

DRAFT of New Transition Article To Address Specific Reviews

ALTERNATIVE 1

Section 27.6 TIMING FOR SPECIFIC REVIEWS

- (a) As of [effective date], hereinafter the “Effective Date for Section 27.6”, ICANN’s obligation to conduct the Specific Reviews set out at Article 4, Section 4.6(b) [Accountability Transparency Review]; Section 4.6(c) [Security, Stability, and Resiliency Review]; Section 4.6(d) [Competition, Consumer Trust and Consumer Choice Review]; and Section 4.6(e) [Registration Directory Service Review] (collectively, “Specific Reviews”) is paused.
- (b) ICANN’s obligation to conduct the Specific Reviews shall resume [one year] [18 months] from the Effective Date for Section 27.6, unless any of the following circumstances exist:
- i. The ICANN Board has accepted a community-developed recommendation(s), issued after the Effective Date for Section 27.6, on how any or all of the Specific Reviews should be modified and directed implementation of such recommendation(s);
 - ii. A Bylaws Amendment Process pursuant to Article 25 of these Bylaws has been initiated for the purpose of modifying or replacing ICANN Bylaws Article 4, Section 4.6 as in force prior to the Effective Date for Section 27.6; or
 - iii. Four of the seven of ICANN’s Supporting Organizations and Advisory Committees, as set forth within these Bylaws, have issued a statement supporting a further pause of the Specific Reviews.

The total pause available under this Transition Article shall not exceed [24][30] months.

- (c) If ICANN resumes its obligation to conduct Specific Reviews as in force prior to the Effective Date for Section 27.6, the schedule for conducting such Specific Reviews will be as follows:
- i. The Accountability and Transparency Review (“ATR”) specified at Article 4, Section 4.6(b) shall be initiated within 90 days of the date that ICANN’s obligation to conduct Specific Reviews resumes;

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- ii. The Security, Stability, and Resiliency Review (SSRR) specified at Section 4.6(c) shall be initiated within 18 months of the initiation of the ATR;
- iii. The Registration Directory Service Review specified at Article 4, Section 4.6(e) shall be initiated within 18 months of the initiation of the SSRR; and
- iv. The timing for the Competition, Consumer Trust and Consumer Choice Review pursuant to Article 4, Section 4.6(d) shall be initiated when the next round of new gTLDs has been in operation for two years, such operation being measured from the time that 500 gTLDs applied for within that round have been delegated into the root zone.

(d) For avoidance of doubt, any amendments to Article 4, Section 4.6 taken at any point while the terms of this Transition Article are in effect shall supersede the operation of this Transition Article.

ALTERNATIVE 2

Section 27.6 TIMING FOR SPECIFIC REVIEWS

- (a) As of [effective date], hereinafter the “Effective Date for Section 27.6”, ICANN’s obligation to conduct the Specific Reviews set out at Article 4, Section 4.6(b) [Accountability Transparency Review]; Section 4.6(c) [Security, Stability, and Resiliency Review]; Section 4.6(d) [Competition, Consumer Trust and Consumer Choice Review]; and Section 4.6(e) [Registration Directory Service Review] (collectively, “Specific Reviews”) is paused for a period of [24] [30] months.
- (b) If no amendment has been completed to ICANN Bylaws Article, Section 4.6 within the [24] [30]-month period specified in Section 27.6(a) above, the schedule for conducting such Specific Reviews will be as follows:
 - i. The Accountability and Transparency Review (“ATR”) specified at Article 4, Section 4.6(b) shall be initiated within 90 days of the date that ICANN’s obligation to conduct Specific Reviews resumes;
 - ii. The Security, Stability, and Resiliency Review (SSRR) specified at Section 4.6(c) shall be initiated within 18 months of the initiation of the ATR;

- iii. The Registration Directory Service Review specified at Article 4, Section 4.6(e) shall be initiated within 18 months of the initiation of the SSRR; and
- iv. The timing for the Competition, Consumer Trust and Consumer Choice Review pursuant to Article 4, Section 4.6(d) shall be initiated when the next round of new gTLDs has been in operation for two years, such operation being measured from the time that 500 gTLDs applied for within that round have been delegated into the root zone.

FOR INFORMATION ONLY:

EXISTING TEXT OF Article 4, Section 4.6 – No changes recommended

Section 4.6. SPECIFIC REVIEWS

(a) Review Teams and Reports

(i) Review teams will be established for each applicable review, which will include both a limited number of members and an open number of observers. The chairs of the Supporting Organizations and Advisory Committees participating in the applicable review shall select a group of up to 21 review team members from among the prospective members nominated by the Supporting Organizations and Advisory Committees, balanced for diversity and skill. In addition, the Board may designate one Director or Liaison to serve as a member of the review team. Specific guidance on the selection process is provided within the operating standards developed for the conduct of reviews under this Section 4.6 (the "**Operating Standards**"). The Operating Standards shall be developed through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN. The Operating Standards must be aligned with the following guidelines:

(A) Each Supporting Organization and Advisory Committee participating in the applicable review may nominate up to seven prospective members for the review team;

(B) Any Supporting Organization or Advisory Committee nominating at least one, two or three prospective review team members shall be entitled to have those one, two or three nominees selected as members to the review team, so long as the nominees meet any applicable criteria for service on the team; and

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(C) If any Supporting Organization or Advisory Committee has not nominated at least three prospective review team members, the Chairs of the Supporting Organizations and Advisory Committees shall be responsible for the determination of whether all 21 SO/AC member seats shall be filled and, if so, how the seats should be allocated from among those nominated.

(ii) Members and liaisons of review teams shall disclose to ICANN and their applicable review team any conflicts of interest with a specific matter or issue under review in accordance with the most recent Board-approved practices and Operating Standards. The applicable review team may exclude from the discussion of a specific complaint or issue any member deemed by the majority of review team members to have a conflict of interest. Further details on the conflict of interest practices are included in the Operating Standards.

(iii) Review team decision-making practices shall be specified in the Operating Standards, with the expectation that review teams shall try to operate on a consensus basis. In the event a consensus cannot be found among the members of a review team, a majority vote of the members may be taken.

(iv) Review teams may also solicit and select independent experts to render advice as requested by the review team. ICANN shall pay the reasonable fees and expenses of such experts for each review contemplated by this Section 4.6 to the extent such fees and costs are consistent with the budget assigned for such review. Guidelines on how review teams are to work with and consider independent expert advice are specified in the Operating Standards.

(v) Each review team may recommend that the applicable type of review should no longer be conducted or should be amended.

(vi) Confidential Disclosure to Review Teams

(A) To facilitate transparency and openness regarding ICANN's deliberations and operations, the review teams, or a subset thereof, shall have access to ICANN internal information and documents pursuant to the Confidential Disclosure Framework set forth in the Operating Standards (the "**Confidential Disclosure Framework**"). The Confidential Disclosure Framework must be aligned with the following guidelines:

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(1) ICANN must provide a justification for any refusal to reveal requested information. ICANN's refusal can be appealed to the Ombudsman and/or the ICANN Board for a ruling on the disclosure request.

(2) ICANN may designate certain documents and information as "for review team members only" or for a subset of the review team members based on conflict of interest. ICANN's designation of documents may also be appealed to the Ombudsman and/or the ICANN Board.

(3) ICANN may require review team members to sign a non-disclosure agreement before accessing documents.

(vii) Reports

(A) Each report of the review team shall describe the degree of consensus or agreement reached by the review team on each recommendation contained in such report. Any member of a review team not in favor of a recommendation of its review team (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such recommendation, which shall be included in the report of the review team. The review team shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization.

(B) At least one draft report of the review team shall be posted on the Website for public review and comment. The review team must consider the public comments received in response to any posted draft report and shall amend the report as the review team deems appropriate and in the public interest before submitting its final report to the Board. The final report should include an explanation of how public comments were considered as well as a summary of changes made in response to public comments.

(C) Each final report of a review team shall be published for public comment in advance of the Board's consideration. Within six months of receipt of a final report, the Board shall consider such final report and the public comments on the final report, and determine whether to approve the recommendations in the final report. If the Board does not approve any or all of the recommendations, the written rationale supporting the Board's decision shall include an explanation for the decision on each recommendation that was not approved. The Board shall promptly direct implementation of the recommendations that were approved.

(b) Accountability and Transparency Review

(i) 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 reflect the public interest and are accountable to the Internet community ("**Accountability and Transparency Review**").

(ii) The issues that the review team for the Accountability and Transparency Review (the "**Accountability and Transparency Review Team**") may assess include, but are not limited to, the following:

(A) assessing and improving Board governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which the Board's composition and allocation structure meets ICANN's present and future needs, and the appeal mechanisms for Board decisions contained in these Bylaws;

(B) assessing the role and effectiveness of the GAC's interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS;

(C) assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof);

(D) assessing the extent to which ICANN's decisions are supported and accepted by the Internet community;

(E) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development; and

(F) assessing and improving the Independent Review Process.

(iii) The Accountability and Transparency Review Team shall also assess the extent to which prior Accountability and Transparency Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(iv) The Accountability and Transparency Review Team may recommend to the Board the termination or amendment of other periodic reviews required by

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this Section 4.6, and may recommend to the Board the creation of additional periodic reviews.

(v) The Accountability and Transparency Review Team should issue its final report within one year of convening its first meeting.

(vi) The Accountability and Transparency Review shall be conducted no less frequently than every five years measured from the date the previous Accountability and Transparency Review Team was convened.

(c) Security, Stability, and Resiliency Review

(i) 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 systems and processes, both internal and external, that directly affect and/or are affected by the Internet's system of unique identifiers that ICANN coordinates ("**SSR Review**").

(ii) The issues that the review team for the SSR Review ("**SSR Review Team**") may assess are the following:

(A) security, operational stability and resiliency matters, both physical and network, relating to the coordination of the Internet's system of unique identifiers;

(B) conformance with appropriate security contingency planning framework for the Internet's system of unique identifiers; and

(C) maintaining clear and globally interoperable security processes for those portions of the Internet's system of unique identifiers that ICANN coordinates.

(iii) The SSR Review Team shall also assess the extent to which ICANN has successfully implemented its security efforts, the effectiveness of the security efforts to deal with actual and potential challenges and threats to the security and stability of the DNS, and the extent to which the security efforts are sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the DNS, consistent with ICANN's Mission.

(iv) The SSR Review Team shall also assess the extent to which prior SSR Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

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(v) The SSR Review shall be conducted no less frequently than every five years, measured from the date the previous SSR Review Team was convened.

(d) Competition, Consumer Trust and Consumer Choice Review

(i) ICANN will ensure that it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection prior to, or concurrent with, authorizing an increase in the number of new top-level domains in the root zone of the DNS pursuant to an application process initiated on or after the date of these Bylaws ("**New gTLD Round**").

(ii) After a New gTLD Round has been in operation for one year, the Board shall cause a competition, consumer trust and consumer choice review as specified in this Section 4.6(d) ("**CCT Review**").

(iii) The review team for the CCT Review ("**CCT Review Team**") will examine (A) the extent to which the expansion of gTLDs has promoted competition, consumer trust and consumer choice and (B) the effectiveness of the New gTLD Round's application and evaluation process and safeguards put in place to mitigate issues arising from the New gTLD Round.

(iv) For each of its recommendations, the CCT Review Team should indicate whether the recommendation, if accepted by the Board, must be implemented before opening subsequent rounds of new generic top-level domain applications periods.

(v) The CCT Review Team shall also assess the extent to which prior CCT Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(e) Registration Directory Service Review

(i) Subject to applicable laws, ICANN shall use commercially reasonable efforts to enforce its policies relating to registration directory services and shall work with Supporting Organizations and Advisory Committees to explore structural changes to improve accuracy and access to generic top-level domain registration data, as well as consider safeguards for protecting such data.

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(ii) The Board shall cause a periodic review to assess the effectiveness of the then current gTLD registry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data ("**Directory Service Review**").

(iii) The review team for the Directory Service Review ("**Directory Service Review Team**") will consider the Organisation for Economic Co-operation and Development ("**OECD**") Guidelines on the Protection of Privacy and Transborder Flows of Personal Data as defined by the OECD in 1980 and amended in 2013 and as may be amended from time to time.

(iv) The Directory Service Review Team shall assess the extent to which prior Directory Service Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(v) The Directory Service Review shall be conducted no less frequently than every five years, measured from the date the previous Directory Service Review Team was convened, except that the first Directory Service Review to be conducted after 1 October 2016 shall be deemed to be timely if the applicable Directory Service Review Team is convened on or before 31 October 2016.