

## ARTICLE I: ~~MISSION, COMMITMENTS, AND CORE VALUES~~

### Section 1. MISSION

1. The mission ~~("Mission")~~ of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. ~~("Mission").~~ In particular, ICANN:
  - a. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are
    - (i) ~~\_~~ Domain names (forming a system referred to as "DNS");
    - (ii) ~~\_~~ Internet protocol ("IP") addresses and autonomous system ("AS") numbers; ~~and~~
    - (iii) ~~and~~ Protocol port and parameter numbers. ~~;~~
  - b. Coordinates the operation and evolution of the DNS root name server system.
  - c. Coordinates policy development reasonably and appropriately related to these technical functions.
2. ~~In this role~~ ~~furthurance of its Mission~~; with respect to domain names, ICANN's ~~Mission~~ ~~role~~ is to coordinate the development and implementation of policies:
  - a. For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and
  - b. That are developed through a bottom-up, consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique name system.

**Comment [SRC (A&C)1]:**  
The language shown here for Article I was based on the Second Draft Proposal and has already undergone significant revision, as reflected in the Third Draft Proposal. As indicated in our cover email, however, our comments and edits here concern matters that are still relevant to the ongoing discussion.

**Comment [SRC (A&C)2]:**  
We note that the Jones Day change to this paragraph reflects the position described by the Board in their recent comments. We have provisionally moved this defined term to reflect an approach more in line with the Third Draft Proposal.

**Comment [SRC (A&C)3]:**  
Please see our comment immediately above. We have provisionally added language to 1(6) to reflect the CCWG position that all of Section 1 describes ICANN's "Mission," although we acknowledge the Board's position as explained in their recent comments.

In any event, we do not believe California nonprofit corporate law would distinguish Bylaws language labeled as "Mission" from prescriptions in the Bylaws about corporate responsibilities in furtherance of a mission.

3. In ~~this furtherance of its Mission, ICANN's~~ role, with respect to IP addresses and AS numbers, ~~ICANN's Mission~~Numbers is described in the ASO MoU between ICANN and RIRs, Address Supporting Organization Memorandum of Understanding approved on 26 August 1999, as amended.
4. In ~~this furtherance of its Mission, ICANN's~~ role, with respect to protocol port and parameter numbers, ~~ICANN's Mission~~ is ~~to~~[to be provided by the IETF].
5. In ~~this furtherance of its Mission, ICANN's~~ role, with respect to the DNS root server system, ~~ICANN's Mission~~systems is ~~to~~[to be provided by the root server operators].
6. ICANN shall ~~have no power to~~ act ~~strictly other than~~ in accordance with, and only as reasonably appropriate to achieve ~~its Mission. Without in any way limiting the foregoing absolute prohibition, ICANN shall not engage in or use its powers to attempt the regulation of services that use the Internet's unique identifiers, or the content that they carry or provide.~~, its Mission[as described in subsections (1) through (5) of this Section 1. ICANN shall not impose regulations on services (i.e., any software process that accepts connections from the Internet) that use the Internet's unique identifiers, or the content that such services carry or provide. ICANN shall have the ability to negotiate, enter into and enforce agreements with contracted parties in service of][support of][furtherance of] its Mission.]<sup>1</sup>

**Comment [SRC (A&C)4]:**  
We note that the Third Draft Proposal retains a cross reference to the ASO MOU. It is unclear whether that reference or the formulation here pertains to the MOU as amended now, or as it may be amended in the future.

In any case, we strongly recommend not incorporating external documents into the Bylaws by reference, but rather placing the applicable language in an appendix to the Bylaws.

**Comment [SRC (A&C)5]:** We note the substantial and ongoing debate within the CCWG about the restriction that Jones Day provisionally removed from this subsection. As a placeholder, we have re-inserted the language from the Third Draft Proposal. Pending further discussion in the community, we have refrained from editing this provision, apart from inserting a bracketed reference to subsections (1) through (5) after "Mission."

## Section 2. COMMITMENTS & CORE VALUES

7.1. In carrying out performing its Mission, ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, both described below as described below, in each case, except to the extent that ICANN's compliance with any Commitment or Core Value could result in ICANN taking actions outside its Mission.<sup>2</sup>

8.2. Commitments:

<sup>1</sup> Note to ICANN: The second sentence should be made part of the Mission, Commitments or Core Values if it is going to be implemented, it should not be tacked on to the general prohibition. Additionally, the second sentence's inclusion could be read by some to imply that ICANN cannot enforce its existing contractual rights. [See comment above.]

<sup>2</sup> Note to ICANN: The CCWG dropped reference to security and stability. This should either be added as the first Commitment or be added here so as to make it paramount over all other Commitments and Core Values. [This note was unclear to us. In Commitment (a) immediately below, the CCWG version retains the references to stability and security from Art. I, Section 2(1) (Core Value 1).]

In performing its Mission, ICANN must operate in a manner consistent with ~~its~~these Bylaws for the benefit of the Internet community as a whole, while carrying out its activities in conformity with relevant principles of international law applicable domestic and international conventions, and applicable local law law [and through open and transparent processes that enable competition and open entry in Internet-related markets].<sup>3</sup> Specifically, ICANN's action must:the following Commitments shouldshall guide the decisions and actions of ICANN:<sup>4</sup>

- a. ~~Preserve~~Preserving and ~~enhance~~enhancing the ~~neutral and judgment free~~ operation of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;<sup>5</sup>
- b. ~~Maintain~~Allowing ICANN to maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet;
- c. ~~Respect~~Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;
- d. ~~Employ~~Employing open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, ~~(including, without limitation,~~ business stakeholders, civil society, the technical community, and academia), that (i) seek input from the public, for whose benefit ICANN shall ~~in all events~~ act, (ii) promote well-informed decisions based on expert advice, and (iii) ensure that those entities most affected can assist in the policy development process;<sup>6</sup>
- e. ~~Make~~Reaching decisions by applying documented policies consistently, neutrally, objectively, and fairly, ~~without singling out any particular party for discriminatory treatment;~~ and in accordance with the requirements of Article II, Section 3 of these Bylaws;

Comment [SRC (A&C)6]: We agree on omitting "judgment free," but the meaning of the word "neutral" is not clear, and a clarification should be added.

Comment [SRC (A&C)7]: What was the rationale for deleting this language?

<sup>3</sup> Note to ICANN: This bracketed text may be challenging. [We do not understand--please clarify.]

<sup>4</sup> Note to ICANN: Revised to be more grammatically correct as the focus should be on how ICANN acts rather than the "action". Also revised to refer to applicable domestic and international law rather than "relevant principles of international law and international conventions and applicable local law" for simplicity and to avoid the inclusion of human rights through referencing international conventions. The lead-in to the list is consistent with the CCWG's recommended lead-in to the Core Values.

<sup>5</sup> Note to ICANN: "Judgment free" is vague and ambiguous (i.e., even a neutral decision requires some judgment). The inclusion of "neutral" should cover this issue. [See our comment above.]

<sup>6</sup> Note to ICANN: "in all events" was deleted because it may not be understood by non-native English speakers, and deletion does not change the meaning.

- f. ~~Remain~~Remaining accountable to the Internet ~~Community~~community through mechanisms ~~defined~~contained in ~~the~~these Bylaws that enhance ICANN's effectiveness.

### 9.3. Core Values:

In performing its Mission, the following ~~core values~~Core Values ~~should~~shall also guide the decisions and actions of ICANN:<sup>7</sup>

- a. Delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties and the roles of both ICANN's internal bodies and external expert bodies;<sup>8</sup>
- b. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of the ICANN community's policy development and decision-making processes in an effort to ensure that the bottom-up, multistakeholder policy development process is used as the means to ascertain the global public interest, and that those processes are transparent and accountable ~~and transparent to the global Internet community;~~<sup>9</sup>
- c. Depending on market mechanisms to promote and sustain a healthy competitive environment in the ~~DNS market.~~ registration of domain names;<sup>10</sup>
- d. Introducing and promoting competition in the registration of domain names where practicable and beneficial ~~into~~ the public interest as identified through the bottom-up, multistakeholder ~~policy~~ development process.<sup>11</sup>
- e. ~~Operate~~Operating with efficiency and excellence, in a fiscally responsible and accountable manner, and, where practicable, at a

<sup>7</sup> Note to ICANN: Consider whether the Commitments and Core Values should be structured similarly (i.e., general lead in for Commitments followed by specifics; Core Values just has specifics). [Alternatively, the first sentence from the Commitments section might be moved to the general preamble in Section 2(1), so that it introduces both the Commitments and Core Values.]

<sup>8</sup> Note to ICANN: Consider whether it is appropriate to keep the "to the extent feasible" limitation here. [We note that the Third Draft Proposal adds this language back.]

<sup>9</sup> Note to ICANN: The addition seems duplicative of Commitment (d).

<sup>10</sup> Note to ICANN: The addition of "healthy" is vague and ambiguous. Consider whether the "feasible" limitation should be retained (or a variation, like "practicable and beneficial to the public interest"). Limited to "registration of domain names" to limit potential mission creep, or the ability of third parties to argue that ICANN's mission extends to all aspects of the DNS market. [We understand that ALAC objected to the deletion of the language about feasibility and appropriateness from the 1st Draft Proposal, and we await CCWG's ultimate decision here.]

<sup>11</sup> Note to ICANN: Addition is duplicative of Commitment (d), but is also probably harmless.

speed that is responsive to the needs of the global Internet community.<sup>12</sup>

- f. While remaining rooted in the private sector, ~~(including, without limitation,~~ business stakeholders, civil society, the technical community, and academia,~~),~~ recognizing that governments and public authorities are responsible for public policy and duly ~~taking into account~~considering the public policy advice of governments and public authorities; and
- g. Striving to achieve a reasonable balance between the interests of different stakeholders;;

4. These Commitments and Core Values reflect the requirement for ICANN to act for the benefit of the Internet community as a whole and are intended to apply shall be applied consistently, in the broadest possible range of circumstances. ~~The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities. The specific way in which~~<sup>13</sup>

**Comment [SRC (A&C)8]:**  
We have added back this language from the CCWG Draft Proposal; "comprehensively" already seemed implicit in the phrase "the broadest possible range of circumstances."

Notwithstanding the above, t~~The specific way in which Commitments and~~ Core Values are applied apply, individually and collectively, to ~~each new~~any given situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Commitments and Core Values simultaneously is not possible. Accordingly, in any situation where one Commitment or Core Value must be reconciled with another, potentially competing Commitment or Core Value, the balancing applied by the Board of Directors or by such person(s) acting pursuant to a delegation of authority from the Board of Directors must further an important public interest goal that is within ICANN's Mission and that is or has been identified in advice given to ICANN or in policies developed, in each case through the bottom-up, multistakeholder process.<sup>14</sup>

<sup>12</sup> Note to ICANN: The the "fiscally responsible manner" could be problematic depending on the outcome of the budget process. [Please clarify.]

<sup>13</sup> Note to ICANN: The text: "The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities" was deleted because of vagueness. In addition, the implication that ICANN has a written agreement (i.e. compact) with the global Internet community is difficult to comprehend. [A&C Note: We have suggested new language here to reflect what we understood to be a statement of general commitment.]

<sup>14</sup> Note to ICANN: There needs to be a way for Commitments and Core Values to be reconciled. We recommend keeping a variation of the current test [note: we assume "current test" refers to the last paragraph of Article I in the existing bylaws], but have not made the needed edits because the Board appears fine with the CCWG's proposed balance methodology. We also revised the language to provide for enhanced clarity. [We have added some further language for clarification. We do not agree with the suggestion to return to the test from the existing bylaws, as we understood the community was concerned about the extent to which that language may permit decision-makers to disregard Core Values or Commitments.]

[ARTICLE IV]

Section 5. ACCOUNTABILITY AND TRANSPARENCY REVIEW

1. Periodic Reviews<sup>15</sup>

ICANN will produce an annual report on the state of its accountability and transparency, including any improvements to Accountability thereto and Transparency.

~~h.a. ICANN will be responsible for creating an annual report that details the status of implementation on all of the recommendations arising from the reviews defined described in this section. This annual review implementation report Article IV, Section 5, which will be opened posted on the Website for a public review and comment period that. Each such annual report and the public comments thereto will be considered by the ICANN Board and serve as input to the continuing process of implementing the recommendations from the Review Teams defined in this section arising from such reviews.~~

~~i.b. Review teams are will be established to and include both a fixed number of members and an open number of participants. Each SO Supporting Organization and AG Advisory Committee participating in the Review applicable review may suggest up to 7 prospective members for the Review Team applicable review team. The group of chairs of the participating SOs and AGs Supporting Organizations and Advisory Committees will select a group of up to 21 Review Team members.~~

<sup>15</sup> Alternative Proposal: Delete Sections 1 and 2 of Article IV in their entirety and replace them with the following:

1. ICANN will produce an annual report on its accountability and transparency, including any improvements thereto and the status of implementation of the recommendations arising from the reviews described in this Article IV, Section 5, which will be posted on the Website for public review and comment. Each such annual report and the public comments thereto will be considered by the Board and serve as input to the continuing process of implementing the recommendations arising from such reviews. [Note: Same as current 1(a).]
2. The reviews described in this Article IV, Section 5 will be conducted in accordance with the most recent Board-approved practices for periodic reviews, which will be developed in coordination with the Supporting Organizations and Advisory Committees.

[In view of the extensive and recent community discussion about the composition of review teams and other details of Sections 1 and 2, we do not believe that deferring these matters to future Board-SO/AC negotiations would reflect current community consensus.]

~~balanced for diversity and skills, to the applicable review team, which may include up to a maximum of 3 members from each participating SO and AC Supporting Organization and Advisory Committee. The Supporting Organization and Advisory Committee chairs should work together to achieve a review team that is balanced for diversity and skill.~~ In addition, the ICANN Board may designate one director as a member of the ~~Review Team~~ review team.<sup>16</sup>

**Comment [SRC (A&C)9]:**  
We note that the composition of review teams is under discussion in the CCWG and that this language will likely need to be revised.

**Comment [SRC (A&C)10]:**  
This guideline should be more specific, as it is not clear what “diversity” by itself means.

~~j.c.~~ If consensus cannot be reached among the members and participants of a review team, consensus will be sought among just the members. In the event ~~a~~ consensus cannot be ~~found~~ reached among the members, a majority vote of the members may be taken. ~~In this case if a vote is taken,~~ both a majority recommendation and a minority response ~~should~~ shall be provided in the final report of the ~~Review Team~~ review team. ~~A recommendation shall be deemed a “majority recommendation” if at least 51% of all the members of the review team approve it.~~

**Comment [SRC (A&C)11]:**  
Wherever possible, we recommend changing “should” to “shall” or “may” to clarify whether something is actually required (which we believe should be the case here).

~~k.d.~~ Review Teams ~~Subject to budgetary constraints and the availability of funding,~~ review teams may also ~~solicit and~~ select independent experts to render advice as requested by the ~~Review Team~~ review team, and the review team may choose to accept or reject all or part of ~~this~~ such advice.<sup>17</sup>

**Comment [SRC (A&C)12]:**  
Who makes this determination, and would a review team have recourse if ICANN refuses to fund the cost of an expert whose advice the team believes is crucial?

## 2. Confidential Disclosure to Review Teams

~~l.a.~~ To facilitate transparency and openness regarding ICANN's deliberations and operations, ~~a review team, or a subset thereof, shall have the Review Teams, or a subset thereof, shall have a review team may request~~ access to ICANN internal information and documents ~~that are related to and reasonably necessary for in connection with that review team's applicable review.~~ If ICANN ~~refuses~~ staff declines to reveal documents or information so requested by ~~the Review Team~~ a review team within the timeframe specified by the review team, ICANN staff must promptly provide a justification written explanation to the ~~Review Team~~ review team. If a consensus of the Review Team ~~is~~ review team's members are not satisfied with ICANN's justification, ~~it can~~ an explanation, the review team may appeal to the Ombudsman

**Comment [SRC (A&C)13]:**  
Although we understand the need to prevent frivolous requests, we prefer the previous language, which reflected consensus and which our edits attempt to restore. Staff will still have the ability to deny frivolous requests.

**Comment [SRC (A&C)14]:**  
We recommend clarifying the meaning of “consensus” to avoid ambiguity over whether a team has authority to escalate a matter.

<sup>16</sup> Note to ICANN: Alternatively, consider whether specifying review teams in this level of detail is appropriate. [A&C Note: Please see our comment to the previous footnote.]

<sup>17</sup> Note to ICANN: Budgetary constraints should be considered. [A&C Note: Please see our margin comment.]

and/or the ~~ICANN~~ Board for a ~~ruling~~determination on the disclosure request, ~~which in the case of the Board shall be final. Any determination of the Ombudsman is not binding on ICANN staff, but may be submitted by the applicable review team when appealing to the Board for a determination.~~<sup>18</sup>

m.b. ~~For documents and information that ICANN does disclose to the Review Team, ICANN~~ ICANN may, in its reasonable discretion, designate certain documents and information that are disclosed to a review team as not for further disclosure by the ~~Review Team~~review team's members, either in its report or otherwise, and may, as a condition to receiving any such documents and information, require the review team members to sign a non-disclosure agreement. Such documents and information will only be provided to the review team's members and will not be distributed to participants. Any review team member who is found to have subsequently disclosed such information will be removed from the review team and will not be eligible to be a member or participant of future review teams without the approval of the Board. If ~~the Review Team is a~~ consensus of the review team's members are not satisfied with ICANN's designation of non-disclosable documents or information, it can appeal to the Ombudsman and/or the ~~ICANN~~ Board for a ~~ruling~~determination on the non-disclosure designation, ~~which in the case of the Board shall be final. Any determination of the Ombudsman is not binding on ICANN staff, but may be submitted by the applicable review team when appealing to the Board for a determination.~~<sup>19</sup>

**Comment [SRC (A&C)15]:**  
We are concerned that the team decision-making process may become unworkable if members have access to far more information and are prohibited from even describing the information to participants. We suggest further discussion on this point.

### c. Confidential Disclosure Framework

- (i) A confidential disclosure framework shall be published and periodically reviewed and updated by ICANN. The confidential disclosure framework shall describe the process by which documents and information are classified, including a description of the levels of classification that documents or information may be subject to, and the classes of persons who may access such documents and information.
- (ii) The confidential disclosure framework shall describe the process by which a Review Team review team may request access to documents and information that are designated as classified or restricted access pursuant to Article IV, Section 5, clause 2.a.

<sup>18</sup> Note to ICANN: Revised to limit confidential disclosure requests to items related to the review and reasonably necessary for the review.

<sup>19</sup> Note to ICANN: We have added in restrictions on the disclosure of confidential information to prevent leaks and provide consequences for such leaks.



- (iii) ~~The confidential disclosure framework shall also describe the provisions of any non-disclosure agreement that members of a Review Team~~review team may be asked to sign ~~pursuant to Article IV, Section 5, clause 2.b.~~

~~The confidential disclosure framework must provide a mechanism to escalate and/or appeal the refusal to release documents and information to duly recognized Review Teams.~~

Comment [SRC (A&C)16]:  
Why was this provision deleted?

d. ~~The draft report of the Review Team should~~ Reports

- ~~(iv)~~(i) ~~All draft reports of each review team must describe the degree of consensus reached by the Review Team~~review team on each recommendation contained in such reports.

- ~~(v)~~(ii) ~~The Review Team~~ Where consensus of the review team members can be reached, review teams should attempt to attempt to assign priorities to its prioritize their recommendations, and provide a rationale for such prioritization.

Comment [SRC (A&C)17]:  
We added back the softer "attempt" language because we understood from CCWG discussions that it can be extremely difficult for teams to prioritize their recommendations, which can involve many nuances.

~~The draft report~~ Draft reports of the Review~~review teams~~ will be published for public comment. ~~The Review Team will~~review team must consider ~~such~~the public ~~comment~~comments received and shall amend the Review~~its report~~ as it deems appropriate before issuing its final report ~~and forwarding the recommendations to the Board.~~

- (iii) The final output of all Reviews~~report must describe the degree of consensus reached by the review team on each recommendation contained in the report as well as a summary of changes made in response to the public comments.~~<sup>20</sup>

- ~~(vi)~~(iv) All final reports issued by review teams will be published for public comment. ~~The~~ Following~~Within 180 days after the conclusion of such public comment period, the~~ Board shall consider the final report and all public comments received in

<sup>20</sup> Note to ICANN: Revised to provide greater consideration of public comment and to require degree of consensus in the final report.

response thereto in deciding how to implement the recommendations of the review team. Following any such approval and, the Board shall instruct ICANN staff immediately to begin implementation within six months of receipt of of the recommendations approved by the Board within 180 days of such approval.<sup>21</sup>

**Comment [SRC (A&C)18]:**  
Since the AoC and the CCWG Second Proposal require the board itself to consider the report within 6 months, we have revised the language here to clarify that requirement.

#### 10.3.1. Accountability & Transparency Review.

- a. The Board shall cause a periodic review of ICANN's execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders the Internet community ("Accountability and Transparency Review").<sup>22</sup>

Issues that may merit attention in this Review include:

b. (a) The Accountability and Transparency Review may address any number of issues, including the following:<sup>23</sup>

- (i) assessing and improving ICANN Board governance, which shall include an ongoing evaluation of Board the Board's performance, the Board selection process, the extent to which Board the Board's composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions;
- (ii) ~~(b)~~ assessing the role and effectiveness of GAC the Governmental Advisory Committee's interaction with the Board and making recommendations for improvement to ensure effective consideration by ICANN of GAC the Governmental Advisory Committee's input on the public policy aspects of the technical coordination of the DNS;

<sup>21</sup> Note to ICANN: Remove the timing restriction on implementation as that may not be realistic for all recommendations. Also revised to allow Board to consider public comments receive to final report as otherwise the final public comment period is useless.

<sup>22</sup> Note to ICANN: Revised to provide that accountability is to the community.

<sup>23</sup> Note to ICANN: Revised to provide that this is the entire list of issues to review so as to keep some scope as to what is to be reviewed. [We do not read the newly proposed language as limiting the scope of review to the given examples.]

- (iii) ~~(e)~~ assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof);
- (iv) ~~(d)~~ assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and
- (v) ~~(e)~~ assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development.

~~b.c.~~ The Accountability and Transparency Review Team shall also assess the extent to which prior Accountability and Transparency Review recommendations have been implemented by ICANN, and the extent to which implementation of the recommendations has had the intended effect.

~~e.d.~~ The Accountability and Transparency Review Team may recommend termination or amendment of other periodic Reviews required by this section Article IV, Section 5, and may recommend the creation of additional periodic Reviews.

~~d.e.~~ This The Accountability and Transparency Review Team should complete its review final report within one year of convening its first meeting.

~~e.f.~~ This periodic The Accountability and Transparency Review shall be convened conducted no less frequently than every five years, measured from the date the previous review wasteam convened its first meeting.

#### ~~11.4.~~ 2. Preserving Security, Stability, and Resiliency- Review

- a. The Board shall cause a periodic Review of ICANN's execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the DNS ("SSR Review").

In this Review, particular attention will be paid to:

b. (a) The SSR Review may address any number of issues, including the following:

- (i) security, stability and resiliency matters, both physical and network, relating to the secure and stable coordination of the Internet DNS;
- (ii) ~~(b)~~ ensuring appropriate contingency planning; and
- (iii) ~~(c)~~ [maintaining clear processes].<sup>24</sup>

~~b.c.~~ Each of the Reviews conducted under this section will SSR Review will also assess the extent to which ICANN has successfully implemented the its current security plan, the effectiveness of the current plan to deal with actual and potential challenges and threats to security and stability, and the extent to which the current security plan is sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the Internet DNS, consistent with ICANN's limited technical Mission.<sup>25</sup>

~~c.d.~~ The SSR Review team shall assess the extent to which prior SSR Review recommendations have been implemented by ICANN.

e. This periodicThe SSR Review team should issue its final report within one year of convening its first meeting.

~~d.f.~~ The SSR Review shall be convenedconducted no less frequently than every five years, measured from the date the previous Review wasreview team convened its first meeting.

### ~~3. Promoting Competition, Consumer Trust, and Consumer Choice.~~

5. ICANN will ensure that as it expands the Top-Level Domain (TLD) space, it willgTLD Review

<sup>24</sup> Note to ICANN: This clause is unclear. [We agree.]

<sup>25</sup> Note to ICANN: Clarification that the review will be of the "current" plan so as to be flexible for future security plans.

~~e.a.~~ The Board shall cause a review of ICANN's execution of its commitment to adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection, as it expands the TLD space, within one year after any batched round of new gTLDs have been in operation ("gTLD Review").

~~The Board shall cause a Review of ICANN's execution of this commitment after any batched round of new gTLDs have been in operation for one year.~~

~~f.b.~~ This The gTLD Review will examine the extent to which the applicable expansion of gTLDs has promoted competition, consumer trust, and consumer choice, as well as the effectiveness of:

- (i) ~~(a)~~ the gTLD application and evaluation process; and
- (ii) ~~(b)~~ the safeguards put in place to mitigate issues involved in the expansion, of generic top level domains.

~~g.c.~~ The gTLD Review team shall also assess the extent to which prior gTLD Review recommendations have been implemented, by ICANN, and the extent to which implementation of the recommendations has had the intended effect.

~~d.~~ Subsequent The gTLD Review team should issue its final report within one year of convening its first meeting.

~~h.e.~~ Each recommendation in a gTLD Review team's final report shall indicate whether implementation of the recommendation should be accomplished before a new round of gTLD expansion occurs. The Board willshall consider the gTLD Review team's recommendations in determining if, when and how subsequent rounds of new gTLDs (if

**Comment [SRC (A&C)19]:**  
For CCWG to confirm:  
Previous language called for a review after a batched round of new gTLDs has been in operation for one year (i.e., an intervening period of at least one year after operation begins), whereas the proposed revision calls for a review within one year after a batched round of new gTLDs have been in operation (i.e., one year or less after operation begins)

~~any) should not be opened until the recommendations of the previous Review required by this section have been implemented.~~<sup>26</sup>

~~i.f. These periodic Reviews. The gTLD Review shall be convened~~~~conducted~~ no less frequently than every five years, measured from the date the previous ~~Review was~~~~review team convened~~~~its first meeting.~~

~~4. Reviewing effectiveness of WHOIS/Directory Services policy and the extent to which its implementation meets the legitimate needs of law enforcement and promotes consumer trust.~~

#### 6. WHOIS/Directory Services Review<sup>27</sup>

~~j.a. ICANN committis committed~~ to enforcing its ~~existing~~ policy relating to ~~the current WHOIS/ and any future gTLD Directory Services Service,~~ subject to applicable laws. ~~Such existing policy requires that ICANN implement measures, and working with the Supporting Organizations, Advisory Committees, and other relevant stakeholders to maintain timely, unrestricted and public explore structural changes to improve the accuracy of and access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information. gTLD registration data, as well as consider safeguards for protecting data.~~<sup>28</sup>

~~k.b.~~ The Board shall cause a periodic ~~Review~~~~review~~ to assess the extent to which WHOIS/Directory Services policy is effective and its implementation meets the legitimate needs of law enforcement ~~and~~ promotes consumer trust. ~~and safeguards data (“WHOIS/Directory Services Review”).~~

**Comment [SRC (A&C)20]:**  
The CCWG consensus in Dublin was to replace the blanket requirement in the 2nd Draft Proposal with a provision to the effect that each recommendation, if accepted, needed to indicate whether implementation must be finished before ICANN may undertake a new round of expansion. We have provisionally made this change.

<sup>26</sup> Note to ICANN: Provided for consideration of gTLD Reviews, but as identified by the Board, an absolute block is inappropriate. [We note that the 2d Draft Proposal admonishes the Board not to take further action, but does not appear to block the Board absolutely from doing so. The proposed substitution here would softened the direction given to the Board here.]

<sup>27</sup> Note to ICANN: Description is beyond what is called for in AoC and has inappropriate editorializing for a heading. -Conformed to be consistent with above periodic reviews. [We agree with this change, especially since the language is repeated in 6(b).]

<sup>28</sup> Note to ICANN: This is based on Bruce Tonkin’s 2 September 2015 email at 1:24 GMT.

~~This~~The WHOIS/Directory Services Review ~~will consider the OECD guidelines regarding privacy, as defined by the OECD in 1980 and amended in 2013.~~

**Comment [SRC (A&C)21]:**  
The original language here was vague and should be clarified, but please explain why it has been deleted entirely.

~~l.c.~~ The Review Team shall also assess the extent to which prior WHOIS/Directory Services Review recommendations have been implemented by ICANN, and the extent to which implementation of the recommendations has had the intended effect.

~~d.~~ This periodicThe WHOIS/Directory Services Review team should issue its final report within one year of convening its first meeting.<sup>29</sup>

~~m.e.~~ The WHOIS/Directory Services Review shall be convened~~conducted~~ no less frequently than every five years, measured from the date the previous Review was~~review team~~ convened its first meeting.

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<sup>29</sup> Note to ICANN: There was no time frame for gTLD Reviews in the CCWG proposal.