

ICANN BOARD PAPER NO. 2023.09.10.1b

TITLE: **Convening the Second IANA Naming Function Review**

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

EXECUTIVE SUMMARY:

The Board is being asked to convene the Second IANA Naming Function Review (IFR) to satisfy the requirement under Section 18.2.b of the ICANN Bylaws that “Periodic IFRs after the first Periodic IFR shall be convened no less frequently than every five years, measured from the date the previous IFR for a Periodic IFR was convened.” The Board [convened](#) the first IFR on 16 September 2018.

The IFR is an accountability mechanism created as part of the IANA stewardship transition to ensure that PTI meets the needs and expectations of its naming customers by adhering to the contractual requirements set forth in the [IANA Naming Function Contract and the IANA Naming Function Statement of Work](#).

Appointing organizations have appointed members and liaisons to the Second IFR in accordance with the Bylaws requirements. This is also an opportunity for the Board to formally confirm the appointment of Alan Barrett as the Board’s liaison to the Second IFR.

ORGANIZATIONAL EFFECTIVENESS COMMITTEE

RECOMMENDATION:

The OEC recommends that the Board convene the Second IANA Naming Function Review in accordance with the requirements under Article 18 of the ICANN Bylaws.

PROPOSED RESOLUTION:

Whereas, the ICANN Bylaws require "The Board, or an appropriate committee thereof, shall cause periodic and/or special reviews (each such review, an "IFR") of PTI's performance of the IANA naming function against the contractual requirements set forth in the IANA Naming Function Contract and the IANA Naming Function SOW to

be carried out by an IANA Function Review Team ("IFRT") established in accordance with Article 18 of the ICANN Bylaws."

Whereas, Section 18.2.b of the ICANN Bylaws requires that "Periodic IFRs after the first Periodic IFR shall be convened no less frequently than every five years, measured from the date the previous IFRT for a Periodic IFR was convened."

Whereas, the Board convened the first IANA Naming Function Review on 16 September 2018.

Whereas, Section 18.3 of the ICANN Bylaws specifies the scope and responsibilities of the IFRT.

Whereas, appointing organizations have appointed members and liaisons to the Second IFRT in accordance with Section 18.7 of the ICANN Bylaws. Of note, on 29 June 2023, the ICANN Board confirmed Alan Barrett will serve as the Board's Liaison to the Second IFRT.

Whereas, Section 18.8.e of the ICANN Bylaws requires the ICANN Board to appoint an ICANN staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and ICANN.

Resolved (2023.09.10.xx) the Board hereby convenes the second IANA Naming Function Review and directs ICANN President and CEO or her designee(s) to provide administrative and operational support necessary for the Review Team to carry out its responsibilities.

Resolved (2023.09.10.xx) the IFR shall be conducted in accordance with the requirements specified in Article 18 of the ICANN Bylaws.

Resolved (2023.09.10.xx) the Board confirms that Alan Barrett will serve as the ICANN Board liaison to the Second IFRT.

Resolved (2023.09.10.xx) the Board directs the ICANN President and CEO or her designee(s) to appoint the appropriate staff member to serve as a point of contact to facilitate formal lines of communication between the Review Team and ICANN org.

PROPOSED RATIONALE:

Why is the Board addressing the issue?

The IFR is an accountability mechanism created as part of the IANA stewardship transition to ensure that PTI meets the needs and expectations of its naming customers by adhering to the contractual requirements set forth in the [IANA Naming Function Contract and the IANA Naming Function Statement of Work](#).

What is the proposal being considered?

The Board is convening the Second IANA Naming Function Review ("IFR") to satisfy the requirement under Section 18.2.b of the ICANN Bylaws that "Periodic IFRs after the first Periodic IFR shall be convened no less frequently than every five years, measured from the date the previous IFRT for a Periodic IFR was convened." The Board [convened](#) the first IFR on 16 September 2018.

Which stakeholders or others were consulted?

Appointing organizations have appointed members and liaisons to the Second IFR in accordance with the Bylaws requirements.

What concerns or issues were raised by the community?

No concerns or issues raised.

Are there positive or negative community impacts?

This action ensures that ICANN adheres to the Bylaws requirements in relation to the IFR, which is an accountability mechanism to ensure that PTI meets the needs and expectations of its naming customers. As such, the Board anticipates that this action will have positive community impacts overall.

What significant materials did the Board review?

The Board has reviewed the Bylaws requirements in relation to the IFR.

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

Costs to operate the review are to be drawn from the IANA Budget. Costs are anticipated to be low, and include expenditures associated with project management, administration, and Review Team travel in accordance with ICANN's Community Travel Support Guidelines.

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

This action should not have any direct impact on the security, stability and resiliency of the domain name system.

Is this action within ICANN's Mission? How does it relate to the global public interest?

This action is within ICANN's mission and supports the global public interest as it relates to ICANN's coordination of the allocation and assignment of names in the root zone.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring Public Comment or not requiring Public Comment?

The ICANN Board is taking this action in accordance with the requirements of the ICANN Bylaws. As such, no public comment period is needed to inform the Board's action.

Signature Block:

Submitted by: John Crain

Position: Chief Technology Officer

Date Noted: 7 August 2023

Email: john.crain@icann.org

ICANN BOARD PAPER NO. 2023.09.10.1c

TITLE: **Approval of IANA Naming Function Review Bylaws Changes**

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

EXECUTIVE SUMMARY:

The Final Report from the first IANA Naming Function Review (IFR) was submitted to the ICANN Board for consideration in April 2021, and on 12 May 2021 the ICANN Board accepted the recommendations. Recommendation 3 of the Final Report recommended changes to the ICANN Bylaws to remove a duplication within Article 18, Section 12.a. Separately, in 2019 the Registries Stakeholder Group requested an update to the IFR composition requirements to ease the geographic diversity requirements. Finally, ICANN organization has identified some areas within the IFR-related Bylaws at Article 18 of the Bylaws that could benefit from clarification for future IFR processes. In addition, Article 19 of the Bylaws includes companion provisions on the composition of a Separation Cross-Community Working Group, which presents the same composition challenges as identified with Article 18. The Board previously approved the initiation of the Fundamental Bylaws Amendment Process for these changes. As public comment has concluded with a general indication of support, the Board is being requested to approve the Fundamental Bylaws at this time. That will initiate an Empowered Community approval process.

ORGANIZATIONAL EFFECTIVENESS COMMITTEE RECOMMENDATION:

The Organizational Effectiveness Committee (OEC) recommends that the Board approve the Fundamental Bylaws Amendments to Articles 18 and 19 relating to the IANA Naming Function Review and the IANA Naming Function Separation Process.

PROPOSED RESOLUTION:

Whereas, the first IANA Naming Function Review provided its Final Report to the ICANN Board to the ICANN Board on 8 April 2021, and the Board [accepted](#) all recommendations in the Report on 12 May 2021. This includes Recommendation 3, to amend the IFR Bylaws at Article 18, Section 18.12 to remove a duplicative requirement.

Whereas, other IFR-related Bylaws within Article 18 that could benefit from clarification for future IFR processes.

Whereas, as part of a 2019 [public comment forum](#) on a previous IFR team composition issue resulting in a Bylaws change, [the Registries Stakeholder Group \(RySG\) requested](#) additional changes to the IFR team composition to account for difficulties in achieving geographic diversity among RySG appointees.

Whereas, Article 19 regarding the IANA Naming Function Separation Process is also appropriate to update (at Section 19.5) at this time, to (1) conform to the 2019 Bylaws amendments regarding ccNSO representative selection; and (2) address the same diversity considerations raised by the RySG in relation to Article 18.

Whereas, Articles 18 and 19 of the ICANN Bylaws are identified as “Fundamental Bylaws”, requiring formal Empowered Community approval of amendments. Due to the significant procedural requirements for consideration of Fundamental Bylaws changes, and to reduce duplication of processes, all proposed amendments to Articles 18 and 19 are being presented together.

Whereas, a public comment forum on the Proposed Fundamental Bylaws was open from 9 March 2023 – 18 April 2023, and no comments were received in opposition to the proposed amendments. A commenter noted a need to update two additional references (at Section 18.8(d) and 19.6(a) to align with the updated the numbering within the two composition sections. Those changes are not material and are appropriate for incorporation without further public comment.

Whereas, the ICANN Board’s Organizational Effectiveness Committee (OEC) recommends the Board to approve the Fundamental Bylaws Amendments to Article 18 as recommended within Recommendation of the Final Report of the IFR, as well as additional proposed amendments to clarify the IFR processes and respond to the RySG request and the corresponding clauses within Articles 18 and 19.

Resolved (2023.09.10.xx), the ICANN Board pursuant to Article 25, Section 25.2 of the ICANN Bylaws, approves the Fundamental Bylaws Amendments to Articles 18 and 19 of the ICANN Bylaws relating to IANA Naming Function Reviews and the IANA Naming Function Separation Process. The ICANN President and CEO, or his designee(s), is directed to proceed to notify the Empowered Community in order to initiate the Empowered Community’s Approval Process.

PROPOSED RATIONALE:

The Board’s action today is an essential step in furthering the implementation of the recommendations of the first IANA Naming Function Review (IFR) team, as Recommendation 3 of the IFR identified changes necessary to Article 18 of the ICANN Bylaws. As well as the additional proposed changes to Articles 18 and 19, which serve to: (1) addressing a 2019 request from the Registries Stakeholder Group on updating the geographic diversity selection requirements for future IFR teams; and (2) clarifying ambiguities on the IFR processes identified through the first running of an IFR after the IANA Stewardship Transition.

The changes that are approved today more clearly set out the expected processes as designed during the IANA Stewardship Transition Process, and do not represent a change to any of those processes.

For clarity, the table below identifies the purpose for each approved amendment:

Bylaws Section	Purpose
18.2; 18.7	Punctuation addition or removal

18.6	<p>Clarification of sequencing of Board consideration of IFR outputs. A key part of these clarifications includes re-ordering the paragraphs regarding the timing of Board consideration of IFR outputs, including clearer definition of what constitutes a Board rejection and when the Empowered Community has an opportunity to consider rejecting that rejection. The Bylaws currently impose a 45-day window on certain Board actions relating to IFR recommendations and authorize the Empowered Community to initiate rejection proceedings if action is not taken within that window. The proposed updates make more explicit that the Board’s failure to act within the prescribed timeframe is to be considered a rejection. The updates also make clearer that the only time that the Empowered Community has the ability to consider rejecting the Board’s <i>approval</i> of an IFR Recommendation is when the Board approves an IFR recommendation to initiate the process to explore separation of IANA from ICANN. This limitation currently exists in the Bylaws but is expressed in the negative (“shall not apply . . . unless such IFR Recommendation relates”) and separate from the clause that it modifies. The proposed change provides a more affirmative statement that the only time the Board’s approval of an IFR recommendation is subject to an Empowered Community Process is when that approval relates to the separation process.</p>
18.8	<p>Clarification of Geographic Diversity Requirements in Composition; Renumbering of internal references for the IFR Chair Selection Process</p>
18.12	<p>Removal of duplicative grounds for Special IFR</p>
18.12	<p>Clarification of potential outputs of Special IFR and sequencing of Board consideration of IFR outputs, including clearer, more affirmative statements of special obligations relating to the initiation of an IANA Naming Function Separation Process. The proposed changes in this section mostly mirror the changes made within Section 18.6.</p>
19.5	<p>Updating of ccNSO representative selection process to conform to 2019 Bylaws amendments to Section 18.7(a); updating geographic diversity composition requirements to confirm to proposed amendments to Section 18.8</p>

19.6	Renumbering of internal references for the IFR Chair Selection Process
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As part of ICANN’s Fundamental Bylaws Amendment Process, ICANN seeks public comment on proposed changes. The public comment forum for these proposed amendments was open from 9 March 2023 – 18 April 2023. The Board has had an opportunity to review the summary of those comments. Four comments were received, including comments from the ccNSO Council and the Registries Stakeholder Group (RySG), two groups with significant assigned responsibilities within the IANA Naming Function Review processes. Two individuals also provided comments. The ccNSO Council, the RySG and one individual commenter each expressed support for the amendments as presented. The ccNSO Council noted the need to conform the numbering within the Chair selection process to reflect the updated numbering of the composition sections. Two commenters also requested competing changes to the frequency of IFRs, and as the frequency is outside of the scope of the posted proposed amendments, neither of those suggestions were taken on. One commenter also requested changes to the scope of IFR responsibilities, which is also not appropriately the subject of unilateral action by the Board and can be considered within the next IFR. The Board notes that the comments as a whole support moving forward with the Fundamental Bylaws amendments.

The Board notes that the ccNSO Council raised a question about the ability to proceed to the next IFR in the event the Co-Chair selection section is not renumbered, and queried whether this is an appropriate grounds for deferral of the next IFR. The Board notes that at the time of the first IFR, the composition-related sections of the Bylaws had already been updated without conforming the Co-Chair selection process, which was unintentionally overlooked at that time. However, the Co-Chair selection process was still successfully concluded, and the Board is confident that the record created through the approval today will clarify any ambiguity as to the intended Co-Chair selections.

As part of the Fundamental Bylaws Amendment process, with the Board’s approval, the Empowered Community will now have an opportunity to evaluate these Bylaws for approval.

The proposed amendments to Articles 18 and 19 will only go into effect if supported by the Empowered Community.

Today's action supports ICANN's continued delivery of the IANA functions, which is a cornerstone of ICANN's mission. It is also in the public interest in that it will continue to support and improve the reviews of ICANN's delivery of the IANA Naming Function within the future, preserving and enhancing this key responsibility.

Initiating the Fundamental Bylaws Amendment process is not anticipated to result in any impact to the security, stability or resiliency of the Internet's DNS. Nor is this action anticipated to result in any budgetary or financial implications.

Signature Block:

Submitted by: Samantha Eisner, Deputy General Counsel

Date: 31 August 2023

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ARTICLE 18 IANA NAMING FUNCTION REVIEWS

Section 18.1. IANA NAMING FUNCTION REVIEW

The Board, or an appropriate committee thereof, shall cause periodic and/or special reviews (each such review, an "IFR") of PTI's performance of the IANA naming function against the contractual requirements set forth in the IANA Naming Function Contract and the IANA Naming Function SOW to be carried out by an IANA Function Review Team ("IFRT") established in accordance with Article 18, as follows:

- (a) Regularly scheduled periodic IFRs, to be conducted pursuant to Section 18.2 below ("**Periodic IFRs**"); and
- (b) IFRs that are not Periodic IFRs, to be conducted pursuant to Section 18.12 below ("**Special IFRs**").

Section 18.2. FREQUENCY OF PERIODIC IFRS

- (a) The first Periodic IFR shall be convened no later than {1 October 2018}.
- (b) Periodic IFRs after the first Periodic IFR shall be convened no less frequently than every five years, measured from the date the previous IFRT for a Periodic IFR was convened.
- (c) In the event a Special IFR is ongoing at the time a Periodic IFR is required to be convened under this Section 18.2, the Board shall cause the convening of the Periodic IFR to be delayed if such delay is approved by the vote of (i) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (ii) a GNSO Supermajority. Any decision by the ccNSO and GNSO to delay a Periodic IFR must identify the period of delay, which should generally not exceed 12 months after the completion of the Special IFR.

Section 18.3. IFR RESPONSIBILITIES

For each Periodic IFR, the IFRT shall:

- (a) Review and evaluate the performance of PTI against the requirements set forth in the IANA Naming Function Contract in relation to the needs of its direct customers and the expectations of the broader ICANN community, and determine whether to make any recommendations with respect to PTI's performance;
- (b) Review and evaluate the performance of PTI against the requirements set forth in the IANA Naming Function Contract and IANA Naming Function SOW;

- (c) Review the IANA Naming Function SOW and determine whether to recommend any amendments to the IANA Naming Function Contract and IANA Naming Function SOW to account for the needs of the direct customers of the naming services and/or the community at large;
- (d) Review and evaluate the openness and transparency procedures of PTI and any oversight structures for PTI's performance, including reporting requirements and budget transparency;
- (e) Review and evaluate the performance and effectiveness of the EC with respect to actions taken by the EC, if any, pursuant to Section 16.2, Section 18.6, Section 18.12, Section 19.1, Section 19.4, Section 22.4(b) and Annex D;
- (f) Review and evaluate the performance of the IANA naming function according to established service level expectations during the IFR period being reviewed and compared to the immediately preceding Periodic IFR period;
- (g) Review and evaluate whether there are any systemic issues that are impacting PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW;
- (h) Initiate public comment periods and other processes for community input on PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW (such public comment periods shall comply with the designated practice for public comment periods within ICANN);
- (i) Consider input from the CSC and the community on PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW;
- (j) Identify process or other areas for improvement in the performance of the IANA naming function under the IANA Naming Function Contract and IANA Naming Function SOW and the performance of the CSC and the EC as it relates to oversight of PTI; and
- (k) Consider and assess any changes implemented since the immediately preceding IFR and their implications for the performance of PTI under the IANA Naming Function Contract and IANA Naming Function SOW.

Section 18.4. IFR REQUIRED INPUTS

In conducting an IFR, the IFRT shall review and analyze the following information:

- (a) Reports provided by PTI pursuant to the IANA Naming Function Contract and/or IANA Naming Function SOW during the IFR period being reviewed, any portion

of which may be redacted pursuant to the Confidential Disclosure Framework set forth in the Operating Standards in accordance with [Section 4.6\(a\)\(vi\)](#);

(b) Reports provided by the CSC in accordance with the CSC Charter during the IFR period being reviewed;

(c) Community inputs through public consultation procedures as reasonably determined by the IFRT, including, among other things, public comment periods, input provided at in-person sessions during ICANN meetings, responses to public surveys related to PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW, and public inputs during meetings of the IFRT;

(d) Recommendations for technical, process and/or other improvements relating to the mandate of the IFR provided by the CSC or the community; and

(e) Results of any site visit conducted by the IFRT, which shall be conducted in consultation with ICANN (i) upon reasonable notice, (ii) in a manner so as to not affect PTI's performance under the IANA Naming Function Contract or the IANA Naming Function SOW and (iii) pursuant to procedures and requirements reasonably developed by ICANN and reasonably acceptable to the IFRT. Any such site visit shall be limited to matters reasonably related to the IFRT's responsibilities pursuant to [Section 18.3](#).

Section 18.5. IFR RESULTS AND RECOMMENDATIONS

(a) The results of the IFR are not limited and could include a variety of recommendations or no recommendation; provided, however, that any recommendations must directly relate to the matters discussed in [Section 18.3](#) and comply with this [Section 18.5](#).

(b) Any IFRT recommendations should identify improvements that are supported by data and associated analysis about existing deficiencies and how they could be addressed. Each recommendation of the IFRT shall include proposed remedial procedures and describe how those procedures are expected to address such issues. The IFRT's report shall also propose timelines for implementing the IFRT's recommendations. The IFRT shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization.

(c) In any case where a recommendation of an IFRT focuses on a service specific to gTLD registry operators, no such recommendation shall be made by the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the Registries Stakeholder Group. In any case where a recommendation of an IFRT focuses on a service specific to ccTLD registry operators, no such recommendation shall be made by

the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the ccNSO.

(d) Notwithstanding anything herein to the contrary, the IFRT shall not have the authority to review or make recommendations relating to policy or contracting issues that are not included in the IANA Naming Function Contract or the IANA Naming Function SOW, including, without limitation, policy development, adoption processes or contract enforcement measures between contracted registries and ICANN.

Section 18.6. RECOMMENDATIONS TO AMEND THE IANA NAMING FUNCTION CONTRACT, IANA NAMING FUNCTION SOW OR CSC

(a) The IFRT may recommend, among other things to the extent reasonably related to the IFR responsibilities set forth in Section 18.3, amendments to the IANA Naming Function Contract, IANA Naming Function SOW and/or the CSC Charter. The IFRT shall, at a minimum, take the following steps before an amendment to either the IANA Naming Function Contract, IANA Naming Function SOW or CSC Charter is proposed:

(i) Consult with the Board (such consultation to be conducted in parallel with other processes set forth in this Section 18.6(a)) and PTI;

(ii) Consult with the CSC;

(iii) Conduct a public input session for ccTLD and gTLD registry operators; and

(iv) Seek public comment on the amendments that are under consideration by the IFRT through a public comment period that complies with the designated practice for public comment periods within ICANN.

(b) A recommendation of an IFRT for a Periodic IFR that would amend the IANA Naming Function Contract or IANA Naming Function SOW shall only become effective if, with respect to each such recommendation (each, an "**IFR Recommendation**"), each of the following occurs in addition to the steps set out in Section 18.6(a)(i)-(iv) above:

(i) The IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;

(ii) ~~After a public comment period that complies with the designated practice for public comment periods within ICANN,~~ Ithe Board has approved the IFR Recommendation; and

(iii) The EC has not rejected the Board's approval of the IFR Recommendation pursuant to and in compliance with Section 18.6(ed), if applicable.

(c) The Board shall accept or reject an IFR Recommendation within 45 days of the later of (1) the date that the condition in Section 18.6(b)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 18.6(b)(ii). If the Board does not act within that 45-day time period, the IFR Recommendation shall be deemed rejected.

~~(d)~~ If the Board (x) rejects an IFR Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 18.6(b)(i) or (y) rejects an IFR Recommendation through expiration of time as specified in Section 18.6(c), ~~does not resolve to either accept or reject an IFR Recommendation within 45 days of the later of (1) the date that the condition in Section 18.6(b)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 18.6(b)(ii)~~, the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable IFR Recommendation. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants.

(i) ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum (as defined in Section 2.3(a) of Annex D), which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants (as defined in Section 2.2(d)(i) of Annex D) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the IFR Recommendation or approve the IFR Recommendation (either, a "**Post-Forum IFR Recommendation Decision**").

(A) If the Board in its Post-Forum IFR Recommendation Decision resolves to approve the IFR Recommendation, such IFR Recommendation will be subject to Section 18.6(ed).

(B) For the avoidance of doubt, the Board shall not be obligated to change its decision on the IFR Recommendation as a result of the Rejection Action Community Forum.

(C)The Board's Post-Forum IFR Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

~~(ed) If the Board approves an IFR Recommendation that relates to an IANA Naming Function Separation Process as described in Article 19~~ **Promptly after the Board approves an IFR Recommendation** (an "IFR Recommendation Decision"), the Secretary shall promptly provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the IFR Recommendation that is the subject of the IFR Recommendation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An IFR Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such IFR Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such IFR Recommendation Decision; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such IFR Recommendation Decision.

(ii) An IFR Recommendation Decision that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

~~(e) For the avoidance of doubt, Section 18.6(d) shall not apply when the Board acts in a manner that is consistent with an IFR Recommendation unless such IFR Recommendation relates to an IANA Naming Function Separation Process as described in Article 19.~~

(f) Timelines for implementing any amendments to the IANA Naming Function Contract or IANA Naming Function SOW shall be reasonably agreed between the IFRT, ICANN and PTI.

(g) A recommendation of an IFRT that would amend the CSC Charter shall only become effective if approved pursuant to Section 17.3(d).

Section 18.7. COMPOSITION OF IFR TEAMS

Each IFRT shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(a) Three representatives who are associated with ccTLD managers, appointed by the ccNSO Council. Representatives need not be associated with a ccNSO member. The ccNSO Council should use an inclusive process, which is open to all ccTLD managers, independent of their membership to the ccNSO. It is strongly recommended that the ccNSO Council reaches out to all ccTLD managers directly and/or through regional ccTLD organizations (i.e., AfTLD, APTLD, LACTLD, and CENTR) in seeking volunteers;

(b) Two representatives appointed by the Registries Stakeholder Group;

(c) One representative appointed by the Registrars Stakeholder Group;

(d) One representative appointed by the Commercial Stakeholder Group;

(e) One representative appointed by the Non-Commercial Stakeholder Group;

(f) One representative appointed by the GAC;

(g) One representative appointed by the SSAC;

~~p>~~(h) One representative appointed by the RSSAC;

(i) One representative appointed by the ALAC;

- (j) One liaison appointed by the CSC;
- (k) One liaison who may be appointed by the ASO; and
- (l) One liaison who may be appointed by the IAB.
- (m) The IFRT shall also include an unlimited number of non-member, non-liaison participants.
- (n) The IFRT shall not be a standing body. A new IFRT shall be constituted for each IFR and the IFRT shall automatically dissolve following the end of the process for approving such IFRT's IFR Recommendations pursuant to Section 18.6.

Section 18.8. MEMBERSHIP; ELECTION OF CO-CHAIRS, AND LIAISONS

- (a) All candidates for appointment to the IFRT as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison to the IFRT, which shall state: (i) why the candidate is interested in becoming involved in the IFRT, (ii) what particular skills the candidate would bring to the IFRT, (iii) the candidate's knowledge of the IANA functions, (iv) the candidate's understanding of the purpose of the IFRT, and (v) that the candidate understands the time necessary to participate in the IFR process and can commit to the role.
- (b) Members, liaisons and participants of the IFRT shall disclose to ICANN and the IFRT any conflicts of interest with a specific complaint or issue under review. The IFRT may exclude from the discussion of a specific complaint or issue any member deemed by the majority of IFRT members to have a conflict of interest. The co-chairs of the IFRT shall record any such conflict of interest in the minutes of the IFRT.
- (c) To the extent reasonably possible, the appointing organizations for the IFRT members and liaisons shall work together to achieve an IFRT that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the IFRT should include members from each ICANN Geographic Region, ~~and~~ the ccNSO and Registries Stakeholder Group shall **each endeavor to** not appoint multiple members who are citizens of countries from the same ICANN Geographic Region, **though an IFRT may proceed even if such geographic diversity targets for the ccNSO and/or the Registries Stakeholder Group appointees cannot be achieved.**
- (d) The IFRT shall be led by two co-chairs: one appointed by the GNSO from one of the members appointed pursuant to clauses ~~(be)~~-~~(ef)~~ of Section 18.7 and one appointed by the ccNSO from one of the members appointed pursuant to clauses (a)-~~(b)~~ of Section 18.7.

(e) The PTI Board shall select a PTI staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and PTI. The Board shall select an ICANN staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and ICANN.

(f) Liaisons to the IFRT are not members of or entitled to vote on any matters before the IFRT, but otherwise are entitled to participate on equal footing with members of the IFRT.

(g) Other participants are entitled to participate in the IFRT, but are not entitled to vote.

(h) Removal and Replacement of IFRT Members and Liaisons

(i) The IFRT members and liaisons may be removed from the IFRT by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the IFRT.

(ii) A vacancy on the IFRT shall be deemed to exist in the event of the death, resignation or removal of any IFRT member or liaison. Vacancies shall be filled by the organization that appointed such IFRT member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the IFRT co-chairs. The organization responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 18.9. MEETINGS

(a) All actions of the IFRT shall be taken by consensus of the IFRT, which is where a small minority may disagree, but most agree. If consensus cannot be reached with respect to a particular issue, actions by the majority of all of the members of the IFRT shall be the action of the IFRT.

(b) Any members of the IFRT not in favor of an action (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such action, which shall be included in the IFRT minutes and/or report, as applicable.

(c) IFRT meetings, deliberations and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.

(d) The IFRT shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following each IFRT meeting. Recordings and transcripts of meetings, as well as mailing lists, shall also be posted to the Website.

Section 18.10. COMMUNITY REVIEWS AND REPORTS

(a) The IFRT shall seek community input as to the issues relevant to the IFR through one or more public comment periods that shall comply with the designated practice for public comment periods within ICANN and through discussions during ICANN's public meetings in developing and finalizing its recommendations and any report.

(b) The IFRT shall provide a draft report of its findings and recommendations to the community for public comment. The public comment period is required to comply with the designated practice for public comment periods within ICANN.

(c) After completion of the IFR, the IFRT shall submit its final report containing its findings and recommendations to the Board. ICANN shall thereafter promptly post the IFRT's final report on the Website.

Section 18.11. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN shall provide administrative and operational support necessary for each IFRT to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the IFRT.

Section 18.12. SPECIAL IFRS

(a) A Special IFR may be initiated outside of the cycle for the Periodic IFRs to address any deficiency, problem or other issue that has adversely affected PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW (a "**PTI Performance Issue**"), following the satisfaction of each of the following conditions:

(i) The Remedial Action Procedures of the CSC set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such procedures shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;

~~(ii) The IANA Problem Resolution Process set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such process shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;~~

(iii) The ccNSO and GNSO shall have considered the outcomes of the processes set forth in the ~~preceding clauses (i) and (ii)~~ [Section 18.12\(a\)\(i\)](#) and shall have conducted meaningful consultation with the other Supporting Organizations and Advisory Committees with respect to the PTI Performance Issue and whether or not to initiate a Special IFR; and

(iii) After a public comment period that complies with the designated practice for public comment periods within ICANN, if a public comment period is requested by the ccNSO and the GNSO, a Special IFR shall have been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or if such procedures do not define a supermajority, two-thirds (2/3) of the Council members) and (B) a GNSO Supermajority.

(b) Each Special IFR shall be conducted by an IFRT and shall follow the same procedures and requirements applicable to Periodic IFRs as set forth in this Section 18, except that:

(i) The scope of the Special IFR and the related inputs that are required to be reviewed by the IFRT shall be focused primarily on the PTI Performance Issue, its implications for overall IANA naming function performance by PTI and how to resolve the PTI Performance Issue;

(ii) The IFRT shall review and analyze the information that is relevant to the scope of the Special IFR; and

(iii) Each recommendation of the IFRT ~~made in a~~ relating to the Special IFR, ~~including but not limited to any recommendation to initiate an IANA Naming Function Separation Process~~, must be related to remediating the PTI Performance Issue or other issue with PTI's performance that is related to the IFRT responsibilities set forth in Section 18.3, and shall include proposed remedial procedures and describe how those procedures are expected to address the PTI Performance Issue or other relevant issue with PTI's performance. For avoidance of doubt, the IFRT may issue recommendations to initiate an IANA Naming Function Separation Process through a Special IFR.

(c) A recommendation of an IFRT ~~for arising from~~ a Special IFR shall only become effective if, with respect to each such recommendation (each, a "**Special IFR Recommendation**"), each of the following occurs:

(i) The Special IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the Special IFR Recommendation; and

(iii) The EC has not rejected the Board's approval of the Special IFR Recommendation pursuant to and in compliance with Section 18.12(e).

(d) The Board shall accept or reject a Special IFR Recommendation within 45 days of the later of (1) the date that the condition in Section 18.12(c)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 18.12(c)(ii). If the Board does not act within that 45-day time period, the Special IFR Recommendation shall be deemed rejected.

~~(ed)~~ If the Board (x) rejects a Special IFR Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 18.12(c)(i) or (y)) rejects an IFR Recommendation through expiration of time as specified in Section 18.12(d) ~~does not resolve to either accept or reject a Special IFR Recommendation within 45 days of the later of (1) the date that the condition in Section 18.12(c)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 18.12(c)(ii),~~ the Secretary shall promptly provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable Special IFR Recommendation. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants.

(i) ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the Special IFR Recommendation or approve the Special IFR Recommendation (either, a "**Post-Forum Special IFR Recommendation Decision**").

(A) If the Board resolves to approve the Special IFR Recommendation, such Special IFR Recommendation will be subject to Section 18.126(f).

(B) For the avoidance of doubt, the Board shall not be obligated to change its decision on the Special IFR Recommendation as a result of the Rejection Action Community Forum.

(C) The Board's Post-Forum Special IFR Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

~~(e)~~ If the Board approves a Special IFR Recommendation that relates to an IANA Naming Function Separation Process as described in Article 19. Promptly after the Board approves a Special IFR Recommendation (a "**Special IFR Recommendation Decision**"), the Secretary shall promptly provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Special IFR Recommendation that is the subject of the Special IFR Recommendation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) A Special IFR Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such Special IFR Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Special IFR Recommendation Decision; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Special IFR Recommendation Decision.

(ii) A Special IFR Recommendation Decision that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

~~(f) For the avoidance of doubt, Section 18.12(e) shall not apply when the Board acts in a manner that is consistent with a Special IFR Recommendation unless such Special IFR Recommendation relates to an IANA Naming Function Separation Process as described in Article 19.~~

Section 18.13. PROPOSED SEPARATION PROCESS

The IFRT conducting either a Special IFR or Periodic IFR may, upon conclusion of a Special IFR or Periodic IFR, as applicable, determine that an IANA Naming Function Separation Process is necessary and, if so, it shall recommend the creation of an SCWG pursuant to Article 19.

ARTICLE 19 IANA NAMING FUNCTION SEPARATION PROCESS

{...}

Section 19.5. SCWG COMPOSITION

(a) Each SCWG shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(i) ~~Three~~ we representatives who are associated with ccTLD managers, appointed by the ccNSO Council. Representatives need not be associated with a ccNSO member. The ccNSO shall use an inclusive process, which is open to all ccTLD managers, independent of their membership in the ccNSO. ~~If from its ccTLD registry operator representatives;~~

~~(ii) One non-ccNSO ccTLD representative who is associated with a ccTLD registry operator that is not a representative of the ccNSO, appointed by the ccNSO; it is strongly recommended that the ccNSO Council reaches out to all ccTLD managers directly and/or through consult with the regional ccTLD organizations (i.e., AfTLD, APTLD, LACTLD and CENTR) in ~~making its appointment~~seeking volunteers;~~

(iii) Three representatives appointed by the Registries Stakeholder Group;

~~(iii)~~ (iv) One representative appointed by the Registrars Stakeholder Group;

(i) One representative appointed by the Commercial Stakeholder Group;

(vi) One representative appointed by the Non-Commercial Stakeholder Group;

(vii) One representative appointed by the GAC;

- (viii) One representative appointed by the SSAC;
 - ~~(ix)~~ One representative appointed by the RSSAC;
 - (ix) One representative appointed by the ALAC;
 - (xi) One liaison appointed by the CSC;
 - (xii) One liaison appointed by the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the SCWG, who shall be named in the IFRT's recommendation to convene the Special IFR;
 - (xiii) One liaison who may be appointed by the ASO;
 - ~~(xiv)~~ One liaison who may be appointed by the IAB; and
 - (xiv) One liaison who may be appointed by the Board.
 - (xvi) The SCWG may also include an unlimited number of non-member, non-liaison participants.
- (b) All candidates for appointment to the SCWG as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison, which shall state (i) why the candidate is interested in becoming involved in the SCWG, (ii) what particular skills the candidate would bring to the SCWG, (iii) the candidate's knowledge of the IANA naming function, (iv) the candidate's understanding of the purpose of the SCWG, and (v) that the candidate understands the time necessary to participate in the SCWG process and can commit to the role.
- (c) Members and liaisons of the SCWG shall disclose to ICANN and the SCWG any conflicts of interest with a specific complaint or issue under review. The SCWG may exclude from the discussion of a specific complaint or issue any member, liaison or participant deemed by the majority of SCWG members to have a conflict of interest. The co-chairs of the SCWG shall record any such conflict of interest in the minutes of the SCWG.
- (d) To the extent reasonably possible, the appointing organizations for SCWG members and liaisons shall work together to:
- (i) achieve an SCWG that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the SCWG should include members from each ICANN Geographic Region. ~~The, and the~~ ccNSO and Registries Stakeholder Group shall each endeavor to not appoint multiple members who are citizens of

countries from the same ICANN Geographic Region, though an SCWG may proceed even if such geographic diversity targets for the ccNSO and/or the Registries Stakeholder Group appointees cannot be achieved;

(ii) ensure that the SCWG is comprised of individuals who are different from those individuals who comprised the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the SCWG, other than the liaison to the IFRT appointed by the CSC; and

(iii) seek to appoint as representatives of the SCWG as many individuals as practicable with experience managing or participating in RFP processes.

(e) ICANN shall select an ICANN staff member and a PTI staff member to serve as points of contact to facilitate formal lines of communication between the SCWG and ICANN and the SCWG and PTI. Communications between the SCWG and the ICANN and PTI points of contact shall be communicated by the SCWG co-chairs.

(f) The SCWG shall not be a standing body. Each SCWG shall be constituted when and as required under these Bylaws and shall dissolve following the end of the process for approving such SCWG's SCWG Recommendations pursuant to Section 19.4(d).

Section 19.6. ELECTION OF CO-CHAIRS AND LIAISONS

(a) The SCWG shall be led by two co-chairs: one appointed by the GNSO from one of the members appointed pursuant to clauses (iii)-(vi) of Section 19.5(a) and one appointed by the ccNSO from one of the members appointed pursuant to clauses (i)-(ii) of Section 19.5(a).

(b) Liaisons to the SCWG shall not be members of or entitled to vote on any matters before the SCWG, but otherwise shall be entitled to participate on equal footing with SCWG members.

(c) Removal and Replacement of SCWG Members and Liaisons

(i) The SCWG members and liaisons may be removed from the SCWG by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the SCWG.

(ii) A vacancy on the SCWG shall be deemed to exist in the event of the death, resignation or removal of any SCWG member or liaison. Vacancies shall be filled by the organization that appointed such SCWG member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the SCWG co-chairs. The organization responsible for filling such

vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

[...]

Public Comment Summary Report

IANA Naming Function Review Bylaws Changes

Open for Submissions Date:

Thursday, 9 March 2023

Closed for Submissions Date:

Tuesday, 18 April 2023

Summary Report Due Date:

Friday, 14 July 2023 (Extended from 22 May 2023)

Category: Reviews

Requester: ICANN org

ICANN org Contact(s): Samantha.eisner@icann.org.

Open Proceeding Link: <https://www.icann.org/en/public-comment/proceeding/iana-naming-function-review-bylaws-changes-18-04-2023>

Outcome:

Four comments were received on the proposed Bylaws changes, including from the Country Code Names Supporting Organization (ccNSO) Council and the Registries Stakeholder Group (RySG), which are two ICANN community groups that are charged with significant responsibilities within the IANA Naming Functions Reviews (IFRs). Three of the four commenters expressed support for the proposed Bylaws changes. The ccNSO Council noted that two additional provisions of the Bylaws, Sections 18.8(d) and 19.6(a), require amendment in order to align the IFR Chair selection process to the updated numbering within the composition sections, and the proposal will be updated prior to further consideration by the ICANN Board.

Comments were also received that suggest changes to other portions of the IFR-related Bylaws not proposed for amendment, including altering the timing between the convening of regular IFRs, as well as suggesting IFR reporting to other communities served by the IANA functions. As those changes would require more intensive community conversation, they are not appropriate to include in a further draft for Board consideration. Finally, comments were received seeking clarification on the impact on the next IFR.

The comments received validated the proposed changes and indicate that it is appropriate for the proposal to continue moving through the Fundamental Bylaws Amendment Process.

Section 1: What We Received Input On

As part of the Fundamental Bylaws Amendment Process, ICANN sought input on a comprehensive package of amendments to Articles 18 and 19 of the ICANN Bylaws, which define ICANN and the community’s obligations regarding the Internet Assigned Numbers Authority (IANA) Naming Function Reviews.

There are four types of changes:

1. The removal of a duplication at Article 18, Section 12(a), as identified by the first IANA Naming Function Review (IFR) team in its Final Report.
2. Updates to the composition of IFR teams to address composition issues identified by the Registries Stakeholder Group (RySG) in 2019.
3. Clarification of ambiguities in the IFR processes identified through the first IFR after the IANA Stewardship Transition.
4. Updates to the composition of the team exploring an IANA Naming Function Separation Process (Article 19), to conform to composition updates for the IFRs within Article 18.

Section 2: Submissions

Organizations and Groups:		
Name	Submitted by	Initials
Country Code Names Supporting Organization Council	Alejandra Reynoso	ccNSO Council
Registries Stakeholder Group	Registries Stakeholder Group	RySG

Individuals:		
Name	Affiliation (if provided)	Initials
James Olorundare		JO
Gabriel Karsten		GK

Section 3: Summary of Submissions

A. Support for Bylaws Amendments as Presented

The ccNSO Council and RySG stated their support for the Bylaws amendments as presented. JO noted support for the changes specifically relating to two of the types of changes presented, on the removal of a duplication as identified by the first IFR team, and on the clarification of ambiguities.

B. Requests for Additional Changes

The ccNSO Council identified that the Bylaws at Sections 18.8(d) and 19.6(a) regarding the selection of IFR Co-Chairs required renumbering based on the proposed changes to the composition-related sections.

The ccNSO Council and GK both commented on the need to update the frequency of Periodic IFRs, which is currently set at five years from the convening of the prior IFR. The ccNSO Council requested that the frequency be moved to five years from the prior IFR team's submission of its final report, to allow for implementation of recommendations between reviews. GK recommended that the frequency be moved to every three years based on the need to respond to changes in the technological landscape.

GK recommended that the IFR Responsibilities be updated to request periodic reporting to the community, with increased awareness to the numbers structure in the community.

C. Requests for Clarification

The ccNSO Council sought additional information on the impact of the upcoming second IFR while the Bylaws changes are pending and recommended a deferral of the start of the second IFR until after the conclusion of the Fundamental Bylaws Amendment Process.

Section 4: Analysis of Submissions

A. Support for Bylaws Amendments as Presented

Based on the commenter support for the Bylaws Amendments as presented, including support from the ccNSO Council and RySG, each of which are directly impacted by the amendments, ICANN org will recommend to the Board to continue with the Bylaws Amendment Process. Notably, there were no objections raised to any of the proposed amendments.

B. Requests for Additional Changes

The ccNSO Council's identification of renumbering required at Sections 18.8(d) and 19.6(a) is greatly appreciated. ICANN org will update the references within the proposed Bylaws Amendments in order to conform the numbering between these sections and the sections on composition.

In relation to the two comments received on modifying the frequency of the Periodic IFRs, as that was not a prior recommendation of the first IFR team, nor a change required to clarify ambiguities within the IFR processes as laid out in the Bylaws, ICANN org does not have the unilateral ability to incorporate updates to that section for approval by the Board. ICANN org notes and encourages the community to further this conversation to allow for more effective reviews that continue to serve the community's needs.

On the request for adding additional reporting responsibilities to the IFR, that is similarly a matter that is not appropriate for ICANN org to forward to the Board at this time, and ICANN org suggests that the commenter provide this input for consideration to the next IFR.

C. Requests for Clarification

ICANN org notes the ccNSO Council's concern in proceeding with the next IFR without clarification of the Co-Chair selection process, and the request to defer the start of the next IFR until after the conclusion of the Fundamental Bylaws Amendment Process. ICANN org notes that when the first IFR proceeded, the composition-related sections of the Bylaws had already been updated without conforming the Co-Chair selection process, which was unintentionally overlooked at that time. However, the Co-Chair selection process was still successfully concluded. ICANN org will flag this concern to the Board. If other participating entities believe that a deferral of the second IFR is appropriate at this time, ICANN org encourages the community to provide this input to the Board.

Section 5: Next Steps

The proposed Bylaws Amendments (including the conforming changes to Sections 18.8 and 19.6) will be presented to the Board for consideration. If approved, the Empowered Community Approval Process will be initiated.

ICANN BOARD PAPER NO. 2023.09.10.1d

TITLE: **Approval of the Amended
Internet Service Providers and Connectivity Providers
(ISPCP) Constituency Charter**

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

EXECUTIVE SUMMARY:

The ICANN Bylaws (Article 11, Section 11.5.c) state that each Generic Names Supporting Organization (GNSO) Stakeholder Group and its associated Constituencies “shall maintain recognition with the ICANN Board.” The ICANN Board has interpreted this language to require approval of any charter amendments. As a best practice, each GNSO Stakeholder Group and Constituency reviews its charter on a regular basis. In September 2013, the ICANN Board approved a four-phase Process for Amending GNSO Stakeholder Group and Constituency Charters (“Process”). This is a defined Process requiring Public Comment and guides ICANN Board consideration of any charter amendments (see Appendix A).

In March 2023, the Internet Service Providers and Connectivity Providers (ISPCP) Constituency of the GNSO amended its current charter (see Appendix B) and notified the ICANN organization of its request for approval by the ICANN Board. Following review of the amended ISPCP Constituency charter (see Appendix C) by the ICANN organization in May 2023, the ICANN Board Organizational Effectiveness Committee (OEC) directed a Public Comment proceeding on the amended ISPCP Constituency charter. The ICANN organization developed a summary report of the Public Comment submissions, and the ISPCP Constituency addressed this feedback in June 2023, revising the charter as appropriate.

Having determined that all necessary steps of the Process to this point have been satisfied (see Appendix B), this paper reflects the recommendation of the OEC that the ICANN Board approve the proposed ISPCP Constituency charter amendments.

ORGANIZATIONAL EFFECTIVENESS COMMITTEE RECOMMENDATION (subject to review and discussion by the OEC):

The OEC, having reviewed all relevant materials, recommends that it is appropriate to move this item for ICANN Board consideration, and that the ICANN Board should consider whether it is prepared to approve the proposed amendments to the ISPCP Constituency charter in line with the Process for Amending GNSO Stakeholder Group and Constituency Charters adopted by the ICANN Board in 2013.

BACKGROUND:

The ICANN Bylaws (Article 11, Section 11.5.c) state that each Generic Names Supporting Organization (GNSO) Stakeholder Group and its associated Constituencies “shall maintain recognition with the ICANN Board.” The ICANN Board has interpreted this language to require approval of any charter amendments. As a best practice, each GNSO Stakeholder Group and Constituency reviews its charter on a regular basis. In September 2013, the ICANN Board approved a four-phase Process for Amending GNSO Stakeholder Group and Constituency Charters (“Process”). This is a defined Process requiring Public Comment and guides ICANN Board consideration of any charter amendments (see Appendix A).

In March 2023, the Internet Service Providers and Connectivity Providers (ISPCP) Constituency of the GNSO amended its current charter (see Appendix B) and notified the ICANN organization of its request for approval by the ICANN Board. Following review of the amended ISPCP Constituency charter (see Appendix C) by the ICANN organization in May 2023, the ICANN Board Organizational Effectiveness Committee (OEC) directed a Public Comment proceeding on the amended ISPCP Constituency charter. The ICANN organization developed a summary report of the Public Comment submissions, and the ISPCP Constituency addressed this feedback in June 2023, revising the charter as appropriate.

PROPOSED RESOLUTION:

Whereas, the ICANN Bylaws (Article 11, Section 11.5.c) state that “Each Stakeholder Group identified in Section 11.3(a) and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN Board.”

Whereas, the ICANN Board has established a Process for Amending Generic Name Supporting Organization (GNSO) Stakeholder Group and Constituency Charters to guide its consideration of any charter amendments.

Whereas, the Internet Service Providers and Connectivity Providers (ISPCP) Constituency amended its current charter and notified the ICANN organization of its request for approval by the ICANN Board.

Whereas, the ISPCP Constituency, the ICANN organization, and the Organizational Effectiveness Committee (OEC) have completed all steps identified in the Process to date, and the OEC has recommended that the ICANN Board approve the proposed changes.

Resolved (2023.09.10.xx), the ICANN Board approves the charter amendments of the ISPCP Constituency of the GNSO as documented in this paper and attachments.

PROPOSED RATIONALE:

Why is the ICANN Board addressing the issues now?

The ICANN Bylaws (Article 11, Section 5.c) state that each GNSO Stakeholder Group and its associated Constituencies “shall maintain recognition with the ICANN Board.” The ICANN Board has interpreted this language to require approval of any charter amendments. As a best practice, each GNSO Stakeholder Group and Constituency reviews its charter on a regular basis. In September 2013, the ICANN Board approved a four-phase Process for Amending GNSO Stakeholder Group and Constituency Charters (“Process”). This is a defined Process requiring Public Comment and guides ICANN Board consideration of any charter amendments (see Appendix C).

What are the proposals being considered?

The ISPCP Constituency completed Phase 1 of the Process by voting to amend its charter and informing the ICANN organization in March 2023. The ISPCP Constituency amended its charter to reflect its current practices, align with its operating procedures, and accommodate its evolving needs. It also considered best practices in the GNSO Operating Procedures, Work Stream 2 Recommendation 6, and the ICANN Bylaws.

Specific amendments include:

- Updated organizational structure while bringing charter in uniformity with ICANN formatting.
- Clarified mission and participation principles.
- Clarified areas of governance, including expanded methods of determining decision-making and policy positions.
- Updated definition of membership eligibility, and methods to determine eligibility.
- Expanded provisions regarding disclosure and resolution of conflicts.
- Provisions for engagement and outreach, including formation of an Outreach and Engagement Committee.
- Provisions for communications, publication policies, and protection of member data.
- New section on accountability and transparency, including communications to members.
- Revised section on elections, which outlines principles related to quorum and the removal of officers.
- Revised section on meetings, which includes principles related to format, minutes, and procedures.
- Formation of the role of Elections Coordinator for the ISPCP Constituency.
- Updated process for amending charter, considering best practices from the GNSO Operating Procedures and Work Stream 2 recommendations.
- Core definitions list to further inform terminology used contextually within the charter.

Is this action within ICANN’s mission? How does it relate to the global public interest?

This action is within ICANN’s commitments to make decisions by applying documented policies consistently, neutrally, objectively, and fairly and to remain accountable to the Internet community. These commitments ensure ICANN performs its mission to ensure the stable and secure operation of the Internet’s unique identifier systems, specifically, the coordination of the development and implementation of policies. Moreover, this action upholds ICANN’s core value of 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. This action also supports ICANN’s strategic objective to improve the effectiveness of ICANN’s

multistakeholder model of governance and evolve it to be increasingly effective, transparent, and accountable. The amendments supplied align with ICANN's mission and meet the global public interest by way of updating the fundamental governance document for one of the ICANN Board-recognized GNSO constituencies.

What stakeholders or others were consulted?

As part of Phase 3 of the Process, the ICANN Board OEC oversaw a 48-day Public Comment proceeding. The Public Comment proceeding received five submissions from four ICANN community groups and one individual. The ICANN organization developed a Summary Report (see Appendix D) and categorized the submissions into two areas: Charter Enforcement and Semantic Recommendation. The ISPCP Constituency addressed all relevant Public Comment feedback through one semantic revision to the charter (see Appendix C, Section 1.1.b).

What materials did the ICANN Board review? What factors did the ICANN Board find to be significant?

The ICANN Board reviewed the amended ISPCP Constituency charter and Summary Report of the Public Comment proceeding. The ICANN Board also reviewed the findings from Phase 2 of the Process in which the ICANN organization reviewed the amended ISPCP Constituency charter, examining the language, form, and structure of the amended ISPCP Constituency charter, and assessed any potential issues with the proposed changes.

What factors did the ICANN Board find to be significant?

The ISPCP Constituency, ICANN organization, and the OEC completed all steps identified in the Process and publication of the amendments for ICANN community review and Public Comment. The OEC has recommended to the ICANN Board that it approve the ISPCP Constituency charter amendments.

Are there any positive or negative ICANN community impacts?

No concerns were raised by ICANN community members regarding the provisions outlined in the amended ISPCP Constituency charter throughout the 48-day Public Comment proceeding.

Are there fiscal or liability concerns for ICANN (Strategic Plan, Operating Plan, Budget); the ICANN community; and/or the public?

There are no anticipated fiscal impact/ramifications on ICANN or individual community members within the amendments supplied. The amendments supplied align with ICANN’s mission and meet the public interest by way of updating the fundamental governance document for one of the ICANN Board-recognized GNSO constituencies.

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

There is no anticipated impact from this decision on the security, stability, and resilience of the Domain Name System because of this decision.

Is this either a defined policy process within ICANN’s Supporting Organizations or Advisory Committees or is it an ICANN organizational administrative function decision requiring Public Comment or not requiring Public Comment?

The proposed ISPCP Constituency charter amendments were subjected to a 48-day Public Comment period (9 May 2023–26 June 2023). No additional Public Comment prior to ICANN Board action is required.

Submitted by: Carlos Reyes

Position: Senior Policy Director, Community Operations and Programs

Date: 08 August 2023

Email: carlos.reyes@icann.org

APPENDIX A

Process for Amending GNSO Stakeholder Group and Constituency Charters

https://gnso.icann.org/sites/default/files/filefield_41943/charter-amendment-process-28sep13-en.pdf

APPENDIX B

ISPCP Constituency Charter, 2009

<https://gnso.icann.org/en/internet-service-and-connection-providers/articles>

APPENDIX C

ISPCP Constituency Charter, 2023

https://docs.google.com/document/d/19xjeMq4-aJgHIsYcyuUDbfX76qgw_Nn_NBJiS4CbcYY/edit?usp=sharing

APPENDIX D

ISPCP Constituency Charter Public Comment Summary Report

<https://itp.cdn.icann.org/en/files/policy-development/public-comment-summary-report-ispcp-constituency-charter-amendments-10-07-2023-en.pdf>

APPENDIX E

ISPCP Constituency Operating Procedures

<https://www.ispcp.info/assets/docs/ISPCP-Operating-Procedures.pdf>

ICANN BOARD PAPER NO. 2023.09.10.1e

TITLE: **Competition, Consumer Trust and Consumer Choice Review (CCT) and Second Security, Stability, and Resiliency of the DNS (SSR2) Review Pending Recommendations**

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

EXECUTIVE SUMMARY:

This proposed action is in furtherance of [resolution](#) 2019.03.01.04 and [resolution](#) 2021.07.21.13 to respectively place 34 recommendations issued by the second review of the Security, Stability and Resiliency of the Domain Name System (SSR2) and 17 recommendations issued by the Competition, Consumer Trust and Consumer Choice review (CCT) in “pending” status¹.

The Board is being asked to take action on two of the six CCT, and nine of the ten SSR2 remaining pending recommendations.

At their meeting on 10 July 2023, the Board Caucus on SSR2 reviewed the ICANN organization (ICANN org) assessment of SSR2 pending recommendations 9.2 and 9.3, which relate to contractual compliance activities, and advised its Sponsoring Committee, the Organizational Effectiveness Committee (OEC), of the proposed Board actions.

At their meetings on 11 July 2023 and 28 July 2023, the Board Caucus on DNS Abuse, the Board Caucus on SSR2, and the Board Caucus on CCT² reviewed the ICANN org assessment of DNS abuse-related SSR2 (12.1, 12.2, 12.3, 12.4, 13.1, 13.2 and 14.2) and

¹ The Board placed recommendations into the “pending” category to seek clarity or further information to enable the Board to decide whether to approve or reject a given recommendation. In the detailed rationale for each recommendation, the Board set out the specific reasons for its decision to place the recommendation into the pending category.

² As stated in the [Operating Standards for Specific Reviews](#) (Section 3.7), the Board monitors the progress of Specific Reviews via the OEC for all procedural issues and via the Board Caucus Group for any substantive matters.

CCT (14 and 15) recommendations and advised their Sponsoring Committee, the OEC, of the proposed Board actions.

At their meetings on 24 July and 31 August, the OEC agreed with the Board Caucuses' proposed way forward and recommended the Board to approve one recommendation as fully implemented and to reject ten recommendations.

As additional time is required to continue addressing the five remaining CCT and SSR2 pending recommendations, the OEC will continue to provide regular updates on progress toward Board action.

ORGANIZATIONAL EFFECTIVENESS COMMITTEE (OEC)

RECOMMENDATION:

The Board Organizational Effectiveness Committee (OEC) recommends the Board to take action on two of the six CCT, and on nine of the ten SSR2 pending recommendations, more specifically to approve one recommendation as fully implemented and reject ten recommendations, as documented in the *Board Action/Rationale on & ICANN org Assessment of Competition, Consumer Trust, Consumer Choice Review (CCT) Pending Recommendations 14 and 15, and Second Security, Stability and Resiliency of DNS Review (SSR2) Recommendations 9.2, 9.3, 12.1, 12.2, 12.3, 12.4, 13.1, 13.2 and 14.2*, 10 September 2023, (hereafter referred to as "September 2023 Scorecard").

PROPOSED RESOLUTION:

Whereas, on 1 March 2019, the Board [took action](#) on each of the 35 recommendations issued within the [Competition, Consumer Trust, and Consumer Choice \(CCT\) Review Team Final Report](#) dated 8 September 2018, as specified within the Scorecard titled "[Final CCT Recommendations: Board Action \(1 March 2019\)](#)", hereafter "March 2019 CCT Scorecard", resolved to place 17 CCT recommendations into pending status (in whole or in part), and committed to take further action on these recommendations subsequent to the completion of intermediate steps.

Whereas, on 22 July 2021, the Board [took action](#) on each of the 63 recommendations issued within the [Second Security, Stability, and Resiliency \(SSR2\) Review Team Final](#)

[Report](#) dated 25 January 2021, as specified within the Scorecard titled "[Final SSR2 Review Team Recommendations – Board Action](#)", hereafter “July 2021 SSR2 Scorecard”, resolved to place 34 SSR2 recommendations into pending status, and committed to take further action on these recommendations subsequent to the completion of steps as identified in the [July 2021 Scorecard](#).

Whereas, on 22 October 2020, the Board resolved to take action on 11 CCT pending recommendations, as specified within the scorecard titled "[Competition, Consumer Trust, Consumer Choice Review Team \(CCT-RT\) Pending Recommendations: Board Action on 11 Recommendations](#)" (hereafter referred to as “October 2020 CCT Scorecard”).

Whereas, on 1 May 2022, the Board took [action](#) on three pending SSR2 recommendations as specified within the "[Scorecard: SSR2 Pending Recommendations-Board Action 1 May 2022](#)".

Whereas, on 16 November 2022, the Board took [action](#) on twenty-one pending SSR2 recommendations as specified within the "[Scorecard SSR2 Pending Recommendations - Board Action - 16 November 2022](#)".

Whereas, in 2020 ICANN consolidated its various efforts related to DNS security threats and DNS abuse under a coordinated [cross functional program](#) focused on the mitigation of DNS security threats.

Whereas, in 2022 the Board aligned on a working, baseline definition of DNS abuse for ICANN which brings together a set of agreed upon DNS security threats to which policy and mitigation work within ICANN can take place immediately, while or if definitions continue to be deliberated.

Whereas, at their meetings on 24 July and 31 August 2023 the Board Organizational Effectiveness Committee (OEC), through the Board Caucus on SSR2, Board Caucus on CCT and Board Caucus on DNS Abuse, considered the assessment produced by ICANN org.

Whereas, on 31 August 2023, the OEC made a recommendation to the ICANN Board to approve one recommendation as fully implemented and to reject ten recommendations.

Resolved (2023.09.10.xx), the Board approves SSR2 Recommendation 13.2 as fully implemented, rejects SSR2 Recommendations 9.2, 9.3, 12.1, 12.2, 12.3, 12.4, 13.1 and 14.2, and CCT Recommendations 14 and 15, as specified in the as documented in the *Board Action/Rationale and ICANN org Assessment of Competition, Consumer Trust, Consumer Choice Review (CCT) Pending Recommendations 14 and 15 and Second Security, Stability and Resiliency of DNS Review (SSR2) Recommendations 9.2, 9.3, 12.1, 12.2, 12.3, 12.4, 13.1, 13.2 and 14.2*, 10 September 2023, (hereafter referred to as “September 2023 Scorecard”), and directs ICANN's President and CEO, or his designee(s), to take all actions as documented in the **September 2023 Scorecard**.

Resolved (2023.09.10.xx), the Board notes that additional time is required to continue addressing the four remaining pending CCT and one remaining SSR2 recommendations, and directs ICANN org to continue to provide regular updates to the Board as work progresses.

Why is the Board addressing the issue?

The Competition, Consumer Trust and Consumer Choice (CCT) and Security, Stability, and Resiliency (SSR) Reviews are two of the four [Specific Reviews](#) anchored in Article 4, Section 4.6 of the ICANN Bylaws. Specific Reviews are conducted by community-led review teams, which assess ICANN's performance in fulfilling its commitments. Reviews contribute to ensuring that ICANN serves the public interest, are critical to maintaining an effective multistakeholder model, and help ICANN achieve its mission, as detailed in Article 1 of the Bylaws.

The CCT Review is the first iteration of this effort. It was initiated under the Affirmation of Commitments (AoC), and calls for an assessment of the extent to which the expansion of gTLDs has promoted competition, consumer trust and consumer choice. It also serves to assess the effectiveness of the application and evaluation process during the 2012 round of the New gTLD Program.

The SSR2 Review is the second iteration of the SSR Review and is focused on the assessment of ICANN’s execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the systems and processes that are affected by the Internet’s system of unique identifiers that ICANN coordinates.

What is the proposal being considered?

This proposed action is in furtherance of [resolution](#) 2019.03.01.04 and [resolution](#) 2021.07.21.13 to respectively place 17 CCT recommendations and 34 SSR2 recommendations in “pending” status.

ICANN org implemented a cross-functional program in 2020 to coordinate the organization’s efforts related to the mitigation of DNS security threats, including processing relevant Specific Reviews recommendations and advice to the Board. Today, the Board takes action on all Specific Reviews recommendations in this cross-functional program’s portfolio.

Recommendation the Board approves as fully implemented.

The Board approves **SSR2 Recommendation 13.2** as fully implemented. Recommendation 13.2 calls for publishing the number of abuse complaints submitted to ICANN org to permit independent third parties to analyze their type. The Board notes that the existing publication format of data and metrics on ICANN.org fulfills the intent of the recommendation.

Recommendations the Board rejects.

The Board rejects DNS abuse-related **CCT Recommendations 14 and 15 and SSR2 Recommendations 12.1, 12.2, 12.3, 12.4, 13.1 and 14.2**. The **September 2023 Scorecard** sets out the specific reasons for the Board’s rejection and includes ICANN org’s assessment.

Acknowledging the CCT and SSR2’s concerns and input related to DNS security threats and DNS abuse, the Board wishes to highlight that ICANN has placed

significant focus on these issues both prior to and since the conclusion of each of these Review Teams' work, as outlined below.

In 2020 ICANN consolidated its various efforts related to DNS security threats and DNS abuse under a coordinated [cross functional program](#) focused on the mitigation of DNS security threats. To achieve its strategic objective about DNS abuse in ICANN's [Strategic Plan](#) for 2021-2025, ICANN org has been strengthening DNS coordination in partnership with relevant stakeholders, and working on establishing and promoting a coordinated approach to effectively identify and mitigate DNS security threats and combat DNS abuse.

Since 2020 the org has initiated, advanced or deployed several important pieces of work related to combatting DNS Security Threats or DNS Abuse, including the publication of the first [DNS Abuse trends report](#) based on data from [Domain Abuse Activity Reporting System](#) (DAAR), enrollment of more than [20 country code Top Level Domains \(ccTLDs\)](#) to voluntarily participate in DAAR, [securement](#) of contractual changes with the gTLD registries to enable ICANN access to data to extend DAAR-like reporting to the registrar level, and creation of the Domain Name Security Threat Information Collection and Reporting (DNSTICR). The Board has a dedicated Board Caucus to follow progress on this important issue.

As articulated in the September 2023 Scorecard and summarized below, ongoing efforts are currently addressing several elements that are included in the recommendations.

CCT Recommendation 14 calls for the inclusion of provisions in Registry Agreements (RA) to provide incentives, including financial incentives, to adopt proactive anti-abuse measures.

Acknowledging the high priority level assigned by the Review Team, the Board appreciates the extensive work conducted by ICANN org to investigate financial incentives by and for registries. ICANN org's findings show that there are specific incentives that some registries, including ccTLDs, have introduced, especially towards their registrars, to support anti-abuse measures. However, at present there is no clear evidence that such incentives ICANN could offer to registries would have the desired

impact of preventing DNS abuse from occurring within a TLD. Consequently, the Board believes that there are not sufficient grounds to direct ICANN org to implement this recommendation which, therefore, is rejected.

The Board encourages ICANN org to continue its existing efforts to educate stakeholders on the importance of working together to prevent, mitigate, contain and act on possible DNS abuse, and to continue to remain vigilant on possible actions to further combat DNS Abuse.

The Board also recognizes the progress of the proposed amendments to the Registrar Accreditation Agreement (RAA) and Base gTLD Registry Agreement that plan to add obligations to mitigate DNS Abuse. Subsequent to the potential incorporation of these amendments into contracts, the community may determine, as appropriate, if policy work would be beneficial to further combat DNS Abuse. Preventative measures, as envisioned in this recommendation, are a possible topic of such community discussions.

CCT Recommendation 15 calls for amendments to the RAA and RA to include provisions aimed at preventing systemic use of specific registrars or registries for DNS security abuse.

The Board recognizes that ICANN org has been actively engaged in a contract amendment process with the registries and registrars to add a clearly defined obligation to mitigate or disrupt DNS abuse in each agreement. The recommendation calls for outcomes that are contingent on community work.

On the component of the CCT Recommendation 15 that calls for the establishment of thresholds of abuse at which compliance inquiries are automatically triggered, with a higher threshold at which registrars and registries are presumed to be in default of their agreements, the Board notes that ICANN Contractual Compliance's role is to bring Registrars into compliance with the RAA regardless of the number of yearly complaints.

Furthermore, the Board recognizes the ICANN org assessment that a potential DNS Abuse Dispute Resolution Policy, as suggested in the SSR2 recommendation, would not be an effective means to enforce policies and deter against DNS Security Abuse as any action on DNS abuse should be enforced in a timely manner.

The community should determine what policy work is needed and how it wishes to prioritize such efforts to enhance safeguards and trust due to the negative impact of DNS Security Abuse on consumers and other users of the Internet. ICANN has included efforts to combat DNS abuse in partnership with relevant industry partners in ICANN's strategic plan, has made significant progress to date and is encouraged by the community dialogue. Acknowledging this recommendation was marked as a prerequisite by the Review Team, the Board considered ICANN org's extensive analysis of the recommendation and, while remaining fully supportive of compliance actions towards registries and registrars, as well as of any community work to enhance DNS abuse safeguards, the Board rejects this recommendation.

SSR2 Recommendation 12.1 suggests the creation of a DNS Abuse Analysis advisory team to recommend an overhaul of the DNS Abuse Reporting.

The Board notes that the community continues its discussions over DNS abuse mitigation. The Board is fully supportive of this effort and remains committed to this important work through facilitation and the convening of diverse relevant groups with diverse viewpoints. The Board notes that the DAAR project was developed thanks to community input. The Board is fully supportive of community discussions over DNS security threat mitigation and remains committed to this important work through facilitation and the convening of diverse relevant groups with diverse viewpoints. The Board notes the absence of issues that would justify an overhaul of DNS Abuse Reporting activity, as suggested by the SSR2, and rejects this recommendation. The Board encourages ICANN org to continue its work to evolve the DAAR initiative based on further community feedback.

SSR2 Recommendation 12.2 calls for structuring agreements with DNS abuse data providers to allow sharing of data for research purposes, and suggests terminating

contracts that do not allow independent verification of methodology behind blocklisting.

The Board recognizes the value of the DAAR project and that the majority of data feeds used in the DAAR reports can be accessed freely and directly by the academic/ non-commercial community without ICANN org serving as an intermediary.

The Board notes that the recommendation's suggested approach of terminating contracts or requiring specialized licensing terms may result in negative consequences impacting the total number of data feeds ICANN org is allowed to access going forward and the corresponding quality of data utilized to generate DAAR reports. Therefore, the Board rejects this recommendation.

SSR2 Recommendation 12.3 calls for ICANN org to publish reports that identify registries and registrars whose domains contribute most to abuse. The Board agrees with the ICANN org assessment that the concept of abuse, as mentioned in the Recommendation language, goes beyond ICANN's remit; that careful considerations are required to distinguish between reported cases of DNS Abuse and evidenced cases of DNS Abuse; that prior engagement with the community could be helpful in designing a procedure that supports positive outcomes, and that the successful implementation and effectiveness measures for this Recommendation imply additional actions. For those reasons, the Recommendation is rejected.

The Board encourages ICANN org to continue in its efforts to report security threat activity to the ICANN community, continue the dialogue with the contracted parties and support their actions in combating DNS Abuse, which may include publication of new reports and release of datasets that capture more specific aspects of the DNS Abuse landscape.

SSR2 Recommendation 12.4 suggests collating and publishing reports of actions taken by registries and registrars in response to complaints of abuse on a voluntary basis and in response to legal obligations.

There are existing efforts within ICANN org as well as by third-parties to collect and provide some of the data similar to what the recommendation suggests.

Recognizing that the recommendation requires changes to the contractual obligations, would create challenges for ICANN org, the registries, and registrars to define a reporting schema that would be globally applicable, and that the benefits and value of producing such reports are unclear, the Board rejects this recommendation.

SSR2 Recommendation 13.1 envisions the establishment of a central DNS abuse complaint portal that automatically directs all abuse reports to relevant parties.

Such an obligation would necessitate a change to ICANN's current contracts with registries and registrars which the ICANN Board cannot unilaterally dictate.

The Board notes that ICANN org does not view a central abuse complaint processing system as an existing gap that it needs to fill in the marketplace and expend its resources upon at this time, and that there is an existing tool that offers a service of centralized intake and distributing abuse reports. Therefore, the Board rejects this recommendation.

SSR2 Recommendation 14.2 calls for ICANN org to provide contracted parties with lists of domains in their portfolios identified as abusive.

The Board notes that progress in the contract amendment process, referred to in the above, will support the evolution of ICANN Compliance's toolkit to appropriately respond to contracted parties' failures to address DNS Abuse.

While the Board encourages ICANN org to continue to innovate and find ways to support the contracted parties in combating DNS Abuse, which may include reporting instances of well evidenced DNS Abuse to registrars and registries, the Board acknowledges the remit and roles of the different parts of the ICANN community. As the language in SSR2 14.2 is not confined to DNS abuse, but rather to much more broadly defined forms of abuse, that go beyond org's remit (as well as its visibility and competencies), the Board rejects this recommendation.

The Board rejects **SSR2 Recommendation 9.2 and 9.3** that are related to contractual compliance activities. The **September 2023 Scorecard** sets out the specific reasons for the Board's rejection and includes ICANN org's assessment.

SSR2 Recommendation 9.2 calls for proactively monitoring and enforcing obligations to notably include the validation of address fields, with an ask that enforcement efforts be focused on those with over 50 complaints or reports per year.

The Board notes that ICANN org can pursue accuracy of registration data according to the provisions included in the RA and RAA, and that at present extensive checks are conducted to verify the accuracy of registration data. The Board recognizes that the recommendation seeks the enforcement of specific compliance requirements (i.e., address fields) regarding data accuracy that are not part of the current registry and registrar contractual framework. The recommendation calls for work or outcomes that would require the Board to unilaterally modify ICANN's agreements with registries and registrars, or that would be contingent on community work. Changes to contracted party agreements would be a matter of policy or a result of voluntary negotiations between ICANN org and contracted parties. The Board wishes to note the extensive provisions on data accuracy already in place in the current Registry and Registrar agreements, and ICANN Contractual Compliance actions that are independent from the number of yearly complaints.

The Board notes the SSR2 Implementation Shepherds' clarification that ICANN org should provide details of what Compliance does in this area, with supporting public documentation and summary results of audits, and that ICANN's Contractual Compliance reports are available on [icann.org](https://www.icann.org).

Moreover, the Board also acknowledges that there are ongoing community discussions on registration accuracy. As a result, the Board rejects SSR2 Recommendation 9.2.

SSR2 Recommendation 9.3 calls for ICANN org to have compliance activities audited externally, at least annually, and to publish those plans along with resulting action plans.

The Board recognizes ICANN Compliance’s continued commitment to transparency and to continuous improvement through internal reviews to assess and improve on its operations.

The Board also acknowledges the Registry Stakeholder Group’s views, as expressed in the public comment on the SSR2 Final Report, that any recommendations related to ICANN Contractual Compliance should be connected to specific contractual terms and tied to a specific problem statement. In addition, the Board notes the Registrar Stakeholder Group’s comment that ICANN Contractual Compliance has resources in place to oversee and ensure consistent and accurate complaint processing.

The Board recognizes that Compliance’s objectives include fully and efficiently addressing third-party complaints, proactive enforcement of contractual obligations, and registry and registrar audits against their contractual obligations. The Board recognizes ICANN org’s assessment that the time and resources requested for running yearly, external audits will not lead to any desired improvement of procedures and processes that at present are running in accordance with the principles set in the contracted parties’ agreements. As a result, the Board rejects this recommendation.

Which stakeholders or others were consulted?

The CCT and SSR2 Final Reports were published for public comment and the Board received feedback as part of that process.

The SSR2 Implementation Shepherds were consulted to obtain clarification on some recommendations.

What significant materials did the Board review?

The Board considered various significant materials and documents. In addition to the ICANN org assessment (see the [September 2023 Scorecard](#)), the Board consulted the review teams’ final reports, the [Staff Report of Public Comment Proceeding on Competition, Consumer Trust, and Consumer Choice Review Team \(CCT\) Final Report & Recommendations](#), the [Staff Report of Public Comment Proceeding on Second Security, Stability, and Resiliency \(SSR2\) Review Team Final Report](#), and clarification provided by the SSR2 Implementation Shepherds.

The Board has also considered the [proposed amendments to the RAA and RA](#), requiring contracted parties to take mitigation actions on domain names being used for DNS Abuse, as well as the [18 October 2021 Informational session about DNS Abuse](#) with a panel of experts to help inform their perspectives.

Are there positive or negative community impacts?

Taking action on eleven CCT and SSR2 pending recommendations contributes to further addressing the outcome of the CCT and SSR2 Specific Reviews, and enhances ICANN's accountability.

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

None.

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

The enhancement of reporting capabilities, per SSR2 13.2, have a net positive impact on security, stability, and resiliency of the DNS.

Is this decision in the public interest and within ICANN's mission?

This action is in the public interest as it is a fulfillment of ICANN Bylaws, as articulated in Section 4.6. It is also within ICANN's mission and mandate. ICANN reviews are an important and essential part of how ICANN upholds its commitments.

The approved recommendation is consistent with ICANN's mission, serves the public interest, and falls within the Board's remit.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

None required.

Signature Block:

Submitted by: Xavier Calvez

Position: Senior Vice President, Planning & Chief Financial Officer

Date Noted: 10 September 2023

Email: xavier.calvez@icann.org

**Board Action/Rationale on & ICANN org Assessment of Competition,
Consumer Trust, Consumer Choice Review (CCT) Pending
Recommendations 14 and 15, and Second Security, Stability and Resiliency
of DNS Review (SSR2) Recommendations 9.2, 9.3, 12.1, 12.2, 12.3, 12.4,
13.1, 13.2 and 14.2**

10 September 2023

The Board takes action on DNS abuse related CCT Recommendations 14, 15 and SSR2 Recommendations 12.1, 12.2, 12.3, 12.4, 13.1, 13.2, 14.2.

The [Board](#) acknowledges the CCT and SSR2 Review Teams' concerns and input related to DNS security threats and DNS abuse, and wishes to highlight that the Board has placed significant focus on these issues both prior to and since the conclusion of each of these Review Teams' work. As a matter of fact, [ICANN's Strategic Plan](#) for 2021-2025, which feeds the Operating Initiatives in ICANN's annual operating plans, has a specific strategic objective related to security, "Strengthen the security of the Domain Name System and the DNS Root Server System", for whose achievement ICANN has been strengthening DNS coordination in partnership with relevant stakeholders, *as well as establishing and promoting a coordinated approach to effectively identify and mitigate DNS security threats and combat DNS abuse.*

ICANN's response to DNS Abuse has been and will remain multifaceted. In 2020 ICANN consolidated its various efforts related to DNS security threats and DNS abuse under a [coordinated cross-functional program focused on the mitigation of DNS security threats](#). The program focuses on three pillars:

- Providing research, data, and expertise to help the community conduct fact-based discussions about the topic.
- Providing resources that assist in raising levels of awareness and support in mitigating DNS security threats.
- Interpreting and enforcing the contractual obligations related to DNS security threats and abuse generally in Registry Agreements, Registrar Accreditation Agreements, and ICANN consensus policies.

Since 2020 the org has initiated, advanced or deployed several important pieces of work related to combatting DNS Security Threats or DNS Abuse. They include:

- Publication of first [DNS Abuse trends report](#), which was based on data from the [Domain Abuse Activity Reporting System \(DAAR\)](#). The report shows that DNS security threats have been trending downward over the prior four years.
- Enrollment of more than [20 Country Code Top Level Domains \(ccTLDs\)](#) to voluntarily participate in DAAR.
- [Securement](#) of contractual changes with the gTLD Registries to enable ICANN access to data to extend DAAR-like reporting to the registrar level.
- Contribution to an environment where the contracted parties [voluntarily initiated](#) contractual negotiations to add obligations to mitigate DNS Abuse in both the Registry and Registrar Agreements.
- Creation of the Domain Name Security Threat Information Collection and Reporting (DNSTICR) tool to analyze domain name registrations related to COVID-19 to identify credible evidence of malware or phishing and notify the sponsoring registrars to help in their mitigation efforts.

The Board recognizes that the discussion and work on DNS abuse has evolved and will continue to evolve over time. Therefore, the Board is appreciative of any current and future ICANN org plan and initiative that contribute to sharing data, refining contracted parties' agreements, investigating actions that support the fight to deter and mitigate DNS abuse, and further enhancing the global stakeholder collaborative approach that is needed to achieve higher results.

These considerations have informed the Board's approach to the recommendations presented in this scorecard.

CCT REC# 14	<p>Recommendation language: Consider directing ICANN organization, in its discussions with registries, to negotiate amendments to existing Registry Agreements, or in consideration of new Registry Agreements associated with subsequent rounds of new gTLDs, to include provisions in the agreements to provide incentives, including financial incentives for registries, especially open registries, to adopt proactive anti-abuse measures.</p> <p>CCT priority: High</p> <p>CCT directed to: The ICANN Board, the Registry Stakeholders Group, the Registrar Stakeholders Group, the Generic Names Supporting Organization, and the Subsequent Procedures PDP WG.</p>
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Board action/rationale:

The Board has aligned on the following working baseline definition of DNS abuse for ICANN: “DNS abuse includes five broad categories of harmful activity: Phishing, Malware, Botnet Command and Control, SPAM when used as a vector, and Pharming.”

The Board recognizes this working definition is neither an exhaustive list nor a criteria-based definition and may need adjusting in the future as DNS abuse evolves. However, it brings together a set of agreed upon DNS security threats to which policy and mitigation work within ICANN can take place immediately, while or if definitions continue to be debated.

The Board recognizes the progress of the proposed amendments to the Registrar Accreditation Agreement and Base gTLD Registry Agreement that plan to add obligations to mitigate DNS Abuse. Subsequent to the potential incorporation of these amendments into contracts, the community may determine, as appropriate, if policy work would be beneficial to further combat DNS Abuse. Preventative measures, as envisioned in this recommendation, are a possible topic of such community discussions.

The Board acknowledges that this recommendation was assigned a high priority level by the Review Team. For this reason, the Board appreciates the extensive work conducted by ICANN org to investigate financial incentives by and for registries. ICANN org’s findings show that there are specific incentives that some registries, including ccTLDs, have introduced, especially towards their registrars, to support anti-abuse measures. However, at present there is no clear evidence that such incentives ICANN could offer to registries would have the desired impact of preventing DNS abuse from occurring within a TLD. Consequently, the Board believes that there are not sufficient grounds to direct ICANN org to implement this recommendation which, therefore, is rejected.

Additionally, the Board encourages ICANN org to continue its existing efforts to educate stakeholders on the importance of working together to prevent, mitigate, contain and act on possible DNS abuse, and to continue to remain vigilant on possible actions to further combat DNS Abuse.

ICANN org assessment:

ICANN org notes that the Board has aligned on a working baseline definition of DNS abuse for ICANN: “DNS abuse includes five broad categories of harmful activity: Phishing, Malware, Botnet Command and Control, SPAM when used as a vector, and Pharming.” It is understood that this working baseline is neither an exhaustive list nor a criteria-based definition. However, it brings together a set of agreed-upon DNS Security Threats to which policy and mitigation work within ICANN can take place immediately, while or if definitions continue to be debated. As established in the [November 2022 exchange of letters](#) between the Contracted Party House (CPH) and ICANN org, there are ongoing efforts between ICANN org, the Registrar Stakeholder Group (RrSG), and gTLD Registries Stakeholder Group (RySG) to pursue enhancements to the DNS abuse obligations contained in the Registrar Accreditation Agreement (RAA) and Base gTLD Registry Agreement (RA). A critical aspect of the proposal by the RySG and RrSG to strengthen existing abuse-related obligations is to arrive upon a definition of the forms of DNS abuse that fall within ICANN’s mandate.

ICANN org has investigated existing practices that some registries, mostly ccTLDs, have introduced over the years to financially support registrar actions that can prevent and/or mitigate possible DNS abuses. Findings of this investigation show a range of measures with varying

success levels and costs on the registry. ICANN org concluded that at present there is no well-established practice for specific and effective incentives that might be offered to registries, including open registries, which could guarantee significant improvements to prevent and/or mitigate DNS abuse.

Furthermore, it is worth noting that this recommendation calls for changes to contracted party agreements which would be a matter of policy or a result of voluntary negotiations between ICANN org and contracted parties. Since [January 2023](#), ICANN org has been actively engaged in a contract amendment process with the Registries and Registrars to add a clearly defined obligation to mitigate or disrupt DNS abuse in each agreement. The Contracted Parties proposed, and ICANN agreed, to keep the scope purposefully focused on mitigation obligations, and to only subsequently engage in wider community discussions, including possible policy development regarding additional obligations. Therefore it may be presumptive for ICANN org to attempt to design and add anti-abuse incentives before the community has had a chance to consider what behaviours or outcomes should be incentivized.

ICANN org will continue to remain vigilant on possible actions that might be introduced to support any contracted party in their fight against DNS abuse.

CCT REC #15	<p>Recommendation language: ICANN Org should, in its discussions with registrars and registries, negotiate amendments to the Registrar Accreditation Agreement and Registry Agreements to include provisions aimed at preventing systemic use of specific registrars or registries for DNS Security Abuse. With a view to implementing this recommendation as early as possible, and provided this can be done, then this could be brought into effect by a contractual amendment through the bilateral review of the Agreements. In particular, ICANN should establish thresholds of abuse at which compliance inquiries are automatically triggered, with a higher threshold at which registrars and registries are presumed to be in default of their agreements. If the community determines that ICANN org itself is ill-suited or unable to enforce such provisions, a DNS Abuse Dispute Resolution Policy (DADRP) should be considered as an additional means to enforce policies and deter against DNS Security Abuse. Furthermore, defining and identifying DNS Security Abuse is inherently complex and would benefit from analysis by the community, and thus we specifically recommend that the ICANN Board prioritize and support community work in this area to enhance safeguards and trust due to the negative impact of DNS Security Abuse on consumers and other users of the Internet.</p> <p>CCT priority: Prerequisite (provisions to address systemic DNS Security Abuse should be included in the baseline contract for any future new gTLDs)</p> <p>CCT directed to: The ICANN Board, the Registry Stakeholders Group, the Registrar Stakeholders Group, the Generic Names Supporting Organization and the Subsequent Procedures PDP WG</p>
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Board action/rationale:

The Board acknowledges the remit and roles of the different parts of the ICANN community and notes that since January 2023, ICANN org has been actively engaged in a contract amendment process with the Registries and Registrars to add a clearly defined obligation to mitigate or disrupt DNS abuse in each agreement. The recommendation calls for outcomes that are contingent on community work.

The recommendation states that ICANN should establish thresholds of abuse at which compliance inquiries are automatically triggered, with a higher threshold at which registrars and registries are presumed to be in default of their agreements. However, the Board notes that ICANN Contractual Compliance’s role is to bring registrars into compliance with the Registrar Accreditation Agreement (RAA) regardless of whether or not a specific “complaint threshold” has been reached.

The Board recognizes the ICANN org assessment that a potential DNS Abuse Dispute Resolution Policy would not be an effective means to enforce policies and deter against DNS Security Abuse as any action on DNS abuse should be enforced in a timely manner.

It is the view of the Board that the community should determine what policy work is needed and how it wishes to prioritize such efforts to enhance safeguards and trust due to the negative

impact of DNS Security Abuse on consumers and other users of the Internet. As discussed above, ICANN has included efforts to combat DNS abuse in partnership with relevant industry partners in ICANN's strategic plan, has made significant progress to date and is encouraged by the community dialogue.

Therefore, considering the outcome of the extensive analysis of each of the components of this Recommendation, while acknowledging that this Recommendation was marked as a "prerequisite" by the Review Team and remaining fully supportive of compliance actions towards registries and registrars who fail to meet their contractual obligations, as well as of any community work to enhance DNS abuse safeguards, the Board rejects this recommendation.

ICANN org assessment:

ICANN's working definition of DNS abuse is: "DNS abuse includes five broad categories of harmful activity: Phishing, Malware, Botnet Command and Control, SPAM when used as a vector, and Pharming." The Board recognized this working definition is neither an exhaustive list nor a criteria-based definition; however this definition brings together a set of agreed-upon DNS Security Threats to which policy and mitigation work within ICANN can take place immediately, while or if definitions continue to be debated. As established in the [November 2022 exchange of letters](#) between the Contracted Party House (CPH) and ICANN org, there are ongoing efforts between ICANN org, the Registrar Stakeholder Group (RrSG), and Registries Stakeholder Group (RySG) to pursue enhancements to the DNS abuse obligations contained in the Registrar Accreditation Agreement (RAA) and Base gTLD Registry Agreement (RA). A critical aspect of the proposal by the RySG and RrSG to strengthen existing abuse-related obligations is to arrive upon a definition of the forms of DNS abuse that fall within ICANN's mandate.

ICANN org strives to mitigate DNS abuse in accordance with ICANN Bylaws and policies. The org maintains a three-pronged approach to mitigating DNS abuse, which includes contributing data and expertise to fact-based discussions, providing tools to the ICANN community, and enforcing contractual obligations with registries and registrars.

ICANN's Contractual Compliance function actively enforces the relevant contracted parties agreement provisions and has conducted audits specifically focused on various anti-abuse provisions. Examples of the abuse-related provisions enforced by ICANN Compliance include Specification 6 4.1, Specification 11 3(a) and 3(b) of the Registry Agreement (RA), as well as Section 3.18 of the Registrar Accreditation Agreement (RAA). For example, both registrars and registries must publish on their website information about how to submit a report of abuse about a domain name and an email address to collect reports of abuse. Registrars are required to investigate and respond appropriately to reports of abuse.

Similarly, ICANN Contractual Compliance enforces other contractual obligations which often play a role in investigations related to DNS abuse. For example, those related to Registration Data (WHOIS) accuracy in Section 3.7.8 and the Whois Accuracy Program Specification of the RAA (ICANN Contractual Compliance often receives reports of inaccurate data associated with allegedly abusive domain names); and those related to zone file third-party access requests (often submitted by security researchers who investigate and help combat DNS abuse) in Specification 4, Section 2 of the RA.

ICANN is currently engaged in contractual negotiations with the registrars and registries to further strengthen requirements related to DNS abuse. A critical aspect of this work is to arrive upon a definition, for inclusion in contracts, of the forms of DNS abuse that fall within ICANN's mandate. "DNS Abuse" for the purposes of the contracts between ICANN and the contracted parties will be defined as malware, botnets, phishing, pharming, and spam (when spam serves as a delivery mechanism for the other forms of DNS Abuse listed prior) as those terms are defined in [Section 2.1 of SAC115](#). One of the intended outcomes of the proposed amendments is for ICANN Contractual Compliance to expand its authority to enforce appropriate DNS Abuse mitigation actions by the Contracted Parties.

This recommendation suggests that ICANN org should trigger compliance inquiries based on the volume or percentage of names that appear via Reputation Block List (RBL) feeds. ICANN org notes that domain names and volumes that appear in RBLs as suspected cases of DNS abuse are not necessarily equivalent to those that are confirmed and evidenced. Additionally, as has been noted in the discussions of the proposed contractual amendments, DNS Abuse mitigation requires contextual analysis. When considering metrics, measurements or thresholds, there also should be consideration for the distinction between domain names that are being primarily used for DNS Abuse from those domain names where the website has been hacked or otherwise compromised and is being used as a vector for DNS Abuse without the knowledge or consent of the registrant. Collateral damage is a particularly important consideration for

compromised domains situations. In these cases, direct suspension of the domain by the registrar or registry operator may not be the appropriate mitigation, as suspension will cut off access to all legitimate content as well as render any associated email and other services with the domain inaccessible.

Setting such generalized "thresholds of abuse" on registries and registrars implies that compliance inquiries will be triggered by the volume of possible abuses rather than their severity and context, which is the principle at the core of any action in this area. Moreover, the ability to collect independently verifiable metrics demarcating abuse thresholds is a core part of this recommendation. There is a distinction between reported cases of DNS abuse which might be sourced via (RBL) feeds, for instance, and evidenced DNS abuse which would be the outcome of a registry/registrar/law enforcement's abuse investigation. While the DNS industry has greatly progressed in its ability to generate independently verifiable metrics of suspected abuse, evidenced abuse metrics (i.e. involving cases of confirmed DNS abuse that should be mitigated) still predominantly require human intervention.

The concept of a DNS Abuse Dispute Resolution Policy (DADRP) that sets out the legal framework for the resolution of DNS abuse-related disputes between a domain name registrant and a third party, akin to the Uniform Domain Name Dispute Resolution Policy (UDRP), appears to clash with expediency required to address and mitigate validated claims of DNS abuse. Acting on DNS abuse should be done in a matter of seconds/minutes/hours/days whereas any Resolution Policy would require more time.

SSR2 REC #12.1	Recommendation language: ICANN org should create a DNS Abuse Analysis advisory team composed of independent experts (i.e., experts without financial conflicts of interest) to recommend an overhaul of the DNS Abuse Reporting activity with actionable data, validation, transparency, and independent reproducibility of analyses as its highest priorities. SSR2 priority: Medium SSR2 directed to: ICANN org
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Board rationale/action:

The Board notes that the community continues its discussions over DNS abuse mitigation. The Board is fully supportive of this effort and remains committed to this important work through facilitation and the convening of diverse relevant groups with diverse viewpoints. Notably, the Domain Abuse Activity Reporting (DAAR) project is a system for studying and reporting on domain name registration and security threats across top-level domain (TLD) registries which was developed thanks to community input.

The Board notes the absence of issues that would justify an overhaul of DNS Abuse Reporting activity, as suggested by the SSR2, and rejects this recommendation. The Board encourages ICANN org to continue its work to evolve the DAAR initiative based on further community feedback.

ICANN org assessment:

The community continues its discussions over DNS abuse mitigation. Discussions include questions around the definitions and scope of DNS security threats that can be considered as within ICANN's remit and the extent to which policy or other community work may be required to supplement efforts already underway, such as industry-led initiatives.

The recommendation language does not identify any specific issues that would justify an overhaul of DAAR or the value added by creating such a working group. Public comments from both the registry and registrar stakeholders question the value of the solution as proposed and share concerns as it relates to its cost and benefits. ICANN org concurs with this assessment. ICANN org continues to welcome and act upon detailed feedback that can help improve the project. In a May 2021 [blog](#) posting, for instance, ICANN org outlined current and planned evolution of the initiative based on concrete suggestions received on the DAAR project documentation, report coverage, and data visualization, among others.

**SSR2
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#12.2**

Recommendation language: ICANN org should structure its agreements with data providers to allow further sharing of the data for noncommercial use, specifically for validation or peer reviewed scientific research. This special no-fee non commercial licence to use the data may involve a time delay so as not to interfere with commercial revenue opportunities of the data provider. ICANN org should publish all data-sharing contract terms on the ICANN website. ICANN org should terminate any contracts that do not allow independent verification of methodology behind blocklisting.

SSR2 priority: Medium

SSR2 directed to: ICANN org

Board rationale/action:

The Board notes the value of the Domain Abuse Activity Reporting (DAAR) project and that the majority of data feeds used in the DAAR reports can be accessed freely and directly by the academic/non-commercial community without ICANN org serving as an intermediary.

The Board also notes that the recommendation’s suggested approach of terminating contracts or requiring specialized licensing terms may result in negative consequences impacting the total number of data feeds ICANN org is allowed to access going forward and the corresponding quality of data utilized to generate DAAR reports.

Therefore, the Board rejects this recommendation.

ICANN org Assessment:

The majority of the data feeds used in the DAAR reports are already freely and directly available to the academic/non-commercial community without ICANN org having to serve as an intermediary. The terms regarding these free data feeds are governed by the requirements of the individual data feed providers independently and apply to all licensees equally. Of note, the redistribution of such feeds (even with the introduction of any time-delays) extends beyond the terms of ICANN org’s contract with the independent consultant hired to generate the DAAR reports, as would the release of the case-level data which would presumably be required for “independent verification of methodology behind blocklisting”.

ICANN org uses multiple sources of reputation blacklist data for various purposes, DAAR being one of them. Some of these purposes, such as the Domain Name Security Threat Information Collection and Reporting (DNSTICR) project, are smaller scale projects and hence could benefit from using the Reputation Block Lists (RBL) free data streams. Due to its nature of publishing data on a daily basis, DAAR cannot benefit from that. However, most of the data used in DAAR can still be obtained by any user from its source provider, as most of them are for free.

While ICANN org could negotiate improved licensing terms to include redistribution or visibility to case-level data at no incremental cost for non-commercial use, this should not be treated as a precondition to data feed provider selection, as is being suggested in the recommendation language. The recommendation’s suggested approach of terminating contracts or requiring specialized licensing terms may result in negative consequences impacting the total number of data feeds ICANN org is allowed to access going forward and the corresponding quality of data utilized to generate DAAR reports.

The reputation feeds used for the DAAR system must satisfy a [number of stringent criteria](#), including their reputation in the operational security community and academia for accuracy and a very low false-positive rate, widespread adoption by large numbers of users, good practices for maintaining lists, high availability, size and quality of detection infrastructure, and use of classifications or sub-classifications to place domains into the applicable security threat categories.

As it relates to publishing all data-sharing contract terms on the ICANN website, this is an operational matter. No specific issue has been cited that would be solved through the publication of all data-sharing contract terms.

Moreover, when evaluating this component of SSR2 12.2, there appears to be a considerable degree of misalignment between the language of the recommendation and the measures outlined to indicate its successful implementation and effectiveness. Specifically, while the recommendation asks that the org focuses on the publication of data-sharing contract terms,

successful implementation is made contingent on the introduction of “metrics that produce actionable, accurate, and trustworthy data”. Effectiveness of the recommendation is further linked to a goal of having “all of the data available to ICANN org is also available to the community and independent researchers, perhaps with a time delay, to provide validation and feedback”.

SSR2 REC #12.3	Recommendation language: ICANN org should publish reports that identify registries and registrars whose domains most contribute to abuse. ICANN org should include machine-readable formats of the data, in addition to the graphical data in current reports. SSR2 priority: Medium SSR2 directed to: ICANN org
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Board rationale/action:

The Board supports ICANN org’s assessment of this Recommendation, more precisely that the concept of abuse, as mentioned in the Recommendation language, goes beyond ICANN’s remit, that careful considerations are required to distinguish between reported cases of DNS Abuse and evidenced cases of DNS Abuse, that prior engagement with the community could be helpful in designing a procedure that supports positive outcomes, and that the successful implementation and effectiveness measures for this Recommendation imply additional actions. For those reasons, the Recommendation is rejected.

The Board encourages ICANN org to continue in its efforts to report security threat activity to the ICANN community, continue the dialogue with the contracted parties and support their actions in combating DNS Abuse, which may include publication of new reports and release of datasets that capture more specific aspects of the DNS Abuse landscape.

ICANN org assessment:

ICANN org assessed the key elements of the Recommendation 12.3 in depth.

First, the recommendation language suggests a much broader, undefined concept of “abuse”, as compared to DNS Abuse, which would go beyond ICANN’s remit, visibility, and competencies.

Secondly, when it comes to the possible publication of reports that identify registries and registrars, careful considerations are required to distinguish between reported cases of DNS Abuse which might be sourced via Reputation Block List (RBL) feeds or via complaints provided to ICANN Compliance, and evidenced cases of DNS Abuse which would result from the investigations by contracted parties or Law Enforcement and Investigations (LEI) agencies. While the DNS industry has greatly progressed in its ability to generate independently verifiable metrics of suspected abuse, evidenced abuse metrics (e.g., involving cases of confirmed DNS Abuse that should be mitigated) still predominantly require human intervention. It is worth highlighting that ICANN org does not have full visibility of evidenced DNS Abuse cases.

Furthermore, before publishing reports that identify registries and registrars it could be helpful for ICANN org to engage in a dialogue with the community to design a procedure that supports positive outcomes, as well as any particulars with respect to the aspects of machine-readability and graphical presentation of outputs.

Lastly, the language of the recommendation and the measures outlined to indicate its successful implementation and effectiveness seem to be misaligned. While the recommendation refers to reports, successful implementation is made contingent on the data being actionable, while leaving unstated which parties would need to act upon the data, and in what specific manner. Effectiveness of the recommendation is further linked to a goal of having “all of the data available to ICANN org also available to the community and independent researchers, perhaps with a time delay, to provide validation and feedback.” For data to be actionable from a DNS Abuse mitigation perspective, it must be provided in a timely manner, supported by evidence, and would only be “actionable” to the relevant contracted parties where the said instance of DNS Abuse is occurring. Per ICANN org’s assessment, this is a different challenge and task than producing public reporting.

It is worth noting that enhancing the transparency and accountability of any DNS Abuse analysis and reporting, as intended by Recommendation 12.3, remains a key objective for ICANN org. Over the years, org has put into place several initiatives to help inform community discussions and support the contracted parties in combating DNS Abuse, as appropriate.

More specifically, ICANN Compliance has been publishing detailed metrics on DNS abuse complaints since 2020 and continues to evolve its reporting. Most recently, in March 2022, ICANN Compliance released new reports on ICANN.org to better capture the current landscape of complaint volumes and related compliance actions. Data tables are accessible on ICANN.org for review and available for extraction and further analysis.

In addition, the Domain Abuse Activity Reporting (DAAR) project offers a platform for studying concentrations of security threats (DNS abuse) in domain names within the gTLD space in an aggregated and anonymous manner, and provides coverage of those ccTLDs that have voluntarily adhered to the project. In a May 2021 [blog](#) posting, ICANN org outlined current and planned evolution of the DAAR project based on the input received which includes project documentation, report coverage and data visualization, among others. The methodology at the core of the DAAR project has been developed, peer reviewed, and previously made available for [public review and comment](#) in order to address [specific goals](#) pertaining to the reporting of security threat concentrations to the ICANN community. Research is ongoing within ICANN org on possible ways of further increasing transparency around DNS Abuse-related data within ICANN's remit to guide the future evolution of the DAAR project.

SSR2 REC #12.4	<p>Recommendation language: ICANN org should collate and publish reports of the actions that registries and registrars have taken, both voluntary and in response to legal obligations, to respond to complaints of illegal and/or malicious conduct based on applicable laws in connection with the use of the DNS.</p> <p>SSR2 priority: Medium</p> <p>SSR2 directed to: ICANN org</p>
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Board rationale/action:

The Board notes that there are existing efforts within ICANN org as well as by third-parties to collect and provide some of the data similar to what the recommendation suggests. Recognizing that the recommendation requires changes to the contractual obligations, would create challenges for ICANN org, the registries, and registrars to define a reporting schema that would be globally applicable, and that the benefits and value of producing such reports are unclear, the Board rejects this recommendation.

ICANN org assessment:

SSR2 12.4 overlaps with CCT recommendation 20, which the Board has already previously indicated lies beyond ICANN org's "authority to demand information that registries are not required to collect or submit to ICANN org".

It was determined that an alternative means of data collection, as suggested by CCT Recommendation 20, could be conducted via a voluntary pilot survey amongst contracted parties. ICANN org has already engaged the RySG about voluntary reporting of DNS Abuse handling, though those efforts were tabled to prioritize the development of contractual amendments to obligate registries and registrars to mitigate DNS Abuse. That scope would be significantly less than the recommendation provides and should not be conflated with achieving all aspects of this recommendation or its success criteria.

Considerations for this effort may include the following: a large subset of reported DNS abuse relates to content and "content layer" related services which fall beyond ICANN's remit. Further, representative datasets at the scale of millions of DNS abuse reports and impacted domain names are currently already available via cross referenced third-party sources such as Trusted Notifier programs, Reputation Block Lists (RBLs), or abuse feeds.

The scope outlined in this recommendation requires reports on actions taken in response to voluntary and legal obligations from more than 1,400 distinct gTLD registry operators, and registrars operating across a minimum of 84 countries. The recommendation also assumes the willingness of the registries and registrars to share this kind of data as well as that this kind of sharing would be possible under their legislative environment.

Beyond the wide variety of international, national, and local legal obligations to which gTLD registry operators and registrars are subject, collation and reporting of such data would be complicated by a lack of consistency in the definition of regulatory framework across countries as to what constitutes “illegal and/or malicious conduct” pertaining to the use of the DNS.

Both the Registry and Registrar Stakeholder groups have questioned the incremental value of the report being proposed in this recommendation. Indeed, there are already efforts from within ICANN org (i.e., via the DAAR initiative) and by third-parties (e.g., via the efforts of the DNS Abuse Institute, IQ Global, and Realtime Registrar, among others) to collect and provide information and functionality similar to that noted in the recommendation text.

Likewise, public comments from both the registry and registrar stakeholders question the value of the solution as proposed and share concerns as it relates to its cost and benefits. ICANN org concurs with this assessment and concludes that at least some of the data required to fulfil this recommendation would be infeasible or impractical to not only collect but also to organize for analysis either by ICANN org or the community. Thus, the value added is questionable and the costs would be considerable.

SSR2 REC #13.1	<p>Recommendation language: ICANN org should establish and maintain a central DNS abuse complaint portal that automatically directs all abuse reports to relevant parties. The system would purely act as an inflow, with ICANN org collecting and processing only summary and metadata, including timestamps and types of complaint (categorical). Use of the system should become mandatory for all generic top-level domains (gTLDs); the participation of each country code top-level domain (ccTLD) would be voluntary. In addition, ICANN org should share abuse reports (e.g., via email) with all ccTLDs.</p> <p>SSR2 priority: High</p> <p>SSR2 directed to: ICANN org</p>
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Board rationale/action:

The Board notes that this recommendation calls for ICANN's gTLD registries and accredited registrars to be required to use a centralized DNS abuse complaint portal. Such an obligation would necessitate a change to ICANN's current contracts with registries and registrars which the ICANN Board cannot unilaterally dictate.

The Board also notes that ICANN org does not view a central abuse complaint processing system as an existing gap that it needs to fill in the marketplace and expend its resources upon at this time, and that per the ICANN org assessment, there is an existing tool that offers a service of centralized intake and distributing abuse reports. Therefore, the Board rejects this recommendation.

ICANN org assessment:

Establishing a centralized abuse complaint reporting system that is mandatory for use by the gTLD registries and registrars would best be a topic for consideration by the GNSO as a potential outcome of policy development. A Review Team cannot mandate binding obligations on Contracted Parties unlike approved outcomes of GNSO PDPs, and the ICANN Board cannot unilaterally dictate policy. When the GNSO considered and recommended the implementation of a centralized system for requesting registration data on an interim basis (the Registration Data Request System currently in development), the GNSO chose to not mandate the use of the tool by all registries and registrars.

This recommendation is similar to a recommendation by the SSAC in SSAC 115, that was put forth to the community as a whole for consideration rather than to the ICANN Board for action.

Moreover, the Registries Stakeholder Group (RySG) and the Registrars Stakeholder Group (RrSG) expressed [concerns](#) regarding the scoping and incremental value of the proposed portal.

Since this recommendation was made by the SSR2 and a similar recommendation for a centralized abuse reporting tool by the SSAC, the Public Interest Registry's DNS Abuse Institute has developed a tool, Netbeacon, that provides a similar service of centralized intake and distributing abuse reports.

As noted by the RrSG: “As the deficiency this proposal will address has not been identified, and the average operational cost could be many multiple millions of dollars annually, the ICANN Board should reject this recommendation.” ICANN org would concur with the assessment, as it does not view a central abuse complaint processing system as an existing gap that it needs to fill in the marketplace and expend its resources upon at this time.

SSR2 REC #13.2	Recommendation language: ICANN org should publish the number of complaints made in a form that allows independent third parties to analyze the types of complaints on the DNS. SSR2 priority: High SSR2 directed to: ICANN org
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Board action/rationale:

The Board acknowledges ICANN Compliance’s publication of detailed metrics on DNS abuse complaints and the evolution of such reporting, including the new reports that better capture the current landscape of complaint volumes and related compliance actions.

The Board notes that the existing publication format of data and metrics on ICANN.org fulfils the intent of the recommendation. The Board remains fully supportive of further initiatives that can inform community work and discussions by providing relevant datasets where available.

Therefore, the Board approves the recommendation as fully implemented.

ICANN org assessment:

The Recommendation’s success measures appear to cover elements that go beyond the Recommendation. Board action should be taken on the recommendation language per se.

Since 2020, ICANN Compliance has published detailed metrics on DNS abuse complaints and continued to evolve its reporting. Most recently, in March 2022, ICANN Compliance [released new reports](#) on ICANN.org to better capture the current landscape of complaint volumes and related compliance actions.

This enhanced reporting, which was made possible by the expanded data available in the newly launched Salesforce-based ticketing system (NSp Compliance), provides [monthly-level data](#) on the complaints received, the obligations enforced, and the process through which the obligations are being enforced. Additional reporting on [DNS abuse complaint type details](#) is also available on a rolling twelve month period. The data tables are accessible on ICANN.org for review and available for further analysis.

SSR2 REC #14.2	Recommendation language: To enable anti-abuse action, ICANN org should provide contracted parties with lists of domains in their portfolios identified as abusive, in accordance with SSR2 Recommendation 12.2 regarding independent review of data and methods for blocklisting domains. SSR2 priority: High SSR2 directed to: ICANN org
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Board action/rationale:

The Board notes that since [January 2023](#), ICANN org has been actively engaged in a contract amendment process with the Registries and Registrars to add a clearly defined obligation to mitigate or disrupt DNS abuse. Progress in this regard will support the evolution of ICANN Compliance’s toolkit to appropriately respond to contracted parties’ failures to address DNS Abuse.

While the Board encourages ICANN org to continue to innovate and find ways to support the contracted parties in combating DNS Abuse, which may include reporting instances of well evidenced DNS Abuse to registrars and registries, the Board acknowledges the remit and roles of the different parts of the ICANN community.

However, as the language in SSR2 14.2 is not confined to DNS abuse, but rather to much more broadly defined forms of abuse, which may encompass forms of abuse that go beyond org’s remit (as well as its visibility and competencies), the Board rejects this recommendation.

ICANN org assessment:

The language in SSR2 14.2 is not confined to DNS abuse, but rather to much more broadly defined forms of abuse, i.e.”ICANN org should provide contracted parties with lists of domains in their portfolios identified as abusive”, which would encompass those which would be beyond org’s remit (as well as its visibility and competencies). The RrSG called for the Board to reject this recommendation as it is “not within ICANN’s remit to police the Internet for abuse.”

While the standalone recommendation 14.2 asks that the org “provide contracted parties with lists of domains in their portfolios identified as abusive”, successful implementation is made contingent on an entirely unaligned goal of ICANN Compliance having “the tools to appropriately respond to contracted parties failing to respond to DNS abuse, specifically the existence of anti-abuse related obligations in all relevant contracts and agreements”, as well as the “use of those tools to deal with egregious policy violations on the part of contracted parties”.

ICANN org measures specific security threats related to domain names through several projects, including the [Domain Name Security Threat Information Collection and Reporting \(DNSTICR\)](#) project, and [Domain Abuse Activity Reporting System \(DAAR\)](#), both of which have a publication/reporting element. Commercial solutions with DNS Abuse reporting capabilities at the individual domain level are also being offered by private sector entities, including by ICANN contracted parties.

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The Board takes action on contractual compliance activities related SSR2 Recommendations 9.2 and 9.3.

SSR2 REC #9.2	<p>Recommendation Language: ICANN org should proactively monitor and enforce registry and registrar contractual obligations to improve the accuracy of registration data. This monitoring and enforcement should include the validation of address fields and conducting periodic audits of the accuracy of registration data. ICANN org should focus their enforcement efforts on those registrars and registries that have been the subject of over 50 complaints or reports per year regarding their inclusion of inaccurate data to ICANN org.</p> <p>SSR2 priority: High</p> <p>SSR2 directed to: ICANN org</p>
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Board action/rationale:

The Board notes that ICANN org can pursue accuracy of registration data according to the provisions included in the Registry Agreement and Registrar Accreditation Agreement, and that at present extensive checks are conducted to verify the accuracy of registration data. The SSR2 recommendation seeks the enforcement of specific compliance requirements (i.e., address fields) regarding data accuracy that are not part of the current registry and registrar contractual framework. The recommendation calls for work or outcomes that would require the Board to unilaterally modify ICANN’s agreements with registries and registrars, or would be contingent on community work. Changes to contracted party agreements would be a matter of policy or a result of voluntary negotiations between ICANN org and contracted parties.

The Board wishes to note the extensive provisions on data accuracy already in place in the current Registry and Registrar agreements, and ICANN Contractual Compliance actions that are independent from the number of yearly complaints.

The Board notes the SSR2 Implementation Shepherds’ [clarification](#) that ICANN org should provide details of what Compliance does in this area, with supporting public documentation and summary results of audits, and that ICANN’s Contractual Compliance reports are available at <https://www.icann.org/resources/compliance-reporting-performance> .

The Board also acknowledges that there are ongoing community discussions on registration data accuracy that may lead to the introduction of further data accuracy checks.

As a result, the Board rejects SSR2 Recommendation 9.2.

ICANN org assessment:

Relevant requirements related to the accuracy of registration data in the contracted parties' agreements include:

- Base Registry agreement (RA) Art. 2.11 and Art. 2.2;
- Registrar Accreditation Agreement (RAA) Art 3.7.8. in addition to complying with the provisions of the WHOIS Accuracy Program. Moreover, the RAA requires registrars to take steps to ensure the accuracy of registration data associated with their sponsored gTLD domain names. In particular, the RAA includes obligations relating to the investigation of allegations of inaccuracy, contact information verification, and data format validation.

ICANN org enforces Registry and Registrar obligations through its Contractual Compliance team. Data accuracy obligations and ICANN org's enforcement of these obligations have not changed post-GDPR. However, the volume of complaints has diminished significantly post-GDPR.

Following the Board's adoption of the Temporary Specification for gTLD Registration Data, many contracted parties now redact personal data within gTLD registration data in public Registration Data Directory Services. As a result, there is less visibility of registrant contact data in public RDDS, and potential complainants often lack direct access to registration data as a result of the GDPR, making it much more difficult to identify instances of registration data inaccuracy or to take action to correct them.

For valid complaints received, Contractual Compliance initiates an investigation into the registrar's compliance with the contractual requirements explained above, including the obligation to take reasonable steps to investigate the claimed inaccuracy. Contractual Compliance will typically close an inaccuracy case when the registrar demonstrates compliance with the investigation and validation or verification requirements, which may include the suspension or cancellation of the domain name registration.

ICANN Compliance conducts regular audits of Registries and Registrars to ensure their compliance with the Registry Agreement (RA) and Registrar Accreditation Agreement (RAA). The [RAA audit program](#) includes a review of the requirements of RAA 3.7.8 relating to Registrar compliance with the Whois Accuracy Program Specification. Information regarding Contractual Compliance audits can be found here <https://www.icann.org/resources/pages/audits-2012-02-25-en>. The latest audit reports are published at <https://www.icann.org/resources/pages/compliance-reports-2023> while the latest contractual compliance dashboard is available at <https://features.icann.org/compliance/dashboard/2023/0423/report>. The audits include confirming that registrars comply with their Whois Accuracy Program Specifications obligations (validation and verification).

With reference to the complaint threshold suggested by the Recommendation, ICANN Contractual Compliance's role is to bring registrars into compliance with the Registrar Accreditation Agreement (RAA), regardless of the number of yearly complaints. Once a complaint has been determined to be valid, ICANN Compliance follows [ICANN's Contractual Compliance Approach and Processes](#). The Informal Resolution process allows ICANN's contractual compliance team to work closely with Registrars and Registries to help them understand their contractual obligations and overcome any contractual compliance challenges and issues they may have. ICANN attempts to resolve contractual compliance matters informally before pursuing formal remedies available under the agreements. ICANN does not provide details regarding contractual compliance activities in the informal resolution phase, in the interest of facilitating open dialogue and resolution. In certain cases, when ICANN determines that a contracted party must resolve a critical issue immediately, an escalated notice is sent. Failure to adequately respond to an escalated notice may result in a breach notice.

The Formal Resolution process, also known as the Enforcement Process, commences when contracted parties have either failed to sufficiently collaborate during the Informal Resolution process or otherwise continue to be noncompliant after attempts at informal resolution. Notices sent during the Formal Resolution process are [published](#), and ICANN updates the progress of each enforcement action.

SSR2 REC #9.3	Recommendation Language: ICANN org should have compliance activities audited externally at least annually and publish the audit reports and ICANN org response to audit recommendations, including implementation plans. SSR2 priority: High SSR2 directed to: ICANN org
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Board action/rationale:

The Board acknowledges that Recommendation 9.3 could have benefited from more clarity, as confirmed by SSR2 Implementation Shepherds.

The Board appreciates the Recommendation’s intent, as well as ICANN Compliance’s continued commitment to transparency, including through publishing detailed metrics on its operations on a regular basis, and its commitment to continuous improvement through internal reviews to assess and improve on its operations.

The Board also acknowledges the Registry Stakeholder Group’s views, as expressed in the public comment on the SSR2 Final Report, that any recommendations related to ICANN Contractual Compliance should be connected to specific contractual terms and tied to a specific problem statement. In addition, the Board notes the Registrar Stakeholder Group’s comment that ICANN Contractual Compliance has resources in place to oversee and ensure consistent and accurate complaint processing.

The Board recognizes that Compliance’s objectives include fully and efficiently addressing third-party complaints, proactive enforcement of contractual obligations, and registry and registrar audits against their contractual obligations. The Board recognizes ICANN org’s assessment that the time and resources requested for running yearly, external audits will not lead to any desired improvement of procedures and processes that at present are running in accordance with the principles set in the contracted parties’ agreements.

As a result, the Board rejects SSR2 Recommendation 9.3.

ICANN org assessment:

As prompted by the July 2021 Board action on the SSR2 Final Report, ICANN org reached out to the SSR2 Implementation Shepherds to obtain [clarification](#) on what would be envisioned for an audit, including against which criteria and the rationale for an external auditor.

The Shepherds acknowledged that the recommendation could have been clearer and indicated that they had the ISO 9000 set of quality management systems standards in mind for setting goals and strategies, and that the main objective is to have third-party audits conducted against the relevant quality management program.

Community input on this Recommendation included supportive comments as well as concerns. The Registry Stakeholder Group’ views expressed in the public comment on the SSR2 Final Report stated that any recommendations related to ICANN Contractual Compliance should be connected to specific contractual terms and tied to a specific problem statement. In addition, the Registrar Stakeholder Group commented that ICANN Contractual Compliance has resources in place to oversee and ensure consistent and accurate complaint processing.

ICANN Compliance demonstrates its commitment to transparency by regularly publishing reports with detailed metrics on its operations. While these reports do not currently include data on performance against internally-developed operational goals, they do provide clear visibility into the day-to-day operations of ICANN Compliance. ICANN Compliance will look for ways to publish more information on its operational goals, its performance in meeting them as well as its efforts to continuously improve its operational effectiveness.

However, looking at the objective of this Recommendation both from an operational and cost/benefit perspective, ICANN org believes that the time and resources requested for running yearly, external audits will not lead to any desired improvement of procedures and processes that at present are running in accordance with the principles set in the contracted parties’ agreements.

ICANN BOARD PAPER NO. 2023.09.10.1f

TITLE: String Selection to Implement SAC113 Recommendation 1

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

Many enterprises and device vendors who create private networks use top-level domain names that are not present in the DNS root zone for their own private purposes. Issues for users of these private networks can arise when resolvers in the private networks accidentally leak these domain names into the public DNS, or when users and their devices move between their private networks and the Internet.

The SSAC publication [SAC113](#) contains a single recommendation asking the ICANN Board to identify and reserve a single string at the top-level of the DNS naming hierarchy for private use. That reserved string must never be delegated. In addition, SAC113 outlines four criteria for choosing the string.

The SSAC advice is being handled through the Board Action Request Register (ARR) process. Phases 1 and 2 of the ARR have been completed. These two phases require the Board to acknowledge receipt of the advice and to ensure that the Board and the SSAC have a mutual understanding of any actionable items contained in the advice.

This paper is a continuation of ICANN Board resolution [2022.09.22.08](#), which instructed ICANN org to carry out a public comment proceeding on the proposed process to implement SAC113. This paper proposes a set of lightweight assessment criteria based on the four criteria from SAC113. It also contains the relevant Board resolutions to direct the Interim President and CEO, or her designee(s) to make the assessment and propose a string for reservation.

BOARD TECHNICAL COMMITTEE’S (BTC) RECOMMENDATION:

The BTC recommends that the Board directs the Interim President and CEO, or her designee(s) to assess many potential strings and propose one for reservation. This work is expected to involve the IANA functions that ICANN operates.

ADDITIONAL BACKGROUND:

Along with recommending that the Board identify and reserve in perpetuity a single string at the top-level of the DNS, SAC113 Section 4.1 outlines four selection criteria for the chosen string:

1. It is a valid DNS label
2. It is not already delegated in the root zone
3. It is not confusingly similar to another TLD in existence
4. It is relatively short, memorable, and meaningful

Following analysis of SAC113, the Board adopted resolution 2022.09.22.08 that proposed the following four steps to implement SAC113 recommendation 1:

1. Conduct a Public Comment proceeding on the proposed approach in steps 2, 3, and 4
2. Instruct IANA to choose the string using the criteria described in SAC113
3. Conduct a Public Comment proceeding on the proposed string chosen by IANA in step 2
4. Pass a Board resolution to reserve the proposed string

ICANN org has completed step 1 of the proposed process and published a [report on the public comment proceeding](#) on 28 February 2023.

In response to that report the SSAC provided additional input via a correspondence, [SSAC2023-05: SSAC Response to Public Comment Summary Report on Proposed Procedure for Selecting a Private Use TLD](#). The SSAC commented that, “it is disappointing that [the staff assessment] effectively dismisses the request to provide a more detailed selection process [and add a 3rd public comment process to the procedure].”

ICANN org sent a [response to SSAC2023-05](#) describing the procedure and noting that the Board still had to make a decision on whether or not to proceed with instructing IANA to select a string for reservation.

Assessment of feedback received

During the public comment period, and the subsequent correspondence from SSAC, a sentiment was expressed that there should be an additional opportunity to scrutinize the internal work processes within IANA on how it performs its assessment. The cross-functional ICANN implementation team has reviewed these concerns and believe that the underlying objective can be addressed by the second public comment period that is already in the plan. After ICANN conducts its assessment (through IANA), it will document its methodology, analysis and work product, and the subsequent public comment on these findings will provide the opportunity for the community to review and comment if they feel the recommendation has been applied appropriately. The implementation team took the view that adding a third public comment proceeding would not offer additional benefit that the planned second public comment period cannot already achieve. Such a third public comment period would unnecessarily complicate and delay moving forward to substantive evaluation of the string itself.

Moving to string evaluation

As outlined in Board resolution 2022.09.22.08, activation of step 2 is contingent on the feedback received during step 1. The Board can initiate the second step in the proposed four-step process if no significant issues that could change the proposed approach were identified in step 1.

In proceeding with step 2 to propose a string, IANA may seek more input from other stakeholders and external parties. Following its investigation and selection, IANA will initiate step 3 and carry out a second Public Comment proceeding for the community to identify any blocking issues concerning the selected string. This second Public Comment proceeding will be limited to soliciting feedback on whether or not the chosen string adheres to the string selection criteria in SAC113 Section 4.1. Proposals for alternative strings, comments on the process itself,

or comments on the general efficacy of private-use TLDs will be out of scope for this Public Comment proceeding.

Unless specific blocking issues are identified in the string proposed by IANA, the Board can proceed to step 4 of the process by passing a resolution to permanently reserve that string from delegation in the root zone. If, however, based on the Report of Public Comments received, the Board determines that there are significant problems with the selected string, the Board may consider instructing ICANN, through IANA, to choose a different string.

Other Considerations

Reserving the chosen string through a Board resolution as a final step will formally complete adoption of the SAC113 recommendation. A Board resolution resolving to never delegate the selected string into the root zone of the DNS will serve as conclusive documentation that prohibits the selected string from being placed into the root zone unless and until the resolution is overtaken by a later resolution.

Once it is known that this string will never be delegated into the DNS root zone, other fora may wish to add this string to more specific lists of reserved names. This would be both a likely and desirable outcome.

In 2016 the SSAC published [SAC090: SSAC Advisory on the Stability of the Domain Namespace](#). Recommendation 3 from SAC090 states:

Pursuant to its finding that lack of adequate coordination among the activities of different groups contributes to domain namespace instability, the SSAC recommends that the ICANN Board of Directors establish effective means of collaboration on these issues with relevant groups outside of ICANN, including the IETF.

Completing the process outlined in resolution 2022.09.22.08 and reserving a string intended for private-use contributes to fulfilling this recommendation.

PROPOSED RESOLUTION:

Whereas, on 18 September 2020 the SSAC published [SAC113: SSAC Advisory on Private-Use TLDs](#), recommending that the ICANN Board ensure a string is identified and reserved at the top level of the DNS for private use, and that this particular string must never be delegated.

Whereas, the Board Technical Committee and ICANN org have evaluated the feasibility of the SSAC's advice in SAC113 and developed a proposed approach for implementing the advice.

Whereas, on 20 October 2020 Göran Marby, President and Chief Executive Officer of ICANN org [wrote](#) Alissa Cooper, Chair, Internet Engineering Task Force and Mirja Kühlewind, Chair, Internet Architecture Board requesting further discussion on the recommendation of SAC113.

Whereas, on 12 November 2020 Alissa Cooper on behalf of the Internet Engineering Steering Group and Mirja Kühlewind on behalf of the Internet Architecture Board [responded](#).

Whereas, on 22 September 2022 the Board passed [resolution 2022.09.22.08](#) directing ICANN org to conduct a Public Comment proceeding on a proposed procedure to identify and reserve a string for private use in accordance with the recommendation contained in SAC113.

Whereas, the Board has considered the letter received from the [Internet Architecture Board](#), the comments received during the [public comment proceeding](#), the additional input the SSAC provided in [SAC2023-05](#), ICANN org's [response to SAC2023-05](#), and the implementation recommendations from the Board Technical Committee and ICANN org relating to this advice.

Resolved (2023.09.10.XX), the Board directs the Interim President and CEO, or her designee(s), to assess SAC113 candidate strings using the assessment criteria IANA has developed. This work is expected to involve the IANA functions that ICANN operates. After IANA has selected a string, the Board directs the Interim President and CEO, or her designee(s), to conduct a Public Comment proceeding to gather feedback on whether the string proposed by IANA meets the criteria defined in SAC113 Section 4.1. The Interim President and CEO, or her designee(s) shall

then prepare and submit a report on the public comments received during this proceeding to assist the Board in determining whether to permanently reserve the string or not.

PROPOSED RATIONALE:

Why is the Board addressing the issue now?

In resolution 2022.09.22.08, the Board approved a four-step process to implement the recommendation contained in SAC113.

The four proposed steps are:

1. Conduct a Public Comment proceeding on the proposed approach in steps 2, 3 and 4;
2. Instruct IANA to choose the string using the criteria described in SAC113;
3. Conduct a Public Comment proceeding on the proposed string chosen by IANA in step 2;
and
4. Pass a Board resolution to reserve the proposed string.

ICANN org has completed the Public Comment of the first step and published a report on its outcome.

What is the proposal being considered?

The Board is considering whether to instruct ICANN, through IANA, to select a string for permanent reservation. Based on the comments received in the first step of the four proposed steps above, the Board may decide to continue with the process or not.

Which stakeholders or others were consulted?

SAC113 discusses many of the efforts, both ongoing and abandoned, in the Internet Engineering Task Force (IETF) to try and resolve this issue. Since the publication of SAC113 the ICANN Board and the Internet Architecture Board (IAB) have exchanged correspondence about SAC113, briefly summarized below.

In the [first correspondence](#) from the ICANN Board to the IETF/IAB Chairs, the Board asked for clarification on what the definition of a ‘technical use’ was for domain names. Since the

[Memorandum of Understanding \(MoU\)](#) between ICANN and the IETF considers ‘assignments of domain names for technical uses’ something the ICANN Board cannot delegate, assign, or instruct IANA to reserve unilaterally.

In its [response](#), the IAB/IETF states:

We understand SAC113 to be a proposal for the ICANN [B]oard to allocate an ICANN Reserved Name, and we believe that it being reserved by ICANN would necessarily require that the chosen string also be removed from consideration for any technical use specified by the IETF. In keeping with our commitment to a single, global namespace (RFC 2826), such a reservation would ensure that the IETF would not consider any special-use name with the same string. Procedurally, if the ICANN board chooses to reserve a string following the advice of SAC113, we would expect the string to be reserved within the IANA-managed reserved domain registry rather than the special-use domain names registry.

The IAB/IETF did not voice any objection to the ICANN Board permanently reserving a top-level string.

During the Public Comment Proceeding on the Proposed Procedure for Selecting a Top-Level Domain String for Private Use, ICANN received comments from the following groups.

- Business Constituency (BC)
- Governmental Advisory Committee (GAC)
- Intellectual Property Constituency (IPC)
- Network Information Centre for United Kingdom of Great Britain and Northern Ireland (UKGBNI)
- Security and Stability Advisory Committee (SSAC)
- Registries Stakeholder Group (RySG)

Two individuals also provided feedback in their individual capacities.

What concerns or issues were raised by the community?

Community members have noted that, even if a top-level string is reserved for technical use, there is no way to compel equipment vendors, protocol designers, and others to use it. It is also not possible to determine the extent to which the chosen string will be used. It is therefore conceivable that implementing SAC113 could ultimately have no material effect on the DNS.

It is also likely not possible to choose a single string that will enjoy universal agreement as being the most appropriate string for this purpose. Different stakeholders and individuals may have different ideas of what the best string is for this purpose, and it will not be possible to identify a single string that will be acceptable to all stakeholders. This consequence is, however, distinct from the ability to choose a string that adheres to the criteria set forth in SAC113.

ICANN org initiated a public comment proceeding on the proposed process and published a [report on the public comment proceeding](#). A summary of the submissions received is reproduced below.

- Procedure needs to provide for direct comment on the candidate string itself and/or ability to re-evaluate selection criteria (RySG, IPC, Napwora, GAC)
- Not appropriate for potentially subjective assessments to be made by IANA (RySG)
- Add an additional evaluation criteria (beyond those provided in SAC113) to evaluate impact on potential future TLDs that may be confusingly similar (RySG)
- A step should be added to perform a trademark search prior to selection of the candidate string (IPC)
- Provide greater specificity into how the internal selection process will be conducted (BC, SSAC, GAC)
- Timely implementation of SAC113 to bring the long-standing underlying issue to a resolution (BC)
- Supports the overall proposed procedure (BC)
- Procedure needs to make the case why the proposed process is necessary and why a dedicated string for private use is needed (IPC)
- Suggestions on which specific strings that the procedure should choose (UKGBNI,

Gaughan)

The Board will continue to take these comments into account as part of its deliberations on whether or not to proceed with instructing IANA to select a string for reservation.

In response to the report of the public comment proceeding the SSAC provided additional input via a correspondence, [SSAC2023-05: SSAC Response to Public Comment Summary Report on Proposed Procedure for Selecting a Private Use TLD](#) in which the SSAC commented:

The SSAC certainly acknowledges that much expertise exists within ICANN org to implement policy decisions. However, implementation plans, e.g., the work products of Implementation Review Teams, are routinely published for public comment before actual implementation. Therefore, it is disappointing that [the summary] response effectively dismisses the request to provide a more detailed selection process (implementation plan) and make that available for Public Comment before that process is undertaken.

ICANN org sent a [response to SSAC2023-05](#) describing the procedure and noting that the Board still had to make a decision on whether or not to proceed with instructing IANA to select a string for reservation.

What significant materials did the Board review?

The Board has reviewed SAC113, an Options Paper developed by staff, correspondence between ICANN and the IAB, the MoU between ICANN and the IETF, the Public Comment Summary Report of the Proposed Procedure for Selecting a Top-Level Domain String for Private Use Public Comment, SSAC2023-05, and ICANN org's response to SSAC2023-05.

What factors did the Board find to be significant?

The Board recognizes that the problem highlighted in SAC113 is a legitimate and significant one that could, if not addressed, materially affect the DNS. SAC113 lays out a path forward and process the Board is following includes specific opportunities for all stakeholders to provide additional input.

Are there positive or negative community impacts?

A positive impact from this Board resolution is to continue the process that will eventually provide a designated namespace for the private use of vendors and other users of the DNS. A negative impact is that there will be one fewer meaningful names available for delegation in the root zone.

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

No additional fiscal impact is anticipated as a result of directing IANA to reserve a string for private use. Any resourcing that may be required to fully implement SAC113 is expected to be covered by existing ICANN org resources.

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

The SSAC has identified many security, stability, and resiliency issues associated with the uncoordinated use of private-use names in SAC113. It is impossible to determine the extent to which reserving a string for private use will alleviate these issues. However, it will not introduce any new security, stability or resiliency issues. It will also not increase the severity of any known and existing security, stability, or resiliency issues.

Is this decision in the public interest and within ICANN's mission?

Reserving a string from delegation permanently is in the public interest for the reasons outlined in this resolution and rationale. It is also within the scope of ICANN's mission as described in the Bylaws. Specifically, Section 1.1 (a) (i) which states: "[ICANN] Coordinates the allocation and assignment of names in the root zone of the Domain Name System [..]".

In its [letter to the Board](#), the IAB/IETF agreed that this reservation was within the scope of ICANN based on [ICANN's MoU with the IETF](#).

During the [public comment proceeding](#) there were no comments received stating that this reservation was not in the public interest or that it was not within ICANN's mission.

Is this either a defined policy process within ICANN’s Supporting Organizations or ICANN’s Organizational Administrative Function decision requiring public comment or not requiring public comment?

This is neither a defined policy process with ICANN’s supporting organizations nor an ICANN org administrative function. The Public Comment proceedings outlined in the four-step implementation plan are not required by the ICANN Bylaws, but are part of the proposed process for implementing SAC113. The purpose of this specific Board action is to initiate the second step of the proposed process directing ICANN, through IANA, to select a string for permanent reservation.

Signature Block:

Submitted by: David Olive, SVP
and Andrew McConachie,
Technology and Policy Director

Policy Development Support

Date Noted: **DATE MONTH 2023**

Email: david.olive@icann.org,
andrew.mcconachie@icann.org

ICANN BOARD PAPER NO. 2023.09.10.1g

TITLE: **Planning-Related PTI Bylaws Amendment**

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

EXECUTIVE SUMMARY:

The Public Technical Identifiers (PTI) Board adopted amendments to the PTI Bylaws to strategically streamline and improve its planning process. ICANN, in its role as sole member, must approve the PTI Bylaws amendment before they can go into effect. The PTI Bylaw amendments are ready for the ICANN Board consideration. The amendments can only go into effect if ICANN, as the sole member of PTI, approves the amendments.

The proposed PTI Bylaws amendments modify Sections 9.2 and 9.3 of the PTI Bylaws and insert a Transition Article at Article 13. These amendments better align the IANA and ICANN Planning Processes, while still preserving the separate nature of the PTI Budget. The proposed PTI Bylaws amendments were posted for public comments from 16 May to 5 July 2023. The comments received were supportive of the change. The PTI Board approved the Bylaws amendments on 22 August 2023.

BOARD GOVERNANCE COMMITTEE RECOMMENDATION:

The ICANN Board Governance Committee (BGC) recommends that the ICANN Board, in its role as the sole member of Public Technical Identifiers (PTI), approve the proposed PTI Bylaws amendments to Sections 9.2, 9.3 and Article 13 of the PTI Bylaws.

PROPOSED RESOLUTION:

Whereas, the PTI Board has long identified a strategic need to streamline its planning processes. To further that goal, a set of PTI Bylaws amendments were developed that achieve two goals: align PTI's annual budgeting process better with ICANN's planning processes, to streamline and simplify the related processes; and to move PTI's Strategic Planning requirement from a four-year to a five-year cycle.

Whereas, the PTI Board carefully considered whether the proposed Bylaws amendments were aligned with the principles set forth during the IANA Stewardship Transition.

Whereas, the PTI Board [initiated](#) a Bylaws Amendment Process pursuant to Article 9 of the PTI Bylaws on 10 May, 2023. The proposed PTI Bylaws Amendments were posted for public comment from 16 May to 5 July 2023. The PTI Board also convened a community session at the ICANN77 Public Meeting in Washington, D.C., USA, to receive additional feedback from the community on the proposal.

Whereas, the public comments received were supportive of the proceeding with the Bylaws amendment. The PTI Board considered the public comment inputs received, as well as other solicited community feedback, as part of the PTI Board's consideration of proceeding.

Whereas, on 22 August 2023, the PTI Board adopted the Amendments to Article 9 and the addition of a Transition Article at Article 13. The PTI Board acknowledged that pursuant to Article 13, PTI's current Strategic Plan is to remain in force through FY25.

Whereas, the ICANN Board, in its role as the sole member of PTI, has the responsibility of reviewing and approving changes to the PTI Bylaws before amendments can go into effect.

Whereas, the ICANN Board has been kept apprised by PTI of the proposed changes, and the ICANN Board agrees that the amendments maintain the principles within the IANA Stewardship Transition while streamlining processes for the benefit of all within the ICANN community.

Resolved, (2023.09.10.xx), the ICANN Board adopts the adopted PTI Bylaws amendments to Sections 9.2, 9.3 and Article 13 of the PTI Bylaws..

PROPOSED RATIONALE:

Both the ICANN and PTI Bylaws contain requirements for ICANN's overall planning processes relating to the IANA functions. The ICANN Bylaws mandate an IANA Operating Plan & Budget (IANA OP&B) and the PTI Bylaws mandate both a PTI Strategic Plan and a PTI Operating Plan & Budget. These are all in addition to

ICANN's main Operating Plan & Budget, Five-Year Operating Plan & Budget, and ICANN's Five Year Strategic Plan. The special timing and processes for the IANA-related plans result in increased complexities and extra steps in the planning process.

The [PTI Strategic Plan for 2021 to 2024](#) contains a strategic goal to reduce the complexities and duplication between what is in scope for IANA and ICANN planning processes and deliverables. Achievement of this strategic goal will simplify the planning process and enhance community engagement in the planning process. The PTI Board initiated the process to amend certain portions of the PTI Bylaws to achieve better streamlining of processes while preserving the key objectives of the IANA Stewardship transition. Those changes include:

- Modifying the timing for the initial delivery of the PTI OP&B to the PTI Board, which is currently set to nine months prior to the start of the fiscal year, to a 90-day window. This will allow better alignment with the remainder of ICANN's planning processes.
- Moving PTI from a four-year strategic planning cycle to a five-year strategic planning cycle, which will enable alignment with ICANN's five-year strategic planning work.
- Introducing a transition article that will confirm that the timing of the development of the next PTI Strategic Plan aligns with ICANN's next strategic planning cycle.

Prior to taking this action, the PTI Board encouraged broad community engagement on the proposed Bylaws, including through the expected [public comment proceeding](#) as well as through a public session during the [ICANN77 public meeting](#) where the PTI Board and management made themselves available for questions. The PTI Board considered the comments received, and reviewed the [staff summary and analysis of those comments](#), and noted that the Bylaws amendments were generally well-supported. The PTI Board considered the Bylaws amendments on 22 August 2023 and approved the changes. The ICANN Board notes that the comments were generally in favor of the proposed changes.

The PTI Board noted in its action approving the Bylaws that this amendment is only appropriate if the principles governing the IANA Stewardship Transition remain intact. The ICANN Board also shares this fundamental concern. Here, the PTI Budget remains separate from the IANA and ICANN Budgets and the processes are designed to continue upholding ICANN's commitment to prioritize the funding for the IANA functions performed through PTI.

The ICANN Board notes the streamlining that can occur through this action. The ICANN Board supports that the PTI Strategic Planning cycle be brought in line with the ICANN Strategic Planning Cycle, including the use of a Transition Article to extend PTI's current Strategic Plan through FY2025.

This change is anticipated to better use community and organizational resources through better integrated and streamlined processes. No fiscal impact is anticipated as a result of this change. This change is also not expected to impact the security, stability or resiliency of the unique technical identifiers that IANA coordinates on behalf of ICANN.

Today's action is within ICANN's mission, as the ICANN Board is exercising its important role in upholding the IANA functions that PTI performs on ICANN's behalf. As the sole member of PTI, ICANN has the responsibility of supporting the public interest through instilling good governance and management within PTI.

Signature Block:

Submitted by: Samantha Eisner

Position: Deputy General Counsel, ICANN

Date Noted: 3 August 2023

Public Technical Identifiers Proposed Bylaw Changes— Redlined

ARTICLE 9 CORPORATE RECORDS, REPORTS AND SEAL

Section 9.1 ACCOUNTING

The fiscal year of the Corporation shall be the same as the fiscal year of the Member. At the end of each fiscal year, the books of the Corporation shall be closed and audited by a CPA. The Corporation shall make the audit available to the Attorney General and to the public on the same basis that the Internal Revenue Service Form 990 is required to be made available.

Section 9.2 ANNUAL BUDGET

- (a) At ~~least~~ ~~least nine months~~ 90 days prior to the commencement of each fiscal year, the Corporation shall submit to the PTI Board and the Board of Directors of ICANN (the “ICANN Board”) a proposed annual operating plan and budget for the Corporation’s next fiscal year (“Annual Budget”).
- (b) During the Annual Budget development process, and prior to approval of the Annual Budget by the PTI Board, the Corporation shall consult with the Supporting Organizations and Advisory Committees, as well as the Registries Stakeholder Group, IAB and RIRs (all as defined in the ICANN Bylaws).
- (c) Prior to approval of the Annual Budget by the PTI Board, a draft of the Annual Budget shall be posted on the ICANN Website (as defined in the ICANN Bylaws) and shall be subject to public comment.
- (d) After reviewing the comments submitted during the public comment period, the PTI Board may direct the Corporation to post a revised draft of the Annual Budget on the Website and may direct the Corporation to conduct one or more additional public comment periods of lengths determined by the PTI Board, in accordance with ICANN’s public comment processes.
- (e) Immediately after the PTI Board approves the Annual Budget, it shall be submitted to the ICANN Board for inclusion in ICANN’s proposed annual operating plan and annual budget.
- (f) On a ~~monthly~~ quarterly basis, the Corporation’s actual performance shall be measured against the Annual Budget and reported to the PTI Board.

Section 9.3 STRATEGIC PLAN

(a) At least 45 days prior to the commencement of each five fiscal year period, tThe Corporation shall submit to the PTI Board a proposed strategic plan of the Corporation ~~develop and annually update a four~~five-year strategic plan that outlines the Corporation's strategic priorities (the "Strategic Plan"). This Strategic Plan process may be run concurrently with the Annual Budget development process described at Section 9.2.

(b) Prior to the approval of the Strategic Plan by the PTI Board, tThe Corporation shall consult with the Supporting Organizations and Advisory Committees, as well as the Registries Stakeholder Group, IAB and RIRs in the development and updating of the Strategic Plan.

(c) Prior to approval of the Strategic Plan by the PTI Board, a draft of the Strategic Plan shall be posted on the ICANN Website (as defined in ICANN's Bylaws) and shall be subject to public comment.

(d) After reviewing the comments submitted during the public comment period, the PTI Board may direct the Corporation to post a revised draft of the Strategic Plan on the Website and may direct the Corporation to conduct one or more additional public comment periods of lengths determined by the PTI Board, in accordance with ICANN's public comment processes.

(e) Promptly after the PTI Board approves the Strategic Plan, the Strategic Plan shall be submitted to the ICANN Board.

(f) On a yearly basis, the Corporation's actual performance shall be measured against the Strategic Plan and reported to the PTI Board.

ARTICLE 13 – TRANSITION ARTICLES

Section 13.1 Strategic Plan

The first Strategic Plan subject to the five-year term set out in Section 9.3(a) shall cover the fiscal years 2026 through 2030. The Corporation's strategic plan covering fiscal years 2020 through 2024 shall remain in force through the end of the Corporation's fiscal year ending 2025.

Public Comment Summary Report

PTI / IANA Governance Proposal

Open for Submissions Date:

Tuesday, 16 May 2023

Closed for Submissions Date:

Wednesday, 5 July 2023

Summary Report Due Date:

Monday, 7 August 2023

Category: Governance

Requester: ICANN org

ICANN org Contact(s): planning@icann.org

Open Proceeding Link: <https://www.icann.org/en/public-comment/proceeding/pti-iana-governance-proposal-16-05-2023>

Outcome:

ICANN received five submissions to the PTI/IANA Governance Proposal Public Comment Proceeding: four from organizations and one from an individual. Commenters voiced general support on the proposed planning process improvement.

The comments are each briefly summarized, and an analysis is provided for each. This Public Comment summary report includes the ICANN org staff summary of the comments and observations on the topics raised by the submitters in relation to the proposed planning process improvements.

ICANN appreciates the time, dedication, and participation in this proceeding and is grateful to those who provided their feedback.

Section 1: What We Received Input On

The purpose of this Public Comment is to seek community feedback on the proposed PTI Bylaw amendment to reduce complexities and improve the PTI-related planning processes with the overall ICANN planning process.

The proposed PTI Bylaw amendments include:

- Modifying the timing for the initial delivery of the PTI Operating Plan & Budget to the PTI Board, which is currently set to nine months prior to the start of the fiscal

year, to a 90-day window. This will allow better alignment with the remainder of ICANN's planning processes.

- Moving PTI from a four-year strategic planning cycle to a five-year strategic planning cycle, which will enable alignment with ICANN's five-year strategic planning work.

These proposed planning process improvements and PTI Bylaw amendment are aligned with the principles defined by the community during the IANA Stewardship Transition, that funding for performance of the IANA Functions is assured by ICANN and that ICANN and its affiliate are recognized and maintained as separate entities.

Section 2: Submissions

Organizations and Groups:

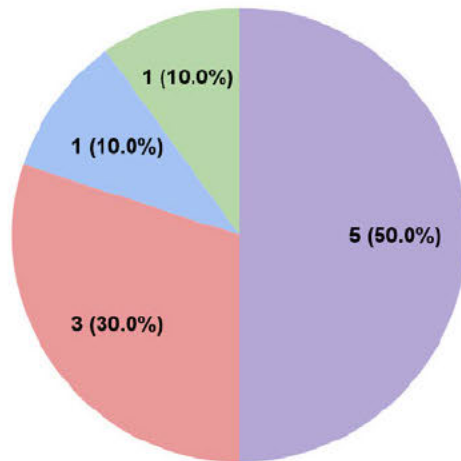
Name	Submitted by	Initials
Business Constituency	Rajiv Prasad	BC
ccNSO Council	Alejandra Reynoso	ccNSO Council
ccNSO Strategic and Operational Planning Committee (SOPC)	Andreas Musielak	ccNSO SOPC
Registries Stakeholder Group	RySG	RySG

Individuals:

Name	Affiliation (if provided)	Initials
James Olorundare	N/A	JO

Section 3: Summary of Submissions

The five submissions include 10 comments. These comments are categorized into four themes: (1) support; (2) general observations; (3) suggestions; and (4) expressed concerns. Section 4 includes ICANN org's response to each theme.



● Support ● General Observations ● Suggestions ● Expressed Concerns

Section 4: Analysis of Submissions

4.1 Supportive

The BC, ccNSO Council, ccNSO SOPC, and the RySG expressed their support for the proposed planning process improvement. In particular, the BC commented “the proposed PTI Bylaw amendments seem relatively minor and reasonable” and the BC “is generally supportive of these proposed PTI Bylaws amendments; the ccNSO Council mentioned that “the proposed amendments and the reasons are clear and reasonable;” ccNSO SOPC indicated “SOPC is supportive of the proposed changes;” in addition, the RySG was pleased to see the proposed amendments, particulars, as the RySG has mentioned about the misalignment of the Five-Year ICANN Strategic Plan and the Four-Year PTI Strategic Plan in previous [Public Comment Proceedings](#), and the RySG expressed its appreciation to ICANN org for evaluating and recommending the well scoped changes to the PTI Bylaws.

4.2 General Observations

ICANN appreciates the BC’s acknowledgement and satisfaction with the IANA services.

James Olorundare indicated the “lack of clarity about how the audit findings will be shared with the public.” It is unclear what Olorundare means by “audit” in the context of this Public Comment. This Public Comment proceeding is about a proposed PTI Bylaws amendment related to the planning process ; it is not part of nor related to the [IANA audit program](#), nor is the annual release of the independent auditor’s review of [PTI’s financial statements](#).

The ccNSO Council strongly supports assurances and explicit confirmation by PTI that the safeguards on the separation of ICANN and PTI and ICANN’s obligation to fund the IANA functions are maintained as basic principles and are not affected. ICANN confirms that PTI will continue to have its Strategic Plan, Operating Plan and Budget, separate

from the ICANN's Plans. In addition, one of the key planning principles for PTI and IANA is that funding for the IANA functions and the activities laid out in the Operating Plan always remain a priority for ICANN. This planning principle is always emphasized in the Operating Plan, such as the PTI [FY24 Operating Plan and Budget](#). Further, we note that the minimum timing specified for the delivery of the PTI Budget is 90-days before the new fiscal year. When read together with the timing requirement of the IANA Budget as specified in the ICANN Bylaws (45 days), this is another signal of the commitment of both ICANN and PTI to consider the PTI Budget first.

4.3 Suggestions

The ccNSO SOPC suggested ICANN org should publish the draft plans in early December to enable the community to effectively contribute to the planning process. ICANN understands the ccNSO SOPC's suggestion and will consider it for the annual planning timeline as part of future process improvements.

4.4 Expressed Concerns

James Olorundare expressed concerns about the 90-day window, as the Bylaw amendment proposed modifying the timing for the initial delivery of the PTI Operating Plan & Budget to the PTI Board, which is currently set to nine months prior to the start of the fiscal year, to a 90-day window.

Note that this 90-day window is the minimum timeframe within which the PTI Budget could be presented, though ICANN is in the practice of providing the PTI Budget far in advance to allow for consideration and approval by the PTI Board in advance of it being incorporated into the IANA Budget for consideration by the ICANN Board and the start of the fiscal year. As further example, within ICANN's Bylaws the timeframe for delivery of the IANA and ICANN Operating Plans and Budgets must be presented within a shorter time frame of 45-days prior to the commencement of each fiscal year.

In practice, the initial delivery of the draft Operating Plan & Budget has been published for Public Comment five or six months prior to the commencement of each fiscal year, which provides sufficient time for Public Comments, Board consideration for Adoption, and the Empowered Community period. ICANN and PTI will continue publishing all annual draft plans five or six months prior to the commencement of each fiscal year moving forward.

Section 5: Next Steps

ICANN appreciates all community input and support for this Public Comment proceeding. ICANN reviewed and responded to all comments received via the Public Comment Summary Report.

Following the publication of the Summary Report, and in accordance with the associated PTI Board resolution, ICANN org will provide the Public Comment analysis to the PTI Board for its consideration.

If the PTI Board adopts the PTI Bylaw Amendments, the ICANN Board, as sole member of PTI, will then be asked to consider the PTI Bylaws amendment for adoption.

**ICANN BOARD OF DIRECTORS
SUBMISSION NO. 2023.09.10.1h**

TITLE: **Appointment of Root Server Operator
Organization Representatives to the RSSAC**

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

EXECUTIVE SUMMARY:

Per Article 12, Section 12.2(c)(ii) of the ICANN Bylaws, the Chair of the Root Server System Advisory Committee (RSSAC) submits the following members for appointment to the RSSAC:

- Wesley Hardaker, University of Southern California – Information Sciences Institute
- Hans Petter Holen, Réseaux IP Européens (RIPE) Network Coordination Centre
- Jun Murai, Widely Integrated Distributed Environment (WIDE) Project
- Paul Vixie, Cogent
- Jose Nunez-Zapata, National Aeronautics and Space Administration (NASA) – AMES Research Center

These individuals have been selected by their root server operator organizations to serve on the RSSAC.

RSSAC RECOMMENDATION:

The RSSAC Chair recommends the ICANN Board of Directors appoint Wesley Hardaker, Hans Petter Holen, Jun Murai, Paul Vixie, and Jose Nunez-Zapata as the RSSAC representatives of their respective root server operator organizations.

PROPOSED RESOLUTION:

Whereas, the ICANN Bylaws call for the establishment of the Root Server System Advisory Committee (RSSAC) with the role to advise the ICANN community and ICANN Board of Directors on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System.

Whereas, the ICANN Bylaws call for the ICANN Board of Directors to appoint one RSSAC member from each root server operator organization, based on recommendations from the RSSAC Chair.

Whereas, the RSSAC Chair has recommended to the ICANN Board of Directors the appointments of representatives from University of Southern California – Information Sciences Institute; Réseaux IP Européens (RIPE) Network Coordination Centre; Widely Integrated Distributed Environment (WIDE) Project; Cogent; and National Aeronautics and Space Administration (NASA) – AMES Research Center to the RSSAC.

Resolved (2023.09.10.XX), the ICANN Board of Directors appoints Jose Nunez-Zapata as the representative of National Aeronautics and Space Administration (NASA) – AMES Research Center to the RSSAC through 31 December 2025; and Wesley Hardaker as the representative of University of Southern California – Information Sciences Institute, Hans Petter Holen as the representative of Réseaux IP Européens (RIPE) Network Coordination Centre, Jun Murai as the representative of Widely Integrated Distributed Environment (WIDE) Project, and Paul Vixie as the representative of Cogent to the RSSAC through 31 December 2026.

PROPOSED RATIONALE:

In May 2013, the root server operator organizations agreed to an initial membership of representatives for the RSSAC, each nominating an individual. The ICANN Board of Directors approved the initial membership of the RSSAC in July 2013 with staggered terms. The current term for the representatives from University of Southern California – Information Sciences Institute; Réseaux IP Européens (RIPE) Network Coordination Centre; Widely Integrated Distributed Environment (WIDE) Project; and Cogent expires 31 December 2023. The current term for representative from National Aeronautics and Space Administration (NASA) – AMES Research Center expires 31 December 2025. National Aeronautics and Space Administration (NASA) – AMES Research Center replaces its representative.

Today, the Board is taking action pursuant to Article 12, Section 12.2 (c)(ii) of the ICANN Bylaws to appoint members to the RSSAC.

The appointment of RSSAC members is not anticipated to have any fiscal impact on the ICANN organization that has not already been accounted for in the budgeted resources necessary for ongoing support of the RSSAC.

This resolution is an organizational administrative function for which no public comment is required. The appointment of RSSAC members contributes to the public interest and the commitment of the ICANN organization to strengthen the security, stability, and resiliency of the DNS.

Submitted by: Wesley Hardaker
Position: RSSAC Liaison to the ICANN Board
Date Noted: 24 August 2023
Email and Phone Number: Contact Information Redacted

ICANN BOARD PAPER NO. 2023.09.10.1i

TITLE: Security and Stability Advisory Committee (SSAC)
Member Appointments

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The Chair of the Security and Stability Advisory Committee (SSAC) respectfully requests the appointment of Gautam Akiwate, Matthias Hudobnik, and Maarten Aertsen as new Committee members.

COMMITTEE RECOMMENDATION:

The Committee recommends the ICANN Board appoint Gautam Akiwate, Matthias Hudobnik, and Maarten Aertsen to the SSAC.

PROPOSED RESOLUTION:

Whereas, in January 2023, the SSAC Membership Committee initiated an annual recruitment cycle and submitted to the SSAC its recommendation for Gautam Akiwate's appointment on 17 May 2023.

Whereas, on 24 May 2023, the SSAC approved the recommendation for Gautam Akiwate.

Whereas, in January 2023, the SSAC Membership Committee initiated an annual recruitment cycle and submitted to the SSAC its recommendation for Matthias Hudobnik's appointment on 13 June 2023.

Whereas, on 20 June 2023, the SSAC approved the recommendation for Matthias Hudobnik.

Whereas, in January 2023, the SSAC Membership Committee initiated an annual recruitment cycle and submitted to the SSAC its recommendation for Maarten Aertsen's appointment on 16 August 2023.

Whereas, on 23 August 2023, the SSAC approved the recommendation for Maarten Aertsen.

Whereas, the SSAC Membership Committee, on behalf of the SSAC, requests that the Board should appoint Gautam Akiwate, Matthias Hudobnik, and Maarten Aertsen to the SSAC for terms beginning immediately upon approval of the Board and ending on 31 December 2026.

Resolved (2023.09.10.xx), the Board appoints Gautam Akiwate, Matthias Hudobnik, and Maarten Aertsen to the SSAC for terms beginning immediately upon approval of the Board and ending on 31 December 2026.

PROPOSED RATIONALE:

The SSAC is a diverse group of individuals whose expertise in specific subject matters enables the SSAC to fulfill its role and execute its mission. Since its inception, the SSAC has invited to its membership individuals with deep knowledge and experience in technical and security areas that are critical to the security and stability of the Internet's naming and address allocation systems.

The SSAC's continued operation as a competent body is dependent on the accumulation of talented subject matter experts who have consented to volunteer their time and energies to the execution of the SSAC mission.

Gautam Akiwate is an academic with extensive research experience in the field of empirical security. His research interests lie at the intersection of networking and security with recent focus on various aspects of Internet security spanning DNS hijacks, BGP hijacks, registrar name management, email security, MANRS ecosystem, and use of blocklists, amongst other topics. Gautam is currently a postdoctoral researcher at Stanford University.

Matthias Hudobnik has degrees in both Engineering (Informatics and Internet Engineering) and Law. For the latter Master's level degree, his thesis was "The Future of WHOIS - An analysis of the policy process under the DGPR with a focus on the litigation ICANN vs EPAG". He has worked as a Legal Intern in IP & IT, Data Protection & Cyber Security, a Technician in ICT, IT & Internet Engineering, a Jurist and Engineer with the Europol Data Protection Function, and a

Researcher in Data Protection, Law Enforcement & Cyber Security. His current position is as Legal Engineer/Senior Agent for Europol Data Protection Function.

Maarten Aertsen is a senior internet technologist with NLnet Labs where his role is to bring their expertise to policy making bodies, including governments, regulators and multi-stakeholder forums, as well as initiate and contribute to applied research. He has recently been actively engaged with two European Commission initiatives to regulate software by setting mandatory security requirements. In his previous position as a senior advisor at the National Cyber Security Centre, his responsibility was to clearly convey the potential effects of security vulnerabilities or incidents to operational, managerial, public administrative, and general audiences within Dutch society.

This resolution is an organizational administrative function for which no public comment is required. The appointment of SSAC members is in the public interest and in furtherance of ICANN's mission as it contributes to the commitment of the ICANN to strengthen the security, stability, and resiliency of the DNS. The appointment of SSAC members is not anticipated to have any fiscal impact on ICANN org that has not already been accounted for in the budgeted resources necessary for ongoing support of the SSAC.

Signature Block:

Submitted by:	James Galvin
Position:	Liaison to the ICANN Board from the Security and Stability Advisory Committee
Date Noted:	23 August 2023
Email:	james.galvin@board.icann.org

ICANN BOARD SUBMISSION NO. 2023.09.10.1j

TITLE: **Establishment of Board Ombuds Search Committee**

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

EXECUTIVE SUMMARY:

The Ombuds is an important accountability mechanism under the ICANN Bylaws. In light of the Ombudsman's resignation effective 30 September 2023, the Board is now tasked with selecting ICANN's next Ombuds. Pursuant to Section II.C of its charter, the Board Governance Committee (BGC) has recommended that the Board establish a temporary Board Ombuds Search Committee to help facilitate the search for the next ICANN Ombuds. The Committee will oversee the search process for a new Ombuds, update the Ombuds position description, oversee the Ombuds function during the ICANN78 Public Meeting, update the Ombuds Office procedures, and oversee the starting of the new Ombuds in the office.

BOARD GOVERNANCE COMMITTEE (BGC) RECOMMENDATION:

The BGC recommends that the Board establish a temporary Board Ombuds Search Committee to help facilitate the search for the next ICANN Ombuds. The BGC further recommends that the Board Ombuds Search Committee be comprised of the following Board members: Alan Barrett, Sarah Deutsch, James Galvin, and Danko Jevtović (Chair).

PROPOSED RESOLUTION:

Whereas, the Ombuds is an important accountability mechanism under the ICANN Bylaws.

Whereas, the current ICANN Ombudsman resigned effective 30 September 2023.

Whereas, pursuant to Section II.C of its charter, the Board Governance Committee (BGC) has recommended that the Board establish a temporary Board Ombuds Search Committee to help facilitate the search for the next ICANN Ombuds. The BGC has recommended the following Board members to serve on the Committee: Alan Barrett, Sarah Deutsch, James Galvin, and Danko Jevtović (Chair).

Resolved (2023.09.10.XX), the Board hereby approves the establishment of the Board Ombuds Search Committee as a temporary Board Committee, and approves the recommended membership and leadership of that Committee as identified above.

PROPOSED RATIONALE:

ICANN's Bylaws require ICANN to maintain an Ombuds Office. (See Bylaws, Art. 5.) In light of the Ombudsman's resignation effective 30 September 2023, the Board is now tasked with selecting ICANN's next Ombuds. The establishment of a temporary Board Committee to help facilitate the search for ICANN's next full-time Ombuds will allow the Board to coordinate the search process more easily and efficiently, with regular reporting from the Committee to the full Board.

This decision is within the public interest and consistent with ICANN's mission in that having an Ombuds in place enhances ICANN's accountability, as the Ombuds is one of the accountability mechanisms within ICANN and set out in the ICANN Bylaws.

The establishment of this temporary Board Committee will not have a financial impact on ICANN. This action will not have a negative impact on the domain name system.

This is an Organizational Administrative Function that does not require Public Comment.

Submitted By: Amy A. Stathos, Deputy General Counsel
Date: 31 August 2023
Email: amy.stathos@icann.org

ICANN BOARD PAPER NO. 2023.09.10.2a

TITLE: GAC Advice: Washington D.C. Communiqué (June 2023)

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The Governmental Advisory Committee (GAC) delivered advice to the ICANN Board in its [ICANN77 Washington D.C. Communiqué](#) issued 20 June 2023. The advice concerns Predictability in New gTLD Applications, Registry Voluntary Commitments (RVCs) / Public Interest Commitments (PICs) in New gTLDs, Applicant Support in New gTLD Applications, and Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs. The GAC also provided a follow-up to previous advice regarding Privacy and Proxy Services.

The ICANN77 Washington D.C. Communiqué was the subject of an exchange between the Board and the GAC on 28 July 2023. The purpose of the exchange was to ensure common understanding of the GAC advice provided in the communiqué.

The Board is being asked to approve the GAC-Board Scorecard to address the GAC's advice in the ICANN77 Washington D.C. Communiqué. The draft Scorecard is attached to this briefing paper. The draft Scorecard includes: the text of the GAC advice; the Board's understanding of the GAC advice following the 28 July 2023 dialogue with the GAC; the GNSO Council's review of the advice in the ICANN77 Washington D.C. Communiqué as presented in a 28 July 2023 [letter](#) to the Board (included for Board review only and will not be part of the final scorecard); and the Board's proposed response to the GAC advice.

ICANN ORG RECOMMENDATION:

The ICANN org recommends that the Board adopt the attached scorecard to address the GAC's advice in the June 2023 ICANN77 Washington D.C. Communiqué.

PROPOSED RESOLUTION:

Whereas, the Governmental Advisory Committee (GAC) met during the ICANN77 meeting in Washington D.C., United States of America and issued advice to the ICANN Board in a [communiqué](#) on 20 June 2023 (“ICANN77 Washington D.C. Communiqué”).

Whereas, the ICANN77 Washington D.C. Communiqué was the subject of an exchange between the Board and the GAC on 28 July 2023.

Whereas, in a 28 July 2023 [letter](#), the GNSO Council provided its feedback to the Board concerning advice in the ICANN77 Washington D.C. Communiqué relevant to Predictability in New gTLD Applications, Registry Voluntary Commitments (RVCs) / Public Interest Commitments (PICs) in New gTLDs, Applicant Support in New gTLD Applications, and Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs.

Whereas, the Board developed a scorecard to respond to the GAC’s advice in the ICANN77 Washington D.C. Communiqué, taking into account the dialogue between the Board and the GAC and the information provided by the GNSO Council.

Resolved (2023.09.10.xx.xx), the Board adopts the scorecard titled “GAC Advice – ICANN77 Washington D.C. Communiqué: Actions and Updates (10 September 2023)” **[INSERT LINK TO FINAL GAC ADVICE SCORECARD ADOPTED BY BOARD]** in response to items of GAC advice in the ICANN77 Washington D.C. Communiqué.

PROPOSED RATIONALE:

Article 12, Section 12.2(a)(ix) of the ICANN Bylaws permits the GAC to “put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.” In its ICANN77 Washington D.C. Communiqué (20 June 2023), the GAC issued advice to the Board regarding Predictability in New gTLD Applications, Registry Voluntary Commitments (RVCs) / Public Interest Commitments (PICs) in New gTLDs, Applicant

Support in New gTLD Applications, and Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs. The GAC also provided a follow-up to previous advice regarding Privacy and Proxy Services. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. Any GAC advice approved by a full consensus of the GAC (as defined in the Bylaws) may only be rejected by a vote of no less than 60% of the Board, and the GAC and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

The Board is taking action today on the GAC Consensus Advice to the ICANN Board in the ICANN77 Washington D.C. Communiqué, including the items related to Predictability in New gTLD Applications, Registry Voluntary Commitments (RVCs) / Public Interest Commitments (PICs) in New gTLDs, Applicant Support in New gTLD Applications, and Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs. This decision is in the public interest and within ICANN's mission, as it is fully consistent with ICANN's bylaws for considering and acting on advice issued by the GAC.

The Board's actions are described in the scorecard dated 10 September 2023 **[INSERT LINK TO FINAL GAC ADVICE SCORECARD ADOPTED BY THE BOARD].**

In adopting its response to the GAC advice in the ICANN77 Washington D.C. Communiqué, the Board reviewed various materials, including, but not limited to, the following materials and documents:

- ICANN77 Washington D.C. Communiqué (20 June 2023):
<https://gac.icann.org/advice/communiques/ICANN77%20Washington%20D.C.%20Communique.pdf>
- The GNSO Council's review of the advice in the ICANN77 Washington D.C. Communiqué as presented in the 28 July 2023 letter to the Board:

[https://gac.icann.org/advice/correspondence/incoming/GNSO%20Council%20Review%20of%20Washington,%20D.C.%20GAC%20Communique%20\(28%20July\).pdf](https://gac.icann.org/advice/correspondence/incoming/GNSO%20Council%20Review%20of%20Washington,%20D.C.%20GAC%20Communique%20(28%20July).pdf)

The adoption of the GAC advice as provided in the scorecard will have a positive impact on the community because it will assist with resolving the advice from the GAC concerning gTLDs and other matters. There are no foreseen fiscal impacts associated with the adoption of this resolution. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS. This is an Organizational Administrative function that does not require public comment.

Signature Block:

Submitted by: David Olive
Position: Senior Vice President, Policy Development Support
Date Noted:
Email: david.olive@icann.org

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GAC Advice – Washington D.C. Communiqué: Board Action (10 September 2023)

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
<p>§1.a.i Predictability in New gTLD Applications</p>	<p>a. The GAC advises the Board to:</p> <p>i. <i>To take steps to ensure equitable participation in the proposed Standing Predictability Implementation Review Team (SPIRT) by all interested ICANN communities, on an equal footing.</i></p> <p><u>RATIONALE:</u></p> <p>The GAC appreciates the efforts to create a Predictability Framework. GAC Members note that further clarification on the implementation of the SPIRT is necessary, as well as on the role the GAC will play in it, especially in light of Implementation Guidance 2.3 of the SubPro PDP Working Group Final Report suggesting direct dialogue between the SPIRT, ICANN org and the ICANN Board on GAC Consensus Advice, in which the GAC expects to be included as well, as discussed with the Board and GNSO Council during ICANN77. Furthermore, GAC members emphasize the importance of the opportunity for equitable participation on an equal footing on the SPIRT by all interested ICANN communities.</p>	<p>The Board understands that the GAC is advising the Board to take steps to ensure equitable participation by all interested ICANN communities in the proposed Standing Predictability Implementation Review Team (SPIRT). The Board also understands, based on input from the GAC on the Board’s clarifying questions, that the GAC would like for the Board to convey the GAC’s position for equitable representation within the SPIRT to the GNSO Council. The Board understands that the predictability in the New gTLD application process is important to the GAC and the ICANN community.</p>	<p>The Board has approved the recommendations on Topic 2, Predictability, and the implementation of the recommended framework is in progress by the org, working with the Implementation Review Team (IRT).</p> <p>The SPIRT, which is part of the recommended Predictability Framework, is a group chartered by the GNSO.</p> <p>The Board accepts this advice and will convey to the GNSO Council the GAC’s advice and rationale concerning representation in formation of the SPIRT.</p>
<p>§2.a.i Registry Voluntary Commitments (RVCs) / Public Interest Commitments (PICs) in New gTLDs</p>	<p>a. The GAC advises the Board to:</p> <p>i. <i>To ensure that any future Registry Voluntary Commitments (RVCs) and Public Interest Commitments (PICs) are enforceable through clear contractual obligations, and that consequences for the failure to meet those obligations should be specified in the relevant agreements with Contracted Parties.</i></p> <p><u>RATIONALE:</u></p> <p>The GAC recalls persistent GAC concerns regarding both the weak implementation of PICs applicable to gTLDs in highly-regulated sectors and the lack of clarity and effectiveness of the mechanism to resolve disputes (the Public Interest Commitments Dispute Resolution Process or PICDRP) and recommends that these issues are remedied in any subsequent rounds.</p>	<p>The Board understands that the GAC is advising the Board to ensure that any future Registry Voluntary Commitments (RVCs) and Public Interest Commitments (PICs) are enforceable through clear contractual obligations and enforceable under the ICANN Bylaws. The Board understands, based on input from the GAC on the Board’s clarifying questions, that the GAC expressed concerns regarding the implementation and effectiveness of PICs in the 2012 round of New gTLDs and may provide examples of concerns at a later time. The Board also understands, based on its clarifying questions discussion with the GAC, that, should there be a community discussion regarding potential Bylaw changes to permit enforceable and allowable RVCs/PICs, that the GAC would like to be involved.</p>	<p>The Board accepts this advice and will consider the GAC’s advice as it further deliberates on pending recommendations related to PICs/RVCs.</p>

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
<p>§3.a.i Applicant Support in New gTLD Applications</p>	<p>a. The GAC advises the Board to:</p> <p style="padding-left: 40px;">i. To specify ICANN’s plans related to steps to expand financial support and engage with actors in underrepresented or underserved regions by ICANN78 in order to inform GAC deliberations on these matters.</p> <p><u>RATIONALE:</u></p> <p>The GAC reaffirms the importance of increasing the number and geographical distribution of applications from underrepresented or underserved regions in future rounds of New gTLDs through the Applicant Support Program. The GAC reiterates its “support for proposals to substantially reduce or eliminate the application fees and ongoing ICANN registry fees to expand financial support” , in order to sufficiently cover all such applications.</p> <p>Without a substantial reduction in, or financial support for, the application and ongoing fees, many potential applicants in underrepresented or underserved regions would be unable to apply due to the status of their economies, where available capital for ICT/digital initiatives has been historically limited.</p> <p>The GAC highlights that non-financial support is also an important element of an applicant support programme, for example awareness raising, capacity development services and training. Assisting in the provision of back-end services may also be appropriate in some cases.</p>	<p>The Board understands the GAC’s desire to learn more about plans for the Applicant Support Program (ASP), including financial support and engagement aspects, in advance of the ICANN78 meeting.</p>	<p>The Board acknowledges and greatly appreciates the GAC’s emphasis on engaging actors in underrepresented or underserved regions. The Board notes that SubPro Final Report Implementation Guidance 17.6 states: “Outreach efforts should not only target the Global South, but also those located in struggling regions that are further along in their development compared to underserved or underdeveloped regions.” While the Board anticipates ICANN’s engagement plans will include efforts related to actors in underrepresented or underserved regions, both the SubPro Final Report (IG 17.6) and the Draft GNSO Guidance Process for ASP emphasize that communications, outreach, awareness, and engagement should not be limited to specific geographies.</p> <p>As comments from GAC colleagues indicate, it is difficult to define an agreed list of underserved and underdeveloped regions and countries in relation to the DNS. The Board welcomes additional GAC input on this, taking into account the GNSO Guidance Process for ASP has developed draft outputs related to outreach and awareness that also reference a part of the GAC’s definition: an “under-served region, is one that does not have a well-developed DNS and or associated industry or economy.” In referencing the GAC’s definition, the GGP WG agreed that the term “under-served” could also encompass indigenous communities and groups.</p> <p>As the recommendations relating to Applicant Support are under discussion and pending action by the Board, the Board defers action on this advice until such time as these deliberations are completed. Considering the Board’s ongoing work in relation to pending Recommendation 17.2, relating to expanding the scope of financial support, ICANN may not be in a position to share specific plans related to this recommendation by ICANN78.</p>
<p>§3.a.ii Applicant Support in New gTLD Applications</p>	<p>a. The GAC advises the Board to:</p> <p style="padding-left: 40px;">i. To take steps to substantially reduce or eliminate the application fees and ongoing ICANN registry fees to expand financial support for applicants from underrepresented or underserved regions.</p> <p><u>RATIONALE:</u></p>	<p>The Board understands the GAC is recommending reduction or elimination of application fees in the next round, and that the GAC would support ICANN org providing fee reductions to new registry operators that qualified for such support in the New gTLD Program.</p>	<p>The Board acknowledges this advice and the importance of financial support for qualified supported applicants. The Board is conducting ongoing work in relation to pending Recommendation 17.2, relating to expanding the scope of financial support.</p> <p>As the recommendations relating to Applicant Support are under discussion and pending action by the Board, the Board defers action on this advice until such time as these deliberations are completed.</p>

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
	<p>The GAC reaffirms the importance of increasing the number and geographical distribution of applications from underrepresented or underserved regions in future rounds of New gTLDs through the Applicant Support Program. The GAC reiterates its “support for proposals to substantially reduce or eliminate the application fees and ongoing ICANN registry fees to expand financial support” , in order to sufficiently cover all such applications.</p> <p>Without a substantial reduction in, or financial support for, the application and ongoing fees, many potential applicants in underrepresented or underserved regions would be unable to apply due to the status of their economies, where available capital for ICT/digital initiatives has been historically limited.</p> <p>The GAC highlights that non-financial support is also an important element of an applicant support programme, for example awareness raising, capacity development services and training. Assisting in the provision of back-end services may also be appropriate in some cases.</p>		
<p>§3.a.iii Applicant Support in New gTLD Applications</p>	<p>a. The GAC advises the Board to:</p> <p>i. To take timely steps to facilitate significant global diversification in the New gTLD Program by ensuring increased engagement with a diverse array of people and organizations in underrepresented or underserved markets and regions, including by:</p> <ul style="list-style-type: none"> ● Raising awareness of the Applicant Support Program; ● Providing training and assistance to potential applicants; ● Exploring the potential to support the provision of back-end services; and ● Providing adequate funding for the Applicant Support Program consistent with diversification targets. <p><u>RATIONALE:</u></p> <p>The GAC reaffirms the importance of increasing the number and geographical distribution of applications from underrepresented or underserved regions in future rounds of new gTLDs through the Applicant Support Program. The GAC reiterates its “support for proposals to substantially reduce or eliminate the application fees</p>	<p>The Board understands that the GAC is suggesting a set of possible steps to help facilitate global diversification in the New gTLD Program.</p>	<p>The Board acknowledges and appreciates this advice. The Board anticipates that ICANN’s communications and engagement plans will articulate how to best raise awareness and provide training and assistance to potential ASP applicants.</p> <p>The Board acknowledges the importance of the ASP in relation to realizing Affirmation 1.3, that, “the primary purposes of new gTLDs are to foster diversity, encourage competition, and enhance the utility of the DNS.”</p> <p>The Board also notes that it is critical to acknowledge the many challenges for potential applicants from underrepresented or underserved communities. While ASP is a critical component of increasing diversity, there may be other issues beyond fees, training, and access to pro bono professional services. Potential applicants may face other barriers in applying for a gTLD, being successful in their gTLD application, and then managing the registry in a secure and stable manner.</p> <p>The next round of the ASP presents a significant learning opportunity to test our collective assumptions about barriers to entry for diverse, underrepresented, and underserved applicants. With a robust evaluation of the ASP, that learning can then be applied to improve the program in future rounds.</p>

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
	<p>and ongoing ICANN registry fees to expand financial support” , in order to sufficiently cover all such applications.</p> <p>Without a substantial reduction in, or financial support for, the application and ongoing fees, many potential applicants in underrepresented or underserved regions would be unable to apply due to the status of their economies, where available capital for ICT/digital initiatives has been historically limited.</p> <p>The GAC highlights that non-financial support is also an important element of an applicant support program, for example awareness raising, capacity development services and training. Assisting in the provision of back-end services may also be appropriate in some cases.</p>		<p>As the recommendations relating to Applicant Support are under discussion and pending action by the Board, the Board defers action on this advice until such time as these deliberations are completed. The Board encourages continued participation by the Small Group of GAC representatives on the GGP on Applicant Support.</p>
<p>§4.a.i Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs</p>	<p>a. The GAC advises the Board to:</p> <p style="padding-left: 40px;">i. To take steps to avoid the use of auctions of last resort in contentions between commercial and non-commercial applications; alternative means for the resolution of such contention sets, such as drawing lots, may be explored.</p> <p><u>RATIONALE:</u></p> <p>While the GAC acknowledges that, in an attempt to reduce potential gaming, recommendation 35.3 of the SubPro PDP Working Group Final Report included the need for applications to be submitted with a “bona fide” intention to operate a TLD, the GAC reiterates concerns regarding the implementation of this condition, and notes that punitive measures for non compliance with the condition of submission of a “bona fide” intention are not sufficiently defined.</p> <p>Regarding Auctions of Last Resort, the GAC reaffirms its view that they should not be used in contentions between commercial and non-commercial applications. In addition the GAC reiterates that private monetary means of resolution of contention sets should be banned or strongly disincentivized, to prevent applications under false pretences for monetary gain. Other means, like drawing lots, may be used to resolve contention sets.</p> <p>The GAC supports ALAC’s view expressed in its advice to the ICANN Board noting that they believe there “should be a ban on private</p>	<p>The Board understands that the GAC would like the Board to take steps to avoid the use of auctions of last resort in contentions between commercial and non-commercial applications. The Board understands that the GAC encourages the consideration of alternative means for the resolution of such contention sets. Based on input from the GAC on the Board’s clarifying questions, the Board understands that the GAC’s distinction between commercial and non-commercial applications in this advice is regarding features of the application, including the application’s business plan, rather than the applications legal entity.</p>	<p>As the recommendations relating to auctions are under discussion and pending action by the Board, the Board defers action on this advice until such time as these deliberations are completed.</p>

GAC Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
	<p>auctions” and that ”by mandating ICANN only auctions, the proceeds of any such ICANN auctions can at least be directed for uses in pursuit of public interest, such as was determined through the CCWG on Auction Proceeds.”</p>		
<p>§4.a.ii Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs</p>	<p>a. The GAC advises the Board to:</p> <p style="padding-left: 40px;">i. To ban or strongly disincentivize private monetary means of resolution of contention sets, including private auctions.</p> <p><u>RATIONALE:</u></p> <p>While the GAC acknowledges that, in an attempt to reduce potential gaming, recommendation 35.3 of the SubPro PDP Working Group Final Report included the need for applications to be submitted with a “bona fide” intention to operate a TLD, the GAC reiterates concerns regarding the implementation of this condition, and notes that punitive measures for non compliance with the condition of submission of a “bona fide” intention are not sufficiently defined.</p> <p>Regarding Auctions of Last Resort, the GAC reaffirms its view that they should not be used in contentions between commercial and non-commercial applications. In addition the GAC reiterates that private monetary means of resolution of contention sets should be banned or strongly disincentivized, to prevent applications under false pretences for monetary gain. Other means, like drawing lots, may be used to resolve contention sets.</p> <p>The GAC supports ALAC’s view expressed in its advice to the ICANN Board noting that they believe there “should be a ban on private auctions” and that ”by mandating ICANN only auctions, the proceeds of any such ICANN auctions can at least be directed for uses in pursuit of public interest, such as was determined through the CCWG on Auction Proceeds.”</p>	<p>The Board understands that the GAC would like the Board to ban or disincentivize private monetary means of resolution of contention sets, including private auctions.</p>	<p>As the recommendations relating to auctions are under discussion and pending action by the Board, the Board defers action on this advice until such time as these deliberations are completed.</p>

GAC Follow Up on Previous Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
Follow-up 1 - Privacy and Proxy Services	The GAC thanks the Board for the reprioritisation of the Privacy Proxy Services Accreditation Issues (PPSAI) policy recommendations, as per the GAC's previous advice. In addition, the ICANN76 Advice requested that the Board regularly update the GAC on the status of activities related to Privacy and Proxy services. In that regard, the GAC appreciates the update from the Board during ICANN77 on the status of developments regarding Privacy and Proxy services and the GAC would welcome continued updates, including providing detail in writing.	The Board understands that the GAC appreciates the Board's update regarding PPSAI and related activities during the ICANN77 public meeting. The Board also understands that the GAC welcomes continued updates, including updates in writing.	The Board appreciates the GAC's interest in this topic and will continue to provide updates on the ongoing work in this area.

ICANN BOARD PAPER NO. 2023.09.10.2b

TITLE: **Second Organizational Review of the Nominating Committee (NomCom2 Review) – Next Steps in Bylaws Amendment Process**

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

EXECUTIVE SUMMARY:

In March 2023, the ICANN Board directed the ICANN organization (org) to initiate a Standard and Fundamental ICANN Bylaws amendment process related to recommendations from the second Organizational Review of the Nominating Committee (NomCom2 Review), including a Public Comment [proceeding](#).

This Board action included several components:

1. Initiated a [Standard and Fundamental ICANN Bylaws amendment](#) process for the implementation of four NomCom2 Review recommendations (7, 9, 24, and 27) which relate to the ICANN Board of Directors, NomCom members, and implementation of the NomCom Standing Committee.
2. Directed ICANN org to include the [draft NomCom Standing Committee Charter](#) in the Public Comment proceeding, to allow the ICANN community an opportunity to express their views on the proposed charter that have implications for ICANN's governance.
3. Consolidated with initiating a Bylaws amendment process on the NomCom-related Bylaws amendments, initiated a [Bylaws amendment](#) process on Article 12.2 of the Bylaws relating to the Root Server System Advisory Committee (RSSAC), that removes the Board's role in selection of RSSAC membership. The RSSAC specifically requested this change in light of having an RSSAC-appointed delegate anticipated to serve as a voting member of the NomCom in the nomination of ICANN Board members.

The Public Comment proceeding opened on 17 April 2023 and closed on 12 June 2023, including a two-week extension as requested by parts of the community. The community [submissions](#) revealed overall support for most of the suggested amendments to the ICANN Bylaws. The inputs raised concerns about the proposed ["Unaffiliated" Directors statement](#) and

corresponding Bylaw amendment, and also provided suggested edits to the NomCom Standing Committee charter.

The divergent views expressed on the “Unaffiliated Directors” definition and proposed amendment will require further consideration by the ICANN Board. Accordingly, a bifurcated approach to the ICANN Standard and Fundamental Bylaws Amendment process is recommended:

1. The ICANN Board approves the Standard Bylaws amendments to Articles 8 and 12 of the ICANN Bylaws, relating to the composition and terms of the NomCom, implementation of the NomCom Standing Committee, and the requested changes to the RSSAC selection process. The Board should also include the proposed Transition Article, now presented as Article 27.5, that specifies the timeline for implementation of the new NomCom terms. Those Bylaws will then move forward within the Empowered Community Process.
2. The Board approves the NomCom Standing Committee charter.
3. The Board defers action on the Fundamental Bylaws Amendment to Article 7, which sets out the proposed requirement for the appointment of “Unaffiliated” Directors to the Board. The “Unaffiliated” Directors statement, as well as the Bylaws amendment putting it into effect, require further Board and likely community discussion before moving forward. Action on the corresponding transition article (posted for Public Comment as Article 27.xy) should also be deferred.

[PROPOSED] ORGANIZATIONAL EFFECTIVENESS COMMITTEE RECOMMENDATION:

In its capacity of overseeing the Organizational Review process, the Organizational Effectiveness Committee (OEC) recommends that the ICANN Board adopt the Standard Bylaws Amendments to Articles 8, 12 and 27. Further, the OEC recommends that the Board defers action on the Fundamental Bylaws amendment process over Article 7, and the corresponding Transition Article language at Article 27, so that the ICANN Board can discuss how to address the “Unaffiliated” Director definition and requirements. .

PROPOSED RESOLUTION:

Whereas, on [16 March 2023](#) the ICANN Board accepted the second Organizational Review of the Nominating Committee (NomCom2 Review) [Final Implementation Report](#) issued by the NomCom2 Review Implementation Working Group (NomComRIWG) which details the

completion of implementation of the 27 recommendations arising out of NomCom2 Review. The ICANN Board also initiated Standard and Fundamental ICANN Bylaws amendment processes over Articles 7, 8, 12 and 27 of the ICANN Bylaws in order to complete the implementation of the NomCom2 Review recommendations.

Whereas, the Bylaws proposals at issue cover four main issues: (1) the composition and terms of the NomCom (Article 8, with a Transition Article at Article 27); (2) the implementation of the NomCom Standing Committee (Article 8); (3) the composition of the ICANN Board to include “Unaffiliated” Directors (Article 7, with a separate Transition Article at Article 27); and (4) as requested by the Root Server System Advisory Committee (RSSAC), a change in how the RSSAC is selected (Article 12).

Whereas, the Board also directed the posting for Public Comment of the proposed charter for the Nominating Committee Standing Committee and an “Unaffiliated” Director statement, as each of these items is directly related to corresponding Bylaws changes.

Whereas, the Bylaws amendment proposals and corresponding documents were posted for public comment between 17 April - 12 June 2023.

Whereas, the community submissions revealed overall support for most of the suggested amendments to the ICANN Bylaws. The inputs raised concerns about the proposed “Unaffiliated” Directors statement and corresponding Bylaw amendment, and also provided suggested edits to the NomCom Standing Committee charter.

Whereas, the divergent views expressed by the community on the inclusion of the “Unaffiliated Directors” requirement in the Bylaws and the corresponding statement require further consideration by the ICANN Board, to determine the appropriate steps forward.

Resolved (2023.09.10.xx), the ICANN Board approves the Standard Bylaws amendments on Articles 8, 12, and 27 of the ICANN Bylaws, relating to the composition and terms of the NomCom, the implementation of the NomCom Standing Committee, and the manner of selection of the RSSAC.

Resolved (2023.09.10.xx), the ICANN Board approves the NomCom Standing Committee charter, as revised to address public comments.

Resolved (2023.xx.xx.__[to be assigned by Secretary]), the ICANN Board will further consider community concerns regarding the Fundamental Bylaws amendment on Article 7 of the ICANN Bylaws related to the “Unaffiliated” Directors role (and the related Statement). The Board directs the OEC to develop a plan within six months of this Board action to address the issue, before determining whether or how to proceed forward in the Fundamental Bylaws amendment process.

PROPOSED RATIONALE:

Why is the Board addressing the issue?

To ensure the ICANN multistakeholder model remains transparent and accountable, and to improve its performance, ICANN conducts Organizational Reviews of its Supporting Organizations, Advisory Committees (other than the Governmental Advisory Committee) and the Nominating Committee, as detailed in [Article 4 Section 4.4](#) of the ICANN Bylaws.

Reviews are critical to maintaining an effective multistakeholder model and in helping ICANN achieve its mission, as detailed in Article 1 of the Bylaws. Reviews also contribute to ensuring that ICANN serves the public interest. The role of the ICANN Board is to ensure that the review process was in compliance with the relevant Bylaw provisions. In this instance, the role of the ICANN Board is also to approve the proposed amendments resulting from the implementation of recommendations that resulted from the second Organizational Review of the Nominating Committee (NomCom2 Review).

ICANN’s Organizational Effectiveness Committee (OEC) oversaw the progress and completion of NomCom2 Review and implementation thereof, and the community’s NomCom Review Implementation Working Group (NomComRIWG).

In [March 2023](#), the Board recognized completion of the NomComRIWG’s role in implementation efforts on all 27 recommendations, as noted in its [Final Implementation Report](#). The Board also initiated the ICANN Bylaws Amendment Process on Fundamental and Standard portions of the ICANN Bylaws, and sought Public Comment on the proposed “Unaffiliated” Directors statement and proposed charter for a Nominating Committee Standing Committee. The community discussion on the rebalancing of the NomCom, arising from Recommendation 10, is continuing in line with the [Board’s resolution 2023.03.16.19](#).

Background

The NomCom2 Review commenced in June 2017 with the announcement of the selection of the Independent Examiner. The Independent Examiner conducting the NomCom2 Review produced a [Final Report in June 2018](#), which was received by the ICANN Board along with the NomCom2 Review Implementation Planning Team's [Feasibility Assessment and Initial Implementation Plan](#) (Feasibility Assessment) for all 27 of the recommendations in the Independent Examiner's Final Report. The NomComRIWG was created in response to the [Board Resolution](#), and developed the Detailed Implementation Plan on 12 [September 2019](#). On [07 November 2019](#), the ICANN Board accepted the NomCom2 Review Detailed Implementation Plan and directed the NomComRIWG to commence implementation, and to provide periodic updates to the OEC. The NomComRIWG submitted [implementation progress reports](#) to the OEC on [30 June 2020](#), [21 December 2020](#), [25 August 2021](#), [17 December 2021](#), and a Final Implementation Report on [30 June 2022](#). The ICANN Board took action on [16 March 2023](#) to accept the status of the NomCom2 Review implementation and initiate a Standard and Fundamental ICANN Bylaws Amendment process, including the Public Comment proceeding. The community submissions revealed overall support for most of the suggested amendments to the ICANN Bylaws. The inputs raised concerns about the proposed "Unaffiliated" Directors statement and corresponding Bylaw amendment, and also provided suggested edits to the NomCom Standing Committee charter.

What action is the Board taking?

The Board is taking the following actions:

1. The ICANN Board approves the Standard Bylaws amendments to Articles 8 and 12 of the ICANN Bylaws, relating to the composition and terms of the NomCom, implementation of the NomCom Standing Committee, and the requested changes to the RSSAC selection process. The Board should also include the first proposed Transition Article , now presented as Article 27.5 that specifies the timeline for implementation of the new NomCom terms. Those Bylaws will then move forward within the Empowered Community Process.
2. The Board approves the NomCom Standing Committee charter.

3. The Board defers action on the Fundamental Bylaws Amendment to (Article 7, which sets out the proposed requirement for the appointment of “Unaffiliated” Directors to the Board. The Unaffiliated Directors statement, as well as the Bylaws amendment putting it into effect, require further Board and likely community discussion before moving forward. Action on the corresponding transition article (posted for Public Comment as Article 27.xy) should also be deferred.

The Standard ICANN Bylaws amendments will:

- Change NomCom delegates’ terms to serve two-year terms, instead of one year (Article 8).
- Transform all NomCom delegates into voting delegates, except for leadership (Article 8).
- Create a NomCom Standing Committee to provide continuity across annual NomCom cycles and to build the institutional memory of the NomCom, since the NomCom itself operates on a tight timeline and needs to focus on its recruiting and evaluation activities. (Article 8).
- Define how these new requirements will be transitioned into practice (Article 27).
- At the request of the Root Server System Advisory Committee (RSSAC), as the RSSAC’s appointed delegate becomes a voting member through this process, the ICANN Board’s role in appointment of RSSAC membership and leadership will be removed (Article 12).

Which stakeholders or others were consulted?

As a result of Board action in [March 2023](#), the community was consulted via [Public Comment proceeding](#) on proposed Standard and Fundamental ICANN Bylaws amendments and documents to implement the NomCom2 Review. Thirteen (13) submissions addressing the Bylaws amendments and documents to implement the NomCom2 Review were received. Out of the total of 13 submissions, nine were from organizations or groups and four were from individuals. Of the nine submissions from organizations, three were from Advisory Committees, one from a Supporting Organization, three from Stakeholder Groups of the GNSO, one from a GNSO Constituency and one from a cross-community working party.

What concerns, or issues were raised by the community?

The submissions received from the community revealed overall support of the suggested

amendments to the ICANN Bylaws, with the exception of several concerns and suggested edits to the proposed “Unaffiliated” Directors statement.

Community concerns on the proposed “Unaffiliated” Directors statement and definition included echoed those that were expressed by the Board:

- Multiple commenters noting concerns that the “Unaffiliated” definition is too broad and potentially disqualifies candidates with relevant experience;
- Some commenters noted they did not support the proposal at all;
- Multiple commenters raised concerns with the ability to fill three seats on the ICANN Board with “Unaffiliated” Directors, and emphasized the priority to fill the seats with qualified candidates.

Because of the scope of concerns raised regarding the “Unaffiliated” Directors statement and incorporation into the Bylaws, the Board is not in a position to approve the Fundamental Bylaws or related documents on that issue. The Board will, in coordination with the OEC, consider what is needed to further consider this topic. The OEC will develop a plan to address the issue within 6 months of this Board action.

Additionally, public comments provided suggested edits to the NomCom Standing Committee charter. The suggested edits to the NomCom Standing Committee charter included suggestions to improve its terminology, and edits that are intended to clarify, rather than change the substance of the charter. The ICANN Board approves the NomCom Standing Committee Charter, as revised to address specific public comments.

There was one suggestion to change Bylaws section 12.2 (b)(ii) regarding SSAC to match the RSSAC-related change to section 12.2 (c)(ii), however this suggestion was not incorporated as the Bylaws amendment to 12.2 (c)(ii) was specifically requested by the RSSAC, and the SSAC has not requested an amendment to the ICANN Bylaws regarding appointment of their membership as it relates to the NomCom. Should this change be recommended, it would entail initiating a separate Bylaws amendment process.

What factors did the Board find to be significant?

The Board found community input on the “Unaffiliated” Directors definition and proposal to be significant, contributing to the determination to proceed with a bifurcated approach in the ICANN

Standard and Fundamental Bylaws Amendments processes. The Board directs the OEC to develop a plan to address the issue within 6 months of this Board action, before determining whether or how to proceed forward in the Fundamental Bylaws amendment process.

In addition, the Board found community support for the Standard Bylaws amendments to be significant, as well as the long history and work of the NomComRIWG, the community group which completed implementation of the recommendations from the NomCom2 Review.

Are there positive or negative community impacts?

The completion of the implementation of NomCom2 Review recommendations and the related modifications to the Standard Bylaws will result in the improvement in overall effectiveness of the NomCom. The change in NomCom delegates' terms to serve two-year terms will help preserve knowledge within the NomCom. Transforming all delegates (except leadership) to be voting members will include more participants in the decision-making process. Establishment of the NomCom Standing Committee will provide continuity across annual NomCom cycles and build the institutional memory of the NomCom, since the NomCom itself operates on a tight timeline and needs to focus on its recruiting and evaluation activities.

In order to mitigate the impact on the work of the 2024 NomCom that is already in progress, the Transition Article the Board is approving today sets out the expectation that these new Bylaws provisions will not impact the composition of the NomCom until the seating of the 2025 NomCom attendant to ICANN's Annual General Meeting in October 2024. Similarly, the NomCom Standing Committee is expected to be in place and available to support the 2025 Nominating Committee.

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

This Board action is anticipated to have some additional fiscal impact to that noted in the Board's [acceptance](#) of the NomCom2 Review [Implementation Plan](#). The additional impact is related to additional support for a new Standing Committee, both in ongoing resources and in Board and community resources related to the selection and service on the Standing Committee, respectively.

The ramifications of this resolution on ICANN org, the community and the public are anticipated to be positive, as this Board action signifies an important milestone for Organizational Reviews and improvements in the effectiveness of the NomCom.

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

This Board action is not expected to have a direct effect on security, stability or resiliency issues relating to the DNS.

How is this action within ICANN's mission and what is the public interest served in this action?

The Board's action is consistent with ICANN's commitment pursuant to [Section 4](#) of the [Bylaws](#) to ensure the ICANN multistakeholder model remains transparent and accountable, and to improve the performance of the NomCom. This action will serve the public interest by contributing to the fulfillment of ICANN's commitment to maintaining and improving its accountability and transparency.

Is Public Comment required prior to Board action?

Yes, Public Comment was required. The Board [initiated](#) a Standard and Fundamental ICANN Bylaws Amendment Process (see [Article 25](#)) for proposed Bylaws amendments and documents to implement the NomCom2 Review, including an ICANN Public Comment proceeding in [April 2023](#).

Submitted by: Theresa Swinehart

Position: Senior Vice President, Global Domains and Strategy (GDS)

Date Noted: 31 August 2023

Email: theresa.swinehart@icann.org

Nominating Committee Standing Committee Charter

(Draft)

Preamble

Recognizing the Nominating Committee (NomCom) Standing Committee has a role to play in supporting continuous improvement of the NomCom and that various NomCom2 Review recommendations and subsequent implementation steps (Recommendations 2-9; 12, 14, 15, 16; 18-23; 25-27) indicate potential roles for the NomCom Standing Committee, those implementation steps have been deferred to be considerations for a work plan once the NomCom Standing Committee it is established.

I. Background

In the final report of the Second Organizational Review of the Nominating Committee (NomCom2 Review), published on 5 June 2018, the independent examiner conducting the review found that there was a lack of continuity in process across different years in NomCom such that the operational performance of any individual NomCom was routinely impacted. The independent examiner recommended that a Standing Committee be formed to suggest and assist in implementing changes to NomCom processes since the NomCom itself operates on a tight timeline and needs to focus on its recruiting and evaluation activities.

For reference, the Nominating Committee (NomCom) is responsible for appointing a number of seats to the ICANN Board of Directors, the Public Technical Identifiers Board of Directors, the At-Large Advisory Committee (ALAC), and the Councils of the Country Code Names Supporting Organization (ccNSO) and the Generic Names Supporting Organization (GNSO). The NomCom is an independent body that acts on behalf of the interests of the global Internet community and within the scope of ICANN's mission and its responsibilities in the Bylaws. The NomCom consists of 18 voting delegates along with a number of non-voting leaders, advisors, and delegates.

II. Purpose

The purpose of the NomCom Standing Committee is to:

- Support continuous improvement to the NomCom Operating Procedures and associated processes to increase the effectiveness and efficiency of the NomCom while enhancing the NomCom's transparency and accountability to the overall ICANN community.
- Provide continuity across annual NomCom cycles and to build the institutional memory of the NomCom.

The NomCom is ultimately responsible for ongoing coordination and communication across ICANN. The NomCom Standing Committee is an external complement to support the NomCom's continuous improvement. The NomCom and NomCom Standing Committee are supported by ICANN org NomCom support staff, who focus on standardization of NomCom processes and also provide continuity. In serving its purpose, the NomCom Standing Committee may coordinate with other entities within ICANN to inform a set of processes to standardize.

The NomCom Standing Committee is not intended to be involved in the work of each annual NomCom. For the avoidance of doubt, the NomCom Standing Committee does not participate in, oversee, or influence the decision-making processes of the NomCom’s annual candidate evaluation and selection activities. The NomCom Standing Committee is also prohibited from participation in, oversight of, or influencing the NomCom delegate selection process which is the sole responsibility of the appointing bodies. The NomCom Standing Committee will not have access to any confidential information available to the NomCom.

III. Scope of Responsibilities

A. Provide continuity across annual NomCom cycles

In collaboration with ICANN org NomCom support staff (section III.C), the NomCom Standing Committee will support the standardization of the work across NomCom cycles including but not limited to the planning, documentation, and the review of the NomCom’s processes. Examples of this work could include:

- Providing input on the publication of process maps and reports regarding the goals and accomplishments of the NomCom’s Continuous Improvement program.
- Reviewing, assessing, and providing inputs on updates to documentation or on NomCom process enhancements.

The NomCom Standing Committee is also charged with participating in ICANN’s annual budget and planning processes (such as the Public Comment fora and other consultations offered by ICANN) on behalf of the NomCom.

B. Build the institutional memory of the NomCom

In collaboration with ICANN org NomCom support staff, the NomCom Standing Committee will be responsible for reviewing, assessing, and providing input on the website and systems used for maintaining a historical archive for processes and procedures used by the NomCom.

The NomCom Standing Committee will be responsible for reviewing, assessing, and providing input to NomCom support staff and NomCom on:

- (a) The website and systems used for maintaining a historical archive for processes and procedures used by the NomCom.
- (b) The process for community outreach on proposed changes to the NomCom Operating Procedures.
- (c) The processes of identifying, collecting and timely publication of publicly available data on the candidate pool.
- (d) The publication of regular reports regarding the goals and accomplishments of the NomCom’s Continuous Improvement program.

C. NomCom Standing Committee engagement with ICANN org

In fulfilling its purpose and responsibilities with ICANN org NomCom support staff, especially with regard to the review of each NomCom cycle, the NomCom Standing Committee will work in consultation with ICANN org NomCom support staff to help assess the previous NomCom cycle. This will be based upon all end-of-cycle feedback received by NomCom support staff, not

designated as confidential. The NomCom Standing Committee will provide feedback on whether processes worked properly and determine any potential changes needed for future NomCom cycles. Activities encompassed in the relationship between the NomCom Standing Committee and ICANN org NomCom support staff may include but not be limited to:

- (a) In coordination with ICANN org NomCom support staff, reviewing the previous NomCom planning cycle projects against the adopted budget to inform the NomCom Standing Committee's recommendations into future budgeting cycles.
- (b) Reviewing the end-of-cycle feedback and providing recommendations for improvements.
- (c) Supporting the assessment and effectiveness of NomCom training to improve training of incoming NomCom delegates and Leadership.
- (d) Supporting the continuous improvement of the NomCom online knowledge base and tools.
- (e) Engagement within the ICANN annual budgeting and planning cycles.

D. NomCom Standing Committee Role with Respect to Bodies That Appoint Delegates to the NomCom

In fulfilling its purpose and responsibilities, the NomCom Standing Committee will be available to provide information/guidance to bodies appointing delegates to the NomCom regarding the diversity needs, in line with the ICANN community agreed upon definitions and goals for diversity considerations.

IV. Composition

The NomCom Standing Committee shall be composed of five seats: four members and one ex-officio observer. The four members will be selected from a pool of eligible candidates (see VII (h) for Membership Requirements) based upon a public Expression of Interest (EOI).

- (i) Each of the four member seats will be filled on a rotational basis as follows:
 - (1) The initial term for Seats 1-4 shall begin upon the conclusion of ICANN's Annual General Meeting [TBD] and rotate as follows:
 - a) Seats 1 and 3 will conclude after year two.
 - b) Seats 2 and 4 will conclude after year three.
 - (ii) The current NomCom Associate Chair serves ex-officio in the fifth seat as a non-voting liaison between the NomCom Standing Committee and the current NomCom.
- (b) The existence of any vacancies shall not affect the ability or obligation of the NomCom Standing Committee to carry out the responsibilities assigned to it in this Charter.
- (c) NomCom Standing Committee Chair:
- (i) Once formed, the NomCom Standing Committee will select a Chair from the NomCom Standing Committee membership. The Chair will convene and facilitate NomCom Standing Committee meetings and support the will of the group to ensure no unilateral or minority led action. A Chair will be selected annually.

(d) Membership Requirements:

- (i) NomCom Standing Committee members shall have each completed at least one full year on the NomCom prior to being appointed to the NomCom Standing Committee.
- (ii) There cannot be overlap between service on the NomCom Standing Committee and service on the NomCom, other than the NomCom Associate Chair who serves only as a liaison and observer between the NomCom Standing Committee and on behalf of the current NomCom.
- (iii) No person who is an employee of or paid consultant to ICANN (including the Ombudsman) shall serve on the NomCom Standing Committee.
- (iv) Preference for new member appointments will be given to:
 - (1) Prior experience on a NomCom Leadership Team (comprised of the NomCom Chair, Chair-elect, and NomCom Associate Chair).
 - (2) Incoming members who are not currently involved in the same SO/AC as outgoing members.
 - (3) Consideration of the WS2 diversity criteria .

(e) Selection of NomCom Standing Committee members

- (i) The ICANN Board, or a subset thereof, is responsible for the review and selection of candidates to the NomCom Standing Committee members. Each candidate must provide a conflict of interest statement as part of the information provided to the ICANN Board for NomCom Standing Committee member selection

V. Terms

1. The term of all four members, excluding the liaison, shall be three years, with initial terms staggered as described above in Composition (VII; ii).
2. All regular terms shall start upon the conclusion of an ICANN Annual General Meeting.
3. A member may serve at most two successive three-year terms, after which at least two years must elapse before the individual is eligible to serve another term.
4. The initial staggered terms are considered a full term. Non-performing members may be removed by an affirmative vote of all other members of the Committee. The determination of Non-Performance can be due to a variety of factors, including, but not limited to, attendance and participation in the NomCom Standing Committee. When a NomCom Standing Committee member fails to attend two regularly scheduled meetings consecutively without prior notification to the group, NomCom Standing Committee ICANN org NomCom support staff shall reach out to the absent member, on behalf of the NomCom Standing Committee, to confirm if the absent member is able to continue participation on the NomCom Standing Committee. Any vacancy that arises during a term shall be filled according to the selection process under IV. Composition. A person elected to fill a vacancy in a term shall not be deemed to have served that term.
5. The NomCom Associate Chair shall serve in their liaison capacity on the NomCom Standing Committee coinciding with their Associate Chair term.¹

¹ There is no obligation for the Nominating Committee Chair to appoint an Associate Chair. If there is no Associate Chair selected, then the Chair-Elect could serve as the Standing Committee liaison for that term.

VI. Meetings

1. The NomCom Standing Committee will meet by remote participation (using appropriate technology) as frequently as necessary, but no fewer than six times per year.
2. Regular meetings may be called upon no less than fourteen (14) days' notice by either (i) the Chair or (ii) any two members of the NomCom Standing Committee acting together.
3. Meetings to address urgent issues may be called in a manner calculated to provide as much notice as possible to the members of the NomCom Standing Committee.
4. NomCom Standing Committee meetings require a majority of members, in order to achieve quorum and proceed to hold a meeting.
5. Outcomes and actions of the NomCom Standing Committee shall be taken by consensus. All outcomes and actions will strive for full consensus, or unanimous agreement. Where full consensus is not possible, outcomes and actions require a majority of NomCom Standing Committee members' support in order to proceed, as opposed to a decision by the Chair.
6. Email discussions do not replace regular meetings, though outcomes and actions can be determined via internet-based discussions (email).
7. The NomCom Standing Committee may elect to meet face-to-face but there will be no travel support associated with this activity.

VII. Accountability and Transparency

The NomCom Standing Committee shall operate openly and transparently. NomCom Standing Committee meetings shall be recorded. The meeting recording, minutes, and other records of the meetings shall be publicly posted to a publicly available webpage as soon as possible following approval by the committee.

Outcomes and actions shall be documented and may be determined via Internet-based discussions without the need for a meeting. The NomCom Standing Committee will use a public mailing list for any matters related to its remit.

NomCom Standing Committee members must adhere to ICANN's conflict-of-interest policy by providing and updating statements of interest that identify potential conflicts of interest in their NomCom Standing Committee service.

VIII. Review & Continuous Improvement

Any entity that appoints delegates to the NomCom, or receives appointees from the NomCom, may propose amendments to this Charter. The NomCom Standing Committee is also empowered to propose amendments to this Charter. All proposed changes shall be subject to ICANN's Public Comment processes and Board approval of charter amendments.

This Charter of the NomCom Standing Committee shall be reviewed at least every 5 years, preferably as part of the NomCom's Organizational Review as per Section 4.4 of the Bylaws (or successor section).

ICANN BOARD SUBMISSION NO. 2023.09.10.2c

TITLE: **Establishment of Board Governance Committee's Subcommittee on Conflicts re the New gTLD Program: Next Round**

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

EXECUTIVE SUMMARY:

As ICANN prepares for the next round of the New gTLD Program (Next Round), it is crucial to ensure that all Board deliberations and decisions are made free from any actual, potential, or perceived conflicts of interests, and with the highest ethical standards. The Board Governance Committee (BGC) in its role of administering and monitoring compliance with the Conflicts of Interest Policy has recommended that a BGC Subcommittee on Conflicts re the New gTLD Program: Next Round (Subcommittee), comprised of Board members who are not conflicted on new gTLDs, for the purpose of managing conflicts of interest issues for Board members relating to the Next Round. The Subcommittee will be responsible for, among other things: (i) developing guidelines to assess conflicts of interests; (ii) evaluating Board members' conflict disclosures to identify any actual, potential, or perceived conflicts; (iii) identifying and assessing mitigation measures for handling these conflicts; (iv) recommending to the BGC, which will then make recommendations to the Board on how to manage identified conflicts; and (v) monitoring ongoing conflicts throughout the duration of the Next Round.

BOARD GOVERNANCE COMMITTEE (BGC) RECOMMENDATION:

The BGC recommends that the Board establish the Board Governance Committee Subcommittee on Conflicts re the New gTLD Program: Next Round (Subcommittee) and that the Subcommittee be comprised of the following Board members: Catherine Adeya (upon taking her seat as a Board member at the conclusion of the Annual General Meeting in October 2023), Chris Chapman, Sajid Rahman, and León Sánchez.

PROPOSED RESOLUTIONS:

Whereas, ICANN is committed to attaining a higher ethical standard to ensure the legitimacy and sustainability of the multistakeholder model.

Whereas, Board members are expected to comply with the [Conflicts of Interest Policy](#) and [Board of Directors' Code of Conduct](#).

Whereas, the Board Governance Committee in its role of administering and monitoring compliance with the Conflicts of Interest Policy has recommended that a subcommittee on conflicts relating to the next round of the New gTLD Program be established, comprised of Board members who are presently free from actual, potential, or perceived conflicts relating to new gTLDs.

Resolved (2023.09.10.XX), the Board approves the establishment of the Board Governance Committee Subcommittee on Conflicts re the New gTLD Program: Next Round (Subcommittee). The Subcommittee shall be comprised of the following Board members: Catherine Adeya (upon taking her seat as a Board member at the conclusion of the Annual General Meeting in October 2023), Chris Chapman, Sajid Rahman, and León Sánchez.

PROPOSED RATIONALE:

As ICANN prepares for the next round of the New gTLD Program (Next Round), it is crucial to ensure that, as always, all Board deliberations and decisions are made free from any actual, potential, or perceived conflicts of interests, and with the highest ethical standards. The Board Governance Committee (BGC) in its role of administering and monitoring compliance with the Conflicts of Interest Policy has recommended that the Board establish a BGC Subcommittee on Conflicts re the New gTLD Program: Next Round (Subcommittee), comprised of Board members who are not conflicted on new gTLDs, for the purpose of managing conflicts of interest issues for Board members relating to the Next Round.

The Subcommittee will be responsible for, among other things: (i) developing guidelines to assess conflicts of interests; (ii) evaluating Board members' conflict disclosures to identify any actual, potential, or perceived conflicts; (iii) identifying and assessing mitigation measures for handling these conflicts; (iv) recommending to the BGC, which will then make recommendations to the Board on how to manage identified conflicts; and (v) monitoring ongoing conflicts throughout the duration of the Next Round.

Establishing the Subcommittee is consistent with ICANN's commitment to ensuring legitimacy and sustainability of the ICANN multistakeholder model by taking steps to ensure that the Board members are operating at the highest ethical standards. Further, the Subcommittee, in line with the [ICANN Conflicts of Interest Policy](#) and [Board Code of Conduct](#), will enhance accountability in Board deliberations and decisions related to the Next Round. This ensures that such decisions and deliberations are made in the best interests of

the global Internet community and are free from the influence of individual conflicts of interest.

This decision is within the public interest and consistent with ICANN's mission as it is expected to positively impact the ICANN community by ensuring that ICANN continues to operate to the highest ethical standards.

The action is not expected to have a fiscal impact on ICANN organization.

This is an Organizational Administrative Function that does not require Public Comment.

Submitted By:	Amy A. Stathos, Deputy General Counsel
Date:	30 August 2023
Email:	amy.stathos@icann.org

ICANN BOARD PAPER NO. 2023.09.10.1d

TITLE: Pending Outputs of the new gTLD Subsequent Procedures Policy Development Process Final Report.

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The ICANN Board developed a scorecard to document its actions on the policy recommendations in the “[Final Report on the New gTLD Subsequent Procedures Policy Development Process](#)” (SubPro Final Report). The first iteration of the scorecard was [adopted](#) on 16 March 2023 ([March 2023 Scorecard](#)). In the March 2023 Scorecard, the Board designated 38 recommendations as “pending” to give the Board additional time to discuss the recommendations and consult with the GNSO Council and Governmental Advisory Committee (GAC) where needed (see Section B of the March 2023 Scorecard).

At this time, the Board is being asked to consider adopting another iteration of the scorecard (September 2023 Scorecard) to address some of the pending policy recommendations identified in the March 2023 Scorecard.

Discussions with the GNSO Council

In May 2023, the Board initiated discussions with the GNSO Council concerning the pending policy recommendations. For some of these recommendations, the Board and GNSO Council discussed the possibility of the GNSO Council issuing a Clarifying Statement to address concerns previously voiced by the Board. The GNSO Council transmitted to the Board the “[New gTLD Subsequent Procedures Pending Recommendations - GNSO Council Clarifying Statement](#)” (Clarifying Statement) on 5 September 2023, and indicated that it should be read as complementary to recommendations as stated in the Final Report and should be considered

jointly with the Outputs for the purpose of implementation and operation of the New gTLD Program: Next Round.

Discussions with the GAC

In May, the Board also engaged with the GAC about the pending policy recommendations concerning GAC Early Warnings and GAC Consensus Advice. The Board [invited](#) the GAC to discuss a clear path forward to supporting a Board decision regarding the noted policy recommendations, including how to address any GAC concerns during the implementation phase. The Board and GAC exchanged views on this topic during the Board-GAC Interaction Group (BGIG) call held on 28 July 2023.

ICANN ORG RECOMMENDATIONS:

ICANN org recommends that:

- The Board adopt the September 2023 Scorecard in full.
 - Section A details the Outputs that the Board adopts.
 - Section B details the Outputs that the Board adopts with the “[New gTLD Subsequent Procedures Pending Recommendations - GNSO Council Clarifying Statement](#)” transmitted to the Board on 5 September 2023.
 - Section C details the Outputs that the Board does not adopt, including a Board statement and rationale for each of the Outputs, per Bylaws Annex A, Section 9a, because they are not in the best interests of the ICANN community or ICANN.
 - Section D details the Outputs that remain pending following this Board action.
- The Board directs ICANN org to implement the recommendations in Sections A and B of the September 2023 Scorecard, taking into consideration both the Clarifying Statement and any additional comments and instructions the Board has provided regarding Recommendation 18.3, 30.4, 30.6, and with regard to Topic 35 (Auctions).

PROPOSED RESOLUTION:

Whereas, on 16 March 2023, the ICANN Board [resolved](#) to adopt the [Scorecard: Subsequent Procedures \(SubPro PDP\)](#) (the “March 2023 Scorecard”), including a number of recommendations designated as “pending.”

Whereas, on 22 May 2023, the GNSO Council and Board entered into [discussions](#) on how to resolve the remaining Outputs, reaching an understanding that for certain pending Outputs, a Clarifying Statement from the Council could address concerns previously voiced by the Board.

Whereas, members of the Board engaged with the GNSO Council’s SubPro Pending Recommendations Small Team (“[SubPro Small Team](#)”) about the substance of a potential Clarifying Statement.

Whereas, on 5 September 2023, the GNSO Council transmitted to the Board the “[New gTLD Subsequent Procedures Pending Recommendations - GNSO Council Clarifying Statement](#)” (Clarifying Statement) developed by the SubPro Small Team to address the Board’s concerns on the pending Outputs; the Council noted the Clarifying Statement should be read as complementary to recommendations as stated in the Final Report and should be considered jointly with the Outputs for the purpose of implementation and operation of the New gTLD Program: Next Round.

Whereas, the Board has reviewed the Clarifying Statement and finds it to be material to the Board’s decision to adopt certain Outputs originally designated as “pending”. The Board agrees with the GNSO Council that the Clarifying Statement should be considered jointly with the relevant Outputs for the purpose of implementation and operation of the Next Round.

Whereas, on 22 May 2023 the Board [wrote](#) to invite the Governmental Advisory Committee (GAC) to discuss a clear path forward to supporting a Board decision regarding the Outputs on GAC Consensus Advice and GAC Early Warning, including how to address any GAC concerns during the implementation phase.

Whereas, the GAC noted its concerns to the pending Outputs from the “[Final Report on the New gTLD Subsequent Procedures Policy Development Process](#)” (SubPro Final Report) Topic 30: ‘GAC Consensus Advice and GAC Early Warnings’ as “issues of importance” in its [ICANN77 Washington D.C. GAC Communiqué](#).

Whereas, on 28 July 2023, the GAC and the Board [discussed](#) the recommendations contained in Topic 30 of the SubPro Final Report (“GAC Advice and GAC Early Warning”).

Whereas, the pending Outputs include recommendations for which the Board previously voiced specific concerns to the New gTLD Subsequent Procedures Policy Development Process Working Group on its draft recommendations 17.2, 18.1, 18.3, 22.7, 24.3, and 24.5 in a Board [comment](#) (dated 30 September 2020) to the SubPro [Draft Final Report](#).

Whereas, the Board has reviewed the relevant discussions of the SubPro PDP Working Group in the SubPro Final Report and has remaining concerns about some of the recommendations.

Whereas, the Board reiterated its concerns regarding these and other recommendations in the “Issue Synopsis” of Section B of the March 2023 [Scorecard](#).

Whereas, the Board developed another iteration of the March 2023 Scorecard to address certain pending Outputs, including a Board Statement, pursuant to Bylaws Annex A, Section 9, with a rationale for why the Board believes that Recommendations 9.2, 17.2, 18.1, 18.3, 22.7, 24.3, and 24.5 are not in the best interests of the ICANN community or ICANN.

Resolved (2023.09.10.xx), the Board adopts the Scorecard: Subsequent Procedures dated xx September 2023 (the “September 2023 Scorecard. The September 2023 Scorecard consists of:

- Section A, which details the Outputs that the Board adopts.
- Section B, which details the Outputs that the Board adopts with the “[New gTLD Subsequent Procedures Pending Recommendations - GNSO Council Clarifying Statement](#)” transmitted to the Board on 5 September 2023 that provide relevant context to these Outputs.
- Section C, which details the Outputs that the Board does not adopt, including a Board statement and rationale for each of the Outputs, per Bylaws Annex A, Section 9a, because they are not in the best interests of the ICANN community or ICANN.
- Section D, which details the recommendations that remain pending following this Board action.

Resolved (2023.09.10.xx), the Board directs the Interim President and CEO, or her designee(s), to commence the implementation work related to the Outputs adopted by the Board in Section A of the September 2023, taking into account the noted Board considerations regarding recommendations 18.4, 30.4 and 30.6.

Resolved (2023.09.10.xx), the Board directs the Interim President and CEO, or her designee(s), to commence the implementation work related to the Outputs adopted by the Board in Section B of the September 2023 Scorecard, and to consider the recommendations and the Clarifying Statement jointly for the purpose of implementation and operation of the Next Round.

Resolved (2023.09.10.xx), the Board finds that the Outputs identified in Section C of the September 2023 Scorecard are not in the best interests of the ICANN community or ICANN (the Corporation), and therefore does not adopt these Outputs. Pursuant to Bylaws Annex A, Section 9, Section D of the September 2023 Scorecard includes the Board Statement to document the

Board’s rationale for why recommendations identified in Section C are not in the best interests of the ICANN community or ICANN (the Corporation). The Board directs the Interim President and CEO, or her designee(s), to submit the Board Statement to the GNSO Council and coordinate with the GNSO Council a time to discuss the Board Statement.

Resolved (2023.09.10.xx), the Board extends its great appreciation to the GNSO Council which has invested considerable time and resources to draft its Clarifying Statement and maintain cooperative dialogue with the Board to mitigate its concerns. The Board also wishes to acknowledge the achievement of the GNSO in delivering a work plan and timeline for the Next Round-related projects under its ownership and for the notable progress made to date.

Resolved (2023.09.10.xx), the Board also wishes to thank the GAC for its engagement with the Board on the relevant Outputs contained in Topic 30 of the Subpro Final Report.

PROPOSED RATIONALE:

Why is the Board addressing the issue?

The actions taken by the Board are a continuation of its deliberations and resolution on the [Final Report](#) at ICANN76 in Cancun (which resulted in the Board [resolving](#) on the March 2023 [Scorecard](#)). Addressing these issues now means that the ICANN Board provides clarity on these recommendations, ensuring the implementation process can proceed in a timely and effective manner. It also provides the GNSO Council with a rationale for why the Board believes that some recommendations are not in the best interests of the ICANN community or ICANN, allowing the GNSO Council to decide whether it would like to draft supplemental recommendations, per Bylaws Annex A, Section 9.

What are the proposals being considered?

The Board is taking action to accept the September 2023 Scorecard, which includes: the adoption of seven (7) recommendations (Section A); the adoption of eleven (11) recommendations for which the GNSO approved Clarifying Statements to address some of the concerns raised in the March 2023 Scorecard (Section B); and the determination that six (6) recommendations are not in the best interests of the ICANN community or ICANN, including a rationale for the Board's action (Section C). Section D provides an overview of the fourteen (14) recommendations that remain "pending" when the Board adopts the September 2023 Scorecard.

Which stakeholders or others were consulted?

The Board has engaged continuously with the community on the Outputs contained in the SubPro Final Report, including:

The GAC:

- ICANN77 GAC Communiqué, [20 June 2023](#)
- Letter from the Board to Nicholas Caballero, Chair, GAC on Subsequent Procedures (SubPro) Policy Development Process (PDP) Outputs, [22 May 2023](#)

The ALAC:

- Letter from the Board to Jonathan Zuck, Chair, ALAC on Subsequent Procedures (SubPro) Policy Development Process (PDP) Outputs, [22 May 2023](#)

The GNSO Council:

- GNSO Council Review of ICANN77 GAC Communiqué, [28 July 2023](#)
- SubPro PDP Pending Recommendations Small Team [discussion](#)
- GNSO Council-approved [Clarifying Statements](#)

What concerns or issues were raised by the community?

Correspondence and dialogue between the Board and community identified auctions as a mechanism of last resort and private resolution of contention sets as one area of concern raised by the Community.

The Board shares some of these concerns, as expressed in the [2018 Board correspondence](#) to the the SubPro PDP Working Group: “the Board believes that applications should not be submitted as a means to engage in private auctions, including for the purpose of using private auctions as a method of financing their other applications. This not only increases the workload on processing but puts undue financial pressure on other applicants who have business plans and financing based on their intention to execute the plan described in the application. In particular, we are concerned about how gaming for the purpose of financing other applications, or with no intent to operate the gTLD as stated in the application, can be reconciled with ICANN's Commitments and Core Values.”

The Board acknowledges the community's concerns, and notes that the GAC also raised specific concerns in its [ICANN77 GAC Communiqué](#). While the Board has not yet acted on the consensus advice, the Board believes that the Clarifying Statements adopted by the GNSO Council clearly states that there is no GNSO policy on the use of private auctions. Therefore, Board action on these recommendations at this moment does not prejudice pending Board action on the GAC consensus advice.

What significant materials did the Board review?

The Board took into account conversations and materials that resulted from the aforementioned Stakeholder engagements, as well as the SubPro [Final Report](#) and the [Operational Design Assessment](#).

Are there positive or negative community impacts?

Please refer to the rationale of the [16 March 2023 Board Resolution](#) for the anticipated impact of the New gTLD Program, which is incorporated herein by reference.

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

A financial assessment of the costs relating to implementing the SubPro Final Report was provided to the Board as part of its resolution on the SubPro Final Report on 16 March 2023. A further assessment of implementation costs was also supplied to the Board as part of the [New gTLD Program: Next Round Implementation Plan](#) on [27 July 2023](#).

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

There are no anticipated security, stability or resiliency issues relating to the DNS as a result of today's Board action to adopt the September 2023 Scorecard, but the Board refers to its rationale to its 16 March 2023 action to adopt the March 2023 Scorecard where such SSR issues are discussed more generally about the New gTLD Program: Next Round.

Is this decision in the public interest and within ICANN's mission?

This action is within ICANN's Mission and is in the public interest as it is important to ensure that, in carrying out its Mission, ICANN's decisions and actions are guided by the following Core Values: "where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment in the DNS market" and "[i]ntroduc[e] and promot[e] competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process." (See ICANN Bylaws at 1.2 (b) (iv)).

Under the ICANN [Bylaws](#), the Board is obligated to consider and adopt all Outputs formally approved by a GNSO Council "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". However, the Board's interest in the expansion of the gTLD namespace is also consistent with ICANN's role, as defined in the [Bylaws](#), to coordinate the development and

implementation of policies relating to "the allocation and assignment of names in the root zone of the Domain Name System ("DNS")" and promote competition in the DNS marketplace.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

This action by the Board fits under its fiduciary duty and oversight role of the organization, and is a necessary step in carrying out the Board's previous commitment to opening subsequent rounds of the New gTLD Program. It should be noted that the Outputs were the subject of public comment, and that the SubPro Final Report was developed by the ICANN multistakeholder community, in accordance with the [GNSO PDP Manual](#).

Signature Block:

Submitted by:

Position:

Date Noted:

Email:

September 2023 Scorecard: Subsequent Procedures (SubPro PDP)

Board Action - [10 September 2023]

This September 2023 Scorecard: Subsequent Procedures (SubPro PDP) (September 2023 Scorecard) is intended to facilitate the Board's consideration of the recommendations, affirmations, affirmations with modification, and implementation guidance (collectively Outputs) contained in the "[Final Report on the New gTLD Subsequent Procedures Policy Development Process](#)" (Final Report) that were listed as in Section B "Pending" in the [Scorecard: Subsequent Procedures \(SubPro PDP\)](#) (Scorecard).

- Section A of this September 2023 Scorecard details the Outputs that the Board adopts.
- Section B of this September 2023 Scorecard details the Outputs that the Board adopts with the "[New gTLD Subsequent Procedures Pending Recommendations - GNSO Council Clarifying Statement](#)" transmitted to the Board on 5 September 2023.
- Section C of this September 2023 Scorecard details the Outputs that the Board does not adopt, including a Board statement and rationale for each of the Outputs, per Bylaws Annex A, Section 9a, because they are not in the best interests of the ICANN community or ICANN.
- Section D of this September 2023 details the Outputs that remain pending.

General Note

Footnotes in the text of the Outputs were embedded in the original Outputs from the [Final Report](#), but the footnote numbers in this Scorecard may differ from the footnote numbering in the Final Report.

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A. Outputs That the Board Adopts

The Board adopts the Outputs in this section pursuant to Resolutions 2023.09.10.19 - 2023.09.10.24.

Output	Board Input Regarding the Implementation Process
Topic 16: Application Submission Period	
<p>Recommendation 16.1: The Working Group recommends that for the next application window and subsequent application windows, absent “extenuating or extraordinary” circumstances, the application submission period must be a minimum of 12 and a maximum of 15 weeks in length</p>	<p>At this time, the Board does not have specific input about this recommendation regarding the implementation process.</p>
Topic 18: Terms and Conditions	
<p>Recommendation 18.4: Applicants must be allowed some type of refund if they decide to withdraw an application because substantive changes are made to the Applicant Guidebook or program processes and such changes have, or are reasonably likely to have, a material impact on applicants.</p>	<p>After consultation with the GNSO Council, the Board instructs ICANN org to provide, during implementation, details of how the terms ‘substantive change’ and ‘material impact’ are defined in the context of this recommendation.</p> <p>In doing so, ICANN org should consult with the SubPro Implementation Review Team (IRT) as needed, in accordance with the Consensus Policy Implementation Framework, and the IRT Principles and Guidelines.</p>
Topic 19: Application Queuing	
<p>Affirmation 19.1: The Working Group supports the approach ultimately taken to application queuing during the 2012 round, in which ICANN conducted drawings to randomize the order of processing applications within an application window, and therefore</p>	<p>At this time, the Board does not have specific input about this recommendation regarding the implementation process.</p>

Output	Board Input Regarding the Implementation Process
<p>affirms the use of a “prioritization draw” for subsequent procedures. The Working Group acknowledges that there may be possible adjustments or alternatives to the logistics of the prioritization draw used in the 2012 round that either would improve on existing processes or be necessitated under applicable law.¹ The Working Group supports such improvements and provides some examples in Implementation Guidance 19.2. The Working Group notes that in the 2012 round, the implementation of drawings included prioritization of IDN applications. This Affirmation does not address the prioritization of IDNs. Please see below for additional information on this issue. The Working Group acknowledges that continuing to use the randomized drawing approach is contingent upon local law and the ability of ICANN to obtain the necessary license to conduct such drawings, but advises that ICANN must not under any circumstances attempt to create a “skills-based” system like “digital archery” to determine the processing order of applications in subsequent procedures. This affirmation updates and replaces Implementation Guideline D from 2007 which recommended a first-come first served method of processing applications.²</p>	
<p>Recommendation 19.3: All applications must be processed on a rolling basis, based on assigned priority numbers. While the 2012 AGB prescribed batches of 500 applications, ICANN org noticed during that round that moving through the priority list without splitting the applications into batches was more efficient. The Working Group affirms that approach by not recommending batches. However, if the volume of Internationalized Domain Names (IDN) applications received equals or exceeds 125, applications will be</p>	<p>At this time, the Board does not have specific input about this recommendation regarding the implementation process.</p>

¹ One example may be exploring whether the prioritization draw must be in person as opposed to virtual.

² Implementation Guideline D from 2007 stated: “A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary. Applications will be time and date stamped on receipt.”

Output	Board Input Regarding the Implementation Process
<p>assigned priority numbers consistent with the formula below.</p> <p>The Working Group recommends that the following formula must be used with respect to giving priority to IDN applications:</p> <ul style="list-style-type: none"> • <u>First 500 applications</u> <ul style="list-style-type: none"> ○ If there are 125 applications or more for IDN strings that elect to participate in the prioritization draw, the first 25% of applications assigned priority numbers in the first group shall be those applications for IDN strings that elect to participate in the prioritization draw. The remaining 75% of applications in the group shall consist of both IDN and non-IDN applications that elect to participate in the prioritization draw. ○ If there are less than 125 applications for IDN strings that elect to participate in the prioritization draw, then all such applications shall be assigned priority numbers prior to any non-IDN application. • <u>Each subsequent group of those electing to participate in the prioritization draw</u> <ul style="list-style-type: none"> ○ For each subsequent group, the first 10% of each group of applications must consist of IDN applications until there are no more IDN applications. ○ The remaining applications in each group shall be selected at random out of the pool of IDN and non-IDN applications that remain. • <u>Processing of applications which do not elect to participate in the prioritization draw</u> 	

Output	Board Input Regarding the Implementation Process
<ul style="list-style-type: none"> ○ When all of the applications that have elected to participate in the prioritization draw have been assigned priority numbers, ICANN shall assign priority numbers to the remaining applications in groups of 500 applications. ○ The first 10% of each group of applications must consist of IDN applications until there are no more IDN applications. ○ The remaining applications in each group shall be selected at random out of the pool of IDN and non-IDN applications that remain. 	
Topic 30: GAC Consensus Advice / GAC Early Warning	
<p>Recommendation 30.4: Section 3.1 of the 2012 Applicant Guidebook states that GAC Consensus Advice “will create a strong presumption for the ICANN Board that the application should not be approved.” Noting that this language does not have a basis in the current version of the ICANN Bylaws, the Working Group recommends omitting this language in future versions of the Applicant Guidebook to bring the Applicant Guidebook in line with the Bylaws language. The Working Group further notes that the language may have the unintended consequence of hampering the ability of the Board to facilitate a solution that mitigates concerns and is mutually acceptable to the applicant and the GAC as described in the relevant Bylaws language. Such a solution could allow an application to proceed. In place of the omitted language, the Working Group recommends including in the Applicant Guidebook a reference to applicable Bylaws provisions that describe the voting threshold for the ICANN Board to reject GAC Consensus Advice.</p>	<p>The Board has noted and reviewed the concerns voiced by some GAC members in the ICANN77 GAC Communiqué. The Board notes the GAC that Bylaws Section 12.2 (a) details all relevant procedures concerning GAC Consensus Advice and that this Bylaws Section, not language in a future Applicant Guidebook, determines how the Board engages with GAC Consensus Advice - regardless of whether it is issued with regard to the Next Round or any other issue.</p> <p>Accordingly, the Board’s adoption of this recommendation does not in any way prejudice or otherwise impact the processes regarding Board consideration of GAC Consensus Advice detailed in the Bylaws Section 12.2 (a).</p>

Output	Board Input Regarding the Implementation Process
<p>Recommendation 30.5: The Working Group recommends that GAC Early Warnings are issued during a period that is concurrent with the Application Comment Period. To the extent that there is a longer period given for the GAC to provide Early Warnings (above and beyond the Application Comment Period), the Applicant Guidebook must define a specific time period during which GAC Early Warnings can be issued.</p>	<p>At this time, the Board does not have specific input about this recommendation regarding the implementation process.</p>
<p>Recommendation 30.6: Government(s) issuing Early Warning(s) must include a written explanation describing why the Early Warning was submitted and how the applicant may address the GAC member’s concerns.</p>	<p>The Board has noted the concerns that the GAC has previously raised on this recommendation, most recently as an issue of concern in the ICANN77 GAC Communiqué.</p> <p>The Board instructs ICANN org to make clear in the Applicant Guidebook that as part of an Early Warning, a GAC member may indicate that its concern can only be addressed by the applicant withdrawing its application.</p> <p>In doing so, ICANN org should consult with the IRT as needed, in accordance with the Consensus Policy Implementation Framework, and the IRT Principles and Guidelines.</p>

B. Outputs That the Board Adopts With GNSO Council-Approved Clarifications

The Board adopts the Outputs in this section pursuant to Resolutions 2023.09.10.19 - 2023.09.10.24.

Output	GNSO Council-Approved Clarification
Topic 3: Applications Assessed in Rounds	
<p>Affirmation with Modification 3.1: The Working Group affirms Recommendation 13 from the 2007 policy, which states: “Applications must initially be assessed in rounds until the scale of demand is clear.” However, the Working Group believes that the recommendation should be revised to simply read, “Applications must be assessed in rounds.”</p>	<p>The SubPro Final Report recommendation envisions that “the next application procedure should be processed in the form of a round” and “Application procedures must take place at predictable, regularly occurring intervals without indeterminable periods of review”. However, the GNSO Council confirms its willingness to engage with the ICANN Board to explore a shared vision for the long-term evolution of the program, which could be materially different than what is envisioned for the next round of the New gTLD Program in the Topic 3 recommendations.</p>
<p>Recommendation 3.2: Upon the commencement of the next application submission period, there must be clarity around the timing and/or criteria for initiating subsequent procedures from that point forth. More specifically, prior to the commencement of the next application submission period, ICANN must publish either (a) the date in which the next subsequent round of new gTLDs will take place or (b) the specific set of criteria and/or events that must occur prior to the opening up of the next subsequent round.</p>	
<p>Recommendation 3.5: Absent extraordinary circumstances application procedures must take place at predictable, regularly occurring intervals without indeterminable periods of review unless the GNSO Council recommends pausing the program and such recommendation is approved by the Board. Such extraordinary circumstances must be subject to the Predictability Framework under Topic 2 of this Report. Unless and until other procedures are recommended by the GNSO Council and approved by the ICANN Board, ICANN must only use “rounds” to administer the New gTLD Program.</p>	

Output	GNSO Council-Approved Clarification
<p>Recommendation 3.6: Absent extraordinary circumstances, future reviews and/or policy development processes, including the next Competition, Consumer Choice & Consumer Trust (CCT) Review, should take place concurrently with subsequent application rounds. In other words, future reviews and/or policy development processes must not stop or delay subsequent new gTLD rounds.</p>	
<p>Recommendation 3.7: If the outputs of any reviews and/or policy development processes has, or could reasonably have, a material impact on the manner in which application procedures are conducted, such changes must only apply to the opening of the application procedure subsequent to the adoption of the relevant recommendations by the ICANN Board.</p>	
<p>Topic 6: Registry Service Provider Pre-Evaluation</p>	
<p>Recommendation 6.8: The RSP pre-evaluation program must be funded by those seeking pre-evaluation on a cost-recovery basis. Costs of the program should be established during the implementation phase by the Implementation Review Team in collaboration with ICANN org.</p>	<p>The GNSO Council confirms its understanding of the Implementation Review Team (IRT) Principles & Guidelines that state that, “the IRT is convened to assist staff in developing the implementation details for the policy to ensure that the implementation conforms to the intent of the policy recommendations.” The Council therefore recognizes that ICANN org will be responsible for establishing the fees charged for the RSP pre-evaluation program, in consultation with the IRT, as is consistent with the roles and responsibilities captured in the IRT Principles & Guidelines. The language used in Recommendation 6.8 is not intended to alter the respective roles and responsibilities of staff and the IRT.</p>
<p>Topic 9: Registry Voluntary Commitments / Public Interest Commitments</p>	

Output	GNSO Council-Approved Clarification
<p>Recommendation 9.15: The Working Group acknowledges ongoing important work in the community on the topic of DNS abuse³ and believes that a holistic solution is needed to account for DNS abuse in all gTLDs as opposed to dealing with these recommendations with respect to only the introduction of subsequent new gTLDs. In addition, recommending new requirements that would only apply to the new gTLDs added to the root in subsequent rounds could result in singling out those new gTLDs for disparate treatment in contravention of the ICANN Bylaws. Therefore, this PDP Working Group is not making any recommendations with respect to mitigating domain name abuse other than stating that any such future effort must apply to both existing and new gTLDs (and potentially ccTLDs). The Working Group has reached this conclusion after duly considering the DNS abuse related CCT-RT</p>	<p>The GNSO Council confirms that this recommendation does not require any implementation nor create any dependencies for the Next Round of the New gTLD Program.</p>

³ The Working Group did not attempt to define the term “DNS abuse” in the course of its discussions and is not endorsing any particular definition of this term. The Working Group notes, however, that the CCT-RT used the following definition to support its work: “Intentionally deceptive, conniving, or unsolicited activities that actively make use of the DNS and/or the procedures used to register domain names.” See p. 3 of the “New gTLD Program Safeguards Against DNS Abuse: Revised Report” (2016) for additional context on this definition: <https://www.icann.org/news/announcement-2016-07-18-en>. The CCT-RT used the term “DNS Security Abuse” in its Final Report to refer to specific, technical forms of abusive behavior: spam, phishing, and malware distribution in the DNS. The CCT-RT also drew on the Registration Abuse Policies Working Group’s Final Report, which provides additional detail about how abuse has been characterized by the ICANN Community: https://gns0.icann.org/sites/default/files/filefield_12530/rap-wg-final-report-29may10-en.pdf.

Output	GNSO Council-Approved Clarification
<p>Recommendations, which includes 14,⁴ 15,⁵ and 16⁶. Note, however, that at the time of the drafting of this report, the ICANN Board only approved Recommendation 16. Recommendations 14 and 15 remain in a “Pending” status.⁷</p>	
<p>Topic 26: Security and Stability</p>	
<p>Recommendation 26.9: In connection to the affirmation of Recommendation 4 from the 2007 policy, Emoji in domain names, at any level, must not be allowed.</p>	<p>The GNSO Council confirms that the “any level” language referenced in the recommendation should be interpreted to only be in respect of domain names that are allocated by the registry operator.</p>
<p>Topic 29: Name Collision</p>	

⁴ CCT-RT Recommendation 14 states: “Consider directing ICANN org, in its discussions with registries, to negotiate amendments to existing Registry Agreements, or in consideration of new Registry Agreements associated with subsequent rounds of new gTLDs, to include provisions in the agreements to provide incentives, including financial incentives, for registries, especially open registries, to adopt proactive anti-abuse measures.”

⁵ CCT-RT Recommendation 15 states: “ICANN Org should, in its discussions with registrars and registries, negotiate amendments to the Registrar Accreditation Agreement and Registry Agreements to include provisions aimed at preventing systemic use of specific registrars or registries for DNS Security Abuse. With a view to implementing this recommendation as early as possible, and provided this can be done, then this could be brought into effect by a contractual amendment through the bilateral review of the Agreements. In particular, ICANN should establish thresholds of abuse at which compliance inquiries are automatically triggered, with a higher threshold at which registrars and registries are presumed to be in default of their agreements. If the community determines that ICANN org itself is ill-suited or unable to enforce such provisions, a DNS Abuse Dispute Resolution Policy (DADRP) should be considered as an additional means to enforce policies and deter against DNS Security Abuse. Furthermore, defining and identifying DNS Security Abuse is inherently complex and would benefit from analysis by the community, and thus we specifically recommend that the ICANN Board prioritize and support community work in this area to enhance safeguards and trust due to the negative impact of DNS Security Abuse on consumers and other users of the Internet.”

⁶ CCT-RT Recommendation 16 states: “Further study the relationship between specific registry operators, registrars and technical DNS abuse by commissioning ongoing data collection, including but not limited to, ICANN Domain Abuse Activity Reporting (DAAR) initiatives. For transparency purposes, this information should be regularly published, ideally quarterly and no less than annually, in order to be able to identify registries and registrars that need to come under greater scrutiny, investigation, and potential enforcement action by ICANN org. Upon identifying abuse phenomena, ICANN should put in place an action plan to respond to such studies, remediate problems identified, and define future ongoing data collection.”

⁷ See relevant Board scorecards here: <https://www.icann.org/en/system/files/files/resolutions-final-cctrecs-scorecard-01mar19-en.pdf> and here: <https://www.icann.org/en/system/files/files/cct-pending-recsboard-action-22oct20-en.pdf>.

Output	GNSO Council-Approved Clarification
<p>Recommendation 29.1: ICANN must have ready prior to the opening of the Application Submission Period a mechanism to evaluate the risk of name collisions in the New gTLD evaluation process as well as during the transition to delegation phase.</p>	<p>The GNSO Council believes that Recommendation 29.1 can be adopted by the Board on the understanding that it does not need to be acted on until such time any next steps for mitigating name collision risks are better understood out of the Name Collision Analysis Project (NCAP) Study 2.</p>
<p>Topic 34: Community Applications</p>	
<p>Recommendation 34.12: The process to develop evaluation and selection criteria that will be used to choose a Community Priority Evaluation Provider (CPE Provider) must include mechanisms to ensure appropriate feedback from the ICANN community. In addition, any terms included in the contract between ICANN org and the CPE Provider regarding the CPE process must be subject to public comment.</p>	<p>The GNSO Council confirms its recommendation that terms included in the contract between ICANN org and the CPE Provider regarding the CPE process must be subject to public comment. This recommendation however is not intended to require ICANN org to disclose any confidential terms of the agreement between ICANN org and the CPE Provider.</p>
<p>Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets</p>	
<p>Recommendation 35.3: Applications must be submitted with a bona fide (“good faith”) intention to operate the gTLD. Applicants must affirmatively attest to a bona fide intention to operate the gTLD clause for all applications that they submit.</p> <ul style="list-style-type: none"> • Evaluators and ICANN must be able to ask clarifying questions to any applicant it believes may not be submitting an application with a bona fide intention. Evaluators and ICANN shall use, but are not limited to, the “Factors” described below in their consideration of whether an application was submitted absent bona fide intention. These “Factors” will be taken into consideration and weighed against all of other facts and circumstances surrounding the impacted applicants and applications. The existence of any one or all of the “Factors” 	<p>The GNSO Council confirms that the references to private auctions in Recommendations 35.3 and 35.5 merely acknowledge the existence of private auctions in 2012 and should NOT be seen as an endorsement or prohibition of their continued practice in future rounds of the New gTLD Program. The Council notes that there were extensive discussions on the use of private auctions in the SubPro working group. To the extent that draft recommendations were developed as to private auctions, these did not receive consensus support in the working group but did receive strong support with significant opposition.</p>

Output	GNSO Council-Approved Clarification
<p>may not themselves be conclusive of an application made lacking a bona fide use intent.</p> <ul style="list-style-type: none"> ● Applicants may mark portions of any such responses as “confidential” if the responses include proprietary business information. <p>The Working Group discussed the following potential non-exhaustive list of “Factors” that ICANN may consider in determining whether an application was submitted with a bona fide (“good faith”) intention to operate the gTLD. Note that potential alternatives and additional language suggested by some Working Group members are included in brackets:</p> <ul style="list-style-type: none"> ● If an applicant applies for [four] [five] or more strings that are within contention sets and participates in private auctions for more than fifty percent (50%) of those strings for which the losing bidder(s) receive the proceeds from the successful bidder, and the applicant loses each of the private auctions, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for each of those applications. ● Possible alternatives to the above bullet point: <ul style="list-style-type: none"> ○ [If an applicant participates in six or more private auctions and fifty percent (50%) or greater of its contention strings produce a financial windfall from losing.] ○ [If an applicant receives financial proceeds from losing greater than 49% of its total number of contention set applications that are resolved through private auctions.] ○ [If an applicant: a. Has six or more applications in contention sets; and b. 50% or more of the contention sets are resolved in private auctions; and c. 50% or more of the private auctions produce a financial windfall to the applicant.] 	

Output	GNSO Council-Approved Clarification
<ul style="list-style-type: none"> ○ [If an applicant applies for 5 or more strings that are within contention sets and participated in 3 private auctions for which the applicant is the losing bidder and receives proceeds from the successful bidder it MUST send to the evaluators a detailed reconciliation statement of its auction fund receipts and expenditure immediately on completion of its final contention set resolution. In addition this may be considered a factor by the evaluators and ICANN in determining lack of bona fide intention to operate the gTLD for all of its applications and in doing so might stop all its applications from continuing to delegation.] ● If an applicant's string is not delegated into the root within two (2) years of the Effective Date of the Registry Agreement, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for that applicant. ● If an applicant is awarded a top-level domain and [sells or assigns] [attempts to sell] the TLD (separate and apart from a sale of all or substantially all of its nonTLD related assets) within (1) year, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for that applicant. ● [If an applicant with multiple applications resolves contention sets by means other than private auctions and does not win any TLDs.] <p>Consideration of whether an application was submitted with a bona fide intention to operate the gTLD must be determined by considering all of the facts and circumstances surrounding the impacted applicants and applications. The above factors may be considered by ICANN in determining such intent provided that there are no other credible explanations for the existence of those Factors.</p>	

Output	GNSO Council-Approved Clarification
Recommendation 35.5: Applicants resolving string contention must adhere to the Contention Resolution Transparency Requirements as detailed below. Applicants disclosing relevant information will be subject to the Protections for Disclosing Applicants as detailed below.	

C. Board Statement pursuant to Bylaws Annex A, Section 9: Recommendations That the Board Does Not Adopt at This Time

The Board does not adopt Outputs in this section pursuant to Resolutions 2023.09.10.19 - 2023.09.10.24. The Issue Synopsis and Rationale provide the bases for Board’s action identified in the Scorecard.

Output	Issue Synopsis	Board Action and Rationale
Topic 9: Registry Voluntary Commitments / Public Interest Commitments		
<p>Recommendation 9.2: Provide single-registrant TLDs with exemptions and/or waivers to mandatory PICs included in Specification 11 3(a) and Specification 11 3(b).⁸</p>	<p>The Board expressed its concern in the Scorecard: Subsequent Procedures (SubPro PDP), adopted 16 March 2023, that a waiver to Spec 11 Section 3 (a) and 3 (b) could lead to DNS abuse for second level registrations in a single registrant TLD going undeterred, unobserved and therefore unmitigated.</p> <p>The Board is also concerned that a waiver to Spec 11 Section 3 (a) and 3 (b) could require a change to the Registry Agreement’s Specification 13, which would introduce significant implementation efforts to harmonize current 2012 agreements with future rounds if ICANN org elected to leverage the current agreement for the future rounds.</p>	<p>Specification 11, Section 3(a) of the Registry Agreement requires registry operators to include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting registrants from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name. Further, domain names can be compromised and become a source for DNS abuse in single-registrant TLDs just as they can in TLDs where domain names can be registered to a registrant other than the registry operator.</p>

⁸ For the sake of clarity, this recommendation and the exemption does NOT apply to Specification 11 3(c) or 11 3(d).

		<p>Section 3(b) requires registry operators to periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats and to maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks.</p> <p>The Board concludes that Recommendation 9.2, if implemented, could lead to DNS abuse for second-level registrations in a single-registrant TLD going undeterred, unobserved, and unmitigated. While DNS abuse in many single-registrant TLDs may be unlikely to impact users beyond the registrant, this may not always be the case. In circumstances in which parties other than the registrant use the TLD in some fashion, waivers to mandatory PICs included in Specification 11, Section 3(a) and Specification 11, Section 3 (b) could expose those users to undetected and unmitigated DNS abuse.</p> <p>For these reasons, the Board has determined that its adoption of this Recommendation would not be in the best interests of the ICANN community or ICANN.</p>
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Topic 17: Applicant Support

Recommendation 17.2: The Working Group recommends expanding the scope of financial support provided to Applicant Support Program beneficiaries beyond the application fee to also cover costs such as application writing fees and attorney fees related to the application process.

The Board remains concerned, as previously voiced as part of its [comment on the Draft Final Report](#), over the open-ended nature of these fees as affirmative payments of costs beyond application fees could raise fiduciary concerns for the Board.

Note, this concern does not extend to facilitation of *pro bono* services.

The Board reiterates its previous concerns about Recommendation 17.2, which calls for ICANN to “expand the scope of financial support provided to Applicant Support Program beneficiaries beyond the application fee to also cover costs such as application writing fees and attorney fees related to the application process.” As previously noted, the Board is concerned that the expansion of applicant support to affirmative payments of costs beyond application fees could raise fiduciary concerns for the Board. For example, such expansion of support could raise the possibility of inappropriate use of resources (e.g. inflated expenses, private benefit concerns, and other legal or regulatory concerns). For these reasons, the Board has determined that its adoption of this Recommendation would not be in the best interests of the ICANN community or ICANN.

The Board recognizes and appreciates, however, that some potential gTLD applicants may need or benefit from these other types of financial assistance. As a result, the Board is conducting ongoing work relating to expanding the scope of financial support.

Topic 18: Terms & Conditions

<p>Recommendation 18.1: Unless required by specific laws, ICANN Board members’ fiduciary duties, or the ICANN Bylaws, ICANN must only reject an application if done so in accordance with the provisions of the Applicant Guidebook. In the event an application is rejected, ICANN org must cite with specificity the reason in accordance with the Applicant Guidebook, or if applicable, the specific law and/or ICANN Bylaws for not allowing an application to proceed. This recommendation constitutes a revision to Section 3 of the Terms and Conditions from the 2012 round.</p>	<p>The Board remains concerned, as previously voiced as part of its comment on the Draft Final Report and in the Scorecard: Subsequent Procedures (SubPro PDP), adopted 16 March 2023, over this recommendation unduly restricting ICANN’s discretion to reject an application in circumstances that fall outside the specific grounds set out in the recommendation.</p>	<p>Recommendation 18.1 states that it constitutes a revision to Section 3 of the Terms and Conditions from the 2012 Applicant Guidebook. Section 3 of the Terms and Conditions in the 2012 Application Guidebook provides that, “Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more gTLDs and to delegate new gTLDs after such approval is entirely at ICANN’s discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.”</p> <p>In the Board’s comment on the Draft Final Report, the Board expressed its concern that Recommendation 18.1 may limit the Board’s authority to act as needed, including in unforeseen circumstances. The Board explained that the revision proposed by the PDP WG could bind the Board unless one of the specific conditions is met, and such limitations could lead to unforeseen challenges. In its comment, the Board stated that it would like to understand what problems the PDP Working Group identified</p>
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		<p>with regard to Section 3 of the Terms and Conditions.</p> <p>The language in the SubPro Final Report regarding Recommendation 18.1 does not differ from what was proposed in the Draft Final Report. In the SubPro Final Report, the Working Group provided its rationale supporting Recommendation 18.1. The Working Group said, "...it must be clear to the applicant why an application was rejected and that any rejection must be justified under provisions of the Applicant Guidebook unless required by specific laws, ICANN Board members' fiduciary duties, or the ICANN Bylaws. The purpose of this recommendation is to guard against arbitrary rejection of an application and ensure that there is transparency when rejections occur. To protect the privacy of applicants, the Working Group believes that ICANN should not publish the detailed reason for rejecting an application if that reason is based on confidential information submitted by the applicant."</p> <p>As stated in the Working Group's rationale, "[t]he purpose of this recommendation is to guard against arbitrary rejection of an application and ensure that there is transparency when rejections occur." The Board takes note of the Working Group's rationale and notes that these concerns are already addressed by the Bylaws. Article 3,</p>
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		<p>Section 3.1 of the Bylaws requires that, “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...,” and that, “ICANN shall also implement procedures for the documentation and public disclosure of the rationale for decisions made by the Board and ICANN’s constituent bodies (including the detailed explanations discussed above).”</p> <p>Additionally, Article 2, Section 2.3 mandates that, “ICANN 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.”</p> <p>ICANN’s Board of Directors has ultimate responsibility for the New gTLD Program. Section 2.1 of the Bylaws establishes that “... the powers of ICANN shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board (as defined in Section 7.1).” As discussed above, the Bylaws already seem to address the concerns noted by the Working Group, and the Board remains concerned that if it adopts Recommendation 18.1, it may unduly limit ICANN’s discretion to reject an application in yet-to-be-identified future circumstance(s), and it may constrain ICANN from acting on</p>
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		<p>an application unless one of the specific conditions is met. Given these reasons, the Board has determined that adoption of Recommendation 18.1 would not be in the best interests of the ICANN community or ICANN.</p>
<p>Recommendation 18.3: In subsequent rounds, the Terms of Use must only contain a covenant not to sue if, and only if, the appeals/challenge mechanisms set forth under Topic 32 of this report are introduced into the program (in addition to the accountability mechanisms set forth in the current ICANN Bylaws). This recommendation is in reference to Section 6 of the Terms and Conditions from the 2012 round.</p>	<p>The Board noted in its Scorecard: Subsequent Procedures (SubPro PDP), adopted 16 March 2023 its concern, as previously voiced as part of its comment on the Draft Final Report, over undue legal exposure that would be created by its adoption of this Recommendation.</p> <p>The Recommendation notes that a covenant not to sue must only be included in the Terms of Use “if, and only if, the appeals/challenge mechanisms set forth under Topic 32 of this report are introduced into the program...[.]” The linkage between the covenant not to sue and the implementation of the appeals/challenge mechanisms set forth in Topic 32 would create a risk of challenges.</p> <p>The Board notes that the Topic 32 recommendations remain pending based on its conclusion that the appeals/challenge mechanisms, as recommended in Topic 32, would unduly complicate, extend, and increase the costs associated with the Next Round of the New gTLDs Program.</p> <p>This Recommendation is inextricably linked</p>	<p>The Board’s adoption of this Recommendation would mean that the covenant not to sue could not be included in the Terms of Use unless the Board adopts and ICANN org “introduces” the recommended appeals/challenge mechanism “as set forth” in Topic 32.</p> <p>During the 2012 round of the New gTLD Program, one of the guiding principles in developing the Applicant Guidebook was to address and mitigate risks and costs of ICANN and the global Internet community. (See https://archive.icann.org/en/topics/new-gtlds/gac-board-legal-recourse-21feb11-en.pdf). The same is true for the next round. The Board remains cognizant that as a non-profit public benefit organization, ICANN lacks the resources to defend against potentially numerous lawsuits in jurisdictions all over the world that might be initiated by applicants that might want to challenge the results of the community-designed next round of the New gTLD Program. The “covenant not to sue” included in the Terms and Conditions of the 2012 Applicant</p>

	<p>to the appeals/challenge mechanism recommended in Topic 32. While the Recommendations in Topic 32 remain pending, they are unlikely to be adopted in their current form.</p>	<p>Guidebook was one element designed to protect the New gTLD Program from such judicial challenges.</p> <p>In the Board’s comment on the Draft Final Report, the Board stated that it understood the intent behind Recommendation 18.3, but expressed its concern that “dissatisfied applicants or objectors might argue based on this policy recommendation that the covenant not to sue is not valid because they did not like the way the appeals/challenge mechanism was built or operated.”</p> <p>The Board notes that the language in the SubPro Final Report regarding Recommendation 18.3 does not differ from what was proposed in the Draft Final Report. As explained in the Board’s rationale for Recommendation 18.1, ICANN’s Board of Directors has ultimate responsibility for the New gTLD Program. If adopted, Recommendation 18.3 could weaken the covenant not to sue by placing conditions on whether it could be included in the Program. This would lead to a level of risk that the Board is unwilling to accept. Additionally, providing funds for these increased legal risks would have an impact on application fees for the next round, which would not be consistent with the intent of this recommendation.</p> <p>The Board has considered Recommendation</p>
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<p>Topic 22: Registrant Protections</p>		
<p>Recommendation 22.7: TLDs that have exemptions from the Code of Conduct (Specification 9), including .Brand TLDs qualified for Specification 13, must also receive an exemption from Continued Operations Instrument (COI) requirements or requirements for the successor to the COI.</p>	<p>As noted in its Scorecard: Subsequent Procedures (SubPro PDP), adopted 16 March 2023, the Board is concerned that an exemption from an COI for Spec 9 applications would have financial impact on ICANN since there would be no fund to draw from if such a registry went into EBERO.</p> <p>Further, not moving a Brand TLD into EBERO might have a security and stability impact, especially if Brands allocate second-level TLDs to customers, partners, or suppliers, such as a car manufacturer providing a second level registration for their cars. The Board also believes that exempting .brand TLDs from a not-yet-known future replacement for the COI is not in the best interest of the ICANN community or ICANN. The mechanics of any successor to the COI should be known before any waivers to it can be considered.</p>	<p>As noted in the issue synopsis, the Board believes that there are scenarios in which .Brand TLDs may have to be moved into EBERO. The Board also believes that it cannot accept a recommendation about a potential successor to the COI without a clear understanding of what that successor looks like, its purpose and its mechanics. Therefore, the Board concludes that the concerns listed in the ‘issue synopsis’ mean that adopting Recommendation 22.7 is not in the best interests of the ICANN community or ICANN.</p>
<p>Topic 24: String Similarity Evaluations</p>		

<p>Recommendation 24.3: The Working Group recommends updating the standards of both (a) confusing similarity to an existing top-level domain or a Reserved Name, and (b) similarity for purposes of determining string contention, to address singular and plural versions of the same word, noting that this was an area where there was insufficient clarity in the 2012 round. Specifically, the Working Group recommends prohibiting plurals and singulars of the same word within the same language/script in order to reduce the risk of consumer confusion. For example, the TLDs .EXAMPLE⁹ and .EXAMPLES may not both be delegated because they are considered confusingly similar. This expands the scope of the String Similarity Review to encompass singulars/plurals of TLDs on a per-language/script basis.</p> <ul style="list-style-type: none"> • An application for a single/plural variation of an existing TLD or Reserved Name will not be permitted if the intended use of the applied-for string is the single/plural version of the existing TLD or Reserved Name. For example, if there is an existing TLD .SPRINGS that is used in connection with elastic objects and a new application for .SPRING that is also intended to be used in 	<p>The Board remains concerned, as previously voiced as part of its comment on the Draft Final Report, over the wording in section (a) and (c) of this Recommendation as they stipulate ‘intended use’ of a gTLD, which implies that ICANN will have to enforce the ‘intended use’ post delegation, which could be challenged as acting outside its mission.</p> <p>In addition, it is the view of the Board that an across-the-board prohibition of singulars / plurals of the same word in the same language or script is not in the best interest of the ICANN community or ICANN.</p>	<p>Recommendations 24.3 and 24.5 extend the Program’s string similarity review to the following three aspects: a visual similarity check; a singular/plural check; an intended use check as relevant for identifying exemptions to the singular/plural check.</p> <p>Based on this, the ICANN Board has identified the following concerns with regard to recommendations 24.3 and 24.5:</p> <ul style="list-style-type: none"> - Not all applied for strings will be lexical words: .mouse/.mice would not be permitted under this recommendation, but .tld and .tlds would be, as the latter is not in a dictionary. - Determining singular/plural forms of words across languages cannot be done predictably nor consistently by a reader: is “bats” plural for “bat” or a declined form of the french verb ‘battre’ (to fight/battle). - Though a gTLD applicant can arbitrarily set the language of a TLD during an application round, a registrant and end-user can only see the script of the TLD string in its practical usage. So the singular/plural determination by the gTLD applicant does not carry onward to the registrant and end
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⁹ .EXAMPLE is used here for illustrative purposes only. The Working Group is aware that technically .EXAMPLE cannot be delegated at all because it is one of the names already reserved from delegation as a Special Use name.

connection with elastic objects, .SPRING will not be permitted.

- If there is an application for the singular version of a word and an application for a plural version of the same word in the same language/script during the same application window, these applications will be placed in a contention set, because they are confusingly similar.
- Applications will not automatically be placed in the same contention set because they appear visually to be a single and plural of one another but have different intended uses. For example, .SPRING and .SPRINGS could both be allowed if one refers to the season and the other refers to elastic objects, because they are not singular and plural versions of the same word. However, if both are intended to be used in connection with the elastic object, then they will be placed into the same contention set. Similarly, if an existing TLD .SPRING is used in connection with the season and a new application for .SPRINGS is intended to be used in connection with elastic objects, the new application will not be automatically disqualified.

The Working Group recommends using a

user. “auto” can be interpreted as a vehicle or a short form for automatic; “cat” can be read the short of Catalan but also the english-language name for an animal.

- Even if the intended use is fixed for a registry separately from the singular/plural form, there is no mechanism to determine the intent of the content of a website and thus restrict a registrant to publishing certain content based on such intent.

Restricting the use and potentially the content of strings registered in TLDs based on the intended use therefore raises concerns for the Board in light of ICANN’s Bylaws Section 1.1 (c).

String similarity evaluation is part of the new gTLD program to protect consumers. The Board believes that this goal continues to be achieved best via the standard of ‘visually confusingly similar’. For any broader perceived similarity issues, string similarity objections can still be used.

Therefore, the Board agrees that extending the standard for assessing string similarity beyond visual similarity, as well as the recommended exception with regard to intended use of a TLD is not within the best interest of the ICANN community or ICANN.

<p>dictionary to determine the singular and plural version of the string for the specific language. The Working Group recognizes that singulars and plurals may not visually resemble each other in multiple languages and scripts globally. Nonetheless, if by using a dictionary, two strings are determined to be the singular or plural of each other, and their intended use is substantially similar, then both should not be eligible for delegation.</p>		
<p>Recommendation 24.5: If two applications are submitted during the same application window for strings that create the probability of a user assuming that they are single and plural versions of the same word, but the applicants intend to use the strings in connection with two different meanings,¹⁰ the applications will only be able to proceed if each of the applicants agrees to the inclusion of a mandatory Public Interest Commitment (PIC) in its Registry Agreement. The mandatory PIC must include a commitment by the registry to use the TLD in line with the intended use presented in the application, and must also include a commitment by the registry that it will require registrants to use domains under the TLD in line with the intended use stated in the application.</p>		<p>See Rationale for Recommendation 24.3 above.</p>

¹⁰ As an example, if the two applicants applied for .SPRING and .SPRINGS, one might intend to use the TLD .SPRING in connection with the season and the other might intend to use the TLD .SPRINGS in connection with the elastic object.

D. Outputs That the Board Is Still Discussing (“Pending”)

The following recommendations remain “pending”, due to the issue synopsis that was approved by the Board, see [Resolutions 2023.03.16.04 – 2023.03.16.15](#) and Scorecard: Subsequent Procedures (SubPro PDP) Section B: 9.1, 9.4, 9.8, 9.9, 9.10, 9.12, 9.13, 30.7, 31.16, 31.17, 32.1, 32.2, 32.10.