15 MAY 2016 BOARD MEETING
Board Papers

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AGENDA – 15 MAY 2016 REGULAR BOARD Meeting – 45 minutes

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AGENDA – 15 MAY 2016 REGULAR BOARD Meeting – 45 minutes

Time, etc.	Agenda Item	Shepherd
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ICANN BOARD SUBMISSION NO. 2015.05.15.1b

TITLE: **Appointment of John R. Levine to the Security & Stability Advisory Committee**

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

EXECUTIVE SUMMARY:

The Chair of the Security and Stability Advisory Committee respectfully requests the appointment of John R. Levine as a new Committee member.

COMMITTEE RECOMMENDATION:

The Security and Stability Advisory Committee desires that the Board appoint John R. Levine to the Security and Stability Advisory Committee.

PROPOSED RESOLUTION:

Whereas, the Security and Stability Advisory Committee (SSAC) reviews its membership and makes adjustments from time-to- time.

Whereas, the SSAC Membership Committee, on behalf of the SSAC, requested that the Board should appoint John R. Levine to the SSAC for a three-year term beginning immediately upon approval by the Board and ending on 31 December 2019.

Resolved (2016.05.15.xx), the Board appoints John R. Levine to the SSAC for a three-year term beginning immediately and ending on 31 December 2019.

PROPOSED RATIONALE:

The SSAC is a diverse group of individuals whose expertise in specific subject matters enables the SSAC to fulfil 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 accrual of talented subject matter experts who have consented to volunteer their time and energies to the execution of the SSAC mission. John R. Levine is an active participant in both the IETF and MAAWG having contributed positively in both fora. He brings a breadth of technical expertise and a well-deserved reputation for excellent technical debate. The SSAC believes he would be a significant contributing member of the SSAC, and the Board accepts the SSAC recommendation to appoint John R. Levine to the SSAC.

Submitted by:	Ram Mohan, SSAC Liaison to the Board
Position:	Liaison to the ICANN Board from the Security & Stability Advisory Committee
Date Noted:	12 April 2016
Email:	rmohan@afilias.info

ICANN BOARD SUBMISSION NO. 2016.05.15.1c

Title: **GNSO gTLD Registries Stakeholder Group Charter Amendments (2016)**

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.

In September 2013, the Board approved a *Process For Amending GNSO Stakeholder Group and Constituency Charters* *(hereinafter "Process"*), which established a four-phase process to be executed to secure formal Board approval of any community governance changes (see Appendix below).

Late last year (November 2015), the gTLD Registries Stakeholder Group (RySG) of the GNSO approved amendments to its governing documents and availed itself of the Board process. The amendments closely followed Board recommendations to the RySG that were articulated in Board Resolution 2015.10.22.14. Among other changes, the amendments seek to (1) create a new class of "Association" members; (2) change the weighted voting categories and measures of the group; and (3) adjust the RySG community fee structure to accommodate the addition of association members.

The purpose of this paper is to recommend Board approval of the proposed amendments. All necessary steps of the process to this point have been satisfied and the Board's Organizational Effectiveness Committee (OEC) recommends full Board approval of the RySG charter amendments.

To date:

1) The RySG has completed Phase I of the Process, voted to amend its governing Charter and formally advised Staff via email on 12 November 2015.

2) As part of its Phase II process responsibilities, ICANN staff conducted a review of the document, with policy staff examining the language, form and structure of the document and the legal team making an assessment of any potential fiscal or liability concerns in the proposed changes.

3) Staff advised the RySG leadership of the results of these examinations, suggested various adjustments to the document (including format and language changes) and the RySG subsequently advised the staff of the acceptance of these changes on 11 January 2016.

4) Also, as part of its Phase II Process responsibilities, Staff reviewed and assessed the proposed changes and advised the OEC that the proposed changes do not appear to raise any fiscal or liability concerns for the ICANN organization. The staff alerted the OEC to a potential issue regarding community collection of membership fees and the OEC discussed that matter with staff. See Section III of this report.

5) The OEC directed staff to post the proposed amendments to an ICANN Public Comments Forum for community review and comment (Phase III of the Process).

6) A 43-day Public Comment period (22 February – 4 April 2016) was completed and staff produced a Summary Report for community and Board review on 15 April 2016. The one community comment submitted supports the amendments. There have been no community objections or other comments on the amendments.

7) The OEC has reviewed the amendments and staff's recommendation to approve them. The OEC now recommends Board approval of the amendments.

Attached you will find a document titled ***Charter of the gTLD Registries Stakeholder Group - Adopted by RySG Vote on 4 November 2015***, which reflects the gTLD Registries' proposed amendments. Yellow highlights in the document identify all new and replacement text and "strikeout" font identifies language deleted from the earlier document version.

Also attached is a copy of the staff Summary Report that reviews and summarizes the community feedback submitted during the public comment forum. That report notes support for the amendments with suggestions for how to productively assess any progress or operational improvements resulting from the changes.

SUMMARY OF AMENDMENTS

In sum, the RySG has amended its existing Charter to address a number of items – including those flagged by the Board in its Dublin resolution approving the last set of RySG Charter amendments (see - Board Resolution 2015.10.22.14). Among the proposed changes, the most substantial charter amendments are in the following areas:

- Creation of a new class of "Association" members;
- Changes to the weighted voting categories and measures of the group; and
- Adjustments to the community fee structure to accommodate the addition of association members.

REPORT OF LIABILITY OR FISCAL CONCERNS

Pursuant to the Process, members of the ICANN policy development support and legal teams have reviewed the proposed charter amendments. Staff advises that the proposed changes do not appear to raise any fiscal or liability concerns for the ICANN organization.

The legal team has taken particular note of the amendment language changing the RySG fee structure. While there may not be a direct fiscal or liability impact on ICANN as a result of these changes, the team notes that the RySG has the potential to generate a sizable amount of fees. As the RySG is not a separate legal entity, there is a possibility that, because of its affiliation with ICANN, some might look to ICANN if ever there were financial malfeasance with the fees collected. The team notes that this potential risk is the same with other communities that collect dues, and is not necessarily a particular issue for the RySG.

These matters were discussed by the OEC with staff prior to the opening of the Public Comment period and no public comments addressed this area of the amendments. The proposed amendments have highlighted the fact that the RySG and other community groups collect membership fees from their members. This may be an area for future community consideration and discussion.

RECOMMENDATION

Now that all but the final steps of the Board's Charter Amendment 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 RySG's internal processes as well as the group's structure itself with a focus on accommodating a new class of membership (associations). These changes should help the group expand community participation and evolve its manner of deliberations and decision-making.

Based on the community comments provided on this matter, it is advisable to encourage the RySG to examine the efficacy of these changes within a reasonable period of time after they are implemented to determine of they are having the intended impacts.

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 gTLD Registries Stakeholder Group (RySG), ICANN Staff, and the Organizational Effectiveness Committee (OEC) have completed all steps identified in the Process - including a determination that the proposed changes will not raise any fiscal or liability concerns for the ICANN organization;

Whereas, the amendments appear to address a number of matters the Board directed to the RySG's attention in previous Board Resolution Number 2015.10.22.14;

RESOLVED (2016.05.15.xx), the ICANN Board approves the RySG Charter Amendments as documented in this paper and attachments. The RySG and ICANN Staff are directed to provide access to the new governing document on the appropriate web pages for the RySG. The Board directs the RySG to review the changes within one year to determine if they are having the intended impacts. ICANN staff is further directed to share this resolution with the leadership of the RySG.

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 *Process For Amending GNSO Stakeholder Group and Constituency Charters* ("*Process"*) to provide a streamlined methodology for compliance with the Bylaws requirement.

Earlier this year, the gTLD Registries Stakeholder Group (RySG) of the GNSO approved amendments to its governing documents and availed itself of the Process.

What are the proposals being considered?

The Stakeholder Group 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. Among a number of amendments, the most substantial charter changes are in the following areas:

- Creation of a new class of "Association" members;
- Changes to the weighted voting categories and measures of the group; and
- Adjustments to the community fee structure to accommodate the addition of association members.

What stakeholders or others were consulted?

In addition to extensive community deliberations within the RySG, the proposed amendments were subjected to a 43-day Public Comment period (22 February – 4 April 2016). When the period was completed, staff produced a Summary Report for community and Board review on 15 April 2016.

What significant materials did the Board review?

The Board reviewed a red-line formatted document of the proposed charter amendments and a copy of the Staff Summary Report summarizing community comments.

What factors did the Board find to be significant?

The GNSO Registries Stakeholder Group (RySG), 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 Stakeholder Group 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 RySG fee structure 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 43-day Public Comment period (22 February – 4 April 2016).

SIGNATURE BLOCK:

Submitted by:	David Olive, Robert Hoggarth
Position:	Senior Vice President-Policy Development Support; Senior Director, Policy and Community Engagement
Date Noted:	27 April 2016
Email and Phone Number	Policy-Staff@icann.org

APPENDIX

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:

- Recognize the proposed charter amendment by a simple majority vote; or
- Reject the proposed amendment by a supermajority (2/3) vote and provide a specific rationale for its concerns.
- 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.

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ICANN BOARD SUBMISSION NO. 2016.05.15.1d

(Subject to BGC approval of recommendation)

TITLE: **Conduct at ICANN Meetings**

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

EXECUTIVE SUMMARY:

During and after ICANN55, the issue of certain community-member conduct toward one another has been raised in various sessions and lists, and the Board agreed to address this matter. While ICANN community members are not bound to the same policies and rules as the ICANN Board and staff, ICANN does expect community members to adhere to certain Expected Standards of Behavior (Standards). The current language of these Standards does not specifically address harassment, but does provide a set of high-level guidelines for interacting with one another. As the Board previously committed, the Board Governance Committee (BGC) has been tasked with considering possible enhancements to the language of these Standards, which the Board is now being asked to post for public comment.

In parallel, staff has initiated discussions with community leaders, and the Board and staff have received input from various aspects of the community, about the process for developing a Community anti-harassment policy. It appears from the input received to date that Community members (at least those that have publicly commented) would like to ask ICANN to work with experts, as needed and appropriate, to help develop a proposed Community anti-harassment policy/procedure to be followed at ICANN Public meetings, which would in turn be presented to the community for further discussion and input.

BOARD GOVERNANCE COMMITTEE (BGC) RECOMMENDATION *(Subject to BGC Approval of Recommendation)*:

The BGC recommends that: (i) the Board authorize the posting for public comment of the proposed revised Expected Standards of Behavior attached as Attachment 1 to the Reference Materials for this Board paper; and (ii) the Board direct the President and CEO, or his designee(s), to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN Public meetings.

PROPOSED RESOLUTION:

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

Whereas, the Board Governance Committee (BGC) has recommended certain revisions to the language of the Expected Standards of Behavior and recommended that the Board authorize the revised version be posted for public comment.

Whereas, the BGC also has recommended that the Board direct the President and CEO, or his designee(s), to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN Public meetings.

Resolved (2016.05.15.xx), the Board hereby authorizes the posting for public comment of the proposed revised Expected Standards of Behavior.

Resolved (2016.05.15.xx), the Board hereby directs the President and CEO, or his designee(s), to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN Public meetings.

PROPOSED RATIONALE:

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

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

language of these Standards. Accordingly, the BGC has reviewed and proposed certain revisions to the language of the Standards, and recommended that the Board authorize the posting for public comment of the proposed revised Standards.

In parallel, staff has initiated discussions with community leaders, and the Board and staff have received input from various aspects of the community, about the process for developing a Community anti-harassment policy. It appears from the input received to date that Community members (at least those that have publicly commented) would like to ask ICANN to work with experts, as needed and appropriate, to help develop a proposed Community anti-harassment policy/procedure to be followed at ICANN Public meetings, which would in turn be presented to the community for further discussion and input. (See Attachments 1, 2 and 3, to the Reference Materials document to this Paper.) The BGC therefore also has recommended that the Board direct the President and CEO, or his designee(s), to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN Public meetings. The Board agrees with this approach.

It is not anticipated that this decision will have any fiscal impact on ICANN, and it will not have any impact on the security, stability or resiliency of the domain name system.

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

Submitted By: Amy A. Stathos, Deputy General Counsel
Dated Noted: 6 May 2016
Email: amy.stathos@icann.org

ICANN BOARD SUBMISSION NO. 2015.05.15.2a

TO:	**ICANN Board of Directors**
TITLE:	**GNSO Council Policy Recommendations on Privacy & Proxy Services Accreditation Issues**
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.

In October 2013, the GNSO Council had chartered the PDP Working Group (WG) 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 GNSO Council approval of the WG charter followed from 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 report in 2012 as well.

Subsequent to the GNSO Council's adoption of the PDP recommendations, the GAC's Marrakech Communique was issued on 9 March 2016. As part of GAC advice in the Communique, the GAC requested time to consider possible advice on public policy issues and noted the GAC's 2007 Principles on Whois Services, in particular, Principe 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 relating to these concerns to the PDP Working Group's Initial Report. In its Marrakech Communique, the GAC also requested a meeting with the Board prior to the Board considering action to adopt the PDP recommendations, and suggested the ICANN56 meeting as an appropriate opportunity.

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 defer adoption of the GNSO policy recommendations at this time. It should be noted that 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.

In light of the GAC's Marrakech Communique, however, staff recommends that, as part of its process in considering adoption of the GNSO policy recommendations, the Board provide the GAC with the opportunity to provide timely GAC advice on the topic. In considering deferral of a vote at this stage, the Board may also wish to consider the option of voting on the GNSO recommendations at the first Board meeting following ICANN56.

Staff notes that the proposed approach outlined above conforms to the ICANN Bylaws; specifically, 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").

The Board may also wish to consider whether or not, in lieu of passing a formal resolution (as further detailed below) at this time, it prefers to issue a statement to similar effect, to be communicated to the GAC and the GNSO.

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://gnso.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://gnso.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://gnso.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); and

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).

Resolved (2016.05.15.xx), the Board thanks the GNSO for completing the Board-requested Policy Development Process (PDP) and acknowledges receipt of the PDP Final Report and the GNSO Council's Recommendations Report concerning the final PDP recommendations.

Resolved (2016.05.15.xx), the Board requests more time to consider the final PDP recommendations and the timely provision and consideration of GAC advice, if any, on their adoption, with a view toward the Board's taking further action on the recommendations at the first Board meeting following the ICANN56 Public Meeting in Helsinki, Finland.

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, and a Recommendations Report from the Council to the Board on the topic 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. The public comment period closed on 16 March 2016. As outlined in Annex A of the ICANN Bylaws, the PDP recommendations are now being forwarded to the Board for its review and action.

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://gnso.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 lifetime 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.

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. As the Working Group did not receive concrete proposals on how a specific framework applicable to law enforcement requests could be developed, its Final Report contains a suggestion for certain minimum requirements that could be included if such a framework is developed in the future.

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.

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 has raised this possibility with respect to this PDP and as such the Board is obliged to take into account any advice that the GAC may provide in a timely manner on the topic.

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. Deferring adoption of the PDP recommendations will also mean that the need to extend the interim specification in the 2013 RAA beyond its current expiration date will become more urgent.

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. This is part of ICANN's on-going efforts to improve the Whois system, including implementing recommendations made previously by the Whois Review Team. Implementing many of the GNSO recommendations would create 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.

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.

The Working Group's Final Report also notes a few 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. To the extent that the GAC provides the Board with timely advice of relevant public policy concerns and the Board accepts such advice, the development of a disclosure framework for law enforcement authorities and other third parties may also need to be considered, possibly in parallel with implementation of the overall accreditation program.

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 if the PDP recommendations are adopted, regardless of whether this occurs immediately or in the future. However, as the current interim specification in the RAA applicable to

such services is due to expire on 1 January 2017, consideration will need to be given to either extending its duration (e.g. to allow for implementation should the PDP recommendations be adopted) or amending and updating it in the event that the PDP recommendations are not adopted.

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:	6 May 2016

ICANN BOARD SUBMISSION NO. 2016.05.15.2b

TITLE:	**Status Update on Investigation into Allegations of Misconduct by Applicant for .HOTEL**
PROPOSED ACTIONS:	**For Board Discussion**

Privileged and Confidential

Privileged and Confidential

Submitted By: Amy A. Stathos, Deputy General Counsel
Dated Noted: 9 May 2016
Email: amy.stathos@icann.org

ICANN BOARD PAPER NO. 2016.05.15.2c

TITLE: **SO/AC FY17 Additional Budget Requests Approval**

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

EXECUTIVE SUMMARY:

As a result of prior discussions between community members and staff, an additional budget requests process was created to enable each Supporting Organizations (SO) and Advisory Committees (AC) to formulate requests for funding of actions to be carried out in the following fiscal year. To allow both community members and staff sufficient time to organize events that occur very soon after the Board approves the overall budget, the approval of these additional budget requests must happen in advance of the approval of the overall ICANN Operating Plan and Budget.

The process includes a deadline of 15 February 2016 for the SOs and ACs to present additional budget requests and an indication that the Board would take action on recommendations relating to those requests by mid May 2016.

STAFF AND BOARD FINANCE COMMITTEE RECOMMENDATION:

The staff and the Board Finance Committee (BFC) recommend that the Board approve funds in the amount of $643,700 to cover the costs of the FY17 SO and AC additional budget requests.

PROPOSED RESOLUTION:

Whereas, prior discussions between community members and ICANN staff members identified the need for an earlier decision on the funding of additional budget requests from ICANN's Supporting Organizations (SO) and Advisory Committees (AC).

Whereas, the staff created an SO/AC additional budget requests process, to collect, review and submit for Board approval funding requests from the SOs and ACs.

Whereas, requests were submitted by the ICANN Community by the set deadline, and were reviewed by a panel of staff members representing the Policy, Stakeholders Engagement and Finance personnel.

Whereas, the review panel recommended the approval of requests representing $643,700 for approval.

Whereas the Board Finance Committee, reviewed the process followed and the staff's proposal, and has recommended that the Board approve staff's recommendation.

Resolved (2016.05.15.xx), the Board approves committing $643,700 during Fiscal Year 2017 to cover the costs associated with the adopted SO/AC additional budget requests.

PROPOSED RATIONALE:

The budget approval earlier in the year is a reasonable accommodation of the established budget approval process and timeline, that facilitate the work of the ICANN community and of the ICANN staff, and does not create additional expenses. The amount of the committed expenses resulting from this resolution is considered sufficiently small to not require that funding resources are specifically identified and approved by the Board.

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.

The approval process is an Organizational Administrative process that has already been subject to significant input from the community.

Submitted by:	Xavier Calvez
Position:	CFO
Date Noted:	03 May 2016
Email:	Xavier.calvez@icann.org

ICANN BOARD SUBMISSION No. 2016.05.15.2d

TITLE: **November 2016 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 in Hyderabad, India, which is the replacement location for the October 2016 ICANN Public Meeting previously schedule to be held in San Juan, Puerto Rico. This requires Board approval as contracting will exceed US$500,000. The Reference Materials for this paper summarize the steps taken to locate a site for the November 2016 Public Meeting, and outlines the facilities' costs.

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 a contract, and make expense disbursements pursuant to that contract, for the convention center in Hyderabad, India where ICANN will hold the November 2016 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 into a contract, and make expense disbursements pursuant to that contract, for the convention center in Hyderabad, India, where ICANN will hold its November 2016 Public Meeting.

PROPOSED RESOLUTION:

Resolution Text Superseded

Resolution Text Superseded

PROPOSED RATIONALE:

Rationale Text Superseded

Submitted by:	Nick Tomasso
Position:	VP, Meetings
Date Noted:	28 April 2016
Email:	nick.tomasso@icann.org

ICANN BOARD SUBMISSION NO. 2016-05-15-2e

TITLE: **USG IANA Stewardship Transition – Additional FY16 Expenses and Funding**

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

EXECUTIVE SUMMARY:

The Board previously approved on 10 March 2016, additional funding of US$1.5 million as an additional expense budget envelope for the remainder of FY16, on the basis of the estimated future expenses produced by the project cost support team.

As the community work relative to the accountability track, as well as the planning for implementation of the IANA Stewardship Transition Proposal, is expected to continue, further expenses are expected through the remainder of FY16 and during FY17.

In order to improve visibility on and control of the expenses, a Project Costs Support Team was formed to produce costs estimates for future work. An envelope for the remainder of FY16 has been produced by the Project Costs Support Team. This estimate includes legal fees related to the By-Laws drafting. The Board Finance Committee recommends that an additional budget envelope of approximately US$5.4 million is approved by Board for Project expenses through the end of FY16.

STAFF AND BOARD FINANCE COMMITTEE RECOMMENDATION:

Whereas, a Project Cost Support Team was formed and the PCST has produced Project expense estimates for the remainder of FY16.

Whereas, it is projected that further Project expenses of up to approximately US$5.4 million will be incurred through the remainder of FY16.

Whereas, the Board Finance Committee met on 3 May 2016 and has approved to recommend to the Board to approve an additional Project expense budget envelope of up US5.4 million to cover Project expenses through the remainder of FY16.

Resolved (2016.05.14.xx), the Board approves a budget envelope of up to US$5.4 million, to cover the costs of the Project to be incurred through the remainder of FY16

based on the estimates produced by the PCST, to be funded through a fund release from the Reserve Fund.

PROPOSED RESOLUTION:

Whereas, the Board has approved expense budget envelopes to support the IANA Stewardship Transition Project ("Project") during FY15 and FY16, and all approved budget envelopes will have been used after the ICANN Meeting 55 in Marrakech.

Whereas, a Project Cost Support Team was implemented to produce Project expense estimates for the remainder of FY16 and for FY17 for the Project.

Whereas, Project Cost Support Team produced expense estimates for the Project expenses of up to approximately US$5.4 million to be incurred through the remainder of FY16.

Whereas, the Board Finance Committee met on 3 March 2016 and has approved to recommend to the Board to approve an additional Project expense budget envelope of up US5.4 million to cover Project expenses through the remainder of FY16.

Resolved (2016.05.15.xx), the Board approves a budget envelope of up to US$5.4 million to cover the costs of the Project to be incurred through the remainder of FY16 to be funded through a fund release from the Reserve Fund.

PROPOSED RATIONALE:

The IANA Stewardship Transition is a major initiative to which the ICANN Community as a whole is dedicating a significant amount of time and resources. ICANN's support for the community's work towards a successful completion of the Project (including both the USG IANA Stewardship transition proposal development and the Cross-Community Working Group on Enhancing ICANN Accountability's work) is critical for ICANN.

Considering its exceptional nature and the significant amount of costs anticipated to be incurred, the funding of this Project could not be provided through the Operating Fund. Accordingly, when the Board approved the FY15 and FY16 Operating Plans

and Budgets, it included the anticipated funding of the transition initiative costs through a corresponding withdrawal from the Reserve Fund.

The Board previously approved the FY16 Operating Plan and Budget, which included an estimated budget envelope of US$7 million for the USG IANA Stewardship Transition ("The Project") to be funded by the Reserve Fund. As the Project used this entire budget envelope by the end of November 2015, the Board approved additional funding of US$4.5 million on 2 February 2016 to allow the project to be funded through the ICANN Meeting 55 in Marrakech. At ICANN 55 in Marrakech, the Board approved additional funding of US$1.5 million on 2 February 2016 to allow the project to be funded through the period of time until the PCST team had worked on a FY16 forecast.

The Board reiterated on its 25 June 2015 statement that the Board is "committed to supporting the community in obtaining the advice it needs in developing recommendations in support of the transition process, and also notes the importance of making sure that the funds entrusted to ICANN by the community are used in responsible and efficient ways. Assuring the continuation of cost-control measures over the future work of the independent counsel is encouraged." (See https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#2.c.).

As the community work relative to the accountability track of the Project is expected to continue, further expenses are expected through the remainder of FY16 and during FY17. The implementation planning for other parts of the Project will also continue. Separately, in order to improve visibility on and control of the expenses for this type of project in partnership with the community, a project costs support team is being formed to produce costs estimates for future work.

The Board Finance Committee has determined that an additional budget envelope of approximately US$5.4 million needs to be approved by Board to allow ICANN to incur further Project expenses for the remainder of FY16.

As this initiative's expenses and funding are approved by the Board, the ICANN Board is now being asked to approve a budget envelope of US$5.4 million to be funded through a release from the Reserve Fund as an additional expense budget envelope for the remainder of FY16.

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

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

Submitted by: Xavier Calvez, CFO
Date Noted: 3 May 2016
Email: Xavier.calvez@icann.org

ICANN BOARD SUBMISSION NO. 2016.05.15.C3a

Confidential Employment Matter

Confidential Employment Matter

Confidential Employment Matter

1. Consent Agenda:

a. Approval of Board Meeting Minutes

Resolved (2016.05.15.xx), the Board approves the minutes of the 3, 9 and 10 March 2016 Meetings of the ICANN Board.

b. Security & Stability Advisory Committee (SSAC) Appointment

Whereas, the Security and Stability Advisory Committee (SSAC) reviews its membership and makes adjustments from time-to- time.

Whereas, the SSAC Membership Committee, on behalf of the SSAC, requested that the Board should appoint John R. Levine to the SSAC for a three-year term beginning immediately upon approval by the Board and ending on 31 December 2019.

Resolved (2016.05.15.xx), the Board appoints John R. Levine to the SSAC for a three-year term beginning immediately and ending on 31 December 2019.

Rationale for Resolution 2016.05.15.xx

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 accrual of talented subject matter experts who have consented to volunteer their time and energies to the execution of the SSAC mission. John R. Levine is an active participant in both the

IETF and MAAWG having contributed positively in both fora. He brings a breadth of technical expertise and a well-deserved reputation for excellent technical debate. The SSAC believes he would be a significant contributing member of the SSAC, and the Board accepts the SSAC recommendation to appoint John R. Levine to the SSAC.

c. GNSO gTLD registries Stakeholder Group Charter Amendments (2016)

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 gTLD Registries Stakeholder Group (RySG), ICANN Staff, and the Organizational Effectiveness Committee (OEC) have completed all steps identified in the Process - including a determination that the proposed changes will not raise any fiscal or liability concerns for the ICANN organization.

Whereas, the amendments appear to address a number of matters the Board directed to the RySG's attention in previous Board Resolution Number 2015.10.22.14.

Resolved (2016.05.15.xx), the ICANN Board approves the RySG Charter Amendments as documented in this paper and attachments. The RySG and ICANN Staff are directed to provide access to the new governing document on the appropriate web pages for the RySG. The Board directs the RySG to review the changes within one year to determine if they are having the intended impacts. ICANN staff is

further directed to share this resolution with the leadership of the RySG.

Rationale for Resolution 2016.05.15.xx

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 *Process For Amending GNSO Stakeholder Group and Constituency Charters* ("Process") to provide a streamlined methodology for compliance with the Bylaws requirement.

Earlier this year, the gTLD Registries Stakeholder Group (RySG) of the GNSO approved amendments to its governing documents and availed itself of the Process.

What are the proposals being considered?

The Stakeholder Group 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. Among a number of amendments, the most substantial charter changes are in the following areas:

- Creation of a new class of "Association" members;
- Changes to the weighted voting categories and measures of the group; and

- Adjustments to the community fee structure to accommodate the addition of association members.

What stakeholders or others were consulted?

In addition to extensive community deliberations within the RySG, the proposed amendments were subjected to a 43-day Public Comment period (22 February – 4 April 2016). When the period was completed, staff produced a Summary Report for community and Board review on 15 April 2016.

What significant materials did the Board review?

The Board reviewed a redline formatted document of the proposed charter amendments and a copy of the Staff Summary Report summarizing community comments.

What factors did the Board find to be significant?

The GNSO Registries Stakeholder Group (RySG), 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 Stakeholder Group 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 RySG fee structure 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 43-day Public Comment period (22 February – 4 April 2016).

d. Conduct at ICANN Meetings

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

Whereas, the Board Governance Committee (BGC) has recommended certain revisions to the language of the Expected Standards of Behavior and recommended that the Board authorize the revised version be posted for public comment.

Whereas, the BGC also has recommended that the Board direct the President and CEO, or his designee(s), to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a

Community anti-harassment policy/procedure to be followed at ICANN Public meetings.

Resolved (2016.05.15.xx), the Board hereby authorizes the posting for public comment of the proposed revised Expected Standards of Behavior.

Resolved (2016.05.15.xx), the Board hereby directs the President and CEO, or his designee(s), to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN Public meetings.

Rationale for Resolutions 2016.05.15.xx – 2016.05.15.xx

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

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

previously committed, the Board Governance Committee (BGC) was tasked with considering possible enhancements to the language of these Standards. Accordingly, the BGC has reviewed and proposed certain revisions to the language of the Standards, and recommended that the Board authorize the posting for public comment of the proposed revised Standards.

In parallel, staff has initiated discussions with community leaders, and the Board and staff have received input from various aspects of the community, about the process for developing a Community anti-harassment policy. It appears from the input received to date that Community members (at least those that have publicly commented) would like to ask ICANN to work with experts, as needed and appropriate, to help develop a proposed Community anti-harassment policy/procedure to be followed at ICANN Public meetings, which would in turn be presented to the community for further discussion and input. (See Attachments 1, 2 and 3, to the Reference Materials document to this Paper.) The BGC therefore also has recommended that the Board direct the President and CEO, or his designee(s), to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN Public meetings. The Board agrees with this approach.

It is not anticipated that this decision will have any fiscal impact on ICANN, and it will not have any impact on the security, stability or resiliency of the domain name system.

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

2. Main Agenda:

a. Consideration of GNSO Policy Recommendations concerning the Accreditation of Privacy and Proxy Services

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://gnso.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://gnso.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://gnso.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); and

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).

Resolved (2016.05.15.xx), the Board thanks the GNSO for completing the Board-requested Policy Development Process (PDP) and acknowledges receipt of the PDP Final Report and the GNSO

Council's Recommendations Report concerning the final PDP recommendations.

Resolved (2016.05.15.xx), the Board requests more time to consider the final PDP recommendations and the timely provision and consideration of GAC advice, if any, on their adoption, with a view toward the Board's taking further action on the recommendations at the first Board meeting following the ICANN56 Public Meeting in Helsinki, Finland.

Rationale for Resolutions 2016.05.15.xx – 2016.05.15.xx

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, and a Recommendations Report from the Council to the Board on the topic 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. The public comment period closed on 16 March 2016. As outlined in Annex A of the ICANN Bylaws, the PDP recommendations are now being forwarded to the Board for its review and action.

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://gnso.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 lifetime 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.

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. As the Working Group did not receive concrete proposals on how a specific framework applicable to law enforcement requests could be developed, its Final Report contains a suggestion for certain minimum requirements that could be included if such a framework is developed in the future.

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.

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 has raised this possibility with respect to this PDP and as such the Board is obliged to take into account any advice that the GAC may provide in a timely manner on the topic.

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. Deferring adoption of the PDP recommendations will also mean that the need to extend the interim specification in the 2013 RAA beyond its current expiration date will become more urgent.

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. This is part

of ICANN's on-going efforts to improve the Whois system, including implementing recommendations made previously by the Whois Review Team. Implementing many of the GNSO recommendations would create 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.

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.

The Working Group's Final Report also notes a few 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. To the extent that the GAC provides the Board with timely advice of relevant public policy concerns and the Board accepts such advice, the development of a disclosure framework for law enforcement authorities and other third parties may also need to be considered, possibly in parallel with implementation of the overall accreditation program.

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 if the PDP recommendations are adopted, regardless of whether this occurs immediately or in the future. However, as the current interim specification in the RAA applicable to such services is due to expire on 1 January 2017, consideration will need to be given to either extending its duration (e.g. to allow for implementation should the PDP recommendations be adopted) or amending and updating it in the event that the PDP recommendations are not adopted.

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.

b. Report re: .HOTEL – For discussion. No resolution to be taken.

c. SO/AC FY17 Additional Budget Requests Approval

Whereas, prior discussions between community members and ICANN staff members identified the need for an earlier decision on the funding of additional budget requests from ICANN's Supporting Organizations (SO) and Advisory Committees (AC).

Whereas, the staff created an SO/AC additional budget requests process, to collect, review and submit for Board approval funding requests from the SOs and ACs.

Whereas, requests were submitted by the ICANN Community by the set deadline, and were reviewed by a panel of staff members representing the Policy, Stakeholders Engagement and Finance personnel.

Whereas, the review panel recommended the approval of requests representing $643,700 for approval.

Whereas the Board Finance Committee, reviewed the process followed and the staff's proposal, and has recommended that the Board approve staff's recommendation.

Resolved (2016.05.15.xx), the Board approves committing $643,700 during Fiscal Year 2017 to cover the costs associated with the adopted SO/AC additional budget requests.

Rationale for Resolution 2016.05.15.xx

The budget approval earlier in the year is a reasonable accommodation of the established budget approval process and timeline, that facilitate the work of the ICANN community and of the ICANN staff, and does not create additional expenses. The amount of the committed expenses resulting from this resolution is considered sufficiently small to not require that funding resources are specifically identified and approved by the Board.

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.

The approval process is an Organizational Administrative process that has already been subject to significant input from the community.

d. October 2016 ICANN Meeting Venue Contracting

Resolution Text Superseded

Rationale for Resolutions 2016.05.15.xx – 2016.05.15.xx

Rationale Text Superseded

Rationale Text Superseded

e. USG IANA Stewardship Transition – Additional FY16 Expenses and Funding

Whereas, the Board has approved expense budget envelopes to support the IANA Stewardship Transition Project ("Project") during FY15 and FY16, and all approved budget envelopes will have been used after the ICANN Meeting 55 in Marrakech.

Whereas, a Project Cost Support Team was implemented to produce Project expense estimates for the remainder of FY16 and for FY17 for the Project.

Whereas, Project Cost Support Team produced expense estimates for the Project expenses of up to approximately US$5.4 million to be incurred through the remainder of FY16.

Whereas, the Board Finance Committee met on 3 March 2016 and has approved to recommend to the Board to approve an additional Project expense budget envelope of up US5.4 million to cover Project expenses through the remainder of FY16.

Resolved (2016.05.15.xx), the Board approves a budget envelope of up to US$5.4 million to cover the costs of the Project to be incurred through the remainder of FY16 to be funded through a fund release from the Reserve Fund.

Rationale for Resolution 2016.05.15.xx

The IANA Stewardship Transition is a major initiative to which the ICANN Community as a whole is dedicating a significant amount of time and resources. ICANN's support for the community's work towards a successful completion of the Project (including both the USG IANA Stewardship transition proposal development and the Cross-Community Working Group on Enhancing ICANN Accountability's work) is critical for ICANN.

Considering its exceptional nature and the significant amount of costs anticipated to be incurred, the funding of this Project could not be provided through the Operating Fund. Accordingly, when the Board approved the FY15 and FY16 Operating Plans and Budgets, it included the anticipated funding of the transition initiative costs through a corresponding withdrawal from the Reserve Fund.

The Board previously approved the FY16 Operating Plan and Budget, which included an estimated budget envelope of US$7 million for the USG IANA Stewardship Transition ("The Project") to be funded by the Reserve Fund. As the Project used this entire budget envelope by the end of November 2015, the Board approved additional funding of US$4.5 million on 2 February 2016 to allow the project to be funded through the ICANN Meeting 55 in Marrakech. At ICANN 55 in Marrakech, the Board approved additional funding of US$1.5 million on 2 February 2016 to allow the project to be funded through the period of time until the PCST team had worked on a FY16 forecast.

The Board reiterated on its 25 June 2015 statement that the Board is "committed to supporting the community in obtaining the advice it needs in developing recommendations in support of the transition process, and also notes the importance of making sure that the funds entrusted to ICANN by the community are used in responsible and efficient ways. Assuring the continuation of cost-control measures over the future work of the independent counsel is encouraged." (See https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#2.c.).

As the community work relative to the accountability track of the Project is expected to continue, further expenses are expected through the remainder of FY16 and during FY17. The implementation planning for other parts of the Project will also continue. Separately, in order to improve visibility on and control of the expenses for this type of project in partnership with the community, a project costs support team is being formed to produce costs estimates for future work.

The Board Finance Committee has determined that an additional budget envelope of approximately US$5.4 million needs to be

approved by Board to allow ICANN to incur further Project expenses for the remainder of FY16.

As this initiative's expenses and funding are approved by the Board, the ICANN Board is now being asked to approve a budget envelope of US$5.4 million to be funded through a release from the Reserve Fund as an additional expense budget envelope for the remainder of FY16.

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

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

f. AOB

3. Executive Session – CONFIDENTIAL

Confidential Employment Matter

Confidential Employment Matter

Confidential Employment Matter

b. AOB

Directors and Liaisons,

Attached below please find the Notice of date and time for a Meeting of the ICANN Board of Directors:

15 May 2016 – Meeting of the ICANN Board of Directors - at 12:45 UTC (2:45pm in Amsterdam) – This Board meeting is estimated to last 45 minutes.

Note: timing of Board Meeting subject to change upon revisions to the overall Workshop schedule.

http://www.timeanddate.com/worldclock/fixedtime.html?msg=ICANN+Board+Meeting&iso=20160515T1445&p1=16&am=45

Some other time zones:
15 May 2016 – 5:45am PDT Los Angeles, CA
15 May 2016 – 8:45am EDT Washington, D.C.
15 May 2016 – 2:45pm CEST Brussels
15 May 2016 – 8:45pm CST Taipei
15 May 2016 – 10:45pm AEST Sydney

Consent Agenda

- **Approval of Board Meeting Minutes from March 3, 9 and 10 2016**
- **Security & Stability Advisory Committee (SSAC) Appointment**
- **GNSO gTLD Registries Stakeholder Group Charter Amendments (2016)**
- **Conduct at ICANN Meetings – *pending BGC approval***

Main Agenda

- **Consideration of GNSO Policy Recommendations concerning the Accreditation of Privacy and Proxy Services**
- **Status Update on Investigation into Allegations of Misconduct by Applicant for .HOTEL**

- **SO/AC FY17 Additional Budget Requests Approval**
- **October 2016 ICANN Meeting Venue Contracting**
- **USG IANA Stewardship Transition – Additional FY16 Expenses and Funding**
- **AOB**

Executive Session – Confidential

Confidential Employment Matter

- **AOB**

Contact Information Redacted

MATERIALS -- Once materials are available, you can find them

If you have trouble with access, please let us know and we will work with you to assure that you can use the BoardVantage Portal for this meeting.

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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