

Board Briefing Materials - 9 August 2016 Special Board Meeting

The originally published version of this document contained information that was withheld from publication in accordance with the [ICANN Publication Practices](#). The updated information can be found in the document at pages 51 - 55. To view a redacted or previously withheld version, please see <https://www.icann.org/en/board-activities-and-meetings/board-materials-redaction-archive-register>.

AGENDA – 9 AUGUST 2016 SPECIAL BOARD Meeting – 120 minutes

Time, etc.	Agenda Item	Shepherd
Assembly, Roll Call & Consent Agenda Vote	1. Consent Agenda	
	1.a. Approval of Board Meeting Minutes from 25 June and 27 June 2016	John Jeffrey
Discussion & Decision	2. Main Agenda	
	2.a. Root Zone Evolution Review Committee (RZERC) Charter	Steve Crocker
	2.b. GNSO Policy Recommendations on Privacy & Proxy Services Accreditation	Bruce Tonkin
	2.c. Consideration of BGC Recommendation on Reconsideration Request 16-3 (.GAY)	Chris Disspain
	2.d. Consideration of Dot Registry v. ICANN IRP Final Declaration	John Jeffrey Amy Stathos

AGENDA – 9 AUGUST 2016 SPECIAL BOARD Meeting – 120 minutes

Time, etc.	Agenda Item	Shepherd
	2.e. PTI Articles of Incorporation	Chris Disspain
	2.f. ICANN Restated Articles of Incorporation	Chris Disspain
	2.g. Root Zone Maintainer Agreement	Bruce Tonkin
	2.h. Consideration of Request for Cancellation of HOTEL Top-Level Domain S.a.r.l's (HTLD's) Application for .HOTEL	John Jeffrey Amy Stahos
	2.i. AOB	
	3. Executive Session – Confidential	
	3.a. Ombudsman FY16 At-Risk Compensation	George Sadowsky
	3.b. Officer Compensation	George Sadowsky
	3.c. AOB	

ICANN BOARD PAPER NO. 2016.08.09.2a.REV1.CLEAN

TITLE: **Root Zone Evolution Review Committee (RZERC) Charter**
PROPOSED ACTION: **For Resolution**

EXECUTIVE SUMMARY:

The Board is being asked to approve the charter for the Root Zone Evolution Review (RZERC) Committee.

Per the NTIA IANA Functions Contract that existed prior to the IANA stewardship transition, NTIA approval was required for the implementation of all changes to the DNS root zone environment such as the DNSSEC-signing of the root zone, many classes of changes to IANA processes, as well as edits that would be applied by the Root Zone Maintainer to the DNS root zone. Post transition, the CWG-Stewardship recommended that approval of routine content changes to the DNS root zone would no longer be required, however due to the critical nature of the root of the DNS, major architectural changes would require formal approvals. The CWG-Stewardship recommended that the ICANN Board seek recommendations from a standing committee regarding the advisability of moving forward with such architectural changes. As part of implementation planning, ICANN named this Committee Root Zone Evolution Review Committee (RZERC).

ICANN developed a charter for the RZERC consistent with the requirements of the CWG-Stewardship proposal, and vetted the charter with both the Implementation Oversight Task Force (IOTF) and CWG-Stewardship prior to posting the charter for a 30-day public comment period.

There was one key concern raised during the public comment period. The concern was that the scope of responsibilities of the RZERC as drafted seemed to overlap with the responsibilities of the RSSAC. The scope of the RZERC as drafted is to consider architectural and operational issues that impose potential risk to the root zone and the root system. Commenters suggested that this scope could be interpreted to mean that the RZERC could consider issues relating to the operation of the root servers, which is a responsibility of the RSSAC. To address this concern, ICANN worked with the RSSAC to modify the scope of the RZERC to clarify that the RZERC

is expected to review proposed architectural changes to the content of the DNS root zone, the systems including both hardware and software components used in executing changes to the DNS root zone, and the mechanisms used for distribution of the DNS root zone. The Committee shall, as determined necessary by its membership, make recommendations related to those changes for consideration by the ICANN Board.

STAFF RECOMMENDATION:

Staff recommends that the Board approve the proposed Root Zone Evolution Review Committee charter as modified in response to public comment.

PROPOSED RESOLUTION:

Whereas, ICANN developed the proposed Root Zone Evolution Review Committee (RZERC) charter in cooperation with the Implementation Oversight Task Force (IOTF) and CWG-Stewardship.

Whereas, the proposed charter is consistent with the IANA Stewardship Transition Coordination Group (ICG) proposal that the Board approved and transmitted to the National Telecommunications and Information Administration (NTIA) on 10 March 2016.

Whereas, ICANN commenced a public comment period from 30 June 2016 to 10 July 2016 <<https://www.icann.org/public-comments/draft-rzerc-charter-2016-06-10-en>> on the proposed charter <<https://www.icann.org/en/system/files/files/draft-rzerc-charter-10jun16-en.pdf>>.

Whereas, the public comment forum on the proposed charter closed on 10 July 2016, with ICANN receiving seven comment submissions by both individuals and organizations/groups. Upon review of these comments, ICANN coordinated with the impacted parts of the ICANN community to address the concerns and revise the charter appropriately.

Whereas, the RZERC charter calls for a representative from the ICANN Board to serve in the Committee.

Resolved (2016.08.09.xx), the Board approves the RZERC charter as revised in response to public comment, and the President and CEO, or his designee(s), is authorized to take such actions as appropriate to form the RZERC.

Resolved (2016.08.09.xx), the Board appoints Suzanne Woolf to serve as the Board's liaison to the RZERC.

PROPOSED RATIONALE:

Why the Board is addressing the issue now?

On 10 March 2016, the Board approved and transmitted the IANA Stewardship Transition Coordination Group (ICG) proposal to the National Telecommunications and Information Administration and directed ICANN to proceed with implementation planning. One of the requirements in the naming portion of the ICG proposal is the formation of a standing committee to review proposed architectural changes to the content of the DNS root zone, the systems including both hardware and software components used in executing changes to the DNS root zone, and the mechanisms used for distribution of the DNS root zone. The Committee shall, as determined necessary by its membership, make recommendations related to those changes for consideration by the ICANN Board. The Board's approval at the recommendation of the Committee is the CWG-Stewardship's proposed replacement for NTIA's current role, which would no longer be in place if the IANA Functions Contract lapses. As part of implementation planning, ICANN named this standing committee Root Zone Evolution Review Committee (RZERC) and worked with the community to draft a charter for the Committee.

What is the proposal being considered?

The proposed charter describes the purpose, scope of responsibilities, and composition of the committee. The charter also sets out how the committee will conduct itself, including frequency and method of meetings, how decisions will be made, records of proceedings, as well as conflict of interest. Lastly, the charter sets out requirements for review and amendments to the charter.

Which stakeholders or others were consulted?

ICANN consulted with the Implementation Oversight Task Force (IOTF) as well as the CWG-Stewardship in the development of the proposed charter. ICANN also conducted a public comment period on the proposed charter from 10 June 2016 through 10 July 2016, following which time the comments were summarized and analyzed.

What concerns or issues were raised by the community?

Seven (7) members of the community participated in the public comment period. Members of the community raised one key concern in their comments.

The concern was that the scope of responsibilities of the RZERC as drafted seems to overlap with the responsibilities of the RSSAC. The scope of the RZERC as drafted is to consider architectural and operational issues that impose potential risk to the root zone and the root system. Commenters suggested that this scope could be interpreted to mean that the RZERC could consider issues relating to the operation of the root servers, which is a responsibility of the RSSAC. To address this concern, ICANN worked with the RSSAC to modify the scope of the RZERC to clarify that the RZERC is expected to review proposed architectural changes to the content of the DNS root zone, the systems including both hardware and software components used in executing changes to the DNS root zone, and the mechanisms used for distribution of the DNS root zone. The Committee shall, as determined necessary by its membership, make recommendations related to those changes for consideration by the ICANN Board.

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:

- The proposed RZERC charter <<https://www.icann.org/en/system/files/files/draft-rzerc-charter-10jun16-en.pdf>>
- Public comments <<https://forum.icann.org/lists/comments-draft-rzerc-charter-10jun16/>>
- Summary and analysis of public comments
- IANA Stewardship Transition Coordination Group (ICG) proposal <<https://www.icann.org/en/system/files/files/iana-stewardship-transition-proposal-10mar16-en.pdf>>
- The RZERC charter as modified in response to public comment.

Are there positive or negative community impacts?

The Board's approval of the proposed charter is an important step in the implementation planning process to fulfill one of the requirements from the IANA Stewardship Transition Coordination Group (ICG) proposal, which was endorsed by the global stakeholder community and approved by the Board on 10 March 2016.

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

There is no fiscal impact expected.

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

The approval of the proposed charter would be an important step toward ensuring security, stability and resiliency of the DNS post transition. The RZERC's scope of responsibility will be to provide the ICANN Board with recommendations regarding proposed architectural changes to the content of the DNS root zone, the systems including both hardware and software components used in executing changes to the DNS root zone, and the mechanisms used for distribution of the DNS root zone.

Signature Block:

Submitted by: Trang Nguyen

Position: Senior Director, Strategic Programs

Date Noted: 18 July 2016; Updated 8 August 2016

Email: trang.nguyen@icann.org

ICANN BOARD PAPER NO. 2016.08.09.2a.**REV1.REDLINE**

TITLE: Root Zone Evolution Review Committee (RZERC) Charter

PROPOSED ACTION: For Resolution

EXECUTIVE SUMMARY:

The Board is being asked to approve the charter for the Root Zone Evolution Review (RZERC) Committee.

Per the NTIA IANA Functions Contract that existed prior to the IANA stewardship transition, NTIA approval was required for the implementation of all changes to the DNS root zone environment such as the DNSSEC-signing of the root zone, many classes of changes to IANA processes, as well as edits that would be applied by the Root Zone Maintainer to the DNS root zone. Post transition, the CWG-Stewardship recommended that approval of routine content changes to the DNS root zone would no longer be required, however due to the critical nature of the root of the DNS, major architectural changes would require formal approvals. The CWG-Stewardship recommended that the ICANN Board seek recommendations from a standing committee regarding the advisability of moving forward with such architectural changes. As part of implementation planning, ICANN named this Committee Root Zone Evolution Review Committee (RZERC).

ICANN developed a charter for the RZERC consistent with the requirements of the CWG-Stewardship proposal, and vetted the charter with both the Implementation Oversight Task Force (IOTF) and CWG-Stewardship prior to posting the charter for a 30-day public comment period.

There was one key concern raised during the public comment period. The concern was that the scope of responsibilities of the RZERC as drafted seemed to overlap with the responsibilities of the RSSAC. The scope of the RZERC as drafted is to consider architectural and operational issues that impose potential risk to the root zone and the root system. Commenters suggested that this scope could be interpreted to mean that the RZERC could consider issues relating to the operation of the root servers, which is a responsibility of the RSSAC. To address this concern,

ICANN worked with the RSSAC to modify the scope of the RZERC, to clarify that the RZERC

is expected to review proposed architectural changes to the content of the DNS root zone, the systems including both hardware and software components used in executing changes to the DNS root zone, and the mechanisms used for distribution of the DNS root zone. The Committee shall, as determined necessary by its membership, make recommendations related to those changes for consideration by the ICANN Board.

STAFF RECOMMENDATION:

Staff recommends that the Board approve the proposed Root Zone Evolution Review Committee charter as modified in response to public comment.

PROPOSED RESOLUTION:

Whereas, ICANN developed the proposed Root Zone Evolution Review Committee (RZERC) charter in cooperation with the Implementation Oversight Task Force (IOTF) and CWG-Stewardship.

Whereas, the proposed charter is consistent with the IANA Stewardship Transition Coordination Group (ICG) proposal that the Board approved and transmitted to the National Telecommunications and Information Administration (NTIA) on 10 March 2016.

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Whereas, the RZERC charter calls for a representative from the ICANN Board to serve in the Committee.

Resolved (2016.08.09 xx), the Board approves the RZERC charter as revised in response to public comment, and the President and CEO, or his designee(s), is authorized to take such actions as appropriate to form the RZERC.

[Resolved \(2016.08.09 xx\), the Board appoints Suzanne Woolf to serve as the Board's liaison to the RZERC.](#)

PROPOSED RATIONALE:

Why the Board is addressing the issue now?

On 10 March 2016, the Board approved and transmitted the IANA Stewardship Transition Coordination Group (ICG) proposal to the National Telecommunications and Information Administration and directed ICANN to proceed with implementation planning. One of the requirements in the naming portion of the ICG proposal is the formation of a standing committee to [review proposed architectural changes to the content of the DNS root zone, the systems including both hardware and software components used in executing changes to the DNS root zone, and the mechanisms used for distribution of the DNS root zone. The Committee shall, as determined necessary by its membership, make recommendations related to those changes for consideration by the ICANN Board. The Board's approval at the recommendation of the Committee is the CWG-Stewardship's proposed replacement for NTIA's current role, which](#) would no longer be in place if the IANA Functions Contract lapses. As part of implementation planning, ICANN named this standing committee Root Zone Evolution Review Committee (RZERC) and worked with the community to draft a charter for the [Committee.](#)

What is the proposal being considered?

The proposed charter describes the purpose, scope of responsibilities, and composition of the committee. The charter also sets out how the committee will conduct itself, including frequency and method of meetings, how decisions will be made, records of proceedings, as well as conflict of interest. Lastly, the charter sets out requirements for review and amendments to the charter.

Which stakeholders or others were consulted?

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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:

- The proposed RZERC charter <<https://www.icann.org/en/system/files/files/draft-rzerc-charter-10jun16-en.pdf>>
- Public comments <<https://forum.icann.org/lists/comments-draft-rzerc-charter-10jun16/>>
- Summary and analysis of public comments
- IANA Stewardship Transition Coordination Group (ICG) proposal <<https://www.icann.org/en/system/files/files/iana-stewardship-transition-proposal-10mar16-en.pdf>>
- The RZERC charter as modified in response to public comment.

Are there positive or negative community impacts?

The Board's approval of the proposed charter is an important step in the implementation planning process to fulfill one of the requirements from the IANA Stewardship Transition Coordination Group (ICG) proposal, which was endorsed by the global stakeholder community and approved by the Board on 10 March 2016.

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

There is no fiscal impact expected.

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

The approval of the proposed charter would be an important step toward ensuring security, stability and resiliency of the DNS post transition. The RZERC's scope of responsibility will be to provide the ICANN Board with recommendations regarding proposed architectural changes to the content of the DNS root zone, the systems including both hardware and software components used in executing changes to the DNS root zone, and the mechanisms used for distribution of the DNS root zone.

Signature Block:

Submitted by: Trang Nguyen

Position: Senior Director, Strategic Programs

Date Noted: 18 July 2016; [Updated 8 August 2016](#)

Email: trang.nguyen@icann.org

ICANN BOARD PAPER NO. 2016.08.09.2a

TITLE: Root Zone Evolution Review Committee (RZERC) Charter

PROPOSED ACTION: For Board Consideration and Approval

Updated with Revised Briefing Materials. See pg. 8 - 12.

Updated with Revised Briefing Materials. See pg. 8 - 12.

Updated with Revised Briefing Materials. See pg. 8 - 12.

Updated with Revised Briefing Materials. See pg. 8 - 12.

ICANN BOARD SUBMISSION NO. 2016.08.09.2b

TO: ICANN Board of Directors
TITLE: GNSO Policy Recommendations on Privacy & Proxy Services Accreditation
PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The Board is being asked to approve a set of policy recommendations relating to ICANN's planned implementation of an accreditation program for privacy and proxy domain name registration service providers. The recommendations were all unanimously approved by the Generic Names Supporting Organization (GNSO) Council at its meeting on 21 January 2016. The approved recommendations provide policy guidelines for the establishment, accreditation, operation and de-accreditation of privacy and proxy services by ICANN, and received the Full Consensus support of all the members of the Policy Development Process (PDP) Working Group that conducted the PDP. In accordance with the ICANN Bylaws, the next step following GNSO Council approval is consideration of the proposed policy by the ICANN Board as soon as is feasible. On 15 May 2016, the ICANN Board acknowledged receipt of the GNSO's recommendations, and resolved to consider them at its first meeting following ICANN56 in order to allow the Governmental Advisory Committee (GAC) to provide timely advice on any public policy concerns raised by the proposed recommendations.

The Privacy & Proxy Services Accreditation Issues PDP Working Group (WG) had been chartered in October 2013 to "provide the GNSO Council with policy recommendations regarding the issues identified during the 2013 [Registrar Accreditation Agreement] negotiations, including recommendations made by law enforcement and GNSO working groups, that were not addressed during the 2013 RAA negotiations and otherwise suited for a PDP; specifically, issues relating to the accreditation of Privacy & Proxy Services." The PDP followed on the approval of the new 2013 RAA by the ICANN Board in June 2013, which marked the conclusion of the last round of RAA negotiations and resulted in the topic of the accreditation of privacy and proxy services being identified as the remaining unaddressed topic from

those negotiations that would be suited to a PDP. The need to accredit providers of such services had been noted by the Whois Review Team in its 2012 Final Report as well.

Subsequent to the GNSO Council's adoption of the PDP recommendations, the GAC's advice in its Marrakech Communique included a request for time to consider possible advice on public policy issues. The GAC also noted its 2007 Principles on Whois Services, in particular, Principle 3 regarding assisting law enforcement authorities in investigations, and Principle 6, regarding contributing to user confidence in the Internet by helping users identify persons or entities responsible for content and services online. Via its Public Safety Working Group, the GAC had previously submitted comments to the PDP Working Group's Initial Report. At ICANN56, the GAC hosted an open session on the topic to which the PDP WG co-chairs and interested Board and GNSO Council members were invited. Following the discussion, the GAC issued its Helsinki Communique in which it advised the Board to direct that the GAC's concerns be effectively addressed to the greatest extent possible during the implementation phase.

The specific policy recommendations for review by the Board are contained in Annex A of the GNSO Council's Recommendations Report to the Board (attached as Annex B of this Board Paper). They include the following:

- Proposed definitions for important terms in the context of this PDP (such as “privacy services”, “proxy services”, “relay”, “reveal” and “law enforcement authority”);
- Certain mandatory provisions to be included in all accredited privacy and proxy service providers' terms and conditions (such as disclosure of the conditions under which the service may be suspended or terminated, how requests for transfers of a domain name are handled, and the specific grounds upon which a customer's details may be disclosed to a third party requester or published as publicly-accessible Whois data);
- Requirements to ensure that accredited privacy and proxy service providers be contactable (such as the maintenance by ICANN of a list of such providers and the publication by providers of a designated point of contact for abuse reporting purposes that is capable and authorized to investigate and handle abuse reports and information requests received);

- Mandatory relaying to customers of certain communications by accredited providers (such as those required by the RAA and ICANN Consensus Policies), specific options for the relaying of third party requests concerning possible abuse or for the disclosure of a customer's contact information, and recommendations concerning further actions (including escalation by a third party requester) in the event of persistent delivery failure of an electronic communication to a customer;
- Implementation of a detailed Request and Disclosure Framework to apply to requests for customer contact information made by intellectual property rights-holders or their authorized representatives (to include procedures for the submission, required elements and handling of such requests, and specific grounds for a provider to refuse such requests);
- General principles for the development of a more specific de-accreditation process for privacy and proxy service providers (including the need to have reasonable safeguards to minimize the risk that a customer's private information is made public as part of the de-accreditation process); and
- Recommendations for the creation of public outreach and educational program for registrars, privacy and proxy service providers and potential customers, consideration of issues specific to privacy and proxy services in the next review of the Inter-Registrar Transfer Policy, and the maintenance and publication of aggregated statistics on the number of third party disclosure and publication requests received and honored by accredited providers.

STAFF RECOMMENDATION:

Staff recommends that the Board adopt the GNSO policy recommendations. The recommendations, if and when implemented, will substantially improve the current environment, where there is presently no accreditation scheme for privacy and proxy services and no community-developed or accepted set of baseline or best practices for such services. The GNSO's recommendations are intended to provide a sound basis for the development and implementation of an accreditation framework by ICANN, as part of ICANN's on-going efforts to improve the Whois system, including implementing recommendations made by the Whois Review Team. Until the implementation by ICANN of an accreditation program for privacy and proxy service providers, only

certain aspects of the operation of such services are covered by an interim specification to the 2013 RAA. This interim specification is due to expire on 1 January 2017.

Staff recommends further that the Board provide specific guidance for the Implementation Review Team that is to be convened to assist ICANN staff with implementing the PDP recommendations, in line with the implementation framework developed previously by the GNSO and ICANN and taking into consideration the GAC's advice in its Helsinki Communique.

Staff notes that the proposed approach outlined above conforms to the ICANN Bylaws, including Article II, Section 6 (requiring that the Board request the GAC's opinion regarding "any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges ... [and] take duly into account any advice timely presented" as a result) and Annex A, Section 9 (prescribing that the Board meet "to discuss the GNSO Council recommendation as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report").

PROPOSED RESOLUTION:

Whereas, on 31 October 2013, the GNSO Council approved the charter for a Working Group to conduct a Policy Development Process that had been requested by the ICANN Board concerning the accreditation by ICANN of privacy and proxy domain name registration service providers, as further described at <http://gns0.icann.org/en/drafts/raa-pp-charter-22oct13-en.pdf>;

Whereas, the PDP followed the prescribed PDP steps as stated in the ICANN Bylaws, resulting in a Final Report being delivered to the GNSO Council on 8 December 2015;

Whereas, the Privacy & Proxy Services Accreditation Issues PDP Working Group (WG) reached Full Consensus on all its final recommendations (see <http://gns0.icann.org/en/issues/raa/ppsai-final-07dec15-en.pdf>);

Whereas, the GNSO Council reviewed and discussed the final recommendations of the Privacy & Proxy Services Accreditation Issues PDP WG, and adopted the

recommendations on 21 January 2016 by a unanimous vote (see:

<http://gns0.icann.org/en/council/resolutions#201601>);

Whereas, the GNSO Council vote met and exceeded the required voting threshold (i.e. supermajority) to impose new obligations on ICANN contracted parties;

Whereas, in accordance with the ICANN Bylaws, a public comment period was opened on the approved recommendations to provide the community with a reasonable opportunity to comment on their adoption prior to action by the ICANN Board, and the comments received have been summarized and reported (see

<https://www.icann.org/en/system/files/files/report-comments-ppsai-recommendations-31mar16-en.pdf>);

Whereas, the ICANN Bylaws provide that the Board is to request the GAC's opinion regarding "any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges" and "take duly into account any advice timely presented" as a result;

Whereas, the Board notified the GAC of the publication of the GNSO's final recommendations for public comment on 19 February 2016 (see

<https://gacweb.icann.org/download/attachments/27492514/2016-02-19-Steve-Crocker-to-Thomas-Schneider-GNSO-PDP.pdf?version=1&modificationDate=1456046942000&api=v2>);

Whereas, in its Marrakech Communique issued on 9 March 2016 the GAC advised the ICANN Board that it needed more time to consider potential public policy concerns relating to the adoption of the final PDP recommendations (see

<https://gacweb.icann.org/download/attachments/28278854/GAC%20Morocco%2055%20Communique%20FINAL.pdf?version=1&modificationDate=1458046221000&api=v2>);

Whereas, on 15 May 2016 the Board acknowledged receipt of the GNSO's PDP recommendations and resolved to consider them at its first meeting following the ICANN56 Public Meeting to enable the GAC to provide timely advice, if any (see <https://www.icann.org/resources/board-material/resolutions-2016-05-15-en#2.a>); and

Whereas, in its Helsinki Communique issued on 30 June 2016 the GAC advised the ICANN Board to direct that the GAC's concerns be effectively addressed to the greatest extent feasible by the Implementation Review Team that is to be convened to implement the adopted recommendations (see https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee?preview=/27132037/43712639/20160630_GAC%20ICANN%2056%20Communique_FINAL%20.pdf):

Resolved (2016.08.09.xx), the Board hereby adopts all the final recommendations of the Privacy & Proxy Services Accreditation Issues PDP Working Group, as passed by a unanimous vote of the GNSO Council on 21 January 2016 ("Privacy/Proxy Policy Recommendations");

Resolved (2016.08.09.xx), the Board directs the President and CEO, or his authorized designee, to develop and execute an implementation plan, including costs and timelines, for the Privacy/Proxy Policy Recommendations consistent with ICANN Bylaws Annex A and the Implementation Review Team Guidelines & Principles endorsed by the Board on 28 September 2015 (see <https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#2.f>), and to continue communication with the community on such work. In the event that policy issues arise in the course of implementation discussions, they should be referred back to the GNSO in accordance with the framework for implementation associated with GNSO policy recommendations, including the Implementation Review Team Guidelines & Principles.

Resolved (2016.08.09.xx), the Board acknowledges the GAC's advice from the Helsinki Communique regarding the Privacy/Proxy Policy Recommendations. The Board will consider the GAC's advice and provide input to the Implementation Review Team for consideration in implementation planning.

RATIONALE FOR RESOLUTION:

Why is the Board addressing the issue now?

In initiating negotiations with the Registrar Stakeholder Group for new form of Registrar Accreditation Agreement (RAA) in October 2011, the ICANN Board had also requested an Issue Report from the GNSO that, upon the conclusion of the RAA negotiations, would start a GNSO PDP to address remaining issues not dealt with in the RAA negotiations that would be suited to a PDP. In June 2013, the ICANN Board approved a new 2013 RAA, and the topic of accrediting privacy and proxy services was identified as the sole issue to be resolved through a GNSO PDP. This topic had also been noted by the Whois Review Team in its Final Report, published in May 2012, in which the Review Team had highlighted the current lack of clear and consistent rules regarding these services, resulting in unpredictable outcomes for stakeholders. The Review Team thought that appropriate regulation and oversight over such services would address stakeholder needs and concerns, and recommended that ICANN consider an accreditation system. Until the development of an accreditation program, only certain aspects of such services are covered by an interim specification to the 2013 RAA, which is due to expire on 1 January 2017 or the implementation by ICANN of an accreditation program, whichever first occurs.

The GNSO Council approved all the final recommendations from the PDP Working Group's Final Report dated 8 December 2015 at its meeting on 21 January 2016, as well as a Recommendations Report to the Board in February 2016. In accordance with the ICANN Bylaws, a public comment period was opened to facilitate public input on the adoption of the recommendations following which the PDP recommendations were forwarded to the Board for its review. On 15 May 2016, the Board resolved to consider action on the recommendations at the first Board meeting following the ICANN56 Public Meeting in Helsinki, Finland, to enable the GAC to provide timely advice on public policy concerns raised by the PDP recommendations, if any. The GAC's advice in its Helsinki Communique was for the Board to direct that the GAC's concerns be

effectively addressed to the greatest extent possible during implementation of the PDP recommendations.

What is the proposal being considered?

The GNSO's policy recommendations include minimum mandatory requirements for the operation of privacy and proxy services; the maintenance of designated contact points for abuse reporting and the publication of a list of accredited providers; requirements related to the handling of requests for disclosure and/or publication of a customer's contact details by certain third party requesters; conditions regarding the disclosure and publication of such details as well as the refusal to disclose or publish; and principles governing the de-accreditation of service providers. The full list and scope of the final recommendations can be found in Annex A of the GNSO Council's Recommendations Report to the Board (see <http://gns0.icann.org/en/drafts/council-board-ppsai-recommendations-09feb16-en.pdf>).

Which stakeholders or others were consulted?

As required by the GNSO's PDP Manual, the Working Group reached out to all GNSO Stakeholder Groups and Constituencies as well as other ICANN Supporting Organizations and Advisory Committees for input during the early phase of the PDP. The Working Group also held open community sessions at all the ICANN Public Meetings that occurred during the life cycle of this PDP. It also sought input on potential implementation issues from ICANN's Registrar Services and Compliance teams. Public comment periods were opened for the Preliminary Issue Report that preceded the PDP, the Working Group's Initial Report, and the GNSO Council's adoption of the Working Group's Final Report. The final recommendations as detailed in the Final Report were completed based on the Working Group's review and analysis of all the public comments and input received in response to its Initial Report.

Following the GAC's advice in its Marrakech Communique of 9 March 2016 and the Board's resolution of 15 May 2016, discussions also took place amongst the Board and community on the topic at the ICANN56 Public Meeting in Helsinki, Finland.

What concerns or issues were raised by the community?

A significant number of public comments were received by the Working Group concerning the possibility that a distinction might be made between domain name registrants with domains serving non-commercial purposes and registrants who conduct online financial transactions. This had been an open question in the Working Group's Initial Report, as at the time a number of Working Group members had supported that distinction. As a result of further Working Group deliberations following review of the public comments received, the Working Group reached consensus on a recommendation that no such distinction be made for purposes of accrediting services.

Concerns had also been expressed over the need to ensure that there are adequate safeguards in place for maintaining the privacy of customer data, and that a reasonable balance is struck as between a legitimate need for access to information (e.g. by law enforcement and intellectual property rights-holders) and that of protecting privacy. Many public comments received in response to the Working Group's Initial Report also highlighted the potential dangers of disclosing private information without cause, including the threat to the physical safety of certain groups of domain name registrants and privacy/proxy customers. The Working Group's final recommendations include a number of suggested principles and policies that aim to provide more concrete guidance than exists at present for privacy and proxy services, third party requesters of customer information, and domain name registrants in relation to topics such as the handling of customer notifications, information requests and domain name transfers.

The Working Group also received several comments concerning the lack of a detailed framework for the submission and confidential handling of disclosure requests from law enforcement authorities, including from the GAC's Public Safety Working Group. In its Initial Report, the Working Group had sought community input on the question as to whether and how such a framework might be developed as well as on more specific questions such as whether it should be mandatory for accredited providers to comply with express requests from law enforcement authorities in the provider's jurisdiction not to notify a customer. Based on input received, the Working Group agreed that accredited privacy and proxy service providers should comply with express law enforcement requests not to notify a customer where this is required by applicable law.

Providers would be free to voluntarily adopt more stringent standards or otherwise cooperate with law enforcement authorities. The Working Group's Final Report also contains a suggestion for certain minimum requirements that could be included if such a framework is to be developed, which could be during the implementation phase of the adopted PDP recommendations.

What significant materials did the Board review?

The Board reviewed the PDP Working Group's Final Report, the GNSO Council's Recommendations Report on the topic to the Board, the summary of public comments received in response to the public comment period that was opened following the GNSO Council's adoption of the recommendations contained in the Final Report, and GAC advice received on the topic, as provided in the Marrakech and Helsinki Communiqués.

What factors did the Board find to be significant?

The recommendations were developed following the GNSO Policy Development Process as set out in Annex A of the ICANN Bylaws and have received the unanimous support of the GNSO Council. As outlined in the ICANN Bylaws, the Council's supermajority support obligates the Board to adopt the recommendations unless, by a vote of more than two-thirds, the Board determines that the recommended policy is not in the best interests of the ICANN community or ICANN.

The Bylaws also allow for input from the GAC in relation to public policy concerns that might be raised if a proposed policy is adopted by the Board. The GAC had raised this possibility with respect to this PDP and the Board will continue to consider the advice that the GAC provided.

Are there positive or negative community impacts?

Developing a full accreditation program for privacy and proxy service providers will require significant resources and take a substantial period of time. It is likely that the interim specification contained in the 2013 RAA will need to be extended beyond its current expiration date of 1 January 2017, to allow for development of such a program.

Implementing the GNSO's recommendations will result in a more uniform set of standards for many aspects of privacy and proxy services, including more consistent procedures for the handling, processing and determination of third party requests by accredited providers, into which reasonable safeguards to protect consumer privacy can be incorporated and public policy concerns highlighted by the GAC addressed as far as possible. At present, there is no accreditation scheme in place for privacy and proxy services and no agreed community-developed set of best practices for the provision of such services. This PDP represents an attempt to develop a sound basis for the development and implementation of an accreditation framework by ICANN and is part of ICANN's on-going efforts to improve the Whois system, including implementing recommendations made previously by the Whois Review Team.

Nevertheless, as highlighted above, the implementation of all the recommendations from the PDP will be time- and resource-intensive due to the scale of the project and the fact that this will be the first time ICANN has implemented such a program for this industry sector. While the RAA may serve as a useful reference point for this program, the Working Group's Final Report acknowledged that this may not be the most appropriate model for a number of reasons. Ensuring that the implementation planning addresses as fully as possible the public policy concerns that have been identified by the GAC, including possibly developing a disclosure framework for law enforcement authorities, is likely to form a substantial part of the implementation work.

The Working Group's Final Report also notes areas where additional work may be required, which could increase the community's workload in the near term. For example, the issue of privacy and proxy services in the context of domain name transfers will need to be addressed in the next review of the Inter-Registrar Transfer Policy.

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

There may be fiscal impacts on ICANN associated with the creation of a new accreditation program specifically covering providers of privacy and proxy services. The implementation plan should take into account costs and timelines for implementation. As the current interim specification in the RAA applicable to such

services is due to expire on 1 January 2017, consideration will also need to be given to extending its duration upon adoption of the PDP recommendations.

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

There are no security, stability or resiliency issues relating to the DNS that can be directly attributable to the implementation of the PDP recommendations. While the accreditation of privacy and proxy service providers is part of the overall effort at ICANN to improve the Whois system, it does not affect or change either the Whois protocol (including the rollout of the new RDAP) or the current features of the Whois system. The Working Group made its final recommendations with the understanding that implementation of its recommendations would be done in the context of any other policy or technical changes to the Whois system, which are outside the scope of this PDP.

Submitted by: Mary Wong

Position: Senior Policy Director

Date Noted:

ICANN BOARD SUBMISSION NO. 2016.07.29.2c

TITLE: **Reconsideration Request 16-3 (Dotgay LLC)**

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

Item Removed From Agenda

Item Removed From Agenda

Item Removed From Agenda

Item Removed From Agenda

Item Removed From Agenda

Item Removed From Agenda

Item Removed From Agenda

ICANN BOARD PAPER NO. 2016.08.09.2e

TITLE: **PTI Articles of Incorporation**

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

EXECUTIVE SUMMARY:

One of the key elements of the IANA Stewardship Coordination Group (ICG's) Proposal is the development of an ICANN affiliate, PTI. ICANN will contract with PTI for the performance of the IANA Functions. One necessary element to legally form PTI is the filing of Articles of Incorporation with the California Secretary of State. ICANN, working with Sidley Austin LLP (the external counsel to the CWG-Stewardship) developed the proposed Articles to be consistent with the ICG Proposal, and the Articles were posted for public comment and further discussed among the CWG-Stewardship. We now have a proposed final version of the PTI Articles of Incorporation that is ready for Board consideration. This is a key step in demonstrating progress in implementation.

STAFF RECOMMENDATION:

The Board is recommended to authorize the CEO, or his designee, to proceed with the formation of PTI.

BACKGROUND:

The ICG Proposal includes a requirement, developed by the CWG-Stewardship, for ICANN to form an affiliate to perform the naming-related IANA functions. This affiliate, which ICANN will name "Public Technical Identifiers", or PTI, is required to be California Nonprofit Public Benefit Corporation, and ICANN will be the sole member of PTI. The protocol parameters and numbering communities have also each agreed to allow PTI to perform the relevant IANA functions via a subcontract with ICANN. As a result, PTI will perform all of the IANA functions currently performed by the IANA Department today, pursuant to contracts with ICANN.

While work is still ongoing in the community on finalizing the Bylaws for the PTI, as well as the key naming functions agreement that ICANN will hold with PTI, PTI must first be formed under law in order for that other work to take effect. Under California law, PTI is

formed through the filing of Articles of Incorporation with the California Secretary of State.

ICANN lawyers worked closely with Sidley Austin LLP, the external counsel to the CWG-Stewardship, to develop PTI Articles that are consistent with the ICG Proposal. The Articles are drafted to meet the legal requirements for this key governance document, as well as to support an application for PTI to be recognized as a tax-exempt organization under U.S. law. The proposed Articles were posted for public comment, and three comments were received, including one comment from the CWG-Stewardship reflecting their further inputs into the document. ICANN was able to take on all of the CWG-Stewardship's recommendations in the draft that is presented to the Board today. Some of the comments, particularly where there were suggested changes to legally required language, were not able to be taken on. A summary report has been produced that identifies how every comment was addressed. A copy of that summary report is included for the Board.

This is the first item that the Board will be asked to decide as it relates to the PTI. As the sole member of PTI, ICANN will be responsible for identifying Board members, approving the PTI Bylaws (alongside the PTI Board), and other items. Each of these will be presented at the appropriate time.

PROPOSED RESOLUTION:

Whereas, on 14 March 2014, the National Telecommunications and Information Administration (NTIA) of the United States Department of Commerce announced its intention to transition the stewardship of the IANA Functions to the global multistakeholder community.

Whereas, on 10 March 2016, Internet Corporation for Assigned Names and Numbers (ICANN) accepted and transmitted to the US National Telecommunications and Information Agency the following transition documents: (i) the IANA Stewardship Transition Coordination Group's IANA Stewardship Transition Proposal, (the "ICG Proposal") and (ii) the Cross Community Working Group on Enhancing ICANN Accountability's Work Stream 1 Report (collectively, the "Transition Proposals").

Whereas, the ICG Proposal included a requirement that ICANN develop an affiliate to perform the naming-related IANA functions under a contract with ICANN, PTI. The ICG

Proposal required PTI to be a California Nonprofit Public Benefit Organization, and ICANN is to be the sole member of PTI.

Whereas, ICANN lawyers worked diligently with the independent counsel to the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (“CWG-Stewardship”) to develop Articles of Incorporation for the new PTI. Those draft Articles were posted for public comment for a period of 30 days.

Whereas, upon the close of the comments, a detailed analysis of the comments was performed and modifications were made to the Articles in response to the public comments. ICANN coordinated with the independent law firm on the revisions.

Whereas, ICANN’s General Counsel has asserted that the proposed PTI Articles of Incorporation remain consistent with the Transition Proposals and recommends that ICANN proceed to forming the affiliate to allow for implementation planning to continue.

Resolved (2016.08.09.xx), the ICANN Board authorizes ICANN’s CEO, or his designee, to proceed with the formation of PTI, including the filing of the proposed PTI Articles of Incorporation as revised after public comment.

PROPOSED RATIONALE

The authorization for ICANN to proceed with the formation of PTI, through the filing of the PTI Articles of Incorporation, is a crucial step in the planning for the implementation of the Transition Proposals. This is a key step for ICANN’s report to NTIA on the status of implementation planning. This timely authorization to move forward with the formation of PTI is necessary to support the global multistakeholder community’s work towards a successful completion of the stewardship of the IANA functions.

These PTI Articles are product of collective work of the internal and external legal teams along with the intensive work of the CWG-Stewardship. The PTI Articles were posted for a 30-day public comment period, and three comments were received. Each of the comments was considered and analyzed, and explanation was provided on whether the PTI Articles required modification to reflect the issues raised within the comment.

With the small number of comments, the Articles did not require significant change in response to those comments. The changes that were made included a modification to the purpose of PTI to more accurately reflect PTI's limited, narrow role to perform the IANA functions. Another change was made to reflect the proper threshold needed to amend the PTI Articles.

In taking this action, the Board relied upon:

[ICG's IANA Stewardship Transition Proposal](#)

Report of Public Comments on PTI Articles of Incorporation

Draft PTI Articles of Incorporation

The Board also relied upon the General Counsel and Secretary's affirmation that PTI Articles reflect the Transition Proposals, as well as the inputs of independent counsel to craft the PTI Articles to support the ICG Proposal.

Authorizing the formation of PTI is in line with ICANN's commitment to accountability and transparency. This action confirms ICANN's commitment to implement the Transition Proposals and all of the elements in those Proposals.

Forming PTI is not anticipated to have any impact on the security, stability or resiliency of the DNS, though the PTI will be essential to ICANN's security, stability and resiliency work. There will be resource implications, including significant resources to support a new affiliate.

This is an Organizational Administrative Function for which public comments were received.

Signature Block:

Submitted by: Samantha Eisner

Position: Deputy General Counsel

Date Noted: 3 August 2016

Email: Samantha.eisner@icann.org

ICANN BOARD PAPER NO. 2016.08.09.2f

TITLE: **ICANN Restated Articles of Incorporation**

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

EXECUTIVE SUMMARY:

On 27 May 2016, the ICANN Board approved the New Bylaws necessary to implement the (i) the IANA Stewardship Transition Coordination Group’s IANA Stewardship Transition Proposal, (the “ICG Proposal”) and (ii) the Cross Community Working Group on Enhancing ICANN Accountability’s Work Stream 1 Report (collectively, the “Transition Proposals”). The Bylaws, however, did not complete the ICANN governance documentation changes needed to plan for full implementation – the ICANN Articles of Incorporation also need to be restated in order to make sure the Transition Proposals are fully implemented. The external counsel to the CCWG-Accountability developed a first draft of the restated Articles, and then ICANN worked closely with the external counsel to reach a draft for consideration. The proposed Restated Articles were posted for comment and there was significant discussion of the Articles within the CCWG-Accountability. The Restated Articles are now ready for Board consideration. This is a key step in demonstrating progress in implementation.

STAFF RECOMMENDATION:

The Board is recommended to approve the change to the Articles of Incorporation, to be deemed effective upon the expiration the IANA Functions Contract between ICANN and NTIA. The Board is also recommended to authorize the CEO, or his designee, to take all necessary steps to file the Restated Articles with the California Secretary of State once effective.

BACKGROUND:

The Transition Proposals require changes to ICANN’s Bylaws (completed in May 2016) and to the ICANN Articles of Incorporation.

ICANN lawyers worked closely with both external firms retained to represent the CCWG-Accountability in the development of these Restated Articles. The independent counsel to the CCWG-Accountability provided a first draft of the Restated Articles, and then the ICANN lawyers worked closely with them to reach a draft for consideration by the community. The

Restated Articles were posted for public comment, and the comment period was extended upon a request from the community. Ultimately, there were six comments received on the Restated Articles, including one from the CCWG-Accountability. ICANN was able to take on all of the CCWG-Accountability's recommendations in the draft that is presented to the Board today. Some of the comments, particularly where there were suggested changes to legally proper language, were not able to be taken on. A summary report has been produced that identifies how every comment was addressed. A copy of that summary report is included for the Board.

The Board is being asked to consider the Restated Articles at this time so that ICANN is able to confirm to NTIA that this element of the transition implementation planning is complete. The Restated Articles will be effective until the expiration the IANA Functions Contract between ICANN and NTIA, which aligns with the effective date of the New ICANN Bylaws. At that time, ICANN will have to file the Restated Articles with the California Secretary of State.

PROPOSED RESOLUTION:

Whereas, on 14 March 2014, the National Telecommunications and Information Administration (NTIA) of the United States Department of Commerce announced its intention to transition the stewardship of the IANA Functions to the global multistakeholder community.

Whereas, on 10 March 2016, Internet Corporation for Assigned Names and Numbers (ICANN) accepted and transmitted to the US National Telecommunications and Information Agency the following transition documents: (i) the IANA Stewardship Transition Coordination Group's IANA Stewardship Transition Proposal, (the "ICG Proposal") and (ii) the Cross Community Working Group on Enhancing ICANN Accountability's Work Stream 1 Report (collectively, the "Transition Proposals").

Whereas, the ICANN Articles of Incorporation need to be restated in order to align with the New ICANN Bylaws and for consistency with the Transition Proposals.

Whereas, ICANN lawyers worked diligently with the independent counsel to the CCWG-Accountability to develop Restated Articles of Incorporation for ICANN. Those Restated Articles were posted for public comment for over 40 days.

Whereas, upon the close of the comments, a detailed analysis of the comments was performed and modifications were made to the Articles in response to the public comments. ICANN coordinated with the independent law firms on the revisions.

Whereas, ICANN's General Counsel has asserted that the proposed Restated ICANN Articles of Incorporation remain consistent with the Transition Proposals and recommends that the Board approve the amendment to ICANN's Articles and authorize ICANN to proceed to filing at the appropriate time.

Resolved (2016.08.09.xx), the ICANN Board approves the proposed amendments to ICANN's Articles of Incorporation, which shall be deemed effective upon the expiration of the IANA Functions Contract between ICANN and NTIA.

Resolved (2016.08.09.xx), the ICANN Board authorizes ICANN's CEO, or his designee, to proceed with the filing of the Restated Articles of Incorporation once they are effective.

PROPOSED RATIONALE

The adoption of the Restated Articles of Incorporation is another key step in the planning for the implementation of the Transition Proposals. The Board is being asked to take this action now to support ICANN's transition planning status report to NTIA due on 12 August 2016. The adoption of amendments to ICANN Articles of Incorporation completes the changes to ICANN's key governance documents that is necessary to align with the Transition Proposals and support the global multistakeholder community's work towards a successful completion of the stewardship of the IANA functions.

These Restated Articles were developed jointly between the legal teams in coordination with the ICANN community. The external counsel to the CCWG-Accountability, as well as ICANN's lawyers, worked closely with the CCWG-Accountability to confirm its understanding and support of the document. The proposed Restated Articles were posted for public for over 40 days, including a requested extension. Six comments were received. Each of the comments was considered and analyzed, and explanation was provided on whether the Articles required modification to reflect the issues raised within the comment. The legal teams continued their close coordination in developing the necessary updates to the Articles.

The changes to the draft Articles based on comments were limited.

In taking this action, the Board relied upon:

[ICG's IANA Stewardship Transition Proposal](#)

Cross Community Working Group on [Enhancing ICANN Accountability \(CCWG-Accountability\) Work Stream 1 Report \("Report"\) to the ICANN Board](#)

Report of Public Comments Proposed Restated Articles of Incorporation (clean and redline to existing Articles)

The Board also relied upon the General Counsel and Secretary's affirmation that the Restated Articles reflect the Transition Proposals, as well as the work of the independent counsel to craft the Articles in support of the Transition Proposals.

The adoption of these Articles is in line with ICANN's commitment to accountability and transparency, as this completes the key governance document that ICANN needs to put in place to provide the community with the new and enhanced accountability tools. This action confirms ICANN's commitment to adopt the accountability changes.

The adoption of these Restated Articles is not anticipated to have any impact on the security, stability or resiliency of the DNS. The resource implications for these Restated Articles are the same as the potential resource implications identified for the implementation of the new ICANN Bylaws.

This is an Organizational Administrative Function for which public comments were received.

Signature Block:

Submitted by: Samantha Eisner

Position: Deputy General Counsel

Date Noted: 3 August 2016

Email: Samantha.eisner@icann.org

ICANN BOARD PAPER NO. 2016.08.09.2g

TITLE: **Root Zone Maintainer Agreement**
PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Board is being asked to approve delegating to the CEO the authority to enter into the Root Zone Maintainer Agreement (RZMA) with Verisign, Inc. The RZMA is one of the requirements from the package of proposals that the Board approved on 10 March 2016 to transition NTIA's stewardship of the IANA function to the global multistakeholder community, and is also a contract exceeding US\$500,000, and therefore requiring the Board approval to delegate signature authority to the CEO.

As background, in a 4 March 2015 letter, the National Telecommunications and Information Agency (NTIA) "officially requested that Verisign and ICANN work together to develop a proposal on how best to transition NTIA's administrative role associated with root zone management in a manner that maintains the security, stability, and resiliency of the Internet's domain name system." In August 2015, ICANN and Verisign submitted a proposal to NTIA in response to its request

<https://www.ntia.doc.gov/files/ntia/publications/root_zone_administrator_proposal-relatedtoiana_functionsste-final.pdf>. The proposal outlines two parts, a parallel testing period of the of Root Zone Management Systems (RZMS) and a Root Zone Maintainer Agreement with Verisign for Verisign to continue performing the root zone maintainer function it performs today under the <[Cooperative Agreement](#)> with the Department of Commerce.

Further, in a NTIA letter dated 9 June 2016 to ICANN, in addition to confirming that the IANA Stewardship Transition Coordination Group (ICG) and Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) proposals meet the criteria NTIA laid out in its March 2015 announcement regarding the transition, NTIA specified that two of pre-conditions for the IANA Stewardship transition are the finalization of the RZMA and successful completion of the parallel testing period.

The parallel testing period of the RZMS successfully concluded on 6 July 2016 <<https://www.icann.org/news/announcement-2016-07-14-en>>, and the RZMA has been finalized with Verisign <<https://www.icann.org/news/blog/root-zone-management-transition-update-preservation-of-security-stability-and-resiliency>>.

Under the RZMA, Verisign will continue to provide services for root zone maintenance, root zone signing with the ZSK, and distribution of the root zone file and related files to the root zone operators at a nominal fee. The RZMA provides for an 8-year term with robust service level agreements that can be modified via a change control process should the customers of IANA require changes to these service level agreements. The change control process also allows for changes to the Root Zone Management System (RZMS) as root zone management evolves to meet the needs of the community. While the 8-year term of the RZMA is intended to promote the security, stability and resiliency of root zone maintenance operations by having Verisign continue in its role, the agreement also provides a capability for the community, through a consensus-based community-driven process, to cause ICANN to transition the function to another service provider after three years. The full RZMA was posted for a 30-day public notice period on 30 June 2016 as required by the ICG proposal and can be viewed at <https://www.icann.org/iana_imp_docs/63-root-zone-maintainer-agreement-v-1-0>. A term sheet of the RZMA is also attached for the Board's review.

STAFF RECOMMENDATION:

Staff recommends that the Board approve the proposed Root Zone Maintainer Agreement with Verisign, Inc.

BOARD FINANCE COMMITTEE RECOMMENDATION:

The Board Finance Committee has reviewed the financial aspects and implications of this contract and has found (i) that the proposed costs of the contract were reasonable, (ii) that the procurement process had been respected, (iii) that the costs were affordable, and recommended approval by the Board as a result. <<https://www.icann.org/resources/board-material/minutes-bfc-2016-06-25-en>>

PROPOSED RESOLUTION:

Whereas, the National Telecommunications and Information Agency (NTIA) officially requested that Verisign and ICANN work together to develop a proposal on how best to transition NTIA's administrative role associated with root zone management in a manner that maintains the security, stability, and resiliency of the Internet's domain name system in a 4 March 2015 letter to ICANN.

Whereas, in August 2015, ICANN and Verisign submitted a proposal to NTIA in response to its request <https://www.ntia.doc.gov/files/ntia/publications/root_zone_administrator_proposal-relatedtoiana_functionsste-final.pdf>. The proposal outlines two parts, a parallel testing period of the of Root Zone Management Systems (RZMS) and a Root Zone Maintainer Agreement (RZMA) with Verisign for Verisign to continue performing the root zone maintainer function it performs today under the <[Cooperative Agreement](#)> with the Department of Commerce.

Whereas, NTIA specified in a 9 June 2016 letter to ICANN that a finalized RZMA and successful completion of the parallel testing period are pre-conditions to the IANA Stewardship transition.

Whereas, the completion of the RZMA is a requirement from the package of proposals that the Board approved on 10 March 2016 to transition NTIA's stewardship of the IANA function to the global multistakeholder community and, because it exceeds US\$500,000 in total, requires that the Board approves to delegate signature authority to the CEO.

Whereas, the parallel testing period of the RZMS successfully concluded on 6 July 2016 <<https://www.icann.org/news/announcement-2016-07-14-en>>.

Whereas, ICANN and Verisign finalized negotiations on the terms of the proposed RZMA for Verisign to perform the root zone maintainer function, and published the proposed RZMA for a 30-day notice period as required by the IANA Stewardship Transition Coordination Group (ICG) proposal <<https://www.icann.org/news/blog/root-zone-management-transition-update-preservation-of-security-stability-and-resiliency>>.

Whereas, the proposed RZMA contains provisions that incorporate relevant requirements from the Cross Community Working Group on Naming Related Functions (CWG-Stewardship).

Whereas, the Board Finance Committee reviewed the financial aspects and implications of the RZMA and found (i) that the proposed costs of the contract were reasonable, (ii) that the procurement process had been respected, (iii) that the costs were affordable, and recommended approval by the Board as a result.

Resolved (2016.08.09.xx), the proposed RZMA 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 the Board is addressing the issue now?

In a 4 March 2015 letter, the National Telecommunications and Information Agency (NTIA) “officially requested that Verisign and ICANN work together to develop a proposal on how best to transition NTIA’s administrative role associated with root zone management in a manner that maintains the security, stability, and resiliency of the Internet’s domain name system.” In August 2015, ICANN and Verisign submitted a proposal to NTIA in response to its request <https://www.ntia.doc.gov/files/ntia/publications/root_zone_administrator_proposal-relatedtoiana_functionsste-final.pdf>. The proposal outlines two parts, a parallel testing period of the of Root Zone Management Systems (RZMS) and a Root Zone Maintainer Agreement with Verisign for Verisign to continue performing the root zone maintainer function it performs today under the <[Cooperative Agreement](#)> with the Department of Commerce.

Completion of the RZMA is also specified as one of the requirements from the package of proposals that the Board approved on 10 March 2016 to transition NTIA’s stewardship of the IANA function to the global multistakeholder community and, because it exceeds US\$500,000 in total, requires that the Board approves to delegate signature authority to the CEO.

Since last August, ICANN and Verisign have had ongoing discussions and negotiations regarding the terms of the RZMA. Negotiations concluded in June and the proposed RZMA was

published for a 30-day public notice period on 30 June 2016. The 30-day public notice period ended on 30 July 2016 and the Board is being asked today to consider the proposed RZMA for approval.

What is the proposal being considered?

The proposed RZMA allows Verisign to continue providing services for root zone maintenance, root zone signing with the ZSK, and distribution of the root zone file and related files to the root zone operators at a nominal fee. The RZMA provides for an 8-year term with robust service level agreements that can be modified via a change control process should the customers of IANA require changes to these service level agreements. The change control process also allows for changes to the Root Zone Management System (RZMS) as root zone management evolves to meet the needs of the community. While the 8-year term of the RZMA is intended to promote the security, stability and resiliency of root zone maintenance operations by having Verisign continue in its role, the agreement also provides a capability for the community, through a consensus-based community-driven process, to cause ICANN to transition the function to another service provider after three years. The full RZMA was posted for a 30-day public notice period on 30 June 2016 as required by the ICG proposal and can be viewed at https://www.icann.org/iana_imp_docs/63-root-zone-maintainer-agreement-v-1-0. A term sheet of the RZMA is also attached for the Board's review.

Which stakeholders or others were consulted?

ICANN held discussions and negotiations with Verisign, Inc. to finalize the proposed RZMA, which was then posted for a 30-day public notice period from 30 June through 30 July 2016.

What concerns or issues were raised by the community?

No significant issues or concerns were brought to ICANN's attention during the 30-day public notice period.

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:

- Verisign Cooperative Agreement with the United States Government
<<https://www.ntia.doc.gov/page/verisign-cooperative-agreement>>
- 4 March 2015 letter from NTIA
- Verisign/ICANN Proposal in Response to NTIA Request – Root Zone Administrator Proposal Related to the IANA Functions Stewardship Transition
<https://www.ntia.doc.gov/files/ntia/publications/root_zone_administrator_proposal-relatedtoiana_functionsste-final.pdf>
- Root Zone Maintainer Agreement <https://www.icann.org/iana_imp_docs/63-root-zone-maintainer-agreement-v-1-0>
- IANA Stewardship Transition Coordination Group (ICG) proposal <<https://www.icann.org/en/system/files/files/iana-stewardship-transition-proposal-10mar16-en.pdf>>

What factors has the Board found to be significant?

The Board carefully considered the RZMA to ensure it contains provisions that would allow ICANN to meet the requirements of the community for the transition, such as:

- The ability to modify service level agreements due to recommendations from the Customer Standing Committee
- The ability to make modifications to the Root Zone Management System due to recommendations from the Root Zone Evolution Review Committee
- The ability for the community, through a consensus-based community-driven process, to cause ICANN to transition the maintainer function to another service provider

The Board also carefully considered the terms of the RZMA to ensure that the maintainer function can continued to be operated in a secure, stable, and reliable manner post transition.

Are there positive or negative community impacts?

A key goal of the proposed RZMA and continued engagement with Verisign, Inc. for the performance of the maintainer function is to provide secure and stable operations of the root

zone through the IANA Stewardship transition and beyond. The Board's approval of the proposed RZMA would ensure that expectations of IANA customers will continue to be met.

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

Verisign, Inc. has historically solely performed the maintainer function at no cost and contracting directly with Verisign, Inc. for the continued performance of this work is desirable to ensure continuity, security and stability during the transition period. The terms of the RZMA allow for the community, through a consensus-based community-driven process, to cause ICANN to transition the maintainer function to another service provider. This contract creates a nominal annual fee of USD 300,000 per year due to Verisign, Inc. for the performance of the maintainer function. The ICANN Board Finance Committee has reviewed the financial aspects and implications of the proposed RZMA and recommends approval of the RZMA to the ICANN Board, on the basis of this review.

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

The Board's approval of the proposed RZMA would ensure continuity, security and stability of the operation of the root zone during the transition period and beyond.

Signature Block:

Submitted by: Trang Nguyen

Position: Senior Director, Strategic Programs

Date Noted: 9 August 2016

Email: trang.nguyen@icann.org

ICANN BOARD SUBMISSION NO. 2016.08.09.2H

TITLE: **Consideration of Request for Cancellation of HOTEL Top-Level Domain S.a.r.l's (HTLD's) Application for .HOTEL**

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

EXECUTIVE SUMMARY:

Travel Reservations SRL, formerly Despegar Online SRL (Despegar) has requested that ICANN cancel HOTEL Top-Level Domain S.a.r.l's (HTLD's) application for .HOTEL. The request for cancellation from Despegar and others (collectively, .HOTEL Claimants)¹ is premised on Dirk Krischenowski's apparent business connections to HTLD, coupled with his exploitation of the portal issue that allowed parties to access confidential information of various applicants for new gTLDs, including information of several of the .HOTEL Claimants.

PROPOSED RESOLUTION:

Whereas, Travel Reservations SRL (formerly Despegar Online SRL), Famous Four Media Limited, Fegistry LLC, Minds + Machines Group Limited, Donuts Inc., and Radix FZC (collectively, .HOTEL Claimants) have requested that ICANN cancel HOTEL Top-Level Domain S.a.r.l's (HTLD's) application for .HOTEL.

Whereas, the .HOTEL Claimants' request is premised on Dirk Krischenowski's apparent business connections to HTLD, coupled with his exploitation of the portal issue that allowed parties to access confidential information of various applicants for new gTLDs, including information of several of the .HOTEL Claimants.

Whereas, ICANN's forensic investigation of the portal issue determined that Mr. Krischenowski's unauthorized access to confidential information did not occur until after HTLD submitted its application in 2012 and after HTLD elected to participate in CPE on 19 February 2014.

Whereas, ICANN has not uncovered any evidence that: (i) the information Mr. Krischenowski may have obtained as a result of the portal issue was used to support HTLD's application for

¹ In addition to Despegar, the .HOTEL Claimants include Famous Four Media Limited, Fegistry LLC, Minds + Machines Group Limited, Donuts Inc., and Radix FZC.

.HOTEL; or (ii) any information obtained by Mr. Krischenowski enabled HTLD's application to prevail in CPE.

Resolved (2016.08.09.xx), the Board concludes that cancellation of HTLD's application for .HOTEL is not warranted.

Resolved (2016.08.09.xx), the Board directs the President and CEO, or his designee(s), to move forward with processing HTLD's application for .HOTEL.

PROPOSED RATIONALE:

HTLD and the .HOTEL Claimants each applied for .HOTEL and were all placed in a contention set. As HTLD's application was community-based, its application was invited to participate in Community Priority Evaluation (CPE) on 19 February 2014. HTLD prevailed in CPE on 11 June 2014, thereby excluding the .HOTEL Claimants from continuing through the process.

The .HOTEL Claimants have argued that Mr. Krischenowski's exploitation of the portal issue that allowed parties to access confidential information of various applicants for new gTLDs, including information of several of the .HOTEL Claimants, coupled with Mr. Krischenowski's apparent business connections to HTLD, is cause for ICANN to cancel HTLD's .HOTEL application.

ICANN's forensic investigation of the portal issue revealed that the user credentials of Mr. Krischenowski and his associates, Mr. Oliver Süme and Ms. Katrin Ohlmer, were responsible for numerous instances of suspected intentional unauthorized access to other applicants' confidential information, which occurred from March through October 2014. Mr. Krischenowski acknowledged that he accessed confidential information of other users, but denied that he acted improperly or unlawfully. Among other things, Mr. Krischenowski claimed that he did not realize the portal issue was a malfunction, and that he used the search tool in good faith. Mr. Krischenowski and his associates also certified to ICANN that they would delete or destroy all information obtained, and affirmed that they had not used and would not use the information obtained, or convey it to any third party.

With respect to claims about Mr. Krischenowski's involvement with HTLD when he accessed the confidential information, ICANN has been informed that he was not directly linked to

HTLD's .HOTEL application as an authorized contact or as a shareholder, officer or director. Mr. Krischenowski was a 50% shareholder and managing director of HOTEL Top-Level-Domain GmbH, Berlin (GmbH Berlin), which was a minority (48.8%) shareholder of HTLD.

ICANN has not uncovered any evidence that: (i) the information Mr. Krischenowski may have obtained as a result of the portal issue was used to support HTLD's application for .HOTEL; or (ii) any information obtained by Mr. Krischenowski enabled HTLD's application to prevail in CPE. HTLD submitted its application in 2012, elected to participate in CPE on 19 February 2014, and prevailed in CPE on 11 June 2014. Mr. Krischenowski's first instance of unauthorized access to confidential information did not occur until early March 2014; and his searches relating to the .HOTEL Claimants did not occur until 27 March, 29 March and 11 April 2014. Therefore, even assuming that Mr. Krischenowski did obtain confidential information belonging to the .HOTEL Claimants, this would not have had any impact on the CPE process for HTLD's .HOTEL application. Specifically, whether HTLD's application met the CPE criteria was based upon the application as submitted in May 2012, or when the last documents amending the application were uploaded by HTLD on 30 August 2013 – all of which occurred before Mr. Krischenowski or his associates accessed any confidential information, which occurred from March 2014 through October 2014. In addition, there is no evidence, or claim by the .HOTEL Claimants, that the CPE Panel had any interaction at all with Mr. Krischenowski or HTLD during the CPE process, which began on 19 February 2014.

In furtherance of the Board's 10 March 2016 resolution directing ICANN's "President and CEO, or his designee(s), to complete the investigation of the issues alleged by the .HOTEL Claimants regarding the portal configuration as soon as feasible and to provide a report to the Board for consideration following the completion of that investigation" (*see* 10 March 2016 Board Resolutions, available at <https://www.icann.org/resources/board-material/resolutions-2016-03-10-en#2.a>), ICANN informed HTLD of the .HOTEL Claimants' request that ICANN cancel HTLD's .HOTEL application, provided HTLD an opportunity to respond, and sought information from HTLD regarding its association with Mr. Krischenowski. In response, Mr. Philipp Grabensee, the now sole Managing Director of HTLD, confirmed for ICANN that at the time of the challenged conduct, Mr. Krischenowski was a 50% shareholder and managing director of GmbH Berlin, which was a minority (48.8%) shareholder of HTLD. Mr. Grabensee also confirmed that Mr. Krischenowski acted as a consultant for HTLD's application at the time

it was submitted (in 2012), and that Mr. Krischenowski represented HTLD in three string confusion objections initiated by HTLD against applications by Despegar and Booking.com in 2013.

Mr. Grabensee also stated that, in accessing the proprietary information, Mr. Krischenowski did not act on HTLD's behalf or in support of its application for .HOTEL. Mr. Grabensee noted that Mr. Krischenowski did not use HTLD's Login ID, did not inform HTLD's personnel about "his action," "did not provide any of the accessed information" to HTLD or its personnel, and HTLD "personnel did not have any knowledge about Mr. Krischenowski's action, and did not consent to it or approve it."

Lastly, Mr. Grabensee noted the following recent changes to HTLD's relationship with Mr. Krischenowski: (i) the business consultancy services between HTLD and Mr. Krischenowski were terminated as of 31 December 2015; (ii) Mr. Krischenowski stepped down as a managing director of GmbH Berlin effective 18 March 2016; (iii) Mr. Krischenowski's wholly-owned company transferred its 50% shares in GmbH Berlin to Ms. Ohlmer (via her wholly-owned company); (iv) GmbH Berlin will transfer its shares in HTLD to Afilias plc; and (v) Mr. Grabensee is now the sole Managing Director of HTLD.

The Board had the opportunity to consider all of the materials submitted relating to the .HOTEL Claimants' request for cancellation of HTLD's .HOTEL application. Following consideration of all relevant information provided and for the reasons set forth in the Resolution and Rationale, the Board has determined that cancellation of HTLD's .HOTEL application is not warranted, and the .HOTEL Claimants' request is therefore denied.

The Board takes these claims seriously and the Board members have exercised independent judgment in making this decision, which it deems in the best interest of the organization and the community as a whole. The Board, however, does acknowledge that, based on the information available, Mr. Krischenowski may have taken some improper actions in relation to the portal configuration issue, and the Board is considering whether this conduct should be addressed directly with Mr. Krischenowski.

This decision has no direct financial impact on ICANN and will not 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: 18 July 2016
Email: amy.stathos@icann.org

Directors and Liaisons,

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

9 August 2016 – Special Meeting of the ICANN Board of Directors - at 22:00 UTC. This Board meeting is estimated to last approximately 120 minutes.

<http://www.timeanddate.com/worldclock/fixetime.html?msg=ICANN+Telephonic+Board+Meeting+-+09+August+-+22%3A00+UTC&iso=20160809T22&p1=%3A&ah=2>

Some other time zones:

9 August 2016 – 3:00pm PDT Los Angeles

9 August 2016 – 6:00pm EDT Washington, D.C.

10 August 2016 – 12:00am CEST Brussels

10 August 2016 – 6:00am CST Taipei

10 August 2016 – 8:00am AEST Sydney

SPECIAL MEETING OF THE ICANN BOARD

Consent Agenda

- Approval of Board Meeting Minutes from 25 June and 27 June 2016

Main Agenda

- Root Zone Evolution Review Committee (RZERC) Charter
- GNSO Policy Recommendations on Privacy & Proxy Services Accreditation
- Consideration of BGC Recommendation on Reconsideration Request 16-3 (.GAY)
- Consideration of Dot Registry v. ICANN IRP Final Declaration
- PTI Articles of Incorporation

- ICANN Restated Articles of Incorporation
- Root Zone Maintainer Agreement
- Consideration of Request for Cancellation of HOTEL Top-Level Domain S.a.r.l's (HTLD's) Application for .HOTEL (*note: the package of Board Materials related to this item has been emailed separately to non-conflicted Board Members*)
- AOB

Executive Session – Confidential

- Ombudsman FY16 At-Risk Compensation
- Officer Compensation
- AOB

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

Contact Information Redacted

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

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

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

John Jeffrey

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