ICANN BOARD PAPER NO. 2017.06.24.1b

TITLE: Appointment of Andrew de la Haije to the Security

and Stability Advisory Committee

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The Chair of the Security and Stability Advisory Committee (SSAC) respectfully requests the appointment of Andrew de la Haije as a new Committee member.

COMMITTEE RECOMMENDATION:

The Committee desires the appointment of Andrew de la Haije to the SSAC.

PROPOSED RESOLUTION:

Whereas, the Security and Stability Advisory Committee (SSAC) does review its membership and make adjustments from time-to-time.

Whereas, the SSAC Membership Committee, on behalf of the SSAC, requests that the Board should appoint Andrew de la Haije to the SSAC for a three-year term beginning immediately upon approval of the Board and ending on 31 December 2020.

Resolved, (2017.06.24.xx) that the Board appoints Andrew de la Haije to the SSAC for a three-year term beginning immediately upon approval of the Board and ending on 31 December 2020.

PROPOSED RATIONALE:

The SSAC is a diverse group of individuals whose expertise in specific subject matters enables the SSAC to fulfill its charter and execute its mission. Since its inception, the SSAC has invited 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. Andrew is the Chief

Operating Officer of Réseaux IP Européens (RIPE), a position he has held for over 10 years. He has been active in the Internet Engineering Task Force (IETF) and ICANN in various capacities for many years. He brings significant operational experience from the Regional Internet Registry (RIR) community including substantial technical expertise. The SSAC believes Andrew would be a significant contributing member of the SSAC.

Submitted by: Ram Mohan

Position: Liaison to the ICANN Board from the Security & Stability

Advisory Committee

Date Noted: 24 May 2017

Email: rmohan@afilias.info

ICANN BOARD PAPER NO. 2017.06.24.1c

TITLE: Approval of GNSO Business Constituency Charter

Amendments

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The ICANN Bylaws (Article X, Section 5.3) state, "Each Stakeholder Group shall maintain recognition with the ICANN Board." The ICANN Board has interpreted this language to require that it formally approve any GNSO Stakeholder Group and/or Constituency Charter amendments.

Late last year the Business Constituency of the GNSO approved amendments to its governing documents and availed itself of the four-phase Board <u>Process For Amending</u> <u>GNSO Stakeholder Group and Constituency Charters</u> (hereinafter "Process" - see Appendix A accompanying this paper).

Having determined that all necessary steps of the Process to this point have been satisfied (see Appendix B accompanying this paper), this paper reflects the recommendation of the Board's Organizational Effectiveness Committee (OEC) that the full Board approve the proposed BC Charter amendments.

COMMITTEE RECOMMENDATION:

Now that all but the final steps of the Board's Process have been fully satisfied, the OEC recommends approval of the proposed amendments by the full ICANN Board.

The proposed amendments reflect a clear and direct effort to improve the BC's internal processes as well as the group's structure itself. These changes should help the group expand community participation and evolve its manner of deliberations, collaboration and decision-making.

PROPOSED BOARD RESOLUTION

Whereas, The ICANN Bylaws (Article X, Section 5.3) state, "Each [GNSO] Stakeholder Group shall maintain recognition with the ICANN Board;"

Whereas, the Board has established a *Process For Amending GNSO Stakeholder Group* and Constituency Charters (hereinafter "Process");

Whereas, the GNSO Business Constituency (BC), ICANN Staff, and the Organizational Effectiveness Committee (OEC) have completed all steps identified in the Process to date - including a determination that the proposed changes will not raise any fiscal or liability concerns for the ICANN organization;

Resolved (2017.06.24.xx), the ICANN Board approves the BC Charter Amendments as documented in this paper and attachments. ICANN staff is directed to share this resolution with the leadership of the BC. The BC and ICANN Staff are further directed to provide access to the new governing document on the appropriate ICANN and BC web pages.

PROPOSED RATIONALE:

Why is the Board addressing this issue now?

ICANN Bylaws (Article X, Section 5.3) state, "Each Stakeholder Group shall maintain recognition with the ICANN Board." The Board has interpreted this language to require that the ICANN Board formally approve any amendments to the governing documents of Stakeholder Groups (SG) and/or Constituencies in the Generic Names Supporting Organization (GNSO).

In September 2013, the Board established a <u>Process For Amending GNSO Stakeholder</u> <u>Group and Constituency Charters</u> ("Process") to provide a streamlined methodology for compliance with the Bylaws requirement.

Earlier this year, the Business Constituency of the GNSO approved amendments to its governing documents and availed itself of the Process.

What are the proposals being considered?

The Business Constituency has substantially amended its existing Charter document to adjust to an evolving composition of membership and to enable it to more effectively

undertake its policy development responsibilities. Among a number of amendments, the most substantial charter changes are in the following areas:

- 1) create a new position of General Counsel (GC) as part of the BC Executive Committee (BC-EC). According to the new charter, the GC is a non-voting position on the BC-EC and the main role of the new GC appears to revolve around maintaining a newly incorporated BC entity;
- 2) add new provisions acknowledging the role that the ICANN Ombudsman could play in resolving potential complaints by BC Members regarding actions or activities within the constituency. These provisions appear to serve as confirmation of the ability of members to seek out the Ombudsman as a means of appeal of actions within the BC with which they do not agree; and
- 3) revise the BC's membership threshold eligibility criteria. In particular, in an effort to avoid what the charter refers to as "conflicts of interest", the revised charter disqualifies from membership any entities which derive more than 30 percent of their annual revenue as a registry operator, registrar, or domain name reseller (e.g., "Contracted Parties").

What stakeholders or others were consulted?

In addition to extensive community deliberations within the BC, the proposed amendments were subjected to a 41-day Public Comment period (6 January – 15 February 2017). When the period was completed, staff produced a Summary Report for community and Board review on 8 March 2017.

What significant materials did the Board review?

Board members reviewed a fresh/clean formatted document of the proposed charter amendments, a copy of the Staff Summary Report summarizing community comments and an issue tracking checklist that describes the dispensation of various community comments considered by the BC.

What factors did the Board find to be significant?

The GNSO Business Constituency, ICANN Staff, and the Organizational Effectiveness Committee completed all steps identified in the Process including a determination that the proposed charter amendments will not raise any fiscal or liability concerns for the

ICANN organization and publication of the amendments for community review and

comment.

Are there Positive or Negative Community Impacts?

The BC has amended its existing Charter document to adjust to an evolving

composition of membership and to enable it to more effectively undertake its policy

development responsibilities.

Are there fiscal impacts/ramifications on ICANN (Strategic Plan, Operating Plan,

Budget); the community; and/or the public?

The amendments include adjustments to the membership eligibility thresholds

established by the BC for constituency membership which could impact individual

community members.

Are there any Security, Stability or Resiliency issues relating to the DNS?

There is no anticipated impact from this decision on the security, stability and resiliency

of the domain name system as a result of this decision.

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 proposed amendments were subjected to a 41-day Public Comment period (6

January to 15 February 2017).

Signature Block:

Submitted by: David Olive; Robert Hoggarth

Position: Senior Vice President, Policy Development Support; Vice President Policy

and Community Services

Date Noted: 7 June 2017-06-07

Email: <u>David.olive@icann.org</u>; robert.hoggarth@icann.org

APPENDIX A

SUMMARY OF GNSO CHARTER AMENDMENT PROCESS (Excerpts)

On 28 September 2013, the ICANN Board established a process for the amendment of GNSO Stakeholder Group and Constituency Charters. That process is as follows:

Phase I: Amendment Preparation

GNSO Stakeholder Groups (SGs) and Constituencies should formulate charter amendments through their own internal processes and notify ICANN Staff as early as practicable (at policy-staff@icann.org) upon initiation and completion (approval) of such efforts.

Phase II: Staff Review

Upon formal receipt of the proposed amendment(s) approved by the community group, ICANN staff will analyze the proposal and, within 10 business days, submit the community proposal with a report to the appropriate Board committee identifying any fiscal or liability concerns.

Phase III: Public Comments

After Board committee review of the Staff report and the proposed charter amendments, the Board committee will direct the opening of a Public Comment Forum. Upon completion of the Forum, within 30 calendar days, staff will provide a report to the Board committee summarizing the community feedback.

Phase IV: Board Review

At the next available opportunity after the delivery and publication of the staff report, the appropriate Board committee shall review the proposed charter amendments, the staff report and any community feedback and make a recommendation to the Board.

After receiving a recommendation from the committee, the Board shall either:

- I. Recognize the proposed charter amendment by a simple majority vote; or
- **II.** Reject the proposed amendment by a supermajority (2/3) vote and provide a specific rationale for its concerns.
- **III.** If neither above condition is met, the Board will ask for further explanation of the proposed amendments by the community.

In its review of the proposed amendments, the ICANN Board may ask questions and otherwise consult with the affected SG or Constituency. If it is not feasible for the Board to take action on the proposed amendments after two meetings, the Board shall report to the affected SG or Constituency the circumstance(s) that prevented it from making a final action and its best estimate of the time required to reach an action. That report is deemed an "action" under this process. If it is not feasible for the Board to take action on the proposed amendments after four meetings (or after a total of six scheduled meetings), the proposed community amendments will be deemed effective.

APPENDIX B

Specific Business Constituency Charter Amendment Process Steps

A. PROCESS TO DATE

- 1) The Business Constituency has completed **Phase I** of the Process, voting late last year to amend its governing Charter and formally advising ICANN staff via email.
- 2) As part of its **Phase II** Process responsibilities, staff reviewed and assessed the proposed changes and advised the Board's Organizational Effectiveness Committee (OEC) that the amendments proposed by the BC did not appear to raise any fiscal or liability concerns for the ICANN organization.
- 3) The OEC subsequently directed staff to post the proposed amendments to an ICANN Public Comments Forum for community review and comment (**Phase III** of the Process). A 41-day Public Comment period (6 January 15 February 2017) was completed and staff produced a Summary Report for community review on 8 March 2017 (see Staff Report accompanying this document package). The BC's dispensation of the community comments submitted has been subsequently tracked and recorded by staff (see issue tracking checklist (v 3.0) accompanying this document package).

B. SUMMARY OF AMENDMENTS

Among other changes, the proposed BC amendments:

- 1) create a new position of General Counsel (GC) as part of the BC Executive Committee (BC-EC). According to the new charter, the GC is a non-voting position on the BC-EC and the main role of the new GC appears to revolve around maintaining a newly incorporated BC entity;
- 2) add new provisions acknowledging the role that the ICANN Ombudsman could play in resolving potential complaints by BC Members regarding actions or activities within the constituency. These provisions appear to serve as confirmation of the ability of members to seek out the Ombudsman as a means of appeal of actions within the BC with which they do not agree; and
- 3) revise the BC's membership threshold eligibility criteria. In particular, in an effort to avoid what the charter refers to as "conflicts of interest", the revised charter disqualifies from membership any entities which derive more than 30 percent of their annual revenue as a registry operator, registrar, or domain name reseller (e.g., "Contracted Parties").

Accompanying this document package you will find a document titled *Business Constituency Charter (v3.1)*, that reflects the BC's proposed new charter documentation. The document format is different from previous charter amendments shared with the Board by other communities, because the document is presented "clean" rather than "red-lined". There are historical and practical reasons for this. The

document is the culmination of exhaustive work by a drafting team commissioned by the BC leadership. The drafting team held 34 hourly sessions since first involving ICANN staff in the project back in October 2014. Since that time, the group produced 45 separate versions of the document to produce version 3.0 of the documentation. The charter version 3.1 now being shared with the Board reflects a few final additional changes that were inspired by community comments submitted in this proceeding and subsequently approved by the BC membership.

C. REPORT OF FISCAL OR LIABILITY CONCERNS

Pursuant to the approval process approved by the Board, members of the ICANN policy development support and legal teams reviewed the proposed charter amendments. Staff advised the OEC in late December 2016 – prior to the opening of the public comment forum on the amendments - that the proposed changes did not appear to raise any fiscal or liability concerns for the ICANN organization.

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ICANN BOARD SUBMISSION NO. 2017.06.24.1d

TITLE: Consideration of Reconsideration Requests 13-16 and

14-10 (.SPORT)

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

On 16 March 2017, the Board directed the Board Governance Committee (BGC) to re-evaluate the Reconsideration Requests filed by dot Sport Limited (the Requestor), weighing the alleged evidence of apparent bias of the Expert that presided over the Community Objection filed against the Requestor's application for .SPORT against the standard applicable to neutrals as set out in the IBA Conflict Guidelines.

Pursuant to the Board's directive, the BGC re-evaluated the two Reconsideration Requests filed by the Requestor (Requests 13-16 and 14-10) and whether the alleged evidence of apparent bias should have been disclosed by the Expert in light of the IBA Conflict Guidelines (the BGC's Further Recommendation on Requests 13-16 and 14-10). The BGC concluded that the IBA Conflict Guidelines did not mandate the disclosure of the relationships and events identified by the Requestor. Nor do the alleged conflicts give rise to a material concern as to lack of independence or impartiality so as to undermine the integrity or fairness of the Expert Determination. Accordingly, the BGC recommended to the Board that Requests 13-16 and 14-10 again be denied.

On 14 June 2017, the Requestor submitted a letter to the ICANN Board rebutting the BGC's Further Recommendation on Requests 13-16 and 14-10 (the 14 June 2017 Letter). As discussed in detail below, the 14 June 2017 Letter does not raise arguments or facts that support reconsideration.

BOARD GOVERNANCE COMMITTEE (BGC) RECOMMENDATION:

The BGC recommended that Requests 13-16 and 14-10 again be denied. The BGC determined that the Requestor's claims are unsupported because the alleged evidence of bias does not "give

rise to doubts as to the arbitrator's impartiality or independence," under the IBA Conflict Guidelines and that Requests 13-16 and 14-10 fail to state any grounds that support reconsideration.

PROPOSED RESOLUTION:

Whereas, dot Sport Limited (Requestor) filed Reconsideration Requests 13-16 and 14-10 challenging the Expert Determination upholding the community objection filed against the Requestor's application for the .SPORT string (Expert Determination) on the basis that the Expert that presided over the objection proceeding failed to disclose certain evidence of alleged bias.

Whereas, the Board Governance Committee (BGC) previously denied Request 13-16 and recommended that the Board deny Request 14-10, and the Board (through the New gTLD Program Committee (NGPC)) agreed, because the Requests did not support reconsideration for the reasons set forth in the BGC's Determination on Request 13-16 and the NGPC Action on Request 14-10.

Whereas, the Requestor initiated an Independent Review Process (IRP) proceeding against ICANN challenging the Expert Determination, and the BGC's and Board's denial of Requests 13-16 and 14-10.

Whereas, the IRP Panel declared the Requestor to be the prevailing party and recommended that the "Board reconsider its decisions on the Reconsideration Requests, in the aggregate, weighing the new evidence in its entirety against the standard applicable to neutrals as set out in the IBA Conflict Guidelines." (Final Declaration, at ¶ 9.1(b).)

Whereas on <u>16 March 2017</u>, the Board adopted the IRP Panel's recommendation and directed the BGC to re-evaluate the relevant Reconsideration Requests.

Whereas, the BGC has carefully considered whether the alleged evidence of apparent bias should have been disclosed by the Expert in light of the IBA Conflict Guidelines, as well as the report issued by the Ombudsman after the Board's determination on Request 14-10.

Whereas, the BGC recommended that Requests 13-16 and 14-10 again be denied, in addition to the grounds set out in the initial BGC Determination on Request 13-16 and the NGPC Action on Request 14-10, because the alleged evidence of bias does not "give rise to doubts as to the arbitrator's impartiality or independence," under the IBA Conflict Guidelines and therefore, the Requestor has not stated proper grounds for reconsideration, and the Board agrees.

Whereas, the Board has carefully considered the supplemental letter submitted by the Requestor on 14 June 2017, and concludes that the letter provides no additional argument or evidence to support reconsideration.

Resolved (2017.06.24.xx), the Board adopts the <u>BGC's Further Recommendation on</u> Reconsideration Requests 13-16 and 14-10.

PROPOSED RATIONALE:

1. Brief Summary

Dot Sport Limited (Requestor) and SportAccord both applied for the .SPORT string and are in the same contention set. SportAccord filed a Community Objection (Objection) against the Requestor's application (Application). The Expert rendered a determination in favor of SportAccord (Expert Determination). (*See* https://newgtlds.icann.org/sites/default/files/drsp/04nov13/determination-1-1-1174-59954-en.pdf. The Requestor then filed two Reconsideration Requests—Request 13-16 and Request 14-10, challenging the International Centre for Expertise of the International Chamber of Commerce's (ICC) appointment of the Expert, claiming that the Expert allegedly violated established policy or process by failing to disclose material information relevant to his appointment. Requests 13-16 and 14-10 were denied by the BGC and NGPC, respectively, on the basis that the grounds did not support reconsideration. (*See* BGC Determination on Reconsideration Request 13-16, https://www.icann.org/en/system/files/files/determination-sport-08jan14-en.pdf; and NGPC Action on Reconsideration Request 14-10, https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-07-18-en.)

Following the https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-07-18-en.)

with the Ombudsman. On 25 August 2014, the Ombudsman issued a final report on the Requestor's new complaint (Ombudsman Final Report).¹

The Requestor then initiated an IRP. On <u>31 January 2017</u>, the IRP Panel declared the Requestor to be the prevailing party, and recommended that the Board reconsider Requests 13-16 and 14-10 "in the aggregate, weighing the new evidence in its entirety against the standard applicable to neutrals as set out in the [International Bar Association Guidelines on Conflicts of Interest in International Arbitration]" (IBA Conflict Guidelines or the Guidelines). (IRP Final Declaration at ¶ 9.1(a)-(b), https://www.icann.org/en/system/files/files/irp-dot-sport-final-declaration-31jan17-en.pdf.) On <u>16 March 2017</u>, the ICANN Board accepted the IRP Panel's recommendation and directed the BGC to re-evaluate the relevant Reconsideration Requests.

The BGC has carefully considered whether the alleged evidence of apparent bias should have been disclosed by the Expert in light of the IBA Conflict Guidelines. The BGC has also evaluated the Ombudsman Final Report, which was issued after the NGPC's determination on Request 14-10. The BGC concluded, and the Board agrees, that the Requestor's claims are unsupported because the alleged evidence of bias does not "give rise to doubts as to the arbitrator's impartiality or independence," under the IBA Conflict Guidelines. (*See* 2004 IBA Conflict Guidelines General Standard 3(a).) The BGC noted that its previous findings regarding timeliness are not relevant to its re-evaluation of Requests 13-16 and 14-10. Therefore, the BGC has recommended that Requests 13-16 and 14-10 be again denied and the Board agrees.

On 14 June 2017, the Requestor submitted a letter to the ICANN Board refuting the BGC's Further Recommendation on Requests 13-16 and 14-10, which the Board has considered and finds does not set forth a basis for reconsideration (the 24 June 2017 Letter). (https://www.icann.org/en/system/files/files/reconsideration-13-16-et-al-dot-sport-crowell-moring-to-icann-board-redacted-14jun17-en.pdf.)

The Board notes that Requests 13-16 and 14-10 sought reconsideration on other grounds in addition to the alleged conflicts. Those additional claims are not part of the BGC's re-

¹ Ombudsman Final Report at Pg. 4, attached as <u>Attachment 1 to the BGC's Further Recommendation on Requests 13-16 and 14-10</u>, which is incorporated here.

evaluation. The Board (through the BGC and the NGPC) previously evaluated those additional claims in the BGC's Determination on Request 13-16 and the NGPC Action on Request 14-10. The Board finds that its previous findings those additional claims which are not part of the BGC's Further Recommendation on Requests 13-16 and 14-10 are still applicable.

2. Facts

The full factual background, which the Board has considered, is set forth in the <u>BGC's Further</u> Recommendation on Requests 13-16 and 14-10 and is incorporated here.

Following the issuance of the BGC's Further Recommendation on Requests 13-16 and 14-10, the Requestor submitted the 14 June 2017 Letter, which the Board has reviewed and considered.

3. The Relevant Standards for Evaluating Reconsideration Requests and Community Objections.

The Bylaws in effect at the time that Requests 13-16 and 14-10 were filed call for the BGC to evaluate and either make a determination, or make recommendations to the Board with respect to Reconsideration Requests. (See Article IV, Section 2 of the Bylaws, effective 11 Apr. 2013, https://www.icann.org/resources/pages/bylaws-2014-04-04-en#IV and Article IV, Section 2 of the Bylaws, effective 7 Feb. 2014, https://www.icann.org/resources/pages/bylaws-2014-10-06- en#IV.) ICANN has previously determined that the reconsideration process can properly be invoked for challenges to new gTLD-related expert determinations rendered by panels formed by third party dispute resolution service providers, such as the ICC, where it can be stated that the provider failed to follow the established policies or processes it is required to follow in reaching the expert determination, or that staff failed to follow its policies or processes in accepting that determination. (See Recommendation of the BGC on Reconsideration Request 13-5, available at https://www.icann.org/en/system/files/files/recommendation-booking-01aug13-en.pdf.) The reconsideration process does not call for the BGC to perform a substantive review of expert determinations. Accordingly, the BGC's review was not to evaluate the ICC Panel's conclusion that there is substantial opposition from a significant portion of the community to which the Requestor's application for .SPORT may be targeted. Rather, the BGC's review was limited to whether the Expert violated the IBA Conflict Guidelines, which the Requestor suggests was accomplished when the Expert failed to disclose the DirecTV Contract, the TyC Relationship,

and his participation as co-chair of a panel at the Conference, as these terms are defined below. The Board notes that Requests 13-16 and 14-10 sought reconsideration on other grounds in addition to the alleged conflicts. Those additional grounds are not part of the BGC's reevaluation. The Board (through the BGC and the NGPC) previously evaluated those additional grounds in the BGC's Determination on Request 13-16 and the NGPC Action on Request 14-10. The Board finds that its previous determinations on those additional grounds, which are not part of the BGC's Further Recommendation on Requests 13-16 and 14-10, are still applicable.

The Board has reviewed and thoroughly considered the <u>BGC's Further Recommendation on</u> Requests 13-16 and 14-10 and finds the analysis sound.

4. Analysis and Rationale

The BGC has concluded, and the Board agrees, that the IBA Conflict Guidelines did not mandate the Expert to disclose that: (i) DirecTV, a client of the Expert's firm, acquired broadcasting rights for the Olympics from the IOC on 7 February 2014 (the DirecTV Contract); (ii) a partner in the Expert's law firm is the president of Torneos y Competencias S.A. (TyC), a company that has a history of securing Olympic broadcasting rights (the TyC Relationship); or (iii) the Expert had co-chaired a panel at a conference in February 2011 (Conference) entitled "The quest for optimizing the dispute resolution process in major sport-hosting events." Accordingly, because the Expert was not required under the IBA Conflict Guidelines to disclose any of the alleged conduct giving rise to the claims of apparent bias asserted by the Requestor, reconsideration is not warranted.

4.1. The IBA Conflict Guidelines Do Not Require Disclosure of the DirecTV Contract or the TyC Relationship.

Contrary to the Requestor's claims, the IBA Conflict Guidelines do not require the Expert to disclose the DirectTV Contract or the TyC Relationship. Disclosure requirements for neutrals are generally assessed in accordance with the guidance set forth in the IBA Conflict Guidelines. The 2004 IBA Conflict Guidelines that were in effect during the Objection proceedings generally require an ICC expert to disclose "facts or circumstances . . . that may, in the eyes of the parties,

give rise to doubts as to the arbitrator's impartiality or independence." (2004 IBA Conflict Guidelines General Standard 3(a).)

In an effort to achieve "greater consistency and fewer unnecessary challenges and arbitrator withdrawals and removals," the Guidelines set forth "lists of specific situations that ... do or do not warrant disclosure or disqualification of an arbitrator" (Guidelines Application List). (*See id.* at ¶ 3.) The lists are designated Red, Orange and Green.

Circumstances identified on the Red List *must* be disclosed to the parties and will disqualify an expert unless the parties affirmatively *waive* the conflict. (*See id.* at § II.2.) An expert has a duty to disclose issues appearing on the Orange List, but those issues will not disqualify an expert unless the parties affirmatively *object* to the conflict. (*See id.* at § II.3.) Further, even if a party objects to an Orange List disclosure, an expert may still be appointed if the authority that rules on the challenge decides that it does not meet the objective test for qualification. (*See id.* at § II.4.) Conduct appearing on the Green List need not be disclosed at all. (*See id.* at § II.6.)

The 2004 IBA Conflict Guidelines note that "a later challenge based on the fact that an arbitrator did not disclose" facts or circumstances in the orange category "should not result automatically in either non-appointment, later disqualification or a successful challenge to any award. . . . [N]on-disclosure cannot make an arbitrator partial or lacking independence; only the facts or circumstances that he or she did not disclose can do so." (*Id.* at § II.5.)

The IRP Panel and Ombudsman in his Final Report identified several Guidelines that they viewed as being potentially implicated by the DirecTV Contract and the TyC Relationship. The BGC and the Board have carefully considered the Guidelines in their entirety, including those sections of the Guidelines identified by the IRP Panel and the Ombudsman. As discussed below, the BGC concluded, and the Board agrees, that the Guidelines did not require the Expert to disclose the DirecTV Contract or the TyC Relationship.

4.1.1. Guidelines 4.2.1 and 3.4.1 (Law Firm Adversary)

The Ombudsman suggested that Guideline 4.2.1 was arguably invoked by the Expert's law firm's representation of DirecTV in negotiations with the IOC. (*See* BGC's Further

Recommendation on Requests 13-16 and 14-10 at Attachment 1.) Guideline 4.2.1 categorizes as Green (i.e., with no disclosure requirement) the circumstance where "[t]he arbitrator's law firm has acted against one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator." (2004 IBA Conflict Guideline Application List at ¶ 4.2.1.)

After careful consideration, the BGC concluded, and the Board agrees, that Guideline 4.2.1 does not fit the circumstances here because the IOC is not an affiliate of SportAccord, as discussed further below. However, even if Guideline 4.2.1 applied, that Guideline does *not* require disclosure. Accordingly, Guideline 4.2.1 cannot support Reconsideration. Notably, the Ombudsman recognized in his final report that Guideline 4.2.1 "is not quite on point," but found it to be the "closest" set of facts to the Expert's law firm's representation of DirecTV in negotiations with the IOC. The Ombudsman added that although "[t]he guidelines talk about affiliates of parties," the "connections" in this case were "not so clear." The BGC agreed, as does the Board, inasmuch as SportAccord lacks any business, corporate, or other relationship with the IOC, but rather merely participates in the same industry, as discussed further below. Either way, as the Ombudsman noted, even if Guideline 4.2.1 *was* on point, an arbitrator's law firm's past adversity to a party or affiliate is on the Green List and therefore need not have been disclosed.

The BGC and the Board have additionally considered Guideline 3.4.1. Guideline 3.4.1, categorized as Orange (i.e., disclosure required), discusses when "[t]he arbitrator's law firm is currently acting adverse to one of the parties or an affiliate of one of the parties," and characterizes it as Orange List. Guideline 3.4.1 does not apply here because the Expert's law firm was adverse to *the IOC* in its representation of DirecTV. The IOC was neither a party to the Objection nor an affiliate of a party. The IBA Conflict Guidelines make clear that the term affiliate is used to describe different entities "within the same group of companies," including entities with a parent-subsidiary relationship or sister companies controlled by the same parent entity. (2004 IBA Conflict Guidelines Explanation 6(b); *Id.* Application List note 5.) With respect to affiliates, the Guidelines are specifically focused on entities that have a "controlling influence" on a party. (*Id.* Explanation 6(c).)

As the Requestor acknowledges, SportAccord is an umbrella organization for all international sports federations (Olympic *and non-Olympic*), as well as organizers of multi-sport games and sport-related international associations. SportAccord has ninety-two full members; the IOC is *not* among them. (*See* http://www.olympic.org/ioc-members-list.) Nor is SportAccord a member of the IOC. (*Id.*) In an industry as interconnected as the international sporting industry, the mere fact that: (1) the IOC's website notes that SportAccord is one of several associations organizing IOC-recognized sports federations; and (2) that *two* of the six members of SportAccord's Executive Council are among the *102* members of the IOC does not demonstrate an affiliation. These facts do not create an affiliation between the two entities that is comparable to an affiliation between two members of the same group of companies. (*See* 2004 IBA Conflict Guidelines Explanation 6(b).) Ultimately, there is nothing that shows, from the Requestor or otherwise, that the IOC has a "controlling influence" on SportAccord as a result of an affiliation or otherwise. Therefore, Guideline 3.4.1 did not mandate disclosure of the DirecTV Contract.

4.1.2. Guideline 2.3.6 (Law Firm Significant Commercial Relationship)

Guideline 2.3.6 categorizes as Red (i.e., disclosure required) the circumstance when the arbitrator's "law firm currently has a significant commercial relationship with one of the parties or an affiliate with one of the parties." The IRP Panel declared that Guideline 2.3.6 was invoked and recommended that ICANN consider whether it required the Expert to disclose his law firm's "relationship" with TyC. (IRP Final Declaration at ¶ 7.91(b).) That "relationship" consists of the fact that a partner in the Expert's law firm is the president of TyC, and the Expert's law firm has represented TyC in negotiations for Olympic broadcasting rights from the IOC.

Guideline 2.3.6 reflects the IBA's view that anyone with a "significant economic interest in the matter at stake" should not serve as an arbitrator in that matter. This is because one with a financial interest in the outcome of an arbitration cannot be – or will be perceived as not being – impartial and independent in the matter. (2004 IBA Conflict Guidelines Explanation 2(d).) As a result, Guideline 2.3.6 prohibits the appointment of an arbitrator whose law firm currently maintains a "significant commercial relationship" with one of the parties or an affiliate of a party.

The IBA's reasons for drafting Guideline 2.3.6 have no application here. The Expert's law firm's "relationship" with TyC is limited to the fact that another partner at the law firm is the president of TyC, and the firm—not the Expert—has represented TyC. The Requestor has not demonstrated that the law firm itself had a substantial (or any) financial stake in TyC or that TyC's business has any effect on the law firm's finances. The Requestor presented no evidence that would support the Requestor's claim that the Expert—or his law firm—would have received any benefit, commercial or otherwise, from deciding for or against SportAccord.

Finally, even if the Expert's law firm did have a significant commercial relationship with TyC, TyC is *not* a party or affiliate of SportAccord. TyC was, if anything, across the table from and *adverse to* the IOC – TyC negotiated with the IOC for Olympic broadcasting rights. The Requestor has not asserted that TyC had any actual connection to the party at issue here, SportAccord, except through the IOC, which as discussed above is not an affiliate of SportAccord. For this additional reason, Paragraph 2.3.6 of the IBA Conflict Guidelines did not require the Expert to disclose the TyC Relationship.

4.1.3. *Guidelines 3.1.4, 3.2.1, and 3.2.3 (Party Client)*

Because the IOC is neither a party nor an affiliate of a party to the Objection, the BGC concluded, and the Board agrees, the remaining Guidelines—Guidelines 3.1.4, 3.2.1, and 3.2.3—that the IRP Panel identified as arguably applicable to the Requestor's claims cannot be interpreted to require the Expert to disclose the TyC Relationship or the DirecTV Contract.

Guideline 3.1.4, categorized as Orange, applies when "[t]he arbitrator's law firm has within the past three years acted for one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator." Guideline 3.2.1, categorized as Orange, applies when "[t]he arbitrator's law firm is currently rendering services to one of the parties or to an affiliate of one of the parties without creating a significant commercial relationship and without the involvement of the arbitrator." Guideline 3.2.3, categorized as Orange, applies when "[t]he arbitrator or his or her firm represents a party or an affiliate to the arbitration on a regular basis but is not involved in the current dispute."

The Requestor has not identified a party or affiliate of a party who is a client of the Expert's law firm, and as discussed, the IOC is not a party or affiliate of a party. Therefore, none of the above-listed Guidelines are analogous to the purported conflicts that the Requestor identified here.

Finally, the IBA Conflict Guidelines recognize that the "growing size of law firms" can unduly limit the ability of a party to "use the arbitrator of its choice." (2004 IBA Conflict Guidelines Explanation 6(a).) Therefore, "the activities of an arbitrator's law firm" cannot "automatically constitute a source of . . . conflict or a reason for disclosure." (*Id.* at General Standard 6(a).) Reading the IBA Conflict Guidelines to require disclosure of law firm relationships that are as tenuously connected to the subject of a dispute as the TyC Relationship and the DirecTV Contract were to the Objection would impose an unnecessary and excessive limit on the ability of parties to "use the arbitrator[s of their] choice." The BGC concluded that it could not recommend that result, and the Board agrees.

4.2. The IBA Conflict Guidelines Do Not Require Disclosure of the Expert's Presentation at the Dispute Resolution Conference.

The Requestor also claims that the Expert should have disclosed his participation in a February 2011 program entitled "[t]he quest for optimizing the dispute resolution process in major sporthosting events," at a conference aimed at, among others, "sports federation leaders." The BGC concluded, and the Board agrees, that none of the rules in the IBA Conflict Guidelines require such disclosure.

The IRP Panel suggested that Guideline 3.5.2 of the IBA Conflict Guidelines is relevant to assessing whether the Expert was required to disclose his participation on a panel. Guideline 3.5.2 applies when "[t]he arbitrator has publicly advocated a specific position regarding the case that is being arbitrated, whether in a published paper or speech or otherwise." Guideline 3.5.2 is part of the Orange List.

Guideline 3.5.2 would apply *only if* the Expert "publicly advocated *a specific position regarding the case* that is being arbitrated" (emphasis added), which the Expert here did not do. Rather, the Expert participated in the Conference at issue in February 2011, *more than two years before*

SportAccord filed its Objection and almost two and a half years before the ICC nominated the Expert to consider the Objection. Therefore, it is logically impossible that the Expert's 2011 presentation advocated a specific position regarding the Objection; as the Objection had not been filed and would not be filed for two years *after* the Conference. Further, the Requestor has not asserted that the Expert advocated a specific position regarding the Objection at the Conference; instead, the Requestor argued simply that the Conference was "aimed at . . . sports federation leaders." Identifying a target audience for a Conference does not rise to the level of "advocat[ing] a specific position regarding the case that is being arbitrated," as is required to implicate Guideline 3.5.2.

The IBA issued updated Conflict Guidelines in 2014, which, although issued after the Expert's appointment, provide additional guidance regarding conflict disclosures. The 2014 IBA Conflict Guidelines further clarified that an "arbitrator must, in principle, be considered to bear the identity of his or her law firm, but the activities of the arbitrator's firm should not automatically create a conflict of interest. The relevance of the activities of the arbitrator's firm . . . and the relationship of the arbitrator with the law firm, should be considered in each case."

The 2014 Guidelines include a new Guideline 4.3.4, which identifies as Green the circumstance that "[t]he arbitrator was a speaker, moderator or organizer in one or more conferences, or participated in seminars or working parties of a professional, social or charitable organization, with another arbitrator or counsel to the parties." (2014 IBA Conflict Guideline Application List at ¶ 4.3.4.)

The 2014 IBA Conflict Guidelines make clear that an arbitrator need *not* disclose that he or she "was a speaker, moderator or organizer in one or more conferences, or participated in seminars or working parties of a professional, social or charitable organization, with another arbitrator or counsel to the parties." (*Id.*) Here, the Expert participated in a panel relating to sports law; his connection to the subject matter raises no inference of bias or partiality, nor does it signify a relationship with one of the parties, an affiliate of the parties, or counsel to a party. If participation in a panel with counsel to the parties need not be disclosed, there is no reason to believe that participation in a panel covering the same genre as the arbitration covered should require disclosure.

In addition to carefully considering the Guidelines identified by the IRP Panel and the Ombudsman (all of which are discussed above), the BGC also reviewed the IBA Conflict Guidelines in their entirety. Based on that review, the BGC concluded, and the Board agrees, that no other guideline is even arguably applicable to the alleged conflicts raised by the Requestor, and thus no other guideline suggests, let alone mandates, that the alleged conflicts should have been disclosed.

Under the standard of review set forth in the Bylaws in effect when the Requestor submitted Requests 13-16 and 14-10, the BGC's review would conclude after evaluating whether the ICC failed to follow *its processes* concerning the appointment of the Expert. However, pursuant to the IRP Panel's recommendation, and the Board's resolution, the BGC has considered the Expert's compliance with the IBA Conflict Guidelines and, additionally, considered "whether the alleged conflicts give rise to a material concern as to lack of independence or impartiality so as to undermine the integrity or fairness of the Expert Determination." For the reasons discussed in detail above, the DirecTV Contract and the TyC Relationship cannot possibly create a material concern of lack of independence or impartiality, or undermine the integrity or fairness of the Expert. Likewise, the mere fact that the Expert participated on a panel relating to the general topic of sports law raises no inference of bias or partiality, nor does it signify a relationship with one of the parties, an affiliate of the parties, or counsel to a party.

The BGC concluded, for the reasons discussed above, and the Board agrees, that the IBA Conflict Guidelines did not mandate the disclosure by the Expert of the DirecTV Contract, the TyC Relationship, or the Expert's presentation at the Conference, nor did the alleged conflicts give rise to a material concern as to the independence or impartiality of the Expert or the integrity or fairness of the Expert Determination. The Board notes that Requests 13-16 and 14-10 sought reconsideration on other grounds in addition to the alleged conflicts. Those additional grounds are not part of the BGC's re-evaluation. The Board (through the BGC and the NGPC) previously evaluated those additional grounds in the BGC's Determination on Request 13-16 and the NGPC Action on Request 14-10. The Board finds that its previous findings those additional grounds, which are not part of the BGC's Further Recommendation on Requests 13-16 and 14-10, are still applicable.

4.3. The Requestor's 14 June 2017 Letter Does Not Provide a Basis for Reconsideration.

The 14 June 2017 Letter sets forth the following argument: (1) the BGC did not "take due account" of the IRP Declaration; (2) the BGC mischaracterized the Expert's purported conflict of interest; (3) the BGC incorrectly applied the IBA Guidelines; (4) the BGC should not have relied on the Ombudsman Final Report; and (5) the BGC did not consider, and ICANN has not disclosed, confidential discussions between ICANN and the IOC. (*See* 14 June 2017 Letter.) The Board finds that the 14 June 2017 Letter does not raise any arguments or facts supporting reconsideration.

4.3.1. The BGC Complied With the Board Resolution

The Board directed ICANN to "take all steps necessary" to implement the IRP Panel's recommendation that the "Board reconsider its decisions on the Reconsideration Requests in the aggregate, weighing the new evidence in its entirety against the standard applicable to neutrals as set out in the IBA Conflict Guidelines", which is exactly what the BGC did. (Resolution 2017.03.16.10.) Neither the IRP Panel nor the Board directed ICANN to conclude that the Expert should have disclosed the alleged conflicts raised by the Requestor, or that the IBA Conflict Guidelines mandated a particular outcome.

The Requestor seeks to substitute its understanding of the IRP Panel's Declaration on the *potential* outcome of ICANN's analysis with ICANN's direction to the BGC and Board to analyze the IBA Conflict Guidelines for themselves. The Requestor is incorrect that "the IRP Panel was abundantly clear . . . that apparent bias existed." (14 June 2017 Letter, Pg. 2.) The IRP Panel stated, as the Requestor noted, that "[i]n the event that an Expert . . . were lacking in independence or impartiality, or there were otherwise an appearance of bias, then it is the ICANN Board that must redress that bias." (Id. at 2; IRP Final Declaration, at ¶ 7.72.) Further, the IRP Panel concluded that ICANN did not consider the IBA Conflicts Guidelines in its initial determination of Requests 13-16 and 14-10. (IRP Final Declaration at ¶ 7.88.) The IRP Panel did not conclude that ICANN applied the IBA Conflicts Guidelines incorrectly.

4.3.2. The BGC Addressed the Alleged Conflicts of Interest.

The Requestor argues that TyC and DirecTV are aligned with, rather than adverse to, the IOC, and therefore the BGC was incorrect to apply the IBA Conflict Guidelines examples as if TyC and DirecTV were adverse to the IOC. (*See* 14 June 2014 Letter, Pg. 2.) Accordingly, as discussed in the BGC's Further Recommendation on Requests 13-16 and 14-10, whether the relationship between the IOC and TyC or DirecTV was aligned or adverse, no connection between any of those three entities and SportAccord gave rise to an appearance of bias. (*See* BGC's Further Recommendation on Requests 13-16 and 14-10, Pgs. 16-17.)

The Board additionally notes that the Requestor cites an indictment of a TyC principal from May 2015², in support of its argument that the Expert was biased when he issued the Expert Determination in October 2013. The IBA Conflict Guidelines are clear that the operative facts and circumstances are those that were present "at the time [the expert] accepts an appointment to act as an arbitrator and . . . during the entire course of the arbitration proceedings." (IBA Conflicts Guidelines, Explanation to General Standard 1.) They do not extend "during the period that the award may be challenged" or thereafter. (See id.) It is not clear how the indictment is relevant, but even if it were, it occurred well after the Objection proceedings ended, and is therefore irrelevant to the IBA Conflict Guidelines analysis. Moreover, as addressed in the BGC's Further Determination on Requests 13-16 and 14-10, "the activities of an arbitrator's law firm" cannot "automatically constitute a source of . . . conflict or a reason for disclosure." (BGC's Further Recommendation on Requests 13-16 and 14-10, Pgs. 19-20; 2004 IBA Conflict Guidelines General Standard 6(a).) Reading the IBA Conflict Guidelines to require disclosure of law firm relationships that are as tenuously connected to the subject of a dispute as the TvC Relationship and the DirecTV Contract were to the Objection would impose an unnecessary and excessive limit on the ability of parties to "use the arbitrator[s of their] choice." (Id.)

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² The Requestor claims that the indictment is evidence of the Expert's bias because the President of TyC is a senior partner at the Expert's law firm and it "would be harmful for [the Expert] and his law firm's significant clients to go against the interest of the IOC and its related associations." (14 June 2014 Letter at Pg. 2.)

4.3.3. The BGC Applied the IBA Conflict Guidelines Correctly.

The Requestor incorrectly claims that the BGC "failed to examine the General Standards of the IBA Conflict Guidelines." (14 June 2017 Letter, Pg. 3.) The BGC began its analysis of the IBA Conflict Guidelines with a discussion of the General Standards, including the requirement that an expert disclose "facts or circumstances . . . that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence." (BGC's Further Recommendation on Requests 13-16 and 14-10, Pgs. 13-14; IBA Conflicts Guidelines, Explanation to General Standard 1.) The BGC also considered the Guidelines Application List, which is intended to provide "greater consistency" in the application of the General Standards. (See id.) The BGC also considered General Standard 6 and its accompanying Explanation, which address the analysis of law firm relationships. (BGC's Further Recommendation on Requests 13-16 and 14-10, Pg. 19.)

Contrary to the Requestor's assertion, the BGC's analysis was not "extremely narrow." Rather, the BGC applied the principals from the General Standards *and* the Guidelines Applications List to conclude that the IBA Conflict Guidelines did not require the Expert to disclose the DirecTV Contract, TyC Relationship, or the Expert's participation as co-chair of a panel at the Conference.

4.3.4. The BGC's References to the Ombudsman Final Report were Appropriate.

The Requestor challenges the BGC's reference to the Ombudsman Final Report, arguing that the Ombudsman's findings are "at odds with the IRP Panel's finding that the BGC should have considered the IBA Conflict Guidelines." The Requestor asserts that the BGC "attach[ed] great weight" to the Ombudsman Final Report, but that it "had no relevance."

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³ The Requestor suggests that it does not understand the "circumstances [under which] the second report was created" and did not receive a copy of the Ombudsman Final Report, dated 25 August 2014. (14 June 2017 Letter, Pgs. 3-4) The Ombudsman Final Report makes clear that it was created in response to the Requestor's *second* complaint, lodged after the BGC denied Request 14-10. (Ombudsman Final Report, at Pgs. 2-3, attached as Attachment 1 to BGC's Further Recommendation on Requests 13-16 and 14-10.) The Requestor also argues that the Ombudsman's 5 May 2015 email to ICANN in which the Ombudsman wrote that he "did not take any steps at all after the draft report" (i.e., the 31 March 2014 email from the Ombudsman) and "never heard again" from the Requestor regarding *that* complaint demonstrates that the Requestor never filed a second Ombudsman complaint. (14 June 2017 Letter, Pg. 4.) However, the Ombudsman was responding to an email from ICANN asking

The Ombudsman Final Report is not inconsistent with the IRP Panel's finding. As the Requestor noted, the IRP Panel declared that the BGC should have considered the IBA Conflict Guidelines. In considering the Requestor's second complaint, the Ombudsman considered the IBA Conflict Guidelines and concluded that they did not mandate disclosure of the purported conflicts.

Additionally, although the BGC considered the Ombudsman Final Report, the BGC's determination was based on its application of the IBA Conflict Guidelines to the facts alleged by the Requestor. It did not rely on the Ombudsman's analysis in reaching its conclusion, but merely noted that the results of the analysis were consistent with the Ombudsman's analysis. Accordingly, the Requestor's arguments regarding the weight that should be accorded the Ombudsman Final Report are not relevant.

4.3.5. ICANN's Discussions with the IOC are Not Relevant.

The Requestor claims for the first time in the 14 June 2017 Letter that ICANN held confidential meetings with the IOC regarding .SPORT. (*See* 14 June 2017 Letter, Pg. 4.) The Board is unaware of any confidential meetings between ICANN and the IOC concerning .SPORT, and the Requestor cites no evidence in support of this accusation. It appears to have been included solely to suggest that ICANN, rather than the Expert, harbored some bias relating to .SPORT. This unfounded assertion does not support reconsideration.

Adopting the BGC's Recommendation has no financial impact on ICANN and will not negatively impact the security, stability and resiliency of the domain name system.

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

Submitted By: Amy A. Stathos, Deputy General Counsel

Date Noted: 23 August 2017

Email: amy.stathos@icann.org

specifically about the Ombudsman's consideration of the Requestor's 6 February 2014 complaint, and not about the second complaint. Therefore, the 5 May 2015 email is not related to the second complaint.

ICANN BOARD SUBMISSION NO. 2017.06.24.1e

TITLE: Consideration of Reconsideration Request 17-1

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The Requestor, Russ Smith, seeks reconsideration of the ICANN Contractual Compliance department's decisions to close both his WHOIS Service Level Agreement (SLA) Complaint which asked ICANN to compel Verisign to produce the historical WHOIS data for the domain name directorschoice.com, and the Requestor's follow-up complaint expressing his dissatisfaction with the handling of his WHOIS SLA Complaint without making the requested historical WHOIS data for directorschoice.com available.

The Requestor claims that reconsideration is warranted for two reasons. *First*, the Requestor asserts that by not providing, or not requiring Verisign to provide, the requested historical WHOIS data, ICANN violated established policies, as set forth in the: (i) 2009 Affirmation of Commitments between the United States Department of Commerce and ICANN; and (ii) terms of ICANN's contracts with registrars and registries, both of which the Requestor suggests require ICANN "to allow public access to whois [*sic*] data without regard to whether it is 'historical.'" *Second*, the Requestor claims that the WHOIS SLA Complaint was closed "without consideration of material information" in violation of Article 4, Section 2(c)(ii) of ICANN's Bylaws.

The BGC evaluated Request 17-1 and found that the Request does not set forth a proper basis for reconsideration because: (i) neither ICANN's Mission, Core Values, and Commitments, nor any established ICANN policy, requires ICANN to ensure that *historical* WHOIS data is publicly available; (ii) ICANN considered all material information provided by the Requestor as part of the investigation of the Requestor's WHOIS SLA Complaint and Complaint Ticket. Therefore, the BGC has recommended that the Board deny Request 17-1 and that no further action be taken in response to the Request.

Following the issuance of the BGC's recommendation, the Requestor submitted a rebuttal and an addendum to the rebuttal to the recommendation in accordance with Article 4, Section 4.2(q) of the Bylaws. As discussed in below, the rebuttal and addendum do not raise arguments or facts that support reconsideration.

BOARD GOVERNANCE COMMITTEE (BGC) RECOMMENDATION:

The BGC recommended that Request 17-1 be denied and that no further action be taken in response to the Request. As detailed in the Recommendation attached to the Reference Materials in support of this submission, the BGC determined that the Requestor's claims are unsupported because: (i) neither ICANN's Mission, Core Values, and Commitments, nor any established ICANN policy, requires ICANN to ensure that *historical* WHOIS data is publicly available; (ii) ICANN considered all material information provided by the Requestor as part of the investigation of the Requestor's WHOIS SLA Complaint and Complaint Ticket.

PROPOSED RESOLUTION:

Whereas, Russ Smith (the Requestor) filed Reconsideration Request 17-1 (Request 17-1) challenging the ICANN Contractual Compliance department's decisions to close both his WHOIS Service Level Agreement (SLA) Complaint, which asked ICANN to compel Verisign to produce the historical WHOIS data for the domain name directorschoice.com, and the Requestor's follow-up complaint expressing his dissatisfaction with the handling of his WHOIS SLA Complaint without making the requested historical WHOIS data for directorschoice.com available.

Whereas, the BGC previously determined that the Request is sufficiently stated and sent the Request to the Ombudsman for review and consideration in accordance with Article 4, Section 4.2(j) and (k) of the ICANN Bylaws.

Whereas, the Ombudsman recused himself from this matter pursuant to Article 4, Section 4.2(l)(iii) of the Bylaws.

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¹ Article 4, Section 4.2(q) of the ICANN Bylaws permits the requestor to file a rebuttal to the BGC's recommendation, provided that the rebuttal is: (i) "limited to rebutting or contradicting the issues raised in the BGC's recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request." (Bylaws, Art. 4, § 4.2(g).)

Whereas, the BGC has carefully considered the merits of Request 17-1 and all relevant materials and recommended that Request 17-1 be denied on the basis that Request 17-1 does not set forth a proper basis for reconsideration, and the Board agrees.

Whereas, the Board has carefully considered the Requestor's rebuttal and addendum to the rebuttal to the BGC's Recommendation to Request 17-1 and concludes that the rebuttal and addendum provide no additional argument or evidence to support reconsideration.

Resolved (2017.06.24.xx), the Board adopts the BGC Recommendation on Request 17-1.

PROPOSED RATIONALE:

1. Brief Summary

The Requestor is the named registrant for directorschoice.com. The Requestor submitted a WHOIS SLA Complaint essentially asking ICANN to compel Verisign to produce the historical WHOIS data for directorschoice.com, which the Requestor stated Verisign refused to do. The Requestor suggested that making historical WHOIS data publicly available was required under the 2009 Affirmation of Commitments between the United States Department of Commerce and ICANN (AoC), and ICANN's Registrar Accreditation Agreements (RAAs) and Registry Agreements (RAs).

ICANN's Contractual Compliance department reviewed the WHOIS SLA Complaint and concluded that: (i) the RAA does not require registrars to provide historical WHOIS data; (ii) the RAA does not apply to registry operators (i.e., Verisign); and (iii) no other ICANN contractual obligation or any established policy requires registry operators to maintain and provide registrants, or anyone else, with historical WHOIS data. Accordingly, the Contractual Compliance department advised the Requestor that ICANN does not have the contractual authority to address any "customer-service related matters that fall outside of the Registrar Accreditation Agreement (RAA) or Registry Agreement (RA) and ICANN policies" and thereafter closed the Requestor's WHOIS SLA Complaint.

On 16 March 2017, the Requestor lodged another complaint with ICANN Contractual Compliance (Complaint Ticket), expressing his dissatisfaction with the handling of his WHOIS SLA Complaint and again essentially requesting that ICANN provide, or compel Verisign to

provide, the historical WHOIS data for directorschoice.com. The Contractual Compliance department again determined, and informed the Requestor that the WHOIS SLA Complaint "did not implicate a breach of an ICANN policy or agreement."

The Requestor claims that reconsideration of ICANN's decision to close the WHOIS SLA Complaint and Complaint Ticket without action is warranted for two reasons. *First*, the Requestor again asserts that by not providing, or not requiring Verisign to provide, the requested historical WHOIS data, ICANN violated established policies, as set forth in: (i) the AoC;² and (ii) the terms of ICANN's contracts with registrars and registries, both of which the Requestor suggests require ICANN "to allow public access to whois [*sic*] data without regard to whether it is 'historical.'" *Second*, the Requestor claims that the WHOIS SLA Complaint was closed "without consideration of material information" in violation of Article 4, Section 2(c)(ii) of ICANN's Bylaws.

The BGC considered Request 17-1 and all relevant materials and recommended that the Board deny Request 17-1 because it does not set forth a proper basis for reconsideration for the reasons set forth in the BGC Recommendation on Reconsideration Request 17-1 (the BGC Recommendation), which have been considered and are incorporated here.

On 2 June 2017, the Requestor submitted a rebuttal to the BGC's Recommendation (Rebuttal), pursuant to Article 4, Section 4.2(q) of ICANN's Bylaws. The Requestor claimed that: (1) the BGC did not "explain[] the distinction between current and historical [WHOIS] data" in its Recommendation; (2) "ICANN staff is recommending user [sic] buy stolen black market whois [sic] data when access to historical whois data is requested"; and (3) the Ombudsman should not have recused himself.

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² The AoC was terminated on 6 January 2017, but some of the relevant requirements, such as ICANN's commitment to making available accurate, up-to-date domain name registration information, are enumerated in ICANN's Bylaws. *See* Letter from Stephen D. Crocker, Chairman of the Board of Directors, ICANN, to Lawrence E. Strickling, Assistant Secretary for Communications & Information, U.S. Dep't of Commerce, 3 January 2017; *see also* Letter from Strickling to Crocker, 6 January 2017, attaching countersigned copy of 3 January letter ("Termination Letter"), *available at* https://www.ntia.doc.gov/files/ntia/publications/ntia-icann_affirmation_of_commitments_01062017.pdf; ICANN Bylaws, 1 October 2016, Art. 1, § 1.1(a)(i) and Annexes G-1 and G-2.

On 12 June 2017, the Requestor submitted an Addendum to his Rebuttal (<u>Addendum</u>), stating that by attaching the Requestor's email correspondence with ICANN to the Recommendation, the BGC "disregarded the posted privacy policy . . . without [the Requestor's] prior knowledge or permission."

The Board has considered Request 17-1 and all relevant materials, the BGC's Recommendation, the Rebuttal and the Addendum. The BGC concludes that neither Request 17-1 nor the Rebuttal nor the Addendum set forth a proper basis for reconsideration.

2. Facts

The full factual background is set forth in the BGC Recommendation on Reconsideration Request 17-1, which the Board has reviewed and considered, and which is incorporated here.

On 1 June 2017, the BGC recommended that Request 17-1 be denied on the basis that Request 17-1 does not set forth a proper basis for reconsideration for the reasons set forth in the <u>BGC</u>

Recommendation on Reconsideration Request 17-1, which are incorporated here.

On 2 June 2017, the Requestor submitted a rebuttal to the BGC Recommendation on Reconsideration Request 17-1 (Rebuttal), pursuant to Article 4, Section 4.2(q) of ICANN's Bylaws, which the Board has also reviewed and considered.

On 12 June 2017, the Requestor submitted an Addendum to his Rebuttal (<u>Addendum</u>), which the Board has also reviewed and considered.

3. Issues

The issues for reconsideration are:

- Whether the ICANN Contractual Compliance department's decision to close the WHOIS SLA Complaint and Complaint Ticket without action contravenes any established ICANN policy; and
- Whether the ICANN Contractual Compliance department closed the WHOIS SLA Complaint without considering material information.

4. The Relevant Standards for Evaluating Reconsideration Requests

Article 4, Section 4.2(a) and (c) of ICANN's Bylaws provide in relevant part that any entity may submit a request "for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (i) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or
- (iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.

(ICANN Bylaws, 1 October 2016, Art. 4, §§ 4.2(a), (c).) Pursuant to Article 4, Section 4.2(k) of the Bylaws, if the BGC determines that the Request is sufficiently stated, the Request is sent to the Ombudsman for review and consideration. (*See id.* at § 4.2(l).) If the Ombudsman recuses himself from the matter, the BGC reviews the Request without involvement by the Ombudsman, and provides a recommendation to the Board. (*See id.* at § 4.2(l)(iii).) The requestor may file a rebuttal to the BGC's recommendation, provided that the rebuttal is: (i) "limited to rebutting or contradicting the issues raised in the BGC's recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request." (*See id.* at § 4.2(q).) Denial of a request for reconsideration of ICANN action or inaction is appropriate if the BGC recommends and the Board determines that the requesting party has not satisfied the reconsideration criteria set forth in the Bylaws. (*See id.* at § 4.2(e)(vi), (q), (r).)

5. Analysis and Rationale

The Board has reviewed and thoroughly considered Request 17-1 and all relevant material, including the BGC Recommendation. The Board finds the analysis set forth in the BGC Recommendation to be sound. The Board has also considered the Requestor's Rebuttal to the

BGC Recommendation and the Addendum. The Board finds that the Rebuttal and Addendum do not raise arguments or facts that support reconsideration.

5.1. No Established Policy Requires ICANN to Make Historical WHOIS Data Available to the Public.

The BGC concluded and the Board agrees that no established policy or procedure requires the ICANN organization or Board to make historical WHOIS data available to the public or to require the operator of .COM to do so. Accordingly, the Requestor cannot identify any ICANN established policies or procedures that require disclosure of historical WHOIS data. The WHOIS system "is the system that asks the question, who is responsible for a domain name or an IP address." (See https://whois.icann.org/en/about-whois.) The WHOIS system does not, and was never intended to, ask the question, "who was" responsible for a domain name or an IP address. Accordingly, the WHOIS lookup tool that the ICANN organization maintains on its website enables the public to identify the current domain name registrant—not all prior registrants of the domain name. As is clear on icann.org, "ICANN does not generate, collect, retain or store the results shown other than for the transitory duration necessary to show these results in response to real-time queries." (https://whois.icann.org/en/history-whois.) As such, the BGC concluded, and the Board agrees, that the ICANN organization did not violate ICANN's Mission, Commitments, Core Values or any established ICANN policies in its handling of the WHOIS SLA Complaint and Complaint Ticket.

5.1.1. The AoC Was Terminated on 6 January 2017, But Did Not Require ICANN to Make Historical WHOIS Data Publicly Available In Any Event.

The Requestor claims that the ICANN organization violated policy established in the AoC when it closed his WHOIS SLA Complaint and Complaint Ticket, because he believes that the AoC requires the ICANN organization to "make whois data public, . . . without regard to whether it is 'historical.'" The BGC concluded, and the Board agrees, that the Requestor's argument is unavailing, for two reasons.

First, the AoC was terminated on 6 January 2017.

(https://www.ntia.doc.gov/files/ntia/publications/ntiaicann affirmation of commitments 01062017.pdf) Therefore, it was not an "established

ICANN policy" on 9 March 2017, when the Contractual Compliance department closed the WHOIS SLA Complaint or on 16 March 2017, when it closed the Complaint Ticket. Because the AoC was not in effect at the time of the ICANN organization action, a violation of it (even if one had occurred, which it did not) would not support reconsideration.

Second, even if the AoC were still in effect, the Requestor misstates the obligations set forth in the AoC. In relevant part, the 2009 AoC required the ICANN organization to "implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information." (2009 AoC, § 9.3.1, https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en.) While the Requestor claims that this language required the ICANN organization to make available "historical" WHOIS data, a plain reading of the AoC confirms that the Requestor's reading of the AoC is not supported, as the AoC does not reference "historical" data at all. To the contrary, when discussing the WHOIS data the ICANN organization was expected to make available, the AoC referred to the "registrant" in the present tense, not to prior registrants, thus supporting the notion that the obligations extended only to current WHOIS data. Accordingly, the AoC has never required the ICANN organization to make historical WHOIS data available and the Contractual Compliance department's responses to the Requestor's WHOIS SLA Complaint and Complaint Ticket would not have violated established ICANN policy even if the AoC was still in effect.

To the extent that the ICANN organization's obligations in the AoC were incorporated into ICANN's Bylaws, the Bylaws also do not require the ICANN organization to make historical WHOIS data available. Rather, the Bylaws explicitly reference "up-to-date," meaning *current*, WHOIS data. (ICANN Bylaws, 1 October 2016, Annexes G-1, G-2, https://www.icann.org/resources/pages/governance/bylaws-en/#annexG1 and https://www.icann.org/resources/pages/governance/bylaws-en/#annexG2. In particular, part of ICANN's Mission is to "coordinate[] the development and implementation of policies concerning the registration of second-level domain names," including developing policies for the "maintenance of and access to accurate and *up-to-date information* concerning registered names[,] name servers[, and] domain name registrations." (*Id.*) The Requestor does not argue

that the ICANN organization failed to provide accurate or up-to-date information on registered names, name servers, or domain name registrations.

5.1.2. <u>ICANN's Contracts with Registries and Registrars Do Not Require the</u> ICANN Organization to Make Historical WHOIS Data Publicly Available.

The Requestor claims that ICANN's contracts with registries and registrars require the ICANN organization to "allow public access to whois [*sic*] data without regard to whether it is 'historical.'"³ The BGC concluded, and the Board agrees, that the Requestor is incorrect.

The Registry Agreement with Verisign for the .COM registry (.COM RA) requires Verisign to "operate a WHOIS service . . . providing free public query-based access to *up-to-date* data concerning domain name and nameserver registrations." (.COM RA, Appendix 5, *available at* https://www.icann.org/resources/pages/appendix-05-2012-12-07-en.) This demonstrates that the obligations in the .COM RA extend only to *current*, not *historical*, registration information. Appendix 5 of the .COM RA provides an example WHOIS display, which again identifies *current* information, and makes no reference to *historical* WHOIS data. (*See id.*) No other portion of the .COM RA (or any other registry agreement ICANN maintains with a registry operator) makes any reference to historical WHOIS data. Therefore, Verisign is not required under the .COM RA to provide the data that the Requestor seeks, and the ICANN organization had no grounds under the .COM RA to compel Verisign to provide that information.

The Requestor also argues that the RAA required ICANN and the registrar to make historical WHOIS data available. The RAA requires registrars to operate a WHOIS service which provides free access to, among other things, "[t]he name . . . of the Registered Name Holder" (i.e. the registrant)—again, in the present tense. (*See* 2013 RAA, § 3.3.1, https://www.icann.org/en/system/files/files/approved-with-specs-27jun13-en.pdf; *see also*, 2013 RAA § 2.1, https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#whois-accuracy.) Further, the RAA requires the registrar to validate registrant information only as it pertains to the current registrant; the registrar is required to retain that information for "the duration of [the registrant's registration of the domain name] and for a period of two additional years thereafter." (2013 RAA § 6.1.1, https://www.icann.org/resources/pages/approved-with-

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³ Request § 7, Pg. 4.

specs-2013-09-17-en#data-retention.) The Requestor registered the domain name directorschoice.com on 7 March 2000. Accordingly, assuming the domain name was previously registered to a different registrant, under the RAA, the registrar was only required to retain that information until no later than 7 March 2002.

The .COM RA and RAA do not require the ICANN organization to make any WHOIS data available. The .COM RA requires Verisign to do so. (.COM RA, Appendix 5, https://www.icann.org/resources/pages/appendix-05-2012-12-07-en.) Under the current .COM RA, Verisign is only required to provide ICANN with "thin" WHOIS data. (*See id.; see also*, Thick Whois Transition Policy for .COM, .NET and .JOBS, https://www.icann.org/resources/pages/thick-whois-transition-policy-2017-02-01-en; WHOIS Primer, https://whois.icann.org/en/primer, and last time the record is updated in its WHOIS data store. (*See* Thick Whois Transition Policy for .COM, .NET and .JOBS, https://www.icann.org/resources/pages/thick-whois-transition-policy-2017-02-01-en; WHOIS data to ICANN under the .COM RA. (*See* .COM RA, Appendix 5, https://www.icann.org/resources/pages/appendix-05-2012-12-07-en.)

Likewise, the RAA requires the registrar, not the ICANN organization, to make the referenced WHOIS data available. To be sure, as previously noted, "ICANN does not generate, collect, retain or store the [WHOIS lookup] results shown other than for the transitory duration necessary to show these results in response to real-time queries." (https://whois.icann.org/en/history-whois.) In other words, the ICANN organization does not maintain WHOIS data, and therefore is unable to provide access to it in all events. Accordingly, the BGC concluded, and the Board agrees, that reconsideration is not warranted on account of the obligations the Requestor erroneously believes derive from contracts with registries and registrars.

5.2. The ICANN Organization Considered All Material Information.

The Request also appears to claim that ICANN's Contractual Compliance department closed the WHOIS SLA Complaint "without consideration of material information" in violation of Article

4, Section 2(c)(ii) of ICANN's Bylaws, insofar as he claims that the ICANN organization "did not review the issues contained in" the WHOIS SLA Complaint before closing it. The Requestor has not submitted any evidence establishing—or even suggesting—that the Contractual Compliance department did not review all material information concerning the WHOIS SLA Complaint prior to furnishing the Requestor with its response. Rather, the Requestor appears to be dissatisfied with the response provided, which is not a basis for reconsideration.

As part of its evaluation of Request 17-1, the BGC asked whether ICANN's Contractual Compliance department considered all material information in its evaluation of the WHOIS SLA Complaint and Complaint Ticket. ICANN's Contractual Compliance department confirmed that it considered all information provided by the Requestor.

5.3. The Rebuttal and Addendum Do Not Raise Arguments or Facts That Support Reconsideration.

The Board has considered the Requestor's Rebuttal and Addendum and finds that the Requestor has not provided any additional arguments or facts supporting consideration.

The Rebuttal claims that: (1) the BGC did not "explain[] the distinction between current and historical [WHOIS] data" in its Recommendation; (2) "ICANN staff is recommending user [sic] buy stolen black market whois [sic] data when access to historical whois data is requested"; and (3) the Ombudsman should not have recused himself. (Rebuttal, https://www.icann.org/en/system/files/files/reconsideration-17-1-smith-requester-rebuttal-bgc-recommendation-02jun17-en.pdf.)

With respect the first argument, the Board has considered Request 17-1, the BGC's Recommendation, and the Rebuttal, and finds that the BGC did consider the distinction between current and historical WHOIS data. Specifically, the BGC explained that the "WHOIS system 'is the system that asks the question, *who is* responsible for a domain name or an IP address.' The WHOIS system does not, and was never intended to, ask the question, 'who was' responsible for a domain name or an IP address." (BGC Recommendation at Pg. 8.) The BGC added that the WHOIS lookup tool is intended to identify the *current* domain name registrant, not historical registrants, and that, as stated on icann.org, "'ICANN does not generate, collect,

retain or store the results shown other than for the transitory duration necessary to show these results in response to real-time queries." (*Id.*) The BGC then considered ICANN's Mission, Commitments, Core Values, and established ICANN policies, and recommended that none of those governing documents or policies require the ICANN organization to make historical WHOIS data publicly available, or require the operator of .COM to do so. (*Id.*) The Requestor may disagree with the BGC's recommendation, but he has not shown that the BGC did not consider whether the ICANN organization "explain[s] the distinction between current and historical [WHOIS] data."

As to the Requestor's argument that "ICANN staff is recommending user [sic] buy stolen black market whois [sic] data when access to historical whois data is requested," the Requestor appears to reference the ICANN Global Support Center's (GSC) 9 March 2017 response to the Requestor, where the GSC wrote:

Unfortunately, ICANN does not retain the WHOIS history of a domain. However, there are many companies that offer that information as a free service. To identify companies that offer WHOIS history for free you may enter some of the following key words into a web search engine: "WHOIS History Lookup Free" "Domain WHOIS History Free" "Historical WHOIS Free" "Free Domain History Lookup."

(BGC Recommendation at Attachment 3, Pg. 3.) While the Requestor apparently is of the view that "third party services . . . effectively hack and steal information from the various whois [sic] databases," he has presented no evidence that free historical WHOIS data available online is likely to be stolen. Further, the Board has considered the GSC's message to the Requestor and does not agree that the GSC was advising that the Requestor try to obtain "stolen" data; rather, the GSC was providing information in an effort to assist the Requestor in obtaining the information he sought (even though the ICANN organization was not obligated to provide that information).

The Board finds that the Requestor's claims concerning the Ombudsman's recusal are unsupported. The Ombudsman is required to recuse himself from "Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his or her role as the Ombudsman pursuant to Article 5 of the[]

Bylaws, or involving the Ombudsman's conduct in some way." (ICANN Bylaws, Art. 4, Section 4.2(l)(iii).) Here, the Ombudsman recused himself pursuant to that requirement. (*See* Response from Ombudsman Re Request 17-1, https://www.icann.org/en/system/files/files/reconsideration-17-1-smith-response-ombudsman-07apr17-en.pdf.)

The Addendum claims that by attaching the Requestor's email correspondence with ICANN to the Recommendation, the BGC "disregarded the posted privacy policy . . . without [the Requestor's] prior knowledge or permission." (Addendum, Pg. 1) The Requestor is incorrect in his assessment of ICANN's privacy policy. ICANN's privacy policy states that "ICANN may include [a] User's personal information in publishing User's comments or feedback on the ICANN Site for the benefit of others or to comply with ICANN's accountability and transparency principles." Reconsideration is one of ICANN's Accountability Mechanisms.⁵ Pursuant to Article 4, Section 4.2(p) of the ICANN Bylaws, the BGC must act "on the basis of the public written record, including information submitted by the Requestor, by the ICANN Staff, and by any third party" in issuing its Recommendation to the Board. (Bylaws, Art. 4, § 4.2(p).) As part of its consideration of Request 17-1, the BGC evaluated the Requestor's WHOIS SLA Complaint and the Complaint Ticket, including the email communication between the Requestor and ICANN's GSC which was appended to the Complaint Ticket and which was part of the Requestor's claims. The BGC obtained these documents from the ICANN organization since the Requestor did not attach them to Request 17-1 or the Supplement to Request 17-1. The BGC was therefore required under Article 4, Section 4.2(p) of the Bylaws to place them in the public record. ICANN's privacy policy and Bylaws permit the publication of the Requestor's WHOIS SLA Complaint and the Complaint Ticket, including the email communication between the Requestor and ICANN's GSC, for this purpose. Moreover, the Board notes that the Requestor's personal information on the WHOIS SLA Complaint and the Complaint Ticket, including the email communication between the Requestor and ICANN's GSC which was appended to the Complaint Ticket, was redacted prior to the publication of the

⁴ ICANN's privacy policy, https://www.icann.org/resources/pages/privacy-2012-12-21-en.

⁵ Accountability and Transparency, https://www.icann.org/resources/accountability. ICANN's privacy policy includes a link to ICANN's Accountability and Transparency page in its discussion of use of a User's personal information to comply with ICANN's accountability principles. *See* https://www.icann.org/resources/pages/privacy-2012-12-21-en.

Attachments to the BGC's Recommendation on Request 17-1. The only personal information that was not reducted was the already publicly available information provided upon a WHOIS lookup for directorschoice.com. Therefore, there was no violation of ICANN's privacy policy.

Adopting the BGC's Recommendation has no financial impact on ICANN and will not negatively impact the security, stability and resiliency of the domain name system.

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

Submitted By: Amy A. Stathos, Deputy General Counsel

Date Noted: 15 June 2017

Email: amy.stathos@icann.org

ICANN BOARD SUBMISSION No. 2017.06.24.1f

TITLE: March 2019 ICANN Meeting Venue Contracting

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The Board is being asked to authorize staff to take all steps necessary to complete contracting for the convention center and host hotels in Kobe, Japan for the March 2019 ICANN Public Meeting, which require Board approval as they will exceed US\$500,000. The Reference Materials for this paper summarize the steps taken to locate a site for the March 2019 Public Meeting, and outlines the facility costs.

As adopted in the November 2016 modifications to ICANN's Delegation of Authority Guidelines, it is the responsibility of the ICANN CEO and Senior Management to identify and select sites for ICANN's Public Meetings within the budget and meetings strategy approved by the Board.

STAFF RECOMMENDATION:

Staff recommends that the Board delegate to the President and CEO, or his designee(s), the authority to take all actions necessary to enter into contracts, and make expense disbursements pursuant to those contracts, for the convention center and host hotels in Kobe, Japan, where ICANN will hold the March 2019 Public Meeting.

BOARD FINANCE COMMITTEE (BFC) RECOMMENDATION

The BFC recommends that the Board delegate to the President and CEO, or his designee(s), the authority to take all actions necessary to enter contracts, and make expense disbursements pursuant to those contracts, for the convention center and host hotels in Kobe, Japan, where ICANN will hold its March 2019 Public Meeting.

PROPOSED RESOLUTION:

Whereas, ICANN intends to hold its first Public Meeting of 2019 in the Asia Pacific region.

Whereas, staff has completed a thorough review of the proposed venues in Asia Pacific and finds the one in Kobe, Japan to be the most suitable.

Resolved (2017.06.24.xx), the Board authorizes the President and CEO, or his designee(s), to engage in and facilitate all necessary contracting and disbursements with the convention center and host hotels for the March 2019 ICANN Public Meeting in Confidential Negotiation Kobe, Japan, in an amount not to exceed Information

Resolved (2017.06.24.xx), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article III, section 5.2 of the ICANN Bylaws until the President and CEO determines that the confidential information may be released.

PROPOSED RATIONALE:

As part of ICANN's Public Meeting schedule, presently three times a year, ICANN hosts a meeting in a different geographic region (as defined in the ICANN Bylaws). ICANN 64, scheduled for 9-14 March 2019, is to occur in the Asia Pacific geographic region. A call for recommendations for the location of the meeting in North America was posted on 15 July 2016. Various parties sent proposals to ICANN.

The staff performed a thorough analysis of the proposals, as well as other venues, and prepared a paper to identify those that met the Meeting Selection Criteria (see http://meetings.icann.org/location-selection-criteria). Based on the proposals and analysis, ICANN has identified Kobe, Japan as the location for ICANN64.

The Board reviewed the staff's briefing for hosting the meeting in Kobe, Japan and the determination that the proposal met the significant factors of the Meeting Selection Criteria, as well as the related costs for facilities selected, for the March 2019 ICANN Public Meeting.

There will be a financial impact on ICANN in hosting the meeting and providing travel support as necessary, as well as on the community in incurring costs to travel to the meeting. But such impact would be faced regardless of the location and venue of the meeting. This action will have no impact on the security or the stability of the DNS.

The Board thanks all who recommended sites for ICANN64.

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

Submitted by: Nick Tomasso

Position: VP, Meetings

Date Noted: 15 May 2017

Email: <u>nick.tomasso@icann.org</u>

ICANN BOARD SUBMISSION No. 2017.06.24.1g

TITLE: November 2019 ICANN Meeting Venue

Contracting

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The Board is being asked to authorize staff to take all steps necessary to complete contracting for the convention center and host hotels in Montréal, Canada for the November 2019 ICANN Public Meeting, which require Board approval as they will exceed US\$500,000. The Reference Materials for this paper summarizes the steps taken to locate a site for the November 2019 Public Meeting, and outlines the facility costs.

As adopted in the November 2016 modifications to ICANN's Delegation of Authority Guidelines, it is the responsibility of the ICANN CEO and Senior Management to identify and select sites for ICANN's Public Meetings within the budget and meetings strategy approved by the Board.

STAFF RECOMMENDATION:

Staff recommends that the Board delegate to the President and CEO, or his designee(s), the authority to take all actions necessary to enter into contracts, and make expense disbursements pursuant to those contracts, for the convention center and host hotels in Montréal, Canada, where ICANN will hold the November 2019 Public Meeting.

BOARD FINANCE COMMITTEE (BFC) RECOMMENDATION

The BFC recommends that the Board delegate to the President and CEO, or his designee(s), the authority to take all actions necessary to enter contracts, and make expense disbursements pursuant to those contracts, for the convention center and host hotels in Montréal, Canada, where ICANN will hold its November 2019 Public Meeting.

PROPOSED RESOLUTION:

Whereas, ICANN intends to hold its third Public Meeting of 2019 in the North America region.

Whereas, staff has completed a thorough review of the proposed venues in North America and finds the one in Montréal, Canada to be the most suitable.

Resolved (2017.06.24.xx), the Board authorizes the President and CEO, or his designee(s), to engage in and facilitate all necessary contracting and disbursements with the convention center and host hotels for the November 2019 ICANN Public Meeting Confidential in Montréal, Canada, in an amount not to exceed Negotiation Information

Resolved (2017.06.24.xx), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article III, section 5.2 of the ICANN Bylaws until the President and CEO determines that the confidential information may be released.

PROPOSED RATIONALE:

As part of ICANN's Public Meeting schedule, presently three times a year, ICANN hosts a meeting in a different geographic region (as defined in the ICANN Bylaws). ICANN66, scheduled for 2-8 November 2019, is to occur in the North America geographic region. A call for recommendations for the location of the meeting in North America was posted on 15 July 2016. Various parties sent proposals to ICANN.

The staff performed a thorough analysis of the proposals, as well as other venues, and prepared a paper to identify those that met the Meeting Selection Criteria (see http://meetings.icann.org/location-selection-criteria). Based on the proposals and analysis, ICANN has identified Montréal, Canada as the location for ICANN66.

The Board reviewed the staff's briefing for hosting the meeting in Montréal, Canada and the determination that the proposal met the significant factors of the Meeting Selection Criteria, as well as the related costs for facilities selected, for the November 2019 ICANN Public Meeting.

There will be a financial impact on ICANN in hosting the meeting and providing travel support as necessary, as well as on the community in incurring costs to travel to the

meeting. But such impact would be faced regardless of the location and venue of the meeting. This action will have no impact on the security or the stability of the DNS.

The Board thanks all who recommended sites for ICANN66.

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

Submitted by: Nick Tomasso

Position: VP, Meetings

Date Noted: 15 May 2017

Email: <u>nick.tomasso@icann.org</u>

ICANN BOARD PAPER NO. 2017.06.24.1h

TITLE: Delegation of eight top-level domains representing India in various

languages to National Internet Exchange of India

PROPOSED ACTION: For Board Consideration on Consent Agenda

REFERENCE: 961259, 961260, 961261, 961262, 961263, 961264, 961265, 961266

EXECUTIVE SUMMARY:

As part of PTI's responsibilities under the IANA Naming Function contract with ICANN, PTI has prepared a recommendation to authorize the delegation of eight country-code top-level domains (.ফুটর, .ළጋരതര, .ভাৰত, .আরত, بارت. , आरतम्, .भारोत, .খাरोत, وإرت. comprised of the IDN ccTLD Fast Track approved strings representing India, to National Internet Exchange of India.

Key points of the investigation on the delegation request are:

- The strings under consideration successfully completed the Fast Track process, which deemed them an appropriate representation of India.
- The proposed manager is the National Internet Exchange of India, a not-for-profit incorporated in 2003 which currently manages the .IN (India) ccTLD as well as seven other IDN ccTLDs representing India where were delegated in 2011.
- Support for the delegation has been provided by several stakeholders of the local Internet community, including:
 - Centre for Development of Advance Computing (C-DAC), a scientific society of the Ministry of Communications and Information Technology
 - o Internet Service Providers Association of India (ISPAI)
 - The Internet & Mobile Association of India (IAMAI)
 - Cyber Café Association of India (CCAOI)
 - o Internet Society India Bangalore Chapter
 - o Internet Society India Delhi Chapter
 - o Internet Society India Kolkata Chapter
 - o Internet Society India Trivandrum Chapter

PROPOSED RESOLUTION:

Resolved (2017.06.24.xx), as part of the exercise of its responsibilities under the IANA Naming Function Contract with ICANN, PTI has reviewed and evaluated the request to delegate the eight country-code top-level domains (হুতেওঁ, এ০০০০, ভাৰত, এ।৯৪, بارت, आरतम्, आरोत, بارث, आरतम्, आरोत, بارث المحافظة المحا

representing India in various languages to National Internet Exchange of India. The documentation demonstrates that the proper procedures were followed in evaluating the request.

PROPOSED RATIONALE:

Why the Board is addressing the issue now?

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

What is the proposal being considered?

The proposal is to approve a request to create eight country-code top-level domains (.ಭಾರತ,

.⊜১০০০, .ভাৰত, .ভাৰত, .খাবন, .भारतम्, .भारोत, ্রু) representing India in various languages and assign the role of manager to the National Internet Exchange of India.

Which stakeholders or others were consulted?

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

What concerns or issues were raised by the community?

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

What significant materials did the Board review?

The Board reviewed the following evaluations:

- The domains are eligible for delegation, as they are strings that have been approved by the IDN ccTLD Fast Track process, and represent a country that is listed in the ISO 3166-1 standard;
- The relevant government has been consulted and does not object;
- The proposed manager and its contacts agree to their responsibilities for managing these

domains;

- The proposal has demonstrated appropriate local Internet community consultation and support;
- The proposal does not contravene any known laws or regulations;
- The proposal ensures the domains are managed locally in the country, and are bound under local law;
- The proposed manager has confirmed they will manage the domains in a fair and equitable manner;
- The proposed manager has demonstrated appropriate operational and technical skills and plans to operate the domains;
- The proposed technical configuration meets the technical conformance requirements;
- No specific risks or concerns relating to Internet stability have been identified; and
- Staff have provided a recommendation that this request be implemented based on the factors considered.

These evaluations are responsive to the appropriate criteria and policy frameworks, such as "Domain Name System Structure and Delegation" (RFC 1591) and "GAC Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains". As part of the process, Delegation and Transfer reports are posted at http://www.iana.org/reports.

What factors the Board found to be significant?

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

Are there positive or negative community impacts?

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

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

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

of country-code top-level domains within a country.

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

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

This is an Organizational Administrative Function not requiring public comment.

SIGNATURE BLOCK:

Submitted by: Naela Sarras

Position: Sr. Manager, IANA Services

Date Noted: 9 June 2017

Email: naela.sarras@icann.org

ICANN BOARD PAPER NO. 2017.06.24.1h

TITLE: Delegation of eight top-level domains representing India in various

languages to National Internet Exchange of India

PROPOSED ACTION: For Board Consideration on Consent Agenda

REFERENCE: 961259, 961260, 961261, 961262, 961263, 961264, 961265, 961266

EXECUTIVE SUMMARY:

As part of PTI's responsibilities under the IANA Naming Function contract with ICANN, PTI has prepared a recommendation to authorize the delegation of eight country-code top-level domains (.ಭಾರತ, .영기ののo, .ভাৰত, .영지아o, .비रतम्, .भारतम्, .भारोत, .খাरोत, (খুটেন) comprised of the IDN ccTLD Fast Track approved strings representing India, to National Internet Exchange of India.

Key points of the investigation on the delegation request are:

- The strings under consideration successfully completed the Fast Track process, which deemed them an appropriate representation of India.
- The proposed manager is the National Internet Exchange of India, a not-for-profit incorporated in 2003 which currently manages the .IN (India) ccTLD as well as seven other IDN ccTLDs representing India where were delegated in 2011.
- Support for the delegation has been provided by several stakeholders of the local Internet community, including:
 - Centre for Development of Advance Computing (C-DAC), a scientific society of the Ministry of Communications and Information Technology
 - o Internet Service Providers Association of India (ISPAI)
 - o The Internet & Mobile Association of India (IAMAI)
 - o Cyber Cafn Association of India (CCAOI)
 - o Internet Society India Bangalore Chapter
 - o Internet Society India Delhi Chapter
 - o Internet Society India Kolkata Chapter
 - o Internet Society India Trivandrum Chapter

PROPOSED RESOLUTION:

representing India in various languages to National Internet Exchange of India. The documentation demonstrates that the proper procedures were followed in evaluating the request.

PROPOSED RATIONALE:

Why the Board is addressing the issue now?

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

What is the proposal being considered?

The proposal is to approve a request to create eight country-code top-level domains (.ಭಾರತ,

.৪১০০০, .ভাৰত, .ও ওও, .بارت, .भारतम्, .भारोत, ুুুুুুুুুুুু representing India in various languages and assign the role of manager to the National Internet Exchange of India.

Which stakeholders or others were consulted?

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

What concerns or issues were raised by the community?

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

What significant materials did the Board review?

The Board reviewed the following evaluations:

- The domains are eligible for delegation, as they are strings that have been approved by the IDN ccTLD Fast Track process, and represent a country that is listed in the ISO 3166-1 standard;
- The relevant government has been consulted and does not object;
- The proposed manager and its contacts agree to their responsibilities for managing these

domains;

- The proposal has demonstrated appropriate local Internet community consultation and support;
- The proposal does not contravene any known laws or regulations;
- The proposal ensures the domains are managed locally in the country, and are bound under local law;
- The proposed manager has confirmed they will manage the domains in a fair and equitable manner;
- The proposed manager has demonstrated appropriate operational and technical skills and plans to operate the domains;
- The proposed technical configuration meets the technical conformance requirements;
- No specific risks or concerns relating to Internet stability have been identified; and
- Staff have provided a recommendation that this request be implemented based on the factors considered.

These evaluations are responsive to the appropriate criteria and policy frameworks, such as "Domain Name System Structure and Delegation" (RFC 1591) and "GAC Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains". As part of the process, Delegation and Transfer reports are posted at http://www.iana.org/reports.

What factors the Board found to be significant?

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

Are there positive or negative community impacts?

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

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

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

of country-code top-level domains within a country.

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

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

This is an Organizational Administrative Function not requiring public comment.

SIGNATURE BLOCK:

Submitted by: Naela Sarras

Position: Sr. Manager, IANA Services

Date Noted: 9 June 2017

Email: naela.sarras@icann.org

ICANN BOARD PAPER NO. 2017.06.24.1i

TITLE: Representative of the Istanbul Liaison Office

PROPOSED ACTION: Board Consideration and Approval

EXECUTIVE SUMMARY:

In 2013, the ICANN Board approved establishing a Liaison office in Istanbul. David Olive, SVP, Policy Development Support agreed to relocate to Istanbul to become the authorized representative in the Liaison Office. David has served in this role for four years and will be returning to Washington, D.C. on 31 August, 2017. Nick Tomasso, VP, Meetings, has agreed to relocate to the Istanbul Liaison office, assuming the role of authorized representative in the Liaison Office, effective 1 Sept 2017. This resolution withdraws David Olive and appoints Nick Tomasso as the authorized representative.

STAFF RECOMMENDATION:

The President and CEO recommends that the Board withdraw David Olive as the representative of the liaison office in Istanbul, Turkey effective 31 August 2017, and appoint Nicholas Tomasso to this role, effective 1 September 2017, with the authority to act individually on behalf of ICANN in connection with the activities of the Liaison Office.

PROPOSED RESOLUTION:

Whereas, the Internet Corporation for Assigned Names and Numbers, a non-profit, public benefit corporation, duly incorporated and existing under the laws of the State of California and the United States of America, having its principal place of business at 12025 E. Waterfront Drive, Suite 300, Los Angeles, California USA 90094 (ICANN), has established a liaison office in Istanbul, Turkey (Liaison Office).

Whereas, by resolution 2013.04.11.03, the ICANN Board appointed David Olive as representative of the Liaison Office, with each and every authority to act on behalf of the Liaison Office.

Whereas, Mr. Olive's role as authorized representative of the Liaison Office will end on 31 August 2017.

Resolved (2017.06.24.xx), effective 31 August 2017, David Olive is removed from his duties as the authorized representative of ICANN's Liaison Office in Istanbul, Turkey, for any and all purposes.

Resolved (2017.06.24.xx), as of 1 September 2017, Nicholas Tomasso, Contact Contact Information Redacted

is

appointed as the representative of the Liaison Office in Istanbul, Turkey, with each and every authority to act individually on behalf of ICANN in connection with the activities of the Liaison Office.

PROPOSED RATIONALE:

ICANN is committed to continuing its global reach and presence in all time zones throughout the globe. One of the early key aspects of ICANN's globalization efforts was to establish offices in Turkey and Singapore.

ICANN formally registered a Liaison Office in Istanbul, Turkey on 18 June 2013. In order to properly have a Liaison Office in Turkey, the ICANN Board is required to designate a Liaison Office representative. To that end, the Board initially designated David Olive as the first representative of ICANN's Liaison to help ICANN establish the Liaison Office in Istanbul and agreed to serve in this role for two years. Mr. Olive then extended his stay for two additional years. ICANN thanks Mr. Olive for his many efforts to build a stable, successful office.

As Mr. Olive is relocating to another ICANN office, the Board must designate a new representative. Nicholas Tomasso has agreed to relocate to Istanbul and to be the new designated Liaison Office representative.

This is the first change of legal representative of the Liaison Office. The identification and designation of a new representative demonstrates the ICANN organizations commitment to globalization.

There will be a fiscal impact on ICANN only to the extent of relocation and other related costs, but such impact has been taken into account in the FY18 budget. This

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

This is an Organizational Administrative Function not requiring public comment.

Signature Block:

Submitted by: Goran Marby

Position: President & CEO

Date Noted: 23 June 2017

Email: <u>Goran.marby@icann.org</u>

Draft: 16 June 2017

ICANN BOARD PAPER NO. 2017.06.24.1j

TITLE: Brussels Branch Manager and Legal

Representative

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

By resolution 05.79, the ICANN Board appointed Olof Nordling as branch manager and legal representative in Brussels, Belgium in 2005. Mr. Nordling will retire from his employment with ICANN effective 31 July 2017. Jean-Jacques Sahel, Vice-President, Stakeholder Engagement – Europe has agreed to assume the role of branch manager and legal representative in Brussels, effective 1 August 2017. The Board is being asked to withdraw Mr. Nordling's authority to act as branch manager and legal representative in Brussels and appoint Mr. Sahel to this role and delegate specific powers to him to enable him to carry out this role.

STAFF RECOMMENDATION:

The President and CEO recommends that the Board withdraw Olof Nordling's authority to act as the branch manager and legal representative in Belgium, effective 31 July 2017, and appoint Mr. Jean Jacques Sahel to this role and delegate the specific powers to him to enable him to carry out this role, effective 1 August 2017.

PROPOSED RESOLUTION:

Whereas, the Internet Corporation for Assigned Names and Numbers, a non-profit, public benefit coporation, duly incorporated and existing under the laws of the State of California and the United States of America, having its principal place of business at 12025 E. Waterfront Drive, Suite 300, Los Angeles, California USA 90094 ("ICANN"), has established a branch office of a non-profit foreign entity in Belgium, currently residing at 6 Rond Point Schuman, b. 5, 1040 Brussels under the name of Internet Corporation for Assigned Names and Numbers;

Contact Information ng, Redacted

Whereas, by resolution 05.79 of the ICANN Board, Olof Nordling, Redacted

, was appointed as the branch manager and legal representative in

Belgium, to serve in this capacity until his appointment is withdrawn by resolution of this Board of Directors.

Whereas, Olof Nordling's role as the branch manager and legal representative in Belgium will end on 31 July 2017 upon his retirement from the corporation.

Whereas, effective 1 August 2017, Jean-Jacques Sahel, Contact Information Redacted

, will assume the duties of the branch manager and legal representative in Belgium.

Resolved (2017.24.xx), Olof Nordling's authority to act as branch manager and legal representative for ICANN's branch office in Brussels, Belgium shall be withdrawn, effective 31 July 2017.

Resolved (2017.24.xx), Jean-Jacques Sahel shall be the new branch manager and legal representative for ICANN's branch office in Brussels, Belgium, effective 1 August 2017 and Mr. Sahel shall not be remunerated for this role.

Resolved (2017.24.xx), Jean-Jacques Sahel be delegated full power to carry out the daily management of ICANN's branch office in Brussels, Belgium including, but not limited to, the following specific powers regarding the operations of such branch:

- 1. Represent the corporation vis-à-vis all public authorities, whether governmental, regional, provincial, municipal or other, the Commercial Courts, Crossroads Bank for Enterprises, the Corporate Counters, the Tax Authorities, including the V.A.T. administration, the Postal Checks service, customs, postal, telephone and telegraph services, and all other public services and authorities.
- Sign daily correspondence, receive and sign receipts for registered letters or
 parcels addressed to the corporation through the post, the customs, the rail-, airand other transport companies and services.

Draft: 16 June 2017

3. Take out, sign, transfer or cancel all insurance policies and all contracts for supply of water, gas, power, telephone and other utilities for the branch, and pay invoices, bills and other dues relating thereto.

- 4. Sign and accept all quotations, contracts and orders for the purchase or sale of office equipment and other investment goods, services and supplies necessary for the functioning of the branch which do not obligate the corporation to expend more than 500 Euro.
- 5. Take or grant leases, including long term leases, on real estate, equipment or other fixed assets and enter into leasing agreements with respect to the same, upon approval from President and CEO of ICANN or ICANN's Board of Directors.
- 6. Claim, collect and receive sums of money, documents or property of any kind and sign receipts with respect thereto.
- 7. Affiliate the branch with all professional or business organizations.
- 8. Represent the branch in court or arbitration proceedings, as plaintiff or defendant, take all necessary steps with respect to the above proceedings, obtain all judgments, and have them executed.
- 9. Draft all documents and sign all papers in order to be able to exercise the powers listed above.
- 10. Adopt all necessary measures to implement the resolutions and recommendations of the Board of Directors.
- 11. Move the branch to any other location in Belgium upon approval of the ICANN President and CEO or the ICANN Board of Directors.

PROPOSED RATIONALE:

ICANN is committed to continuing its global reach and presence in all time zones throughout the globe. To this end, the ICANN Board passed resolutions establishing a branch office in Belgium and in 2005 appointed Olof Nordling as the branch manager

Draft: 16 June 2017

and legal representative with associated delegated powers to commit these duties. Mr.

Nordling's will retire from his employment with ICANN on 31 July 2017. This will

require the Board to appoint a new branch manager and legal representative. This

resolution, appointing Mr. Sahel as the branch manager and legal representative with

delegation of the specific powers required to manage the branch, continues ICANN's

effective management of the branch office following the retirement of the current

branch manager and legal representative.

There will be a fiscal impact on ICANN only to the extent of expenses regular travel

related costs, but such impact has been taken into account in the FY18 budget.

This resolution is not intended to have any impact on the security, stability and

resiliency of the domain name system.

This is an Organizational Administrative Function not requiring public comment.

Signature Block:

Submitted by: Goran Marby

Position: President & CEO

Date Noted: 23 June 2017

Email: <u>Goran.marby@icann.org</u>

ICANN BOARD PAPER NO. 2017.06.24.2a

TITLE: FY18 Operating Plan and Budget, the FY18 IANA

Budget and the FY18 Five-Year Operating Plan

Update Approval

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

As required by Section 22.4 (a) of the ICANN Bylaws, the draft FY18 Operating Plan and Budget, the draft FY18 IANA Budget and the FY18 Five-Year Operating Plan Update have been developed by ICANN Organization and were posted for public comment and discussion on 08 March 2017. Since the initial posting, changes have been made to the draft FY18 Operating Plan and Budget resulting from ICANN Organization's analysis and public input. In addition, other consultations were held with ICANN Organization, Board and community members. All public comments have been taken into consideration, and where appropriate and feasible, have been incorporated and a final FY18 Operating Plan and Budget, the FY18 IANA Budget and the FY18 Five-Year Operating Plan Update have been developed. Per the Bylaws, the FY18 Operating Plan and Budget, FY18 IANA Budget and the FY18 Five-Year Operating Plan Update are to be adopted by the Board and then posted on the ICANN website.

Further, per section 3.9 of each of the three currently effective Registrar Accreditation Agreements, and as needed to develop the budget, the Board must establish the Variable Accreditation Fee that the Registrars are required to pay. The Registrar Variable Fees are set forth in the FY18 Operating Plan and Budget.

BOARD FINANCE COMMITTEE (BFC) RECOMMENDATION:

The BFC has recommended, after careful consideration of the public comments received and the corresponding responses, that the Board approve the FY18 Operating Plan and Budget, the FY18 IANA Budget and the Five Year Operating Plan Update.

PROPOSED RESOLUTION:

Whereas, the draft FY18 Operating Plan and Budget, the FY18 IANA Budget and the FY18 Five Year Operating Plan Update were posted for public comment in accordance with the Bylaws on 08 March 2017, which was based upon community consultations, and consultations with ICANN Organization and the Board Finance Committee, during the current fiscal year.

Whereas, on 19 April 2017, the Board evaluated and approved the Supporting Organization (SO) and Advisory Committee (AC) additional budget requests.

Whereas, comments received through the public comment process were discussed by ICANN Organization members during several calls with representatives of the ICANN bodies that submitted them, to help ensure the comments were adequately understood and appropriate consideration was given to them. The results of the calls and responses to the comments have been thoroughly discussed will the BFC members.

Whereas, the public comments received were considered to determine required revisions to the draft FY18 Operating Plan and Budget, the FY18 IANA Budget and the FY18 Five-Year Operating Plan Update.

Whereas, in addition to the public comment process, ICANN actively solicited community feedback and consultation with the ICANN Community by other means, including conference calls, meetings at ICANN 58 in Copenhagen and email communications.

Whereas, at each of its recent regularly scheduled meetings the Board Finance Committee (BFC) has discussed, and guided ICANN Organization on the development of the FY18 Operating Plan and Budget, the FY18 IANA Budget and the FY18 Five-Year Operating Plan Update.

Whereas, the BFC met on 09 June 2017 to review and discuss the suggested changes resulting from public comment, the final FY18 Operating Plan and Budget, the FY18 IANA Budget and the FY18 Five Year Operating Plan Update, and recommended that the Board adopt the FY18 Operating Plan and Budget, the FY18 IANA Budget and the FY18 Five Year Operating Plan Update.

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

Whereas, the description of the Registrar fees, including the recommended Registrar Variable Accreditation Fees, for FY18 has been included in the FY18 Operating Plan and Budget.

Resolved (2017.06.24.xx), the Board adopts the FY18 Operating Plan and Budget, including the FY18 ICANN Caretaker Budget that will be in effect until the Board decision becomes effective. A Board decision that is the subject of a rejection power by the Empowered Community (EC) becomes effective 28 days after the ICANN Secretary notification to the EC of Board approval. The adoption of the FY18 Operating Plan and Budget establishes the Variable Accreditation Fees (per registrar and transaction) as set forth in the FY18 Operating Plan and Budget.

Resolved (2017.06.24.xx), the Board adopts the FY18 IANA Budget, including the FY18 IANA Caretaker Budget that will be in effect until the Board decision becomes effective. A Board decision that is the subject of a rejection power by the EC becomes effective 28 days after the ICANN Secretary notification to the EC of Board approval.

Resolved (2017.06.24.xx), the Board adopts the FY18 Five Year Operating Plan Update.

PROPOSED RATIONALE:

In accordance with Section 22.4 of the ICANN Bylaws, the Board is to adopt an annual budget and publish it on the ICANN website. On 08 March 2017, drafts of the FY18 Operating Plan and Budget, the FY18 IANA Budget and the FY18 Five Year Operating Plan Update were posted for public comment. The Public Technical Identifiers (PTI) Board approved the PTI Budget on 18 January 2017, and the PTI Budget was received as input into the FY18 IANA Budget.

The published draft FY18 Operating Plan and Budget and the FY18 IANA Budget were based on numerous discussions with members of ICANN Organization and the ICANN Community, including extensive consultations with ICANN Supporting Organizations, Advisory Committees, and other stakeholder groups throughout the prior several months.

The comments received from the public comment process resulted in some revisions to the 08 March 2017 draft FY18 Operating Plan and Budget. Notably the following consultation activities were carried out:

- 08 September 2017 and 13 September 2017 Community webinar on the FY18 Planning Schedule
- 08 November 2016: A four-hour budget working group session on the FY18 Budget assumptions was held in Hyderabad with over 15 community members, ICANN Organization members and Asha Hemrajani, Chair of the Board Finance Committee (BFC).
- 14 March 2017 a three hour budget working group session on the FY18 Operating
 Plan and Budget with over 15 community members, ICANN Organization members
 and Asha Hemrajani, Chair of the Board Finance Committee (BFC).
- 08 May 2017: Review/discussion with the Business Constituency (BC), the
 Intellectual Property Constituency (IPC), and the Internet Service Providers and
 Connectivity Providers Constituency (ISPCP) about the public comments submitted
 by these groups on FY18 Operating Plan & Budget (BFC members were advised).
- 09 May 2017: Review/discussion with the Non-Commercial Stakeholder Group (NCSG), the Non-Commercial Users Constituency (NCUC), the Not-for-Profit Operational Concerns Constituency (NPOC) and the Generic Names Supporting Organization (GNSO) Council about public comments submitted by these groups on FY18 Operating Plan & Budget (BFC members were advised).
- 15 May 2017: Review/discussion with the Registry Stakeholder Group of the FY18
 Operating Plan & Budget about the public comments submitted by this group (Board member attending: Asha Hemrajani)

All comments received in all manners were considered in developing the FY18 Operating Plan and Budget, the FY18 IANA Budget and the FY18 Five Year Operating Plan Update. Where feasible and appropriate these inputs have been incorporated into the final FY18 Operating Plan and Budget, the FY18 IANA Budget and the FY18 Five Year Operating Plan Update proposed for adoption.

In addition to the day-to-day operational requirements, the FY18 Operating Plan and Budget includes the FY18 new gTLD budget items and amounts allocated to various FY18 budget requests received from community leadership. The FY18 Operating Plan and Budget also

discloses financial information on the New gTLD Program, relative to expenses, funding and

net remaining funds. Further, because the Registrar Variable Accreditation Fee is key to the

development of the budget, the FY18 Operating Plan and Budget sets out and establishes

those fees, which are consistent with recent years, and will be reviewed for approval by the

Registrars.

The FY18 Operating Plan and Budget, the FY18 IANA Budget and the FY18 Five Year

Operating Plan Update, all will have a positive impact on ICANN in that together they

provide a proper framework by which ICANN will be managed and operated, which also

provides the basis for the organization to be held accountable in a transparent manner. This

will have a fiscal impact on ICANN and the Community as is intended. This should have a

positive impact on the security, stability and resiliency of the domain name system (DNS)

with respect to any funding that is dedicated to those aspects of the DNS.

This is an Organizational Administrative Function that has already been subject to public

comment as noted above.

Submitted By: Xavier Calvez, Chief Financial Officer

Date Noted: 12 June 2017

Email: xavier.calvez@icann.org

ICANN BOARD PAPER NO. 2017.06.24.2b

TITLE: Board Consideration of SSAC Recommendations

from SAC062, SAC063, SAC064, SAC065, SAC070,

and SAC073

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The Security and Stability Advisory Committee (SSAC) publishes advisories with recommendations to the ICANN Board relating to matters of security and stability. The ICANN organization has evaluated these documents and has made recommendations regarding implementation in the accompanying scorecard "Implementation Recommendations for SSAC Advice Documents SAC062, SAC063, SAC064, SAC065, SAC070, and SAC073 (08 June 2017)."

This scorecard is intended to represent SAC documents that pre-date the Action Request Registry (ARR).

This scorecard specifically addresses these following SAC documents and recommendations:

- SAC062: SSAC Advisory Concerning the Mitigation of Name Collision Risk (Nov 2013)
- SAC063 Recommendations 2 and 5: SSAC Advisory on DNSSEC Key Rollover in the Root Zone (Nov 2013)
- SAC064 Recommendations 2 and 3: SSAC Advisory on DNS "Search List" Processing (Feb 2014)
- SAC065 Recommendation 1: SSAC Advisory on DDoS Attacks Leveraging DNS Infrastructure (Feb 2014)
- SAC070 Recommendations 3, 4a, 5, and 6: SSAC Advisory on the Use of Static TLD / Suffix Lists (May 2015)

• SAC073: SSAC Comments on Root Zone Key Signing Key Rollover Plan (Nov 2015)

The Board is being asked to consider and adopt the ICANN organization's recommendations within the scorecard "Implementation Recommendations for SSAC Advice Documents SAC062, SAC063, SAC064, SAC065, SAC070, and SAC073 (08 June 2017)." The draft scorecard is attached to this briefing paper. The scorecard includes: the text of the SSAC advice; the ICANN organization's confirmed understanding of the advice item, the ICANN organization's recommendation for implementation, background on the advice, and the ICANN organization's proposed solution to address the advice.

STAFF RECOMMENDATION:

Staff recommends that the Board adopt the scorecard "Implementation Recommendations for SSAC Advice Documents SAC062, SAC063, SAC064, SAC065, SAC070, and SAC073 (08 June 2017)" to address the SSAC's advice.

PROPOSED RESOLUTION:

Whereas, the Security and Stability Advisory Committee (SSAC) submitted recommendations in SAC Documents: SAC062, SAC063, SAC064, SAC065, SAC070 and SAC073.

Whereas, the ICANN organization has evaluated the feasibility of the SSAC's advice and developed implementation recommendations for each.

Whereas, the Board has considered the SSAC Advice and the ICANN organization's implementation recommendations relating to this advice.

Resolved (2017.06.24.xx), the Board adopts the scorecard titled "Implementation Recommendations for SSAC Advice Documents SAC062, SAC063, SAC064, SAC065, SAC070, and SAC073 (08 June 2017)." [INSERT LINK TO FINAL SSAC ADVICE SCORECARD ADOPTED BY BOARD], and directs the CEO to implement the advice as described in the scorecard.

PROPOSED RATIONALE:

The Action Request Register is a framework intended to improve the process for the Board's consideration of recommendations to the ICANN Board, including advice from its Advisory Committees. This framework has been under development since 2015, and as part of the initial effort, the ICANN organization reviewed SSAC Advice issued between 2010 and 2015 to identify items that had not yet received Board consideration. The results of this initial review were communicated to the SSAC Chair in a letter from the Chair of the ICANN Board on 19 October 2016 (see https://www.icann.org/en/system/files/correspondence/crocker-to-faltstrom-19oct16-en.pdf). This resolution is intended to address several of items that were identified as open at that time, as well as two items identified as being part of the "pilot" process.

As part of the Action Request Register process, for each advice item presented with this resolution, the ICANN organization has reviewed the request, confirmed its understanding of the SSAC's request with the SSAC, and evaluated the feasibility of the request. The ICANN organization is presenting its recommendations to the Board in the scorecard [INSERT LINK TO FINAL SCORECARD] so that the Board may formally consider the advice and direct the CEO to address the advice appropriately.

Background information on each advice document is provided below:

SAC062 recommends that ICANN should work with the broader Internet community to identify what strings are appropriate to reserve for private namespace use and what type of private namespace use is appropriate. ICANN's Office of the CTO continues to be active in the IETF Working Group DNSOP on specifying a process to reserve special use names. This effort will update RFC6761 (see https://www.icann.org/en/system/files/files/sac-062-en.pdf).

SAC063 recommends that ICANN staff should lead, coordinate and otherwise encourage the creation of a testbed to analyse behaviors of validating resolver implementations that may affect or be affected by the root KSK rollover. As part of the root KSK rollover project, ICANN's Office of the CTO continues its work with the resolver testbed that the

research team has created to study the behavior of DNSSEC validators under various operational conditions. (See https://www.icann.org/en/system/files/files/sac-063-en.pdf)

SAC064 addresses "Search List" processing behavior. In this context, a search list is a list of domains that are appended to a user's input of a partial domain name in order to form a fully qualified domain name. Recommendation 2 suggests that ICANN staff should work with the DNS community and the IETF to encourage the standardization of search list processing behavior. Recommendation 3 suggests ways to consider in which search list behavior could help mitigate name collisions. ICANN staff can facilitate both recommendations though there could be an impact on cost and resources in order to do so. (See https://www.icann.org/en/system/files/files/sac-064-en.pdf.)

SAC065 is an advisory on DDoS attacks leveraging DNS infrastructure and Recommendation 1 indicates that ICANN should help facilitate an Internet-wide community effort to reduce the number of open resolvers and networks that allow network spoofing. Upon the creation of such a community effort, ICANN should provide measurement and outreach support with appropriate allocation of staff and funding. (See https://www.icann.org/en/system/files/files/sac-065-en.pdf.)

SAC070 is an advisory about Public Suffix Lists (PSL). Although there is no consensus definition of a PSL, SAC defines it as "a domain in which multiple parties that are unaffiliated with the owner of the public suffix may register subdomains." Although multiple PSLs exist, the Mozilla Foundation's PSL appears to be the most widely accepted. Recommendation 3 suggests that ICANN work with the Mozilla Foundation to create informational material about the Mozilla Foundation's PSL that can be given to registry operators. Recommendation 4a suggests that the Internet community should standardize the approach to PSLs and ICANN and the work being done with universal acceptance should encourage the software development community to support the use of PSLs. Recommendation 5 suggest that IANA should host a PSL containing information about the domains within the registries with which IANA has direct communication. Recommendation 6 suggests that parties working on universal acceptance such as the UASG include the use of a PSL and actions of a PSL as part of their work. ICANN can

consult with the Mozilla Foundation and the larger ICANN community to the desirability of educational materials and, if desirable, ICANN's Office of the CTO would have to consider the prioritization into its project load as well as costs and other factors. The Universal Acceptance Steering Group (UASG) already recommends that TLDs are validated where necessary and makes specific reference to SAC070 in its UA documentation. However, the UASG does not currently recommend the use of the Mozilla Foundation PSL because the UASG does not have confidence that it is authoritative. It is also not clear that there would be a benefit for IANA to create and host a separate PSL as the Mozilla Foundation PSL is already the most widely used PSL. Community consultation would be required. (See

https://www.icann.org/en/system/files/files/sac-070-en.pdf.)

SAC073 contains comments on the Root Zone Key Signing Key (KSK) Rollover Plan, addressing the following topics: Terminology and definitions relating to DNSSEC key rollover in the root zone, Key management in the root zone, motivations for root zone KSK rollover, risks associated with root zone KSK rollover, mechanisms for root zone KSK rollover, quantifying the risk of failed trust anchor update, and DNS response size considerations. ICANN's Office of the CTO and Public Technical Identifiers (PTI) are jointly responsible for the planning and execution of the root zone KSK rollover project and a report as requested in SAC073 should be written to address the comments in SAC073. (See https://www.icann.org/en/system/files/files/sac-073-en.pdf.)

Signature Block:

Submitted by: David Conrad

Position: Chief Technology Officer

Date Noted: 8 June 2017

Email: david.conrad@icann.org

ICANN BOARD PAPER NO. 2017.06.24.2c

TITLE: Renewal of .NET Registry Agreement

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The Board is being asked to approve the proposed Renewal Registry Agreement with Verisign, Inc. (the "Registry Operator" or "Verisign"), for .NET, which is set to expire on 30 June 2017 and was originally executed on 01 January 1985

This proposal is the result of bilateral discussions and agreement reached between ICANN and Verisign, and is based on the current .NET Registry Agreement with modifications agreed upon by ICANN and Verisign. The proposed .NET Renewal Registry Agreement includes certain provisions incorporated into legacy generic Top Level Domain (gTLD) Registry Agreements (such as from the .ORG Registry Agreement, dated 22 August 2013), as well as certain provisions from the base New gTLD Registry Agreement.

The proposed .NET Renewal Registry Agreement includes certain provisions consistent with those in the New gTLD Registry Agreement including the adoption of the escrow format for data escrow deposits and Bulk Registration Data Access files (BRDA), adoption of the Application Program Interface (API) Specification for data escrow reporting, Registration Data Directory Services (i.e. Whois) Specifications, and incorporating the Zone File Access requirements.

The proposed .NET Renewal Registry Agreement has been revised to incorporate some of the provisions in the .ORG Registry Agreement, which are also consistent with the provisions of the New gTLD Registry Agreement. These include contractual compliance audit provisions and a termination provision related to Verisign's bankruptcy.

New provisions for the proposed .NET Renewal Registry Agreement include Verisign's acknowledgement that ICANN may take certain compliance actions with respect to ICANN-accredited registrars, similar to the .ORG Registry Agreement. Additionally, Verisign's indemnification obligations have been revised such that Verisign will not be obligated to

indemnify ICANN if a claim arose due to the willful misconduct of ICANN, which is consistent with the .COM Registry Agreement and the New gTLD Registry Agreement. Verisign has also agreed to initiate negotiations at least 6 months prior to the expiration date of the .NET Registry Agreement to facilitate future renewal negotiations and provide the ICANN community with the same visibility as to the timing of renewal negotiations. Finally, the parties have agreed to enter into good faith negotiations to: (i) within 120 days following the Effective Date, amend the .NET Registry Agreement, including applicable Appendices, to implement an emergency transition process for the interim operation of the registry and (ii) within 6 months of the Effective Date, develop a transition plan for the timing and process by which monthly reports for the .NET registry will transition to the content and formatting set forth in Specification 3 of the New gTLD Registry Agreement.

From 20 April 2017 through 30 May 2017, ICANN posted the proposed renewal of the .NET Registry Agreement for public comment. At the time this report was drafted, twenty three comments were added to the forum.

ICANN ORGANIZATION RECOMMENDATION:

ICANN organization recommends that the Board approve the proposed Renewal Registry Agreement with Verisign for the continued operation of the .NET TLD.

PROPOSED RESOLUTION:

Whereas, ICANN commenced a public comment period from 20 April 2017 through 30 May 2017 on the proposed Renewal Registry Agreement for the .NET TLD.

Whereas, the .NET Renewal Registry Agreement includes new and modified provisions consistent with the comparable terms of the .ORG Registry Agreement and .COM Registry Agreement.

Whereas, the .NET Renewal Registry Agreement includes new provisions consistent with the comparable terms of the New gTLD Base Registry Agreement.

Whereas, the public comment forum on the proposed Renewal Registry Agreement closed on 30 May 2017, with ICANN receiving comments from twenty three (23) independent organizations and individuals. A summary and analysis of the comments were provided to the Board.

Whereas, the Board has determined that no revisions to the proposed .NET Renewal Registry Agreement are necessary after taking the comments into account.

Resolved (2017.06.24.xx), the proposed .NET Renewal Registry Agreement is approved and the President and CEO, or his designee(s), is authorized to take such actions as appropriate to finalize and execute the Agreement.

PROPOSED RATIONALE:

Why is the Board addressing the issue now?

ICANN and Verisign entered into a <u>Registry Agreement</u> on <u>01 July 2005</u> for operation of the .NET top-level domain. The current .NET Registry Agreement expires on 30 June 2017. The proposed Renewal Registry Agreement was posted for public comment between 20 April 2017 and 30 May 2017. At this time, the Board is approving the proposed .NET Renewal Registry Agreement for the continued operation of the .NET TLD by Verisign.

What is the proposal being considered?

The proposed .NET Renewal Registry Agreement, approved by the Board, is based on the current .NET Registry Agreement with modifications agreed upon by ICANN and Verisign, and includes certain provisions incorporated into legacy gTLD Registry Agreements (such as from the .ORG Registry Agreement, dated 22 August 2013), as well as certain provisions from the base New gTLD Registry Agreement.

Which stakeholders or others were consulted?

ICANN organization conducted a public comment period on the proposed .NET Renewal Registry Agreement package of terms from 20 April 2017 through 30 May 2017. Subsequently, ICANN summarized, analyzed and published a report of public comments. Additionally, ICANN engaged in bilateral negotiations with the Registry Operator to agree to the package of terms to be included in the proposed .NET Renewal Registry Agreement that was posted for public comment.

What concerns or issues were raised by the community?

The public comment forum on the proposed .NET Renewal Registry Agreement closed on 30 May 2017, with ICANN organization receiving twenty three (23) comments. The comments were comprised of commentary from twenty three (23) independent organizations summarized in the five main categories listed below.

- 1. Registry Pricing (Section 7.3) While Section 7.3 of the Registry Agreement did not change, many comments focused on the permitted annual 10% increase in registration fees available through the term of the .NET Registry Agreement. Most oppose the available increase in fees while one commenter stated that ICANN is not in the position to be a "price regulator" and didn't object the price increases as long the annual 10% price cap remains intact and does not apply to the .COM Registry Agreement coming up for renewal in 2018.
- 2. Registry Fees to ICANN (Section 7.2) Comments centered on the \$0.75 fee Verisign pays to ICANN per .NET domain registration and why it is different from the \$0.25 for other top-level domains. Concerns centered on the unfairness of having the burden of the extra cost being passed on to registrants and the value of the extra fees and how ICANN uses those fees. Requests were made to provide more insight and accountability as to how the funds are distributed to support ICANN's ongoing mission to enhance the security and stability of the DNS and Internet and to improve participation in the Internet community.
- 3. Registry Agreement The community voiced concerns that the .NET Registry
 Agreement has a presumptive renewal clause and believe the agreement should be open
 for competitive bid. Commenters consider the presumptive renewal to be noncompetitive for one registry operator to manage the two highest volume TLDs. As noted
 in the summary and analysis of the comments, the renewal provisions in the current .NET
 Registry Agreement are generally consistent with all other gTLD Registry Agreements.
 These renewal provisions encourage long-term investment in robust TLD operations, and
 this has benefitted the community in the form of reliable operation of the registry
 infrastructure. ICANN does not have the right under the current .NET Registry
 Agreement to unilaterally refuse to renew the agreement or to bifurcate registry
 functions.

- 4. Exclusion of Rights Protection Management The community was split with regard to the exclusion of the new gTLD rights protection mechanisms and safeguards in legacy gTLDs: Some commenters expressed support for the exclusion of certain rights protection mechanisms, such as Uniform Rapid Suspension and Trademark Post-Delegation Dispute Resolution Procedure, and the exclusion of the Public Interest Commitments (i.e., safeguards) contained in the New gTLD Registry Agreement stating that these are not consensus policies and registries should wait until a final decision is made via the Generic Names Supporting Organization (GNSO) Policy Development Process (PDP). Others expressed concern over the exclusion of New gTLD rights protection mechanisms arguing that the provisions should not be borne only by new gTLD Registry Operators.
- 5. Negotiation Process Commenters noted that while the new .NET Registry Agreement incorporates important technical and operational advantages from the new gTLD Registry Agreement it does not go far enough and should adopt the new gTLD Registry Agreement. Commenters suggested that if .NET does not transition to the new gTLD Registry Agreement more should be done to harmonize the provisions for consistency among Registry Agreements. Further, commenters noted a lack of transparency in the negotiation process between ICANN and Verisign and requested more exposure to the negotiation process before a Registry Agreement is finalized.

What significant materials did the Board review?

As part of its deliberations, the Board reviewed various materials, including, but not limited to, the following materials and documents:

- Proposed .NET Renewal Registry Agreement
- Redline showing changes compared to the current .NET Registry Agreement
- Redline of the new Appendices 1, 2, 3, and 5 compared to their applicable Specifications in the base New gTLD Registry Agreement
- Summary of changes
- Summary and analysis of public comments

What factors has the Board found to be significant?

The Board carefully considered the public comments received for the .NET Renewal Registry Agreement, along with the summary and analysis of those comments. The Board also considered the terms agreed upon by the Registry Operator as part of the bilateral negotiations with ICANN organization. While the Board acknowledges the concerns expressed by some community members regarding the 10% annual increase, the Board recognizes that the Registry Operator is allowed to determine the charge for .NET domain registrations within the price cap provisions of the .NET Registry Agreement. Further, the Board understands that the pricing provision was not changed from the previous agreement and the 10% is capped and arguably allows the Registry Operator to increase prices to account for inflation and increased costs/investments.

The Board also acknowledges concerns expressed by community members regarding the continuation of the \$0.75 registration fee paid to ICANN, which is higher than the \$0.25 paid by other TLDs, and supports the utilization of those funds to support the security and stability of the DNS and the Internet. Further, the Board encourages more activities to expand the Internet community by which the funds support ICANN projects such as the Fellowship Program and supports more efforts for ICANN to be transparent in the use of those funds for the intended activities.

While the Board acknowledges the concerns expressed by some community members regarding the exclusion of the Uniform Rapid Suspension, Post-Delegation Dispute Resolution Procedure, and Public Interest Commitments in the .NET Renewal Registry Agreement, the Board notes that the inclusion of the these provisions is based on the bilateral negotiations between ICANN organization and the Registry Operator. The Uniform Rapid Suspension, Post-Delegation Dispute Resolution Procedure, and Public Interest Commitments have not been adopted as Consensus Policy. As such, ICANN organization has no ability to make these provisions mandatory for any TLDs other than new gTLD applicants who applied during the 2012 New gTLD round. However, a legacy registry operator may agree to adopt these provisions during bilateral negotiations, including as a result of moving to the New gTLD Registry Agreement. Accordingly, the Board's approval of the proposed .NET Renewal Registry Agreement does not decree the exclusion of Uniform Rapid Suspension, Post-Delegation Dispute Resolution Procedure, or Public Interest Commitments as mandatory requirements for legacy TLDs. These

provisions, or lack thereof, are only adopted on a case-by-case basis as a result of bilateral negotiations.

The Board acknowledges comments questioning whether the negotiation process for renewing and amending legacy registry agreements is transparent enough and how the .NET Renewal Registry Agreement was arrived at. All registry operators have the ability to negotiate the terms of their Registry Agreement with ICANN organization, which inherently means discussions between the two contracted parties – ICANN and the applicable Registry Operator. This was the case with Verisign and the .NET Renewal Registry Agreement. The Board notes the process is straightforward and involves discussions between the two parties until agreement is reached. Once agreement is reached, ICANN organization invites community feedback through the public comment process to ensure transparency and to collect valuable input. The Board also notes that the .NET Renewal Registry Agreement contains new provisions that require the parties to commence renewal discussions at least six months prior to the expiration of the .NET Renewal Registry Agreement, which should provide the ICANN community awareness off the timing of the renewal thereof.

The Board notes that current .NET Registry Agreement calls for presumptive renewal of the agreement at its expiration so long as certain requirements are met. The .NET Renewal Registry Agreement is subject to the negotiation of renewal terms reasonably acceptable to ICANN and the Registry Operator. The renewal terms approved by the Board are the result of the bilateral negotiations called for in the current .NET Registry Agreement, and remaining on the existing form while updating provisions to be more in line with the New gTLD Registry Agreement would not violate established GNSO policy. The provisions adopted from the new form of the New gTLD Registry Agreement offers positive technical and operational advantages, in addition to benefits to registrants and the Internet community the adoption of the escrow format for data escrow deposits and BRDA (Bulk Registration Data Access) files, adoption of the API Specification for data escrow reporting, and Registration Data Directory Services (e.g. Whois) Specifications.

Are there positive or negative community impacts? The Board's approval of the .NET Renewal Registry Agreement offers positive technical and operational benefits. The adoption of certain provisions from the New gTLD Registry Agreement will provide consistency across all

registries leading to a more predictable environment for end-users. For example, the fact the

.NET Renewal Registry Agreement mandates the use of accredited registrars that are subject to

the Registrar Accreditation Agreement provides numerous benefits to registrars and registrants.

Are there fiscal impacts or ramifications on ICANN organization (e.g. strategic plan,

operating plan, budget), the community, and/or the public?

There is no significant fiscal impact expected from the .NET Renewal Registry Agreement.

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

The .NET Renewal Registry Agreement is not expected to create any security, stability, or

resiliency issues related to the DNS. The .NET Renewal Registry Agreement includes terms

intended to allow for swifter action in the event of certain threats to the security or stability of the

DNS, as well as other technical benefits expected to provide consistency across all registries

leading to a more predictable environment for end-users.

Signature Block:

Submitted by: Akram Atallah

Position: President, Global Domains Division

Date Noted: 09 June 2017

Email: akram.atallah@icann.org

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AGENDA - 24 JUNE 2017 REGULAR BOARD Meeting

Last Updated 23 June

Time, etc.	Agenda Item	Shepherd
Assembly, Roll Call & Consent Agenda Vote	1. Consent Agenda	
	1.a. Board Meeting Minutes from 18 May 2017	John Jeffrey
	1.b. Appointment of new members to the SSAC	Ram Mohan
	1.c. Approval of GNSO Business Constituency Charter	Rinalia Abdul Rahim
	1.d. March 2019 ICANN Meeting Venue Contracting	Asha Hemrajani
	1.e. November 2019 ICANN Meeting Venue Contracting	Asha Hemrajani
	1.f. Delegation of eight Internationalized Domain Names representing India to the National Internet exchange of India (NIXI)	Khaled Koubaa

AGENDA - 24 JUNE 2017 REGULAR BOARD Meeting

Last Updated 23 June

Time, etc.	Agenda Item	Shepherd
,	1.g. Representative of the	Göran Marby
	Istanbul Liaison Office	-
	[to remain confidential until	
	formal announcement is made]	
	1.h. Brussels Branch Manager	Göran Marby
	and Legal Representative [to	
	remain confidential until	
	formal announcement is made]	
	1.i. Thank you to Local Host	Steve Crocker
	of ICANN 59 Meeting	
	1.j. Thank you to Sponsors of	Steve Crocker
	ICANN 59 Meeting	
	1.k. Thank you to Interpreters,	Steve Crocker
	Staff, Event and Hotel Teams	
	of ICANN 59 Meeting	
Discussion	2. Main Agenda	
& Decision	2.a. FY18 Operating Plan and	Asha Hemrajani
	Budget, the FY18 IANA	
	Budget and the FY18 Five-Year	
	Operating Plan Update	
	Approval	

AGENDA - 24 JUNE 2017 REGULAR BOARD Meeting

Last Updated 23 June

Time, etc.	Agenda Item	Shepherd
	2.b. Consideration of Board	Steve Crocker
	Advice Register SSAC	
	recommendations from	
	SAC062, SAC063, SAC064,	
	SAC065, SAC070, and SAC073	
	2.c. Consideration of BGC's	Chris Disspain
	Revised Recommendation on	
	Reconsideration Requests 13-	
	16 and 14-10	
	2.d. Consideration of BGC's	Chris Disspain
	Rec on Reconsideration	
	Request 17-1	
	2.eNET Registry Agreement	Chris Disspain
	Renewal	Akram Atallah
	2.f. AOB	

Directors and Liaisons,

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

24 June 2017 – Public Meeting of the ICANN Board of Directors - at 07:00 UTC (9:00am – 10:00am in Johannesburg). This Board meeting is estimated to last approximately 60 minutes.

https://www.timeanddate.com/worldclock/fixedtime.html?msg=Regular+
Meeting+of+the+ICANN+Board&iso=20170624T09&p1=111&ah=1

Some other time zones:

24 June 2017 - 12:00am PDT Los Angeles

24 June 2017 - 3:00am EDT Washington, D.C.

24 June 2017 - 9:00am CEST Brussels

REGULAR MEETING OF THE ICANN BOARD

Consent Agenda:

- Approval of Board Meeting Minutes from 18 May 2017
- Security and Stability Advisory Committee Appointment
- Approval of GNSO Business Constituency Charter Amendments
- Consideration of the Board Governance Committee's Revised Recommendation on Reconsideration Requests 13-16 and 14-10
- Consideration of the Board Governance Committee's Recommendation on Reconsideration Request 17-1
- March 2019 ICANN Meeting Venue Contracting
- November 2019 ICANN Meeting Venue Contracting
- Delegation of eight Internationalized Domain Names representing India to the National Internet exchange of India (NIXI)
- Brussels Office Administrative Approvals and Istanbul Office Administrative Approvals

Main Agenda

- FY18 Operating Plan and Budget, the FY18 IANA Budget and the FY18 Five-Year Operating Plan Update Approval
- Consideration of Board Advice Register SSAC recommendations from SAC062, SAC063, SAC064, SAC065, SAC070, and SAC073
- .NET Registry Agreement Renewal
- AOB

MATERIALS – You can access the Board Meeting materials

Contact Information Redacted

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

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

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

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