing of fact witness statements (as ICANN has done in this IRP) and limiting telephonic or in-person hearings to argument only is inconsistent with the objectives setout in Articles III and IV setout above.

The Panel again reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

36. On 24 March and 1 April 2015, the Panel rendered Procedural Orders No. 5 and 6, in which, among other things, the Panel recorded the Parties' "agreement that there will no cross-examination of any of the witnesses" at the hearing of the merits.
37. On 20 April 2015, the Panel rendered its Third Declaration on the IRP Procedure. In that Declaration, the Panel decided that the hearing of this IRP should be an in-person one in Washington, D.C. and required all three witnesses who had filed witness statements to be present at the hearing.
38. The Panel in particular noted that:

13. [...] Article IV, Section 3, and Paragraph 4 of ICANN's Bylaws (reproduced above) – the Independent Review Process – was designed and set up to offer the Internet community, an accountability process that would ensure that ICANN acted in a manner consistent with ICANN's Articles of Incorporation and Bylaws.

14. Both ICANN's Bylaws and the Supplementary Rules require an IRP Panel to *examine* and *decide* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws. As ICANN's Bylaws explicitly put it, an IRP Panel is "*charged with* comparing contested actions of the Board [...], and with *declaring* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws.

15. The IRP is the only independent third party process that allows review of board actions to ensure their consistency with the Articles of Incorporation or Bylaws. As already explained in this Panel's 14 August 2014 Declaration on the IRP Procedure ("August 2014 Declaration"), the avenues of accountability for applicants that have disputes with ICANN do *not* include resort to the courts. Applications for gTLD delegations are governed by ICANN's Guidebook, which provides that applicants waive all right to resort to the courts:

"Applicant hereby releases ICANN [...] from any and all claims that arise out of, are based upon, or are in any way related to, any action or failure to act by ICANN [...] in connection with ICANN's review of this application, investigation, or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN ON THE BASIS OF ANY OTHER LEGAL CLAIM."

Thus, assuming that the foregoing waiver of any and all judicial remedies is valid and enforceable, then the only and ultimate "accountability" remedy for an applicant is the IRP.

16. Accountability requires an organization to explain or give reasons for its activities, accept responsibility for them and to disclose the results in a transparent manner.

[...]

21. In order to keep the costs and burdens of independent review as low as possible, ICANN's Bylaws, in Article IV, Section 3 and Paragraph 12, suggests that the IRP Panel conduct its proceedings by email and otherwise via the Internet to the maximum extent feasible, and where necessary the IRP Panel may hold meetings by telephone. Use of the words "should" and "may" versus "shall" are demonstrative of this point. In the same paragraph, however, ICANN's Bylaws state that, "in the unlikely event that a telephonic or in-person hearing is convened, the hearing *shall* be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance."

22. The Panel finds that this last sentence in Paragraph 12 of ICANN's Bylaws, unduly and improperly restricts the Panel's ability to conduct the "independent review" it has been explicitly mandated to carryout in Paragraph 4 of Section 3 in the manner it considers appropriate.

23. How can a Panel compare contested actions of the Board and declare whether or not they are consistent with the provisions of the Articles of Incorporation and Bylaws, without the ability to fact find and make enquiries concerning those actions in the manner it considers appropriate?

24. How can the Panel for example, determine, if the Board acted without conflict of interest, exercised due diligence and care in having a reasonable amount of facts in front of it, or exercised independent judgment in taking decisions, if the Panel cannot ask the questions it needs to, in the manner it needs to or considers fair, just and appropriate in the circumstances?

25. How can the Panel ensure that the parties to this IRP are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case with respect to the mandate the Panel has been given, if as ICANN submits, "ICANN's Bylaws do not permit any examination of witnesses by the parties or the Panel during the hearing"?

26. The Panel is unanimously of the view that it cannot. The Panel is also of the view that any attempt by ICANN in this case to prevent it from carrying out its independent review of ICANN Board's actions in the manner that the Panel considers appropriate under the circumstances deprives the accountability and review process set out in the Bylaws of any meaning.

27. ICANN has filed two 'Declarations' in this IRP, one signed by Ms. Heather Dryden, a Senior Policy Advisor at the International Telecommunications Policy and Coordination Directorate at Industry Canada, and Chair of ICANN Government Advisory Committee from 2010 to 2013, and the other by Mr. Cherine Chalaby, a member of the Board of Directors of ICANN since 2010. Mr. Chalaby is also, since its inception, one of three members of the Subcommittee on Ethics and Conflicts of ICANN's Board of Governance Committee.

28. In their respective statements, both individuals have confirmed that they "have personal knowledge of the matters set forth in [their] declaration and [are] competent to testify to these matters *if called as a witness*."

[...]

29. In his Declaration, Mr. Chalaby states that “all members of the NGPC were asked to and did specifically affirm that they did not have a conflict of interest related to DCA’s application for .AFRICA when they voted on the GAC advice. In addition, the NGPC asked the BGC to look into the issue further, and the BGC referred the matter to the Subcommittee. After investigating the matter, the Subcommittee concluded that Chris Disspain and Mike Silber did not have conflicts of interest with respect to DCA’s application for .AFRICA.”

30. The Panel considers it important and useful for ICANN’s witnesses, and in particular, Mr. Chalaby as well as for Ms. Sophia Bekele Eshete to be present at the hearing of this IRP.

31. While the Panel takes note of ICANN’s position depicted on page 2 of its 8 April 2015 letter, the Panel nonetheless invites ICANN to reconsider its position.

32. The Panel also takes note of ICANN’s offer in that same letter to address written questions to its witnesses before the hearing, and if the Panel needs more information after the hearing to clarify the evidence presented during the hearing. The Panel, however, is unanimously of the view that this approach is fundamentally inconsistent with the requirements in ICANN’s Bylaws for it to act openly, transparently, fairly and with integrity.

33. As already indicated in this Panel’s August 2014 Declaration, analysis of the propriety of ICANN’s decisions in this case will depend at least in part on evidence about the intentions and conduct of ICANN’s top personnel. Even though the Parties have explicitly agreed that neither will have an opportunity to cross-examine the witnesses of the other in this IRP, the Panel is of the view that ICANN should not be allowed to rely on written statements of its top officers attesting to the propriety of their actions and decisions without an opportunity for the Panel and thereafter DCA Trust’s counsel to ask any follow-up questions arising out of the Panel’s questions of ICANN’s witnesses. The same opportunity of course will be given to ICANN to ask questions of Ms. Bekele Eshete, after the Panel has directed its questions to her.

34. The Parties having agreed that there will be no cross-examination of witnesses in this IRP, the procedure for asking witnesses questions at the hearing shall be as follows:

- a) The Panel shall first have an opportunity to ask any witness any questions it deems necessary or appropriate;
- b) Each Party thereafter, shall have an opportunity to ask any follow-up questions the Panel permits them to ask of any witness.

The Panel again reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

39. On 27 April and 4 May 2015, the Panel issued its Procedural Order No. 7 and 8, and on that last date, it held a prehearing conference call with the Parties as required by the ICDR Rules. In Procedural

Order No. 8, the Panel set out the order of witness and party presentations agreed upon by the Parties.

40. On 18 May 2015, and in response to ZA Central Registry's (ZACR) request to have two of its representatives along with a representative from the African Union Commission (AUC) attend at the IRP hearing scheduled for 22 and 23 May 2015 in Washington, D.C., the Panel issued its Procedural Order No. 9, denying the requests made by ZACR and AUC to be at the merits hearing of this matter in Washington, D.C.
41. In a letter dated 11 May 2015, ZACR and AUC's legal representative had submitted that both entities had an interest in this matter and it would be mutually beneficial for the IRP to permit them to attend at the hearing in Washington, D.C.
42. ZACR's legal representative had also argued that "allowing for interests of a materially affected party such as ZACR, the successful applicant for the dotAfrica gTLD, as well as broader public interests, to be present enhances the legitimacy of the proceedings and therefore the accountability and transparency of ICANN and its dispute resolution procedures."
43. For the Panel, Article 20 of the ICDR Rules, which applied in this matter, stated that the hearing of this IRP was "private unless the parties agree otherwise". The Parties in this IRP did not consent to the presence of ZACR and AUC. While ICANN indicated that it had no objection to the presence of ZACR and AUC, DCA Trust was not of the same view. Therefore, ZACR and AUC were not permitted to attend.
44. The in-person hearing of the merits of this IRP took place on 22 and 23 May 2015 at the offices of Jones Day LLP in Washington, D.C. All three individuals who had filed witness statements in this IRP, namely Ms. Sophia Bekele Eshete, representative for DCA Trust, Ms. Heather Dryden and Mr. Cherine Chalaby, representatives for ICANN, attended in person and answered questions put to them by the Panel and subsequently by the legal representatives of both Parties. In attendance at the hearing was also Ms. Amy Stathos, Deputy General Counsel of ICANN.
45. The proceedings of the hearing were reported by Ms. Cindy L. Sebo of TransPerfect Legal Solutions, who is a Registered Merit Real-Time Court Reporter.

46. On the last day of the hearing, DCA Trust was asked by the Panel to clearly and explicitly articulate its prayers for relief. In a document entitled Claimant's Final Request for Relief which was signed by the Executive Director of DCA Trust, Ms. Sophia Bekele and marked at the hearing as Hearing Exhibit 4, DCA Trust asked the Panel to:

Declare that the Board violated ICANN's Articles of Incorporation, Bylaws and the Applicant Guidebook (AGB) by:

- Discriminating against DCA and wrongfully assisting the AUC and ZACR to obtain rights to the .AFRICA gTLD;
- Failing to apply ICANN's procedures in a neutral and objective manner, with procedural fairness when it accepted the GAC Objection Advice against DCA; and
- Failing to apply its procedures in a neutral and objective manner, with procedural fairness when it approved the BGC's recommendation not to reconsider the NGPC's acceptance of the GAC Objection Advice against DCA;

And to declare that:

- DCA is the prevailing party in this IRP and, consequently, shall be entitled to its costs in this proceeding; and
- DCA is entitled to such other relief as the Panel may find appropriate under the circumstances described herein.

Recommend, as a result of each of these violations, that:

- ICANN cease all preparations to delegate the .AFRICA gTLD to ZACR;
- ICANN permit DCA's application to proceed through the remainder of the new gTLD application process and be granted a period of no less than 18 months to obtain Government support as set out in the AGB and interpreted by the Geographic Names Panel, or accept that the requirement is satisfied as a result of the endorsement of DCA Trust's application by UNECA; and
- ICANN compensate DCA for the costs it has incurred as a result of ICANN's violations of its Articles of Incorporation, Bylaws and AGB.

47. In its response to DCA Trust's Final Request for Relief, ICANN submitted that, "the Panel should find that no action (or inaction) of the ICANN Board was inconsistent with the Articles of Incorporation or Bylaws, and accordingly none of DCA's requested relief is appropriate."

48. ICANN also submitted that:

DCA urges that the Panel issue a declaration in its favor...and also asks that the Panel declare that DCA is the prevailing party and entitled to its costs. Although ICANN believes that the evidence does not support the

declarations that DCA seeks, ICANN does not object to the form of DCA's requests.

At the bottom of DCA's Final Request for Relief, DCA asks that the Panel recommend that ICANN cease all preparations to delegate the .AFRICA gTLD to ZACR, and that ICANN permit DCA's application to proceed and give DCA no less than 18 additional months from the date of the Panel's declaration to attempt to obtain the requisite support of the countries in Africa. ICANN objects to that appropriateness of these requested recommendations because they are well outside the Panel's authority as set forth in the Bylaws.

[...]

Because the Panel's authority is limited to declaring whether the Board's conduct was inconsistent with the Articles or the Bylaws, the Panel should limit its declaration to that question and refrain from recommending how the Board should then proceed in light of the Panel's declaration. Pursuant to Paragraph 12 of that same section of the Bylaws, the Board will consider the Panel's declaration at its next meeting, and if the Panel has declared that the Board's conduct was inconsistent with the Articles or the Bylaws, the Board will have to determine how to act upon the opinion of the Panel.

By way of example only, if the Panel somehow found that the unanimous NGPC vote on 4 June 2013 was not properly taken, the Board might determine that the vote from that meeting should be set aside and that the NGPC should consider the issue anew. Likewise, if the Panel were to determine that the NGPC did not adequately consider the GAC advice at [the] 4 June 2013 meeting, the Board might require that the NGPC reconsider the GAC advice.

In all events, the Bylaws mandate that the Board has the responsibility of fashioning the appropriate remedy once the Panel has declared whether or not it thinks the Board's conduct was inconsistent with ICANN's Articles of Incorporation and Bylaws. The Bylaws do not provide the Panel with the authority to make any recommendations or declarations in this respect.

49. In response to ICANN's submissions above, on 15 June 2015, DCA Trust advanced that the Panel had already ruled that its declaration on the merits will be binding on the Parties and that nothing in ICANN's Bylaws, the Supplementary Procedures or the ICDR Rules applicable in these proceedings prohibits the Panel from making a recommendation to the ICANN Board of Directors regarding an appropriate remedy. DCA Trust also submitted that:

According to ICANN's Bylaws, the Independent Review Process is designed to provide a remedy for "any" person materially affected by a decision or action by the Board. Further, "in order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation. Indeed, the ICANN New gTLD Program Committee, operating under the delegated authority of the ICANN Board, itself suggested that DCA could seek relief through ICANN's accountability

mechanisms or, in other words, the Reconsideration process and the Independent Review Process. If the IRP mechanism – the mechanism of last resort for gTLD applicants – is intended to provide a remedy for a claimant materially injured or harmed by Board action or inaction, and it serves as the only alternative to litigation, then naturally the IRP Panel may recommend how the ICANN Board might fashion a remedy to redress such injury or harm.

50. On 25 June 2015, the Panel issued its Procedural Order No. 10, directing the Parties to by 1 July 2015 simultaneously file their detailed submissions on costs and their allocation in these proceedings.
51. The additional factual background and reasons in the above decisions, procedural orders and declarations rendered by the Panel are hereby adopted and incorporated by reference in this Final Declaration.
52. On 1 and 2 July 2015, the Parties filed their respective positions and submissions on costs.

II. BRIEF SUMMARY OF THE PARTIES' POSITIONS ON THE MERITS & REQUEST FOR RELIEF

53. According to DCA Trust and as elaborated on in its Memorial on Merits dated 3 November 2014, the central dispute between it and ICANN in this IRP may be summarized as follows:

32. By preventing DCA'S application from proceeding through the new gTLD review process and by coordinating with the AUC and others to ensure that the AUC obtained the rights to .AFRICA, ICANN breached its obligations of independence, transparency and due process contained in its Articles of Incorporation and Bylaws, including its obligation to conduct itself consistent with its duty of good faith under relevant principles of international law.

54. According to DCA Trust, among other things, "instead of functioning as a disinterested regulator of a fair and transparent gTLD application process, ICANN used its authority and oversight over that process to assist ZACR and to eliminate its only competitor, DCA, from the process."
55. DCA Trust also advanced that, "as a result, ICANN deprived DCA of the right to compete for .AFRICA in accordance with the rules ICANN established for the new gTLD program, in breach of the Applicant Guidebook ("AGB") and ICANN's Articles of Incorporation and Bylaws."

56. In its 3 December 2014 Response to DCA's Memorial on the Merits, among other things, ICANN submitted that, "ICANN's conduct with respect to DCA's application for .AFRICA was fully consistent with ICANN's Bylaws, its Articles of Incorporation and the Applicant Guidebook. ICANN also pleaded that it acted through open and transparent processes, evaluated DCA's application for .AFRICA in accordance with the procedures set forth in the Guidebook, and followed the procedures set forth in its Bylaws in evaluating DCA's Request for Reconsideration."
57. ICANN advanced that, "DCA is using this IRP as a mean to challenge the right of African countries to support a specific (and competing) application for .AFRICA, and to rewrite the Guidebook."
58. ICANN also added that, "ICANN provided assistance to those who requested, cooperated with governmental authorities, and respected the consensus advice issued by the GAC, which speaks on behalf of the governments of the world."
59. In its Final Request for Relief filed on 23 May 2015, DCA Trust asked this Panel to:
 1. Declare that the Board violated ICANN's Articles of Incorporation, Bylaws and the Applicant Guidebook (AGB);
 2. Declare that DCA Trust is the prevailing party in this IRP and, consequently entitled to its costs in this proceeding; and
 3. Recommend as a result of the Board violations a course of action for the Board to follow going forward.
60. In its response letter of 1 June 2015, ICANN confirmed that it did not object to the form of DCA Trust's requests above, even though it believes that the evidence does not support the declarations that DCA Trust seeks. ICANN did, however, object to the appropriateness of the request for recommendations on the ground that they are outside of the Panel's authority as set forth in the Bylaws.

III. THE ISSUES RAISED AND THE PANEL'S DECISION

61. After carefully considering the Parties' written and oral submissions, perusing the three witness statements filed and hearing *viva voce* the testimonies of the witnesses at the in-person hearing of this IRP in Washington, D.C., the Panel answers the following four questions put to it as follows:

1. Did the Board act or fail to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

Answer: Yes.

2. Can the IRP Panel recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook (AGB)?

Answer: Yes.

3. Who is the prevailing party in this IRP?

Answer: DCA Trust

4. Who is responsible for bearing the costs of this IRP and the cost of the IRP Provider?

Answer: ICANN, in full.

Summary of Panel's Decision

For reasons explained in more detail below, and pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process.

Finally, DCA Trust is the prevailing party in this IRP and ICANN is responsible for bearing, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider.

As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, DCA Trust and ICANN shall each bear their own expenses. The Parties shall also each bear their own legal representation fees.

IV. ANALYSIS OF THE ISSUES AND REASONS FOR THE PANEL'S DECISION

1) Did the Board act or fail to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

62. Before answering this question, the Panel considers it necessary to quickly examine and address the issue of "standard of review" as referred to by ICANN in its 3 December 2014 Response to DCA's Memorial on the Merits or the "law applicable to these proceedings" as pleaded by DCA Trust in its 3 November 2014 Memorial on the Merits.

63. According to DCA Trust:

30. The version of ICANN's Articles of Incorporation and its Bylaws in effect at the time DCA filed its Request for IRP applies to these proceedings. [Articles of Incorporation of Internet Corporation for Assigned Names and Numbers (21 November 1998) and Bylaws of the Internet Corporation for Assigned Names and Numbers (11 April 2013)]. ICANN's agreement with the U.S. Department of Commerce, National Telecommunications & Information Administration ("NTIA"), the "Affirmation of Commitments," is also instructive, as it explains ICANN's obligations in light of its role as regulator of the Domain Name System ("DNS"). The standard of review is a *de novo* "independent review" of whether the actions of the Board violated the Bylaws, with focus on whether the Board acted without conflict of interest, with due diligence and care, and exercised independent judgment in the best interests of ICANN and its many stakeholders. (Underlining added).

31. All of the obligations enumerated in these documents are to be carried out *first* in conformity with "relevant principles of international law" and *second* in conformity with local law. As explained by Dr. Jack Goldsmith in his Expert Report submitted in *ICM v. ICANN*, the reference to "principles of international law" in ICANN's Articles of Incorporation should be understood to include both customary international law and general principles of law.

64. In response, ICANN submits that:

11. The IRP is a unique process available under ICANN's Bylaws for persons or entities that claim to have been materially and adversely affected by a decision or action of the ICANN Board, but only to the extent that Board action was inconsistent with ICANN's Bylaws or Articles. This IRP Panel is tasked with providing its opinion as to whether the challenged Board actions violated ICANN's Bylaws or Articles. ICANN's Bylaws specifically identify the deferential standard of review that the IRP Panel must apply when evaluating the actions of the ICANN Board, focusing on:

- a. Did the Board act without conflict of interest in taking its decision?;
- b. Did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
- c. Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

12. DCA disregards the plain language of ICANN's Bylaws and relies instead on the IRP Panel's declaration in a prior Independent Review proceeding, *ICM v. ICANN*. However, *ICM* was decided in 2010 under a previous version of ICANN's Bylaws. In its declaration, the *ICM* Panel explicitly noted that ICANN's then-current Bylaws "d[id] not specify or imply that the [IRP] process provided for s[hould] (or s[hould] not) accord deference to the decisions of the ICANN Board." As DCA acknowledges, the version of ICANN's Bylaws that apply to this proceeding are the version as amended in April 2013. The current Bylaws provide for the deferential standard of review set forth above. [Underlining is added]

- 65. For the following reasons, the Panel is of the view that the standard of review is a *de novo*, objective and independent one examining whether the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation and Bylaws.
- 66. ICANN is not an ordinary California nonprofit organization. Rather it has a large international purpose and responsibility to coordinate and ensure the stable and secure operation of the Internet's unique identifier systems.
- 67. Indeed, Article 4 of ICANN's Articles of Incorporation require ICANN to "operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets." ICANN's Bylaws also impose duties on it to act in an open, transparent and fair manner with integrity.
- 68. ICANN's Bylaws (as amended on 11 April 2013) which both Parties explicitly agree that applies to this IRP, reads in relevant parts as follows:

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in Section 2 of this Article, ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.

[...]

4. Requests for such independent review shall be referred to an Independent Review Process Panel [...], which shall be charged with comparing contested actions of the Board to Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:
 - a. did the Board act without conflict of interest in taking its decision?
 - b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
 - c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

69. Section 8 of the Supplementary Procedures similarly subject the IRP to the standard of review set out in subparagraphs a., b., and c., above, and add:

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

70. In the Panel's view, Article IV, Section 3, and Paragraph 4 of ICANN's Bylaws (reproduced above) – the Independent Review Process – was designed and set up to offer the Internet community, a *de novo, objective and independent* accountability process that would ensure that ICANN acted in a manner consistent with ICANN's Articles of Incorporation and Bylaws.
71. Both ICANN's Bylaws and the Supplementary Rules require an IRP Panel to *examine* and *decide* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws. As ICANN's Bylaws explicitly put it, an IRP Panel is "*charged with* comparing contested actions of the Board [...], and with *declaring* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws.

72. The IRP is the only independent third party process that allows review of board actions to ensure their consistency with the Articles of Incorporation or Bylaws. As already explained in this Panel’s 14 August 2014 Declaration on the IRP Procedure (“August 2014 Declaration”), the avenues of accountability for applicants that have disputes with ICANN do *not* include resort to the courts. Applications for gTLD delegations are governed by ICANN’s Guidebook, which provides that applicants waive all right to resort to the courts:

Applicant hereby releases ICANN [...] from any and all claims that arise out of, are based upon, or are in any way related to, any action or failure to act by ICANN [...] in connection with ICANN’s review of this application, investigation, or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend or not to recommend, the approval of applicant’s gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN ON THE BASIS OF ANY OTHER LEGAL CLAIM.

73. Thus, assuming that the foregoing waiver of any and all judicial remedies is valid and enforceable, then the only and ultimate “accountability” remedy for an applicant is the IRP.
74. As previously decided by this Panel, such accountability requires an organization to explain or give reasons for its activities, accept responsibility for them and to disclose the results in a transparent manner.
75. Such accountability also requires, to use the words of the IRP Panel in the *Booking.com B.V. v. ICANN* (ICDR Case Number: 50-20-1400-0247), this IRP Panel to “objectively” determine whether or not the Board’s actions are in fact consistent with the Articles of Incorporation, Bylaws and Guidebook, which this Panel, like the one in *Booking.com* “understands as requiring that the Board’s conduct be appraised independently, and without any presumption of correctness.”
76. The Panel therefore concludes that the “standard of review” in this IRP is a *de novo, objective and independent* one, which does not require any presumption of correctness.
77. With the above in mind, the Panel now turns its mind to whether or not the Board in this IRP acted or failed to act in a manner inconsistent

with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook.

DCA Trust's Position

78. In its 3 November 2014 Memorial on the Merits, DCA Trust criticizes ICANN for variety of shortcomings and breaches relating to the Articles of Incorporation, Bylaws and Applicant Guidebook. DCA Trust submits:

32. By preventing DCA's application from proceeding through the new gTLD review process and by coordinating with the AUC and others to ensure that the AUC obtained the rights to .AFRICA, ICANN breached its obligations of independence, transparency and due process contained in its Articles of Incorporation and Bylaws, including its obligation to conduct itself consistent with its duty of good faith under relevant principles of international law.

79. DCA Trust also pleads that ICANN breached its Articles of Incorporation and Bylaws by discriminating against DCA Trust and failing to permit competition for the .AFRICA gTLD, ICANN abused its Regulatory authority in its differential treatment of the ZACR and DCA Trust applications, and in contravention of the rules for the New gTLD Program, ICANN colluded with AUC to ensure that the AUC would obtain control over .AFRICA.

80. According to DCA Trust:

34. ICANN discriminated against DCA and abused its regulatory authority over new gTLDs by treating it differently from other new gTLD applicants without justification or any rational basis— particularly relative to DCA's competitor ZACR—and by applying ICANN's policies in an unpredictable and inconsistent manner so as to favor DCA's competitor for .AFRICA. ICANN staff repeatedly disparaged DCA and portrayed it as an illegitimate bidder for .AFRICA, and the Board failed to stop the discriminatory treatment despite protests from DCA.

35. Moreover, ICANN staff worked with InterConnect to ensure that ZACR, but not DCA, would be able to pass the GNP evaluation, even going so far as to draft a letter supporting ZACR for the AUC to submit back to ICANN. While ICANN staff purported to hold DCA to the strict geographic support requirement set forth in the AGB, once DCA was removed from contention for .AFRICA, ICANN staff immediately bypassed these very same rules in order to allow ZACR's application to pass the GNP evaluation. After DCA's application was pulled from processing on 7 June 2013, ICANN staff directed InterConnect to equate the AUC's support for ZACR's application as support from 100% of African governments. This was a complete change of policy for ICANN, which had insisted (until DCA's application was no longer being considered) that the AUC endorsement was not material to the geographic requirement.

36. However, none of the AUC statements ZACR submitted were adequate endorsements under the AGB, either. ICANN staff then took the remarkable step of drafting the AUC endorsement letter in order to enable ZACR to pass review. The Director of gTLD Operations, Trang Nguyen, personally composed an endorsement letter corresponding to all the AGB requirements for Commissioner Ibrahim's signature. Once Commissioner Ibrahim responded with a signed, stamped copy of the letter incorporating minor additions, ICANN staff rushed to pass ZACR's application just over one week later.

37. In its Response to the GAC Advice rendered against its application, DCA raised concerns that the two .AFRICA applications had been treated differently, though at the time it had no idea of just how far ICANN was going or would go to push ZACR's application through the process. Apparently the NGPC failed to make any inquiry into those allegations. .AFRICA was discussed at one meeting only, and there is no rationale listed for the NGPC's decision in the "Approved Resolutions" for the 4 June 2013 meeting. An adequate inquiry into ICANN staff's treatment of DCA's and ZACR's application—even simply asking the Director of gTLD Operations whether there was any merit to DCA's concerns—would have revealed a pattern of discriminatory behavior against DCA and special treatment by both ICANN staff and the ICANN Board in favor of ZACR's application.

38. In all of these acts and omissions, ICANN breached the AGB and its own Articles of Incorporation and Bylaws, which require it to act in good faith, avoid discriminating against any one party, and ensure open, accurate and unbiased application of its policies. Furthermore, ICANN breached principles of international law by failing to exercise its authority over the application process in good faith and committing an abuse of right by ghost-writing an endorsement letter for ZACR and the AUC, and then decreeing that the letter was all that would be needed for ZACR to pass. Finally, the Board's failure to inquire into the actions of its staff, even when on notice of the myriad of discriminatory actions, violates its obligation to comply with its Bylaws with appropriate care and diligence.

81. DCA Trust submits that the NGPC breached ICANN's Articles of Incorporation and Bylaws by failing to apply ICANN's Procedures in a neutral and objective manner with procedural fairness, when it accepted the GAC Objection Advice against DCA Trust, the NGPC should have investigated questions about the GAC Objection Advice being obtained through consensus, and the NGPC should have consulted with an independent expert about the GAC advice given that the AUC used the GAC to circumvent the AGB's community objection procedures.

82. According to DCA Trust:

44. The decision of the NGPC, acting pursuant to the delegated authority of the ICANN Board, to accept the purported "consensus" GAC Objection Advice, violated ICANN's Articles of Incorporation and Article III § 1 of its Bylaws, requiring transparency, consistency and fairness. ICANN ignored

the serious issues raised by DCA and others with respect to the rendering and consideration of the GAC Objection Advice, breaching its obligation to operate “to the maximum extent possible in an open and transparent manner and consistent with procedures designed to ensure fairness.” It also breaches ICANN’s obligation under Article 4 of its Articles of Incorporation to abide by principles of international law, including good faith application of rules and regulations and the prohibition on the abuse of rights.

45. The NGPC gave undue deference to the GAC and failed to investigate the serious procedural irregularities and conflicts of interest raised by DCA and others relating to the GAC’s Objection Advice on .AFRICA. ICANN had a duty under principles of international law to exercise good faith and due diligence in evaluating the GAC advice rather than accepting it wholesale and without question, despite having notice of the irregular manner in which the advice was rendered. Importantly, ICANN was well aware that the AUC was using the GAC to effectively reserve .AFRICA for itself, pursuant to ICANN’s own advice that it should use the GAC for that purpose and contrary to the New gTLD Program objective of enhancing competition for TLDs. The AUC’s very presence on the GAC as a member rather than an observer demonstrates the extraordinary lengths ICANN took to ensure that the AUC was able to reserve .AFRICA for its own use notwithstanding the new gTLD application process then underway.

46. The ICANN Board and staff members had actual knowledge of information calling into question the notion that there was a consensus among the GAC members to issue the advice against DCA’s application, prohibiting the application of the rule in the AGB concerning consensus advice (which creates a “strong presumption” for the Board that a particular application “should not proceed” in the gTLD evaluation process). The irregularities leading to the advice against DCA’s application included proposals offered by Alice Munyua, who no longer represented Kenya as a GAC advisor at the time, and the fact that the genuine Kenya GAC advisor expressly refused to endorse the advice. Redacted - GAC Designated

Confidential Information

Finally, the ICANN Board knew very well that the AUC might attempt to use the GAC in an anticompetitive manner, since it was ICANN itself that informed the AUC it could use the GAC to achieve that very goal.

47. At a bare minimum, this information put ICANN Board and staff members on notice that further investigation into the rationale and support for the GAC’s decision was necessary. During the very meeting wherein the NGPC accepted the Objection Advice, the NGPC acknowledged that due diligence required a conversation with the GAC, even where the advice was consensus advice. The evidence shows that ICANN simply decided to push through the AUC’s appointed applicant in order to allow the AUC to control .AFRICA, as it had previously requested.

48. Even if the GAC’s Objection Advice could be characterized as “consensus” advice, the NGPC’s failure to consult with an independent expert about the GAC’s Objection Advice was a breach of ICANN’s duty to act to the “maximum extent feasible in an open and transparent manner

and consistent with procedures designed to ensure fairness.” The AGB specifically provides that when the Board is considering any form of GAC advice, it “may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.”

49. Given the unique circumstances surrounding the applications for .AFRICA—namely that one applicant was the designee of the AUC, which wanted to control .AFRICA without competition— ICANN should not have simply accepted GAC Objection Advice, proposed and pushed through by the AUC. If it was in doubt as to how to handle GAC advice sponsored by DCA’s only competitor for .AFRICA, it could have and should have consulted a third-party expert in order to obtain appropriate guidance. Its failure to do so was, at a minimum, a breach of ICANN’s duty of good faith and the prohibition on abuse of rights under international law. In addition, in light of the multiple warning signs identified by DCA in its Response to the GAC Objection Advice and its multiple complaints to the Board, failure to consult an independent expert was certainly a breach of the Board’s duty to ensure its fair and transparent application of its policies and its duty to promote and protect competition.

83. DCA Trust also submits that the NGPC breached ICANN’s Articles of Incorporation and Bylaws by failing to apply its procedures in a neutral and objective manner, with procedural fairness, when it approved the BGC’s recommendation not to reconsider the NGPC’s acceptance of the GAC Objection Advice against DCA.

84. According to DCA Trust:

50. Not only did the NGPC breach ICANN’s Articles of Incorporation and its Bylaws by accepting the GAC’s Objection Advice, but the NGPC also breached ICANN’s Articles of Incorporation and its Bylaws by approving the BGC’s recommendation not to reconsider the NGPC’s earlier decision to accept the GAC Objection Advice. Not surprisingly, the NGPC concluded that its earlier decision should not be reconsidered.

51. First, the NGPC’s decision not to review its own acceptance of the GAC Objection Advice lacks procedural fairness, because the NGPC literally reviewed its own decision to accept the Objection Advice. It is a well-established general principle of international law that a party cannot be the judge of its own cause. No independent viewpoint entered into the process. In addition, although Mr. Silber recused himself from the vote on .AFRICA, he remained present for the entire discussion of .AFRICA, and Mr. Disspain apparently concluded that he did not feel conflicted, so both participated in the discussion and Mr. Disspain voted on DCA’s RFR.

52. Second, the participation of the BGC did not provide an independent intervention into the NGPC’s decision-making process, because the BGC is primarily a subset of members of the NGPC. At the time the BGC made its recommendation, the majority of BGC members were also members of the NGPC.

53. Finally, the Board did not exercise due diligence and care in accepting the BGC's recommendation, because the BGC recommendation essentially proffered the NGPC's inadequate diligence in accepting the GAC Objection Advice in the first place, in order to absolve the NGPC of the responsibility to look into any of DCA's grievances in the context of the Request for Review. The basis for the BGC's recommendation to deny was that DCA did not state proper grounds for reconsideration, because failure to follow correct procedure is not a ground for reconsideration, and DCA did not identify the actual information an independent expert would have provided, had the NGPC consulted one. Thus, the BGC essentially found that the NGPC did not fail to take account of material information, because the NGPC did not have before it the material information that would have been provided by an independent expert's viewpoint. The BGC even claimed that if DCA had wanted the NGPC to exercise due diligence and consult an independent expert, DCA should have made such a suggestion in its Response to the GAC Objection Advice. Applicants should not have to remind the Board to comply with its Bylaws in order for the Board to exercise due diligence and care.

54. ICANN's acts and omissions with respect to the BGC's recommendation constitute further breaches of ICANN's Bylaws and Articles of Incorporation, including its duty to carry out its activities in good faith and to refrain from abusing its position as the regulator of the DNS to favor certain applicants over others.

85. Finally, DCA Trust pleads that:

[As] a result of the Board's breaches of ICANN's Articles of Incorporation, Bylaws and general principles of international law, ICANN must halt the process of delegating .AFRICA to ZACR and ZACR should not be permitted to retain the rights to .AFRICA it has procured as a result of the Board's violations. Because ICANN's handling of the new gTLD application process for .AFRICA was so flawed and so deeply influenced by ICANN's relationships with various individuals and organizations purporting to represent "the African community," DCA believes that any chance it may have had to compete for .AFRICA has been irremediably lost and that DCA's application could not receive a fair evaluation even if the process were to be re-set from the beginning. Under the circumstances, DCA submits that ICANN should remove ZACR's application from the process altogether and allow DCA's application to proceed under the rules of the New gTLD Program, allowing DCA up to 18 months to negotiate with African governments to obtain the necessary endorsements so as to enable the delegation and management of the .AFRICA string.

ICANN's Position

86. In its Response to DCA's Memorial on the Merits filed on 3 December 2014 ("ICANN Final Memorial"), ICANN submits that:

2. [...] Pursuant to ICANN's New gTLD Applicant Guidebook ("Guidebook"), applications for strings that represent geographic regions—such as "Africa"—require the support of at least 60% of the respective national governments in the relevant region. As DCA has acknowledged on

multiple occasions, including in its Memorial, DCA does not have the requisite governmental support; indeed, DCA now asks that ICANN be required to provide it with eighteen more months to try to gather the support that it was supposed to have on the day it submitted its application in 2012.

3. DCA is using this IRP as a means to challenge the right of African countries to support a specific (and competing) application for .AFRICA, and to rewrite the Guidebook. The Guidebook provides that countries may endorse multiple applications for the same geographic string. However, in this instance, the countries of Africa chose to endorse only the application submitted by ZA Central Registry (“ZACR”) because ZACR prevailed in the Request for Proposal (“RFP”) process coordinated by the African Union Commission (“AUC”), a process that DCA chose to boycott. There was nothing untoward about the AUC’s decision to conduct an RFP process and select ZACR, nor was there anything inappropriate about the African countries’ decision to endorse only ZACR’s application.

4. Subsequently, as they had every right to do, GAC representatives from Africa urged the GAC to issue advice to the ICANN Board that DCA’s application for .AFRICA not proceed (the “GAC Advice”). One or more countries from Africa—or, for that matter, from any continent—present at the relevant GAC meeting could have opposed the issuance of this GAC Advice, yet not a single country stated that it did not want the GAC to issue advice to the ICANN Board that DCA’s application should not proceed. As a result, under the GAC’s rules, the GAC Advice was “consensus” advice.

5. GAC consensus advice against an application for a new gTLD creates a “strong presumption” for ICANN’s Board that the application should not proceed. In accordance with the Guidebook’s procedures, the Board’s New gTLD Program Committee (the “NGPC”) considered the GAC Advice, considered DCA’s response to the GAC Advice, and properly decided to accept the GAC Advice that DCA’s application should not proceed. As ZACR’s application for .AFRICA subsequently passed all evaluation steps, ICANN and ZACR entered into a registry agreement for the operation of .AFRICA. Following this Panel’s emergency declaration, ICANN has thus far elected not to proceed with the delegation of the .AFRICA TLD into the Internet root zone.

6. DCA’s papers contain much mudslinging and many accusations, which frankly do not belong in these proceedings. According to DCA, the entire ICANN community conspired to prevent DCA from being the successful applicant for .AFRICA. However, the actions that DCA views as nefarious were, in fact, fully consistent with the Guidebook. They also were not actions taken by the Board or the NGPC that in any way violated ICANN’s Bylaws or Articles, the only issue that this IRP Panel is tasked with assessing.

87. ICANN submits that the Board properly advised the African Union’s member states of the Guidebook Rules regarding geographic strings, the NGPC did not violate the Bylaws or Articles of Incorporation by accepting the GAC Advice, the AUC and the African GAC members properly supported the .AFRICA applicant chosen through the RFP

process, the GAC issued consensus advice opposing DCA's application and the NGPC properly accepted the consensus GAC Advice.

88. According to ICANN:

13. DCA's first purported basis for Independent Review is that ICANN improperly responded to a 21 October 2011 communiqué issued by African ministers in charge of Communication and Information Technologies for their respective countries ("Dakar Communiqué"). In the Dakar Communiqué, the ministers, acting pursuant to the Constitutive Act of the African Union, committed to continued and enhanced participation in ICANN and the GAC, and requested that ICANN's Board take numerous steps aimed at increasing Africa's representation in the ICANN community, including that ICANN "include ['Africa'] and its representation in any other language on the Reserved Names List in order [for those strings] to enjoy [] special legislative protection, so [they could be] managed and operated by the structure that is selected and identified by the African Union."

14. As DCA acknowledges, in response to the request in the Dakar Communiqué that .AFRICA (and related strings) be reserved for a operator of the African ministers' own choosing, ICANN advised that .AFRICA and its related strings could not be placed on the Reserved Names List because ICANN was "not able to take actions that would go outside of the community-established and documented guidelines of the program." Instead, ICANN explained that, pursuant to the Guidebook, "protections exist that w[ould] allow the African Union and its member states to play a prominent role in determining the outcome of any application for these top-level domain name strings."

15. It was completely appropriate for ICANN to point the AU member states to the publicly-stated Guidebook protections for geographic names that were put in place to address precisely the circumstance at issue here—where an application for a string referencing a geographic designation did not appear to have the support of the countries represented by the string. DCA argues that ICANN was giving "instructions . . . as to how to bypass ICANN's own rules," but all ICANN was doing was responding to the Dakar Communiqué by explaining the publicly-available rules that ICANN already had in place. This conduct certainly did not violate ICANN's Bylaws or Articles.

16. In particular, ICANN explained that, pursuant to the Guidebook, "Africa" constitutes a geographic name, and therefore any application for .AFRICA would need: (i) documented support from at least 60% of the national governments in the region; and (ii) no more than one written statement of objection . . . from "relevant governments in the region and/or from public authorities associated with the continent and region." Next, ICANN explained that the Guidebook provides an opportunity for the GAC, whose members include the AU member states, to provide "Early Warnings" to ICANN regarding specific gTLD applications. Finally, ICANN explained that there are four formal objection processes that can be initiated by the public, including the Community Objection process, which may be filed where there is "substantial opposition to the gTLD application from a significant

portion of the community to which the gTLD string may be explicitly or implicitly targeted. Each of these explanations was factually accurate and based on publicly available information. Notably, ICANN did not mention the possibility of GAC consensus advice against a particular application (and, of course, such advice could not have occurred if even a single country had voiced its disagreement with that advice during the GAC meeting when DCA's application was discussed).

17. DCA's objection to ICANN's response to the Dakar Communiqué reflects nothing more than DCA's dissatisfaction with the fact that African countries, coordinating themselves through the AUC, opposed DCA's application. However, the African countries had every right to voice that opposition, and ICANN's Board acted properly in informing those countries of the avenues the Guidebook provided them to express that opposition.

18. In another attempt to imply that ICANN improperly coordinated with the AUC, DCA insinuates that the AUC joined the GAC at ICANN's suggestion. ICANN's response to the Dakar Communiqué does not even mention this possibility. Further, in response to DCA's document requests, ICANN searched for communications between ICANN and the AUC relating to the AUC becoming a voting member of the GAC, and the search revealed no such communications. This is not surprising given that ICANN has no involvement in, much less control over, whether the GAC grants to any party voting membership status, including the AUC; that decision is within the sole discretion of the GAC. ICANN's Bylaws provide that membership in the GAC shall be open to "multinational governmental organizations and treaty organizations, on the invitation of the [GAC] through its Chair." In any event, whether the AUC was a voting member of the GAC is irrelevant to DCA's claims. As is explained further below, the AUC alone would not have been able to orchestrate consensus GAC Advice opposing DCA's application.

19. DCA's next alleged basis for Independent Review is that ICANN's NGPC improperly accepted advice from the GAC that DCA's application should not proceed. However, nearly all of DCA's Memorial relates to conduct of the AUC, the countries of the African continent, and the GAC. None of these concerns is properly the subject of an Independent Review proceeding because they do not implicate the conduct of the ICANN Board or the NGPC. The only actual decision that the NGPC made was to accept the GAC Advice that DCA's application for .AFRICA should not proceed, and that decision was undoubtedly correct, as explained below.

20. Although the purpose of this proceeding is to test whether ICANN's Board (or, in this instance, the NGPC) acted in conformance with its Bylaws and Articles, ICANN addresses the conduct of third parties in the next few sections because that additional context demonstrates that the NGPC's decision to accept the GAC Advice—the only decision reviewable here—was appropriate in all aspects.

21. After DCA's application was posted for public comment (as are all new gTLD applications), sixteen African countries—Benin, Burkina Faso, Comoros, Cameroon, Democratic Republic of Congo, Egypt, Gabon, Ghana, Kenya, Mali, Morocco, Nigeria, Senegal, South Africa, Tanzania and Uganda—submitted GAC Early Warnings regarding DCA's application.

Early Warnings are intended to “provid[e] [] applicant[s] with an indication that the[ir] application is seen as potentially sensitive or problematic by one or more governments.” These African countries used the Early Warnings to notify DCA that they had requested the AUC to conduct an RFP for .AFRICA, that ZACR had been selected via that RFP, and that they objected to DCA’s application for .AFRICA. They further notified DCA that they did not believe that DCA had the requisite support of 60% of the countries on the African continent.

22. DCA minimizes the import of these Early Warnings by arguing that they did not involve a “permissible reason” for objecting to DCA’s application. But DCA does not explain how any of these reasons was impermissible, and the Guidebook explicitly states that Early Warnings “may be issued for any reason.” DCA demonstrated the same dismissive attitude towards the legitimate concerns of the sixteen governments that issued Early Warnings by arguing to the ICANN Board and the GAC that the objecting governments had been “teleguided (or manipulated).”

23. In response to these Early Warnings, DCA conceded that it did not have the necessary level of support from African governments and asked the Board to “waive th[e] requirement [that applications for geographic names have the support of the relevant countries] because of the confusing role that was played by the African Union.” DCA did not explain how the AUC’s role was “confusing,” and DCA ignored the fact that, pursuant to the Guidebook, the AUC had every right to promote one applicant over another. The AUC’s decision to promote an applicant other than DCA did not convert the AUC’s role from proper to improper or from clear to confusing.

24. Notably, long before the AUC opposed DCA’s application, DCA itself recognized the AUC’s important role in coordinating continent-wide technology initiatives. In 2009, DCA approached the AUC for its endorsement prior to seeking the support of individual African governments. DCA obtained the AUC’s support at that time, including the AUC’s commitment to “assist[] in the coordination of [the] initiative with African Ministers and Governments.”

25. The AUC, however, then had a change of heart (which it was entitled to do, particularly given that the application window for gTLD applications had not yet opened and would not open for almost two more years). On 7 August 2010, African ministers in charge of Communication and Information Technologies for their respective countries signed the Abuja Declaration. In that declaration, the ministers requested that the AUC coordinate various projects aimed at promoting Information and Communication Technologies projects on the African continent. Among those projects was “set[ting] up the structure and modalities for the [i]mplementation of the DotAfrica Project.”

26. Pursuant to that mandate, the AUC launched an open RFP process, seeking applications from private organizations (including DCA) interested in operating the .AFRICA gTLD. The AUC notified DCA that “following consultations with relevant stakeholders . . . [it] no longer endorse[d] individual initiatives [for .AFRICA].” Instead, “in coordination with the Member States . . . the [AUC] w[ould] go through [an] open [selection]

process”—hardly an inappropriate decision (and not a decision of ICANN or its Board). DCA then refused to participate in the RFP process, thereby setting up an inevitable clash with whatever entity the AUC selected. When DCA submitted its gTLD application in 2012 and attached its 2009 endorsement letter from the AUC, DCA knew full well (but did not disclose) that the AUC had retracted its support.

27. In sum, the objecting governments' concerns were the result of DCA's own decision to boycott the AUC's selection process, resulting in the selection of a different applicant, ZACR, for .AFRICA. Instead of addressing those governments' concerns, and instead of obtaining the necessary support of 60% of the countries on the African continent, DCA asked ICANN to re-write the Guidebook in DCA's favor by eliminating the most important feature of any gTLD application related to a geographic region—the support of the countries in that region. ICANN, in accordance with its Bylaws, Articles and Guidebook, properly ignored DCA's request to change the rules for DCA's benefit.

28. At its 10 April 2013 meeting in Beijing, the GAC advised ICANN that DCA's application for .AFRICA should not proceed.⁴⁰ As noted earlier, the GAC operates on the basis of consensus: if a single GAC member at the 10 April 2013 meeting (from any continent, not just from Africa) had opposed the advice, the advice would not have been considered “consensus.”⁴¹ As such, the fact that the GAC issued consensus GAC Advice against DCA's application shows that not a single country opposed that advice. Most importantly, this included Kenya: Michael Katundu, the GAC Representative for Kenya, and Kenya's only official GAC representative, was present at the 10 April 2013 Beijing meeting and did not oppose the issuance of the consensus GAC Advice.

29. DCA attempts to argue that the GAC Advice was not consensus advice and relies solely on the purported email objection of Sammy Buruchara, Kenya's GAC advisor (as opposed to GAC representative). As a preliminary matter (and as DCA now appears to acknowledge), the GAC's Operating Principles require that votes on GAC advice be made in person. Operating Principle 19 provides that:

If a Member's accredited representative, or alternate representative, is not present at a meeting, then it shall be taken that the Member government or organisation is not represented at that meeting. Any decision made by the GAC without the participation of a Member's accredited representative shall stand and nonetheless be valid.

Similarly, Operating Principle 40 provides:

One third of the representatives of the Current Membership with voting rights shall constitute a quorum at any meeting. A quorum shall only be necessary for any meeting at which a decision or decisions must be made. The GAC may conduct its general business face-to-face or online.

25. DCA argues that Mr. Buruchara objected to the GAC Advice via email, but even if objections could be made via email (which they cannot), Mr. Katundu, Kenya's GAC representative who was in Beijing at the GAC

meeting, not Mr. Buruchara, Kenya's GAC advisor, was authorized to speak on Kenya's behalf. Accordingly, under the GAC rules, Mr. Buruchara's email exchanges could not have constituted opposition to the GAC Advice.

26. Redacted - GAC Designated Confidential Information

And, tellingly, DCA did not to submit a declaration from Mr. Buruchara, which might have provided context or support for DCA's argument.

27. Redacted - GAC Designated Confidential Information

28. Notably, immediately prior to becoming Kenya's GAC advisor, Mr. Buruchara had served as the chairman of DCA's Strategic Advisory Board. But despite Mr. Buruchara's close ties with DCA and with Ms. Bekele, the Kenyan government had: (i) endorsed the Abuja Declaration; (ii) supported the AUC's processes for selecting the proposed registry operator; and (iii) issued an Early Warning objecting to DCA's application.

In other words, the Kenyan government was officially on record as supporting ZACR's application and opposing DCA's application, regardless of what Mr. Buruchara was writing in emails.

29. Furthermore, correspondence produced by DCA in this proceeding (but not referenced in either of DCA's briefs) shows that, despite Ms. Bekele's and Mr. Buruchara's efforts to obtain the support (or at least non-opposition) of the Kenyan government, the Kenyan government had rescinded its earlier support of DCA in favor of ZACR. For example, in February 2013, Ms. Bekele emailed a Kenyan government official asking that Kenya issue an Early Warning regarding ZACR's application. The official responded that he would have to escalate the matter to the Foreign Ministry because the Kenyan president "was part of the leaders of the AU who endorsed AU to be the custodian of dot Africa." On 10 April 2013, Ms. Bekele emailed Mr. Buruchara, asking him to make further points objecting to the proposed GAC advice. Mr. Buruchara responded that he was unable to do so because the Kenyan government had been informed (erroneously informed, according to Mr. Buruchara), that Mr. Buruchara was "contradict[ing] the Heads of State agreement in Abuja." On 8 July 2013,

Mr. Buruchara explained to Ms. Bekele that he “stuck [his] neck out for DCA inspite [*sic*] of lack of Govt support.”

30. Because DCA did not submit a declaration from Mr. Buruchara (and because Ms. Bekele’s declaration is, of course, limited to her own interpretation of email correspondence drafted by others), the Panel is left with a record demonstrating that: (i) Mr.

Buruchara was not authorized by the Kenyan government to oppose the GAC Advice; Redacted - GAC Designated Confidential Information and (iii) the actual GAC representative from Kenya (Mr. Katundu) attended the 10 April 2013 meeting in Beijing and did not oppose the issuance of the consensus GAC Advice that DCA’s application for .AFRICA should not proceed.

31. In short, DCA’s primary argument in support of this Independent Review proceeding—that the GAC should not have issued consensus advice against DCA’s application—is not supported by any evidence and is, instead, fully contradicted by the evidence. And, of course, Independent Review proceedings do not test whether the GAC’s conduct was appropriate (even though in this instance there is no doubt that the GAC appropriately issued consensus advice).

32. As noted above, pursuant to the Guidebook, GAC consensus advice that a particular application should not proceed creates a “strong presumption for the ICANN Board that the application should not be approved.” The ICANN Board would have been required to develop a reasoned and well-supported rationale for not accepting the consensus GAC Advice; no such reason existed at the time the NGPC resolved to accept that GAC Advice (5 June 2013), and no such reason has since been revealed. The consensus GAC Advice against DCA’s application was issued in the ordinary course, it reflected the sentiment of numerous countries on the African continent, and it was never rescinded.

33. DCA’s objection to the Board’s acceptance of the GAC Advice is twofold. First, DCA argues that the NGPC failed to investigate DCA’s allegation that the GAC advice was not consensus advice. Second, DCA argues that the NGPC should have consulted an independent expert prior to accepting the advice. DCA also argued in its IRP Notice that two NGPC members had conflicts of interest when they voted to accept the GAC Advice, but DCA does not pursue that argument in its Memorial (and the facts again demonstrate that DCA’s argument is incorrect).

34. As to the first argument, the Guidebook provides that, when the Board receives GAC advice regarding a particular application, it publishes that advice and notifies the applicant. The applicant is given 21 days from the date of the publication of the advice to submit a response to the Board. Those procedures were followed here. Upon receipt of the GAC Advice, ICANN posted the advice and provided DCA with an opportunity to respond. DCA submitted a lengthy response explaining “[w]hy DCA Trust disagree[d]” with the GAC Advice. A primary theme was that its application had been unfairly blocked by the very countries whose support the Guidebook required DCA to obtain, and that the AUC should not have been allowed to endorse an applicant for .AFRICA. DCA argued that it had been

unfairly “victimized” and “muzzled into insignificance” by the “collective power of the governments represented at ICANN,” and that “the issue of government support [should] be made irrelevant in the process so that both contending applications for .Africa would be allowed to move forward” In other words, DCA was arguing that the AUC’s input was inappropriate, and DCA was requesting that ICANN change the Guidebook requirement regarding governmental support for geographic names in order to accommodate DCA. ICANN’s NGPC reviewed and appropriately rejected DCA’s arguments.

35. One of DCA’s three “supplementary arguments,” beginning on page 10 of its response to the GAC Advice, was that there had been no consensus GAC advice, in part allegedly evidenced by Mr. Buruchara’s (incomplete) email addressed above. DCA, however, chose not to address the fact that: (i) DCA lacked the requisite support of the African governments; (ii) Mr. Buruchara was not the Kenyan GAC representative; (iii) Mr. Buruchara was not at the Beijing meeting; (iv) the government of Kenya had withdrawn any support it may have previously had for DCA’s application; and (iv) the actual Kenyan GAC representative (Mr. Katundu) was at the ICANN meeting in Beijing and did not oppose the issuance of the GAC Advice against DCA’s application for .AFRICA. All of these facts were well known to DCA at the time of its response to the GAC Advice.

36. The NGPC’s resolution accepting the GAC Advice states that the NGPC considered DCA’s response prior to accepting the GAC Advice, and DCA presents no evidence to the contrary. DCA’s disagreement with the NGPC’s decision does not, of course, demonstrate that the NGPC failed to exercise due diligence in determining to accept the consensus GAC Advice.

37. As to DCA’s suggestion that the NGPC should have consulted an independent expert, the Guidebook provides that it is within the Board’s discretion to decide whether to consult with an independent expert:

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.

The NGPC clearly did not violate its Bylaws, Articles or Guidebook in deciding that it did not need to consult any independent expert regarding the GAC Advice. Because DCA’s challenge to the GAC Advice was whether one or more countries actually had opposed the advice, there was no reason for the NGPC to retain an “expert” on that subject, and DCA has never stated what useful information an independent expert possibly could have provided.

89. ICANN also submits that the NGPC properly denied DCA’s request for reconsideration, ICANN’s actions following the acceptance of the GAC Advice are not relevant to the IRP, and in any event they were not improper, the ICANN staff directed the ICC to treat the two

African applications consistently, and ICANN staff did not violate any policy in drafting a template letter at the AUC request.

90. According to ICANN:

38. DCA argues that the NGPC improperly denied DCA's Reconsideration Request, which sought reconsideration of the NGPC's acceptance of the GAC Advice. Reconsideration is an accountability mechanism available under ICANN's Bylaws and administered by ICANN's Board Governance Committee ("BGC"). DCA's Reconsideration Request asked that the NGPC's acceptance of the GAC Advice be rescinded and that DCA's application be reinstated. Pursuant to the Bylaws, reconsideration of a Board (or in this case NGPC) action is appropriate only where the NGPC took an action "without consideration of material information" or in "reliance on false or inaccurate material information."

39. In its Reconsideration Request, DCA argued (as it does here) that the NGPC failed to consider material information by failing to consult with an independent expert prior to accepting the GAC Advice. The BGC noted that DCA had not identified any material information that the NGPC had not considered, and that DCA had not identified what advice an independent expert could have provided to the NGPC or how such advice might have altered the NGPC's decision to accept the GAC Advice. The BGC further noted that, as discussed above, the Guidebook is clear that the decision to consult an independent expert is at the discretion of the NGPC.

40. DCA does not identify any Bylaws or Articles provision that the NGPC violated in denying the Reconsideration Request. Instead, DCA simply disagrees with the NGPC's determination that DCA had not identified any material information on which the NGPC failed to rely. That disagreement is not a proper basis for a Reconsideration Request or an IRP. DCA also argues (again without citing to the Bylaws or Articles) that, because the NGPC accepted the GAC Advice, the NGPC could not properly consider DCA's Reconsideration Request. In fact, the DCA's Reconsideration Request was handled exactly in the manner prescribed by ICANN's Bylaws: the BGC—a separate Board committee charged with considering Reconsideration Requests—reviewed the material and provided a recommendation to the NGPC. The NGPC then reviewed the BGC's recommendation and voted to accept it. In short, the various Board committees conducted themselves exactly as ICANN's Bylaws require.

41. The NGPC accepted the GAC Advice on 4 June 2013. As a result, DCA's application for .AFRICA did not proceed. In its Memorial, DCA attempts to cast aspersions on ICANN's evaluation of ZACR's application, but that evaluation has no bearing on whether the NGPC acted consistently with its Bylaws and Articles in handling the GAC advice related to DCA's application. Indeed, the evaluation of ZACR's application did not involve any action by ICANN's Board (or NGPC), and is therefore not a proper basis for Independent Review. Although the actions of ICANN's staff are not relevant to this proceeding, ICANN addresses DCA's allegations for the sake of thoroughness and because the record demonstrates that ZACR's application was evaluated fully in conformance with the Guidebook requirements.

42. DCA alleges that “ICANN staff worked with [the ICC] to ensure that ZACR, but not DCA, would be able to pass the GNP evaluation.” DCA’s argument is based on false and unsupported characterizations of the ICC’s evaluation of the two .AFRICA applications.

43. First, DCA claims (without relevant citation) that ICANN determined that the AUC’s endorsement would count as an endorsement from each of the AU’s member states only after ICANN had stopped processing DCA’s application. In fact, the record indicates that ICANN accepted the ICC’s recommendation that the AUC’s endorsement would qualify as an endorsement from each of the AU’s member states while DCA’s application was still in contention, at a time when the recommendation had the potential to benefit both applicants for .AFRICA (had DCA also in fact received the AUC’s support).

44. The Guidebook provides that the Geographic Names Panel is responsible for “verifying the relevance and authenticity of supporting documentation.” Accordingly, it was the ICC’s responsibility to evaluate how the AUC’s endorsement should be treated. The ICC recommended that the AUC’s endorsement should count as an endorsement from each of the AU’s member states. The ICC’s analysis was based on the Abuja Declaration, which the ICC interpreted as “instruct[ing] the [AUC] to pursue the DotAfrica project, and in [the ICC’s] independent opinion, provide[d] suitable evidence of support from relevant governments or public authorities.” The evidence shows that ICANN accepted the ICC’s recommendation before the NGPC accepted the GAC Advice regarding DCA’s application— in a 26 April 2013 email discussing the preparation of clarifying questions regarding the AUC’s letters of support, ICANN explained to the ICC that “if the applicant(s) is/are unable to obtain a revised letter of support from the AU [], they may be able to fulfill the requirements by approaching the individual governments.”

45. DCA also claims that ICANN determined that endorsements from the UNECA would not be taken into account for geographic evaluations. This simply is not true. Pursuant to the ICC’s advice, the UNECA’s endorsement was taken into account. Like the AUC, the UNECA had signed letters of support for both DCA and ZACR. The ICC advised that because the UNECA was specifically named in the Abuja Declaration, it too should be treated as a relevant public authority. ICANN accepted the ICC’s advice.

46. DCA argues that, after ICANN had stopped processing DCA’s application, ICANN staff improperly assisted the AUC in drafting a support letter for ZACR. As is reflected in the clarifying questions the ICC drafted regarding the endorsement letters submitted on behalf of each of the two .AFRICA applications, the Guidebook contains specific requirements for letters of support from governments and public authorities. In addition to “clearly express[ing] the government’s or public authority’s support for or non- objection to the applicant’s application,” letters must “demonstrate the government’s or public authority’s understanding of the string being requested and its intended use” and that “the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN”. In light of these specific requirements, the Guidebook even includes a sample letter of support.

47. The first letter of support that the AUC submitted for ZACR's application did not follow the correct format and resulted in a clarifying question from the ICC. As a result, the AUC requested ICANN staff's assistance in drafting a letter that conformed to the Guidebook's requirements. ICANN staff drafted a template based on the sample letter of support in the Guidebook, and the AUC then made significant edits to that template. DCA paints this cooperation as nefarious, but there was absolutely nothing wrong with ICANN staff assisting the AUC, assistance that DCA would certainly have welcomed, and which ICANN would have provided, had the AUC been supporting DCA instead of ZACR.

91. Finally, ICANN submits:

50. ICANN's conduct with respect to DCA's application for .AFRICA was fully consistent with ICANN's Bylaws, its Articles of Incorporation and the Applicant Guidebook. ICANN acted through open and transparent processes, evaluated DCA's application for .AFRICA in accordance with the procedures set forth in the Guidebook, and followed the procedures set forth in its Bylaws in evaluating DCA's Request for Reconsideration. ICANN provided assistance to those who requested, cooperated with governmental authorities, and respected the consensus advice issued by the GAC, which speaks on behalf of the governments of the world.

51. DCA knew, as did all applicants for new gTLDs, that some of the applications would be rejected. There can only be one registry operator for each gTLD string, and in the case of strings that relate to geographic regions, no application can succeed without the significant support of the countries in that region. There is no justification whatsoever for DCA's repeated urging that the support (or lack thereof) of the countries on the African continent be made irrelevant to the process.

52. Ultimately, the majority of the countries in Africa chose to support another application for the .AFRICA gTLD, and decided to oppose DCA's application. At a critical time, no country stood up to defend DCA's application. These countries—and the AUC— had every right to take a stand and to support the applicant of their choice. In this instance, that choice resulted in the GAC issuing consensus advice, which the GAC had every right to do. Nothing in ICANN's Bylaws or Articles, or in the Guidebook, required ICANN to challenge that decision, to ignore that decision, or to change the rules so that the input of the AUC, much less the GAC, would become irrelevant. To the contrary, the AUC's role with respect to the African community is critical, and it was DCA's decision to pursue a path at odds with the AUC that placed its application in jeopardy, not anything that ICANN (or ICANN's Board or the NGPC) did. The NGPC did exactly what it was supposed to do in this circumstance, and ICANN urges this IRP Panel to find as such. Such a finding would allow the countries of Africa to soon provide their citizens with what all parties involved believe to be a very important step for Africa – access to .AFRICA on the internet.

The Panel's Decision

92. The Panel in this IRP, has been asked to determine whether, in the case of the application of DCA Trust for the delegation of the .AFRICA top-level domain name in its 2012 General Top-Level Domains (“gTLD”) Internet Expansion Program (the “New gTLD Program”), the Board acted or failed to act in a manner inconsistent with ICANN’s Articles of Incorporation, Bylaws or the Applicant Guidebook?
93. After reviewing the documentation filed in this IRP, reading the Parties’ respective written submissions, reading the written statements and listening to the testimony of the three witnesses brought forward, listening to the oral presentations of the Parties’ legal representatives at the hearing in Washington, D.C., reading the transcript of the hearing, and deliberating, the Panel is of the unanimous view that certain actions and inactions of the ICANN Board (as described below) with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.
94. ICANN is bound by its own Articles of Incorporation to act fairly, neutrally, non-discriminatorily and to enable competition. Article 4 of ICANN’s Articles of Incorporation sets this out explicitly:
4. The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.
95. ICANN is also bound by its own Bylaws to act and make decisions “neutrally and objectively, with integrity and fairness.”
96. These obligations and others are explicitly set out in a number of provisions in ICANN’s Bylaws:

ARTICLE I: MISSION AND CORE (Council of Registrars) VALUES

Section 2. CORE (Council of Registrars) VALUES

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

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.

[...]

7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.

10. Remaining accountable to the Internet community through mechanisms that enhance ICANN (Internet Corporation for Assigned Names and Numbers)'s effectiveness.

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

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

ARTICLE II: POWERS

Section 1. GENERAL POWERS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board.

Section 3. NON-DISCRIMINATORY TREATMENT

ICANN (Internet Corporation for Assigned Names and Numbers) shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by

substantial and reasonable cause, such as the promotion of effective competition.

ARTICLE III: TRANSPARENCY

Section 1. PURPOSE

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

97. As set out in Article IV (Accountability and Review) of ICANN's Bylaws, in carrying out its mission as set out in its Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws and with due regard for the core values set forth in Article I of the Bylaws.
98. As set out in Section 3 (Independent Review of Board Actions) of Article IV, "any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and casually connected to the Board's alleged violation of the Bylaws or Articles of Incorporation, and not as a result of third parties acting in line with the Board's action."
99. In this IRP, among the allegations advanced by DCA Trust against ICANN, is that the ICANN Board, and its constituent body, the GAC, breached their obligation to act transparently and in conformity with procedures that ensured fairness. In particular, DCA Trust criticizes the ICANN Board here, for allowing itself to be guided by the GAC, a body "with apparently no distinct rules, limited public records, fluid definitions of membership and quorums" and unfair procedures in dealing with the issues before it.
100. According to DCA Trust, ICANN itself asserts that the GAC is a "constituent body." The exchange between the Panel and counsel for ICANN at the in-person hearing in Washington, D.C. is a living proof of that point.

HONORABLE JUDGE CAHILL:

Are you saying we should only look at what the Board does? The reason I'm asking is that your -- the Bylaws say that ICANN and its constituent bodies shall operate, to the maximum extent feasible, in an open and transparent manner. Does the constituent bodies include, I don't know,

GAC or anything? What is "constituent bodies"?

MR. LEVEE:

Yeah. What I'll talk to you about tomorrow in closing when I lay out what an IRP Panel is supposed to address, the Bylaws are very clear. Independent Review Proceedings are for the purpose of testing conduct or inaction of the ICANN Board. They don't apply to the GAC. They don't apply to supporting organizations. They don't apply to Staff.

HONORABLE JUDGE CAHILL:

So you think that the situation is a -- we shouldn't be looking at what the constituent -- whatever the constituent bodies are, even though that's part of your Bylaws?

MR. LEVEE:

Well, when I say not -- when you say not looking, part of DCA's claims that the GAC did something wrong and that ICANN knew that.

HONORABLE JUDGE CAHILL:

So is GAC a constituent body?

MR. LEVEE:

It is a constituent body, to be clear --

HONORABLE JUDGE CAHILL:

Yeah.

MR. LEVEE:

-- whether -- I don't think an IRP Panel -- if the only thing that happened here was that the GAC did something wrong --

HONORABLE JUDGE CAHILL:

Right.

MR. LEVEE:

-- an IRP Panel would not be -- an Independent Review Proceeding is not supposed to address that, whether the GAC did something wrong.

Now, if ICANN knew -- the Board knew that the GAC did something wrong, and that's how they link it, they say, Look, the GAC did something wrong, and ICANN knew it, the Board -- if the Board actually knew it, then we're dealing with Board conduct.

The Board knew that the GAC did not, in fact, issue consensus advice. That's the allegation. So it's fair to look at the GAC's conduct.

101. The Panel is unanimously of the view that the GAC is a constituent body of ICANN. This is not only clear from the above exchange between the Panel and counsel for ICANN, but also from Article XI (Advisory Committees) of ICANN's Bylaws and the Operating Principles of the GAC. Section 1 (General) of Article XI of ICANN's Bylaws states:

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

Section 2, under the heading, Specific Advisory Committees states:

There shall be at least the following Advisory Committees:

1. Governmental Advisory Committee

a. The Governmental Advisory Committee should consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers) as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN (Internet Corporation for Assigned Names and Numbers)'s policies and various laws and international agreements or where they may affect public policy issues. [Underlining is that of the Panel]

Section 6 of the preamble of GAC's Operating Principles is also relevant. That Section reads as follows:

The GAC commits itself to implement efficient procedures in support of ICANN and to provide thorough and timely advice and analysis on relevant matters of concern with regard to government and public interests.

102. According to DCA Trust, based on the above, and in particular, Article III (Transparency), Section 1 of ICANN's Bylaws, therefore, the GAC was bound to the transparency and fairness obligations of that provision to "operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness", but as ICANN's own witness, Ms. Heather Dryden acknowledged during the hearing, the GAC did not act with transparency or in a manner designed to insure fairness.

Mr. ALI:

Q. But what was the purpose of the discussion at the Prague meeting with respect to AUC? If there really is no difference or distinction between voting/nonvoting, observer or whatever might be the opposite of observer,

or the proper terminology, what was -- what was the point?

THE WITNESS:

A. I didn't say there was no difference. The issue is that there isn't GAC agreement about what are the -- the rights, if you will, of -- of entities like the AUC. And there might be in some limited circumstances, but it's also an extremely sensitive issue. And so not all countries have a shared view about what those -- those entities, like the AUC, should be able to do.

Q. So not all countries share the same view as to what entities, such as the AUC, should be able to do. Is that what you said? I'm sorry. I didn't --

A. Right, because that would only get clarified if there is a circumstance where that link is forced. In our business, we talk about creative ambiguity. We leave things unclear so we don't have conflict.

103. As explained by ICANN in its Closing Presentation at the hearing, ICANN's witness, Ms. Heather Dryden also asserted that the GAC Advice was meaningless until the Board acted upon it. This last point is also clear from examining Article 1, Principle 2 and 5 of ICANN GAC's Operating Principles. Principle 2 states that "the GAC is not a decision making body" and Principle 5 states that "the GAC shall have no legal authority to act for ICANN".

MR. ALI:

Q. I would like to know what it is that you, as the GAC Chair, understand to be the consequences of the actions that the GAC will take --

HONORABLE JUDGE CAHILL:

The GAC will take?

MR. ALI:

Q. -- the GAC will take -- the consequences of the actions taken by the GAC, such as consensus advice?

HONORABLE JUDGE CAHILL:

There you go.

THE WITNESS:

That isn't my concern as the Chair. It's really for the Board to interpret the outputs coming from the GAC.

104. Ms. Dryden also stated that the GAC made its decision without providing any rationale and primarily based on politics and not on potential violations of national laws and sensitivities.

ARBITRATOR KESSEDJIAN:

So, basically, you're telling us that the GAC takes a decision to object to an applicant, and no reasons, no rationale, no discussion of the concepts that are in the rules?

THE WITNESS:

I'm telling you the GAC did not provide a rationale. And that was not a requirement for issuing a GAC --

HONORABLE JUDGE CAHILL:

But you also want to check to see if the countries are following the right -- following the rules, if there are reasons for rejecting this or it falls within the three things that my colleague's talking about.

THE WITNESS:

The practice among governments is that governments can express their view, whatever it may be. And so there's a deference to that.

That's certainly the case here as well.

105. ICANN was bound by its Bylaws to conduct adequate diligence to ensure that it was applying its procedures fairly. Section 1 of Article III of ICANN's Bylaws, require it and its constituent bodies to "operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. The Board must also as per Article IV, Section 3, Paragraph 4 exercise due diligence and care in having a reasonable amount of facts in front of it.
106. In this case, on 4 June 2013, the NGPC accepted the GAC Objection Advice to stop processing DCA Trust's application. On 1 August 2013, the BGC recommended to the NGPC that it deny DCA Trust's Request for Reconsideration of the NGPC's 4 June 2013 decision, and on 13 August 2013, the NGPC accepted the BGC's recommendation (i.e., the NGPC declined to reconsider its own decision) without any further consideration.
107. In this case, ICANN through the BGC was bound to conduct a meaningful review of the NGPC's decision. According to ICANN's Bylaws, Article IV, Section 2, the Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The [BGC] shall have the authority to, among other things, conduct whatever factual investigation is deemed appropriate, and request additional written submissions from the affected party, or from others.

108. Finally, the NGPC was not bound by – nor was it required to give deference to – the decision of the BGC.

109. The above, combined with the fact that DCA Trust was never given any notice or an opportunity in Beijing or elsewhere to make its position known or defend its own interests before the GAC reached consensus on the GAC Objection Advice, and that the Board of ICANN did not take any steps to address this issue, leads this Panel to conclude that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were not procedures designed to insure the fairness required by Article III, Sec. 1 above, and are therefore inconsistent with the Articles of Incorporation and Bylaws of ICANN.

110. The following excerpt of exchanges between the Panel and one of ICANN's witnesses, Ms. Heather Dryden, the then Chair of the GAC, provides a useful background for the decisions reached in this IRP:

PRESIDENT BARIN:

But be specific in this case. Is that what happened in the .AFRICA case?

THE WITNESS:

The decision was very quick, and --

PRESIDENT BARIN:

But what about the consultations prior? In other words, were -- were you privy to --

THE WITNESS:

No. If -- if colleagues are talking among themselves, then that's not something that the GAC, as a whole, is -- is tracking or -- or involved in. It's really those interested countries that are.

PRESIDENT BARIN:

Understood. But I assume -- I also heard you say, as the Chair, you never want to be surprised with something that comes up. So you are aware of -- or you were aware of exactly what was happening?

THE WITNESS:

No. No. You do want to have a good sense of where the problems are, what's going to come unresolved back to the full GAC meeting, but that's -- that's the extent of it.

And that's the nature of -- of the political process.

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HONORABLE JUDGE CAHILL:

Okay.

THE WITNESS:

-- that question was addressed via having that meeting.

PRESIDENT BARIN:

And what's your understanding of what -- what the consequence of that decision is or was when you took it? So what happens from that moment on?

THE WITNESS:

It's conveyed to the Board, so all the results, the agreed language coming out of GAC is conveyed to the Board, as was the case with the communiqué from the Beijing meeting.

PRESIDENT BARIN:

And how is that conveyed to the Board?

THE WITNESS:

Well, it's a written document, and usually Support Staff are forwarding it to Board Staff.

ARBITRATOR KESSEDJIAN:

Could you speak a little bit louder? I don't know whether I am tired, but I --

THE WITNESS:

Okay. So as I was saying, the document is conveyed to the Board once it's concluded.

PRESIDENT BARIN:

When you say "the document", are you referring to the communiqué?

THE WITNESS:

Yes.

PRESIDENT BARIN:

Okay. And there are no other documents?

THE WITNESS:

The communiqué --

PRESIDENT BARIN:

In relation to .AFRICA. I'm not interested in any other.

THE WITNESS:

Yes, it's the communiqué.

PRESIDENT BARIN:

And it's prepared by your staff? You look at it?

THE WITNESS:

Right --

PRESIDENT BARIN:

And then it's sent over to --

THE WITNESS:

-- right, it's agreed by the GAC in full, the contents.

PRESIDENT BARIN:

And then sent over to the Board?

THE WITNESS:

And then sent, yes.

PRESIDENT BARIN:

And what happens to that communiqué? Does the Board receive that and say, Ms. Dryden, we have some questions for you on this, or --

THE WITNESS:

Not really. If they have questions for clarification, they can certainly ask that in a meeting. But it is for them to receive that and then interpret it and -- and prepare the Board for discussion or decision.

PRESIDENT BARIN:

Okay. And in this case, you weren't asked any questions or anything?

THE WITNESS:

I don't believe so. I don't recall.

PRESIDENT BARIN:

Any follow-ups, right?

THE WITNESS:

Right.

PRESIDENT BARIN:

And in the subsequent meeting, I guess the issue was tabled. The Board meeting that it was tabled, were you there?

THE WITNESS:

Yes. I don't particularly recall the meeting, but yes.

[...]

ARBITRATOR KESSEDJIAN:

Can I turn your attention to Paragraph 5 of your declaration?

Here, you basically repeat what is in the ICANN Guidebook literature, whatever. These are the exact words, actually, that you use in your declaration in terms of why there could be an objection to an applicant -- to a specific applicant. And you use three criteria: problematic, potentially violating national law, and raise sensitivities.

Now, I'd like you to, for us -- for our benefit, to explain precisely, as concrete as you can be, what those three concepts -- how those three concepts translate in the DCA case. Because this must have been discussed in order to get this very quick decision that you are mentioning. So I'd like to understand, you know, because these are the criteria -- these are the three criteria; is that correct?

THE WITNESS:

That is what the witness statement says, but the link to the GAC and the role that I played in terms of the GAC discussion did not involve me interpreting those three things. In fact, the GAC did not provide rationale for the consensus objection.

ARBITRATOR KESSEDJIAN:

No.

But, I mean, look, the GAC is taking a decision which -- very quickly -- I'm using your words, "very quickly" -- erases years and years and years of work, a lot of effort that have been put by a single applicant. And the way I understand the rules is that the -- the GAC advice -- consensus advice against that applicant are -- is based on those three criteria. Am I wrong in that analysis?

THE WITNESS:

I'm saying that the GAC did not identify a rationale for those governments that put forward a string or an application for consensus objection. They might have identified their reasons, but there was not GAC agreement about those reasons or -- or -- or -- or rationale for that. We had some discussion earlier about Early Warnings. So Early Warnings were issued by individual countries, and they indicated their rationale. But, again, that's not a GAC view.

ARBITRATOR KESSEDJIAN:

So, basically, you're telling us that the GAC takes a decision to object to an applicant, and no reasons, no rationale, no discussion of the concepts that are in the rules?

THE WITNESS:

I'm telling you the GAC did not provide a rationale. And that was not a requirement for issuing a GAC --

HONORABLE JUDGE CAHILL:

But you also want to check to see if the countries are following the right -- following the rules, if there are reasons for rejecting this or it falls within the three things that my colleague's talking about.

THE WITNESS:

The practice among governments is that governments can express their view, whatever it may be. And so there's [...] deference to that. That's certainly the case here as well. The -- if a country tells -- tells the GAC or says it has a concern, that's not really something that -- that's evaluated, in the sense you mean, by the other governments. That's not the way governments work with each other.

HONORABLE JUDGE CAHILL:

So you don't go into the reasons at all with them?

THE WITNESS:

To issue a consensus objection, no.

HONORABLE JUDGE CAHILL:

Okay. ---

[...]

PRESIDENT BARIN:

I have one question for you. We spent, now, a bit of time or a considerable amount of time talking to you about the process, or the procedure leading to the consensus decision.

Can you tell me what your understanding is of why the GAC consensus objection was made finally?

[...]

But in terms of the .AFRICA, the decision -- the issue came up, the agenda -- the issue came up, and you made a decision, correct?

THE WITNESS:

The GAC made a decision.

PRESIDENT BARIN:

Right. When I say "you", I mean the GAC.

Do you know -- are you able to express to us what your understanding of the substance behind that decision was? I mean, in other words, we've spent a bit of time dealing with the process.

Can you tell us why the decision happened?

THE WITNESS:

The sum of the GAC's advice is reflected in its written advice in the communiqué. That is the view to GAC. That's -- that's --

[...]

ARBITRATOR KESSEDJIAN:

I just want to come back to the point that I was making earlier. To your Paragraph 5, you said -- you answered to me saying that is my declaration, but it was not exactly what's going on. Now, we are here to --

at least the way I understand the Panel's mandate, to make sure that the rules have been obeyed by, basically. I'm synthesizing. So I don't understand how, as the Chair of the GAC, you can tell us that, basically, the rules do not matter -- again, I'm rephrasing what you said, but I'd like to give you another opportunity to explain to us why you are mentioning those criteria in your written declaration, but, now, you're telling us this doesn't matter.

If you want to read again what you wrote, or supposedly wrote, it's Paragraph 5.

THE WITNESS:

I don't need to read again my declaration. Thank you. The header for the GAC's discussions throughout was to refer to strings or applications that were controversial or sensitive. That's very broad. And –

ARBITRATOR KESSEDJIAN:

I'm sorry. You say the rules say problematic, potentially violate national law, raise sensitivities. These are precise concepts.

THE WITNESS:

Problematic, violate national law -- there are a lot of laws -- and sensitivities does strike me as being quite broad.

[...]

ARBITRATOR KESSEDJIAN:

Okay. So we are left with what? No rules?

THE WITNESS:

No rationale with the consensus objections.

That's the -- the effect.

ARBITRATOR KESSEDJIAN:

I'm done.

HONORABLE JUDGE CAHILL:

I'm done.

PRESIDENT BARIN:

So am I.

111. The Panel understands that the GAC provides advice to the ICANN Board on matters of public policy, especially in cases where ICANN activities and policies may interact with national laws or international agreements. The Panel also understands that GAC advice is developed through consensus among member nations. Finally, the Panel understands that although the ICANN Board is required to consider GAC advice and recommendations, it is not obligated to follow those recommendations.

112. Paragraph IV of ICANN's Beijing, People's Republic of China 11 April 2013 Communiqué [Exhibit C-43] under the heading "GAC Advice to the ICANN Board" states:

IV. GAC Advice to the ICANN Board

1. New gTLDs

a. GAC Objections to the Specific Applications

i. The GAC Advises the ICANN Board that:

i. The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:

1. The application for .africa (Application number 1-1165-42560)

[...]

Footnote 3 to Paragraph IV.1. (a)(i)(i) above in the original text adds, "Module 3.1: The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." A similar statement in this regard can be found in paragraph 5 of Ms. Dryden's 7 February 2014 witness statement.

113. In light of the clear "Transparency" obligation provisions found in ICANN's Bylaws, the Panel would have expected the ICANN Board to, at a minimum, investigate the matter further before rejecting DCA Trust's application.

114. The Panel would have had a similar expectation with respect to the NGPC Response to the GAC Advice regarding .AFRICA which was expressed in ANNEX 1 to NGPC Resolution No. 2013.06.04.NG01 [Exhibit C-45]. In that document, in response to DCA Trust's application, the NGPC stipulated:

The NGPC accepts this advice. The AGB provides that “if GAC advised ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved. The NGPC directs staff that pursuant to the GAC advice and Section 3.1 of the Applicant Guidebook, Application number 1-1165-42560 for .africa will not be approved. In accordance with the AGB the applicant may withdraw [...] or seek relief according to ICANN’s accountability mechanisms (see ICANN’s Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.

115. Based on the foregoing, after having carefully reviewed the Parties’ written submissions, listened to the testimony of the three witnesses, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN’s Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

116. As indicated above, there are perhaps a number of other instances, including certain decisions made by ICANN, that did not proceed in the manner and spirit in which they should have under the Articles of Incorporation and Bylaws of ICANN.

117. DCA Trust has criticized ICANN for its various actions and decisions throughout this IRP and ICANN has responded to each of these criticisms in detail. However, the Panel, having carefully considered these criticisms and decided that the above is dispositive of this IRP, it does not find it necessary to determine who was right, to what extent and for what reasons in respect to the other criticisms and other alleged shortcomings of the ICANN Board identified by DCA Trust.

2) Can the IRP Panel recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN’s Articles of Incorporation, Bylaws or the Applicant Guidebook?

118. In the conclusion of its Memorial on the Merits filed with the Panel on 3 November 2014, DCA Trust submitted that ICANN should remove ZACR’s application from the process altogether and allow DCA’s application to proceed under the rules of the New gTLD Program, allowing DCA up to 18 months to negotiate with African governments

to obtain the necessary endorsements so as to enable the delegation and management of the .AFRICA string.

119. In its Final Request for Relief filed with the Panel on 23 May 2015, DCA Trust requested that this Panel recommend to the ICANN Board that it cease all preparations to delegate the .AFRICA gTLD to ZACR and recommend that ICANN permit DCA's application to proceed through the remainder of the new gTLD application process and be granted a period of no less than 18 months to obtain Government support as set out in the AGB and interpreted by the Geographic Names Panel, or accept that the requirement is satisfied as a result of the endorsement of DCA Trust's application by UNECA.

120. DCA Trust also requested that this Panel recommend to ICANN that it compensate DCA Trust for the costs it has incurred as a result of ICANN's violations of its Articles of Incorporation, Bylaws and AGB.

121. In its response to DCA Trust's request for the recommendations set out in DCA Trust's Memorial on the Merits, ICANN submitted that this Panel does not have the authority to grant the affirmative relief that DCA Trust had requested.

122. According to ICANN:

48. DCA's request should be denied in its entirety, including its request for relief. DCA requests that this IRP Panel issue a declaration requiring ICANN to "rescind its contract with ZACR" and to "permit DCA's application to proceed through the remainder of the application process." Acknowledging that it currently lacks the requisite governmental support for its application, DCA also requests that it receive "18 months to negotiate with African governments to obtain the necessary endorsements." In sum, DCA requests not only that this Panel remove DCA's rival for .AFRICA from contention (requiring ICANN to repudiate its contract with ZACR), but also that it rewrite the Guidebook's rules in DCA's favor.

49. IRP Panels do not have authority to award affirmative relief. Rather, an IRP Panel is limited to stating its opinion as to "whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws" and recommending (as this IRP Panel has done previously) that the Board stay any action or decision, or take any interim action until such time as the Board reviews and acts upon the opinion of the IRP Panel. The Board will, of course, give extremely serious consideration to the Panel's recommendations.

123. In its response to DCA Trust's amended request for recommendations filed on 23 May 2015, ICANN argued that because the Panel's authority is limited to declaring whether the Board's conduct was inconsistent with the Articles or the Bylaws, the Panel should limit its declaration to that question and refrain from

recommending how the Board should then proceed in light of the Panel's declaration.

124. In response, DCA Trust submitted that according to ICANN's Bylaws, the Independent Review Process is designed to provide a remedy for "any" person materially affected by a decision or action by the Board. Further, "in order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation.

125. According to ICANN, "indeed, the ICANN New gTLD Program Committee, operating under the delegated authority of the ICANN Board, itself [suggests] that DCA could seek relief through ICANN's accountability mechanisms or, in other words, the Reconsideration process and the Independent Review Process." Furthermore:

If the IRP mechanism – the mechanism of last resort for gTLD applicants – is intended to provide a remedy for a claimant materially injured or harmed by Board action or inaction, and it serves as the only alternative to litigation, then naturally the IRP Panel may recommend how the ICANN Board might fashion a remedy to redress such injury or harm.

126. After considering the Parties' respective submissions in this regard, the Panel is of the view that it does have the power to recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook.

127. Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws states:

ARTICLE IV: ACCOUNTABILITY AND REVIEW
Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

11. The IRP Panel shall have the authority to:

d. recommend that the Board stay any action or decision or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP.

128. The Panel finds that both the language and spirit of the above section gives it authority to recommend how the ICANN Board might fashion a remedy to redress injury or harm that is directly related and causally connected to the Board's violation of the Bylaws or the Articles of Incorporation.

129. As DCA Trust correctly points out, with which statement the Panel agrees, "if the IRP mechanism – the mechanism of last resort for

gTLD applicants – is intended to provide a remedy for a claimant materially injured or harmed by Board action or inaction, and it serves as the only alternative to litigation, then naturally the IRP Panel may recommend how the ICANN Board might fashion a remedy to redress such injury or harm.”

130. Use of the imperative language in Article IV, Section 3, paragraph 11 (d) of ICANN’s Bylaws, is clearly supportive of this point. That provision clearly states that the IRP Panel has the authority to recommend a course of action until such time as the Board considers the opinion of the IRP and acts upon it.
131. Furthermore, use of the word “opinion”, which means the formal statement by a judicial authority, court, arbitrator or “Panel” of the reasoning and the principles of law used in reaching a decision of a case, is demonstrative of the point that the Panel has the authority to recommend affirmative relief. Otherwise, like in section 7 of the Supplementary Procedures, the last sentence in paragraph 11 would have simply referred to the “declaration of the IRP”. Section 7 under the heading “Interim Measures of Protection” says in part, that an “IRP PANEL may recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the IRP declaration.”
132. The scope of Article IV, Section 3, paragraph 11 (d) of ICANN’s Bylaws is clearly broader than Section 7 of the Supplementary Procedures.
133. Pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN’s Bylaws, therefore, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust’s application to proceed through the remainder of the new gTLD application process.

3) Who is the prevailing party in this IRP?

134. In its letter of 1 July 2015, ICANN submits that, “ICANN believes that the Panel should and will determine that ICANN is the prevailing party. Even so, ICANN does not seek in this instance the putative effect that would result if DCA were required to reimburse ICANN for all of the costs that ICANN incurred. This IRP was much longer [than] anticipated (in part due to the passing of one of the panelists last summer), and the Panelists’ fees were far greater than an ordinary IRP, particularly because the Panel elected to conduct a live hearing.”

135. DCA Trust on the other hand, submits that, “should it prevail in this IRP, ICANN should be responsible for all of the costs of this IRP, including the interim measures proceeding.” In particular, DCA Trust writes:

On March 23, 2014, DCA learned via email from a supporter of ZA Central Registry (“ZACR”), DCA’s competitor for .AFRICA, that ZACR would sign a registry agreement with ICANN in three days’ time (March 26) to be the registry operator for .AFRICA. The very same day, we sent a letter on behalf of DCA to ICANN’s counsel asking ICANN to refrain from executing the registry agreement with ZACR in light of the pending IRP proceedings. See DCA’s Request for Emergency Arbitrator and Interim Measures of Protection, Annex I (28 Mar. 2014). Instead, ICANN entered into the registry agreement with ZACR the very next day—two days ahead of schedule. [...] Later that same day, ICANN responded to DCA’s request by treating the execution of the contract as a *fait accompli* and, for the first time, informed DCA that it would accept the application of Rule 37 of the 2010 [ICDR Rules], which provides for emergency measures of protection, even though ICANN’s Supplementary Procedures for ICANN Independent Review Process expressly provide that Rule 37 does not apply to IRPs. A few days later, on March 28, 2014, DCA filed a Request for Emergency Arbitrator and Interim Measures of Protection with the ICDR. ICANN responded to DCA’s request on April 4, 2014. An emergency arbitrator was appointed by the ICDR; however, the following week, the original panel was fully constituted and the parties’ respective submissions were submitted to the Panel for its review on April 13, 2014. After a teleconference with the parties on April 22 and a telephonic hearing on May 5, the Panel ruled that “ICANN must immediately refrain from any further processing of any application for .AFRICA” during the pendency of the IRP. Decision on Interim Measures of Protection, ¶ 51 (12 May 2014).

136. A review of the various procedural orders, decisions, and declarations in this IRP clearly indicates that DCA Trust prevailed in many of the questions and issues raised.

137. In its letter of 1 July 2015, DCA Trust refers to several instances in which ICANN was not successful in its position before this Panel. According to DCA Trust, the following are some examples, “ICANN’s Request for Partial Reconsideration, ICANN’s request for the Panel to rehear the proceedings, and the evidentiary treatment of ICANN’s written witness testimony in the event it refused to make its witnesses available for questioning during the merits hearing.”

138. The Panel has no doubt, as ICANN writes in its letter of 1 July 2015, that the Parties’ respective positions in this IRP “were asserted in good faith.” According to ICANN, “although those positions were in many instances diametrically opposed, ICANN does not doubt that DCA believed in the credibility of the positions that it took, and

[ICANN believes] that DCA feels the same about the positions ICANN took.”

139. The above said, after reading the Parties’ written submissions concerning the issue of costs and deliberation, the Panel is unanimously of the view that DCA Trust is the prevailing party in this IRP.

4) Who is responsible for bearing the costs of this IRP and the cost of the IRP Provider?

140. DCA Trust submits that ICANN should be responsible for *all* costs of this IRP, including the interim measures proceeding. Among other arguments, DCA Trust submits:

This is consistent with ICANN’s Bylaws and Supplementary Procedures, which together provide that in ordinary circumstances, the party not prevailing shall be responsible for all costs of the proceeding. Although ICANN’s Supplementary Procedures do not explain what is meant by “all costs of the proceeding,” the ICDR Rules that apply to this IRP provide that “costs” include the following:

- (a) the fees and expenses of the arbitrators;
- (b) the costs of assistance required by the tribunal, including its experts;
- (c) the fees and expenses of the administrator;
- (d) the reasonable costs for legal representation of a successful party; and
- (e) any such costs incurred in connection with an application for interim or emergency relief pursuant to Article 21.

Specifically, these costs include all of the fees and expenses paid and owed to the [ICDR], including the filing fees DCA paid to the ICDR (totaling \$4,750), all panelist fees and expenses, including for the emergency arbitrator, incurred between the inception of this IRP and its final resolution, legal costs incurred in the course of the IRP, and all expenses related to conducting the merits hearing (*e.g.*, renting the audiovisual equipment for the hearing, printing hearing materials, shipping hard copies of the exhibits to the members of the Panel).

Although in “extraordinary” circumstances, the Panel may allocate up to half of the costs to the prevailing party, DCA submits that the circumstances of this IRP do not warrant allocating costs to DCA should it prevail. The reasonableness of DCA’s positions, as well as the meaningful contribution this IRP has made to the public dialogue about both ICANN’s accountability mechanisms and the appropriate deference owed by ICANN to its Governmental Advisory Committee, support a full award of costs to

DCA.

[...]

To the best of DCA's knowledge, this IRP was the first to be commenced against ICANN under the new rules, and as a result there was little guidance as to how these proceedings should be conducted. Indeed, at the very outset there was controversy about the applicable version of the Supplemental Rules as well as the form to be filed to initiate a proceeding. From the very outset, ICANN adopted positions on a variety of procedural issues that have increased the costs of these proceedings. In DCA's respectful submission, ICANN's positions throughout these proceedings are inconsistent with ICANN's obligations of transparency and the overall objectives of the IRP process, which is the only independent accountability mechanism available to parties such as DCA.

141. DCA Trust also submits that ICANN's conduct in this IRP increased the duration and expense of this IRP. For example, ICANN failed to appoint a standing panel, it entered into a registry agreement with DCA's competitor for .AFRICA during the pendency of this IRP, thereby forcing DCA Trust to request for interim measures of protection in order to preserve its right to a meaningful remedy, ICANN attempted to appeal declarations of the Panel on procedural matters where no appeal mechanism was provided for under the applicable procedures and rules, and finally, ICANN refused only a couple of months prior to the merits hearing, to make its witnesses available for viva voce questioning at the hearing.

142. ICANN in response submits that, "both the Bylaws and the Supplementary Procedures provide that, in the ordinary course, costs shall be allocated to the prevailing party. These costs include the Panel's fees and the ICDR's fees, [they] would also include the costs of the transcript."

143. ICANN explains on the other hand that this case was extraordinary and this Panel should exercise its discretion to have each side bear its own costs as this IRP "was in many senses a first of its kind." According to ICANN, among other things:

This IRP was the first associated with the Board's acceptance of GAC advice that resulted in the blocking of an application for a new gTLD under the new gTLD Program;

This was the first IRP associated with a claim that one or more ICANN Board members had a conflict of interest with a Board vote; and

This was the first (and still only) IRP related to the New gTLD Program that involved a live hearing, with a considerable amount of debate associated with whether to have a hearing.

144. After reading the Parties' written submissions concerning the issue of costs and their allocation, and deliberation, the Panel is unanimous in deciding that DCA Trust is the prevailing party in this IRP and ICANN shall bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider.

145. As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, however, DCA Trust and ICANN shall each bear their own expenses, and they shall also each bear their own legal representation fees.

146. For the avoidance of any doubt therefore, the Panel concludes that ICANN shall be responsible for paying the following costs and expenses:

- a) the fees and expenses of the panelists;
- b) the fees and expenses of the administrator, the ICDR;
- c) the fees and expenses of the emergency panelist incurred in connection with the application for interim emergency relief sought pursuant to the Supplementary Procedures and the ICDR Rules; and
- d) the fees and expenses of the reporter associated with the hearing on 22 and 23 May 2015 in Washington, D.C.

147. The above amounts are easily quantifiable and the Parties are invited to cooperate with one another and the ICDR to deal with this part of this Final Declaration.

V. DECLARATION OF THE PANEL

148. Based on the foregoing, after having carefully reviewed the Parties' written submissions, listened to the testimony of the three witnesses, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to

refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process.

150. The Panel declares DCA Trust to be the prevailing party in this IRP and further declares that ICANN is to bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider as follows:

- a) the fees and expenses of the panelists;
- b) the fees and expenses of the administrator, the ICDR;
- c) the fees and expenses of the emergency panelist incurred in connection with the application for interim emergency relief sought pursuant to the Supplementary Procedures and the ICDR Rules; and
- d) the fees and expenses of the reporter associated with the hearing on 22 and 23 May 2015 in Washington, D.C.
- e) As a result of the above, the administrative fees of the ICDR totaling US\$4,600 and the Panelists' compensation and expenses totaling US\$403,467.08 shall be born entirely by ICANN, therefore, ICANN shall reimburse DCA Trust the sum of US\$198,046.04

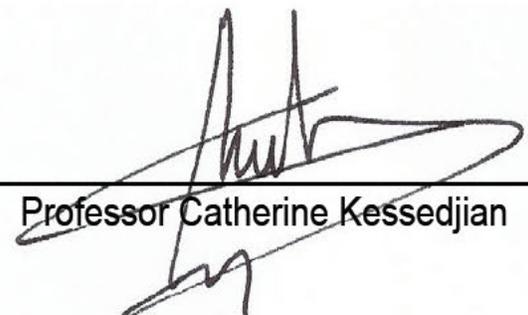
151. As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, DCA Trust and ICANN shall each bear their own expenses. The Parties shall also each bear their own legal representation fees.

The Panel finally would like to take this opportunity to fondly remember its collaboration with the Hon. Richard C. Neal (Ret. and now Deceased) and to congratulate both Parties' legal teams for their hard work, civility and responsiveness during the entire proceedings. The Panel was extremely impressed with the quality of the written work presented to it and oral advocacy skills of the Parties' legal representatives.

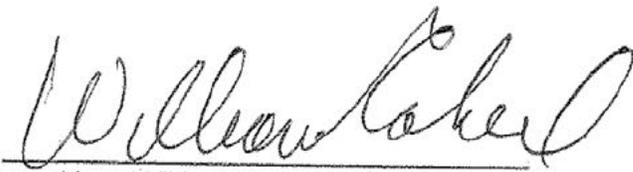
This Final Declaration has sixty-three (63) pages.

Date: Thursday, 9 July 2015.

Place of the IRP, Los Angeles, California.



Professor Catherine Kessedjian



Hon. William J. Cahill (Ret.)



Babak Barin, President

Annex 15

Response to Documentary Information Disclosure Policy Request

To: Mike Rodenbaugh on behalf of GCCIX, WLL

Date: 8 June 2016

Re: Request No. 20160509-1

Thank you for your Request for Information dated 4 May 2016, which was submitted on 9 May 2016 (Request) through the Internet Corporation for Assigned Names and Numbers' (ICANN's) Documentary Information Disclosure Policy (DIDP), on behalf of GCCIX, WLL (GCCIX), and which was received by ICANN on 9 May 2016. We note that because your Request was not submitted through DIDP@icann.org as a standalone DIDP request, the Request will not be published separately. Rather, your Request is set forth verbatim below and this Response will be published as a Request and Response to DIDP Request No. 20160509-1.

Items Requested

Your Request seeks the following:

1. All documents relating or referring to the secret Beijing meetings between GAC and ICANN Board and Staff relating to the .GCC application.
2. All documents relating or referring to any discussion of, and/or showing any reason for, the GAC Advice in the Beijing Communiqué that the .GCC application be rejected.
3. All documents relating or referring to any discussion of, and/or showing any reason for, the Board's acceptance of the GAC Advice in the Beijing Communiqué that the .GCC application be rejected.
4. All documents relating or referring to any discussion of, and/or showing any reason for, the Board's decision to terminate the pending LRO which was fully briefed by the CCASG [Cooperation Council for Arab States of the Gulf] and Applicant.
5. All documents relating or referring to the GAC and/or Board's consideration of the briefing and/or evidence submitted by the CCASG and/or Applicant in the LRO brought by CCASG against Applicant.
6. All documents relating or referring to the Board's consideration of IGO name protection at the top level, including without limitation the purported CCASG acronym "GCC".
7. All documents relating or referring to the "small group" referenced in ICANN Staff's March 16, 2016 PDP Update, including without limitation documents identifying the members of the small group and all documents relating or referring to the mandate and/or meetings or deliberations of the small group.

8. All documents relating or referring to the Board's efforts to reconcile the bare GAC Advice to reject the .GCC application, and the GNSO's unanimous, thoroughly developed and reasoned advice that purported IGO acronyms should not be protected at the top level.

Response

A principal element of ICANN's approach to transparency and information disclosure is the commitment to make publicly available a comprehensive set of materials concerning ICANN's operational activities. In addition to ICANN's practice of making many documents public as a matter of course, the DIDP is "intended to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, are made available to the public unless there is a compelling reason for confidentiality." (See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) A threshold consideration in responding to a DIDP request is whether the documents requested are in ICANN's possession, custody or control. Under the DIDP Policy, where the responsive document does not exist, ICANN shall not be required to create or compile summaries of any documented information. (See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.)

Item Nos. 1 through 3: Item No. 1 requests documents relating to "the secret Beijing meetings between GAC and ICANN Board and Staff relating to the .GCC application." It is unclear what "secret meetings" the Requester is referencing in Item No. 1. ICANN is not aware of any "secret meetings" between the GAC and the ICANN Board or staff relating to the .GCC application. The ICANN Board and the GAC conducted an open and public meeting at ICANN56 in Beijing. The transcript of that meeting as well as the entire schedule for ICANN56 is available on the ICANN meetings site, available here <http://archive.icann.org/en/meetings/beijing2013/>.

Item No. 2 requests documents relating to the "reason for" the GAC advice in the Beijing Communiqué. The GAC issues its advice through communiqués such as the Beijing Communiqué it issued on 11 April 2013, which states: "The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on [t]he application for .gcc (application number: 1-1936-2101)." (Beijing Communiqué, available at <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>.) Previously, the GAC had issued an Early Warning on 20 November 2012, stating that the governments of Bahrain, Oman, Qatar, and UAE, and the Gulf Cooperation Council expressed their "serious concerns toward '.GCC' new gTLD application made by GCCIX WLL specifically in two areas": (a) that the applied-for gTLD exactly matches a name of an Intergovernmental Organization; and (b) there is a lack of community involvement and support for the .GCC application. The Early Warning further stated that: "the governments of Bahrain, Oman, Qatar and the UAE and the Gulf Cooperation Council would like to **raise its disapproval and non-endorsement** to this application and request the ICANN and the new gTLD program evaluators to not approve this application." (See <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings> (emphasis in original).)

See the GAC Early Warning notice for the rationale for the stated concerns at <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings>.

Item No. 3 requests documents relating to the Board's acceptance of the GAC advice. Upon receipt of the Beijing Communiqué, ICANN published it, thereby triggering the response period (<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>). The Requester responded to the GAC advice. (See Summary and Analysis of Applicant Responses to GAC Advice available at <https://www.icann.org/en/groups/board/documents/briefing-materials-3-04jun13-en.pdf>.) On 4 June 2013, the NGPC adopted the NGPC Scorecard, which contained the NGPC's response to the GAC advice found in the Beijing Communiqué. With respect to the .GCC string, the NGPC Scorecard stated in pertinent part:

The NGPC accepts [the GAC] advice. The [Guidebook] provides that if “GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.”

The NGPC's 4 June 2013 resolution (Resolution 2013.06.04.NG01) contains a lengthy rationale stating, among other things, why (and under what authority) the NGPC was addressing the GAC advice, which stakeholders were consulted, what concern or issues were raised by the community, what significant materials the Board reviewed as part of its deliberations, what factors the Board found to be significant, and whether there were positive or negative community impacts. (See Resolution 2013.06.04.NG01 at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-04-en>.) The NGPC meeting minutes for the 4 June 2013 meeting are available at <https://www.icann.org/resources/board-material/minutes-2013-05-18-en>; and the NGPC briefing materials for the 4 June 2013 meeting are available at <https://www.icann.org/resources/pages/2013-51-2012-02-25-en>.

To the extent there are other documents that may be responsive to Item Nos. 1 through 3, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.
- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to

compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Confidential business information and/or internal policies and procedures.

Item Nos. 4 through 5 request documents relating to the termination of the Legal Rights Objection (LRO) that the Cooperation Council for the Arab States of the Gulf (CCASG) filed against the .GCC application, and “the GAC and/or Board’s consideration” of the briefing and/or evidence supporting or opposing the LRO. As was explained in the BGC Recommendation on Reconsideration Request 13-17 and the NGPC’s adoption of the BGC Recommendation (see <https://www.icann.org/resources/pages/13-17-2014-02-13-en>), the CCASG filed an LRO against the .GCC application on 13 March 2013 with the WIPO Arbitration and Mediation Center (WIPO), the third-party provider selected to handle legal rights objections under ICANN’s New gTLD Program. The Requester responded on 15 May 2013. While the LRO was pending, the GAC issued the Beijing Communiqué (explained in detail above), with consensus GAC advice that ICANN not proceed with the application for the .GCC string. As Christine Willett (then-Vice President, gTLD Operations) explained in her letter to the Requester on 5 September 2013 (which the Requester attached as an exhibit to its Reconsideration Request 13-17 regarding this same topic, available at <https://www.icann.org/resources/pages/13-17-2014-02-13-en>):

Module 3 of the AGB provides the objection procedures for applications, and provides for two types of mechanisms that may affect an application’s ability to continue to move forward: (1) GAC advice, and (2) the dispute resolution procedure. Applicants are on notice that the GAC may provide advice directly to the ICANN Board on any application as provided in the AGB. The GAC’s objection to your application is separate and distinct from the Legal Rights Objection filed by CCASG. While I acknowledge your concern about the Legal Rights Objection to your application, the NGPC had an obligation to consider the GAC’s advice and decided not to act inconsistently with the advice. Please be advised that the WIPO proceeding for the Legal Rights Objection is not moving forward based on the NGPC’s action on 4 June 2013.

The termination of the CCASG’s LRO against the .GCC application is noted on the WIPO webpage, under the heading Legal Rights Objection Cases, available here <http://www.wipo.int/amc/en/domains/lro/>; and is noted on the new gTLD microsite, available here <https://newgtlds.icann.org/en/program-status/odr/determination>. Any correspondence between WIPO and the parties to the LRO that may relate to the termination of the LRO is: (a) confidential as between WIPO and the relevant parties; and (b) already available to the Requester since the Requester was a party to the LRO.

With respect to Item No. 5, to the extent that the Requester included any documents relevant to the LRO as exhibits to its Reconsideration Request 13-17, the BGC and the NGPC reviewed such documents in the course of making their recommendation and determination on Reconsideration Request 13-17. As noted above, Reconsideration Request 13-17 and its exhibits, a letter from WIPO to the BGC, the BGC's Recommendation on Request 13-17, and the NGPC's adoption of the BGC's Recommendation are available at <https://www.icann.org/resources/pages/13-17-2014-02-13-en>. ICANN makes no representations regarding what the GAC did or did not review with respect to the briefing and/or evidence supporting or opposing the LRO.

To the extent there are other documents that may be responsive to Item Nos. 4 through 5, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Confidential business information and/or internal policies and procedures.

Item Nos. 6 through 8: Item Nos. 6-7 request documents relating to “the Board’s consideration of IGO name protection at the top level,” and the members and deliberations of the IGO “small group.” Item No. 8, as written, requests documents relating to the Board’s efforts to reconcile “the bare GAC Advice to reject the .GCC application,” and the GNSO policy recommendations regarding IGO protections. This request seems to conflate two separate issuances of GAC advice—one being the GAC consensus advice (provided in the Beijing Communiqué) that the .GCC application should not proceed; and the other being GAC advice relating to IGO protections in general at the top and second level. As such, the response provided herein to Item No. 8 relates to the Board’s efforts to reconcile the inconsistencies between the GAC advice and the GNSO policy recommendations regarding IGO protections.

Issues related to whether certain international organizations such as International Governmental Organizations (IGOs), including the Red Cross/Red Crescent Movement (RCRC) and the International Olympic Committee (IOC), should receive special protection for their names at the top level and second level in new gTLDs have been raised throughout the development of the New gTLD Program. In order to explore the issue in detail, the ICANN Board requested policy advice from the GNSO Council. The

scope of organizations was expanded to also generally consider all International Non-Governmental Organizations (INGOs). Advice or other commentary issued by the GAC relating to IGO and INGO names is available on the GAC's website at <https://gacweb.icann.org/display/GACADV/IGO+and+INGO+Names>. The Board's consideration of GAC advice relating to IGO protections is available through the Board and NGPC resolutions relating to each such instance of GAC advice; relevant meeting minutes, and applicable Board briefing materials for these meetings are publicly available at <https://www.icann.org/resources/pages/2016-board-meetings>. In addition, the NGPC posted a GAC Advice Scorecard at <https://www.icann.org/en/system/files/files/gac-advice-scorecard-07oct15-en.pdf>, which is a compilation of all GAC advice issued between April 2013 and June 2015 along with related actions taken by the NGPC.

Contemporaneously, the GNSO initiated a Policy Development Process (PDP), in October 2012, to evaluate whether there is a need for special protections at the top level and second level in all gTLDs for the names and acronyms of IGOs and INGOs; and, if so, to develop policy recommendations for such protections (PDP Working Group). The PDP Working Group issued its Final Report in November 2013, following which the GNSO Council adopted all the consensus recommendations from its PDP Working Group regarding protections at the top and second level in all gTLDs for the names and acronyms of certain IGOs and INGOs. The development of the PDP Working Group, the Final Report, the GNSO's resolution adopting the recommendations, and additional relevant information are publicly available on the GNSO webpage at <http://gnso.icann.org/en/group-activities/active/igo-ingo>.

On 30 April 2014, the Board adopted the GNSO's recommendations that are not inconsistent with GAC advice received on the topic and requested additional time to consider the remaining recommendations (which include those relating to IGO acronym protections). The Board also resolved to facilitate dialogue between the GAC, GNSO, and other affected parties to resolve the remaining differences. The Board's 30 April 2014 resolution, meeting minutes, and briefing materials are available online at <https://www.icann.org/resources/pages/2014-2015-01-28-en>. In June 2014, the NGPC requested that the GNSO Council consider amending its remaining policy recommendations with respect to the nature and duration of protection for IGO acronyms, the full names of the entities making up the international Red Cross movement, and the names of 189 national Red Cross societies. (See <http://gnso.icann.org/en/correspondence/chalaby-to-robinson-16jun14-en.pdf>.) The GNSO Council responded to the NGPC's request in October 2014 seeking further clarification (see <http://gnso.icann.org/en/correspondence/robinson-to-chalaby-disspain-07oct14-en.pdf>), and in January 2015, the NGPC replied and indicated that discussions remain ongoing (see <http://gnso.icann.org/en/correspondence/chalaby-to-robinson-15jan15-en.pdf>).

In the meantime, at the ICANN meeting in Los Angeles in October 2014, the NGPC resolved to provide temporary protections for the names of the entities of the Red Cross and the 189 national societies on an interim basis "while the GAC, GNSO, Board, and ICANN community continue to actively work on resolving the differences in the

advice from the GAC and the GNSO policy recommendations on the scope of protections for the RCRC names.” (See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.d>). In addition, the IGO “small group” was formed as a result of discussions between the NGPC and the GAC at the Los Angeles meeting, where representatives of various IGOs were observers. The informal “small group” serves as a forum for discussions regarding the protection of IGO identifiers in an effort to resolve the conflicts between the GNSO policy recommendations and the GAC advice, and consists of volunteer representatives of various IGOs, representatives of the ICANN Board, and representatives of the GAC. Once the GNSO Council receives further information from the Board and delivery of the IGO small group final proposal, the GNSO Council will begin to consider whether or not to proceed with possible amendments to its adopted policy recommendations, pursuant to the GNSO Operating Procedures. Information regarding the progress of the IGO small group and the Board’s efforts to reconcile the inconsistencies between the GAC advice and the GNSO policy recommendations regarding IGO protections is publicly available at the following links:

- GAC Buenos Aires Communiqué (June 2015):
<https://gacweb.icann.org/download/attachments/39059707/GAC%20Buenos%20Aires%2053%20Communique.pdf?version=1&modificationDate=1436283677000&api=v2>
- GAC Dublin Communiqué (October 2015):
<https://gacweb.icann.org/download/attachments/40632516/GAC%20Dublin%2054%20Communique.pdf?version=1&modificationDate=1445598555000&api=v2>
- April 2016 GNSO PDP Update – Protection of Certain International Organization Names in all gTLDs:
<https://gacweb.icann.org/display/gacweb/Early+Engagement+Policy+Document+-+IGO+INGO>
- Prior GNSO PDP Updates - Protection of Certain International Organization Names in all gTLDs, available by month at:
<https://gacweb.icann.org/display/gacweb/Archives+-+Early+GAC+engagement+in+GNSO+and+ccNSO+PDPs>
- Correspondence regarding the IGO small group and the Board’s efforts to reconcile the GAC advice and the GNSO policy recommendations:
 - 20 March 2014 email from the NGPC to the GNSO enclosing a proposal for dealing with GAC advice on IGO acronyms:
<http://gns0.icann.org/mailling-lists/archives/council/msg15906.html>
 - 20 March 2014 letter from the NGPC to the GNSO:
<http://gns0.icann.org/en/correspondence/chalaby-to-robinson-20mar14-en.pdf>
 - 6 March 2014 letter from the GAC to the NGPC:
https://gacweb.icann.org/download/attachments/27492514/Letter%20from%20Heather%20Dryden%20to%20Cherine%20Chalaby%20re%20IGO%20Protection_20140306%20%281%29.pdf?version=1&modificationDate=1441637008000&api=v2

- 16 June 2014 letter from the NGPC to the GNSO:
<http://gnso.icann.org/en/correspondence/chalaby-to-robinson-16jun14-en.pdf>
- 25 June 2014 letter from the GNSO to the GAC:
<http://gnso.icann.org/en/correspondence/robinson-to-dryden-25jun14-en.pdf>
- 24 July 2014 letter from the NGPC to the GNSO:
<http://gnso.icann.org/en/correspondence/chalaby-to-robinson-24jul14-en.pdf>
- 7 October 2014 letter from the GNSO to the NGPC:
<http://gnso.icann.org/en/correspondence/robinson-to-chalaby-disspain-07oct14-en.pdf>
- 12 December 2014 email from GNSO-GAC Liaison to the IGO-INGO Curative Rights Working Group regarding questions to be addressed by the IGO small group: <http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2014-December/000223.html>
- 15 January 2015 letter from the NGPC to the GNSO:
<http://gnso.icann.org/en/correspondence/chalaby-to-robinson-15jan15-en.pdf>
- 16 January 2015 IGO small group response to the GNSO PDP Working Group questions:
<https://gacweb.icann.org/download/attachments/27492514/IGO%20small%20group%20response%20-%202019%20Jan%20%285%29.pdf?version=1&modificationDate=1425940694000&api=v2>
- 19 January 2015 email enclosing the IGO small group's response to the IGO-INGO Curative Rights Working Group's list of questions:
<http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2015-January/000245.html>
- 22 January 2015 letter from the NGPC to the GAC Chair:
<https://gacweb.icann.org/download/attachments/27492514/chalaby-to-schneider-22jan15-en.pdf?version=1&modificationDate=1425597236000&api=v2>
- 3 February 2015 letter from the IGO group to the GAC Chair:
<https://gacweb.icann.org/download/attachments/27492514/Letter%20to%20Thomas%20Schneider-OECD.pdf?version=1&modificationDate=1425581746000&api=v2>
- 20 July 2015 letter from OECD Secretary General to then-ICANN CEO Fadi Chehade:
<https://www.icann.org/en/system/files/correspondence/gurria-to-chehade-20jul15-en.pdf>

To the extent there are other documents that may be responsive to Item Nos. 6 through 8, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will

be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Confidential business information and/or internal policies and procedures.

Notwithstanding the applicable Defined Conditions of Nondisclosure identified in this Response, ICANN also evaluated the documents subject to these conditions to determine if the public interest in disclosing them outweighs the harm that may be caused by such disclosure. ICANN has determined that there are no particular circumstances for which the public interest in disclosing the information outweighs the harm that may be caused by the requested disclosure.

About DIDP

ICANN's DIDP is limited to requests for documentary information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, please see <http://www.icann.org/en/about/transparency/didp>. ICANN makes every effort to be as responsive as possible to the entirety of your Request. As part of its accountability and transparency commitments, ICANN continually strives to provide as much information to the community as is reasonable. We encourage you to sign up for an account at MyICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN's website that are of interest because, as we continue to enhance our reporting mechanisms, reports will be posted for public access.

We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.

Annex 16

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

INDEPENDENT REVIEW PANEL

ICDR No. 01-16-0000-7056

In the Matter of an Independent Review Process

Between:

**AMAZON EU S.A.R.L.,
Claimant,**

-and-

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,
Respondent.**

FINAL DECLARATION

IRP Panel:

Hon. Robert C. Bonner, Chair

Robert C. O'Brien, Esq.

Hon. A. Howard Matz (Concurring and partially dissenting)

1. Claimant Amazon EU S. a. r. l. ("Amazon") seeks independent review of the decision of the Board of the Internet Corporation for Assigned Names and Numbers ("ICANN"), acting through ICANN's New gTLD Program Committee ("NGPC"), denying its applications for top-level domain names of .amazon and its IDN equivalents in Chinese and Japanese characters. Amazon contends that in making the decision to deny its applications, the NGPC acted in a manner that was inconsistent with and violated

provisions of ICANN’s Articles of Incorporation, Bylaws and/or Applicant Guidebook for gTLD domain names (collectively, ICANN’s “governance documents”). ICANN contends, to the contrary, that at all times the NGPC acted consistently with ICANN’s governance documents.

2. After conducting a two-day in-person hearing on May 1–2, 2017 and having reviewed and considered the briefs, arguments of counsel and exhibits offered by the parties as well as the live testimony and the written statement of Akram Atallah, the written statement of Scott Hayden, the expert reports of Dr. Heather Forrest, Dr. Jerome Passa, and Dr. Luca Radicati di Bronzoli, the Panel declares that:

- a. The Board, acting through the NGPC, acted in a manner inconsistent with its Articles, Bylaws and Applicant Guidebook because, as more fully explained below, by giving complete deference to the consensus advice of the Government Advisory Committee (“GAC”) regarding whether there was a well-founded public policy reason for its advice, the NGPC failed in its duty to independently evaluate and determine whether valid and merits-based public policy interests existed supporting the GAC’s consensus advice. In sum, we conclude that the NGPC failed to exercise the requisite degree of independent judgment in making its decision as required by Article IV, Section 3.4(iii) of its Bylaws. (*See also* ICANN, Supplementary Procedures, Rule 8(iii) [hereafter “Supplementary Procedures”].)
- b. The effect of the foregoing was to impermissibly convert the strong presumption to be accorded GAC consensus advice under the Applicant

Guidebook into a conclusive presumption that there was a well-founded public policy interest animating the GAC advice.

- c. While the GAC was not required to give a reason or rationale for its consensus advice, the Board, through the NPGC, was. In this regard, the Board, acting through the NGPC, failed in its duty to explain and give adequate reasons for its decision, beyond merely citing to its reliance on the GAC advice and the presumption, albeit a strong presumption, that it was based on valid and legitimate public policy concerns. An explanation of the NGPC's reasons for denying the applications was particularly important in this matter, given the absence of any rationale or reasons provided by the GAC for its advice and the fact that the record before the NGPC failed to substantially support the existence of a well-founded and merits-based public policy reason for denying Amazon's applications.
- d. Notwithstanding the strong presumption, there must be a well-founded public policy interest supporting the decision of the NPGC denying an application based on GAC advice, and such public policy interest must be discernable from the record before the NGPC. We are unable to discern a well-founded public policy reason for the NGPC's decision based upon the documents cited by the NGPC in its resolution denying the applications or in the minutes of the May 2014 meeting at which it decided that the applications should not be allowed to proceed.

- e. In addition, the failure of the GAC to give Amazon, as a materially affected party, an opportunity to submit a written statement of its position to the GAC, despite Amazon's request to the GAC Chair, violated the basic procedural fairness requirements for a constituent body of ICANN. (*See* ICANN, Bylaws, art. III, § 1 (July 30, 2014) [hereinafter Bylaws].) In its decision denying the applications, the NGPC did not consider the potential impact of the failure of the GAC to provide for minimal procedural fairness or its impact on the presumption that would otherwise flow from consensus advice.
- f. In denying Amazon's applications, the NGPC did not violate the Bylaws' prohibition against disparate treatment.
- g. Amazon's objections to changes made to the Applicant Guidebook are untimely.

I. PROCEDURAL HISTORY

The relevant procedural background of this Independent Review Process ("IRP") is:

3. The parties to the IRP are identified in the caption and are represented as follows:

Claimant: John Thorne of Kellogg, Hansen, Todd, Figel & Frederick

Respondent: Jeffrey LeVee of Jones Day

4. The authority for the Independent Review Process is found at Article IV, Section 3 of the ICANN Bylaws.

5. The applicable Procedural Rules are ICDR's International Dispute Resolution Procedures, as amended and in effect on June 1, 2014, as augmented by ICANN's Supplementary Procedures, as amended and in effect as of 2011.
6. On May 14, 2014, relying primarily upon the GAC's consensus objection, the NGPC rejected Amazon's applications.
7. Amazon's request for reconsideration was rejected by ICANN's Board Governance Committee on August 22, 2014.
8. Thereafter, Amazon notified ICANN of its intention to seek independent review under Article IV, Section 3 of ICANN's Bylaws, and Amazon and ICANN participated in a Cooperative Engagement Process in an attempt to resolve the issues related to Amazon's applications. No resolution was reached.
9. On March 1, 2016, Amazon filed a Notice of Independent Review with the International Centre for Dispute Resolution, and thereafter, this Independent Review Panel (the "Panel") was selected pursuant to the procedures described therein.
10. After a preliminary telephonic conference on October 4, 2016, the Panel issued Preliminary Conference and Scheduling Order No. 1, *inter alia*, establishing timelines for document exchange and granting Amazon's request for an in-person hearing to be held in Los Angeles, California. Thereafter, on November 17, 2016, in its Order No. 2, the Panel granted Amazon's application to permit live testimony at the hearing of Akram Atallah, the Interim President and Chief Executive Officer of ICANN, and denied its requests for live testimony by Amazon's Vice President and Associate

General Counsel for Intellectual Property Scott Hayden; Dr. Heather Forrest, an Amazon expert witness; and Heather Dryden, former chair of the GAC. After some adjustment, a schedule for pre-hearing briefs was established and the merits hearing dates were set for May 1–2, 2017.

11. On January 3, 2017, the Panel approved a Joint Stipulation Against Unauthorized Disclosure of Confidential Information (“Joint Stipulation”) providing for the good faith designation of proprietary and sensitive internal documents as CONFIDENTIAL or HIGHLY CONFIDENTIAL.
12. An in-person merits hearing was held in Los Angeles on May 1–2, 2017, at which Mr. Atallah’s testimony was taken, exhibits were produced and the matter argued. At the conclusion of the hearing on May 2, the Panel closed the proceedings, subject to receiving a transcript of the hearing and a consolidated exhibit list from counsel, and took the issues presented under submission.
13. Following the merits hearing, on June 7, 2017 the Panel issued its Order No. 3 denying Amazon’s objections to ICANN’s proposed redactions of the hearing transcript that disclosed information contained in several exhibits designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL under the Joint Stipulation.

II. FACTS

The salient facts are:

14. Amazon is a global e-commerce company incorporated under the laws of Luxembourg. Marketing through retail websites worldwide, Amazon, together with its affiliates, is

one of the largest internet marketers of goods in the world, with hundreds of millions of customers globally. (Statement of Scott Hayden, ¶ 5-6 [hereinafter Hayden Statement].)

It has a well-recognized trade name of “Amazon” which is a registered trademark in over 170 nations. (Id., at ¶ 7.) For nearly two decades, Amazon has been granted and used a well-recognized second level domain name of amazon.com. (Id., at ¶ 15.)

15. In April 2012, Amazon applied to ICANN for the delegation of the top-level domain names .amazon and its Chinese and Japanese equivalents, pursuant to ICANN’s Generic Top-Level Domains (“gTLD”) Internet Expansion Program. (Id., at ¶12.)

16. There are significant security and operational benefits to a company having its own top level domain name, including its ability to “create and differentiate” itself and have its own “digital identity online.” (Tr. Akram Atallah Test., 82-83 [hereinafter Atallah Tr.].) Amazon saw the potential of having the .amazon gTLD, or string, as a “significant opportunity to innovate on behalf of its customers” and improve its service to its hundreds of millions of customers worldwide. (Hayden Statement, ¶ 7.) It also saw it as a means to safeguard its globally recognized brand name. (Id.)

17. ICANN is a non-profit, multi-stakeholder organization incorporated in the State of California, established September 30, 1998 and charged with registering and administering internet names, both second and top level, in the best interests of the internet community. (Request for Independent Review, 3.) ICANN operates pursuant to Articles of Incorporation and Bylaws. The Bylaws applicable to this IRP proceeding are those as amended in July 30, 2014. (Id., at 3-4; *see* Bylaws (designated as Ex. C-64).)

18. In 2008 ICANN proposed to expand top level domain names beyond .com, .edu, .org to generic top level domain names. (Request for Independent Review, 6-7.) Through its multi-stakeholder policy development process, over a several-year period ICANN developed and issued an Applicant Guidebook (“Guidebook” or “AGB”) setting forth procedures for applying for and the processing and approval of gTLD names. There have been several iterations of the Guidebook. The version applicable to the Amazon applications at issue was adopted in 2012. (Id.; *see* ICANN, gTLD Applicant Guidebook (June 4, 2012) (designated as Ex. C-20) [hereinafter Guidebook].)
19. The Guidebook sets forth procedures for applying for and objecting to top level domain names. As for geographic names, the Guidebook adopts the ISO geographic names registry that includes prohibited geographic names and restricted geographic names, the latter which cannot be used over the objection of a nation that has an interest in such names. (*See* Guidebook, §§ 2.2.1.4.1, 2.2.1.4.2.) There is an initial review process for all applications for gTLDs. (Id., at § 1.1.2.5.) The objection process includes both an Independent Objector (“IO”) process and the potentiality of an objection by one or more governments that make up ICANN’s Government Advisory Committee (“GAC”). (Id., at §§ 1.1.2.4, 1.1.2.6., 3.2.5.) An IO can lodge an objection which ordinarily results in one or more independent experts being appointed by the International Chamber of Commerce to determine the merits of the objection, against criteria set forth in the Guidebook. (Id., at § 3.2.5.) Short of an objection, a GAC member government is permitted to lodge an “Early Warning Notice” expressing its public policy “concerns” regarding an application for a gTLD or string. (Id., at § 1.1.2.4.) The Guidebook also contemplates situations where the member governments of the GAC

provide “consensus advice” objecting to a string, in which case such “advice” is to be given a strong presumption against allowing an application to proceed. (*See generally* Guidebook, Module 3.)

20. There have been over 1,900 applications for gTLDs. Only a small fraction of them, less than 20, have been the subject of GAC advice. (Atallah Tr., 214.)

21. Amazon’s applications passed ICANN’s initial review process with flying colors, receiving the highest possible score in ICANN’s initial review report (“IER”). (Hayden Statement, ¶¶ 25-30.) Indeed, on July 13, 2013, ICANN issued an IER for the .amazon application that received a maximum score of 41 out of a possible 41 points. (Id.) The IER stated that .amazon did “not fall within the criteria for a geographic name contained in the Applicant Guidebook § 2.2.1.4.” (Id.) In other words, at this early stage, ICANN had determined that .amazon is not a listed geographic name in the AGB. This means that .amazon was not a prohibited nor restricted geographic name requiring governmental support. (Id., at ¶ 31.)

22. Nonetheless, on November 20, 2012, Amazon’s applications were the subject of an Early Warning Notice filed by the governments of Brazil and Peru. (*See* Ex. C-22.) By its own terms, an Early Warning Notice is not an objection; however, it puts an applicant on notice that a government has a public policy concern about the applied for string that could be a subject of GAC advice at some later point in time. (*See* Guidebook, § 1.1.2.4.) The Early Warning Notice process is set forth in ICANN’s Applicant Guidebook. (Id.)

23. The Early Warning Notice began with the recital that “The Amazon region constitutes an important part of the territory of . . . [eight nations, including six others besides Brazil and Peru] due to the extensive biodiversity and incalculable natural resources.” (Ex. C-22, at 1.) Brazil and Peru then stated three reasons for their concerns about a private company, Amazon, being granted the gTLD “Amazon.” (Id., at 1-2.) The reasons were that:

(1) It would prevent the use of this domain for purposes of public interest related to the protection, promotion and awareness raising an issue related to the Amazon biome. It would also hinder the possibility of use of this domain name to congregate web pages related to the population inhabiting that geographical region;

(2) The string “matched” part of the name, in English, of the “Amazon Cooperation Treaty Organization,” an international organization formed under the Amazon Cooperation Treaty signed in 1978; and

(3) The string had not received support from governments of countries where the geographic Amazon region is located.¹

(See Id.)

24. In a note to the Early Warning Notice, Brazil stated:

The principle of protection of geographic names that refer to regions that encompass peoples, communities, historic heritages and traditional social networks whose public interest could be affected by the assignment, to

¹ As noted elsewhere, under the Guidebook, a non-listed “geographic” name does not require government support.

private entities, of gTLDs that directly refer to those spaces, is hereby registered with reference to the denomination in English of the Amazon region, but should not be limited to it.

(Id., at 3.) Brazil went on to state that its concerns about the .amazon string extended to the English word “amazon” in “other languages, including Amazon’s IDN [internationalized domain name] applications” using Chinese and Japanese characters. (Id.)

25. The parties stipulated that none of the strings applied for by Amazon are listed geographic names as defined in ICANN’s Applicant Guidebook. (Ex. C-102, ¶ 1; Expert Report of Dr. Heater Forrest, 18-28 [hereinafter Forrest Report].)

26. Part of Guidebook procedures provide for an Independent Objector (“IO”) to challenge applications for domain names. (Guidebook, § 3.5.4.) Regarding Amazon’s applications, on March 12, 2013, an IO, Alain Pellet, initiated community objections to Amazon’s applications before the International Centre for Expertise of the International Chamber of Commerce (“Centre”). (Ex. C-102, ¶ 2.) The objections interposed by the IO were virtually identical to the concerns raised by Brazil and Peru in their Early Warning Notice. (Hayden Statement, ¶ 32.) Amazon responded to the IO’s community objections in May 2013. Thereafter, on June 24, 2013, the Centre selected Professor Luca G. Radicati di Brozoli as an independent expert to evaluate the IO’s objections. (Ex. C-47, at 4.) At the request of the IO, the independent expert, Professor Radicati, allowed both sides to file additional written statements. (Id., at 5.) The IO provided an augmented written statement on August 16, 2013, and Amazon replied to it on August 22, 2013. (Id., at 5.) Although, following an extension of time, his draft expert report

was due October 5, 2013, Dr. Radicati did not submit his final expert report until January 27, 2014. (Id., at 5, 25.)

27. On January 27, 2014, Professor Radicati issued a detailed Expert Determination rejecting the IO community objections. (See Ex. C-47.) He methodically considered the four factors laid out in Section 3.5.4 of the Guidebook as to whether the IO's objection on behalf of the community, i.e., the people and area of the Amazon region, had merit. (Id., at 13-14.) Regarding the first factor, he found that there was a strong association between the "community" invoked by the IO and the strings applied for. (Id., at 15.) As to the second factor, i.e., whether there as a "clear delineation of the community" invoked by the IO, Dr. Radicati indicated that: "The record is mixed and doubts could be entertained as to whether the clear delineation criterion is satisfied." (Id., at 16-18.) In light of his conclusion that there was not material detriment to the community being represented by the IO, (*see* discussion *infra*), Dr. Radicati stated that there was no need to reach a "conclusive finding" on the second factor. (Id., at 18.)

28. One of the four factors was "[w]hether the Applications create a likelihood of material detriment to a significant portion of the Amazon community." (Id., at 21). Professor Radicati determined that the applied for string .amazon would not pose a material detriment to the region or the people who inhabit the geographic region proximate to the Amazon River. (Id., at 21-24)

29. Among other things, Professor Radicati found that neither the Amazon community nor any entity purporting to represent that community had applied for the string .amazon. (Id., at 23.) This failure alone, he found, "can be regarded as an indication that the

inability to use the Strings in *not crucial* to the protection of the Amazon Community’s interests.” (Id. (emphasis added).) Regarding his finding of an absence of material harm, Professor Radicati concluded that the fact that an objector is deprived of future use of a specific gTLD is not a material detriment under ICANN’s Guidebook:

[T]he Amazon Community’s inability to use the Strings [.amazon and the two IDNs] is not an indication of detriment, and even less of material detriment. The Objection Procedures are clear in specifying that “[a]n allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a filing of material detriment” (Section 3.5.4).

(Id., at 23 (Emphasis in the original).)

30. Further, supporting his finding of no material detriment to the Amazon community and region, Professor Radicati noted that the applicant, Amazon, has used the name “Amazon”

as a brand, trademark and domain name for nearly two decades also in the States [including Brazil and Peru] arguably forming part of the Amazon Community. . . . There is no evidence, or even allegation, that this has caused any harm to the Amazon Community’s interests, or has led to a loss of reputation linked to the name of the region or community or to any other form of damage.

. . . [I]t is unlikely that the loss of the ‘.com’ after ‘Amazon’ will change matters.

(Id., at 23).

31. Regarding the absence of material detriment factor, Professor Radicati concluded:

More generally, there is no evidence either that internet users will be incapable of appreciating the difference between the Amazon group and its activities and the Amazon River and the Amazon Community, or that Amazonia and its specificities and importance for the world will be removed from the public consciousness, with the dire consequences emphasized by the IO. Were a dedicated gTLD considered essential for the interests of the Amazon Community, other equally evocative strings would presumably be available. “.Amazonia” springs to mind.

(Id., at 23.)

32. Another factor considered by independent expert Radicati was: “Whether there is substantial opposition to the Strings within the community.” (Id., at 19.) In rejecting the IO objections, Professor Radicati, while aware of the Early Warning Notice of Brazil and Peru, was evidently unaware that they continued to object to the applied for strings, nor was he aware of the GAC advice. (Id., at 20-21.) Indeed, he stated:

As evidence of substantial opposition to the Applications the IO relies essentially on the position expressed by the Governments of Brazil and Peru in the Early Warning Procedure. The two Governments undoubtedly have significant stature and weight within the Amazon Community. However, as noted by the Applicant, beyond their expressions of opposition in the Early Warning Procedure, the two Governments did not voice disapproval of the initiative in other forms. As a matter of fact, they engaged in discussions with the Applicant.

This is not without significance. Indeed, had the two Governments seriously intended to oppose the Application, they would presumably have done so directly. There is no reason to believe that they could have been deterred from doing so by the fear of negative consequences or by the costs of filing an objection. The Applicant is persuasive in arguing that the Brazilian and Peruvian Governments’ attitude is an indication of their belief that their interests can be protected even if the Objection does not succeed. Indeed, in assessing the substantial nature of the opposition to an objection regard must be had not only to the weight and authority of those expressing it, but also to the forcefulness of their opposition.

(Id.) These considerations led Dr. Radicati to find that the IO has failed to make a showing of substantial opposition to the Applications within the purported Amazon Community. (*See id.*)

33. Professor Radicati was mistaken about the continued lack of opposition to the string, especially from Brazil and Peru. Had he been informed of their opposition and the GAC advice objecting to the strings, it would no doubt have changed his finding regarding

whether there was substantial opposition to the strings. Nevertheless, even though, in addition to factors negating detriment, he considered lack of serious opposition as “indirect confirmation” of lack of detriment, it does not appear that Professor Radicati’s lack of knowledge regarding the GAC advice would have significantly impacted the reasons for his finding that there was no material detriment to the interest of the people and region proximate to the Amazon River by awarding the string to Amazon. (Id., at 23-24.)

34. The NGPC, rejected Amazon’s applications on May 14, 2014. While the NGPC had Professor Radicati’s expert rulings and determinations before it, it did not discuss nor rely upon his expert determinations, *inter alia*, regarding the lack of material detriment, in making its decision to reject Amazon’s applications. (Ex. C-102, ¶ 2.)

35. In order to assist it in carrying out its functions, ICANN has various supporting organizations and advisory committees. One such committee is the GAC which is comprised of representatives of governments from around the world and several multi-lateral governmental organizations. (Atallah Tr., 98-99.)

36. Amazon’s applications were discussed at meetings of the GAC in Beijing in April, 2013² and, later, in Durban, South Africa on July 16, 2013.

37. At its plenary session in Durban on July 16, 2013, the GAC discussed the applications for the .amazon strings. The session was transcribed. (See Ex. C-40.) At this meeting, representatives of various nations spoke. (Id.) Brazil and Peru led the opposition to

² The Beijing GAC meeting was closed and there is no publicly available transcript of what was discussed respecting the application for .amazon and the related IDN strings in Japanese and Chinese characters.

Amazon’s strings, and approximately 18 delegates of GAC member nations expressed general support for Brazil and Peru’s position opposing the applied for strings. (Id.)

With one or two exceptions of no significance, only the governments of Brazil and Peru expressed any actual reasons for opposing the applications, but if anything, Brazil and Peru’s reasons at the GAC meeting were either less specific than the three they gave in their Early Warning Notice or they were not well-founded grounds for objecting to the applied for strings. The representative of Peru, for example, stated that the applications should be rejected because “Amazon” was an ISO “listed” geographic name in the Guidebook; a statement which the parties now agree was erroneous, but not corrected during the Durban meeting.³ (Id., at 14-15.)

38. At the Durban GAC meeting, Brazil essentially pointed out that Brazil and other nations in the Amazon region of South America have a “concern” with the application to register the gTLD .amazon. (Id., at 11-13.) The reason for their concern, much less an articulated public policy concern, is not apparent. (Id.) For example, Brazil asked that the GAC reject the registration of “dot amazon by a private company in the name of the public interest.” (Id., at 13.) Brazil does not define what the “public interest” for such a rejection would be. Moreover, how assigning .amazon to the applicant would harm the “public interest” was not explained. Brazil asserted that an undefined “community[,]” quite possibly, the people residing in the Amazon region, will “clearly be impacted[,]” but neither Brazil nor any other nation explained what this “impact”

³ We note that the word “amazon” can be traced back to ancient Greece as meaning large, powerful female warriors. (See *Amazon*, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/amazon> (last visited June 12, 2017).) This meaning of the word is found in Virgil’s Aeneid. Indeed, it is one of the word’s defined meanings in the English language. (Id.)

would be or how it would harm the population living in the Amazon region or be detrimental to its “bio systems.” (Id., at 11-13). Brazil stated that it cannot accept the registration of .amazon to the applicant as “a matter of principle,” but nowhere does it make clear what that “principle” is. (Id., at 13.) A Brazilian vice minister added that dot amazon affected “communities” in eight countries, and it is important to protect “geographical and cultural names.” (Id., at 13-14.) Again, he did not articulate how such “names” would be harmed. (Id.)

39. At the Durban meeting, the representative of Peru set forth three “points that we think are crucial to understanding our request [to reject the applied for strings].” (Id., at 14.) According to the Peruvian representative, they were:

- (1) “[L]egal grounds” found in the ICANN’s Bylaws, in prior GAC advice and in the Guidebook, (Id., at 14.);⁴
- (2) The string is a geographic name listed in the Guidebook and therefore requiring governmental consent (Id., at 14-15.);⁵ and
- (3) The national and local governments of the countries through which the Amazon River flows “have expressed, in writing, their rejection to dot amazon.” (Id., at 14-15, 24.).⁶

⁴ Based on our review, no “legal” grounds for rejecting the applications is apparent in those documents or elsewhere. (See Ex. C-48, at 7, 14.)

⁵ As noted elsewhere, the word “Amazon” is not a listed geographic name in the Guidebook. Therefore, government consent is not required.

⁶ See discussion *supra*, at 10 n. 1 (Individual governmental consent is not required by the Guidebook).

40. At the conclusion of the plenary session at Durban, after the representative of one nation acknowledged that “there are different viewpoints,”⁷ the GAC Chair, Heather Dryden, asked:

So I am now asking you in the [GAC] committee whether there are any objections to a GAC consensus objection to the applications for dot Amazon, which would include their IDN equivalents? I see none. . . . So it is decided.

(Id., at 30.)

41. In a communique at the conclusion of its Durban meeting, the GAC issued consensus⁸ advice to the Board of ICANN recommending to the Board that it not proceed with Amazon’s applications, stating:

The GAC Advises the ICANN Board that:

- i. The GAC has reached consensus [that the following application should not proceed] on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:
 1. The application for .amazon (application number 1-1315-58056) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591).

(Ex. R-22, at 3-4 (footnote omitted).)

42. In substance, the GAC “advice” or recommendation was that the Board should reject the applications for all three gTLDs applied for by Amazon. (Id.) No reasons were given by the GAC for its advice, nor did it provide a rationale for the same.⁹ (*See Id.*)

⁷ *See* Ex. C-40, at 29.

⁸ “Consensus” advice means, in essence, no nation objected to the position taken in the advice. It does not mean, however, that there was unanimous approval of the advice.

⁹ The Panel requested that the parties attempt to secure a written statement from Heather Dryden, who was the Chair of the GAC at the time of the Durban meeting, regarding the reasons for the

43. During the course of the GAC’s meetings in Durban, Amazon Vice President and Associate General Counsel Scott Hayden stated that Amazon “asked the GAC to grant us the opportunity to distribute to the GAC background materials about the .AMAZON Applications and the proposals we had made but the GAC Chair rejected our request.” (Hayden Statement, ¶ 37.)
44. At all times pertinent herein, ICANN’s Board delegated its authority to decide all issues relating to new gTLD program that would otherwise require a Board decision, including decisions regarding whether an application for a gTLD should proceed or be rejected, to the NGPC.¹⁰ (Ex. C-54, at 6.)
45. Procedures set forth in the Applicant Guidebook, Module 3.1 provide for an opportunity for an applicant to provide a written response to GAC advice. Amazon submitted a response taking issue with the GAC advice. (*See* Ex. C-43.) Thereafter, regarding one of the issues raised by Amazon, that is, whether Brazil or Peru had a right under international law to the name indicating the geographic region or river called “Amazon,” the NGPC commissioned an independent legal expert, Dr. Jerome Passa, a law professor at the Université Panthéon-Assas in Paris, France, to opine. (*See* Ex. C-48.)
46. In his March 31, 2014 report, Dr. Passa concluded that neither Brazil nor Peru had a legally cognizable right to the geographic name “Amazon” under international law, or for that matter under their own national laws. (Ex. C-48, at 7, 14; *accord* Forrest

GAC advice. (Order No. 2, at 4.) No longer the GAC Chair, Ms. Dryden declined to provide a statement. (Atallah Tr., 95.)

¹⁰ This delegation was made on April 10, 2012.

Report, 5, 9-12). In sum, he concluded that there was no legal principle supporting Brazil and Peru's objections. In other words, the legal objection of Brazil and Peru was without merit and did not provide a basis for the rejection of Amazon's gTLD applications.¹¹ (Ex. C-48, at 14.)

47. Moreover, Dr. Passa found that there was no prejudice to Brazil or Peru if the applied for strings were assigned to Amazon:

Beyond the law of geographical indications [which do not support Brazil and Peru's legal claims], the assignment of '.amazon' to Amazon would not in any event be prejudicial to the objecting states [Brazil and Peru] who, since they have no reason for linguistic reasons to reserve '.amazon', could always if they so wished reserve a new gTLD such as '.amazonia' or '.amazonas' which would create no risk of confusion with '.amazon'.

(Id., at 10; *see also* Ex. C-47, at 23.)

48. Both Amazon and the governments of Brazil and Peru were afforded an opportunity to respond to Dr. Passa's report. All three did so. (Ex. C-54, at 9-10.)

49. The NGPC considered Amazon's applications at several meetings. Following receipt of Dr. Passa's report and several letters responding thereto, the NGPC met on April 29, 2014 to consider the applications for the .amazon string and its Chinese and Japanese IDN equivalents. (*See* Ex. R-31, at 2-4.) The applications were discussed and the GAC advice referenced, but no decision was reached whether to allow the applications to proceed or to deny them. (Id.) Nor was any discussion or speculation by the NPGC

¹¹ Regarding whether Amazon had a legal right to be assigned the strings, Dr. Passa opined "no one can claim a TLD simply because the name it consists of is not included on the ISO list" and that Amazon did not have a legal right to the gTLD .amazon based on its registered trademarks for that name in Brazil, Peru and other nations. (Ex. C-48, at 10.) Amazon makes the point that it was not making a legal claim of right based on its trademarks. (Ex. C-51, at 2.)

regarding the rationale for the GAC advice, or any public policy reasons that supported it, reflected in the minutes of this meeting. (Id.)

50. At its May 14, 2014 meeting, the NGPC adopted a resolution¹² in which it rejected Amazon's applications. Under the heading "GAC Advice on .AMAZON (and related IDNs)," the NGPC resolved that: "[T]he NGPC accepts the GAC advice . . . and directs the [ICANN] President and CEO . . . that the applications . . . filed by Amazon EU S.à.r.l. should not proceed." (Ex. C-54, at 6-7.)

51. The resolution goes on to state:

The action being approved today is to accept the GAC's advice to the ICANN Board contained in the GAC's Durban Communiqué stating that it is the consensus of the GAC that the applications . . . should not proceed. The New gTLD Applicant Guidebook (AGB) provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed, this will create a strong presumption for the ICANN Board that the application should not be approved." (AGB, § 3.1). To implement this advice, the NGPC is directing the ICANN President and CEO . . . that the applications . . . should not proceed.

(Id., at 7.)

52. After referencing the fact of Amazon's position opposing the GAC advice and stating that it considered the report of Dr. Passa "as part of the NGPC's deliberations in adopting the resolution," the resolution states: "The NGPC considered several significant factors during its deliberations about how to address the GAC advice" (Id., at 8-10.) The resolution noted that the NGPC "had to balance the competing interest of each factor to arrive at a decision." (Id., at 10.) Then, after noting that it

¹² The minutes of the NGPC meeting on May 14, 2014 (Ex. R-83) are substantially the same and recite verbatim the NGPC resolution. (Ex. C-54).

lacked the benefit of any rationale from the GAC for its advice, it listed factors it relied upon, which were:

- (1) The Early Warning Notice submitted by Brazil and Peru that state as reasons for their concern, namely:
 - (a) The granting of the string to Amazon would deprive the string for use by some future party for purposes of protecting the Amazon biome and/or its use related to the populations inhabiting the Amazon region; and
 - (b) Part of the string matches the name in English of the Amazon Cooperation Treaty Organization. (*Id.*, at 10.)¹³
- (2) Curiously, the NGPC considered correspondence reflecting that Amazon sought to amicably resolve Brazil and Peru’s objections. We assume that Amazon’s effort to informally resolve concerns of Brazil and Peru was not a factor that *supported* the NGPC’s decision denying Amazon’s applications. (*Id.*, at 10-11.)¹⁴
- (3) The resolution correctly noted that, as it stood in the position of the ICANN Board, under the Guidebook the NGPC was called upon to “individually

¹³ On its face, it is difficult to see how this partial, one-word match in English to a treaty organization’s name is a valid reason that supports the GAC advice and hence the NGPC’s decision. Indeed, it was undisputed that this organization is commonly referred to as “OTCA,” an acronym for its name in Spanish. (Hayden Statement, ¶ 16; Forrest Report, 27.) There appears to be no reason to believe that internet users would be misled or confused.

¹⁴ If so, this would be unwise policy for the same reason that evidence of settlement discussions is not to be considered against a party attempting to settle a matter. (*See, e.g.*, Fed. R. Ev. 408 (and international legal equivalents).)

consider an application for a new gTLD to determine whether approval would be in the best interests of the Internet community.” (Id., at 11.)¹⁵

(4) The resolution goes on to list eighteen documents, including, for example, the Early Warning Notice, that the NGPC reviewed before deciding to reject Amazon’s applications. (Id., at 11-13.) Aside from referring to the Early Warning Notice, there is no discussion in the resolution how any of these other documents impacted the NGPC’s decision.

53. Thus, the only *reasons* articulated by the NGPC for its decision rejecting Amazon’s applications were the strong presumption arising from the GAC consensus advice and, albeit without explanation, two reasons advanced by Brazil and Peru in their Early Warning Notice. Assuming that those reasons animated the GAC advice—and this is by no means clear¹⁶—there is no explanation by the NGPC in its resolution regarding why the reasons reflect well-founded and credible public policy interests.

54. The only live witness at the hearing was Akram Atallah, ICANN’s Deputy Chief Executive Officer and President of its Global Domains Division. Mr. Atallah has held executive positions at ICANN since he joined in 2010, and, significantly, he attended all seven meetings of the NGPC at which Amazon’s applications were agendaized and discussed, and in particular the last two meetings on April 29 and May 14, 2014. (Atallah Tr., 86:14-24.)

¹⁵ This factor neither supports the grant or the denial of the application, but merely reinforces that NGPC’s duty to make an independent and balanced determination in the best interests of the Internet community.

¹⁶ In her testimony before the *DCA Trust* IRP, GAC Chair Heather Dryden stated that Early Warning Notices, and the rationale of nations that issued them, do not reflect GAC’s rationale for its advice. (Ex. CLA-5, 314:16-19; *see also* Atallah Tr., 306:12-24.)

55. In substance, Mr. Atallah testified that Amazon's applications would have been allowed to proceed, but for the GAC consensus advice opposing them. (Id., at 88-89).
56. Mr. Atallah testified that the NGPC did not consider the .ipiranga string, named for a famed waterway in Brazil, because neither Brazil nor the GAC opposed that string. Nor did Brazil submit an Early Warning Notice with respect to .ipiranga. (Id., at 90).
57. Regarding the impact of GAC consensus advice on the NGPC's decision, Mr. Atallah testified that ICANN is not controlled by governments, but ICANN procedures permit governments, through the GAC, to provide input, both as to ICANN policy matters and individual applications to ICANN. (Id., at 94-95.) The NPGC resolution (Ex. C-54) provides the entire rationale for the Board's (here, the NGPC's) decision to reject Amazon's applications. (Id., 93.) Because it lacks expertise, the NGPC, acting for the Board, did not and "will not substitute its decision" for the GAC's, especially on public interest issues. (Id., at 99-101, 128.)
58. Once the GAC provides the NGPC with consensus advice, Mr. Atallah explained, not only is there a strong presumption that it should be accepted, but it also sets a bar too "high for the Board to ignore." (Id.) Put differently, the bar is "too high for the Board to say no." (Id.) The Board, he said, defers to the consensus GAC advice as a determination that there is, in fact, a well-founded public policy reason supporting it. (Id., at 102). He added: "the board does not substitute its opinion to the opinion of the countries of that region when it comes to the public interest." (Id., at 128:16-18).
59. Mr. Atallah acknowledged that if GAC consensus advice was based upon the GAC's (or governments' advocating for a GAC consensus objection) mistaken view of

international law, it would outweigh the strong presumption and the advice would be rejected by the Board. (Id., at 127:11-128:4.) But the Board would not consider GAC consensus advice based on an anti-U.S. bias or “fear of foreign exploitation,” whether rational or not, as grounds for rejecting such advice. (Id., at 129:21-130:9.)

60. Although the NGPC considered the reasons given in the Early Warning Notice, Mr. Atallah made clear that the NGPC made no independent inquiry regarding whether there was a well-founded public policy rationale for the GAC advice, (Id., 102:17-20), nor did the NGPC explain why the reasons given in the Early Warning Notice stated well-founded public policy concerns for rejecting the applications. Moreover, the NGPC in its resolution did not discuss, much less evaluate Brazil and Peru’s reasons for their objection to the strings, (*see* Ex. C-54).

61. On August 22, 2014, ICANN’s Board Governance Committee denied Amazon’s request for reconsideration of the NGPC’s decision. (Ex. C-67.)

62. On March 1, 2016, Amazon filed its Notice and Request for an Independent Review of the NGPC decision denying its applications.

III. PROVISIONS OF THE ICANN’S ARTICLES OF INCORPORATION, BY-LAWS AND APPLICANT GUIDEBOOK

63. The task of this Panel is to determine whether the NGPC acted in a manner consistent with ICANN’s Articles of Incorporation, Bylaws and Applicant Guidebook.¹⁷ The most

¹⁷ While the Bylaws refer only to the Articles of Incorporation and Bylaws as subjects for the IRP process, the Panel is also permitted to determine whether the procedures of the Guidebook were followed. (*See Booking.com B.V. v. ICANN*, Case No. 50-20-1400-0247, Final Declaration,

salient provisions of these governance documents are listed below.

64. Article IV, Section 3(4) of the Bylaws and Rule 8 of ICANN Supplementary

Procedures for Independent Review Process provide:

The IRP Panel must apply a defined standard of review to the IRP request, focusing on: a. did the Board act without conflict of interest in taking its decision?; b. did the ICANN Board exercise due diligence and care in having sufficient facts in front of them?; and c. Did the ICANN Board members exercise independent judgment in taking the decision, believed to be in the best interest of the company [i.e., the internet community as a whole]?

(See Bylaws, Art. IV, § 3(4).) Here, only compliance with requirements (ii) and (iii) is in issue.

65. Art. 4 of the Articles of Incorporation:

“[ICANN] shall operate for the benefit of the Internet community as a whole”

66. Art. I, Sec. 2 of the Bylaws: CORE VALUES¹⁸

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

. . .

3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interest of affected parties.

4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making. . . .

6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

at ¶ 106 (Int’l Centre for Dispute Resolution, March 3, 2015), <https://www.icann.org/en/system/files/files/final-declaration-03mar15-en.pdf>; Resp’t Prehearing Br., 6.)

¹⁸ All references to the Bylaws are to those in effect at the time of the NGPC’s decision, that is, the Bylaws, as amended July 2014. (See Ex. C-64.)

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness. . . .

10. Remaining accountable to the Internet community through mechanisms that enhance ICANN’s effectiveness [such as the process of independent review].

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

. . . Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

67. Art. II, Sec. 3 of the Bylaws: NON-DISCRIMINATORY TREATMENT

“ICANN shall not . . . single out any particular party for disparate treatment unless justified by substantial and reasonable cause”

68. Art. III (TRANSPARENCY), Sec. 1 of the Bylaws: PURPOSE

“ICANN and its constituent bodies shall operate to the maximum extent feasible in a[] . . . transparent manner and consistent with procedures designed to ensure fairness.”

69. Art. IV (ACCOUNTABILITY AND REVIEW), Sec. 1 of the Bylaws: PURPOSE

“. . . ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in Article I of these Bylaws.”

70. Art. IV (ACCOUNTABILITY AND REVIEW), Sec. 3 of the Bylaws:

INDEPENDENT REVIEW OF BOARD ACTIONS

The Board, or in this case, the NGPC final decision is subject to an “independent review” by this independent review panel to determine whether the Board/NGPC made

its decision in a manner consistent with ICANN’s articles of incorporation, applicable Bylaws and the applicant guidebook, i.e., its governance documents.

71. Art. XI (ADVISORY COMMITTEES), Sec. 1 of the Bylaws: GENERAL

“Advisory Committees shall have no legal authority to act for ICANN, but shall report their findings and recommendations to the Board.”

72. Art. XI, Sec. 2(1)(a) of the Bylaws

“The [GAC] should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly . . . where they may affect public policy issues.”

73. Art. XI, Sec. 2(1)(j) of the Bylaws

“The advice of the [GAC] on public policy matters shall be duly taken into account, both in the formulation and adoption of policies.”

74. Module 2 of the Applicant Guidebook¹⁹

Module 2 of the Guidebook sets forth the evaluation procedures for gTLD strings, including string similarity, string confusion, DNS stability, reserved names and geographic names.

75. Sec. 2.2.1.4 of the Applicant Guidebook

“Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments . . . in geographic names. The requirements and procedure

¹⁹ The applicable version of the Guidebook for purposes of this IRP is Version 10 published on June 4, 2012. (*See* Ex. C-20; Resp’t Prehearing Br., 10 n. 29.)

ICANN will follow in the evaluation process are described in the following paragraphs.”

76. Sec. 2.2.1.4.2 of the Applicant Guidebook

“The following types of applied-for strings are considered geographic names and [require] . . . non-objection from the relevant governments” This is followed by a list of four specific categories, including, *inter alia*, cities, sub-national place names, etc.

77. Sec. 2.2.1.4.4 of the Applicant Guidebook

“A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic name For any application where the GNP determines that the applied-for string is not a geographic name requiring government support (as described in this module), the application will pass the Geographic Names review with no additional steps required.”

78. Attachment to Module 2 of the Applicant Guidebook, at A-1

“It is ICANN’s goal to make the criteria and evaluation as objective as possible.”

79. Module 3 of the Applicant Guidebook

Module 3 relates to Objection Procedures.

80. Sec. 3.1, GAC Advice on New gTLDs of the Applicant Guidebook

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities [i.e., may affect public policy issues].

. . .

. . . The GAC [may] advise[] ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN that the application should not be approved.

IV. PARTIES' POSITIONS AND REQUEST FOR RELIEF

81. Having set forth the procedural history, the relevant facts and the applicable provisions of ICANN's governing documents, the Panel now sets forth the issues raised by the parties and then provides the reasons for its Declaration.

82. Amazon seeks a declaration that the NGPC, acting for the Board, acted in a manner inconsistent with certain provisions, discussed below, of ICANN's Articles of Incorporation, Bylaws and/or Guidebook in connection with its rejection of the Amazon applications. Distilled to their essence, Amazon makes the following contentions:

- a. The GAC was required to state a reason(s) or rationale for its consensus advice, i.e., reason(s) for recommending that Amazon's applications be denied.
- b. As a constituent body of ICANN, the GAC was required to adhere to the Bylaws' duties of procedural fairness under Article III, Section 1. To comply with this Bylaw, the GAC was either required to permit Amazon, as the potentially adversely affected party in interest, to appear before the GAC or, at a minimum, submit information to the GAC in writing before it issued consensus advice.
- c. To warrant a strong presumption, GAC advice must be based upon a valid and legitimate public policy interest(s).
- d. By failing to make an independent evaluation of whether or not there was a valid public policy rationale for the GAC advice, the NGPC abdicated its independent decision making function to the GAC, converted the strong presumption to be given to GAC consensus advice into a conclusive presumption or veto, and otherwise abandoned its obligation to make a sufficient due diligence

investigation of the facts needed to support its decision and/or failed to make an independent, merits-based decision in the best overall interest of the Internet community.

- e. To comply with ICANN's transparency obligations, the NGPC must give reasons for its decisions. The NGPC's resolution of May 14, 2014 is not a sufficient statement of reasons for its decision rejecting Amazon's applications in that the NGPC failed to state any public policy rationale for its decision and/or balance the interests of Amazon favoring the granting of the applications with public policy interests militating against granting same.
- f. The ICANN Board, acting through the NGPC, violated its obligation not to engage in disparate treatment of the applicant under Article II, Section 3 of the Bylaws by denying its application, whereas under similar circumstances a private Brazilian corporation was granted the gTLD of .ipiranga, a string based on the name of another celebrated waterway in Brazil.²⁰

83. As for relief, in addition to a declaration by this Panel that the NGPC acted inconsistently with ICANN governance documents, Amazon seeks affirmative relief in the form of a direction to ICANN to grant Amazon's applications. Alternatively, Amazon asks the Panel to recommend to the ICANN Board that its applications be granted and to set timelines for implementation of the Panel's recommendation, including a timeline for ICANN's "meet and confer" obligation with the GAC.²¹

²⁰ The Ipiranga is mentioned in the Brazilian national anthem.

²¹ In these circumstances, Amazon urges the Panel to retain jurisdiction until final resolution of this matter by the Board.

84. ICANN disputes each of Amazon’s contentions and asserts that the NPGC did not violate the Articles of Incorporation, the Bylaws or the Guidebook. Fairly synthesized, it argues:

- a. There is nothing in the Articles of Incorporation, applicable Bylaws²² or Guidebook that requires the GAC to state any reason for its consensus advice.
- b. The procedural fairness obligation applicable to the GAC, as a constituent body of ICANN, did not require the Board to assure that a representative of a private company be able to appear before the GAC, nor did it require the Board to allow a potentially adversely affected party to be able to submit written statements to the GAC.²³
- c. Although the GAC advice must be based on legitimate public policy considerations, even in the absence of a rationale for the GAC advice, there was sufficient support in the record before the NGPC for the NGPC to discern a well-founded public policy interest, and it was proper for the NGPC to consider reasons given in the Early Warning Notice as providing a public policy reason supporting the NGPC decision.
- d. Given the strong presumption arising from GAC consensus advice, the NGPC appropriately decided to reject Amazon’s applications.

²² Although not applicable to this IRP, Section 12.3 of the new version of the Bylaws adopted in 2016 requires all advisory committees of ICANN, including the GAC, to include “the rationale for such advice.” (See Ex. R-81; ICANN Bylaws, § 12.3 (eff. Oct. 1, 2016).) The new Bylaws indicate that they are not intended to be retroactive. (See ICANN Bylaws, § 27.4 (eff. Oct. 1, 2016).)

²³ ICANN also noted that Amazon had an opportunity to “lobby” governments in between the GAC meetings at which Amazon’s applications were discussed and it, in fact, did so. ICANN argued that this overcomes any lack of procedural fairness regarding the GAC.

- e. The NGPC gave reasons for its decision, and the reasons given by the NGPC for denying Amazon's applications are sufficient.
 - f. The NGPC did not engage in disparate treatment of Amazon. The anti-disparate treatment provision contained in the Article II, Section 3 of the Bylaws should be read, not as applying to ICANN as a whole, but as a limitation on actions of the ICANN Board. As there was no objection to .ipiranga, neither the NGPC nor the Board was ever called on to decide whether .ipiranga should be granted to a private company.²⁴ Accordingly, there could be no disparate treatment by the Board, or the NGPC acting for the Board, regarding the strings at issue in this proceeding.
 - g. Amazon's challenge to a 2011 change in the Applicant Guidebook relieving the GAC of any requirement to provide reasons for its advice is untimely.
85. Further, ICANN takes issue with the relief requested by Amazon. It argues that the Panel's powers are limited under the Bylaws to declaring whether or not the Board, or in this case the NGPC, complied with its obligations under ICANN's governance documents. It acknowledges, however, that if the Panel finds that the NGPC acted in a manner inconsistent with the governance documents, the Panel may properly make remedial recommendations to the Board.

V. ANALYSIS OF ISSUES AND REASONS FOR DECISION

86. The majority of the Panel discusses *seriatim* each of the pertinent issues fairly raised by parties as part of the Independent Review Process.

²⁴ ICANN also argued that the Ipiranga, a small waterway running through Sao Paulo, paled by comparison to the Amazon River, both in length and importance.

A. Was the GAC required to state a reason(s) or provide a rationale for its advice?

87. There is little question that a statement of reasons by the GAC, when providing consensus advice regarding an application for an internet name, is desirable. Having a reason or rationale would no doubt be helpful to the ICANN Board in evaluating the GAC's advice and assuring that there is a well-founded public policy interest behind it. Nonetheless, there is no specific requirement that the GAC provide a reason or rationale for its advice, and therefore, we conclude that a rationale or statement of reasons by the GAC was not required at the time of its action in this matter.²⁵
88. Amazon argues the decision in the *DCA Trust* IRP, particularly paragraph 74, is precedent for proposition that the GAC must provide a reason for its advice. In that IRP, the Panel held: "As previously decided by this Panel, such accountability requires an organization to *explain or give reasons* for its activities, accept responsibility for them and to disclose the results in a transparent manner." (*See DotConnectAfrica Trust v. ICANN*, Case No. 50-2013-001083, Final Declaration, at ¶ 74 (Int'l Centre for Dispute Resolution, July 31, 2015), <https://www.icann.org/en/system/files/files/final-declaration-2-redacted-09jul15-en.pdf> (Emphasis added) [hereinafter *DCA Trust*].)
89. While prior IRP decisions are indeed precedential, although not binding on this Panel,²⁶ we believe that read in context, *DCA Trust* stands for the proposition that the Board, to meet its accountability and transparency obligations, must give reasons for its actions. We do not read this language as requiring the GAC to do so.
90. It is true that ICANN changed its Bylaws in 2016 and now the GAC is required to provide a rationale for its advice, but this change is not retroactive, and, contrary to

²⁵ See discussion *supra*, at 32 n. 22 (discussing a change in the Bylaws effective 2016).

²⁶ See Bylaws, Article IV, Section 3(21).

Amazon's argument, cannot be viewed as merely codifying the holding in *DCA Trust*.
(See discussion *supra*, at 32 n. 22.)

B. Was Article III, Section 1's procedural fairness requirement violated?

91. This issue is evidently one of first impression. We have been unable to find any prior IRP matter that has considered this issue with respect to the GAC, and none was cited to us by the parties.
92. Article III, Section 1 of the Bylaws provides: "ICANN *and its constituent bodies* shall operate . . . with procedures designed to ensure fairness." (Emphasis added.)
93. The GAC is a constituent body of ICANN within the meaning of this Article. Indeed, ICANN does not argue otherwise. Nor is there any doubt, under the facts presented, that Amazon attempted to offer a written statement or materials regarding why the GAC should not adopt consensus advice opposing Amazon's applications. (Hayden Statement, ¶ 37.) It was not permitted to do so. (*Id.*) Nor is there any doubt that, as the applicant, Amazon stood to be materially adversely affected if the GAC issued consensus advice against its application, if for no other reason than there would be a strong presumption that, if the GAC did so, Amazon's application should be rejected by the ICANN Board.
94. Basic principles of procedural fairness entitle an applicant who request to have the opportunity to be heard in some manner before the GAC, as a constituent body of the ICANN. There is, however, a question of how much procedural fairness is required to satisfy Article III, Section 1. We need not decide whether such procedural fairness necessarily rises to the level normally required by administrative and quasi-judicial bodies. (See, e.g., *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313

(1950).) However, in matters relating to individual applications being considered by the ICANN Board itself, it is noteworthy that while individual applicants are not permitted to appear in person and make a presentation to the Board, ICANN's procedures permit an applicant, whose interests may be adversely affected by a decision of the Board regarding its application, to submit a written statement to the Board as to why its application should be permitted to proceed. The Panel is of the view that the same type of procedural fairness afforded by the Board required the GAC, as a constituent body of ICANN, to provide a comparable opportunity. Thus, under the facts of this IRP, the procedural fairness obligation applicable to the GAC, at a minimum, required that the GAC allow a written statement or comment from a potentially adversely affected party, before it decided whether to issue consensus advice objecting to an application. The Board's obligation was to see that the GAC, as a constituent body of ICANN, had such a procedure and that it followed it.

95. In this case, Amazon attempted to distribute written materials explaining its position to the GAC, but the GAC Chair denied its request. (Hayden Statement, ¶ 37.) Allowing a written submission would have given Amazon an opportunity, among other things, to correct the erroneous assertion by representatives of the Peruvian government that "Amazon" was a *listed* geographic name under the Guidebook. Amazon might have been able to submit information that neither Brazil nor Peru had a legal or sovereign right to the name "Amazon" under international or domestic law and that Amazon had registered the trademark or trade name of "Amazon" in many nations of the world, including Brazil and Peru. In any event, the failure to provide Amazon with an opportunity to submit a written statement - - despite its request that it be allowed to do

so - - to the very body of ICANN that was considering recommending against its application violated Article III, Section 1.

96. In the view of the majority of the Panel, while the GAC had the ability to establish its own method of proceeding, its failure to afford Amazon the opportunity to submit a written statement to the GAC governments at their meeting in Durban undermines the strength of the presumption that would otherwise be accorded GAC consensus advice. While our holding is limited to the facts presented in this matter, it draws support from the principle that a party has the right to present its views where a judicial or arbitral body is deciding its case. Indeed, this fundamental principle of procedural fairness is widely recognized in international law. Moreover, international law also supports the view that the failure to afford a party the opportunity to be present its position affects the value of the decision-making body's proclamations. For example, in the realm of international arbitration, the awards of arbitrators are given substantial, nearly irrefutable, deference. (*See generally* Convention on the Recognition and Enforcement of Foreign Arbitral Awards arts. III, V, July 6, 1988, 21 U.S.T. 2517, 330 U.N.T.S. 38 (the "New York Convention").) However, the New York Convention allows a court to refuse to enforce an arbitration award—that is, refuse to show the arbitrators deference—if "[t]he party against whom the award is invoked was not given proper notice . . . or was otherwise unable to present his case." (*Id.*, at art. V(1)(b).) Identical provisions allowing a party to either set aside an arbitration award or resist its enforcement appear in the Model Law on International Commercial Arbitration published by United Nations Commission on International Trade Law. (See United Nations Commission on International Trade Law, UNCITRAL Model Law on

International Commercial Arbitration 1985, with Amendments as Adopted in 2008, arts. 34(2)(a)(ii), 36(1)(a)(ii) (Vienna: United Nations, 2008.)

97. We find that this principle, enshrined in international arbitration law by convention, is instructive here. While the GAC is indisputably a political body - - not a judicial or arbitral body - - its consideration of specific gTLD applications takes place within the framework of the ICANN Board's application review process where the GAC's consensus advice is given a strong presumption by the Board, which itself is functioning as a quasi-judicial body. Thus, under the facts before us, the GAC's decision not to provide a affected party with the opportunity to be present a written statement of its position, notwithstanding its specific request to do so, not only constitutes a violation of procedural fairness obligations under Article III, Section 1 of the ICANN Bylaws, it diminishes the strength of the strong presumption that would otherwise be warranted based upon GAC consensus advice.
98. It is true, as ICANN established at the hearing, that because Amazon's applications were considered at two GAC meetings, Amazon had an opportunity between those meetings to lobby one or more governments to object to consensus advice, and it attempted to do so. Whatever this opportunity was, however, it was not a procedure that the GAC made available when requested by an applicant. Moreover, attempting to influence governments, who have their own political agendas and trade-offs that could be extraneous to the merits of an application for an internet name, is not the same as procedural fairness provided by the GAC itself. That duty is independently mandated under the Bylaws and is not supplanted by an opportunity to lobby governments apart from or in-between GAC meetings.

99. Our decision regarding minimum procedural fairness required by Article III, Section 1 of the Bylaws finds support in the *DCA Trust* IRP. In that matter, the Panel noted that DCA Trust was not given “an opportunity in Beijing or elsewhere to make its position known or defend its own interests before the GAC reached consensus on the GAC Objection Advice[.]” (*See DCA Trust*, at ¶ 109.) The *DCA Trust* Panel went on to hold that this lack of procedural opportunity was “not [a] procedure[] designed to insure the fairness required by Article III, sec. 1.” (*Id.*)

C. Must GAC advice be based upon public policy considerations?

100. The reasons for GAC Advice, even if not expressed, as is the case before us, must nonetheless be grounded in public policy. This proposition is fairly gleaned from several provisions of ICANN’s governance documents. Thus, the Bylaws recognize that the GAC’s purpose is to advise the Board regarding its activities “where they may affect public policy issues.” (Bylaws, art. XI, § 2(1)(a).) So, not only does the GAC have an important role in providing recommendations and advice regarding policy development by ICANN, but it also can intervene regarding a specific application to ICANN provided that the application raises legitimate public policy concerns. The GAC Operating Principles reinforce the need for a nexus between GAC advice and legitimate public policy concerns. (*See ICANN Governmental Advisory Comm. Operating Principles*, art. I, principles 2, 4.) Although not a decision-making body, as reflected in its Operating Principles, the GAC views itself as providing advice and recommendations to the ICANN Board and operating as a forum to discuss “government and other public policy issues and concerns.” (*Id.*) The Applicant

Guidebook indicates that the GAC may object when an application “violates national laws or raises sensitivities.”²⁷ (Guidebook, module 3.1.)

101. Moreover, the public policy concerns underlying GAC advice must be well-founded.

Mr. Atallah acknowledged that if GAC consensus advice was based upon a mistaken view of international law, the Board would reject such advice. (Atallah Tr., 127:14-128:4.) Thus, we conclude that if, for example, in the unlikely event that GAC consensus advice was animated by purely private interests, or corruptly procured, the ICANN Board would properly reject it. Put differently, such advice, even if consensus advice, would not be well-founded and would not warrant a strong presumption, or any presumption at all. Similarly, if the only reason for the GAC advice was that the applied for string is a listed geographic name under the Guidebook, whereas in truth and in fact it is not a listed geographic name, that reason, although based on public policy concerns, would be not be well-founded and, therefore, would be rejected by the Board. Put differently, the objection based on such grounds would not warrant a presumption that it should be sustained. Similarly, if the reason for objecting to the string is that assigning it would violate international or national laws, consensus advice might warrant a presumption if well-founded, but that presumption would be overcome by expert reports that make clear that neither international law, nor national law of the

²⁷ As noted, based on the record before us, the granting of Amazon’s application would violate no country’s national laws. As for sensitivities, it is noteworthy that nowhere in the record is there a claim, much less any support for same, that the people who inhabit the Amazon region would find the use by the applicant of the English-language string, .amazon, derogatory or offensive. Brazil’s statement of concerns regarding the “risks” of granting the applications that relates to “a very important cultural, traditional, regional and geographical name related to the Brazilian culture” falls short of identifying what those “risks” are. (*See* Ex. C-40, at 11-13.) Nor did the delegates from Brazil or Peru articulate why the use of the string would be offensive to the sensibilities of people inhabiting the Amazon River basin. (*See id.*) There was no evidence in the record to support such an assertion, even had it been made.

objecting countries, prohibit the assignment of the string to the applicant. This is especially true where, as here, an independent expert report commissioned by the NGPC made clear that the legal objection of Brazil and Peru lacked merit. If the only reason for the consensus advice is that another entity, presumably a non-governmental organization (NGO), in the future would be denied the string, at a minimum the NGPC, acting for the Board, would need to explain why the Guidebook rule that deprivation of future use of a string, standing alone, is not a basis to deny a string is inapplicable. Further, if the public policy concern supporting the GAC advice is implausible or irrational, presumably the Board would find it not well-founded and would not be compelled to follow it, notwithstanding the strong presumption. (*Cf.* Atallah Tr., 128:24-129:20.)

102. The foregoing illustrates why it is highly desirable for the GAC to provide reasons or a rationale for its consensus advice to the Board. In this matter, the only arguably valid reason for the GAC advice is the assertion by Brazil and Peru that sometime in the future a NGO or other entity may wish to use the applied for English gTLD and equivalents in Chinese and Japanese characters to promote the environment and/or the culture of indigenous people of the Amazon region. This is no doubt a public policy concern. However, the evidence before the NGPC, in the form of expert reports of Dr. Passa and Dr. Radicati, indicates quite clearly that there is no prejudice or material harm to potential future users of the applied for strings. Ordinarily, the Board defers to expert reports, especially expert reports, such as Dr. Passa's, commissioned by the Board, or in this instance, by the NGPC functioning as the Board.

103. We conclude that GAC consensus advice, although no reasons or rationale need be given, nonetheless must be based on a well-founded public interest concern and this public interest basis must be ascertained or ascertainable from the entirety of the record before the NGPC. In other words, the reason(s) supporting the GAC consensus advice, and hence the NGPC decision, must be tethered to valid and legitimate public policy considerations. If the record fails to contain such reasons, or the reason given is not supported by the record, the Board, in this case acting through the NGPC, should not accept the advice.²⁸

104. As we explain more fully below, the Board cannot simply accept GAC consensus advice as conclusive. The GAC has not been granted a veto under ICANN's governance documents. If the NGPC's *only* basis for rejecting the applications was the strong presumption flowing from GAC consensus advice, this would have the effect of converting the consensus advice into a conclusive presumption and, in reality, impermissibly shifting the Board's duty to make an independent and objective decision on the applications to the GAC.

105. In this matter, the NGPC relied upon the reasons set out in the Early Warning Notice of Brazil and Peru as providing a rationale supporting the GAC advice. Although there is no clear evidence that the rationale for objecting to the use of the applied-for strings advanced by Brazil and Peru in the Early Warning Notice formed the rationale for the

²⁸ Under ICANN procedures, the Board would then engage the GAC in further discussions and give GAC a reason why it is doing so. (Atallah Tr., 121-128.) In this case, the reason might well be that there is no discernable valid and legitimate public policy reason for the GAC's recommendation. To the extent that reasons were given in the Early Warning Notice, the mere deprivation of the future use of the string does not appear to be a material reason, especially where there is no showing of harm or prejudice to the environment or inhabitants of the Amazon region.

GAC advice,²⁹ we believe it was appropriate for the NGPC to consider the reasons given by Brazil and Peru as support for the NGPC's decision, along with the presumption of valid public policy concerns arising from the consensus advice, as a basis for denying Amazon's application. Needless to say, however, the Early Warning Notice itself is not entitled to any presumption that it contains valid public policy reasons.

106. That said, as noted above, the reasons given by Brazil and Peru in their Early Warning Notice do not appear to be based on well-founded public policy concerns that justify the denial of the applications. Further, Brazil and Peru's objection to the applications based on deprivation of future use of the strings is not supported by the record, including the expert reports that are part of that record. In these circumstances, we are constrained to conclude that there is nothing to support the NGPC's decision other than the presumption arising from GAC consensus advice. There must be something more than just the presumption if the NGPC is to be said to have exercised its duty to make an independent decision regarding the applications, especially where, as in this matter, the GAC did not provide the ICANN Board with a rationale or reasons for its advice.

D. Were the Early Warning Notice reasons relied on by the NGPC well-founded public policy reasons?

107. Because the NGPC did not set forth its own reasons or analysis regarding the existence of a well-founded public policy concern justifying its rejection of the applications, the Panel must undertake to review the record before the NGPC. Having done so, we are

²⁹ Indeed, the testimony of Heather Dryden, the former Chair of the GAC, in the *DCA Trust* IRP, part of the record in this IRP, indicates that there is no consensus GAC rationale for its advice. (Ex. CLA-5, 322:24-324:21.)

unable to discern from the record before the NGPC a well-founded public policy rationale for rejecting the applications.

108. Four reasons were asserted by Brazil and Peru in their Early Warning Notice and the discussion at the meeting of the GAC in Durban on July 16, 2013:

- a. Peru asserted that applications should be rejected because “Amazon” is a listed geographic name. ICANN, however, concedes that Peru’s assertion, made at GAC’s Durban meeting to rally support for GAC advice opposing Amazon’s application, was erroneous. “Amazon” is not a listed geographic name. (*See* Ex. C-40, at 14-15, 24; Ex. C-102, ¶ 1.)
- b. Brazil and Peru asserted legal rights to the name “.amazon” under international law, causing the NGPC to ask for an expert opinion on this issue. (Atallah Tr., 216:4-13.) Peru specifically claimed it had legal grounds to the name “Amazon,” as it denotes a river and a region in both Brazil and Peru, (*see, e.g.*, Ex. C-40, at 14), and it invoked the “rights of countries to intervene in claims that include words that represent a geographical location of their own,” (Ex. C-95, at 2). The legal claim of Brazil and Peru is without merit. Dr. Passa’s report, part of the record before the NGPC, makes plain that neither nation has a legal or sovereign right under international law, or even their own national laws, to the name. (Ex. C-48.) There appear to be no inherent governmental rights to geographic terms. (*See* Ex. C-34; Forrest Report, ¶ 5.2.1.)
- c. Brazil and Peru asserted in their Early Warning Notice that unidentified governmental or non-governmental organizations, who in the future may be interested in using the string to protect the environment (“biome”) of the Amazon

region or promote the culture of the people that live in this region, will be deprived of future use of the .amazon top level domain name if the applications are granted. (Ex. C-40, at 11-12.) We discuss this assertion below.

- d. Brazil and Peru also asserted that they objected to the applied-for string .amazon because it matched one of the words, in English, used by the Amazon Cooperation Treaty Organization. (*See* Ex. C-22, at 1.) A one word match is not likely to be misleading and is not a plausible public policy reason for an objection. (*See* discussion *supra*, at 22 n. 13.)
109. Only the third reason possibly presents a plausible public policy reason that could be considered to be well-founded. As discussed earlier, the record before the NGPC, however, undermines even this assertion as a well-founded reason for the GAC advice and, therefore, does not support the NGPC's decision denying the applications. First, it is noteworthy that under ICANN's own rules the mere fact that an entity will be deprived of the future use of a string is not a material reason for denying a domain name to an applicant. Indeed, the Guidebook prohibits ICANN from a finding of harm based solely on "[a]n allegation of detriment that consists only of the applicant being delegated the string instead of the objector." (Guidebook, § 3.5.4.) Thus, even had a non-governmental organization filed an application for the .amazon gTLD in order to promote the environment of the Amazon River basin or its inhabitants and objected to that string be awarded to the applicant, this would not alone justify denial of Amazon's applications. While not dispositive, it does lead us to conclude that there must be some evidence of detriment to the public interest in order to justify the rejection of the applications for the strings.

110. Even if, *arguendo*, deprivation of future use could be considered a public policy reason, the uncontroverted record before the NGPC, found in two expert reports, the report of ICC independent expert Professor Radicati di Brozolo and the expert report by Dr. Passa commissioned by the NGPC, was that the use of the string by Amazon was not prejudicial and would not harm such potential future interest in the name, because (1) no entity other than Amazon has applied for the string, (2) Amazon has used this tradename and domain name for decades without any indication it has harmed the geographic region of the Amazon River or the people who live there, and (3) equally evocative strings exist, such as “Amazonia” and “Amazonas”³⁰ that could be used in the future to further the interests to which Brazil and Peru alluded in their Early Warning Notices. (See Ex. C-47, at 13-14, 21-23; Ex. C-48, at 10.) Although Professor Radicati was not informed of the GAC advice³¹, that alone does not undermine his determination that there was no material detriment to the interests of the people inhabiting the Amazon region by awarding the applicant the .amazon string. Moreover, his findings regarding the absence of prejudice or detriment are consistent with and are supported by those of Dr. Passa, the NGPC’s independent expert, who was well aware of the GAC objection to the string.

111. The NGPC did not analyze Professor Radicati’s or Dr. Passa’s reports in its resolution denying the applications. In absence of any statement of the reasons by the NGPC for denying the applications, beyond deference to the GAC advice, we conclude that the NGPC failed to act in a manner consistent with its obligation under the ICANN

³⁰ It is noteworthy that Amazon agreed not to object to .amazonas and .amazonia, if they were to be applied for. (Hayden Statement, ¶ 21.)

³¹ The Panel is surprised and troubled that neither the IO nor Amazon informed Professor Radicati of the GAC advice objecting to the strings before he made his determinations.

governance documents to make an independent, objective decision on the applications at issue. (See Bylaws, art. IV, § 3(4); Supplementary Procedures, Rule 8(iii).)

Moreover, without such an explication of a reason indicating a well-founded public policy interest, the Panel is unable to discharge meaningfully its independent review function to determine whether the NGPC made an independent, objective and merits-based decision in this matter.

E. Was the NGPC required to state its reasons for its decision denying the applications?

112. Although the GAC was not required to state reasons for its action (*see* discussion *supra* at 34-35), under the circumstances presented in this matter we hold that, in order to comply with its governance documents, the Board, in this case the NGPC, *was* required to state reasons for its decision in order to satisfy the community that it rendered an independent and objective decision in this matter. “[A]ccountability requires an organization to *explain or give reasons* for its activities.” (*See DCA Trust*, at ¶ 74; *accord Vistaprint Ltd. v. ICANN*, Case No. 01-14-0000-6505, Final Declaration, at ¶ 190 (Int’l Centre for Dispute Resolution, Oct. 9, 2015), <https://www.icann.org/en/system/files/files/vistaprint-v-icann-final-declaration-09oct15-en.pdf> [hereinafter *Vistaprint*] (stating that the Board’s decisions should be “supported by a reasoned analysis.”) (quoting *Gulf Cooperation Council v. ICANN*, Case No. 01-14-0002-1065, Interim Declaration on Emergency Request, at ¶ 76 (Int’l Centre for Dispute Resolution, Feb. 12, 2015) <https://www.icann.org/en/system/files/files/interim-declaration-emergency-protection-redacted-12feb15-en.pdf>)). Similar to *GCC* Final, para. 142, the NGPC resolution in this matter does not discuss the factors or reasons that led to its decision denying the applications, beyond the presumption flowing from

GAC consensus advice. Suffice it to say, the minutes of the NGPC's May 14, 2014 meeting and its resolution adopted that date are bereft of a reasoned analysis.

113. To be clear, our limited holding is that under the facts of this IRP, where the NGPC is relying on GAC Advice and the GAC has provided no rationale or reason for its advice, the NGPC must state reasons why the GAC advice is supported by well-founded public interests. Otherwise, the NGPC is not acting in a transparent manner consistent with its Bylaws as there would be scant possibility of holding it accountable for its decision. (*See* Bylaws, art. I, § 2(8), art. III, § 1.) Here, the limited explanation of the NGPC is deficient. Certainly, there is no way that an independent review process would be able to assess whether an independent and objective decision was made, beyond reliance on the presumption, in denying the applications. The NGPC failed to articulate a well-founded public policy reason supporting its decision. In the event the NGPC was unable to ascertain and state a valid public policy interest for its decision, it had a due diligence duty to further investigate before rejecting Amazon's applications.

(Supplementary Procedures, Rule 8(ii); *see also DCA Trust*, at ¶ 74.)

F. Absent a well-founded public policy reason, did the NGPC impermissibly give the GAC consensus advice a conclusive presumption?

114. Implicit in the NGPC resolution is that the GAC advice was based on concerns stated by Brazil and Peru in their Early Warning Notice and that the reasons given in the Early Warning Notice by Brazil and Peru for objecting were based on valid, legitimate and credible public policy concerns. An Early Warning Notice, in and of itself, is not reason for rejecting an application. At a minimum, it would require that the Board independently find that the reason(s) for the objections stated therein reflect a well-

founded public policy interest. As there is no explanation in the NGPC resolution why any of the reasons given by Brazil and Peru supported its decision to reject the applications, we have concluded above that there was not a sufficient statement of the reasons by the NGPC to satisfy the requirement of the Bylaws that the Board give reasons for its decisions.

115. In his testimony, Mr. Atallah acknowledged that ICANN is not controlled by governments, even when governments, through the GAC, provide consensus advice. (Atallah Tr., 94-95.) Consensus advice from the GAC is entitled to a strong presumption that it is based on valid public policy interests, but not a conclusive presumption. In its governance documents, ICANN could have given consensus GAC advice a conclusive presumption or a veto, but it chose not to do so.

116. Yet in this matter, Mr. Atallah candidly admitted that when the GAC issued consensus advice against Amazon's applications, the bar was too high for the Board (NGPC) to say "no." (Atallah Tr., 100-101, 128.) Clearly, the NGPC deferred to the consensus GAC advice regarding the existence of a valid public policy concern and by so doing, it abandoned its obligation under ICANN governance documents to make an independent, merits-based and objective decision whether or not to allow the applications to proceed. By failing to independently evaluate and articulate the existence of a well-founded public policy reason for the GAC advice, the NGPC, in effect, created a conclusive or irrebuttable presumption for the GAC consensus advice. In essence, it conferred on the GAC a veto over the applications; something that went beyond and was inconsistent with ICANN's own rules.

117. Moreover, as observed above, we are unable to discern from the Early Warning Notice a well-founded public policy reason for the NGPC's action. There being none evident, and none stated by the NGPC, much less the GAC, the only rationale supporting the NGPC's decision appears to be the strong presumption of a public policy interest to be accorded to GAC consensus advice. But as that is the only basis in the record supporting the NGPC's decision, to let the NGPC decision stand would be tantamount to converting the strong presumption into a conclusive one and, in effect, give the GAC a veto over the gTLD applications. This would impermissibly change the rules developed and adopted in the Guidebook. And it would also run afoul of two important governance principles of ICANN:

- That the Board state reasons for its decisions; and
- That the Board make independent and objective decisions on the merits.

118. It is noteworthy that, while the NGPC's resolution listed many documents that it considered, the NGPC did not explain how those documents may or may not have affected its own reasons or rationale for denying Amazon's applications, other than its reference to the GAC consensus advice and its presumption. Moreover, nowhere does the NGPC explain why rejecting Amazon's application is in the best interest of the Internet community, especially where a well-founded public policy interest for the GAC advice is not evident.

119. Under these circumstances, the NGPC's decision rejecting the Amazon application is inconsistent with its governance documents and, therefore, cannot stand.

G. Did the NGPC violate ICANN’s prohibition against disparate treatment when it denied the applications?

120. Amazon argues that the NGPC discriminated against it by denying its application for .amazon, yet an application by a private Brazilian oil company for the string .ipiranga, another famous waterway in Brazil, was approved. Amazon contends that by approving .ipiranga and denying .amazon, the ICANN Board, here the NGPC, engaged in disparate treatment in violation of Article II, Section 3 of the Bylaws.

121. It is accurate that ICANN’s Bylaws prohibit discriminatory treatment by the Board in applying its policies and practices regarding a particular party “unless justified by substantial and reasonable cause.” (Bylaws, art. II, § 3.) As pointed out by ICANN’s counsel, in this instance neither the Board nor NGPC, acting on its behalf, considered, much less granted, the application for .ipiranga and, therefore, did not engage in discriminatory action against Amazon. We agree. In the context of this matter, the Bylaws’ proscription against disparate treatment applies to Board action, and this threshold requirement is missing. Thus, we do not find the NGPC impermissibly treated these applications differently in a manner that violated Article II, Section 3 of the Bylaws regarding disparate treatment.

H. Was Amazon’s objection to changes to the applicant guidebook untimely?

122. In essence, Amazon argued that the GAC was required to state reasons for its advice under earlier iterations of the Guidebook. To the extent that earlier versions of the Guidebook supported Amazon’s contention, the Guidebook was changed in 2012 and earlier requirements that the GAC state reasons for its advice or provide specific

information were deleted. ICANN's launch documents, ICANN argued, are even more explicit regarding this change.

123. We agree with ICANN that to the extent that Amazon is challenging Guidebook changes made in 2011 in this proceeding, its attempt to do so is untimely. (*See Booking.com B.V. v. ICANN*, Case No. 50-20-1400-0247, Final Declaration, at ¶ 106 (Int'l Centre for Dispute Resolution, March 3, 2015), <https://www.icann.org/en/system/files/files/final-declaration-03mar15-en.pdf>; *Vistaprint*, at ¶ 172.) Any disagreement with proposed changes to the Guidebook must be made within 30 days of the notice of proposed amendments to the Guidebook. (*See* Bylaws, Art. IV, § 3.3.)

CONCLUSION

124. Based upon the foregoing, we declare that Amazon has established that ICANN's Board, acting through the NGPC, acted in a manner inconsistent with ICANN's Bylaws, as more fully described above. Further, the GAC, as a constituent body of ICANN, failed to allow the applicant to submit any information to the GAC and thus deprived the applicant of the minimal degree of procedural fairness before issuance of its advice, as required by the Bylaws. The failure by the GAC to accord procedural fairness diminishes the presumption that would otherwise attach to its consensus advice.

125. The Panel recommends that the Board of ICANN promptly re-evaluate Amazon's applications in light of the Panel's declarations above. In its re-evaluation of the applications, the Board should make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications. Further, if the Board determines that the applications should

not proceed, the Board should explain its reasons supporting that decision. The GAC consensus advice, standing alone, cannot supplant the Board's independent and objective decision with a reasoned analysis. If the Board determines that the applications should proceed, we understand that ICANN's Bylaws, in effect, require the Board to "meet and confer" with the GAC. (*See* Bylaws, Article XI, § 2.1(j).) In light of our declaration, we recommend that ICANN do so within sixty (60) days of the issuance of this Final Declaration. As the Board is required to state reasons why it is not following the GAC consensus advice, we recommend the Board cite this Final Declaration and the reasons set forth herein.

126. We conclude that Amazon is the prevailing party in this matter. Accordingly, pursuant to Article IV, Section 3(18) of the Bylaws, Rule 11 of ICANN's Supplementary Procedures and Article 31 of the ICDR Rules, ICANN shall bear the costs of this IRP as well as the cost of the IRP provider. The administrative fees and expenses of the International Centre for Dispute Resolution (ICDR) totaling US\$5,750 shall be borne by ICANN and the compensation and expenses of the Panelists totaling US\$314,590.96 shall be borne by ICANN. Therefore, ICANN shall reimburse Amazon the sum of US\$163,045.51, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Amazon.

127. Each side will bear its own expenses and attorneys' fees.

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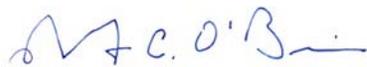
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Our learned co-panelist, Judge A. Howard Matz, concurs in the result. Attached hereto is Judge Matz's separate concurring and partially dissenting opinion.

SO ORDERED this 10th day of July, 2017



Robert C. Bonner
Chair



Robert C. O'Brien

CONCURRING AND PARTIALLY DISSENTING OPINION

OF A. HOWARD MATZ

128. I greatly admire my colleagues on this Panel and respect their diligent and thoughtful work in providing the foregoing Declaration. Moreover, for the reasons I will summarize at the end of this opinion, I concur in the outcome that they reach. But I do not believe that our authority, or that of any IRP Panel, permits us to invalidate a decision of ICANN based in substantial part on a finding that the GAC violated “basic principles of procedural fairness. . . widely recognized in international law. . .” To the extent that the Majority Declaration overturns ICANN’s decision because the NGPC failed to remedy that supposed GAC violation, it extends the scope of an IRP beyond its permissible bounds. And in any event I also reject the factual basis for the Majority’s conclusions about due process and fundamental fairness.

AUTHORITY OF AN IRP PANEL

129. The majority correctly states that “the task of this Panel is to determine whether the NGPC acted in a manner consistent with ICANN’s Articles of Incorporation, Bylaws and Applicant guidebook.” Majority Declaration, ¶ 63. The majority goes on to cite Article IV, § 3(4) of the Bylaws as follows:

The IRP Panel must apply a defined standard of review to the IRP request, focusing on: a. did the Board act without conflict of interest in taking its decision?; b. did the ICANN Board exercise due diligence and care in having sufficient facts in front of them?; and c. Did the ICANN Board members exercise independent judgment in taking the decision, believed to be in the best interest of the company [*i.e.*, the internet community as a whole]?

Id. ¶ 64.

130. What is troublesome about the Majority Declaration is that it does not comply with the clearly limited scope of review that we are duty-bound to follow. Article IV, § 3(4) specifically mandates that the IRP Panel “shall be charged with comparing contested actions of the *Board* to the Articles of Incorporation and Bylaws, and with declaring whether the *Board* has acted consistently with [those] provisions. . . .” (Emphasis added.) Instead of focusing on whether the *Board* acted consistently with its own responsibilities, the Majority Declaration devotes a considerable portion of the ruling to criticizing the *GAC*. Indeed, it does not merely criticize the *GAC*, but also finds that because the *GAC* supposedly violated a “fundamental principle of procedural fairness [that is] widely recognized in international law” [Majority Declaration ¶ 96] it thereby violated Art. III, § 1 of ICANN’s Bylaws. *See, e.g.*, Majority Declaration, ¶¶ 2(e); 94-99; 124. Nowhere does the majority provide support for the proposition that this IRP Panel is entitled to opine on whether general principles of international law require that “fundamental notions of due process” be imported onto *GAC* proceedings, especially when the parties did not even meaningfully brief those “general principles.”
131. As stated in the Final Declaration in *Booking.com B.V. v. ICANN*, ICDR Case No. 50-20-1400-0247 (Mar. 3, 2015),

The only substantive check on the conduct of the ICANN Board is that such conduct may not be inconsistent with the Articles of Incorporation or Bylaws – or, the parties agree, with the Guidebook. ¶ 108. . . . Nor . . . does our authority extend to opining on the nature of the policies or procedures established in the Guidebook. ¶ 110 . . . [I]t is not for the Panel to opine on whether the Board could have acted differently than it did; rather, our role is to assess whether the Board’s action was consistent with the applicable rules found in the Articles, Bylaws, and Guidebook. Nor, as stated, is it for us to purport to appraise the policies and procedures established by ICANN in the Guidebook (since, again, this IRP is not a challenge to those policies and

procedures themselves), but merely to apply them to the facts. ¶
115.

132. The majority finds that the Board (NGPC) violated Article IV, § 3(4) of the Bylaws because it effectively and improperly granted the GAC advice a conclusive presumption, despite that advice having been undermined by the GAC's supposed unfairness. (See below.) In this respect and to this extent, then, although the holding in the Majority Declaration is explicitly based on the conduct of the Board (Majority Declaration ¶ 113), the result must be seen as a reflection of the majority's view about what the GAC did (or failed to do). If the conclusion that "the NGPC failed to exercise the requisite degree of independent judgment" (Majority Declaration, ¶ 2(a)) is dubious, as I think it is, then the Majority Declaration may have exceeded its proper scope.

WAS THERE REALLY A "DUE PROCESS" VIOLATION?

133. The claimed violation by the GAC of due process is based on the written testimony of Mr. Scott Hayden, who is Amazon's Associate General Counsel for Intellectual Property. He wrote, "We had asked the GAC to grant us the opportunity to distribute to the GAC background materials about the Amazon Applications and the proposals we had made but the GAC Chair rejected our request." Hayden Statement, ¶ 37.

134. It is noteworthy that Mr. Hayden did not disclose just who at Amazon asked just which GAC representative for leave to submit just which written disclosure, or when such request was made (although it was evidently before the Durban meeting). Even more noteworthy is the indisputable fact that *the GAC already knew* about those Amazon applications and proposals. Indeed, governments objecting to those applications could not have issued an Early Warning until and unless at least the Amazon application had

come to their attention, and Brazil and Peru did not in fact issue the Early Warning until after they received Amazon's application.

135. Notwithstanding my view that it is not appropriate for this Panel to rest its decision, at least in large part, on whether the GAC was fair, I recognize that it is tempting to invoke Bylaws Article III, § 1 ("ICANN and its constituent bodies shall . . . ensure fairness") as the basis for doing so. "Fair is fair," after all, and it is not uncommon in an IRP for the disputing parties to challenge the fairness of their opponent's conduct. But even assuming the GAC was legally obligated to allow Amazon to make a direct written presentation in Durban, what was the impact of its failure to do so? The record shows that there was no impact at all; the claimed violation or error was utterly harmless.

136. The only supposed harm mentioned by the majority is that "allowing a written submission by Amazon would have given Amazon an opportunity, among other things, to correct the erroneous assertion by representatives of the Peruvian government that '.Amazon' was a *listed* geographic name under the Guidebook." *Id.* at ¶ 95. (Emphasis in original.) In fact, however, Mr. Atallah testified that if .Amazon had been on the list, the GAC would not even have been considering the issue in the first place. *Tr.*, p. 208.

As he put it,

So the only reason it's accepted as an application is because it was not on the list and everybody knew that. Otherwise, it wouldn't be an issue that required GAC Advice in the first place.

Id. at 209. This testimony was not rebutted.

137. Which leads to another concern that I have with the majority view: it is at odds with reality. It simply defies common sense to depict Amazon as having been effectively shut out of the process leading up to the GAC Advice or as the victim of one-sided,

heavy-handed maneuvering by Brazil, Peru, and the many other governments that joined in the Durban communique. Indeed, the facts show otherwise. At the hearing before this Panel, Amazon’s counsel himself conceded that people other than government representatives *were* allowed to attend the GAC meeting in Durban: “I now understand that observers were permitted in Durban. So the transparency issue . . . there were observers there. . . .” Tr., p. 270. Their attendance, counsel further acknowledged, was a form of “participation.” *Id.* at 269. In his written testimony, Mr. Atallah affirmed that at the Durban meeting on July 18, 2013 ICANN conducted a “Public Forum,” at which several speakers commented on the GAC’s advice regarding .Amazon. Amazon’s representative, Stacy King, actually stated, “We disagree with these recommendations and object” *Id.* at ¶ 36. Moreover, ICANN introduced ample and unrefuted evidence that in the spring and summer of 2013 – before the GAC Advice was issued – Amazon communicated its response to the Brazil/Peru opposition to several countries, including Germany (Ex. R-67), Australia (Ex. R-69), the United Kingdom (Ex. R-66) and Luxembourg (Ex. R-68). Nor is it surprising that a company as large and influential as Amazon directly waged such a sustained lobbying campaign with numerous members of the GAC. Amazon, of all possible gTLD applicants, was probably the best equipped to communicate its position to everyone involved in the determination of whether ICANN should grant it a new gTLD. Just as it may be understandable to take into account the notion that “fair is fair” in assessing the GAC’s conduct, so too should we recognize the reality that “Amazon is Amazon.”

138. For these reasons, then, in my respectful opinion there is little merit in the majority’s decision to “piggyback” the claimed due process violation by the GAC into a basis for

“undermin[ing] the strength of the presumption that would otherwise be accorded GAC consensus advice.” Majority Declaration, ¶ 96.

139. In addition to the foregoing factors, another reason why it is unfortunate that the Majority Declaration has declared that the GAC has a duty to adhere to international law-based principles of due process is that such declaration might well cause considerable confusion within ICANN. Article III, § 1 of the Bylaws, cited in ¶ 92 of the Majority Declaration, does indeed provide that both ICANN “and its constituent bodies shall operate. . . with procedures designed to ensure fairness.” But just what are those bodies? How do they participate within ICANN? Do they all function in the same manner? Do they rely on committees? Are they entitled to representation on Board committees? On the Board’s Executive Committee? If constituent bodies must permit direct presentations, would the Board and all its Committees also have to permit third parties to appear before them directly? These are legitimate questions to ask here, notwithstanding that the Majority Declaration states that it is limited to the facts of this case (¶ 113), because this IRP Declaration is entitled to be treated as precedent. (Bylaws Article IV, § 3(21).) But the questions are not even considered, much less answered.

140. Finally, given that it is the ICANN Board whose specific conduct we are reviewing, it must be stressed here that there is absolutely no evidence that it or the NGPC were unaware of both the GAC’s thinking and Amazon’s position. While I will return to the question of what the NGPC knew and what it did *infra*, at this point it is sufficient to note that as to the GAC’s thinking, Mr. Atallah swore under oath that for those NGPC and Board members who attended the seven meetings dealing with Amazon’s

application, it would not have been a benefit if GAC had provided a rationale with its advice. As he put it, “as an insider, you know exactly what is going on” Tr., p. 109. He went on to explain: “ICANN has three meetings a year, every year, where everybody gets together to actually develop policies and do the ICANN business. In every meeting the board actually meets with the GAC. And the issues that the GAC is facing are actually . . . told to the board, and so the board is aware of the issues that . . . the GAC members are bringing up . . . It’s open meetings. And in several of those meetings, the South American countries had voiced their issues with the Amazon applications.” Tr., p. 113. Mr. Atallah also testified that “when the GAC Advice came about, the board provided notice to Amazon to actually provide it with information, present their view, their side of the topic and they presented a large document to the NGPC which they reviewed and did their due diligence.” Tr., p. 184.

DID THE NGPC INDEPENDENTLY INVESTIGATE THE APPROPRIATE FACTS AND FACTORS RELATING TO AMAZON’S APPLICATION?

141. The majority has concluded that “The Board, acting through the NGPC . . . failed in its duty to independently evaluate and determine whether valid and merits-based public policy interests existed supporting the GAC’s consensus advice . . . [and thus] failed to exercise the requisite degree of independent judgment” Majority Declaration, ¶ 2(a). In my respectful opinion, the Majority Declaration either conflates or misapprehends the important difference between what ICANN initially *did* in looking into the GAC Advice re .Amazon and what it concluded after doing so.

142. The Majority Declaration acknowledges that under the then-applicable Bylaws, the GAC was not required to give reasons for its actions. Majority Declaration, ¶¶ 87-90. The Majority Declaration notes that even the decision in the *Dot Connect Africa Trust v. ICANN IRP* (ICDR Case No. 50-2013-001083) does not require the GAC to provide such reasons.³² But then the Majority Declaration essentially goes on to hold the Board responsible for GAC’s supposed failure “to explain or give reasons for its activities. Majority Declaration, ¶ 112 (emphasis in original). It does so by construing the Board to have relied solely on the “strong presumption” that the GAC’s advice is entitled to be implemented as if that presumption was conclusive. Majority Declaration, ¶¶ 104, 114. If that is what the Board did, such action would indeed fail to constitute “independence.” But I do not agree that that is what the Board did.

143. Brazil and Peru, as GAC members, issued their Early Warning on November 20, 2012 and the GAC issued its Advice on July 18, 2013. Thereafter, ICANN notified Amazon, and the NGPC proceeded to solicit and receive from Amazon and others numerous documents and submissions, which were read and considered over the course of seven different NGPC meetings. (Exs. R-26 through R-31.) Also reviewed were Professor Radicati’s Jan. 27, 2014 analysis (Ex. C-47); Dr. Passa’s March 31, 2014 “expert”

³² Regrettably, however, the Majority Declaration does not sufficiently make clear that before the Applicant Guidebook was completed, quite a saga had unfolded over how applications for top level domains in names containing geographic meaning would be treated. Various grounds for objection were considered. The GAC is comprised of sovereign governments that by their very nature function through a political lens, but the GAC is vital to the very essence of the internet and ICANN. There could be no worldwide web without the support and cooperation of governments around the globe. The GAC pushed for the right to raise concerns and objections separate and apart from the otherwise generally available grounds. Recognizing this, the full ICANN community granted GAC the very powers that have been challenged here. The outcome was that the entire ICANN community agreed to allow the GAC to use the Early Warning and GAC Advice (without accompanying rationales) procedures. The written testimony of Mr. Atallah explained this in great detail. (¶¶ 11-23.)

opinion (Ex. C-48); the Early Warning (C-22); several letters from Peru (C-45; C-50; C-51); at least four letters from Amazon (C-35; C-36; C-44; C-46) and other items.

(See Ex. R-83.) Mr. Atallah testified at length about what the NGPC did. He summarized it this way:

But the information that the NGPC went through was comprehensive. They looked at every opinion that the counterparties have [sic] and everything that was available to them, and they made their decision based on the process and as well as the issues at hand . . . and actually reviewed so much information, so much data, that the thing took ten month[s] . . .”

Tr., pp. 184-185.

144. I thus conclude that the NGPC did not in fact accept the GAC advice as conclusive. It displayed both due diligence and independent initiative in its effort to carry out its responsibilities.³³ However, whether it actually succeeded in discharging its responsibilities requires us to ascertain whether that independent inquiry led to a conclusion consistent with what the mission or core values of ICANN require. To that analysis I now turn.

145. Paragraph 113 of the Majority Declaration states very clearly,

To be clear, our limited holding is that under the facts of this IRP, where the NGPC is relying on GAC advice and the GAC has provided no rationale or reason for its advice, the NGPC must state reasons why the GAC advice is supported by *well-founded* public interest [sic] concerns. Otherwise, the NGPC is not acting in a transparent manner consistent with its Bylaws, Article I, § 2(8), Article III, § 1.

³³ In reaching this conclusion, I choose not to apply literally and indiscriminately Mr. Atallah’s testimony to the effect that the NGPC made no independent inquiry as to whether there was a valid public interest rationale for the GAC advice. (Tr., p. 238.) For Amazon to rely so heavily on that off-the cuff statement, made at the very end of a full day’s testimony and in response to a question from the Panel chair, is to take it out of fair context. Indeed Mr. Atallah followed that response with “But there was no reasons for us to believe that the public interests of the Brazilian people is [sic] misrepresented by their governments.” *Id.*

(Emphasis added.)

146. I agree, at least as to Article III, § 1. For me, the key requirement is that there be a “well-founded” basis for the NGPC’s conclusion, regardless of how procedurally adequate its inquiry otherwise was under the Bylaws. Amazon having at least rebutted the strong presumption supporting advice of the GAC, the burden of making that showing became ICANN’s to bear. It failed to do so.

147. The GAC had every right to assert “cultural sensitivities” as the primary basis for its opposition to Amazon’s application. See Paragraph 2.1(b) of the GAC Principles Regarding New gTLDs: “New gTLDs should respect . . . the sensitivities regarding terms with national, cultural, geographic and religious significance.” But Brazil and Peru needed to do more than raise those concerns in the conclusory manner that they did. Professor Radicati had sound reason to conclude that awarding the string “.Amazon” to Amazon would not in fact create a material detriment to the people who inhabit the wide region in South America that is part of the Amazon River and rain forest. As he put it, “. . . [T]here were many other parties defending interests potentially affected by the Applications (environmental groups, representatives of the indigenous populations and so on) that could have voiced some form of opposition to the Applications, had they been seriously concerned about the consequences. Particularly given the standing of at least some of those organizations, it is implausible that none of them would have been aware of the Applications.” Ex. C-47, ¶ 93. Radicati went on to add, “[T]here is no evidence either that internet users will be incapable of appreciating the difference between the Amazon group and its activities and the Amazon River and the Amazon Community and its specificities [sic] and

importance for the world will be removed from the public consciousness, with the dire consequences emphasized by the IO.” Ex. C-47, ¶ 103. (Emphasis added.)

148. What the objectors, the GAC and the NGPC failed to demonstrate here stands in contrast with what the applicants for the “.persiangulf” gTLD pointed to in the “Partial Final Declaration” in the IRP in *Gulf Cooperation Council (GCC) v. ICANN* (ICDR Case No. 01-14-0002-1065). There, in fact, *both* the applicant (Asia Green) and its opponents presented greater support for their respective positions. For example, Asia Green noted,

There are in excess of a hundred billion of Persians worldwide. They are a disparate group, yet they are united through their core beliefs. They are a group whose origins are found several millennia in the past, their ethnicity often inextricably linked with their heritage. Hitherto, however, there has been no way to easily unify them and their common cultural, linguistic and historical heritage. The .persiangulf gTLD will help change this. (¶ 14)

For its part, the GCC established that “the relevant community was substantially opposed to the “.persiangulf” application, and (c) the relevant community was closely associated with and implicitly targeted by the gTLD string.” (¶ 38)

149. So what, then, could Brazil and Peru have presented to the GAC that the NGPC should have looked for or relied on in order to reach a conclusion consistent with Art. 1, § 2 of the Bylaws, including such ICANN core values as “seeking . . . broad, informed participation reflecting . . . geographic and cultural diversity” (Core Value 4), “open and transparent policy development mechanisms” (Core Value 7) and “recognizing that governments. . . are responsible for public policy” (Core Value 11)? They could have presented: public opinion surveys; expressions of concern by existing native communities; resolutions by existing NGOs; and submissions by historians and

scientists in the Amazon region about the importance of cultural patrimony and ecological preservation. Had Brazil and Peru made at least some such information available to the GAC and had the GAC at least acknowledged that it had received such material, the NGPC's decision to uphold the GAC advice even in the absence of an explicit GAC rationale would have been sufficient, in my opinion.

150. In addition to the foregoing reasons for concurring in the result, there are other considerations that persuade me to join in the outcome of the majority's ruling. For example, as already indicated, I agree with several observations that are central to the majority's conclusion, including the following.

- a. GAC advice must be based upon public policy considerations, even if not incorporated into a written "rationale." Majority Declaration ¶ 100.
- b. The public policy considerations must be "well-founded," *Id.*, ¶ 101, and "ascertainable from the entirety of the record before the NGPC." *Id.*, ¶ 103.
- c. It "is highly desirable for the GAC to provide reasons or a rationale for its consensus advice to the Board." *Id.*, ¶ 102.³⁴
- d. The Board "cannot accept GAC consensus advice as conclusive." *Id.*, ¶ 104. (Put another way, a "strong" presumption is not the same as an "irrebuttable" presumption.)

151. Also, for the most part, Amazon's conduct in pursuing its application was commendably reasonable. For example, it explicitly agreed not to apply for gTLDs with the names (or words) "Amazonas," "Amazonia" and close variants thereof. Such a concrete effort at compromise should not be ignored or taken for granted.

³⁴ So basic and compelling is this "desirable" factor that it now has become required in the 2016 Bylaws.

152. Moreover, given that the 2016 changes in the Bylaws now impose requirements on the GAC to provide reasons for GAC advice, to the extent that because the GAC did not explicitly do so in this case ICANN's decision has been found to be deficient, the outcome of this IRP will cause little or no detriment to ICANN going forward.

153. In the *Booking* Final Declaration, *supra*, the Panel recognized the value of an IRP “contribut[ing] to an exchange that might result in enabling disputants in future cases to avoid having to resort to an IRP to resolve issues such as have arisen here.” ¶ 4. Here, too, there is a demonstrable benefit to the ICANN community that can result from further guidance about the minimum requirements that ICANN must meet in order to have its decisions about GAC advice upheld in the face of challenge. That benefit is especially applicable where, as here, the practical effect of the Panel's ruling is that the dispute is remanded for further proceedings. In other words, Brazil, Peru, the GAC and ICANN, as well as Amazon, may now supplement and strengthen their positions. The Applicant Guidebook states that the objective for ICANN is to “determine whether approval would be in the best interest of the internet community.” § 5.1. Here, all the interested parties, including Brazil, Peru and the GAC, are members of that community. *See* Bylaws, Art. I, § 2(11). They all share a common objective and potentially a common benefit in promoting their respective interests anew in light of this Declaration.

Dated: July 10, 2017


A. Howard Matz