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October 3, 2017

By E-Mail to

Internet Corporation for Assigned Names and
Numbers 12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: Proposed Renewal of .MUSEUM Sponsored Registry Agreement

Dear ICANN:

I am writing on behalf of the members of the Internet Commerce Association (ICA). ICA is a not-for-profit trade association representing the domain name industry, including domain registrants, domain marketplaces, and direct search providers. Its membership is composed of domain name registrants who invest in domain names (DNs) and develop the associated websites, as well as the companies that serve them. Professional domain name registrants are a major source of the fees that support registrars, registries, and ICANN itself. ICA members own and operate approximately ten percent of all existing Internet domains on behalf of their own domain portfolios as well as those of thousands of customers. ICA is a longstanding member of the GNSO's Business Constituency.

This letter addresses the Proposed Renewal of .Museum Sponsored Registry Agreement that was [published](#) for public comment on August 24, 2017.

Executive Summary

- **ICA is concerned that Global Domain Division (GDD) has proposed a renewal agreement that proposes community status which is inconsistent with the present definition of “community” applied to other gTLDs; has engaged in a process that fails to observe the very safeguards it has stated must be followed for the expansion of classes of eligible registrants for a community gTLD; and continues to undermine the GNSO’s authority to recommend the substance of Consensus Policy by imposing adoption of URS through the RA renewal process.**
- **The 2016 launch of the PDP Review of All Rights Protection Mechanisms in All gTLDs, which is tasked with recommending whether new gTLD RPMs should become Consensus Policy for legacy gTLDs under its GNSO Council-approved Charter, makes it particularly inappropriate for GDD staff to continue seeking that de facto policy result in non-transparent, bilateral RA negotiations that contravene the policymaking process set forth in the Bylaws.**
- **GDD staff should demonstrate their clear commitment to ICANN’s bottom-up policymaking process by ceasing and desisting from seeking top-down imposition of new gTLD RPMs in legacy gTLD RA negotiations until the RPM Review WG has completed its work reviewing those RPMs and its final recommendations – including whether those RPMs should become Consensus Policy -- have been acted upon by the GNSO Council and ICANN Board.**
- **In the absence of such GDD self-restraint, the ICANN Board should declare an immediate moratorium on the imposition of new gTLD RPMs on legacy gTLDs through RA renewal negotiations until the above referenced PDP has been concluded, the GNSO Council has acted upon its recommendations, and any implementation and transition issues have been addressed.**
- **The vastly expanded community of eligible registrants for the .Museum gTLD is inconsistent with the “community” definition adopted for the new gTLD program. Promulgating an inconsistent concept of gTLD community could create conflicts with the ongoing work of the Subsequent Procedures WG.**
- **The opaque process utilized for the expansion of eligible .Museum registrants is at odds with the transparent process being developed within ICANN, that GDD has stated must be utilized by other community gTLDs seeking to add new classes of eligible registrants. The renewal proposal shows no evidence that members of the**

existing .Museum sponsored community have been consulted on the proposed class expansion.

De Facto Consensus Policy Established Through Non-Transparent Contract Negotiations

GDD has proposed renewal of the .MUSEUM Sponsored Registry Agreement that incorporates elements of the base new gTLD registry agreement. The multi-stakeholder community has not, however, fully deliberated on whether these elements should become Consensus Policy required of legacy sTLDs like .MUSEUM. This is at least the 5th instance in which the GDD has proposed such an amendment to a legacy TLD registry agreement.¹ By substituting staff judgment in place of GNSO policy development, GDD exceeds its powers and overrides safeguards intended to preserve transparency and inclusion within the multi-stakeholder community.

The amendments in question require the .MUSEUM sTLD to *inter alia* adopt new rights protection mechanisms (RPMs) from the new gTLD Registry Agreement, specifically the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Uniform Rapid Suspension (URS) dispute resolution procedure.² The GNSO has initiated a Policy Development Process (PDP) to review all RPMs at all gTLDs, and the Working Group (WG) Charter specifically tasks it with recommending whether any of the new gTLD program RPMs should become Consensus Policy and thereby applicable to legacy gTLDs. The WG tasked with evaluating these new RPMs does not expect to complete its Phase One consideration of new gTLD RPMs until sometime in 2018. If the GDD persists in forcing registries to adopt these pre-Consensus Policy RPMs, it may widely implement procedures that do not align with the GNSO's ultimate conclusions. Further, as ICANN policy staff has recognized, application of the RPMs to legacy gTLDs raises certain transition issues that are not addressed by implementation via contract. Finally, in the absence of such RPMs being Consensus Policy, registrants may have legal grounds to question their imposition. Overall, GDD personnel continue to set de facto substantive policy for gTLDs by adopting elements of the new gTLD registry agreement into amended and renewed RAs for

¹ See "Proposed Renewal of .TRAVEL Sponsored TLD Registry Agreement" (<https://www.icann.org/public-comments/travel-renewal-2015-05-12-en>) posted May 2015, "Proposed Renewal of .CAT TLD Registry Agreement" (<https://www.icann.org/public-comments/cat-renewal-2015-05-28-en>). Also see "Proposed Renewal of .PRO Un-sponsored Registry Agreement" (<https://www.icann.org/public-comments/pro-renewal-2015-05-28-en>), posted for public comment May 2015. Also see Proposed Renewal of .MOBI Sponsored TLD Registry Agreement" Published for public comment on December 23, 2016 <https://www.icann.org/public-comments/mobi-renewal-2016-12-23-en>).

² See ICANN, Specification 7 to the .MUSEUM Registry Agreement, available at <https://www.icann.org/sites/default/files/tlds/museum/museum-proposed-renewal-redline-24aug17-en.pdf>

legacy gTLDs.

The underlying policy issue created by GDD pursuit of the imposition of new gTLD RPMs on legacy gTLDs through contract negotiations was raised to a high profile within the ICANN community more than two years ago in 2015 when the revised RAs for .Travel, .Cat and .Pro were challenged by multiple segments of the ICANN Community.

ICA's .Travel [comment letter](#) of June 21, 2015 stated in part:

The ICA is strongly opposed to the inclusion of new gTLD rights protection mechanisms (RPMs), particularly Uniform Rapid Suspension (URS), in this renewal agreement (RA) for a legacy gTLD. We believe that this attempt by ICANN contracting staff to create de facto Consensus Policy via individual registry contract, absent a relevant Policy Development Process (PDP), is a glaring example of the type of top down, unaccountable action that should be targeted by enhanced accountability measures accompanying the IANA transition proposal. Contracts with legacy gTLDs can contain and enforce Consensus Policy, but it is an impermissible violation of ICANN's Bylaws for contracts to attempt to create Consensus Policy.... The potential addition of these RPMs to legacy gTLDs through this inappropriate avenue will have a substantial and deleterious effect on ICANN's policymaking process going forward, will create a new and dangerous precedent whereby de facto Consensus Policy can be created by contractual fiat in violation of ICANN Bylaws, and will substantially and adversely affect third parties around the world consisting of the existing registrants of more than one hundred million legacy gTLD domains.

In addition to ICA, that general line of reasoning was [echoed](#) by the Electronic Frontier Foundation and IP Justice, as well as ICANN's Business Constituency (BC) and Non-Commercial Stakeholders Group (NCSG).

On July 31, 2015 GDD staff [published](#) its Report of Public Comments regarding the Proposed Renewal of .TRAVEL Sponsored TLD Registry Agreement. In defense of the inclusion of the URS in the proposed .Travel Registry Agreement and other RAs, the report stated:

*Although the URS was developed and refined through the process described here, including public review and discussion in the GNSO, it has not been adopted as a consensus policy and ICANN staff has no ability to make it mandatory for any TLDs other than those subject to the new gTLD registry agreement. **Accordingly, ICANN staff has not moved to make the URS mandatory for any legacy TLDs, and it would be inappropriate for staff to do so. In the case of .TRAVEL and other legacy TLD registry agreement renewals (.JOBS) and proposed renewals for .CAT and .PRO registry agreements, inclusion of the URS was developed as part of the proposal in bilateral negotiations between the registry operator and ICANN. (Emphasis added)***

This self-serving justification posits that GDD's opening position in these negotiations is not an attempt to make any particular revision "mandatory", and that a registry's agreement to a GDD request is entirely "voluntary" within the context of balanced, bilateral negotiations. It is true that under ICANN's new standard registry agreement any registry operator has a presumptive right of renewal of its RA – but only of the exact same RA, with no material changes in its terms and conditions. But all three of the registries accepting URS in their 2015 renegotiations sought and received material beneficial changes in their RAs that GDD staff had the exclusive power to approve, and to condition upon the acceptance of other unrelated revisions – and that linkage of registry benefits to URS acquiescence has been maintained in subsequent examples, including this one..

To the collective dismay of ICA and other parties that objected to the 2015 actions, ICANN's Board chose to back GDD staff rather than defend the community-based policymaking process. On February 3, 2016, in response to "Reconsideration Requests 15-19 (the ICANN Business Constituency & the ICANN Noncommercial Stakeholder Group (NCSG) and 15-20 (The Internet Commerce Association)", ICANN's Board adopted the Board Governance Committee's denial of the two referenced Requests.

That [action](#) was based upon the flimsy rationale that—

The inclusion of the new gTLD RPMs in the Renewed Registry Agreements is part of the package of agreed-upon terms resulting from the bilateral negotiations between ICANN and each registry operator, and not, as Requesters claim, a "unilateral decision by ICANN contractual staff." The Requesters present no evidence to the contrary – i.e., that applying the new gTLD RPMs to the Renewed Registry Agreements was based on a unilateral decision by ICANN staff. The Requesters suggest that the Board should have reviewed all of ICANN staff's communications with the .CAT, .TRAVEL, and .PRO registry operators in order to confirm that the negotiations were in fact bilateral. Such contention, however, does not support reconsideration.

The Board's decision was based upon the false premise that the negotiations between a registry operator requesting material and beneficial alterations in its RA can be bilateral and balanced when GDD staff have placed requested changes on the table at the start of negotiations and have the unrestricted power to deny the requested RA changes unless their requests are acceded to. The Board also failed to review the full record of communications between the negotiating parties to judge whether the final draft agreement was coerced by GDD staff.

By circumventing ICANN Bylaws, GDD personnel are undermining the fundamental principles of transparency and inclusion that are core tenets of ICANN's mission. GDD personnel are effectuating policy through bilateral negotiations with registry operators, and the final outcome is only subject to the larger community's review by way of the publication of these proposed RA amendments and solicitation of responsive public comments.

The myth of “voluntary” acquiescence to GDD negotiating demands is undermined again in the present case, in which the .Museum registry operator stands to gain a vast, almost limitless expansion of eligible .Museum registrants simply by acquiescing to requested RPM adoption. The interest of the ICANN community in maintaining a transparent and bottom-up policy development process that is not influenced by private economic interests was not represented by either party to this negotiation.

Launch of the PDP Review of All Rights Protection Mechanisms in All gTLDs

From a policy development perspective, the principal difference between the 2015 actions and the instant case is the intervening creation of the PDP Review of All Rights Protection Mechanisms in All gTLDs. The Working Group’s [Charter](#) was approved by the GNSO Council on March 15, 2016.

That Charter’s “List of Potential Issues for Consideration in This PDP” includes this overarching one:

Should any of the New gTLD Program RPMs (such as the URS), like the UDRP, be Consensus Policies applicable to all gTLDs, and if so what are the transitional issues that would have to be dealt with as a consequence?

The actions of GDD staff in proposing adoption of new gTLD registry provisions by incumbent gTLDs severely prejudices the work of the PDP by creating de facto policy decisions in advance of its initial report and recommendations. Further, the GDD’s position in RA negotiations is materially flawed in that it fails to consider and address important “transitional issues”, including the necessary legal steps to bind legacy gTLD registrants to use of the URS when it has not been adopted as a Consensus Policy through proper PDP methodologies.

I spoke to this matter in my Public Forum Statement at ICANN 57 in Hyderabad, India, stating (as captured in the session transcript):

SO I'LL END WITH THIS QUESTION: I DON'T KNOW WHAT THE RPM WORKING GROUP IS GOING TO RECOMMEND ON URS BECOMING CONSENSUS POLICY. MY OWN MIND IS COMPLETELY OPEN ON THIS POINT DEPENDING ON WHAT OUR WORK FINDS AND WHAT CHANGES MIGHT BE MADE IN IT.

BUT IF WE WERE TO RECOMMEND THAT URS SHOULD NOT BE CONSENSUS POLICY ... WOULD GDD STAFF CONTINUE THIS PRACTICE IN NEGOTIATIONS? IF THE ANSWER IS NO, THEN I MAINTAIN IT'S INAPPROPRIATE FOR THEM TO DO IT NOW. AND IF THE ANSWER IS THAT THEY'RE GOING TO KEEP DOING IT EVEN IF WE COME OUT AGAINST IT BEING CONSENSUS POLICY, THEN DOESN'T THAT RENDER THAT PART OF OUR CHARTER WORK A SOMEWHAT IRRELEVANT EXERCISE IN FUTILITY?

In response, GDD head Akram Atallah stated:

IF THE POLICY COMES BACK AND SAYS THAT THE URS IS NOT SOMETHING THAT WE WANT TO HAVE AS A POLICY, OF COURSE, WE WOULD SUPPORT THAT.

Although the response is a tad ambiguous, read in its best light it indicates that GDD staff might cease its practice of suggesting adoption of new gTLD RPMs by legacy TLDs in RA renewal or revision negotiations if the WG recommends against their adoption as Consensus Policy.

If that is a correct reading of GDD's position, then the proper action for it to take going forward is to cease and desist from urging legacy gTLDs to adopt those RPMs in RA negotiations while the RPM Review WG is active, because a recommendation of the WG that the RPMs not become Consensus Policy would merely be an extension of the current status quo. If it is an incorrect reading, then the PDP deliberations of the WG on this central question are indeed an irrelevant exercise in futility and make a mockery of ICANN's purported commitment to the bottom-up policymaking process that is set forth in ICANN's Bylaws.

In the absence of such GDD self-restraint, the ICANN Board should declare a moratorium on the imposition of new gTLD RPMs on legacy gTLDs until the above referenced PDP has been concluded, the GNSO Council has acted upon its recommendations, and any implementation and transition issues have been addressed.

For the record, ICA has taken no position on whether URS or any other relevant new gTLD RPM should become ICANN Consensus Policy applicable to .Com, .Net and other legacy gTLDs (and we note that .Net did not acquiesce to the URS when its RA was renewed this year). Our position on that matter shall be based upon the PDP's review and findings regarding the actual implementation of the URS, and particularly whether it is being uniformly administered as a narrow supplement to the UDRP in which bad faith registration and use are demonstrated by clear and convincing evidence, as well as whether its overall application is consistent with the URS provider requirements set forth in the Applicant Guidebook as well as in the Memorandum of Understanding (MOU) establishing a contractual relationship between ICANN and URS providers. Our position will also be dependent on whether any alterations of the URS are recommended – and, in particular, whether a domain transfer option is recommended, given its potential to turn the URS into a rapid and inexpensive means of hijacking valuable legacy domains.

(For the record, while I am one of three Co-Chairs of the RPM Review WG, that position gives me a co-equal voice solely on administrative matters, and no authority whatsoever to steer that very large WG with global membership and multiple interests and perspectives toward reaching consensus on any particular policy recommendation.)

Concerns Regarding Substantive Community Registration Policies for .MUSEUM

Appendix S in the current .MUSEUM Registry Agreement is carried over to the proposed renewal of the Registry Agreement in the form of Specification 12 (Community Registration Policies) with some modifications. As such, upon Board approval the .MUSEUM proposed renewal registry agreement will be re-categorized as a "Community TLD" instead of a "Sponsored TLD". In reviewing this aspect of the proposed RA we rely upon the definition of "Community" adopted for the new gTLD program, as it is the only one we are aware of and because ICANN should utilize terms consistently across all its operations.

Eligibility requirements have been expanded such that registrations will be granted to museums, professional associations of museums, individuals with an interest or a link with museum profession and /or activity, or **bona fide museum users**. The provisions regarding (i) delegated authority; (ii) selection of registrars; (iii) existing sponsor services; and (iv) community related registrations have been deleted. (Emphasis added) That "bona fide museum users" provision arguably turns this Sponsored TLD into an open TLD. As a practical matter, anyone can register a .museum domain name since there is no requirement for registrants to document that they actually "use" any museums nor any practical means of verification.

To illustrate the open-ended nature of this proposal, if this RA is approved any "bona fide user" of the [Iceland Phallogical Museum](#), the [International Clown Hall of Fame and Research Center](#), or the [Sulabh International Museum Of Toilets](#) will become an eligible .museum registrant. We question whether such users – more accurately described as casual visitors – share any sense of a distinct community among themselves, much less with individuals who frequent the world's great museums of art, science, and history. This proposed class of eligible registrants is indistinguishable from the general public, and the general public cannot constitute any recognized community for gTLD purposes.

Even if .MUSEUM were arguably a Community TLD, these RA renewal negotiations stand in stark contrast to the very tight controls and tests used to judge Community TLD applicants in the new gTLD program. The bar was set very high, including a rigorous contention set evaluation process that resulted in most affected community applicants learning they weren't qualified and therefore could not avoid going to auction against other applicants in a contention set.

We cannot imagine that any new gTLD application which proposed a restriction to "bona fide users" of the TLD string term would have passed muster if challenged as being a bona fide Community Applicant. So GDD appears to be creating a major discrepancy between the very tight definition of community TLD transparently used in new gTLD application evaluations, and the very loose one accepted here in a RA renewal shaped behind closed doors.

A cursory review of Module 4 of the new gTLD Applicant Guidebook (AG)³,

³ <https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>

containing “String Contention Procedures”, supports this view. In this regard we note that the “Attachment to Module 2”⁴ of the AG makes clear that this contention set procedure sets the relevant standards for judging the bona fide nature of a gTLD claiming to represent a community, stating at #20 in regard to an applicant’s claim of “Community-based Designation”:

“Responses are not scored in the Initial Evaluation. Responses may be scored in a community priority evaluation, if applicable. Criteria and scoring methodology for the community priority evaluation are described in Module 4 of the Applicant Guidebook”.

Section 4.2.3 of Module 4⁵ of the AG, relating to Community Priority Evaluation (CPE) Criteria, sets forth the standards and key definitions for discerning the difference between bona fide communities from suspect ones. A key definition is that of “Community”:

Notably, as “community” is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some understanding of the community’s existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.

As previously observed, there is no evidence of any awareness and mutual recognition among the members of a purported community of “bona fide museum users”; nor is there a shred of evidence that the community existed prior to September 2007 or that it can be expected to have a future existence.

That definition of “community” is a critical component of Criterion #1 of the CPE, Community Establishment, which in turn is measured by Delineation and Extension. In this regard, Module 4 states:

- “Delineation” relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.
- “Extension” relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.

Even if it is asserted that there is some self-aware and self-recognized group of museum users justifying the existence of such a “community” – an assertion we strongly contest – it seems clear that the Delineation of its membership is quite unclear, dispersed, and essentially unbound. As for its Extension, its numbers and geographic reach likely encompass millions of people across the globe, an observation leading to the conclusion that allowing bona fide museum users to be .Museum registrants will convert this presently sponsored and registration-restricted gTLD into one with completely open registration, as the breadth of the

⁴ <https://newgtlds.icann.org/en/applicants/agb/evaluation-questions-criteria-04jun12-en.pdf>

⁵ <https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>

proposed “extension” is at odds with any recognizable bounds of a community.

As a new gTLD application must score at least 14 out of 16 points to prevail in a community priority evaluation, and a .Museum gTLD proposing a definition of its community identical to that proposed in the RA renewal we are commenting upon would likely score zero points, it seems highly probable that if .Museum was a new gTLD it would fail CPE on these factors alone. We are aware that Module 4 states that “a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid”, but in this instance we believe the proposed definition of the community is far too broad to be valid under any reasonable analysis.

Therefore, we believe that the proposed RA should delete “bona fide museum users” from the list of eligible registrants; and that the term “individuals with an interest or a link with museum profession and /or activity” should likewise be tightened to require that the “interest” be one that is demonstrated or documented.

Concerns Regarding the Process for Expanding Eligible .Museum Registrants

GDD has proposed in this renewal RA to both convert .Museum from a Sponsored to a Community gTLD as well as to significantly expand the range of its potential registrants. Just as the proposed delineation of eligible registrants is inconsistent with the definition of “community” adopted for CPE purposes in the new gTLD program, the process being followed for that expansion of eligible registrants is inconsistent with that being imposed on other bona fide community gTLDs.

In particular, this process contrasts sharply with the scrutiny that GDD is presently applying to fTLD’s (.bank, .insurance) proposal to make a minor modification of its registration policies (adding “Bank holding or parent companies that are supervised by a relevant government regulatory” to the eligibility list of other regulated financial institutions) through an internal registry process that followed fTLD’s publicly available Policy Development Process Policy and received approval by its Advisory Council and Board of Directors.⁶ In response, ICANN denied the request, stating it is not currently in a position to approve requests to amend community restrictions in Specification 12 of the New gTLD Registry Agreement absent completion of a community developed process to consider such requests, with that process including having the registry operator consult with the relevant TLD community as well as collecting documentation of support from key participants in that community.

⁶ For background we refer to a presentation made by Craig Schwartz to GNSO Council on 20-Sep-2017. Also see ICANN’s [letter](https://www.icann.org/en/system/files/correspondence/weinstein-to-schwartz-22sep17-en.pdf) to Mr. Schwartz on the same subject -- <https://www.icann.org/en/system/files/correspondence/weinstein-to-schwartz-22sep17-en.pdf> .

That GDD response raises another troubling inconsistency: Why is .Museum permitted to expand its eligible registrants when other, indisputably bona fide community gTLDs are told that such requests must await final development of a process for considering them? And why is fTLD told that the full process for a Community gTLD Change request must be followed before its rather narrow objective can be considered, while .MUSEUM is allowed to transition to “Community” status (which is arguably a transition to a fully open registry) without any evidence of a preceding community review? Of course, such a review could not presently be conducted as ICANN has yet to approve a Community gTLD Change Request process. (Please note that the ICA has no position on the validity of .fTLD’s request; we are citing it solely as an example of inconsistent GDD positions on necessary procedures for expansion of a community gTLD’s eligible registrant classes.)

Conclusion

Given the history of flimsy and self-serving justifications by GDD staff and the ICANN Board for similar actions taken since 2015, we are under no illusion that this comment letter will likely be successful in effecting removal of the URS and other new gTLD RA provisions from the revised .Museum RA. Nonetheless, we strenuously object to this GDD action that intrudes upon and debases ICANN’s legitimate community-based policymaking process: and we urge the GDD and Board to reconsider their positions, and to ensure that GDD staff ceases and desists from taking similar action in the context of future RA renewals and revisions until the RPM Review WG renders the community’s judgment as to whether the URS and other new gTLD RPMs should become Consensus Policy, and such recommendation is reviewed by both the GNSO Council and the ICANN Board.

The ICANN Board should declare a moratorium on the imposition of new gTLD RPMs on legacy gTLDs as requested above. Failure to do so risks substantial harm to ICANN’s perceived commitment to acting in an accountable manner that strictly adheres to its Bylaws, and tarnish ICANN’s reputation by creating the clear impression that monetary and other registry benefits are being traded for unrelated policy-related contract concessions in closed door RA renewal negotiations.

Further, In regard to the proposed conversion of .Museum from a Sponsored to a Community gTLD and the very considerable expansion of

its eligible registrants, the proposed renewal RA is inconsistent with the established definition of “community” established for gTLD purposes; and the process followed in developing it is at odds with the consultative process that ICANN has directed bona fide community gTLDs to follow when proposing expansion of eligible registrant classes. Further, the action taken could be at odds with any changes regarding community gTLDs that may be recommended by the WG reviewing Substantive Procedures for the next round of gTLDs.

In sum, GDD cannot and should not use the registry renewal agreement negotiation process as a means of circumventing the established policymaking process which delivered the current boundaries defining “community” for gTLD purposes, and which has sole authority to determine Consensus Policy. Likewise, GDD cannot tell some community gTLDs what transparent safeguards must be followed if they wish to expand classes of eligible registrants while requiring no similar safeguards for changes made through opaque RA renewal negotiations. Similarly, it cannot and should not create de facto Consensus Policies concerning RPMs through RA renewal negotiations.

Overall, GDD needs to do a much better job of acting in a manner that respects the community-based policymaking process and that is consistent with existing policy decisions and internal approval procedures. The rulebook should not get torn up when GDD goes behind closed doors with a registry that needs its registry agreement renewed, and ICANN’s Board should act in response to the ever-growing evidence that such disregard for established policy and procedure is occurring in these RA renewal negotiations.

We appreciate the opportunity to provide these comments on the proposed revision of the .Museum RA. We hope they are helpful to the further consideration of this matter by ICANN and its community.

Sincerely,

Philip S. Corwin

Counsel, Internet Commerce Association