2.7.3 Closed Generics

a. Recommendations and/or implementation guidelines

No Agreement: The Working Group notes that in the 2012 round of the New gTLD Program, a decision was made by the ICANN Board to effectively ban exclusive use generic applications. It is the understanding of the Working Group that the ICANN Board intended that its decision to effectively ban Closed Generics applied only to the 2012 round and that it wanted the GNSO to engage in policy discussion regarding the treatment of such strings in subsequent rounds. Although the Working Group has had numerous discussions about this topic, and received extensive comments from the community, the Working Group was not able to agree as to how to treat these applications in subsequent rounds.

b. Deliberations and rationale for recommendations and/or implementation guidelines

The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013.[1] In the Beijing Communiqué, the GAC advised the Board that, "For strings representing generic terms, exclusive registry access should serve a public interest goal" (the "Category 2.2 Safeguard Advice"). The GAC identified a non-exhaustive list of strings in the current round of the New gTLD Program that it considers to be generic terms where the applicant is proposing to provide exclusive registry access.

On 21 June 2015, the ICANN Board passed a resolution that effectively banned Exclusive Generic / Closed Generic TLDs in the 2012 round. In addition, the Board requested that the GNSO consider this topic in future policy development work for subsequent procedures.[2] The GNSO Council has in turn charged the Working Group with analyzing the impact of Closed Generics and considering future policy.

Although the Working Group generally agrees that some form of policy guidance should be drafted on this topic, at this stage, however, there continue to be different and strongly-held views on the specific policy goals.

The Working Group discussed that for most subjects within the PDP's remit, the 2012 implementation is considered the default going forward unless the Working Group agrees that a change to policy, implementation, or both is appropriate. In this particular case, however, the text of the Board's resolution left unclear what the "default" should be in subsequent procedures. Specifically, the Board stated that it was making a decision for the 2012 round but requesting input from the GNSO, through policy development work, about how to handle this issue going forward. The Working Group further noted that the Applicant Guidebook did not provide any guidance on the issue of Closed Generics, either in allowing or forbidding them. The Working Group discussed the possible scenario that if the Working Group were unable to put forward

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[1] See https://gac.icann.org/contentMigrated/icann46-beijing-communique
[2] https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a

recommendations on this topic, it may be up to the Board to decide how to proceed for subsequent procedures. However, the Working Group agreed that this was not an ideal outcome both from the perspective that it is the GNSO and this PDP's remit to develop policy on this topic, but also as an acknowledgement that the Board would be put in a challenging situation in this scenario.

> **Commented [1]:** Comment from Jeff Neuman: I am of the mind to remove this paragraph for the ICANN Paper because the discussion of what the default is will likely derail our conversation.

Four options have been discussed and were put out for public comment in the Initial Report. As the Working Group developed and deliberated on these options, it took into consideration GAC Advice included in the Beijing Communique on Category 2.2 Safeguards, and specifically the Advice that "For strings representing generic terms, exclusive registry access should serve a public interest goal."[3] The Working Group was careful to note that the implementation in 2012, of effectively banning closed generics, was not necessarily representative of the GAC Advice, which appeared to envision a scenario where an exclusive registry (i.e., closed generic) could be acceptable. Therefore, four options were considered by the Working Group:

- Option 1: Formalize GNSO policy, making it consistent with the existing base Registry Agreement that Closed Generics should not be allowed.
- Option 2: Allow Closed Generics but require that applicants demonstrate that the Closed Generic serves a public interest goal in the application. Potential objections process could be similar to community-based objections.
- Option 3: Allow Closed Generics but require the applicant to commit to a code of conduct that addresses the concerns expressed by those not in favor of Closed Generics. An objections process for Closed Generics could be modelled on community objections.
- Option 4: Allow Closed Generics with no additional conditions. Establish an objections process modelled on community objections.

Divergent views have been expressed on these options within the Working Group and in the responses received through public comment. In particular, there are some that believe that closed generics should not be allowed under any circumstances, and others believe that Option 4 is the only acceptable solution, both of which effectively means that options 2 and 3, or any other proposed solution that seeks to either mitigate perceived harms or impose conditions on the use of Closed Generics, are therefore unacceptable.

Nevertheless, the Working Group considered if there may be new ways to think about the Closed Generic issue and seek a compromise position, given the diverging views on the topic. Members of the Working Group who support implementing closed generics in some form sought to assuage the concerns of those that favor banning closed generics by raising the following questions for discussion:
- For those who raised concerns about Closed Generics in the 2012 round and those who continue to raise concerns, is there a way to allow Closed Generics while addressing the

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[3] https://gac.icann.org/contentMigrated/icann46-beijing-communique

concerns raised, for example through some formulation of the suggested measures included in Option 2 or 3?

- For those who support Closed Generics without restrictions, are there additional rules or conditions that could be acceptable if these rules or conditions enabled Closed Generics to be available, for example through some formulation of the suggested measures included in Option 2 or 3?

The Working Group was unable to agree on either of the above options, , but noted that if the Working Group were to recommend Option 2 or 3, additional details would need to be discussed:

- Option 2: Against what criteria would applications be evaluated to determine if they serve a public interest goal? How is public interest defined in this regard?
- Option 3: What provisions might be included in a code of conduct that could address the concerns raised about Closed Generics? Are there objective criteria that could be used to determine whether a particular application would serve the public interest?

The Working Group began to consider additional new proposals put forward by Working Group members regarding treatment of closed generics in subsequent rounds that most closely related to Option 2.

- Allow closed generic applications in line with GAC Advice only where the ICANN Board determined that the TLD would serve a public interest goal. Some proposed that the Board could only do this if the Board approved the application by a Supermajority for example at least 90% of sitting, non-conflicted, Board members) that the TLD would serve a public interest goal.
  - Working Group members expressed different perspectives on whether the decision by the Board should be appealable through the ICANN Reconsideration or IRP processes or whether it should be considered final.
  - One possibility to reduce the number of potential applications would be to limit applicants for closed generics to non-profit entities. This limitation was proposed because it offers a reasonable way to restrict the applicant pool that is aligned with the objective of serving the public interest.
  - An additional supplemental proposal suggested additional contractual enforcement provisions in the relevant RA for a closed generic TLD that is a generic word, such terms and conditions: (1) to be derived from the applicant's submission on the use of the closed generic TLD as being in the public interest; (2) which prohibit any action considered as anti-competitive (eg. discriminatory registration policies in favour of certain parties or against competitors in the applicable industry); (3) which govern any dealings on the disposal and/or future use of the closed TLDs - that (1) and (2) must be adhered to at all times and by any party which operates or acquires the rights under the RA; and (4) to stipulate that launching for SLD registration for the closed generic TLD by the (first) RO must take place within 2 years of signing the RA.

The breach of one or more of which will constitute cause for termination of the RA.

A hypothetical example was raised within the Working Group for a .disaster application by the International Red Cross where the applicant proposed a closed TLD to only be used by them in connection with disaster relief efforts around the world (eg. hurricainesandy.disaster). Users would know, for example, that uses of that domain name were sponsored by the official disaster recovery efforts in an effort to reduce fraudulent charitable solicitations. One could argue that it is more in the public interest for that TLD to be used in this manner as opposed to requiring the TLD to be open for sale by registrars in an unrestricted manner.

One Working Group member proposed a series of additional use cases for potential closed generic TLDs.[4] The Working Group member encouraged the Working Group to develop creative solutions to solve the needs raised in these use cases.

c. New issues raised in deliberations since publication of the Initial Report, if applicable.

The Working Group further considered input from the ICANN Board that "Because difficult questions on how to define the public interest and public interest goals have been pending for several years, the Board re-emphasizes that it remains critical for the Subsequent Procedures group to further flesh out these concepts in all proposed options for addressing closed generics."[5] Because the Working Group was unable to come to agreement that Closed Generics should be allowed if it is determined that the use would be in the "public interest", the Working Group did not take the further step to define "public interest."

> **Commented [2]:** Staff Comment: Possible topic for further discussion prior to the public comment period.

Some Working Group members raised the concern that if the Working Group recommended allowing Closed Generics in subsequent procedures, the new policy might be unfair to applicants from the 2012 round who were forced to withdraw or alter their applications. For context, it was noted that all of the affected applicants in the 2012 round chose either to convert their applications to open TLDs or withdraw their applications completely. There were no applicants that elected to defer their applications to any future round. Therefore, the Working Group does not believe there are any substantial outstanding issues from the 2012 round that need to be addressed on this topic. The Working Group further agreed that the main focus of the Working Group, for this topic and all others, should be on developing appropriate policy without the consideration of the fairness or unfairness to previous applicants for having different rules. If additional work is needed to address issues of fairness, this can be addressed at a future date by the GNSO Council or another group set up for this purpose.

d. Dependencies/relationships with other areas of this report or external efforts

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[4] https://mm.icann.org/pipermail/gnso-newgtld-wg/2020-February/002544.html
[5] https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000046.html

None identified at this time.

2.3.2 Global Public Interest

a. Recommendations and/or implementation guidelines

Affirmation xx (rationale 1): The Working Group affirms Recommendation 6 from the 2007 policy, which states: "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally accepted and internationally recognized principles of law. Examples of such limitations that are internationally recognized include, but are not limited to, restrictions defined in the Paris Convention for the Protection of Industrial Property (in particular restrictions on the use of some strings as trademarks), and the Universal Declaration of Human Rights (in particular, limitations to freedom of speech rights)."

Recommendation xx (rationale 2): Mandatory PICs currently captured in Specification 11 3(a)-(d) of the Registry Agreement must continue to be included in Registry Agreements for gTLDs in subsequent procedures. No additional mandatory PICs are needed at this time. Noting that Mandatory PICs were not included in the 2007 recommendations, this recommendation codifies existing practice into policy. One adjustment to the 2012 implementation is included in the following recommendation (Recommendation xx (rationale 3)).

Recommendation xx (rationale 3): Provide single-registrant TLDs with exemptions and/or waivers to mandatory PICs included in Specification 11 3(a) and Specification 11 3(b).

Recommendation xx (rationale 4): ICANN must continue to provide applicants with the opportunity to submit Registry Voluntary Commitments (RVCs) (previously called voluntary PICs) in subsequent rounds. Applicants must be able to submit RVCs at the time of application submission as well as at any other time prior to the execution of a Registry Agreement. RVCs will continue to be included in the applicant's Registry Agreement. In addition, for subsequent rounds all provisions of the PICDRP and associated processes shall equally apply to RVCs.

Recommendation xx (rationale 5): Applicants must also be allowed to commit to additional RVCs, or modify proposed RVCs, in response to public comments, objections, GAC Early Warnings, and/or GAC Advice.

Recommendation xx (rationale 6): At the time an RVC is made, the applicant must set forth whether such commitment is limited in time, duration and/or scope such that the commitment can adequately be reviewed by ICANN, a party providing a relevant public comment (if applicable), an existing objector (if applicable) and/or the GAC (if the RVC was in response to a GAC Early Warning or GAC Advice).

Recommendation xx (rationale 7): Any proposed changes to RVCs, including additions or changes, must be subject to public comment.

Commented [3]: Staff comment: Question from ICANN org: Does the WG want to specify a cut-off point in the program process for changes to the voluntary PIC in order to allow for the opportunity for others to file objections based on the changes, or whether a new opportunity for objections to be filed after a change has been made should be allowed.

Commented [4]: Comment from Jeff Neuman: All RVCs should undergo public comment. But yes, we should discuss with the WG at what point in time would objections be able to be filed on those.

Commented [5]: Staff comment: Question from ICANN org: Does the WG want to specify a cut-off point in the program process for changes to the voluntary PIC in order to allow for the opportunity for others to file objections based on the changes, or whether a new opportunity for objections to be filed after a change has been made should be allowed.

Commented [6]: Comment from Jeff Neuman: All RVCs should undergo public comment. But yes, we should discuss with the WG at what point in time would objections be able to be filed on those.

Commented [7]: Staff comment: Note request from ICANN org to clarify what is meant by "reviewed by ICANN" (i.e., an evaluation, a completeness check, or something else)

Recommendation xx (rationale 8): The Working Group acknowledges ongoing work in the community on the topic of DNS abuse and recommends that the community continues to take steps to address CCT-RT recommendations 14,[6] 15,[7] and 16[8] through community-wide discussions that address DNS abuse in all TLDs as opposed to dealing with these recommendations with respect to only the introduction of subsequent new gTLDs.

b. Deliberations and rationale for recommendations and/or implementation guidelines.

Rationale for Affirmation xx (rationale 1): The Working Group affirms that the New gTLD Program should continue to operate in a manner consistent with generally accepted and internationally recognized principles of law and legal norms. As such, the Working Group believes that Recommendation 6 of the 2007 policy remains appropriate policy for subsequent procedures.

Rationale for Recommendation xx (rationale 2): Public Interest Commitments were not envisioned in the 2007 policy and the concept was codified in Specification 11 as part of the implementation process in the 2012 round. The Working Group believes that mandatory PICs included in Specification 11 3(a)-(d) served their intended purpose and therefore recommends

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[6] CCT-RT Recommendation 14 states: "Consider directing ICANN org, in its discussions with registries, to negotiate amendments to existing Registry Agreements, or in consideration of new Registry Agreements associated with subsequent rounds of new gTLDs, to include provisions in the agreements to provide incentives, including financial incentives, for registries, especially open registries, to adopt proactive anti-abuse measures."

[7] CCT-RT Recommendation 15 states: "ICANN Org should, in its discussions with registrars and registries, negotiate amendments to the Registrar Accreditation Agreement and Registry Agreements to include provisions aimed at preventing systemic use of specific registrars or registries for DNS Security Abuse. With a view to implementing this recommendation as early as possible, and provided this can be done, then this could be brought into effect by a contractual amendment through the bilateral review of the Agreements. In particular, ICANN should establish thresholds of abuse at which compliance inquiries are automatically triggered, with a higher threshold at which registrars and registries are presumed to be in default of their agreements. If the community determines that ICANN org itself is ill-suited or unable to enforce such provisions, a DNS Abuse Dispute Resolution Policy (DADRP) should be considered as an additional means to enforce policies and deter against DNS Security Abuse. Furthermore, defining and identifying DNS Security Abuse is inherently complex and would benefit from analysis by the community, and thus we specifically recommend that the ICANN Board prioritize and support community work in this area to enhance safeguards and trust due to the negative impact of DNS Security Abuse on consumers and other users of the Internet."

[8] CCT-RT Recommendation 16 states: "Further study the relationship between specific registry operators, registrars and technical DNS abuse by commissioning ongoing data collection, including but not limited to, ICANN Domain Abuse Activity Reporting (DAAR) initiatives. For transparency purposes, this information should be regularly published, ideally quarterly and no less than annually, in order to be able to identify registries and registrars that need to come under greater scrutiny, investigation, and potential enforcement action by ICANN org. Upon identifying abuse phenomena, ICANN should put in place an action plan to respond to such studies, remediate problems identified, and define future ongoing data collection."

codifying these existing mandatory PICs in policy. The Working Group did not identify any additional mandatory commitments that it believes are necessary for subsequent procedures. The Working Group notes ongoing work on this topic through discussions between the GAC Public Safety Working Group and Registries, which may impact future work in relation to mandatory PICs. The Working Group acknowledges that concern was raised in public comment and in Working Group discussion that Section 3(a) constitutes a form of intellectual property policing of Internet content which is beyond the scope and mission of ICANN, but given the level of support that many groups have provided for upholding the current framework, the Working Group recommends maintaining the status quo as implemented in 2012.

Rationale for Recommendation xx (rationale 3): The Working Group supports maintaining mandatory PICs for TLDs that implement a standard model of selling domains to third parties. The Working Group believes, however, that certain mandatory PICs are not necessary to require for TLDs where there is a single registrant. Specifically, the Working Group notes that commitments included in Specification 11 3(a) are required to be passed down to a registrar and from there to the registrant. Therefore, they are not relevant in the case of a single registrant TLD. The Working Group further believes that security threat monitoring and reporting requirements under Specification 11 3(b) should not be applicable to single registrant TLDs because the threat profile for such TLDs is much lower compared to TLDs that sell second level domains. The Working Group therefore believes that is it appropriate for single registrant TLDs to receive exemptions/waivers from the requirements in Specification 11 3(a) and 3(b).

Rationale for Recommendation xx (rationale 4): The Working Group agreed that it is important for applicants to have an opportunity to make commitments either in anticipation of concerns or objections that might be raised about an application or in response to concerns or objections that have been raised. The Working Group further agreed that there must be a mechanism to transform these application statements into binding contractual commitments. The Working Group believes that the system of Registry Voluntary Commitments (RVCs) (previously called Voluntary PICs) in the 2012 round served the purpose of allowing applicants to make and be held to such commitments. Therefore, the Working Group recommends maintaining this mechanism in subsequent procedures.

The Working Group discussed the name "Public Interest Commitments" or "PICs" and whether that term truly reflected the nature of the commitments made by Registries. Although the WG agreed that the mandatory commitments could certainly be considered in "the public interest", other voluntary commitments may or may not necessarily be in the "public interest." Those commitments more appropriately may be considered in the interest of the registry and/or the constituencies/stakeholders they support, they cannot all be considered in the "public interest." Therefore, the WG decided to change the name of the Voluntary PICs to "Registry Voluntary Commitments" or "RVCs." To be clear, this represents a name change rather than a substantive change.

The Working Group understands that some applicants will be prepared at the time of application to propose RVCs. The Working Group believes that applicants should be encouraged to submit

such RVCs with the application, but should also be able to do so at any other time prior to the execution of a Registry Agreement.

In the 2012 round, Voluntary PICs were included in Specification 11, section 4 of the Registry Agreement. The Working Group believes that RVCs should continue to be captured in the Registry Agreement in subsequent rounds.

The Working Group notes that in public comment and in Working Group discussions some concern was raised that Voluntary PICs made by certain applicants in the 2012 round violated human rights and civil liberties and were not sufficiently subject to review by ICANN org or the community. From this perspective, RVCs in subsequent procedures should be narrowly tailored, should only be allowed to address concerns raised by the GAC or the community, should only be permitted if they fall within the scope and mission of ICANN as set out in the New Bylaws, and should always be subject to public comment. The Working Group has reviewed these comments and understands the concerns raised. The Working Group believes that the recommended approach is broadly supported and addresses the key concerns raised in public comment and Working Group deliberations.

Rationale for Recommendation xx (rationale 5): Noting that applicants may identify RVCs that they would like to propose in response to public comments, objections, GAC Early Warnings, and/or GAC Advice, the Working Group recommends that applicants should have an opportunity to submit RVCs after the initial application is submitted in order to remedy concerns raised through these channels.

Rationale for Recommendation xx (rationale 6): The Working Group believes that to the extent an applicant is making an RVC that is limited in time, duration and/or scope, the applicant should provide details about these proposed limitations at the time the RVC is submitted. This provides the transparency necessary to ensure that relevant parties have sufficient opportunity to review and respond to the details of the RVC being proposed.

Additional discussion of rationale 4, 5, and 6 with respect to CCT-RT recommendation 25

The Working Group reviewed and discussed CCT-RT recommendation 25,[9] which provides guidance on the implementation of RVCs with a particular focus on improving transparency and accountability. The Working Group shares the CCT-RT's belief that transparency and accountability are essential in the implementation of RVCs, and believes that recommendations

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[9] CCT-RT recommendation 25: "To the extent voluntary commitments are permitted in future gTLD application processes, all such commitments made by a gTLD applicant must state their intended goal and be submitted during the application process such that there is sufficient opportunity for community review and time to meet the deadlines for community and limited public interest objections. Furthermore, such requirements should apply to the extent that voluntary commitments may be made after delegation. Such voluntary commitments, including existing voluntary PICs, should be made accessible in an organized, searchable online database to enhance data driven policy development, community transparency, ICANN compliance, and the awareness of variables relevant to DNS abuse trends."

Commented [8]: Staff comment: The Working Group could consider aligning the language of its recommendations to more closely follow the CCT-RT language: "all such commitments made by a gTLD applicant must state their intended goal and be submitted during the application process such that there is sufficient opportunity for community review and time to meet the deadlines for community and limited public interest objections. Furthermore, such requirements should apply to the extent that voluntary commitments may be made after delegation."

[xx-xx] serve these objectives by establishing clear processes and supporting community review of and input on RVCs.

The Working Group is further considering additional recommendations and Implementation Guidance in line with CCT-RT recommendations:

- Potential Recommendation: Applicants must provide a rationale for any RVCs proposed.
- Potential Recommendation: In support of the principle of transparency, RVCs must be readily accessible and presented in a manner that is usable, as further described in the Implementation Guidance below.
  - Potential Implementation Guidance: The Working Group notes the CCT-RT's recommendation 25[10] has recommended developing an "organized, searchable online database" for RVCs. ICANN org should evaluate this recommendation in the implementation phase and determine the best method for ensuring that RVCs are widely accessible.

Rationale for Recommendation xx (rationale 7): The Working Group emphasizes the importance of transparency and accountability in the implementation of RVCs. By requiring public comment on any changes to RVCs, the New gTLD Program will ensure that the community has an opportunity to provide input on any changes being proposed.

Rationale for Recommendation xx (rationale 8): The Working Group believes that work within the ICANN community on the topic of DNS abuse should take place in a comprehensive and holistic manner, addressing both existing TLDs and those that will be delegated in the future. Given that the PDP is chartered to address only new gTLDs that will be delegated in subsequent applications rounds, the Working Group does not believe it is in the proper position to address the issue, and therefore defers to broader community efforts on the topic.

c. New issues raised in deliberations since publication of the Initial Report, if applicable.

The Working Group reviewed GAC Category 1 Safeguard Advice included in the Beijing Communique (2013),[11] which required safeguards to be added as Public Interest Commitments to Specification 11 of the Registry Agreement for certain categories of strings:

- Regulated Sectors/Open Entry Requirements in Multiple Jurisdictions
- Highly Regulated Sectors/Closed Entry Requirements in Multiple Jurisdictions

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[10] CCT-RT recommendation 25: "To the extent voluntary commitments are permitted in future gTLD application processes, all such commitments made by a gTLD applicant must state their intended goal and be submitted during the application process such that there is sufficient opportunity for community review and time to meet the deadlines for community and limited public interest objections. Furthermore, such requirements should apply to the extent that voluntary commitments may be made after delegation. Such voluntary commitments, including existing voluntary PICs, should be made accessible in an organized, searchable online database to enhance data driven policy development, community transparency, ICANN compliance, and the awareness of variables relevant to DNS abuse trends."
[11] See https://gac.icann.org/contentMigrated/icann46-beijing-communique

● Special Safeguards Required

The Working Group considered the implementation framework[12] adopted by the ICANN Board's New gTLD Program Committee[13] to address GAC Category 1 Safeguard Advice, as well as subsequent GAC Advice on the topic included in the Los Angeles Communique (2014)[14] and Singapore Communique (2015).[15]

The Working Group is discussing whether to affirm the framework adopted for Category 1 strings in the 2012 round and/or provide guidance on rules for sensitive strings in future rounds. The Working Group considered that it could potentially develop a framework and/or set of criteria for determining what is sensitive or in a "highly-regulated" sector. For example, an applicant could be asked to self-identify that they are applying for string that is sensitive or in a "highly-regulated" sector. An expert panel could then review that self-designation, as was the case with geographic names in the 2012 round.

In further discussion of this topic, the Working Group will continue to take into account recommendation 23[16] from the CCT-RT's Final Report.

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[12] See https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf
[13] See https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en
[14] "1. Reconsider the NGPC's determination not to require the verification and validation of credentials of registrants for the highly regulated Category 1 new gTLDs. The GAC believes that for the limited number of strings in highly regulated market sectors, the potential burdens are justified by the benefits to consumers; reconsider the requirements to consult with relevant authorities in the case of doubt about the authenticity of the credentials; and reconsider the requirement to conduct periodic pre-registration check to ensure that Registrants continue to possess valid credentials; and 2. Ensure the issues (verification/validation; post-registration checks; consultations with authorities) are addressed in the review process for any subsequent rounds of new gTLDs." See:
https://gac.icann.org/contentMigrated/icann51-los-angeles-communique
[15] "The GAC urges the NGPC to: 1. publicly recognize these commitments [by Registries who voluntarily adopt GAC Advice regarding the verification and validation of credentials] as setting a best practices standard that all Registries involved with such strings should strive to meet." See:
https://gac.icann.org/contentMigrated/icann52-singapore-communique
[16] Recommendation 23: ICANN should gather data on new gTLDs operating in highly regulated sectors to include the following elements:
a) a survey to determine 1) the steps registry operators are taking to establish working relationships with relevant government or industry bodies; 2) the volume of complaints received by registrants from government and regulatory bodies and their standard practices to respond to those complaints;
b) a review of a sample of domain websites within the highly regulated sector category to assess whether contact information to file complaints is sufficiently easy to find;
c) an inquiry to ICANN Contractual Compliance and registrars/resellers of highly regulated domains seeking sufficiently detailed information to determine the volume and the subject matter of complaints regarding domains in highly regulated industries;
d) an inquiry to registry operators to obtain data to compare rates of abuse between those highly regulated gTLDs that have voluntarily agreed to verify and validate credentials to those highly regulated gTLDs that have not; and
e) an audit to assess whether restrictions regarding possessing necessary credentials are being enforced by auditing registrars and resellers offering the highly regulated TLDs (i.e., can an individual or entity without the proper credentials buy a highly regulated domain?).

Commented [10]: Staff comment: Reminder of questions from ICANN org: If mandatory PICs are to be codified as policy recommendations, it would be helpful if the PDP Working Group could provide guidance on (i) What the categories of strings are; (ii) The process and criteria for applied-for strings to be put into those categories, including who makes the decision, implications on the evaluation and string contention processes; (iii) What the contractual obligations are for each of the categories.

Commented [11]: Staff comment: for WG discussion

The Working Group considered that GAC Category 1 Advice stated that for strings in market sectors which have clear and/or regulated entry requirements, "at the time of registration, the registry operator must verify and validate the registrants' authorisations, charters, licenses, and/or other related credentials for participation." The NGPC's framework for Implementing GAC Category 1 Advice, however, did not include requirements that specific strings must operate as validated TLDs and instead provided other measures to safeguard strings associated with highly-regulated sectors.

The Working Group has begun to discuss the concept of "verified" TLDs and consider whether special rules should apply to these TLDs. One definition of a verified TLD is one that requires verification of eligibility prior to use, adherence to standards, autonomy to take back a name, and ongoing verification.[17] The Working Group has not yet discussed if it agrees with this definition or whether it considers an alternate definition more appropriate. The concept of verification is tied to highly-regulated sectors because entities in these sectors are often subject to licensing or credentialing that ensures entities meet specific criteria or standards. A registry operating a verified TLD could confirm that a registrant held the appropriate license or credential.

The Working Group is discussing whether to recommend requiring TLDs to be verified in certain cases. For example, one proposal reviewed by the Working Group suggests that a registry should be required to operate a TLD as a verified TLD if: 1. is linked to regulated or professional sector; 2. is likely to invoke a level of implied trust from consumers; or 3. has implications for consumer safety and wellbeing. The Working Group has not yet made any conclusions on this topic.

The Working Group is also discussing the merits and drawbacks of incentivizing verified TLDs. The Working Group reviewed CCT-RT recommendation 12[18] and considered whether establishing incentives for operating verified TLDs could be a means to address this

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To the extent that current ICANN data collection initiatives and compliance audits could contribute to these efforts, we recommend that ICANN assess the most efficient way to proceed to avoid duplication of effort and leverage current work.

[17] https://www.vtld.domains/

[18] CCT-RT recommendation 12: Create incentives and/or eliminate current disincentives that encourage gTLD registries to meet user expectations regarding (1) the relationship of content of a gTLD to its name; (2) restrictions as to who can register a domain name in certain gTLDs based upon implied messages of trust conveyed by the name of its gTLDs (particularly in sensitive or regulated industries; and (3) the safety and security of users' personal and sensitive information (including health and financial information). These incentives could relate to applicants who choose to make public interest commitments in their applications that relate to these expectations. Ensure that applicants for any subsequent rounds are aware of these public expectations by inserting information about the results of the ICANN surveys in the Applicant Guide Books.

recommendation. The Working Group further discussed potential methods of establishing such incentives:

- Fee reduction.
- Priority in application processing.
- Incentives for registries to carry verified TLDs.

At a high-level, the Working Group identified pros and cons for providing special rules applying to verified TLDs, either through requirements or incentives associated with these strings:

Pros	Cons
Improve trust and confidence in specific areas/industries where there may be sensitivities/risks	This topic is closely connected to content and policy on the issue could constitute a form of content regulation
Contribute to improved consumer protection through registrant verification prior to domain name use and through ongoing monitoring of the domain space for compliance with registry standards	Existing procedure already provides sufficient opportunities to address concerns associated with TLDs related to highly regulated or professional sectors and therefore further categories of TLDs are not necessary

d. Dependencies/relationships with other areas of this report or external efforts.

- Global Public Interest Framework under ICANN's Strategic Plan
- Mandatory PICs should be revisited to reflect the ongoing discussions between the GAC Public Safety Working Group and Registries as appropriate.
- Objections (with respect to Verified TLDs).

2.8.1 Objections [GAC Advice and GAC Early Warning Only]

a. Recommendations and/or implementation guidelines

Affirmation xx (rationale 0): Subject to the recommendations below, the WG supports the 2012 implementation of GAC Early Warnings. More specifically, "Concurrent with the [public] comment period, ICANN's Governmental Advisory Committee (GAC) may issue a GAC Early Warning notice concerning an application. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments.[19]

Recommendation xx (rationale 1): GAC Advice must include clearly articulated rationale, including the national or international law [and merits-based public policy reasons] [or merits-based public policy reasons] [and/or merits-based public policy reasons] upon which it is

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[19] Applicant Guidebook, Section 1.1.2.4.

Margin comments:

Commented [12]: Staff comment: For WG discussion

Commented [13]: Staff comment: Note overlap with topic Registrar Support for New gTLDs. So far, the WG has leaned towards no recommendations on Registrar Support for New gTLDs.

Commented [14]: Staff comment: Is further work/discussion/research needed here?

Commented [15]: Staff Comment: Old Action Items:

23 September 2019:

ACTION ITEM 1: Re: BRG/RySG: New Idea - Supports this option but suggests the language is modified to "GAC Advice must include clearly articulated rationale, including the (i) national or international law; and (ii) merits-based public policy reasons, upon which it is based". Review to determine if WG agrees to add to high-level agreements.

ACTION ITEM 2: Re: INTA: New Idea - Require that GAC Advice nominate and provide contact details for an authorized GAC contact who is knowledgeable about the grounds for the objection and authorized to discuss solutions with a view to trying to reach a resolution. Review to determine if WG agrees to add to high-level agreements.

Option listed in Initial Report: Future GAC Advice, and Board action thereupon, for categories of gTLDs should be issued prior to the finalization of the next Applicant Guidebook. Any GAC Advice issued after the application period has begun must apply to individual strings only, based on the merits and details of the application, not on groups or classes of applications.

ACTION ITEM 3: Review to determine if WG agrees to add to high-level agreements.

ACTION ITEM 4: Look in the Bylaws with respect to GAC Advice.

26 September 2019:

Should there be some sort of early warning for governments? See: carried out in accordance with the Bylaws and GAC's internal procedures: "Does the presumption that a "string will not proceed" limit ICANN's ability to facilitate a solution that both accepts GAC Advice but also allows for the delegation of a string if the underlying concerns that gave rise to the objection were addressed? Does that presumption unfairly prejudice other legitimate interests?"

ACTION ITEM 1: Put on the list for comment: Rather than a specific time period, the WG could consider some principle or period (e.g., concurrent with the application comment period).

Commented [16]: Staff Comment: for discussion. one of the bracketed options could be included or all could be omitted.

based.[20]

Recommendation xx (rationale 2): To provide predictability to applicants as well as the Internet community, future GAC Advice for categories of gTLDs (if any), and Board action thereupon, must be issued prior to the finalization of the next Applicant Guidebook. Any GAC Advice issued after the application period has begun must apply to individual strings only, based on the merits and details of the applications for that string, not on groups or classes of applications.

Recommendation xx (rationale 3): Consistent with the updated ICANN Bylaws, omit in future editions of the Applicant Guidebook language included in the 2012 AGB section 3.1 that GAC Advice "will create a strong presumption for the ICANN Board that the application should not be approved." The Working Group believes that this language is not only unnecessary in light of the Bylaws, but has the unintended consequence of hampering the ability for applicants, ICANN org, and the GAC to mitigate concerns, which could allow an application to proceed.

Recommendation xx (rationale 4): To the extent that there is a decision to allow a longer period for the GAC to provide Early Warnings (above and beyond the public comment period), the application process should define a specific time period during which GAC Early Warnings can be issued and require that the government(s) issuing such Warning(s) include both a written rationale/basis and specific action requested of the applicant.

Recommendation xx (rationale 5): The applicant must have an opportunity to engage in direct dialogue in response to GAC Early Warnings [and GAC Advice] and amend the application during a specified time period.

Recommendation xx (rationale 6): Applicants must be allowed to change the application, including the addition or modification of Registry Voluntary Commitments (RVCs, formerly Voluntary PICs), in response to GAC Early Warnings and/or GAC Advice.

b. Deliberations and rationale for recommendations and/or implementation guidelines

The Working Group reviewed public comments submitted by the GAC in response to the Working Group's Initial Report. The Working Group appreciates the GAC's openness to discussion on opportunities to increase the transparency and fairness in the GAC Early Warning and GAC Advice process. The Working Group understands the GAC's position that the PDP should not make recommendations on GAC activities. At the same time, the Working Group

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[20] In developing this recommendation, the Working Group considered Section 12.3. PROCEDURES of the ICANN Bylaws, which states that ". . .each Advisory Committee shall ensure that the advice provided to the Board by such Advisory Committee is communicated in a clear and unambiguous written statement, including the rationale for such advice." See
https://www.icann.org/resources/pages/governance/bylaws-en. The Working Group also considered the Amazon IRP Final Declaration, which states: "By failing to independently evaluate and articulate the existence of a well-founded public policy reason for the GAC advice, the NGPC, in effect, created a conclusive or irrebuttable presumption for the GAC consensus advice. In essence, it conferred on the GAC a veto over the applications; something that went beyond and was inconsistent with ICANN's own rules."See icann.org/en/system/files/files/irp-amazon-final-declaration-11jul17-en.pdf

considers it within the PDP's remit to make recommendations regarding ICANN processes as they apply specifically to future rounds of the New gTLD Program. The Working Group provides the above recommendations with a focus exclusively on GAC Early Warning and GAC Advice as they apply to subsequent rounds.

Rationale for Affirmation xx (rationale 0): The Working Group believes that the GAC Early Warning mechanism served its intended purpose of allowing GAC members to raise concerns about New gTLD applications. Therefore, the Working Group supports continuation of the mechanism in subsequent rounds.

Rationale for recommendation xx (rationale 1): The ICANN Bylaws require that Advice provided by Advisory Committees must be clear, unambiguous and accompanied by a rationale.[21] The Working Group notes that CCT-RT Recommendation 33[22] specifically references this requirement with respect to GAC Advice related to gTLDs. The Working Group emphasizes that by providing a rationale, the GAC not only permits the Board to determine how to apply that Advice, but it also gives applicants an opportunity to remedy concerns raised in GAC Advice while still proceeding with the application process if those concerns have been sufficiently addressed. The Working Group further believes that the requirement to provide a rationale supports transparency and predictability, which are essential in processes related to the New gTLD Program.

Rationale for recommendation xx (rationale 2): GAC Advice in the 2012 round was provided for whole categories of applications, whereas the 2012 Applicant Guidebook states that Advice is to be provided for individual applications. The Working Group reviewed that when the GAC initially issued Advice on categories of strings in the 2012 round, applicants experienced uncertainty because it was unclear if the lists provided were exhaustive and was also unknown whether those applying for strings in related industries might be impacted. The Working Group believes that in service of predictability, if the GAC issues Advice on categories in the future, this Advice must be given by the GAC and actioned by the Board before the Applicant Guidebook is published, so that prospective applicants fully understand the implications and scope of the Advice before the application process begins. The Working Group recommends that any GAC Advice issued once the application submission period has begun must be limited to individual strings, so that it is clear which applicants are affected. To the extent that there are multiple applications for the same string, the Advice must take into account that different members of a contention set may be proposing different business models, and reference relevant applications individually to improve clarity for all parties.

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[21] See Section 12.3. PROCEDURES of the ICANN Bylaws
https://www.icann.org/resources/pages/governance/bylaws-en
[22] Recommendation 33 states: "As required by the October 2016 Bylaws, GAC consensus advice to the Board regarding gTLDs should also be clearly enunciated, actionable and accompanied by a rationale, permitting the Board to determine how to apply that advice. ICANN should provide a template to the GAC for advice related to specific TLDs, in order to provide a structure that includes all of these elements. In addition to providing a template, the Applicant Guidebook (AGB) should clarify the process and timelines by which GAC advice is expected for individual TLDs."

Rationale for recommendation xx (rationale 3): By omitting the language referenced in this recommendation, the Board has greater flexibility to facilitate a solution that both accepts GAC Advice and allows for the delegation of a string if the underlying concerns that gave rise to the GAC Advice are addressed. The Working Group believes that this recommendation is consistent with the ICANN Bylaws, which require the Board to consider GAC Advice but do not require the Board to accept this Advice.[23]

Rationale for recommendation xx (rationale 4): The Working Group supports processes that provide the GAC with a fair and consistent opportunity to provide Early Warnings while also ensuring that that application process is transparent and predictable for all parties. The Working Group believes that by providing a clear timeframe in which GAC members may provide Early Warning(s) on applications, predictability will be increased in the application process. The Working Group recommends that Early Warnings include a written rationale/basis and specific action requested of the applicant, so that it is clear why the Early Warning is being issued and how the applicant may be able to address the underlying concerns. This measure provides greater transparency in the process and also enables applicants to propose specific changes to the application to address concerns raised by GAC members.

Rationale for recommendation xx (rationale 5): The Working Group believes that applicants and GAC members will both benefit from the opportunity to engage directly in dialogue about the content of Early Warnings and underlying concerns that the GAC members issuing those Early Warnings may have about an application. This provides parties the opportunity to avoid misunderstandings, address any incorrect assertions of fact, and potentially come to a mutually agreeable solution. To the extent that an application can be amended to address the issue identified in an Early Warning, the Working Group recommends that applicants have the opportunity to make such changes. To ensure predictability in the application process, there must be a limited window of time in which this dialogue can take place and corresponding application changes can be submitted.

Rationale for recommendation xx (rationale 6): The Working Group believes that to the extent that applicants can address concerns raised in GAC Early Warnings or GAC Advice through proposed changes to the application, they should have the opportunity to make such changes and continue with the application process. Potential amendments could include the addition of Voluntary Commitments (formerly PICs). Application changes would be subject to evaluation by ICANN as discussed in section Application Change Requests.

c. New issues raised in deliberations since publication of the Initial Report, if applicable.

The Working Group is currently considering whether additional work may be needed to harmonize PDP recommendations with recommendation 33 from the CCT-RT, which was directed in part at the Subsequent Procedures PDP WG and which the Board passed through to the target community groups. Recommendation 33 states: "As required by the October 2016

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[23] See Article 12, Section 2.2(a) (x) and (xi) of the Bylaws dated 28 November 2019: https://www.icann.org/resources/pages/governance/bylaws-en

Bylaws, GAC consensus advice to the Board regarding gTLDs should also be clearly enunciated, actionable and accompanied by a rationale, permitting the Board to determine how to apply that advice. ICANN should provide a template to the GAC for advice related to specific TLDs, in order to provide a structure that includes all of these elements. In addition to providing a template, the Applicant Guidebook (AGB) should clarify the process and timelines by which GAC advice is expected for individual TLDs."

As noted in sub-section b above, the Working Group's believes that recommendation xx is consistent with the CCT-RT's recommendation that GAC Advice is "enunciated, actionable and accompanied by a rationale." The Working Group has not yet made a decision about whether to provide further recommendations corresponding to the other elements of the CCT-RT recommendation, in particular regarding the proposed template for GAC Advice related to specific TLDs and clarification in the AGB regarding process and timelines for GAC Advice directed at specific TLDs.

The Working Group notes that the details of the CCT-RT recommendation state: "While the details should be left to the Subsequent Procedures PDP Working Group, the CCT believes there should be a mechanism created to specifically allow objections by individual members of the GAC and means to challenge assertions of fact by GAC members. Finally, some sort of appeals mechanism is imperative." The Working Group believes that creating the opportunity for dialogue between applicants and GAC members as part of the Early Warning [GAC Advice] process (Working Group recommendation xx) provides a potential means to "challenge assertions of fact by GAC members." The Working Group further believes that the substantive appeals mechanism proposed in section Accountability Mechanisms addresses the need for an appeals mechanism expressed by the CCT-RT.

d. Dependencies/relationships with other areas of this report or external efforts

Global Public Interest, Application Change Requests, Accountability Mechanisms (see discussion on CCT-RT recommendation 33 in sub-section c. above)

2.5.4 Applicant Support

a. Recommendations and/or implementation guidelines

Affirmation xx *with modification* (rationale 1): The Working Group affirms Implementation Guideline B from 2007, which states: "Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants *that qualify for applicant support*."

Affirmation xx with modification (rationale 2): The Working Group notes that Implementation Guideline N from 2007 states: "ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed." The Working Group

recommends that as was the case in the 2012 round, fee reduction and non-financial assistance[24] must be available for select applicants who meet evaluation criteria through the Applicant Support Program. It believes that the high-level goals and eligibility requirements for the Applicant Support Program remain appropriate. The Working Group notes, however, that the Applicant Support Program was not limited to least developed countries in the 2012 round and believes that the Program should continue to be open to applicants regardless of their location as long as they meet other program criteria. Therefore, the Working Group recommends the following language in place of Implementation Guideline N: "ICANN must retain the Applicant Support Program, which includes fee reduction and non-financial support for eligible applicants."

Recommendation xx (rationale 3): The Working Group recommends expanding the scope of financial support provided to Applicant Support Program beneficiaries beyond the application fee to also cover costs such as application writing fees, attorney fees related to the application process, and ongoing ICANN registry-level fees.[25]

Recommendation xx (rationale 4): The Working Group recommends that ICANN seek opportunities to improve outreach, education, application evaluation, and program evaluation elements of the Applicant Support Program, as proposed in the Implementation Guidance below.

> Implementation Guidance xx (rationale 4): Outreach and education should be delivered well in advance of the application window opening, as longer lead times help to create awareness about the program. [Such Outreach and education should commence no later than the start of the Communication Period.]

> Implementation Guidance xx (rationale 4): A dedicated Implementation Review Team should be established and charged with developing implementation elements of the Applicant Support Program.

> Implementation Guidance xx (rationale 4): Outreach efforts should not only target the Global South, but also "middle applicants," which are located in struggling regions that are further along in their development compared to underserved or underdeveloped regions.

> Implementation Guidance xx (rationale 4): The Working Group supports recommendation 6.1.b in the Program Implementation Review Report, which states:

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[24] In the 2012 round, the non-financial component of the program was provided through the pro bono assistance program.

[25] These are the fees specified in the Registry Agreement which are currently annual fees paid on a quarterly basis.

Commented [21]: Staff Comment: There appears to be some divergence in previous WG conversations about whether ongoing costs should be covered. May require further discussion.

Commented [22]: Comment from Jeff Neuman: Yes, lets highlight for discussion.

Commented [23]: Staff Comment: Does it make sense to provide guidance relative to the regular communications period? E.g., Shorter, equal, at least equal, longer.

Commented [24]: Staff Comment: WG to confirm:
- Is this IG specific to outreach or is it also intended to modify application evaluation criteria? If it is about evaluation, the WG may want to review the Financial Assistance Handbook from the 2012 round and specifically criteria #1.4 and #1.7 which relate to developing economies, and consider specific modifications as Implementation Guidance: https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf
- "Middle applicant" is about the location of the applicant and not the population served, correct?

Further Staff Comments:
Great question. It would seem to depend at least partially on whether the existing criteria would allow a "middle applicant" to pass. After a quick skim, it seems like yes, they could in theory pass?

Commented [25]: Comment from Jeff Neuman: A couple of interesting observations. (1) The handbook is not technically part of the guidebook, or the policy, but was used by ICANN in the 2012 round. Should we have an affirmation adopting the Handbook subject to the changes recommended by our WOrking Group?
(2) Some of the criteria would have to be revised to include applicants that were not based in developing economies or the Global South.
(3) We need to address the CCT-RT Recommendation of defining the Global South. But I would argue that we do not have to do that if the Applicant Support program is not just aimed at the Global South.

"6.1.b: Consider researching globally recognized procedures that could be adapted for the implementation of the Applicant Support Program.[26]

Implementation Guidance xx (rationale 4): In implementing the Applicant Support Program for subsequent rounds, the dedicated Implementation Review Team should draw on experts with relevant knowledge, including from the targeted regions, to develop appropriate program elements related to outreach, education, and application evaluation. Regional experts may be particularly helpful in providing insight on the evaluation of business plans from different parts of the world.

Implementation Guidance xx (rationale 4): The dedicated Implementation Review Team[27] should seek advice from experts in the field to develop an appropriate framework for analysis of metrics to evaluate the success of the Applicant Support Program. The Working Group identified a non-exhaustive list of potential data points to support further discussion in the implementation phase. The Working Group anticipates that the dedicated IRT will consider how these and other potential metrics may be prioritized:
- Awareness and Education:
  - number of outreach events and follow up communications with potential applicants
  - level of awareness about the New gTLD Program / Applicant Support Program
  - level of interest expressed/number that considered applying
  - number of applicants
  - diversity of the applicant pool (including geographic diversity and IDNs)
  - number of service providers offering pro-bono assistance
- Approval Rate
  - number of approved applicants
- Success of Launched gTLD:
  - The number of registrants of domain names registered in "regional" TLDs (e.g., TLDs focusing mainly on a local, limited market), keeping in mind that there are other barriers for registrants in developing countries to access domain names, such as inability to access online payment services and a lack of local registrars.

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[26] The detailed description of this recommendation in the PIRR states: "In regards to the development of criteria and processes, the community may wish to research globally recognized procedures that could be adapted for the implementation of a financial assistance program (e.g., World Bank programs). Additional [research] may also be undertaken to better understand the needs of the target market and their obstacles to becoming registry operators (e.g., infrastructure, training). This information would help to design a program to better meet the needs of the target market."

[27] Although the Working Group discussed a separate IRT, this could also be achieved through a dedicated Work Stream or Track of the overall New gTLDs Implementation Review Team. The important concept here is that there is a dedicated team of knowledgeable and diverse experts in this niche area that understand the unique nature of financial and non-financial support for those in need.

○ The number of domain names registered in "regional" new gTLDs compared to the number of Internet users in such regions. These numbers could be compared with the same numbers for Internet users and "regional" new gTLDs in developed regions such as Europe and North America.

Recommendation xx (rationale 5): The Working Group supports recommendation 6.1.a in the Program Implementation Review Report, which states: "Consider leveraging the same procedural practices used for other panels, including the publication of process documents and documentation of rationale."[28]

Recommendation xx (rationale 6): ICANN Org must develop a plan for funding the Applicant Support Program, as proposed in the Implementation Guidelines below.

> *Implementation Guideline xx (rationale 6): ICANN Org should evaluate whether it can provide funds (as they did in 2012) or whether additional funding is needed for the Applicant Support Program in subsequent rounds.*

> *Implementation Guideline xx (rationale 6): ICANN Org should seek funding partners to help financially support the Applicant Support Program, as appropriate.*

> **Commented [26]:** Staff Comment: For WG discussion.

Recommendation xx (rationale 7): Applicants who do not meet the requirements of the Applicant Support Program must have the option to to pay the balance of the full standard application fee and transfer to the standard application process. Applicants must be provided with a limited period of time to provide any additional information that would be necessary to convert the application into one that would meet the standard criteria (e.g., showing how the applicant for financial and other support could acquire the requisite financial backing and other support services to pass the applicable evaluation criteria). That said, this limited period of time should not cause unreasonable delay the other elements of the New gTLD Program or any other applicants for a string in which its application may be in a contention set.

Recommendation xx (rationale 8): The Financial Assistance Handbook[29] or its successor, subject to the changes included in the above recommendations, must be incorporated into the Applicant Guidebook for subsequent rounds.

b. Deliberations and rationale for recommendations and/or implementation guidelines

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[28] The detailed description of this recommendation in the PIRR states: "Regarding execution of the program, in this round, the SARP was an independent panel that defined its own processes, procedures, and final reports. The SARP's work was performed earlier than the other New gTLD Program evaluation panels, and based on lessons learned from the implementation of other panels, ICANN should consider whether additional guidance should be provided to the SARP regarding publication of their processes, final report format, and documentation of rationale."
[29] The Financial Assistance Handbook from the 2012 round is available at: https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf

The Working Group notes that CCT-RT Recommendation 32 states: "Revisit the Applicant Financial Support Program." This recommendation is directed at the Subsequent Procedures PDP and passed through by the Board. The Working Group has extensively discussed the Applicant Support Program and has put forward the above recommendations to support improving the program in subsequent procedures.

Rationale for Affirmation xx with modification (rationale 1): As discussed in greater detail under the topic Application Fees, the Working Group supports the general approach to application fees taken in the 2012 round. Implementation Guideline B states that "Application fees may differ for applicants." In the 2012 round, successful candidates to the Applicant Support Program were eligible for a reduced application fee. The Working Group supports maintaining a reduced application fee for Applicant Support recipients.

Rationale for Affirmation xx with modification (rationale 2): The Working Group believes that financial and non-financial assistance should continue to be provided to eligible applicants in subsequent procedures in order "to serve the global public interest by ensuring worldwide accessibility to, and competition within, the new gTLD Program,"[30] as was the case in the 2012 round. The Working Group further believes that the high-level Applicant Support Program eligibility requirements from 2012 remain appropriate, namely that applicants must demonstrate financial need, provide a public interest benefit, and possess the necessary management and financial capabilities.[31] The Working Group notes that the program was available to applicants regardless of location in the 2012 round and believes that this should continue to be the case, as there are prospective applicants in need of assistance around the world that may want to launch TLDs serving the public interest or an underserved community.

The Working Group notes that CCT-RT Recommendation 31 states: "The ICANN organization to coordinate the pro bono assistance program." This recommendation is directed at the ICANN organization. The ICANN Board accepted the recommendation contingent on the recommendation from the New gTLD Subsequent Procedures PDP WG that the pro bono assistance program continue. Recommendation xx provides guidance that the Applicant Support Program's pro bono assistance program should continue in subsequent procedures along with other elements of the program.

Rationale for Recommendation xx (rationale 3): The Working Group recognizes that the costs of applying for a TLD extend beyond the application fee and that these additional costs could be uncertain and prohibitive for applicants with limited financial resources. Therefore, the Working Group recommends that the Applicant Support Program provide financial assistance to cover additional fees associated with the application process.

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[30] Stated objective of the Applicant Support Program from the 2012 round:
https://newgtlds.icann.org/en/applicants/candidate-support#financial-assistance
[31] See the New gTLD Financial Assistance Handbook for additional information:
https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf

Rationale for Recommendation xx and Implementation Guidance xx-xx (rationale 4): The Working Group believes that there there are opportunities for improvement in the outreach, education, application evaluation, and program evaluation elements of the Applicant Support Program and suggests that a dedicated IRT should be formed to focus on implementation of the Applicant Support Program.

The Working Group considered why there were a very limited number of applicants to the Applicant Support Program in the 2012 round and that only one applicant ultimately met the Program criteria to receive assistance. The Working Group believes that in the 2012 application round, the main factor was that there was a limited amount of time available to conduct outreach for the Program in between finalization of Applicant Support Program details and launch of the application window.[32]

The Working Group reviewed and discussed recommendations contained in the report "New gTLDs and the Global South: Understanding Limited Global South Demand in the Most Recent new gTLD Round and Options Going Forward" by AMGlobal, which focuses on recommendations for the New gTLD Program to more effectively reach prospective applicants in the Global South and developing economies. While this report does not specifically discuss the Applicant Support Program, the Working Group notes that the recommendations from the report may still be applicable as the Global South and developing economies were and continue to be targets of the Applicant Support Program. The AMGlobal Report emphasizes the importance of timely and effective outreach and communications regarding the New gTLD Program to better reach potential applicants in the Global South and emerging markets. The Working Group believes that similar conclusions can be made about the Applicant Support Program.

The Working Group considered that ALAC Advice to the ICANN Board has emphasized the importance of outreach in the implementation of the Applicant Support Program.[33] Observations by Working Group members from the 2012 round and community input reinforce the necessity of making sure that information about the Applicant Support Program is accessible to the target audience.

The Working Group notes that CCT-RT Recommendation 30 states: "Expand and improve outreach into the Global South." This recommendation is directed at the ICANN organization. The relevant Board Resolution mentions that the Subsequent Procedures may want to work on a definition of the Global South. Recommendation xx and Implementation Guidance xx focus on the importance of improved outreach consistent with the CCT-RT recommendation on this topic, although the Subsequent Procedures recommendations do not focus exclusively on the "Global South" or attempt to define this term.

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[32] See December 2011 Board Resolution directing staff to finalize the implementation plan for the launch of the Applicant Support Program in January 2012: https://features.icann.org/2011-12-08-applicant-support
[33] https://atlarge.icann.org/advice_statements/8071

The Working Group believes that "middle applicants" are an important potential target of the Applicant Support Program, because they may be better positioned to operate a TLD and may operate in a market that is more prepared for TLD expansion compared to potential applicants in underserved or underdeveloped regions, but at the same time may also require assistance in applying for a TLD. Therefore, the Working Group recommends that outreach efforts also include prospective applicants from these areas, noting that further work may be needed in the implementation phase to define the "middle applicant."

The Working Group agrees with the PIRR that globally recognized procedures, for example from the World Bank, could potentially be adapted for use in the Applicant Support Program. The Working Group encourages the dedicated IRT to conduct further work to identify such procedures in the Implementation phase. The Working Group emphasizes that it is important for the dedicated IRT to consult with relevant experts in the implementation of the Applicant Support Program in order to ensure that best practices are followed and knowledge about the target regions is appropriately leveraged.

The Working Group believes that the dedicated IRT should additionally work with experts to develop metrics to evaluate the success of the Applicant Support Program. The Working Group notes that CCT-RT Recommendation 29 states: "Set objectives/metrics for applications from the Global South." This recommendation is directed at the Subsequent Procedures PDP and GNSO. The ICANN Board passed this recommendation through with the suggestion that the PDP could work with ICANN org on defining "Global South" or agree on another term to describe underserved or underrepresented regions or stakeholders in coordination with ICANN org.

Without exclusively focusing on the Global South, the Working Group has considered possible metrics to define success of the Applicant Support Program, which avoids focusing solely on the number of applicants that are approved by the Applicant Support Program. This approach is in recognition that in some circumstances, potential applicants may not see a new gTLD as a priority, their locale lacks sufficient infrastructure to support a gTLD, or other factors that may prevent their pursuit of a gTLD.

This non-exhaustive list provided in Implementation Guideline xx may serve as a starting point for discussion as the dedicated IRT consults with experts in the implementation phase regarding metrics to evaluate the success of the Applicant Support Program.

Rationale for Recommendation xx (rationale 5): The Working Group agrees with the Program Implementation Review Report conclusion that lessons learned from the implementation of other New gTLD Program evaluation panels should be applied, where applicable, to the SARP. As noted in the PIRR, possible areas of improvement include publication of processes, format of the final report, and documentation of rationale for decisions.

Rationale for Recommendation xx and Implementation Guidance xx-xx (rationale 6): There will need to be a clear plan in place for funding the Applicant Support Program. ICANN will need to

evaluate the extent to which funds will be provided from the ICANN org budget and if additional funding is needed, should consider additional funding sources.

Rationale for Recommendation xx (rationale 7): In the 2012 round, unsuccessful candidates for the Applicant Support Program were not able to transfer their applications to the standard application process. If they were found to be ineligible for the Applicant Support Program, this decision marked the end of the application process for a New gTLD for that round. In public comment and Working Group discussions, a number of groups and individuals raised the concern that candidates who would have been a good match for the Applicant Support Program may have been deterred in the 2012 round because of this limitation. The Working Group agreed that given low application rates for Applicant Support in the 2012 round, it would be beneficial to adjust program rules to be more inviting to prospective candidates in the target groups. The Working Group believes that the opportunity to transfer an application is an important part of the equation to attract eligible applicants. The Working Group notes ICANN org's concerns about this programmatic change, in particular that if there are no penalties or other mechanisms to prevent gaming and further, no geographic location criteria, it is more likely that there will be many ASP applications, which could impact costs to process applications and to fund applicants who do qualify, as well as the impact on program timelines. In considering how to address this concern, the Working Group discussed potential measures to reduce the risk of gaming, for example a quick look mechanism like that discussed in ==section xx on Objections==. The Working Group suggests that further consideration may be given to gaming prevention measures in the implementation phase.

Rationale for Recommendation xx (rationale 8): The Working Group believes that in service of transparency and predictability, the Financial Assistance Handbook should be published as part of the Applicant Guidebook.

c. New issues raised in deliberations since publication of the Initial Report, if applicable.

In considering public comments, the Working Group discussed prioritization of successful Applicant Support applications. Specifically, the Working Group considered whether there should be any changes to the 2012 approach of establishing priority between applications if there are more qualified applicants than funds available. The Working Group did not come to a conclusion on these points, and therefore did not recommend a departure from the 2012 implementation.

> **Commented [27]:** Staff Comment: Is there anything else the Working Group wants to include here?

The Working Group noted that the recommendation to allow unsuccessful Applicant Support candidates to transfer to a standard application raises new questions about that timing of the Applicant Support process relative to the timing of the overall application evaluation process. The Working Group considered a proposal to address concerns about gaming associated with transfers. Under this proposal, applicants requesting support are notified before "reveal day" whether they qualify for the Applicant Support Program. If they do not qualify and decide to transfer to the standard application process, they are required to pay the full standard application fee. If there are multiple applications for the same string, all applicants for that string

are only revealed after all applicants have paid their full fees. The Working Group considered that under this proposal, the Applicant Support Program applicant has no information to gain, and therefore is not in a position to game the system.

d. Dependencies/relationships with other areas of this report or external efforts
- Potential coordination with ICANN Org's work on the definition of terms "underserved" and "underrepresented" regions
- Section 2.4.2 on Communications

2.9.1. Community Applications

a. Recommendations and/or implementation guidelines

Affirmation xx (rationale 1): The Working Group affirms the following concept derived from Implementation Guideline F from 2007: "If there is contention for strings...a claim to support a community by one party will be a reason to award priority to that application."

Affirmation xx (rationale 1): The Working Group affirms Implementation Guideline H from 2007, which states: "External dispute providers will give decisions on complaints."

Recommendation xx (rationale 2): The Community Priority Evaluation (CPE) process must be as efficient, transparent and predictable as possible.

Implementation Guideline xx (rationale 2): In service of transparency, if the evaluation panel relied on research for the decision it should be cited and a link to the information provided.

Implementation Guideline xx (rationale 2): To support predictability, the CPE guidelines should be considered a part of the policy adopted by the Working Group.

Implementation Guideline xx (rationale 3): ICANN org should examine ways to make the CPE process more efficient in terms of costs and timing.

Recommendation xx (rationale 2): All Community Priority Evaluation procedures (including any supplemental dispute provider rules) must be developed and published before the opening of the application submission period and must be readily and publicly available.

Recommendation xx (rationale 4): ICANN must consider ways to improve evaluators' ability to gather information about an application.

Implementation Guidance xx (rationale 4): Evaluators should continue to be able to send clarifying questions to CPE applicants but further, should be able to engage in written dialogue with them as well.

Commented [28]: Staff Comment: Does the WG want to affirm or otherwise address this PIRR recommendation? Recommendation 4.1.a: Consider all dimensions of the feedback received to revisit the CPE scoring and framework before the next application round.

Commented [29]: Comment from Jeff Neuman: Technically I am note sure we are affirming this whole Guideline F. For example, I am not sure yet whether we will allow mutual agreement resolution...and the last part about giving the ICANN Board discretion, etc. The only thing we are affirming is the priority of communities in a contention set.

Commented [30]: Comment from Staff: Does the WG want to provide any detail here? Request from ICANN org: "It would be helpful if the PDP Working Group could provide more detailed guidance on the specific areas of the CPE process that "must be more transparent and predictable." Additionally, it would be helpful if the PDP Working Group could provide more specific guidance on what should be changed or added that would enhance transparency and predictability for the CPE process."

Commented [31]: Staff Comment: Does this mean publication of the AGB? Or opening of the application submission period?

<u>Implementation Guidance xx (rationale 4)</u>: Evaluators should be able to issue clarifying questions, or utilize similar methods to address potential issues, to those who submit letters of opposition to community-based applications.

b. Deliberations and rationale for recommendations and/or implementation guidelines

In considering this topic, the Working Group notes that the ICANN Board previously identified Communities as one of the areas for potential policy development work for subsequent procedures.[34] The Working Group offers the above recommendations in an effort to guide improvements in the Community Priority Evaluation process.

<u>Rationale for Affirmation xx and xx (rationale 1)</u>: The Working Group supports the overall approach used in the 2012 round for community-based applications, as well as the continued prioritization of applications in contention sets that have passed Community Priority Evaluation. Therefore, the Working Group affirms the concept derived from Implementation Guideline F as well as the text of Implementation Guideline H from 2007.

<u>Rationale for Recommendation xx-xx and Implementation Guidance xx-xx (rationale 2)</u>: The Working Group believes that the 2012 CPE process lacked the appropriate level of transparency and predictability. The Working Group believes that transparency and predictability are essential objectives in the implementation of CPE and recommends that ICANN org seek opportunities to improve the evaluation process to ensure that evaluation criteria and the application of these criteria are transparent and predictable to all parties. The Working Group has provided specific suggestions in this regard through Implementation Guidance. In further support of transparency and predictability, the Working Group has recommended that evaluation procedures (including any supplemental dispute provider rules) are widely available before the opening of the application submission period.

<u>Rationale for Implementation Guidance xx (rationale 3)</u>: The Working Group believes that the CPE process was too costly for applicants, considering that the actual cost incurred by applicants was essentially double compared to what was predicted in the Applicant Guidebook, and further believes that the process took too long to complete. The Working Groups believes that drawing on lessons learned from the 2012 round, the CPE process should be able to realize efficiencies in both costs and time in subsequent rounds.

<u>Rationale for Recommendation xx and Implementation Guidance xx-xx (rationale 4)</u>: In the 2012 application round, evaluators could submit clarifying questions (CQs) to CPE applicants through ICANN org.[35] The Working Group believes, however, that evaluators should have additional resources at their disposal to gather information about a CPE application and any opposition to

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[34] See 17 November 2014 Board resolution: https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf
[35] For specific information about the circumstances under which CQs were issued in CPE, please see 126-127 of the Program Implementation Review Report.

that application. The Working Group has provided Implementation Guidance with specific suggestions in this regard.

In developing recommendations on this topic, the Working Group reviewed relevant GAC Advice included in the Beijing Communiqué (ICANN46),[36] Durban Communiqué (ICANN47),[37] Singapore Communiqué (ICANN49),[38] Los Angeles Communiqué (ICANN51),[39] Buenos Aires Communiqué (ICANN53),[40] and Dublin Communiqué (ICANN54).[41] The Working Group further reviewed relevant At-Large Statements on Community Expertise in Community Priority Evaluation[42] and Preferential Treatment for Community Applications in String Contention.[43] The Working Group has not identified any conflicts between the Working Group's recommendations

[36] "The GAC advises the Board that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information." See: https://gac.icann.org/contentMigrated/icann46-beijing-communique

[37] "The GAC advises the ICANN Board to consider to take better account of community views, and improve outcomes for communities, within the existing framework, independent of whether those communities have utilized ICANN's formal community processes to date." See https://gac.icann.org/contentMigrated/icann47-durban-communique

[38] "The GAC Advises ICANN to continue to protect the public interest and improve outcomes for communities, and to work with the applicants in an open and transparent manner in an effort to assist those communities. The GAC further notes that a range of issues relating to community applications will need to be dealt with in future rounds." See https://gac.icann.org/contentMigrated/icann49-singapore-communique

[39] "The GAC has concerns about the consistency of the Community Priority Evaluation Process, following the rejection of a number of applications. There is a need to ensure that criteria for community priority treatment are applied consistently across the various applications. The GAC requests the ICANN Board to examine the feasibility of implementing an appeal mechanism in the current round in case an applicant contests the decision of a community priority evaluation panel." See https://gac.icann.org/contentMigrated/icann51-los-angeles-communique

[40] "The GAC continues to keep under review the community application process for new gTLDs, noting that it does not appear to have met applicant expectations. The GAC looks forward to seeing the report of the ICANN Ombudsman on this matter following his current inquiry and will review the situation at its meeting in Dublin." See https://gac.icann.org/contentMigrated/icann53-buenos-aires-communique

[41] "The GAC advises the ICANN Board that: i. The GAC reiterates previously expressed concerns that the Community Priority Evaluation (CPE) process has not met the expectations of applicants and notes that all the successful applications are currently the subject dispute resolution procedures; ii. The GAC expects the current specific problems faced by individual applicants to be resolved without any unreasonable delay, and in a manner in which justified community interests are best served; iii. The GAC notes possibly unforeseen consequences for community applicants of recourse by competing applicants to other accountability mechanisms; and the specific challenges faced by some community applicants in auctions when in competition with commercial applicants; iv. The GAC will take into account the final report of the ICANN Ombudsman on this issue when preparing the GAC's input into the GNSO's review of issues for improving procedures relating to community-based applications in the next gTLD round; and the Competition, Trust, and Consumer Choice Review (CCT) under the Affirmation of Commitments." See https://gac.icann.org/contentMigrated/icann54-dublin-communique

[42] "1. The ALAC has concerns about the sufficiency of community expertise in panels that evaluate new gTLD community applications. 2. The ALAC stands ready to offer appropriate ICANN community volunteers to serve as panel members or advisors." See https://atlarge.icann.org/advice_statements/7201

[43] "Applications with demonstrable support, appropriate safeguards and strong emphasis on community service should be accorded preferential treatment in the new gTLD string contention resolution process." See https://atlarge.icann.org/advice_statements/7211

and the Advice provided by the GAC and ALAC. The Working Group believes that its recommendations for improved transparency and predictability are aligned with concerns expressed by the GAC that greater consistency is needed in the Community Priority Evaluation process. The Working Group further notes that it is recommending the establishment of a limited appeals mechanism for the New gTLD Program that would enable applicants and other parties to challenge or appeal decisions made in the application process, including the results of Community Priority Evaluation (see section ==xx Accountability Mechanisms== for additional information). The Working Group believes that this mechanism has the potential to support more consistent outcomes in CPE for subsequent procedures.

The Working Group notes that CCT-RT Recommendation 34 states: "A thorough review of the procedures and objectives for community based applications should be carried out and improvements made to address and correct the concerns raised before a new gTLD application process is launched. Revisions or adjustments should be clearly reflected in an updated version of the 2012 AGB." This recommendation was directed to the Subsequent Procedures PDP WG. The ICANN Board passed this recommendation through to the Working Group. The Working Group has extensively discussed the the Community Priority Evaluation process and put forward the above recommendations to address concerns raised about CPE in the 2012 round. The Working Group believes that the work it has completed is in line with that recommended by the CCT-RT.

c. New issues raised in deliberations since publication of the Initial Report, if applicable.

The Working Group considered proposals for specific changes to the CPE Guidelines from 2012.[44] The Working Group noted that there was some support in particular for a proposal to adjust CPE scoring criteria to ensure that expressions of opposition to an community-based application are viewed in balance with expressions of support for the application.

The Working Group considered feedback that it might be beneficial to have a less restrictive word count for communities to engage in clarifying and providing information. The Working Group discussed that before pursuing this idea further, it would likely need to investigate the limit in the 2012 round and whether it was different for different types of evaluations. The Working Group did not come to a conclusion on this issue.

The Working Group discussed a proposal to grant "extra credit" in CPE to applicants that help or solve a problem inside a community. The Working Group noted that if it were to make a recommendation in this regard, it might be helpful to suggest a specific adjustment to the CPE Guidelines and scoring criteria. No specific proposal has yet been put forward.

d. Dependencies/relationships with other areas of this report or external efforts

Community Objections (Section - Objections)

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[44] https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf

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Commented [32]: Staff Comment: From the CCT-RT recommendations tracking spreadsheet: As the WG refines recommendations on this topic, it may want to consider whether to make additional recommendations regarding objectives. Note that the CCT-RT recommendations consider "a higher rate of success for such applications" to be a measure of success.

Commented [33]: Staff Comment: Each of the items raised in this section may be appropriate for additional discussion/closure.

Commented [34]: Staff Comment: Working document: https://docs.google.com/document/d/1lh_1NARViJXNNewDg-q87sQzQoC1dCtC/edit

Commented [35]: Comment from Jeff Neuman: Lets highlight this as well for discussion.

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