

2.3.2 Registry commitments / Public Interest Commitments (formerly 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 Public Interest Commitments (PICs) currently captured in Specification 11 3(a)-(d) of the Registry Agreement¹ 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)².

Recommendation xx (rationale 4): ICANN must allow applicants to submit Registry Voluntary Commitments (RVCs)(previously called voluntary PICs) in subsequent rounds in their

¹ The relevant sections are as follows:

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a “Registry Related Party”), to:
 - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
 - b. register domain names in its own right, except for names registered through an ICANN accredited registrar; provided, however, that Registry Operator may (a) reserve names from registration pursuant to Section 2.6 of the Agreement and (b) may withhold from registration or allocate to Registry Operator up to one hundred (100) names pursuant to Section 3.2 of Specification 5;
 - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, “front-running”); or
 - d. allow any Affiliated registrar to disclose Personal Data about registrants to Registry Operator or any Registry Related Party, except as reasonably necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions.

For full detail, see the 31 June 2017 Registry Agreement here:

<https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.pdf>

² For the sake of clarity, this recommendation and the exemption does NOT apply to Specification 11 3(c) or 11 3(d).

applications and/or to respond to public comments, objections, GAC Early Warnings, and/or GAC Advice. Applicants must be able to submit RVCs at any time prior to the execution of a Registry Agreement; provided, however, that all RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendation set forth in Section **xx** Application Changes Requests.

Recommendation xx (rationale 5): RVCs must 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 6): At the time an RVC is made, the applicant must set forth whether such commitment is limited in time, duration and/or scope. Further, an Applicant must include its reasons and purposes for making such RVCs such that the commitments can adequately be considered by any entity or panel (e.g., 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)) to understand if the RVC addresses the underlying concern(s).

Recommendation xx (rationale 7): 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.

Implementation Guidance xx (rationale 7): The Working Group notes that the CCT-RT's recommendation 25 has recommended developing an "organized, searchable online database" for RVCs. The Working Group agrees and believes ICANN org should evaluate this recommendation in the implementation phase and determine the best method for ensuring that RVCs are widely accessible.

Recommendation xx (rationale 8): The Working Group acknowledges ongoing important work in the community on the topic of DNS abuse and believes a holistic solution is needed to account for DNS abuse in all gTLDs as opposed to dealing with these recommendations with respect to only the introduction of subsequent new gTLDs. In addition, recommending new requirements that would only apply to the new gTLDs added to the root in subsequent rounds could result in singling out those new gTLDs for disparate treatment in contravention of the ICANN Bylaws. Therefore, this PDP Working Group is not making any recommendations with respect to mitigating domain name abuse other than stating that any such future effort must apply to both existing and new gTLDs (and potentially ccTLDs)

The Working Group has reached this conclusion after duly considering the DNS Abuse related CCT-RT recommendations, which includes 14,³ 15,⁴ and 16⁵. Note however that at the time of the drafting of this report, the ICANN Board only passed through a portion of recommendation 16 to this Working Group (amongst several other community groups) and recommendations 14 and 15 remain in a “Pending” status⁶.

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 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

³ [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.”](#)

⁴ [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.”](#)

⁵ [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.”](#)

⁶ [See relevant Board scorecard here: https://www.icann.org/en/system/files/files/resolutions-final-cct-recs-scorecard-01mar19-en.pdf](https://www.icann.org/en/system/files/files/resolutions-final-cct-recs-scorecard-01mar19-en.pdf)

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 it is 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.

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.

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. These types of changes should be considered application change requests, which includes public comment.

Rationale for Recommendation xx (rationale 5): In the 2012 round, Registry Agreements are published in full, including any voluntary Public Interest Commitments in Specification 11. The Working Group believes this practice should continue in future rounds, in support of transparency. While the Working Group is recommending that Voluntary PICs now be referred to as RVCs, this is not intended to change their nature. Accordingly, any RVCs that a registry commits to should be subject to enforcement via the PICDRP, as Voluntary PICs in Specification 11 are for 2012 registries.

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.

Rationale for recommendation xx (rationale 7):

The Working Group reviewed and discussed CCT-RT recommendation 25,⁷ which provides guidance on the implementation of RVCs with a particular focus on improving transparency and

⁷ 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

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

The Working Group has adjusted its recommendations and made additional Implementation Guidance in line with CCT-RT recommendations.

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),⁸ 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
- Special Safeguards Required

The Working Group considered the implementation framework⁹ adopted by the ICANN Board's New gTLD Program Committee¹⁰ to address GAC Category 1 Safeguard Advice, as well as

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.”

⁸ See <https://gac.icann.org/contentMigrated/icann46-beijing-communique>

⁹ See <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf>

¹⁰ See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en>

subsequent GAC Advice on the topic included in the Los Angeles Communique (2014)¹¹ and Singapore Communique (2015).¹²

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 a 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 23¹³ from the CCT-RT's Final Report.

¹¹ "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>

¹² "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>

¹³ 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?).

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.

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.¹⁴ 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 a 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 12¹⁵ and considered whether establishing incentives for operating verified TLDs could be a means to address this recommendation. The Working Group further discussed potential methods of establishing such incentives:

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

¹⁴ <https://www.vtld.domains/>

¹⁵ 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.

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).
- Closed Generics (e.g., potential waiver for certain mandatory PICs)

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 and GAC Advice. Section 1.1.2.4 of the 2012 Applicant Guidebook describes the Early Warning mechanism: “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.”

Implementation Guidance xx (rationale 2): To the extent that the GAC provides Advice in the future on categories of TLDs, the Working Group urges the GAC to provide this Advice, and the Board to take any corresponding action, prior to the finalization of the next Applicant Guidebook. Once the application period has begun, the Working Group urges the GAC to limit Advice to individual applications only, based on the merits and details of the application for a particular string, not [only] on groups or classes of applications or string types.

Recommendation xx (rationale 1): As stated in the ICANN Bylaws, GAC Advice must include a clearly articulated rationale.¹⁶ The Working Group recommends that GAC Advice be limited to the scope set out in the applicable Bylaws provisions and elaborate on any “interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.”¹⁷ To the extent that the rationale for GAC Advice is based on public policy considerations, well-founded merits-based public policy reasons must be articulated.¹⁸

Recommendation xx (rationale 3): Section 3.1 of the 2012 Applicant Guidebook states that GAC Advice “will create a strong presumption for the ICANN Board that the application should not be approved.” Noting that this language does not have a basis in the current version of the ICANN Bylaws, the Working Group recommends omitting this language in future versions of the Applicant Guidebook to bring the Applicant Guidebook in line with the Bylaws language.¹⁹ The Working Group further notes that the language may have the unintended consequence of hampering the ability for applicants, ICANN org, and the GAC to mitigate concerns and reach a mutually acceptable solution as described in the relevant Bylaws language, which could allow an application to proceed.

Recommendation xx (rationale 4): The Working Group recommends that GAC Early Warnings are issued during a period that is concurrent with the application comment period, as described in the 2012 Applicant Guidebook.²⁰ To the extent that there is a longer period given for the GAC to provide Early Warnings (above and beyond the application comment period), the Applicant Guidebook must define a specific time period during which GAC Early Warnings can be issued.

¹⁶ Section 12.3. PROCEDURES of the ICANN Bylaws states: “. . .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>.

¹⁷ Section 12.2(a)(i) of the ICANN Bylaws states: “The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.” See <https://www.icann.org/resources/pages/governance/bylaws-en>.

¹⁸ See the Amazon IRP Final Declaration, which states: “The Panel recommends that the Board of ICANN promptly re-evaluate Amazon’s applications in light of the Panel’s declarations above. In its re-evaluation of the applications, the Board should make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon’s applications.” See [icann.org/en/system/files/files/irp-amazon-final-declaration-11jul17-en.pdf](https://www.icann.org/en/system/files/files/irp-amazon-final-declaration-11jul17-en.pdf)

¹⁹ Section 12.2 (a)(x) of the ICANN Bylaws states: “The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee advice, it shall so inform the Governmental Advisory Committee and state the reasons why it decided not to follow that advice. Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection (“GAC Consensus Advice”), may only be rejected by a vote of no less than 60% of the Board, and the Governmental Advisory Committee and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee will state whether any advice it gives to the Board is GAC Consensus Advice.”

²⁰ See section 1.1.2.4 of the 2012 Applicant Guidebook.

Recommendation xx (rationale 5): Government(s) issuing Early Warning(s) must include a written explanation describing why the Early Warning was submitted and how the applicant may address the GAC member's concerns.

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), to address GAC Early Warnings and/or GAC Advice. Relevant GAC members are strongly encouraged to make themselves available during a specified period of time period for direct dialogue²¹ with applicants impacted by GAC Early Warnings or GAC Advice to determine if a mutually acceptable solution can be found.

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 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, and further supports the role of GAC Advice. Therefore, the Working Group supports continuation of these mechanisms in subsequent rounds, subject to the recommendations included in this report.

Rationale for Implementation Guidance 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 and other parties 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 should be given by the GAC and actioned by the Board before the Applicant Guidebook is published, so that prospective applicants and the Internet community fully understand the implications and scope of the Advice before the application process begins. The Working Group urges that any GAC Advice issued once the application submission period has begun be limited to individual applications, so that it is clear which are affected. To the extent that GAC Advice may be related to a particular string, there may be

²¹ While face-to-face dialogue is encouraged, the Working Group recognizes that this may not be feasible in all cases, Dialogue through remote channels may also support the productive exchange of ideas.

multiple applications for the same string and the Advice should take into account that different members of a contention set may be proposing different business models or may be proposing specific measures to address concerns that the GAC may have about the use of the string. Therefore, the Working Group strongly encourages GAC Advice about a string to reference relevant applications individually to improve clarity for all parties.

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.²² The Working Group notes that CCT-RT Recommendation 33²³ specifically references this requirement with respect to GAC Advice related to gTLDs. The Working Group emphasizes that by providing a rationale that is in line with the scope of GAC Advice described in the ICANN Bylaws, 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 3): The Working Group seeks to ensure that policy and future versions of the Applicant Guidebook are consistent with the applicable provisions of the ICANN Bylaws. The Working Group reviewed that as part of the 2016 revisions to the ICANN Bylaws, changes were made to section Bylaws 2.12, which describes the role of the GAC and GAC Advice. Noting that the Bylaws do not indicate that GAC Advice “will create a strong presumption for the ICANN Board that the application should not be approved,”²⁴ the Working Group recommends that future versions of the Applicant Guidebook do not contain this language. 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. Allowing for mutually acceptable solutions is consistent with the relevant section of the Bylaws.

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 for all parties.

²² See Section 12.3. PROCEDURES of the ICANN Bylaws

<https://www.icann.org/resources/pages/governance/bylaws-en>

²³ 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.”

²⁴ 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>

Rationale for recommendation xx (rationale 5): The Working Group recommends that Early Warnings include a written explanation, so that it is clear why the Early Warning is being issued and how the applicant may potentially 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 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 must have the opportunity to make such changes and continue with the application process. Potential amendments could include the addition of Registry Voluntary Commitments (formerly PICs). Application changes would be subject to evaluation by ICANN as discussed in section **Application Change Requests**.

The Working Group believes that applicants and GAC members both benefit from the opportunity to engage directly in dialogue about the content of Early Warnings and GAC Advice, as well as underlying concerns that the GAC members 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.

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 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." The Board passed this recommendation through to the targets of the recommendations, including the New gTLD Subsequent Procedures Working Group.

As noted in sub-section b above, the Working Group 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)