ICANN | GNSO
Generic Names Supporting Organization

Final Report on the new gTLD Subsequent Procedures Policy Development Process

Status of This Document

This is the Final Report of the GNSO New gTLD Subsequent Procedures (SubPro) Working Group.

Preamble

The objective of this Final Report is to present final recommendations, implementation guidance, and other outputs on topics within the Working Group's charter. The recommendations, implementation guidance, and other outputs included in this report are the culmination of years of Working Group deliberations and community input that take into account input received through a number of public comment periods, including a survey of existing Stakeholder Group / Constituency / Advisory Committee statements from the 2012 round of new gTLDs, a set of dozens of initial questions aimed at getting input on the processes and results of the 2012 new gTLD round, as well as comments on the Working Group's Initial Report, Supplemental Initial Report, and draft Final Report.

Part 2 of this report focuses on the substance of topics addressed by the Working Group. Each topic follows the same basic structure, with a focus on Working Group outputs and the rationale associated with these outputs. There are 5 types of outputs: (a) Affirmation, (b) Affirmation with Modification, (c) Recommendation, (d) Implementation Guidance, and/or (e) No Agreement. These are described in the box below. Each topic also briefly summarizes key issues that were raised in deliberations since publication of the Initial

This Final Report may be translated into different languages; please note that only the English version is authoritative.

Report and Supplemental Initial Report. This summary does not repeat the comprehensive explanations, background and discussion material included in the Initial and Supplemental Initial Report and should be read in conjunction with the deliberations summary included in the Initial and Supplemental Initial Report. Finally, noting the large number of topics and the interdependency between many subjects, each topic summarizes intersections between the topic and other issue areas, in addition to related efforts outside of the PDP, and the reason for the interdependencies.

Annex C provides the consensus designations for the outputs included in this Final Report.

The Co-Chairs offer sincere gratitude to Working Group members and ICANN Policy Staff for their dedication that has enabled us to deliver this Final Report.

Types of New gTLD Subsequent Procedures Working Group outputs

Affirmation: Affirmations indicate that the Working Group believes that an element of the 2012 New gTLD Program was, and continues to be, appropriate, or at a minimum acceptable, to continue in subsequent procedures. Affirmations may apply to one or more of the following:
- Policy Recommendation, Implementation Guideline, or Principle from the 2007 policy
- Existing provisions of the 2012 Applicant Guidebook; or
- Other elements of implementation introduced after the release of the final Applicant Guidebook but applied to the 2012 application round.

In the event the Working Group was unable to recommend an alternate course of action, the Working Group operated on the basis that the "status quo" should remain in place as a default position. This status quo consists of the 2007 policy, the final Applicant Guidebook, and any implementation elements that were put into practice in the 2012 application round.

Affirmation with Modification: Similar to affirmations, but used in cases where the Working Group recommends a relatively small adjustment to the 2012 New gTLD Program's policies or implementation. In some cases modifications to the policy or implementation language are necessary to reflect what actually occurred during the 2012 gTLD round.

Recommendation: The Working Group expects that the GNSO Council and ultimately the ICANN Board will approve and implement all recommendations set forth in this Final Report, and ICANN Org will work closely with an Implementation Review Team (IRT) to ensure that implementation takes place in line with the Working Group's intent. Recommendations often address **what** the Working Group recommends takes place, as opposed to how it should take place. Recommendations typically use the term "must," indicating that the recommended action is required to take place and/or necessary for the New gTLD Program.

Implementation Guidance: The Working Group strongly recommends the stated action, with a strong presumption that it will be implemented, but recognizes that there may exist valid reasons in particular circumstances to not take the recommended action exactly as described. However, the party to whom the action is directed must make all efforts to achieve the purpose behind the recommended action (as expressed in the rationale and the recommendation to which the implementation guidance is linked, if applicable) even if done through a different course. In all cases, the full implications must be understood and carefully weighed before choosing a different course. Implementation guidance commonly refers to **how** a recommendation should be implemented. Implementation guidance typically uses the term "should" indicating that the Working Group expects the action to take place, noting the caveats above.

No Agreement: In one case (Topic 23: Closed Generics), the Working Group did not reach agreement on recommendations and/or implementation guidance and there arguably was not a clear "status quo" or default position from the 2012 round to affirm. Therefore, this Final Report attempts to capture the different views of the members of the Working Group, but makes no further assertion about policy or implementation for subsequent procedures on the matter.

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1 Executive Summary

1.1 Introduction

On 17 December 2015, the GNSO Council initiated a Policy Development Process and chartered the New gTLD Subsequent Procedures Working Group. The Working Group (WG) was tasked with calling upon the community's collective experiences from the 2012 New gTLD Program round to determine what, if any changes may need to be made to the existing Introduction of New Generic Top-Level Domains policy recommendations from 8 August 2007.

As the original policy recommendations adopted by the GNSO Council and ICANN Board have "been designed to produce a systemized and ongoing mechanisms for applicants to propose new top-level domains", those policy recommendations remain in place for subsequent rounds of the New gTLD Program unless the GNSO Council decides to modify those policy recommendations via a policy development process. The Working Group was chartered to develop new policy principles, recommendations, and implementation guidance or to clarify, amend, or replace existing such elements.

A Call for Volunteers to the Working Group was issued on 27 January 2016. The Working Group held its first meeting on 22 February 2016 and met regularly since that time. With over 250 members and observers in the SubPro Working Group, and dozens of issues to address regarding the 2012 New gTLD Program, the SubPro Co-Chairs divided the initial phase of work into a set of "Overarching Issues" and five Work Tracks. Each of the five Work Tracks covered a number of related issues with the help of one or more Co-Leaders. The first Initial Report was published for public comment on 3 July 2018 and contained the output of the Working Group on the Overarching Issues as well as preliminary recommendations and questions for community feedback from Work Tracks 1-4. The Working Group subsequently produced two supplemental Initial Reports. A Supplemental Initial Report covering additional issues that were deemed to warrant deliberations by the Working Group was published for public comment on 30 October 2018. On 5 December 2018, the Working Group's Work Track 5 published a Supplemental Initial Report for public comment focused exclusively on the topic of geographic names at the top level. Work Track 5 adopted its own Final Report by consensus and submitted it to the full Working Group on 22 October 2019. Given that some of the recommendations were substantively updated following publication of the Initial Report and Supplemental Initial Report, the draft Final Report was published for an additional public comment period on 20 August 2020.

This Final Report is a culmination of the work completed by the Working Group over a period of nearly 5 years. The Working Group is also putting forward without modification the Final Report produced by Work Track 5.

1.2 Draft Final Recommendations and other Outputs

As discussed in the Preamble, this report contains 5 types of outputs: Affirmation, Affirmation with Modification, Recommendation, Implementation Guidance, and No Agreement. Given the broad scope of this Working Group and the extensive list of topics contained in its Charter, the set of outputs are also substantial. As a result, the Working Group has copied all of the outputs in a table and make them available in Annex B. The purpose of doing so is twofold: 1) the Working Group wanted to avoid this Executive Summary from becoming too long and repetitive and 2) the Working Group wanted to consolidate the outputs to facilitate community review. *Please see Annex B for the consolidated table of outputs.*

Work Track 5 on Geographic Names at the Top-Level produced a Final Report exclusively focused on the subject of geographic names at the top-level. The recommendations in the report were adopted by the Work Track by consensus and passed to the full Working Group for its consideration. *Please see Annex J for the Work Track Final Report and associated recommendations.*

Annex C provides the consensus designations for the outputs included in this Final Report. In summary, all but 1 of the topics received a designation of either Full Consensus or Consensus. More specifically, 25 topics received Full Consensus, 16 received Consensus and 1 received a designation of Strong Support but Significant Opposition. The Annex provides further detail about the consensus designations for specific outputs under each topic.

1.3 Deliberations and Community Input

The Working Group reached out to all ICANN Supporting Organizations (SOs) and Advisory Committees (ACs) as well as GNSO Stakeholder Groups (SGs) and Constituencies (Cs) with a request for input at the start of its deliberations, which included a specific request for historical statements or Advice relating to new gTLDs.[1] All responses received were reviewed by the Working Group and incorporated into deliberations for each of its Charter questions. The Working Group also sought to identify other community efforts that either might serve as a dependency to its work or simply an input to be considered. These efforts included the Competition, Consumer Trust & Consumer Choice (CCT) Review Team and the PDP on the Review of All Rights Protection Mechanisms in All gTLDs, among others.

Initially, the Working Group as a whole considered a set of six (6) overarching issues that have an impact on many of the topics contained in the Working Group's Charter. Specific

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[1] See outreach and inputs received on the Wiki here: https://community.icann.org/x/2R6OAw

to these overarching issues, the Working Group prepared a set of questions and sought input from all SOs, ACs, SGs, and Cs. This outreach, called Community Comment 1 (CC1)[2], and the resulting responses were taken into account in the Working Group's deliberations.

The Working Group determined that the best way to conduct initial work on the approximately 35 remaining topics was to divide the work into four (4) Work Tracks (WTs). Each of these Work Tracks had two Co-Leaders to guide the deliberations. The Work Tracks prepared a second set of questions, called Community Comment 2 (CC2)[3], on the subjects within their respective remit. CC2 was issued directly to all SO/AC/SG/Cs, but also published for public comment. The resulting responses were taken into account in the Working Group's deliberations.

Public comment periods were held on the Working Group's Intial Report, Supplemental Initial Report, and draft Final Report. Input received through these public comment period was taken into account in the Working Group's deliberations.

At ICANN meetings, the Working Group engaged in direct outreach with the Governmental Advisory Committee (GAC) and the At-Large Advisory Committee (ALAC) with a focus on topics known to be of particular interest to these groups (e.g., community-based applications, Applicant Support, etc.). These outreach efforts aided the Working Group's deliberations, particularly by helping to ensure that viewpoints from community members outside of the Working Group were also considered.

As noted in the Preamble, in early 2018, the Working Group established a Work Track 5 (WT5), dedicated to the singular topic of geographic names at the top-level. Work Track 5 published its own Final Report, attached as Annex J, which took into account input received through public comment on Work Track 5's own Supplemental Initial Report. Work Track 5 conducted outreach by connecting to the relevant communities through Work Track Co-Leaders and participants engaged in those communities. There was a Work Track Co-Leader representing each of the ALAC, the ccNSO, the GAC, and the GNSO. While serving WT5 in a neutral manner, the Co-Leaders also acted as liaisons to their respective communities, ensuring that members of their communities are aware of the work and of the opportunities to engage. The Work Track 5 Co-Leaders regularly met with SOs and ACs during ICANN meetings. Further engagement took place through cross-community sessions held at ICANN59 and ICANN62 on the topic of geographic names at the top level.

1.4 Conclusions and Next Steps

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[2] See Community Comment 1 outreach and inputs received, on the Wiki here: https://community.icann.org/x/3B6OAw
[3] See Community Comment 2 outreach and inputs received, on the Wiki here: https://community.icann.org/x/Gq7DAw

The Final Report and outputs are being delivered to the GNSO Council for its consideration. If adopted by the GNSO Council, they will be submitted to the ICANN Board for consideration.

2 Deliberations of the Working Group

This section of the report focuses on the substance of topics addressed by the Working Group. Each topic follows the same basic structure, with a focus on Working Group outputs and the rationale associated with these outputs. There are 5 types of outputs: Affirmation, Affirmation with Modification, Recommendation, Implementation Guidance, No Agreement. These are described in the Preamble. Each topic also briefly summarizes key issues that were raised in deliberations since publication of the Initial Report and Supplemental Initial Report. This summary does not repeat material included in the Initial Report and should be read in conjunction with deliberations summary included in the Initial Report. Finally, noting the large number of topics and the interdependency between many subjects, each topic summarizes intersections between the topic and other issue areas, in addition to related efforts outside of the PDP.

Annex C provides the consensus designations for the outputs included in this Final Report. In summary, all but 1 of the topics received a designation of either Full Consensus or Consensus. More specifically, 25 topics received Full Consensus, 16 received Consensus and 1 received a designation of Strong Support but Significant Opposition. The Annex provides further detail about the consensus designations for specific outputs under each topic.

2.1 Initial Fact-Finding and Research

Per its Charter, the Working Group was tasked to review a list of topics and questions, as part of its work to develop policy recommendations and implementation guidance relating to New gTLD Subsequent Procedures. These topics and questions were derived in large part from the prior work done by the community via the Non-PDP Discussion Group on New gTLD Subsequent Procedures and by staff within the Final Issue Report.

The Working Group grouped all its Charter questions / topics into five (5) groupings, starting its deliberations as a single group and concentrating on a collection of so-called, "overarching issues." In August of 2016, the Working Group established four (4) Work Tracks, each of which concentrated on a collection of questions / topics contained in the Working Group's Charter. The Working Group later established a fifth Work Track focused on geographic names at the top-level, which produced a separate Final Report. Following the publication of the Initial Report and Supplemental Initial Report, the Working Group worked at the plenary level to produce a draft Final Report, taking into account input received through public comment. The Working Group considered input received through public comment on the draft Final Report and refined the outputs included in this Final Report.

In an effort to help readers understand how all of these topics can be considered holistically in the context of the New gTLD Program, the Charter questions / topics will

be arranged and discussed in an order and in groupings that map generally to the chronological proceedings from the 2012 round of the New gTLD Program.

Minor modifications have been made to the list of topics since publication of the Initial Report:

- Initial Report topic Accreditation Programs (RSP Pre-Approval) has been re-named RSP Pre-Evaluation (Topic 6).
- Two new topic headings have been added: Metrics and Monitoring (Topic 7) and Conflicts of Interest (Topic 8).
- Initial Report topic Global Public Interest has been re-named Registry Voluntary Commitments / Public Interest Commitments (Topic 9).
- Initial Report topic Variable Fees has been incorporated into Application Fees (Topic 15).
- GAC Early Warning and GAC Consensus Advice was discussed under the topic Objections in the Initial Report. It is now a distinct topic (Topic 30).
- Initial Report topic Accountability Mechanisms has been divided into two topics, Limited Challenge / Appeal Mechanism (Topic 32) and Dispute Resolution Procedures After Delegation (Topic 33).

New gTLD Program	
Overarching Issues	
1	Continuing Subsequent Procedures
2	Predictability
3	Applications Assessed in Rounds
4	Different TLD Types
5	Applications Submission Limits
6	Registry Service Provider Pre-Evaluation
7	Metrics and Monitoring

8	Conflicts of Interest
Foundational Issues	
9	Registry Voluntary Commitments / Public Interest Commitments
10	Applicant Freedom of Expression
11	Universal Acceptance
Pre-Launch Activities	
12	Applicant Guidebook
13	Communications
14	Systems
Application Submission	
15	Application Fees
16	Application Submission Period
17	Applicant Support
18	Terms & Conditions
Application Processing	
19	Application Queuing
20	Application Change Requests
Application Evaluation/Criteria	

21	Reserved Names
21.1	*Geographic Names*
22	Registrant Protections
23	Closed Generics
24	String Similarity Evaluations
25	IDNs
26	Security and Stability
27	Applicant Reviews: Technical/Operational, Financial and Registry Services
28	Role of Application Comment
29	Name Collisions
Dispute Proceedings	
30	GAC Consensus Advice and GAC Early Warning
31	Objections
32	Limited Challenge/Appeal Mechanism
33	Dispute Resolution Procedures After Delegation
String Contention Resolution	
34	Community Applications
35	Auctions: Mechanisms of Last Resort / Private Resolution of

	Contention Sets
Contracting	
36	Base Registry Agreement
37	Registrar Non-Discrimination / Registry/Registrar Standardization
38	Registrar Support for New gTLDs
Pre-Delegation	
39	Registry System Testing
Post-Delegation	
40	TLD Rollout
41	Contractual Compliance

In drafting this report, there are a set of documents that are relevant and continually referenced in numerous sections. In an effort to avoid having an overwhelming number of footnotes, some of those key documents are listed here:

- *GNSO's Final Report on the Introduction of New Generic Top-Level Domains* (herein referenced as the 2007 Final Report)[4]
- Applicant Guidebook (AGB)[5]
- *ICANN Global Domains Division Program Implementation Review Report* (PIRR)[6]
- Registry Agreement[7]
- ICANN Bylaws[8]

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[4] See 2007 Final Report here: https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm
[5] See the June 2012 version of the AGB here: https://newgtlds.icann.org/en/applicants/agb
[6] See revised and final PIRR here: https://www.icann.org/en/system/files/files/program-review-29jan16-en.pdf
[7] See the Registry Agreement here: https://www.icann.org/resources/pages/registries/registries-agreements-en
[8] See the ICANN Bylaws here: https://www.icann.org/resources/pages/governance/bylaws-en

2.2 Deliberations and Recommendations: Overarching Issues

Topic 1: Continuing Subsequent Procedures

a. Recommendations and/or implementation guidelines

Affirmation 1.1: The Working Group recommends that the existing policy contained in the 2012 Applicant Guidebook[9], that a "systematized manner of applying for gTLDs be developed in the long term," be maintained.

Affirmation 1.2: The Working Group affirms Principle A from the 2007 policy[10] and recommends that the New gTLD Program must continue to be administered "in an ongoing, orderly, timely and predictable way."

Affirmation 1.3: The Working Group affirms that the primary purposes of new gTLDs are to foster diversity, encourage competition, and enhance the utility of the DNS.

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

Rationale for Affirmation 1.1: The existing policy for new gTLDs states that there will be a "systemized manner of applying for gTLDs to be developed in the long term." In affirming the continuation of this policy the Working Group applied the consistent approach outlined in the Preamble of this report.

The Working Group took note of the Competition, Consumer Choice & Consumer Trust Review Team (CCT-RT) Final Report, which states that "on balance the expansion of the DNS marketplace has demonstrated increased competition and consumer choice."[11] While the Working Group recognizes that some parties believe the new gTLD market to already be saturated others have indicated that they are aware of interested potential applicants, including .Brands. Overall, the Working Group did not agree that a compelling reason was identified to override existing policy. The Working Group also took note that support from some parties was contingent on the basis of other elements being completed prior to the eventual launch of subsequent new gTLDs (e.g., previous commitments for review of the New gTLD Program, including a costs and benefits analysis as advised by the GAC in its Helsinki Communiqué,[12] and reiterated in its

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[9] See section 1.1.6 of the Applicant Guidebook
[10] See the Final Report for the Introduction of New Generic Top-Level Domains here: https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm
[11] https://www.icann.org/en/system/files/files/cct-final-08sep18-en.pdf at p. 5.
[12] See Helsinki Communiqué here: https://gac.icann.org/contentMigrated/icann56-helsinki-communique

Hyderabad Communiqué[13] and ICANN68 Communiqué[14]). The Working Group agreed that determining what dependencies might need to be completed prior to program launch is outside of its remit and should be decided elsewhere (e.g., ICANN Board). In addition, the Working Group believes that the number of studies commissioned on behalf of the CCT-RT, including economic analyses on marketplace competition and end-user/registrant surveys, and which ultimately fed into the CCT-RT's determination of increased competition and consumer choice, address at least in part the GAC's request for a costs and benefits analysis.

The Working Group took note of the GAC Consensus Advice contained in the Montréal Communiqué[15], which states that future rounds should not begin until the prerequisite and high priority recommendations of the CCT-RT are implemented. The Working Group understands that it is required to consider all CCT-RT recommendations directed to it via the 01 March 2019 ICANN Board resolution[16] and 22 October 2020 ICANN Board resolution,[17] but is not necessarily required to agree with all outcomes and suggested solutions. Accordingly, this report will describe the manner in which all relevant CCT-RT recommendations were considered and how they were or were not integrated into any final recommendations.

Rationale for Affirmation 1.2: A major theme that was repeatedly raised throughout the life cycle of this PDP was the need for balanced predictability for all parties involved. It is on this basis that the desire for an "orderly, timely and predictable" New gTLD Program is universally supported.

Rationale for Affirmation 1.3: The Working Group agreed that fostering consumer choice, consumer trust, and market differentiation should continue to be primary focal points for the New gTLD Program.

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

None identified for this topic.

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

- Topic 3: Applications Assessed in Rounds discusses in further detail the "systematized manner" in which the New gTLD application opportunities should be available.

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[13] See Hyderabad Communiqué here: https://gac.icann.org/contentMigrated/icann57-hyderabad-communique
[14] See ICANN68 Communiqué here: https://gac.icann.org/contentMigrated/icann68-gac-communique
[15] See Montréal Communiqué here: https://gac.icann.org/contentMigrated/icann66-montreal-communique
[16] See Board resolution here: https://www.icann.org/resources/board-material/resolutions-2019-03-01-en
[17] See Board resolution here: https://www.icann.org/en/system/files/files/cct-pending-recs-board-action-22oct20-en.pdf

- Topic 7: Metrics & Monitoring includes recommendations on the collection of data to support further understanding of the New gTLD Program's impact.

Topic 2: Predictability

a. Recommendations and/or implementation guidelines

Recommendation 2.1: ICANN must establish predictable, transparent, and fair processes and procedures for managing issues that arise in the New gTLD Program after the Applicant Guidebook is approved which may result in changes to the Program and its supporting processes. The Working Group recommends that ICANN org use the Predictability Framework detailed in Annex E of this Report as its guidance during implementation to achieve the goal of predictability in mitigating issues.

The Predictability Framework is principally:

- A framework for analyzing the type/scope/context of an issue and if already known, the proposed or required Program change, to assist in determining the impact of the change and the process/mechanism that should be followed to address the issue. The framework is therefore a tool to help the community understand how an issue should be addressed as opposed to determining what the solution to the issue should be; the framework is not a mechanism to develop policy.

The Framework is not intended to identify the solution to an issue but rather, to identify the proper mechanism to reach a solution in a consistent and procedurally sound manner. Therefore, this Framework complements the existing GNSO processes and procedures. It is not intended to be a substitute or replacement for those, nor should the Framework be seen as supplanting the GNSO Council's decision-making authority. In fact, the GNSO processes and procedures are incorporated into the Predictability Framework explicitly. In the event of a conflict, existing GNSO processes and procedures, including the GNSO Input Process, GNSO Guidance Process, and EPDP as contained in the Annexes to the GNSO Operating Procedures take precedence.

Additionally, the Working Group recommends the formation of a Standing Predictability Implementation Review Team ("SPIRT") (Pronounced "spirit") to serve as the body responsible for reviewing potential issues related to the Program, to conduct analysis utilizing the framework, and to recommend the process/mechanism that should be followed to address the issue (i.e., utilize the Predictability Framework). The GNSO Council shall be responsible for oversight of the SPIRT and may review all recommendations of the SPIRT in accordance with the procedures outlined in the GNSO Operating Procedures and Annexes thereto.

> Implementation Guidance 2.2: The Working Group recognizes the challenges in determining the details of the framework and establishing the SPIRT and

therefore emphasizes that implementation of both elements should focus on simplicity and clarity.

Implementation Guidance 2.3: Once the SPIRT has been formed, the ICANN Board/ICANN org should engage in dialogue with the SPIRT to determine the process required to consider future GAC Consensus Advice on new gTLDs where such GAC Consensus Advice could potentially have an impact on any applications or the program in general.

Implementation Guidance 2.4: The SPIRT should be subject to a lean, focused review once it has undertaken enough work to support this review. The review should be supervised by the GNSO Council. The SPIRT should continue to operate during the period that the review takes place.

Implementation Guidance 2.5: ICANN org should maintain and publish a change log or similar record to track changes to the New gTLD Program, especially those that arise and are addressed via the Predictability Framework and the SPIRT. The change log should contain a level of detail sufficient for the community to understand the scope and nature of the change without compromising security, the privacy of individuals, or confidentiality obligation owed to applicants or to other third parties. The GNSO Council should be informed of updates to the change log on a regular and timely basis. Interested parties should be able to subscribe to the change log to be informed of changes.

Implementation Guidance 2.6: The Working Group acknowledges that there may be emergency circumstances which will require ICANN org to take an action that may impact the New gTLD Program. In such a case, the action should be narrowly tailored to address only the emergency situation. The ICANN Board should notify all impacted applicants (if any) and the SPIRT within 24 hours after the emergency situation. The notification should include the nature of the emergency, the action taken (or anticipated action) in response to the emergency, as well as expected impacts on the New gTLD Program. That notification will be considered a referral to the SPIRT of an issue if the SPIRT elects to address that issue.

Recommendation 2.7: In the event significant issues arise that require resolution via the Predictability Framework, applicants should be afforded the opportunity to withdraw their application from the process and receive an appropriate refund consistent with the standard schedule of refunds.

Implementation Guidance 2.8: Under the circumstances described in Recommendation 2.7, a refund should be permitted on an exceptional basis even if it does not follow the refund schedule.

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

Rationale for Recommendation 2.1 and Implementation Guidance 2.2, 2.3, 2.4, 2.5, and 2.6: Principle A of the GNSO's Final Report on the Introduction of New Generic Top-Level Domains states that "New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way." Applicants and other parties interested in the New gTLD Program, however, believed that there were a number of changes that were made after the commencement of the 2012 program which hindered the program's predictability. Therefore, the Working Charter asked the Working Group to consider the question, "How can changes to the program introduced after launch (e.g., digital archery/prioritization issues, name collision, registry agreement changes, public interest commitments (PICs), etc.) be avoided?" In addition, the ICANN Board commented that "The Board is concerned about unanticipated issues that might arise and what mechanism should be used in such cases."[18]

The Predictability Framework intends to address the concerns raised in the Charter and by the ICANN Board by creating an efficient, independent mechanism to analyze and manage issues that arise in the New gTLD Program after the Applicant Guidebook is approved which may result in changes to the program and its supporting processes. The recommendations from this Working Group are intended and expected to lessen the likelihood of unaccounted for issues in the future, but this framework is a recognition that despite best efforts, some issues may be missed and circumstances may simply change over time.

The Working Group spent considerable meeting time on the Predictability Framework and the SPIRT. There were challenges in reaching agreement on the purpose, the remit, the guiding set of rules and understanding how concerns raised could be adequately addressed. The Working Group therefore recognizes that the Implementation Review Team, or similar, may also be challenged in implementing the framework and SPIRT. As the IRT considers implementation details, it should keep in mind that the solution should be as clear, simple, and precise as possible. The successful implementation of the framework and SPIRT is important in that it will build trust in the mechanism and of course, effectively support those that must utilize it. In the course of deploying the implementation materials, there may be a need to develop educational and/or explanatory text to better ensure a more complete understanding within the community. Once its work is underway, the SPIRT should also be subject to review to ensure that it is operating effectively. The Working Group believes that the review of the SPIRT should be lean and focused, and suggests that the Customer Standing Committee (CSC) may be an example to draw on in this regard.

The framework seeks to ensure that, where appropriate, ICANN org works with the community in addressing issues and makes changes to the program with the necessary community input. At the same time, the framework seeks to allow ICANN org to make

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[18] See https://www.icann.org/en/system/files/correspondence/chalaby-to-langdon-orr-neuman-26sep18-en.pdf at p. 2.

changes to its internal processes that do not have a material impact on applicants or other community members, change applications, or impact any of the processes set forth in the Applicant Guidebook.[19] However, the Working Group believes that in support of transparency and accountability, changes to the program, including those non-impactful changes just described, should be tracked and shared with the community. In order to aid the GNSO Council in its consideration of changes, the Working Group believes the Council should be informed on a regular and timely basis of any updates to the change log. Interested community members should have the ability to be kept up to date on the changes, potentially via some form of subscription service.

The Working Group acknowledges that there may be emergency circumstances which will require ICANN org to take an action that may impact the New gTLD Program. The Working Group has provided implementation guidance indicating when and how the ICANN Board should notify the SPIRT and impacted applicants if action is taken under emergency circumstances.

Rationale for Recommendation 2.7 and Implementation Guidance 2.8: The Working Group believes that if significant issues arise that require resolution via the Predictability Framework, it may be reasonable for an applicant to choose to withdraw from the application process. Given that the applicant could not have reasonably predicted the issues at the time of application, the Working Group believes that it is fair for the applicant to receive an appropriate refund in these cases.

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

Some Working Group members raised concerns about the Predictability Framework, and in particular suggested that existing structures within the GNSO should be leveraged to the greatest extent possible instead of creating a new structure, like the SPIRT. From this perspective, new, novel structures should only be created where existing ones are not fit for purpose. These Working Group members suggested that the GNSO Council, or perhaps a standing committee established and overseen by the GNSO Council (with membership beyond just Councilors), could wield the Predictability Framework. The Working Group discussed this perspective, but decided that the unique needs of the New gTLD Program warrant a new structure tailored to the purpose. The Working Group therefore agreed that the SPIRT is needed to utilize the Predictability Framework and accordingly has provided detailed guidance in Annex E regarding the establishment of the structure.

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

None.

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[19] These types of changes are considered Operational - Minor ("Category A") type changes, as described in Annex E.

Topic 3: Applications Assessed in Rounds (Application Submission Periods)

a. Recommendations and/or implementation guidelines

Affirmation with Modification 3.1: The Working Group affirms Recommendation 13 from the 2007 policy, which states: "Applications must initially be assessed in rounds until the scale of demand is clear." However, the Working Group believes that the recommendation should be revised to simply read, "Applications must be assessed in rounds."

Recommendation 3.2: Upon the commencement of the next application submission period, there must be clarity around the timing and/or criteria for initiating subsequent procedures from that point forth. More specifically, prior to the commencement of the next application submission period, ICANN must publish either (a) the date in which the next subsequent round of new gTLDs will take place or (b) the specific set of criteria and/or events that must occur prior to the opening up of the next subsequent round.

> Implementation Guidance 3.3: A new round may initiate even if steps related to application processing and delegation from previous application rounds have not been fully completed.

> Implementation Guidance 3.4: Where a TLD has already been delegated, no application for that string will be allowed for a string in a subsequent round.

> It should in general not be possible to apply for a string that is still being processed from a previous application round, i.e.
> - If there is an application that has a status of "Active", "Applicant Support", "In Contracting", "On-hold", or "In PDT", a new application for that string will not be allowed in a subsequent round.
>
> However,
> - If all applications for a particular string have been Withdrawn in a given round, meaning that no registry operator has signed (or will be eligible to sign) a Registry Agreement for the string in that round, new applications for the string will be allowed in a subsequent round.
> - If all applications for a given string have a status of "Will Not Proceed", an application for the TLD will only be allowed if:
>   - All appeals and/or accountability mechanisms have proceeded through final disposition and no applications for the string have succeeded in such appeals and/or accountability mechanisms; or

- ○ All applicable time limitations (statute of limitations) have expired such that all applicants for a particular string would not be in a position to file an appeal or accountability mechanism with respect to the string.
- If all applications for a given string have a status of "Not Approved", an application for the TLD string will only be allowed if:
  - ○ All appeals and/or accountability mechanisms have proceeded through final disposition and no applications for the string have succeeded in such appeals and/or accountability mechanisms; or
  - ○ All applicable time limitations (statute of limitations) have expired such that all applicants for a particular string would not be in a position to file an appeal or accountability mechanism with respect to the string; and
  - ○ The ICANN Board has not approved new policies or procedures that would allow one or more of the applicants from the prior round to cure the reasons for which it was placed in the "Not Approved" category, but has approved new policies or procedures that would allow an applicant to apply for the string in any subsequent round. In the event that there are new policies or procedures put into place which would allow applications for strings which were "Not Approved" in a prior round, the ICANN Board must make a determination as to whether the applicants in the prior round have any preferential rights for those strings if such prior applicants commit to adopt such new policies or procedures at the time such policies or procedures are put into place.
- Once a string has been delegated, ICANN should be able to force other applications for the string to withdraw/close out, unless an applicant provides ICANN good reason to keep the application in "Active" status. Such reason could include the fact that there are ongoing accountability mechanisms and/or litigation with respect to the given string.

In addition,
- If a registry operator has terminated its Registry Agreement and (i) the TLD has not been reassigned to a different registry operator, and (ii) in the case of a Specification 13 Brand TLD, it is more than 2 years following the Expiration Date (See RA Section 4.5(a)), then applications will be allowed to be submitted during a subsequent round.

Recommendation 3.5: Absent extraordinary circumstances application procedures must take place at predictable, regularly occurring intervals without indeterminable periods of

review unless the GNSO Council recommends pausing the program and such recommendation is approved by the Board. Such extraordinary circumstances must be subject to the Predictability Framework under Topic 2 of this Report. Unless and until other procedures are recommended by the GNSO Council and approved by the ICANN Board, ICANN must only use "rounds" to administer the New gTLD Program.

Recommendation 3.6: Absent extraordinary circumstances, future reviews and/or policy development processes, including the next Competition, Consumer Choice & Consumer Trust (CCT) Review, should take place concurrently with subsequent application rounds. In other words, future reviews and/or policy development processes must not stop or delay subsequent new gTLD rounds.

Recommendation 3.7: If the outputs of any reviews and/or policy development processes has, or could reasonably have, a material impact on the manner in which application procedures are conducted, such changes must only apply to the opening of the application procedure subsequent to the adoption of the relevant recommendations by the ICANN Board.

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

Rationale for Affirmation with Modification 3.1: Given the period of time between the 2012 round of the New gTLD Program and the eventual launch of the next application procedure, the scale of demand is unclear. Accordingly, at a minimum, the next application procedure should be processed in the form of a round.

Rationale for Recommendation 3.2 and Implementation Guidance 3.3 and 3.4: The Working Group believes that predictability is a key element of the New gTLD Program and notes that the program cannot be predictable if there are indeterminate periods of time between application opportunities. Therefore, the Working Group recommends that once subsequent procedures begin, information should be provided about when additional application opportunities will become available. As an example, and merely as an example, prior to the launch of the next round of new gTLDs, ICANN could state something like, "The subsequent introduction of new gTLDs after this round will occur on [specific date] or nine months following the date in which 50% of the applications from the last round have completed Initial Evaluation." This measure will ensure that prospective applicants have the information they need to decide whether to apply and when to do so.

The Working Group does not believe that all applications from an application round must be processed and delegated before subsequent round can open. It is the Working Group's view that such a dependency is unnecessary and would cause significant uncertainty for prospective applicants. Given that an application for a string from one round may still be in process when the following round opens, the Working Group agreed that it is important for applicants to have a clear understanding of when it is possible to apply for a string that had been applied for in a previous round. Specifically, the Working Group

believes that it should not be possible to apply for a string that is still being processed from a previous application round. The Working Group provided specific implementation guidance on the definition of when an application should be considered "in process" and outlined circumstances in which new applications for a string should and should not be permitted.

While many within the Working Group either supported or did not oppose this recommendation, some expressed opposition. Some Working Group members advocated for an alternate recommendation that, in recognition of Principle G, Applicant Freedom of Expression, timely applications for any string previously applied for but not yet delegated should be permitted, but such applications should not be processed further unless and until the matching string from the previous round has been classified as "Will Not Proceed." The rationale for opposing Implementation Guidance 3.4 was that applicants from prior rounds could retain too much power to (a) insist on non-compliance with new policy requirements applicable to subsequent procedures and (b) be able to effectively block later applicants for the same string who are willing to comply with new subsequent procedures policy requirements. Examples provided related to evolving name collisions policy and Closed Generics policy. The Working Group discussed this view, but ultimately determined that there was greater support for barring new applications for strings still in process from a previous round.

Rationale for Recommendations 3.5-3.7: When feasible, application opportunities should be available at regular intervals. The Working Group believes that reviewing the New gTLD Program on a regular, ongoing basis is also important, but in support of predictability, does not believe that subsequent procedures should be paused pending input from reviews or PDPs unless extraordinary circumstances dictate that this is necessary.

The Working Group analyzed the possibility of using other application processes for subsequent procedures including a model based on accepting applications on a first-come, first-served basis. Although that model had support from a few participants, there was no consensus in the group in support of using a first-come, first-served model. Rounds enhance the predictability for applicants (e.g., preparation), the ICANN community and other third-party observers to the program (e.g., public comments, objections).

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

The Working Group considered several proposals that put forward the idea of having rounds consisting only of .Brands, geographic top level domains, IDN TLDs and/or community-based TLDs prior to a general open application period. Although there was a small level of support for those proposals, the Working Group did not reach consensus on recommending priority rounds for certain types of TLDs and therefore did not include such elements in its recommendations.

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

- Topic 1: Continuing Subsequent Procedures includes an affirmation that opportunities to apply for new gTLDs should continue to be available in a "systemitized manner." This topic discusses in further detail the "systematized manner" in which new gTLD application opportunities should be available.
- As details about the cadence of future application opportunities are established in implementation, recommendations under this topic should be considered in conjunction with recommendations in under the following topics: Topic 16: Application Submission Period, Topic 5: Application Submission Limits, Topic 19: Application Queuing, Topic 26: Security and Stability (with regard to limits to the rate of delegation from a technical perspective), and Topic 40: TLD Rollout.
- The manner in which subsequent rounds are structured may impact the implementation of a number of program elements, for example Applicant Guidebook (Topic 12), Communications (Topic 13), Application Support (Topic 17), and RSP Pre-Evaluation (Topic 6).

Topic 4: Different TLD Types

a. Recommendations and/or implementation guidelines

Recommendation 4.1: The Working Group recommends differential treatment for certain applications based on either the application type, the string type, or the applicant type. Such differential treatment may apply in one or more of the following elements of the new gTLD Program: Applicant eligibility[20]; Application evaluation process/requirements[21]; Order of processing; String contention[22]; Objections[23]; Contractual provisions.

- Different application types:
    - Standard
    - Community-Based (for different application questions, Community Priority Evaluation, and contractual requirements)[24]
    - Geographic Names (for different application questions)[25]
    - Specification 13 (.Brand TLDs) (for different application questions and contractual requirements)[26]

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[20] See section 1.2.1 of the 2012 Applicant Guidebook.
[21] See Module 2 of the 2012 Applicant Guidebook.
[22] See Module 4 of the 2012 Applicant Guidebook.
[23] See Module 3 of the 2012 Applicant Guidebook.
[24] As defined under Topic 34: Community Applications.
[25] As defined in Annex J: Final Report of Work Track 5 on Geographic Names at the Top Level.
[26] See Topic 22: Registrant Protections, Topic 9: Registry Voluntary Commitments / Public Interest Commitments, and Topic 20: Application Change Requests for recommendations impacting .Brand applicants.

- Different string types:
    - Geographic Names (for different application questions)[27]
    - IDN TLDs (priority in order of processing)[28]
    - Variant TLDs[29]
    - Strings subject to Category 1 Safeguards[30]

- Different Applicant Types:
    - Intergovernmental organizations or governmental entities (for different contractual requirements)
    - Applicants eligible for Applicant Support[31]

Recommendation 4.2: Other than the types listed in Recommendation 4.1, creating additional application types[32] must only be done under exceptional circumstances.[33] Creating additional application types, string types, or applicant types must be done solely when differential treatment is warranted and is NOT intended to validate or invalidate any other differences in applications.

> Implementation Guidance 4.3: To the extent that in the future, the then-current application process and/or base Registry Agreement unduly impedes an otherwise allowable TLD application by application type, string type, or applicant type, there should be a predictable community process by which potential changes can be considered. This process should follow the Predictability Framework discussed under Topic 2. See also the recommendation under Topic 36: Base Registry Agreement regarding processes for obtaining exemptions to certain provisions of the base Registry Agreement.

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

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[27] As defined in Annex J: Final Report of Work Track 5 on Geographic Names at the Top Level.

[28] As defined under Topic 19: Application Queuing.

[29] As defined under Topic 25: IDNs.

[30] As defined under Topic 9: Registry Voluntary Commitments / Public Interest Commitments.

[31] As identified under Topic 17: Applicant Support.

[32] In the 2012 round, there were only two types of applications, standard and community-based. Per the 2012 AGB, it stated that, "A standard gTLD can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. A standard applicant may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions. Standard simply means here that the applicant has not designated the application as community-based." The Working Group believes that there is a difference between the **type of application** versus the **type of string**, and they are not necessarily dependent upon one another. For instance, a standard application can apply for a geographic names string. In addition, the **type of applicant** may have additional impacts on the process or contracting.

[33] The Working Group notes that the so-called 'Closed Generic' application type is a separate type of application treated under Topic 23 of this report. The recommendation and implementation guidance provided under this topic is not intended to apply to Closed Generics, as that subject needs further policy work.

<u>Rationale for Recommendations 4.1 and 4.2 and Implementation Guidance 4.3</u>: The
Working Group reviewed the types of applications, strings, and applicants that were
either explicitly or implicitly identified in the 2012 round. This included standard and
community-based application types described in the Applicant Guidebook, types
implicitly identified in the base Registry Agreement through additional evaluation criteria
(as was the case for geographic names) or different contractual provisions (governmental
applicants), as well as the .Brand TLD type registry that was established in Specification
13 of the Registry Agreement. The Working Group supported continuing the overall
approach used in the 2012 round in which types were identified based on specific
programmatic needs, and corresponding program elements associated with these types
were developed to meet the needs established.

In its deliberations leading to these recommendations, the Working Group discussed that
creating strict additional categories of different TLD types will likely impact one or more
aspects of the New gTLD Program (e.g., application requirements, evaluation, base
Registry Agreement, post-delegation activities, etc.). As such, the creation of new types
should not be taken lightly and must account for any differences through the entirety of
the application, evaluation, and delegation processes. There must be a clear justification
for new types and benefits must outweigh the potential costs.

The Working Group considered GAC Consensus Advice contained in the Nairobi
Communiqué[34] (2010) that suggested exploring the potential benefits of further
categories that could simplify management of the New gTLD Program, create greater
flexibility in the application procedures to address the needs of different applicants, make
application processes more predictable, and create greater efficiencies for ICANN.
Ultimately, after careful consideration, the Working Group concluded that it is
challenging to implement categories in a simple, effective, and predictable manner. The
Working Group did not find a compelling reason to do so in light of these difficulties.
The Working Group particularly emphasized that the establishment of new types adds
elements to the application, evaluation, and contractual compliance aspects of the
program, which may have unintended impacts. The Working Group further considered
that the introduction of different types and corresponding differential treatment of
applications could create inappropriate incentives for applicants to "game" the system
and win an unfair advantage over other applicants, or to simply select the easiest or
simplest path to approval. Creating additional categories may also lead to a more
complicated contractual compliance environment and challenges in supporting changes
between the various types after delegation.

The Working Group acknowledged that there are legitimate and important differences
that may exist between different strings and/or registry business plans, and does not seek
to discount these differences. However, given the complexity of the issue, the Working
Group believes that the additional types should be added under exceptional circumstances
only. The Working Group notes that there may be legitimate needs to make adjustments

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[34] https://gac.icann.org/contentMigrated/icann37-nairobi-communique

to the New gTLD Program's approach to types in the future, but it is not in a position to anticipate these needs based on the information currently available.

The Working Group further reviewed the GAC Durban Communiqué[35] and GAC Principles on New gTLDs,[36] which advise on treatment of certain kinds of strings. Please see the applicable topics of this report for further discussion on the following:

- Strings subject to Category 1 Safeguard Advice: Please see Topic 9: Registry Voluntary Commitments / Public Interest Commitments.
- Community Applications: Please see Topic 34: Community Applications.
- Geographic Names: Please see Annex J: Final Report of Work Track 5 on Geographic Names at the Top Level.

Note that GAC Consensus Advice regarding geographic names at the top level is not addressed in this part of the report as the topic was considered by Work Track 5 in the context of Work Track 5 deliberations and was taken into account in the formulation of Work Track 5's recommendations. Please see Annex J on Geographic Names at the Top Level for further information.

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

The Working Group discussed specific proposals put forward in public comment on the Initial Report and through Work Track discussions for additional types, including Verified TLDs, applications from the Global South, and Non-Profit TLDs. As discussed in sub-topic b above, given the complexity of implementing differential treatment based on new and additional types of TLDs, applications, or applicants, the Working Group determined that any additions to the existing framework should be done on an exceptional basis. The Working Group does not rule out the possibility of establishing differential treatment for the proposed types in the future through community processes, but it is not putting forward any recommendations on the issue.

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

- This topic discusses different types of TLDs, which are addressed in greater depth in other parts of this report: Topic 25: IDNs, Topic 34: Community Applications, Topic 17: Applicant Support, Topic 9: Registry Voluntary Commitments / Public Interest Commitments (regarding strings subject to Category 1 Safeguards), Topic 23: Closed Generics, and Annex J: Final Report of Work Track 5 on Geographic Names at the Top Level.

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[35] https://gac.icann.org/contentMigrated/icann47-durban-communique
[36] https://gac.icann.org/contentMigrated/gac-principles-regarding-new-gtlds

- Topic 19: Application Queuing provides a recommendation regarding prioritization of IDN applications when establishing the order of processing applications.
- Additional topics in this report include recommendations with implications for the .Brand application type: Topic 22: Registrant Protections, Topic 9: Registry Voluntary Commitments / Public Interest Commitments, and Topic 20: Application Change Requests.
- Topic 36: Base Registry Agreement addresses processes for obtaining exemptions to certain provisions of the base Registry Agreement, which may be applicable if additional types of TLDs are identified in the future.
- The addition of new TLD types, if introduced after the Applicant Guidebook is approved, should follow processes described under Topic 2: Predictability.

Topic 5: Application Submission Limits

a. Recommendations and/or implementation guidelines

Affirmation 5.1: In the 2012 application round, no limits were placed on the number of applications in total or from any particular entity. The Working Group is not recommending any changes to this practice and therefore affirms the existing implementation.

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

Rationale for Affirmation 5.1: The Working Group considered that any policy recommendations on this topic should support the underlying goals of the New gTLD Program, including the promotion of competition and consumer choice. The concept of fairness was also discussed as a potential guiding principle, although the Working Group did not come to an agreement about what fairness would mean in the context of potential application submission limits. The Working Group believes that if application submission limits are to be specified, that there must be a clear fact-based justification for setting these limits and they must be consistent with underlying program goals and principles. Further, it must be operationally feasible to enforce any limits that are set.

There were three different perspectives expressed in the Working Group on this topic:
- Those that supported the status quo in which no limits are imposed
- Those that supported setting limits in principle, but could not identify an effective, fair and/or feasible mechanisms to enforce such limits, and therefore accepted the status quo
- Those that supported setting limits and did not accept the status quo

In reviewing the above considerations and positions, the Working Group did not reach any agreement that application submission limits are justified or feasible to implement

and therefore did not recommend any change to existing implementation from the 2012 round.

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

While a number of responses to public comment on the Initial Report supported preliminary recommendations that no application submission limits should be put in place, the Working Group also reviewed and discussed comments that favored placing limits on the number of applications. In particular, the Working Group considered a suggestion that ICANN should allow no more than 24 applications for each company, including its parent company, subsidiaries, and affiliates. The rationale was that potentially unlimited application numbers favored large, existing entities, which appear at odds with the overall goals of encouraging applications for gTLDs from companies and communities around the world. From this perspective if hundreds, or thousands, of applications are allowed from large companies in developed countries, there may be few gTLDs left for the Global South. The stated goals of this proposal were to increase fairness and allow for adequate oversight and public review. The Working Group did not find a clear rationale for the specific number proposed (24 applications per company) and did not come to any agreement to move forward with the proposal.

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

- Topic 7: Metrics & Monitoring includes recommendations on the collection of data to support further understanding of the New gTLD Program's impact.

Topic 6: Registry Service Provider Pre-Evaluation

a. Recommendations and/or implementation guidelines

Affirmation 6.1: The Working Group affirms Principle C of the 2007 policy, which states: "The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition, the introduction of a new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service provider diversity."

Recommendation 6.2: The Working Group recommends establishing a program in which registry service providers ("RSPs")[37] may receive pre-evaluation by ICANN if they pass the required technical evaluation and testing conducted by ICANN, or their selected third party provider. The only difference between a pre-evaluated RSP and one that is

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[37] The term "Registry Services Provider" or "RSP" refers to the entity that performs the critical registry services on behalf of a registry operator. In some cases, this may be the same entity as the registry operator itself; in other cases, this may be a third party to whom the registry operator subcontracts those services.

evaluated during the application evaluation process is the timing of when the evaluation and testing takes place; Therefore, all criteria for evaluation and testing must be the same.

Recommendation 6.3: Participation in the RSP pre-evaluation process must be voluntary and the existence of the process shall not preclude an applicant from providing its own registry services or providing registry services to other new gTLD registry operators, provided that the applicant passes technical evaluation and testing during the standard application process.

Recommendation 6.4: The RSP pre-evaluation process shall be open to all entities seeking such evaluation, including both new and incumbent RSPs. For the initial RSP pre-evaluation process, both the evaluation criteria and testing requirements shall be the same regardless of whether the RSP applying for evaluation is a new RSP or an incumbent RSP.

Recommendation 6.5: Pre-evaluation occurs prior to each application round and only applies to that specific round. Reassessment must occur prior to each subsequent application round.

> Implementation Guidance 6.6: With respect to each subsequent round, ICANN org may establish a separate process for reassessments that is more streamlined compared to the evaluation and testing of those entities seeking RSP pre-evaluation for the first time.

> Implementation Guidance 6.7: It may be appropriate to require an RSP to agree to a more limited set of click-wrap terms and conditions when submitting their application for the pre-evaluation process. Such an agreement would be limited to the terms and conditions of the pre-evaluation program and may not create an ongoing direct contractual relationship between ICANN and the RSP nor be interpreted in any way to make an RSP a "contracted party" as that term is used in the ICANN community.

Recommendation 6.8: The RSP pre-evaluation program must be funded by those seeking pre-evaluation on a cost-recovery basis. Costs of the program should be established during the implementation phase by the Implementation Review Team in collaboration with ICANN org.

Recommendation 6.9: A list of pre-evaluated RSPs must be published on ICANN's website with all of the other new gTLD materials and must be available to be used by potential applicants with an adequate amount of time to determine if they wish to apply for a gTLD using a pre-evaluated RSP.

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

Rationale for Affirmation 6.1 and Recommendation 6.2: The Working Group affirms the goals identified in Principle C of the 2007 policy, namely the promotion of competition in the provision of registry services, as well as enhancing consumer choice, market differentiation and geographical and service provider diversity. In addition, the Working Group considered the importance of the principle of efficiency in the program, and agreed in particular that where operationally feasible and appropriate, efficiencies should be realized in the technical evaluation of registry services without compromising the other goals of the program, such as diversity, competition, and security of the DNS. The Working Group reviewed the fact that where a single RSP provided registry services for multiple TLD applications in the 2012 application round, the RSP was subject to duplicative evaluation and testing (in some cases hundreds of times). The Working Group agreed that this duplicative evaluation and testing could be reduced by establishing a program in which RSPs are evaluated in advance of an application round opening. To ensure that processes are fair to all RSPs (those pre-evaluated and those not pre-evaluated), the Working Group believes that criteria for evaluation and testing should be the same for all RSPs, regardless of when they are assessed.

Rationale for Recommendation 6.3: The Working Group considered different perspectives on whether the RSP pre-evaluation process should be optional or mandatory and reviewed points in support of each position. The Working Group noted that if the program was mandatory, ICANN could greatly streamline technical evaluations, limiting focus to applicants that are proposing "non-standard" or new registry services. In addition, applicants would know all of the RSP providers in advance of the application window opening. The Working Group also considered possible disadvantages to making the program mandatory. In particular, it would force RSPs to be evaluated prior to knowing the potential applicant base. If an entity wanted to provide its own services, it would be required to be evaluated in advance of the application window and therefore let all other applicants know that the entity was applying for a string. It could limit competition by requiring all RSPs to be evaluated early. In addition, it could favor incumbents that are insiders and know about ICANN's processes. The Working Group also noted that ICANN would still have to do technical evaluations for anyone proposing "non-standard" or new registry services, so ICANN would still have to have evaluators on call. On balance, the Working Group determined that the disadvantages of making the program mandatory outweighed the advantages, and therefore recommends that the program should be optional for RSPs.

Rationale for Recommendation 6.4: The Working Group considered different perspectives on whether incumbent RSPs should be "grandfathered" into the pre-evaluation process and be subject to different requirements compared to new RSPs. The Working Group ultimately agreed that the principles of fairness, competition, and consumer choice would best be served if the RSP pre-evaluation processes and structures treat incumbent RSPs and prospective RSPs in an equitable manner. Therefore, the Working Group recommends that all RSPs are subject to the same requirements and criteria in the pre-evaluation process.

Rationale for Recommendation 6.5: The Working Group supports the notion that pre-evaluated RSPs should periodically be subject to reassessment to ensure that they continue to meet eligibility criteria over time. The Working Group considered two options, one focused on reassessment every "x" number of years and another based on reassessment prior to the opening of each subsequent application window. The Working Group settled on the second option, noting though that this option would work only if subsequent procedures continue to operate as a series of application rounds; therefore the testing timing would need to be revisited if a first-come, first-serve model was later adopted. However, acknowledging that the Working Group is recommending that application opportunities be organized as rounds for the foreseeable future, the Working Group came to the conclusion that reassessment prior to each round is the most logical approach for the program.

Rationale for Implementation Guidance 6.6: In discussing the topic of reassessment of RSPs, particularly around the reassessment taking place prior to each round, the Working Group considered whether efficiencies could be gained once the series of application rounds become regularly occurring and the gap in time between each round is minimized. Some Working Group members suggested that for RSPs that have been pre-evaluated previously, a more limited review could be warranted.

Rationale for Implementation Guidance 6.7: The Working Group noted that it may be appropriate to require an RSP to agree to a more limited set of click-wrap Terms and Conditions when submitting their application, which would govern the limited RSP pre-evaluation process and not any ongoing relationship.

Rationale for Recommendation 6.8: The Working Group does not believe that any external source of funding should be leveraged to establish and operate the RSP pre-evaluation process. It further does not view the RSP pre-evaluation process as a source of revenue for ICANN. The Working Group recommends that the program should be funded by fees paid by RSPs seeking pre-evaluation and that the program should operate on a revenue-neutral, cost-recovery basis. The Working Group anticipates that as part of program implementation, cost estimates for the program will be generated and a corresponding fee structure will be established.

The Working Group notes concerns raised in Working Group discussions that it is difficult to recommend a costing model for the RSP pre-evaluation process in the absence of information about the potential costs of implementation or the pre-evaluation process. The Working Group encourages further exploration of this issue in the implementation phase.

Rationale for Recommendation 6.9: The Working Group suggests that a round of pre-evaluation (and reassessment for those RSPs that have already been pre-evaluated in a previous round) will take place in advance of each application round. This will provide the opportunity for applicants to choose to use a pre-evaluated RSP as part of their application if they would like to do so. The Working Group understands that prospective applicants need time to evaluate their options when selecting an RSP. Therefore, the

Working Group recommends that the pre-evaluation round should take place well enough in advance of the application window to allow prospective applicants to consider the options for pre-evaluated RSPs and make an informed decision.

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

The Working Group discussed a number of specific potential elements of the RSP pre-evaluation process in considering public comments on the Initial Report. One of the issues discussed was whether there should be measures built into the pre-evaluation process to protect applicants, and in particular whether there should be a method for removing approval of a pre-evaluated RSP that is in breach or terminated. Some Working Group members expressed that it is important to protect applicants by ensuring that any RSP with the label "pre-evaluated" is not failing. Other Working Group members pointed out that in the 2012 round, if an RSP passed the evaluation, it was approved. If the RSP later failed, this was an issue to be resolved between the RSP and the registry operator. There was no contractual agreement between ICANN and the RSP. These members of the Working Group envision that the RSP pre-evaluation would work in a similar manner. Prior to each round, a set of RSPs would be pre-evaluated for that round. In the case of a failure once the contract was executed, this would be an issue for the registry operator to address directly with the RSP. The Working Group did not come to an agreement whether to (or how to) remove an RSP from the pre-evaluated list but did agree that the RSP pre-evaluation process was intended to be forward-looking as opposed to looking at past history (see below).

On a related subject, the Working Group discussed whether past performance of an RSP should be taken into account in the RSP pre-evaluation process. Some Working Group members expressed that information about past performance is an important indicator of potential future performance, and therefore should be considered. From another perspective, historically, all evaluations have been forward-looking. If the Working Group follows the principle that the only difference between pre-evaluation and standard evaluation is timing, pre-evaluation should also be forward-looking and should not take into consideration past performance. The Working Group did not come to an agreement on a recommendation on this topic.

The Working Group considered whether it is appropriate to have an appeals process to allow RSPs who are denied pre-evaluation status to request that the decision is reconsidered. From one perspective, it is important for applicants to have recourse if they think that an application has been inappropriately turned down. From another perspective an appeals process is not necessary because (a) it is a voluntary program, and (b) RSPs that are not pre-evaluated can always support applications and elect to be evaluated again during the actual application window. Ultimately, the Working Group did not think a recommendation was necessary.

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

- Topic 15: Application Fees includes implementation guidance regarding the technical evaluation fee, including that associated with the RSP pre-evaluation program.
- Discussion and recommendations regarding evaluation and testing are included under Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services and Topic 39: Registry System Testing. See also Topic 26 for a broader discussion of considerations related to security and stability.

Topic 7: Metrics and Monitoring

a. Recommendations and/or implementation guidelines

Recommendation 7.1: Meaningful metrics must be identified to understand the impact of the New gTLD Program. To review metrics, data must be collected at a logical time to create a basis against which future data can be compared.

> Implementation Guidance 7.2: Metrics collected to understand the impact of New gTLD Program should, broadly speaking, focus on the areas of trust, competition, and choice. The Working Group notes that the Competition, Consumer Trust and Consumer Choice Review's 2018 Final Report[38] includes a series of recommendations regarding metrics. Work related to the development of metrics should be in accordance with CCT-RT recommendations currently adopted by the Board, as well as those adopted in the future. The Working Group suggests the following possible metrics for further consideration in the implementation phase:
> - The presence of new gTLDs in lists of highly used websites, such as Alexa 1 Million and Cisco Umbrella 1 Million
> - Recognition of specific gTLDs in niches, communities, and verticals
> - Annual growth of new gTLDs as compared to legacy TLDs and previous application rounds, i.e., comparing the growth of TLDs approved in 2012 with TLDs approved in subsequent rounds
> - Number of new registries and registrars year over year
> - Locations of new registries and registrars year over year, in an effort to see how subsequent rounds affects diversity in the marketplace
> - Categories of gTLDs offered and diversity metrics within those categories

Recommendation 7.3: ICANN org must establish metrics and service level requirements for each phase of the application process including each during the review, evaluation, contracting and transition to delegation stages. ICANN must report on a monthly basis on its performance with respect to these key performance indicators.

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[38] See https://www.icann.org/en/system/files/files/cct-final-08sep18-en.pdf

Recommendation 7.4: ICANN org must further develop its Service Level Agreement (SLA) monitoring to allow for more robust ongoing monitoring of TLD operations.

Recommendation 7.5: ICANN org must publish anonymized, aggregate SLA monitoring data on a regular basis.

>Implementation Guidance 7.6: ICANN org should publish 1. The thresholds on the five critical registry functions that it has used to determine the triggering of an EBERO event 2. The number of events that have triggered or come close to triggering EBERO since launch of EBERO for the 2012 round.

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

Rationale for Recommendation 7.1 and Implementation Guidance 7.2: The Working Group agreed that fostering consumer choice, consumer trust, and market differentiation must continue to be primary focal points for the New gTLD Program, and therefore areas around which measures of success should be established, data collected, and effectiveness measured. The PDP briefly sought to try and identify metrics for success but ultimately determined that this exercise is more appropriately completed during the implementation phase, in accordance with Board-approved recommendations of the CCT-RT, although the Working Group has put forward some suggested metrics for further consideration as implementation guidance. The Working Group believes that an Implementation Review Team should determine the appropriate metrics, and the data[39] required, to measure such metrics on a regular basis to help evaluate the New gTLD Program.

The Working Group recognizes that certain metrics may require the collection of additional data from the contracted parties which may not already be collected under the current Registry and Registrar Agreements. The Working Group therefore recognizes that ICANN org may need to enter into discussions with the Contracted Parties during implementation to determine what, if any, data may be needed in the future to measure these metrics on an ongoing basis, and to include the collection and use of such data in any subsequent Registry and Registrar Agreements, provided that such collection and use is in accordance with applicable law.

The Working Group expects that data collection and processing conducted by ICANN org will be in compliance with applicable data protection law.

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[39] Without being proscriptive, the Working Group believes that the initial metrics from the Identifier Technology Health Indicators (ITHI) project (https://ithi.privateoctopus.com/metrics.html) and the Implementation Advisory Group's report, which served the work of the Competition, Consumer Trust & Consumer Choice Review Team's work, are beneficial resources for establishing metrics. The Working Group also received guidance from the community during its public comment on its Initial Report (See section 2.2.1.e.1 here: https://docs.google.com/spreadsheets/d/15zDdzlBwLCz5m2sNXui6N6pporbUq-lDFEwfh4rKi4A/edit#gid=0)

Rationale for Recommendation 7.3: The Working Group believes that predictability is a key factor supporting the success of applicants as they proceed through contracting and delegation phases of the New gTLD Program. The Working Group understands that registries will be better positioned to successfully implement business plans if they have a clear understanding of how long steps of the contracting and delegation process will take. Therefore, the Working Group recommends that the ICANN organization publish and adhere to specific timeframes and deadlines throughout these processes to ensure predictability for registries and allow them to plan effectively.

Rationale for Recommendation 7.4, 7.5, and 7.6: The Working Group agreed with ICANN org's recommendation that in order to streamline Registry System Testing (RST) by removing certain tests, ICANN should be relying on ongoing monitoring of TLD operations against existing contractual requirements. In a public comment to the Working Group's Initial Report, the SSAC noted that, "In general, it is preferable to discover major failures before delegation instead of after the TLD is in operation. Past performance is not a guarantee of future performance." However, the Working Group believes that expanded operational testing in conjunction with more robust ongoing monitoring will better ensure that registries are able to meet SLAs. To support the development of recommendations on this topic and related topics, the Working Group requested that ICANN org provide the Working Group with statistics resulting from SLA monitoring and data on EBERO thresholds reached.[40] The Working Group believes that from a transparency perspective and to support future policy development, the ongoing publication of similar data will benefit the ICANN community and the New gTLD Program. The Working Group noted that it could be beneficial to publish anonymized responses given in relation to failures in order to provide context for the statistics, for example if there was an error in the monitoring process. The Working Group encourages further consideration of this issue during the implementation phase.

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

None identified for this topic.

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

- Metrics to understand the impact of the New gTLD Program may impact future discussions related to Topic 1: Continuing Subsequent Procedures.
- Topic 39: Registry System Testing provides suggestions to streamline RST. This topic notes ICANN org's recommendation that in order to streamline RST, ICANN should be relying on ongoing monitoring of TLD operations against existing contractual requirements through SLA monitoring. Recommendations regarding SLA monitoring are included under this topic.

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[40] The response received from ICANN org is available at: https://mm.icann.org/pipermail/gnso-newgtld-wg/2020-January/002378.html

- Discussion of metrics specifically related to the Applicant Support Program is included under Topic 17: Applicant Support Program.

Topic 8: Conflicts of Interest

a. Recommendations and/or implementation guidelines

Recommendation 8.1: ICANN must develop a transparent process to ensure that dispute resolution service provider panelists, Independent Objectors, and application evaluators are free from conflicts of interest. This process must serve as a supplement to the existing Code of Conduct Guidelines for Panelists, Conflict of Interest Guidelines for Panelists, and ICANN Board Conflicts of Interest Policy.[41]

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

Rationale for Recommendation 8.1: The Working Group believes that provisions in the 2012 round were insufficient to effectively guard against conflicts of interest among dispute resolution service provider panelists, the Independent Objector, and application evaluators. Therefore, the Working Group recommends that ICANN develop a transparent process to prevent conflicts of interest among these parties in subsequent rounds.

The Working Group notes that some comments on the draft Final Report suggested drawing on best practice resources for the implementation of this recommendation, such as the International Bar Association's Guidelines on Conflicts of Interest in International Arbitration.[42]

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

None identified for this topic.

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

- Additional recommendations regarding dispute resolution service providers and the Independent Objector are included under Topic 31: Objections.
- Additional recommendations regarding application evaluation processes are included under the following topics:

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[41] https://www.icann.org/resources/pages/governance/coi-en#:~:text=The%20purpose%20of%20this%20Board,the%20Internet%20community%2C%20as%20a

[42] https://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx#Practice

- ○ Topic 9: Registry Voluntary Commitments / Public Interest Commitments (Category 1 strings)
- ○ Topic 22: Registrant Protections (Background Screening)
- ○ Topic 24: String Similarity Evaluations
- ○ Annex J: Work Track 5 Final Report on Geographic Names at the Top Level
- ○ Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services
- ○ Topic 34: Community Applications
- ○ Topic 17: Applicant Support Program
- ○ Topic 6: RSP Pre-Evaluation

2.3 Deliberations and Recommendations: Foundational Issues

Topic 9: Registry Voluntary Commitments / Public Interest Commitments

a. Recommendations and/or implementation guidelines

Recommendation 6 from the 2007 policy is affirmed under Topic 31: Objections. Recommendation 6 is also relevant to this topic.

Recommendation 9.1: Mandatory Public Interest Commitments (PICs) currently captured in Specification 11 3(a)-(d) of the Registry Agreement[43] must continue to be included in

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[43]The relevant sections are as follows:

3. Registry Operator agrees to perform the following specific public interest commitments, which commitments shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN (posted at http://www.icann.org/en/resources/registries/picdrp), which may be revised in immaterial respects by ICANN from time to time (the "PICDRP"). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

- (a) Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.
- (b) Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and

Registry Agreements for gTLDs in subsequent procedures. Noting that mandatory PICs were not included in the 2007 recommendations, this recommendation puts existing practice into policy. One adjustment to the 2012 implementation is included in the following recommendation (Recommendation 9.2).[44]

Recommendation 9.2: Provide single-registrant TLDs with exemptions and/or waivers to mandatory PICs included in Specification 11 3(a) and Specification 11 3(b).[45]

Affirmation 9.3: The Working Group affirms the framework established by the New gTLD Program Committee (NGPC) to apply additional Safeguards to certain new gTLD strings that were deemed applicable to highly sensitive or regulated industries,[46] as established in response to the Governmental Advisory Committee (GAC) Beijing Communiqué.[47]

This framework includes ten (10) Safeguards of different levels implemented amongst a set of four groups with ascending levels of requirements:

1) Regulated Sectors/Open Entry Requirements in Multiple Jurisdictions: Category 1 Safeguards 1-3 applicable

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botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.

(c) Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.

(d) Registry Operator of a "Generic String" TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person's or entity's "Affiliates" (as defined in Section 2.9(c) of the Registry Agreement). "Generic String" means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.

For full detail, see the 31 June 2017 Registry Agreement here:
https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.pdf

[44] In addition to the existing mandatory PICs discussed under this topic, Topic 24: String Similarity Evaluations includes a recommendation to introduce a new mandatory PIC that would be required in cases where two applications are submitted during the same application window for strings that create the probability of a user assuming that they are single and plural versions of the same word, but the applicants intend to use the strings in connection with two different meanings. The applicants would commit to the use stated in the application via a mandatory PIC.

[45] For the sake of clarity, this recommendation and the exemption do NOT apply to Specification 11 3(c) or 11 3(d).

[46] See the relevant NGPC scorecard here: https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf

[47] See Beijing Communiqué (https://gac.icann.org/contentMigrated/icann46-beijing-communique): "Strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm."

2) Highly-Regulated Sectors/Closed Entry Requirements in Multiple Jurisdictions: Category 1 Safeguards 1-8 applicable
3) Potential for Cyber Bullying/Harassment: Category 1 Safeguards 1-9 applicable
4) Inherently Governmental Functions: Category 1 Safeguards 1-8 and 10 applicable

Strings that fall into these categories require the adoption of the relevant Category 1 Safeguards as contractually binding requirements in Specification 11 of the Registry Agreement (i.e., as mandatory Public Interest Commitments, or PICs).

The Working Group affirms:
        a) The four groups described in the NGPC's scorecard;
        b) The four groups' varying levels of required Category 1 Safeguards; and,
        c) The integration of the relevant Category 1 Safeguards into the Registry Agreement, by way of PICs.

Recommendation 9.4: The Working Group recommends establishing a process to determine if an applied-for string falls into one of four groups defined by the NGPC framework for new gTLD strings deemed to be applicable to highly sensitive or regulated industries. This process must be included in the Applicant Guidebook along with information about the ramifications of a string being found to fall into one of the four groups.

Implementation Guidance 9.5: Applicants may choose to self-identify if they believe that their string falls into one of the four groups. This designation will be confirmed, or not, using the process outlined below in Implementation Guidance 9.6.

Implementation Guidance 9.6: During the evaluation process, each applied-for string should be evaluated to determine whether it falls into one of the four groups, and therefore is subject to the applicable Safeguards. An evaluation panel should be established for this purpose, the details of which will be determined in the implementation phase. The panel should be composed of experts in regulated industries, who will also be empowered to draw on the input of other experts in relevant fields.

Implementation Guidance 9.7: The panel evaluating whether a string is applicable to highly sensitive or regulated industries should conduct its evaluation of the string after the Application Comment Period is complete.

Recommendation 9.8: If an applied-for string is determined to fall into one of the four groups of strings applicable to highly sensitive or regulated industries, the relevant Category 1 Safeguards must be integrated into the Registry Agreement as mandatory Public Interest Commitments.

Recommendation 9.9: ICANN must allow applicants to submit Registry Voluntary Commitments (RVCs) (previously called voluntary PICs) in subsequent rounds in their applications or to respond to public comments, objections, whether formal or informal,

GAC Early Warnings, GAC Consensus Advice, and/or other comments from the GAC. 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 under topic 20: Application Changes Requests, including, but not limited to, an operational comment period[48] in accordance with ICANN's standard procedures and timeframes.

Recommendation 9.10: RVCs must continue to be included in the applicant's Registry Agreement.

> Implementation Guidance 9.11: The Public Interest Commitment Dispute Resolution Process (PICDRP) and associated processes[49] should be updated to equally apply to RVCs.[50]

Recommendation 9.12: 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, GAC Consensus Advice, or other comments from the GAC)) to understand if the RVC addresses the underlying concern(s).

Recommendation 9.13: 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 9.14: The Working Group notes that the CCT-RT's Recommendation 25[51] has recommended developing an "organized, searchable online database" for RVCs. The Working Group agrees and believes that ICANN org should evaluate this recommendation in the implementation phase and determine the best method for ensuring that RVCs are widely accessible.

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[48] a 30-day comment period giving the public the opportunity to comment on any change to a public part of an application.

[49] "Associated processes" refers to all existing processes relevant to what were formerly known as voluntary PICs.

[50] For additional discussion of the PICDRP, see Topic 33: Dispute Resolution Procedures After Delegation.

[51] CCT-RT Recommendation 25 states: "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 so 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."

<u>Recommendation 9.15</u>: The Working Group acknowledges ongoing important work in the community on the topic of DNS abuse[52] and believes that 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,[53] 15,[54] and 16.[55] Note, however,

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[52] The Working Group did not attempt to define the term "DNS abuse" in the course of its discussions and is not endorsing any particular definition of this term. The Working Group notes, however, that the CCT-RT used the following definition to support its work: "Intentionally deceptive, conniving, or unsolicited activities that actively make use of the DNS and/or the procedures used to register domain names." See p. 3 of the "New gTLD Program Safeguards Against DNS Abuse: Revised Report" (2016) for additional context on this definition: https://www.icann.org/news/announcement-2016-07-18-en. The CCT-RT used the term "DNS Security Abuse" in its Final Report to refer to specific, technical forms of abusive behavior: spam, phishing, and malware distribution in the DNS. The CCT-RT also drew on the Registration Abuse Policies Working Group's Final Report, which provides additional detail about how abuse has been characterized by the ICANN Community: https://gnso.icann.org/sites/default/files/filefield_12530/rap-wg-final-report-29may10-en.pdf

[53] 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."

[54] 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."

[55] 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."

that at the time of the drafting of this report, the ICANN Board only approved Recommendation 16. Recommendations 14 and 15 remain in a "Pending" status.[56]

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

Rationale for Recommendation 9.1: 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 putting these existing mandatory PICs into policy. 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 9.2: The Working Group supports maintaining the existing mandatory PICs included in Specification 11 3(a)-(d) 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 Affirmation 9.3, Recommendations 9.4 and 9.8, and Implementation Guidance 9.5-9.7: In developing recommendations regarding strings applicable to highly sensitive or regulated industries, the Working Group reviewed GAC Category 1 Safeguard Advice included in the Beijing Communiqué (2013),[57] the implementation framework[58] adopted by the ICANN Board's New gTLD Program Committee[59] to

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[56] See relevant Board scorecards here: https://www.icann.org/en/system/files/files/resolutions-final-cct-recs-scorecard-01mar19-en.pdf and here: https://www.icann.org/en/system/files/files/cct-pending-recs-board-action-22oct20-en.pdf

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

[58] See https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf

[59] See https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en

address GAC Category 1 Safeguard Advice, as well as subsequent GAC Consensus
Advice on the topic included in the Los Angeles Communiqué (2014)[60] and Singapore
Communiqué (2015).[61]

The Working Group believes that the framework established by the New gTLD Program
Committee (NGPC) in response to the Governmental Advisory Committee (GAC)
Beijing Communiqué continues to be a valuable and appropriate tool for:

1. Identifying strings applicable to highly sensitive or regulated industries and
2. Applying corresponding protections for gTLDs associated with those strings.

Therefore, the Working Group believes that the framework established by the New gTLD
Program Committee (NGPC) should continue to apply in subsequent procedures, as
described in Affirmation 9.3.

The Working Group believes that in order to ensure predictability for all parties in
subsequent procedures, there must be a clear method to establish whether an applied-for
string is applicable to a highly sensitive or regulated industry. The Working Group has
recommended a process for doing so, and offered implementation guidance that a new
evaluation procedure should be established to evaluate each string. The Working Group
considered whether the Board or GAC might be appropriate entities to conduct the
evaluation, but ultimately decided that given the volume of work required, it would be
most practical for a dedicated panel with appropriate expertise to have this responsibility.
The Working Group noted that the GAC would continue to have the ability to issue
Consensus Advice on any application and that the Board would consider such Consensus
Advice using procedures described in the ICANN Bylaws.

For those strings determined to be applicable to highly sensitive or regulated industries,
the Working Group believes that it continues to be appropriate for applicable Registry
Agreements to include Category 1 Safeguards as mandatory Public Interest
Commitments.

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[60] "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

[61] "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

In developing recommendations on the topic of strings applicable to highly sensitive or regulated industries, the Working Group took into account CCT-RT Recommendation 12,[62] which was directed at the Subsequent Procedures PDP Working Group and passed through by the ICANN Board. The Working Group further took into account recommendation 23[63] from the CCT-RT's Final Report, which was approved by the ICANN Board on 22 October 2020.[64]

Rationale for Recommendation 9.9: 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, for example through public comment or by an SO/AC. 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.

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[62] 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."

[63] CCT-RT 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."

[64] See applicable scorecard here: https://www.icann.org/en/system/files/files/cct-pending-recs-board-action-22oct20-en.pdf

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 Working Group 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 Working Group 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.

The Working Group notes that in public comment on the Initial Report 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, whether formal or informal, GAC Early Warnings, GAC Consensus Advice, or other comments from GAC 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 an operational comment period 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 an operational comment period.

Rationale for Recommendation 9.10 and Implementation Guidance 9.11: 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. 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, and the PICDRP should be updated to apply to RVCs.

Rationale for Recommendation 9.12: 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 9.13 and Implementation Guidance 9.14: The Working Group reviewed and discussed CCT-RT Recommendation 25,[65] 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 the Working Group's recommendations serve these objectives by establishing clear processes and supporting community review of and input on RVCs. Transparency is further supported by ensuring that RVCs are publicly available and accessible. In the 2012 round, Registry Agreements were 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.

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

Rationale for Recommendation 9.15: 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. On 27 April 2020, the Working Group Co-Chairs sent a letter to the GNSO Council providing an update on the Working Group's discussion regarding DNS abuse and explaining the reasoning behind Recommendation 9.15.[66]

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

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[65] 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."

[66] See https://gnso.icann.org/sites/default/files/file/field-file-attach/neuman-langdon-orr-to-drazek-27apr20-en.pdf

The Working Group discussed the concept of "verified" TLDs and considered whether there should be incentives to operate TLDs in this manner in cases where it is not mandatory. 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.[67] The Working Group did not come to an agreement about whether supports this definition. The concept of verification is tied to 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 holds the appropriate license or credential.

The Working Group discussed the merits and drawbacks of incentivizing verified TLDs in cases where it is not mandatory. The Working Group reviewed CCT-RT Recommendation 12[68] 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.

At a high-level, the Working Group identified pros and cons for providing incentives to operate verified TLDs:

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	Existing procedure already provides sufficient opportunities to address concerns associated with TLDs related to highly regulated or

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

[68] 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."

the domain space for compliance with registry standards	professional sectors and therefore further categories of TLDs are not necessary

The Working Group ultimately agreed that its recommendations regarding strings applicable to highly sensitive or regulated are sufficient in this regard, and therefore did not make any additional recommendations for incentives to operate verified TLDs.

In response to the Draft Final Report, the ICANN Board commented that it was concerned that the current ICANN Bylaws language (which differs from that which existed during the 2012 New gTLD round) could "create issues for ICANN to enter and enforce any content-related issue regarding PICs or Registry Voluntary Commitments (RVCs)." It then asked the Working Group whether it had "considered this specific language in ICANN's Bylaws as part of its recommendations or implementation guidance on the continued use of PICs or the future use of RVCs? Can the PDP WG provide guidance on how to utilize PICs and RVCs without the need for ICANN to assess and pass judgment on content?"[69]

During subsequent Working Group discussions, the Working Group decided not to alter its recommendations with respect to the PICs or RVCs. The Working Group will respond to the ICANN Board's specific concerns under separate cover. In short:

a) To the extent that existing PICs are used as PICs (or RVCs) in subsequent rounds, these are specifically "grandfathered" into the current Bylaws mission.

b) The Working Group also agreed that to the extent that RVCs or PICs address eligibility rules for the registration and/or renewal of domain names, these would not involve the need for ICANN to assess and pass judgement on content (as set forth in the Bylaws).

c) To the extent that some registries will want to make voluntary commitments in response to public comments, Government Early Warnings, GAC Advice, etc., it is understood by the Working Group that having these commitments reflected in Registry Agreements even if they fall outside of ICANN's core mission is consistent with the Bylaws where neither ICANN itself nor any third party under ICANN's control is required to pass judgment on 'content'. In such cases, it is understood that using an independent third party as an arbiter to determine whether there has been a violation of the commitment would be consistent with ICANN's mission even if ICANN were ultimately required to rely on that

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[69] https://mm.icann.org/pipermail/gnso-newgtld-wg/attachments/20200930/25c89cf8/2020-09-30MaartenBottermantoCherylLangdonOrrandJeffNeuman_Final_Report-0001.pdf

third party decision to enforce a pre-arranged contractual remedy, which could include sanctions and/or termination of the Registry Agreement.[70]

In short, the PDP Working Group stands by its recommendations and implementation guidance which envisage the use of PICs / RVCs to resolve issues that arise through the public comments, objections, Government Early Warnings, GAC Advice or other concerns expressed by the community. The commitments must be enforceable through contracts entered into between registry operators and ICANN. The Working Group therefore urges the IRT to work with ICANN org to implement the recommendations and implementation guidance set forth herein in a manner consistent with ICANN's current Bylaws.

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

- This topic includes a recommendation that ICANN must allow applicants to submit Registry Voluntary Commitments (RVCs) (previously called voluntary PICs) to respond to public comments, objections, whether formal or informal, GAC Early Warnings, GAC Consensus Advice, or other comments from the GAC. Additional information about public comments, objections, GAC Early Warnings, and GAC Consensus Advice, see Topic 28: Role of Application Comment, Topic 31: Objections, and Topic 30: GAC Early Warning and GAC Consensus Advice. This topic discusses verified TLDs, which are further considered under Topic 31: Objections.
- Topic 24: String Similarity Evaluations includes a recommendation for the introduction of a new mandatory PIC that would be required in specific cases where two applications are submitted during the same application window for strings that create the probability of a user assuming that they are single and plural versions of the same word, but the applicants intend to use the strings in connection with two different meanings. The applicants would commit to the use stated in the application via a mandatory PIC.
- The Public Interest Commitment Dispute Resolution Procedure (PICDRP) is the dispute resolution procedure in relation to PICs and RVCs. See Topic 33: Dispute Resolution Procedures After Delegation for further discussion of the PICDRP.
- Mandatory PICs should be revisited to reflect the ongoing discussions between the GAC Public Safety Working Group and registries, as appropriate.
- See also the Global Public Interest Framework under ICANN's Strategic Plan.

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[70] The Working Group does not endorse any particular pre-arranged contractual remedy, but rather states the range of potential remedies. The term "pre-arranged" is used to ensure that the possible remedies are documented in the appropriate contract. For example, in a dispute between two parties that is resolved by an RVC, the settlement agreement would contain which dispute provider would hear the dispute, would require that the parties be bound by the decision, and would set forth the potential remedies that ICANN could impose upon the Registry if the dispute provider found a violation. ICANN will not have to create a remedy for the violation, but rather it will be able to select from a list of options provided in the contract.

Topic 10: Applicant Freedom of Expression

a. Recommendations and/or implementation guidelines

Affirmation 10.1: The Working Group affirms Principle G from the 2007 policy, which states: "The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law." The Working Group further affirms Recommendation 3: "Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industrial Property (in particular trademark rights), the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (in particular freedom of speech rights)."

> Implementation Guidance 10.2: As the ICANN organization and community incorporate human rights into ICANN's processes in line with the recommendations of CCWG-Accountability Work Stream 2, they should consider the application of this work to elements of the New gTLD Program. Specifically, the Working Group suggests further consideration of applicant freedom of expression rights in the TLD proposed during pre-application through delegation stages of the process. Applicant freedom of expression should be balanced with other third party[71] rights recognized in the 2012 Applicant Guidebook as modified by this PDP, legitimate interests, the principle of fairness, and "generally accepted legal norms of morality and public order that are recognized under principles of international law." For example, it may be beneficial to include concrete case studies or examples in guidance to evaluators and dispute resolution service providers to ensure that criteria are correctly and consistently applied in support of the applicable principles and rights.

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

Rationale for Recommendation 10.1 and Implementation Guidance 10.2: The Working Group believes that Principle G and Recommendation 3 from the 2007 policy remain important and appropriate for subsequent procedures of the New gTLD Program. The Working Group understands the challenges of ensuring that freedom of expression and other rights are appropriately incorporated into the implementation and operation of the program, and therefore recommends a proactive approach to ensuring that these rights are taken into account in the development of program rules, processes, and materials. While the Working Group did not agree to specific recommendations in this regard, it

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[71] The term "third party" in this context includes the Independent Objector as well as any parties on behalf of whom the Independent Objector is acting.

encourages ICANN org to give additional consideration to this issue in the implementation phase.

In November 2019, The ICANN Board adopted[72] recommendations of the Cross Community Working Group on Enhancing ICANN Accountability (CCWG Accountability) Work Stream 2 (WS2), including a Framework for Interpretation (FOI)[73] for the human rights core value added to the Bylaws in October 2016.[74] The FOI is "a high-level framework for how the bylaw language should be interpreted and applied to ensure that ICANN accomplishes its Mission consistent with its core values and operates within law applicable to its operations."[75] To the extent that additional work is undertaken to reflect human rights considerations in ICANN's processes, including through the implementation of WS2 recommendations, such work should also incorporate freedom of expression rights in the New gTLD Program application processes consistent with the Working Group's implementation guidance.[76]

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

None.

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

- To the extent that additional work is undertaken to reflect human rights considerations in ICANN's processes, including through the implementation of Cross Community Working Group on Enhancing ICANN Accountability (CCWG Accountability) Work Stream 2 (WS2) recommendations, the Working Group anticipates that implementation guidance under this topic will be taken into account.

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[72] https://www.icann.org/resources/board-material/resolutions-2019-11-07-en#2.c

[73] See Annex 3 of the WS2 Final Report: https://www.icann.org/en/system/files/files/ccwg-acct-ws2-final-24jun18-en.pdf

[74] See Section 1.2.(b)(viii) in the current version of the Bylaws (as amended 28 November 2019): "Subject to the limitations set forth in Section 27.2, within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create, and shall not be interpreted to create, any obligation on ICANN outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate ICANN to enforce its human rights obligations, or the human rights obligations of other parties, against other parties."

[75] For additional information see the WS2 Implementation Assessment Report: https://community.icann.org/display/WEIA/Public+Documents?preview=/120819602/120819621/WS2%20Implementation%20Assessment%20Report_5Nov2019.pdf

[76] At the time of writing this report, the most recent update on the status of WS2 implementation was available here: https://69.schedule.icann.org/meetings/fZpstoxtb9L3rqwWF#/?limit=10&sortByFields%5B0%5D=isPinned&sortByFields%5B1%5D=lastActivityAt&sortByOrders%5B0%5D=-1&sortByOrders%5B1%5D=-1&uid=a6ijir8iemBHYWRru.

Topic 11: Universal Acceptance

a. Recommendations and/or implementation guidelines

Principle B from the 2007 policy is affirmed with modification under Topic 25: IDNs. Principle B is also relevant to this topic.

Affirmation 11.1: The Working Group welcomes and encourages the work of the Universal Acceptance Initiative[77] and the Universal Acceptance Steering Group.[78]

Affirmation 11.2: The Working Group affirms 2012 implementation elements addressing Universal Acceptance issues, and in particular, guidance provided in section 1.2.4 of the Applicant Guidebook ("Notice concerning Technical Acceptance Issues with New gTLDs"), as well as clause 1.2 of the Registry Agreement ("Technical Feasibility of String").

Recommendation 11.3: Applicants should be made aware of Universal Acceptance challenges in ASCII and IDN TLDs. Applicants must be given access to all applicable information about Universal Acceptance currently maintained on ICANN's Universal Acceptance Initiative page, through the Universal Acceptance Steering Group, as well as future efforts.

> Implementation Guidance 11.4: ICANN should include more detailed information regarding Universal Acceptance issues either directly in the Applicant Guidebook or by reference in the Applicant Guidebook to additional resources produced by the Universal Acceptance Steering Group or other related efforts.

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

Rationale for Affirmations 11.1 and 11.2, Recommendation 11.3, and Implementation Guidance 11.4: The Working Group affirms the importance of efforts related to Universal Acceptance and encourages the ongoing work taking place through the Universal Acceptance Initiative and the Universal Acceptance Steering Group. The Working Group acknowledges that language in the 2012 Applicant Guidebook and the Registry Agreement raise awareness about potential challenges that applicants and registries may face with respect to Universal Acceptance. At the same time, the Working Group believes that ICANN should more clearly and thoroughly illustrate to potential applicants the possible problems that registrants of IDNs in particular may face in the usage of those domains, as well as work underway in this regard. Recommendation 11.3 and Implementation Guidance 11.4 seek to ensure that potential applicants have the information they need to make an informed decision before submitting the application.

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[77] Additional information about the Universal Acceptance Initiative is available at:
https://www.icann.org/resources/pages/universal-acceptance-initiative-2014-10-03-en
[78] Additional information about the Universal Acceptance Steering Group is available at: https://uasg.tech/

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

While some commenters thought that no additional work should be proposed beyond that being done through the Universal Acceptance Initiative and by the Universal Acceptance Steering Group, others believe that more can and should be done to further the adoption of Universal Acceptance (UA). They believe that since the primary obstacle to the successful expansion of the domain namespace remains the rejection of these new gTLDs by legacy code, the community and ICANN org need to involve themselves in more active outreach efforts to explain to third parties the benefits of increasing Internet inclusivity and diversity in UA to reach Internet end-users. Some commenters also believe that ICANN should, at a minimum, require registries and registrars that are owned by the same entity, to be UA ready as part of their application for a new gTLD. This would mean that their systems should be ready for IDN registrations, ready to handle IDNs and non-IDN new gTLD consistently on name servers and other machines, be able to manage any Email Address Internationalization (EAI), and to send and receive emails from these types of addresses. Finally, some commenters also claim that ICANN should also require registries and registrars to take affirmative action to ensure UA-readiness in their downstream supply-chains.

The Working Group notes that it may be useful in the implementation phase to consider and compare data collected by the UASG before the next round and after the next round of the New gTLD Program.

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

- Related efforts external to this PDP include the Universal Acceptance Initiative and the Universal Acceptance Steering Group.

2.4 Deliberations and Recommendations: Pre-Launch Activities

Topic 12: Applicant Guidebook

a. Recommendations and/or implementation guidelines

Affirmation 12.1: The Working Group affirms that an Applicant Guidebook should be utilized for future new gTLD processes as was the case in the implementation of the 2012 application round. The Working Group further affirms that the Applicant Guidebook should continue to be available in the 6 United Nations languages as was the case in the 2012 application round.

Affirmation 12.2: The Working Group affirms Implementation Guideline A from the 2007 policy, which states: "The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains."

Affirmation with Modification 12.3: With the substitution included in italicized text, the Working Group affirms Implementation Guideline E from the 2007 policy: "The *commencement of the* application submission period will be at least four (4) months after the issue of the *Applicant Guidebook* and ICANN will promote the opening of the applicant round." The term "Request for Proposal" in the original Implementation Guideline has been substituted with "Applicant Guidebook" to reflect the actual name of the document used in 2012 and the "application submission period" has been replaced with the "commencement of the application submission period."

Recommendation 12.4: The Working Group recommends focusing on the user when drafting future versions of the Applicant Guidebook (AGB) and prioritizing usability, clarity, and practicality in developing the AGB for future new gTLD processes. The AGB should effectively address the needs of new applicants as well as those already familiar with the application process. It should also effectively serve those who do not speak English as a first language in addition to native English speakers.

> Implementation Guidance 12.5: To promote usability and clarity, write the Applicant Guidebook using Plain Language standards to the extent possible and avoid complex legal terminology when it is not necessary.[79]

> Implementation Guidance 12.6: To ensure that the AGB is a practical resource for users, the core text of the AGB should be focused on the application process. Historical context and policy should be included in appendices or a companion guide, while remaining linked to relevant AGB provisions. The Working Group suggests including step-by-step instructions for applicants with clear guidance about how the process may vary in the case of applications for different categories of TLDs or other variable situations.

> Implementation Guidance 12.7: In service of usability, ICANN org should ensure that the AGB has a robust Table of Contents and Index. The online version should be tagged and searchable, so that users may easily find sections of text that are applicable to them.

Recommendation 12.8: The English version of the Applicant Guidebook must be issued at least four (4) months prior to the commencement of the applicant submission period.

Recommendation 12.9: All other translated versions of the Applicant Guidebook, including in the 6 UN languages, must be available no later than two (2) months prior to the commencement of the application submission period.

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[79] https://www.plainlanguage.gov/about/definitions/

Implementation Guidance 12.10: All translations of the final Applicant Guidebook should be available at or as close as possible in time to the point at which the English version is published, but in no event later than two (2) months prior to the commencement of the application submission period.

Recommendation 12.11: Application fees for each application must be published in that round's Applicant Guidebook.

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

Rationale for Affirmations 12.1 and 12.2, Affirmation with Modification 12.3, Recommendations 12.4, 12.8 and 12.9, and 12.11, and Implementation Guidance 12.5-12.7 and 12.10: The Working Group generally agreed that an AGB of some form should continue to be utilized in future waves of applications. The Working Group recommendations and implementation guidance therefore focus on ways to improve the AGB to better serve key programmatic goals. The Working Group considered the importance of ensuring that the New gTLD Program is widely accessible and easy to understand for a broad, global audience. Noting that the AGB is the central resource for applicants to find information and instructions regarding the application process, the Working Group developed recommendations and implementation guidance that support usability, clarity, and practicality of the AGB for its primary audience.
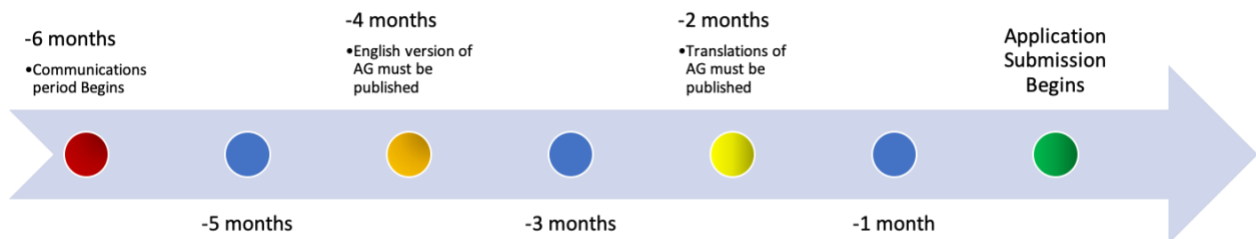
c. New issues raised in deliberations since publication of the Initial Report, if applicable

In reviewing public comments on the Initial Report, the Working Group found that respondents were largely supportive of the preliminary recommendations included under this topic. Therefore, additional discussions on this topic focused on ensuring that recommendations are as clear and concise as possible to support effective interpretation and implementation by ICANN org.

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

- Topic 9: Registry Voluntary Commitments / Public Interest Commitments includes a recommendation that the process to determine if Category 1 Safeguards will be required for an applied-for string must be published in the Applicant Guidebook.
- Topic 11: Universal Acceptance includes implementation guidance that more detailed information about Universal Acceptance should be included in the Applicant Guidebook or by reference in the AGB.
- Topic 14: Systems includes implementation guidance that Agreements or Terms of Use associated with systems access should be published with the Applicant Guidebook.

Topic 15: Application Fees includes implementation guidance that information about management of excess fees should be documented in the Applicant Guidebook.
- Topic 17: Applicant Support includes a recommendation that the Financial Assistance Handbook or its successor must be incorporated into the Applicant Guidebook.
- Topic 19: Application Queuing includes a recommendation that processes related to application queuing must be included in the Applicant Guidebook.
- Topic 20: Application Change Requests includes implementation guidance that the Applicant Guidebook should identify types of application changes that will require a re-evaluation of some or all of the application and those that will not.
- Topic 28: Role of Applicant Comment includes implementation guidance that the Applicant Guidebook should contain guidelines about how public comments are to be utilized or taken into account by the relevant evaluators and panels.
- Topic 31: Objections includes a recommendation that the details of dispute resolution and challenge processes must be published in the Applicant Guidebook. This topic also includes implementation guidance that the Applicant Guidebook should include criteria and/or processes to be used by panelists for the filing of, response to, and evaluation of formal objections.

Topic 13: Communications

a. Recommendations and/or implementation guidelines

Affirmation 13.1: The Working Group affirms Implementation Guideline C and Implementation Guideline M from the 2007 Final Report:
- Implementation Guideline C: "ICANN will provide frequent communications with applicants and the public including comment forums which will be used to inform evaluation panels."[80]

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[80] Usage of comments to inform evaluation panels is addressed more specifically under Topic 28: Role of Application Comment.

- Implementation Guideline M: "ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way that no longer requires all participants in the conversation to be able to read and write English."

Recommendation 13.2: The Working Group believes that an effective communications strategy and plan is needed to support the goals of the program referenced in Affirmation 6.1. Accordingly, the Working Group recommends that the New gTLD communications plan must be developed with timeliness, broad outreach and accessibility as key priorities. The communications plan must be targeted to achieve the goals of the New gTLD Program as articulated. The plan must include a Communications Period commensurate in length to achieve those goals.

Implementation Guidance 13.3: For timeliness, the Working Group believes that for the next subsequent round, the Communications Period should begin at least six (6) months prior to the beginning of the application submission period. Essentially, the communications plan should be commensurate with the time needed to perform elements like the non-exhaustive list below:
- Outreach related to Applicant Support
- Establishing and allowing interested parties to engage in the RSP pre-evaluation process

Implementation Guidance 13.4: Consistent with the recommendations under Topic 3: Applications Assessed in Rounds, the Working Group believes that a shorter Communications Period (i.e., less than the minimum 6 months stated above) may be needed for subsequent rounds if and when a steady state for application submission periods is established.

Implementation Guidance 13.5: For broad outreach, the Working Group believes that consistent with Recommendation 8.4.b[81] from the Program Implementation Review Report, the program should "Leverage ICANN's Global Stakeholder Engagement (GSE) team to promote awareness of the New gTLD Program within their regions/constituencies." The Working Group believes that the GSE team should be leveraged to support the dissemination of program information and support education and overall outreach. The various Supporting Organizations and Advisory Committees are also important partners in sharing information.

Implementation Guidance 13.6: For accessibility, the Working Group stresses the need for a single, well-designed website dedicated to the New gTLD Program to support the sharing and accessibility of program information, which is consistent

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[81] http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf

with Recommendation 8.4.a[82] from the Program Implementation Review Report. Once on the site, broadly speaking, users should be able to obtain information they are seeking in an effective manner. To that end, the Working Group has suggested specific elements for consideration:

- Continue to maintain an online knowledge database, but ensure that it is robust, is easy to search and navigate, is updated on a timely basis, and emphasizes issues with wide-ranging impact. In addition, to the extent possible, all items in the online knowledge database should reference applicable sections of the Applicant Guidebook to which the items relate.
- Create an opt-in based notification system for applicants to receive program updates, updates to the online knowledge database, and application-specific updates.

Implementation Guidance 13.7: For timeliness and accessibility as it relates to applicant communications, the Working Group believes that robust customer support is needed to address substantive and logistical questions as well as inquiries regarding use of applicant-facing systems.[83] Real-time communication methods are preferred (e.g., telephone, online chat), but the Working Group recognizes that these forms of communication may be costly. Further, the Working Group also recognizes that there may need to be different methods utilized. For instance, technical support for submitting an application may be different than responding to substantive inquiries about completing an application.

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

Rationale for Affirmation 13.1, Recommendation 13.2, and Implementation Guidance 13.3-13.7: The Working Group was in wide agreement that the New gTLD Program's communications plan should serve the goals of raising awareness about the New gTLD Program to as many potential applicants as possible around the world and making sure that potential applicants know about the program in time to apply. To serve this objective, the Working Group determined that the focus should be on timeliness, broad outreach, and accessibility. As a result, the Working Group focused on specific suggestions that would further those high-level goals. Public comment received was largely supportive of the Working Group's preliminary outcomes and accordingly, they have been carried forth as implementation guidance in this report.

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[82] Recommendation 8.4.a states: "Consolidate all next round program information into a single site and make information as accessible as possible." See
http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf
[83] The Working Group agrees with Recommendation 8.5.a in the Program Implementation Review Report, which states: "Consider customer service to be a critical function of the organization, and ensure that the Customer Service Center has the appropriate resources to support the ongoing and future activities of the New gTLD Program." See http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf

The Working Group also recognizes that during the 2012 round, ICANN org was reluctant to provide real time support due to its equal access obligations and not wanting to appear to be giving some applicants information that was not necessarily provided to other applicants. The Working Group notes that although this is a legitimate concern, there should be ways to provide real-time support in a manner which does not run afoul of those equal access obligations.

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

Public comments received suggested that while there may be goals specific to the communications plan, the communications plan itself should be designed to help achieve the goals for the New gTLD Program. The Working Group felt this was a helpful distinction and accordingly, integrated this element into the recommendation above.

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

- The communications plan should be consistent with the overall goals of the program (e.g., metrics established under Topic 7: Metrics and Monitoring), as well as goals specific to certain elements (e.g., the success factors under Topic 17: Applicant Support, work necessary in relation to setting up the RSP pre-evaluation process described under Topic 6: RSP Pre-Evaluation).
- The structure of application windows (see Topic 3: Applications Assessed in Rounds) and length of the application submission period (see Topic 16: Application Submission Period) may impact the length of time needed to perform outreach.
- Implementation guidance regarding customer support also applies to customer support related to the use of applicant-facing systems, which are further discussed under Topic 14: Systems.
- The impact of comments made on applications collected through the comment forums referred to in Implementation Guideline C is addressed separately (see Topic 28: Role of Application Comment).

Topic 14: Systems

a. Recommendations and/or implementation guidelines

Affirmation 14.1: The Working Group affirms Implementation Guideline O from the 2007 Final Report, which states: "ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations." The Working Group further affirms Implementation Guideline L, which states: "The use of personal data must be limited to the purpose for which it is collected."

Recommendation 14.2: The design, development, and deployment of applicant-facing systems must prioritize security, stability, usability, and a positive user experience following industry best practices.

Implementation Guidance 14.3: In support of security, stability, usability, and a positive user experience, systems should be designed and developed well in advance of the point that they need to be used by applicants, so that there is sufficient time for system testing without causing undue delay. System tests should follow industry best practices and ensure that all tools meet security, stability, and usability requirements and that confidential data will be kept private.[84]

Implementation Guidance 14.4: In support of improved usability, the Working Group advises that ICANN org should leverage prospective end-users to beta test systems, perhaps by setting up an Operational Test and Evaluation environment. The Working Group notes that if beta testing is conducted, it must be done in an open and transparent manner that does not provide the testers with an unfair advantage in the application process.[85] The Working Group notes however that the mere access to beta testing does not in and of itself constitute such an unfair advantage. It further notes that ICANN org did not have an end user beta testing program in 2012 because it believed that allowing some users to have access to the system for beta testing provided those users with an unfair advantage over others. The Working Group does not agree with ICANN org's assertion from that time period.

Implementation Guidance 14.5: In support of improved usability, the Working Group suggests integrating systems to the extent possible and simplifying login management. Specifically, if the use of multiple systems are required, the Working Group encourages enabling users to access different systems using a single login and, as recommended in the Program Implementation Review Report (Recommendation 1.1.b), "Implement a system that would allow applicants the flexibility to associate as many applications as desired to a single user account."

Implementation Guidance 14.6: In support of improved usability, the Working Group suggests that specific data entry fields in applicant-facing systems should accept both ASCII and non-ASCII characters. Although the Working Group recognizes that English is the authoritative language for the New gTLD Program, there are a number of fields including the applied-for string, applicant's name, and

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[84] This recommendation is consistent with Recommendation 8.1.a in the Program Implementation Review Report, which states: "In developing timelines for future application rounds, provide an appropriate amount of time to allow for the use of best practices in system development." See http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf

[85] This implementation guidance is consistent with Recommendation 8.1.b in the Program Implementation Review Report, which states: "Explore beta testing for systems to allow for lessons learned, to increase effectiveness of such systems, and to provide further transparency, clarity, and opportunity for preparation to applicants." See http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf

contact information (including email addresses) that should be collected and displayed in their native language / script. In addition, systems should accept standard nomenclature and terminology for services being proposed by the applicant, including associated characters.

Implementation Guidance 14.7: The Working Group suggests a number of feature enhancements to support an improved user experience. Specifically, the Working Group suggests the following capabilities for applicant-facing systems:
- Provide applicants with automated confirmation emails when information or documentation is submitted. Where applicable, applicants should also receive confirmation of payments.
- Provide applicants with automated invoices for application-related fees.
- Allow applicants to view historical changes that have been made to the application by any system user, including ICANN org, both during the application and evaluation phases.
- Allow applicants to upload application documents into the application system for additional questions where this was not possible in the 2012 round.
- Allow applicants to auto-fill information/documentation in multiple fields across applications. This functionality should only be enabled in a limited number of fields where it would be appropriate for responses to be identical. It should not be possible to auto-fill responses to questions corresponding to the following questions in the 2012 Applicant Guidebook: 16,[86] 18(a),[87] 18(b),[88] 19,[89] 20,[90] 21,[91] 22,[92] and 23[93] (for question 23, autofill should not be allowed only if services are specified that are not pre-approved). It should not be possible to auto-fill Registry Voluntary Commitments (formerly called voluntary PICs).
- Allow applicants to specify additional contacts to receive communication about the application and/or access the application and specify different levels of access for these additional points of contact.

Recommendation 14.8: The principles of predictability and transparency must be observed in the deployment and operation of applicant-facing systems.

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[86] This question asks the applicant for a description of applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string.
[87] This question asks the applicant to describe the mission/purpose of the proposed gTLD.
[88] This question asks the applicant how the proposed gTLD will benefit registrants, Internet users, and others.
[89] This question asks the applicant if the application is for a community-based TLD.
[90] This question asks community-based applicants for additional information about the community that the applicant is committing to serve.
[91] This question asks the applicant if the application is for a geographic name, and if so, requests supporting documentation, where applicable.
[92] This question asks the applicant to describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD.
[93] This question asks the applicant to provide the name and full description of all the Registry Services to be provided.

Implementation Guidance 14.9: To ensure predictability and minimize obstacles and legal burdens for applicants, any Agreements or Terms of Use associated with systems access (including those required to be "clicked-through") should be finalized in advance of the Applicant Guidebook's publication and published with the Applicant Guidebook.[94]

Implementation Guidance 14.10: In service of transparency, once the systems are in use, ICANN should communicate any system changes that may impact applicants or the application process. Processes described under Topic 2: Predictability should be followed.

Recommendation 14.11: With respect to its operation and administration of the systems, ICANN must retain the ability to act in emergency situations, including those where immediate action is necessary to remedy any service interruption, interference, service obstruction or other imminent threat to the systems, provided that ICANN gives notice to all impacted users of the affected system(s) as soon as reasonably practicable after such action has been taken. If such action involves any downtime to the system(s), ICANN shall provide updates to impacted users as to the root cause of the downtime, the impact of the downtime event on impacters users of the system(s), and when normal service can be restored.

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

Rationale for Affirmation 14.1, Recommendations 14.2 and 14.8, and Implementation Guidance 14.3-14.7, 14.9, 14.10, and 14.11: The Working Group believes that applicant-facing systems should facilitate the application process in an effective manner consistent with industry best practices. Recommendations and implementation guidance aimed at improving usability and user experience seek to minimize unnecessary logistical barriers to completing the application process. The Working Group further emphasizes security and stability to ensure that trust with potential applicants is maintained and users have a high-level of confidence that data is being handled safely and appropriately. In developing recommendations regarding security and stability, the Working Group carefully reviewed and considered security incidents related to systems in the 2012 round that are detailed in the Program Implementation Review Report. Recommendations and implementation guidance regarding predictability and transparency reflect broader goals for the New gTLD Program that are discussed throughout this Report.

The Working Group understands that some of the system enhancements included in the implementation guidance under this topic would result in added complexity, cost, and time to implement systems. The Working Group recognizes that ICANN org will need to balance different priorities in the implementation of applicant-facing systems and

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[94] This implementation guidance refers to all Agreements and Terms of Use other than the Registry Agreement and Applicant Terms of Use.

consider this guidance in the broader context of different objectives and constraints. Nonetheless, the Working Group sees value in detailing specific changes that it believes would improve the applicant experience and make systems easier to use.

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

In preliminary recommendations, the Working Group considered providing guidance on disclosure requirements regarding data breaches in applicant-facing systems. In its public comment on the Initial Report, ICANN org clarified that the Cybersecurity Transparency Guidelines and Coordinated Vulnerability Disclosure Reporting at ICANN[95] governs how ICANN org discloses major security vulnerabilities and resulting incidents that cause significant risk to the security of ICANN's systems, or to the rights and interests of data subjects, or otherwise require disclosure under applicable legal requirements. Given that these guidelines cover the data breach scenarios discussed in the Working Group, the Working Group emphasizes the importance of timely disclosure of data breaches to potentially affected parties but does not feel that any additional specific guidance is needed at this time.

In reviewing public comments on the Initial Report, the Working Group reviewed the preliminary recommendation to allow applicants to reproduce, or "auto-fill", responses from one application into another application. Concerns were raised by some Working Group members that each application should be unique, so that the community can effectively review and comment on pending applications. From this perspective, by enabling auto-fill, systems would undermine the distinct and individualized nature of applications. Auto-fill would also incentivize and make it easier for applicants not to provide clear, distinctive and individualized responses for each gTLD. Others disagreed with those concerns noting that applicants will still manually copy and paste the information without the auto-fill capabilities and therefore it would not be making applications more distinct, but rather just making it more difficult for applicants to complete their applications. In addition, they challenged whether having unique applications is a goal of the program. As a compromise, the Working Group nevertheless agreed that auto-fill could be allowed in a limited number of fields without jeopardizing the unique nature of applications.

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

- Any changes to applicant facing systems once they are in use should follow processes described under Topic 2: Predictability.
- Implementation guidance regarding customer support under Topic 13: Communications also applies to customer support related to the use of applicant-facing systems.

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[95] https://www.icann.org/cybersecurityincidentlog

- Agreements or Terms of Use associated with systems access should be published with the Applicant Guidebook. The Applicant Guidebook is discussed under Topic 12: Applicant Guidebook.
- Additional recommendations regarding systems that support application comment are included under Topic 28: Role of Application Comment.

2.5 Deliberations and Recommendations: Application Submission

Topic 15: Application Fees

a. Recommendations and/or implementation guidelines

Affirmation 15.1: Subject to Implementation Guidance 15.2 below, the Working Group affirms that as was the case in the 2012 round, all applications in subsequent procedures should pay the same base application fee regardless of the type of application or the number of applications that the same applicant submits. This would not preclude the possibility of additional fees in certain circumstances, as was the case in the 2012 round of the program (e.g., Community Priority Evaluation, Registry Service Evaluation Process, etc.). The Working Group notes that as was the case in the 2012 round, successful candidates for the Applicant Support Program will be eligible for a reduced application fee.

> Implementation Guidance 15.2: Fees for the technical and operational evaluation for the core registry services should be charged to an applicant if they are using a registry service provider that is not pre-evaluated ("Technical Evaluation Fee"). The Technical Evaluation Fee should be the same regardless of whether the evaluation occurs as part of the pre-evaluation process or as part of the application process. For example, if the Technical Evaluation Fee portion of the overall application fee is $US25,000, that portion of the application fee should only be charged to those applicants that do not select a pre-evaluated registry service provider.

Affirmation with Modification 15.3: With the addition of the italicized text, the Working Group affirms Implementation Guideline B from 2007: "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*." The Working Group believes, however, that for subsequent procedures the only historical costs that should be part of the cost structure in determining application fees are those actual costs directly related to the implementation of the New gTLD Program.

Affirmation with Modification 15.4: The Working Group affirms the principle of cost recovery reflected in the 2012 Applicant Guidebook: "The gTLD evaluation fee is set to

recover costs associated with the new gTLD program. The fee is set to ensure that the program is fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions."

For the next application round and each subsequent round, an assessment must take place prior to each round to estimate the application fee that would be necessary to achieve cost recovery. In the event that the estimated application fee, based on the revenue neutral principle, falls below a predetermined threshold amount (i.e., the application fee floor), the actual application fee should be set at that higher application fee floor instead. The development of the application fee must be fully transparent with all cost assumptions explained and documented.

In managing funds for the New gTLD Program, ICANN must have a plan in place for managing any excess fees collected or budget shortfalls experienced. The plan for the management and disbursement of excess fees, if applicable, must be communicated in advance of accepting applications and collecting fees for subsequent procedures. The implementation guidance below describes in more detail how this should be accomplished.

> Implementation Guidance 15.5: Although ICANN must operate the new gTLD Program on a cost recovery basis (subject to any floors as set forth in this report) ICANN org may set aside a certain small percentage of excess fees (to the extent there are excess fees) to apply towards covering the costs of maintaining the capability to assemble future subsequent rounds of new gTLDs with minimum delay and to ensure that the new gTLD Program is able to continue into the future. Examples of such costs include retaining staff with program expertise and maintaining requisite systems. Any excess fees set aside by ICANN for this purpose should be explicitly recorded and justified.

> Implementation Guidance 15.6: If excess fees are collected in subsequent procedures and the cost recovery model is followed (i.e., the application fee floor is not implemented) any excess fees should be returned to applicants where possible in the form of a refund or a credit towards future fees, where applicable. ICANN may establish a schedule for the disbursement of refunds upon the achievement of specified milestones. For illustrative purposes only, such a schedule could establish that once 50% of the applications have been fully processed (eg., delegated, withdrawn, or not approved), ICANN would issue a payment of 25% of the excess fees back to the applicants. The disbursement mechanism must be communicated before applicants submit applications and fees to ICANN. If ICANN is unable to locate the applicant for the return of excess fees, the amount of the excess for that applicant should be used for the purposes described in Recommendation 15.7. Further, to the extent that excess fees per applicant are lower than a predetermined amount, for example $US1,000, the funds should not be refunded to the applicant, but rather should be used for the purposes described in Recommendation 15.7. ICANN org should further explore

the issues related to the management of excess fees with the Implementation Review Team and ensure that the resulting implementation is clearly documented in the Applicant Guidebook.

Recommendation 15.7: In the event that an application fee floor is used to determine the application fee, excess fees received by ICANN must be used to benefit the New gTLD Program and not any other ICANN program or purpose; that includes one or more of the following elements of the New gTLD Program:

(a) a global communication and awareness campaign about the introduction and availability of new gTLDs;
(b) long-term program needs such as system upgrades, fixed assets, etc.;
(c) Applicant Support Program;
(d) top-up of any shortfall in the segregated fund as described below; or
(e) other purpose(s) that benefits the New gTLD Program.

Implementation Guidance 15.8: To help alleviate the potential burden of an overall budget shortfall, a separate segregated fund should be set up that can be used to absorb any shortfalls and topped-up in a later round. The amount of the contingency should be a predetermined value that is reviewed periodically to ensure its adequacy.

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

Rationale for Affirmation 15.1 and Implementation Guidance 15.2: The Working Group considered different perspectives on whether a single base fee should apply to all applications (with the exception of successful applications for Applicant Support), or whether different fees may be appropriate for certain application types or applicants, for example IDNs, applications for IDN strings in multiple scripts, .Brands, all community applications, only community applications with non-profit intentions, or in the case of applicants who apply for multiple strings.

In addition to considering proposals from Working Group members and input received through public comment, the Working Group reviewed GAC Consensus Advice in the Nairobi Communiqué (2010) which stated the following with respect to fees in the 2012 round: "instead of the currently proposed single-fee requirement, a cost-based structure of fees appropriate to each category of TLD would a) prevent cross subsidisation and b) better reflect the project scale, logistical requirements and financial position of local community and developing country stakeholders who should not be disenfranchised from the new TLD round."

With respect to this Advice, the Working Group noted that the fee structure included a single base fee, but also included additional fees for certain circumstances where additional costs were incurred, therefore avoiding excessive cross-subsidization. At the same time, given the numerous factors that could apply to each application that could impact the cost of processing, the Working Group agreed that it is not possible to

categorize applications in a way that would have a corresponding simple fee structure based on cost of processing. Further, the Working Group considered that the Applicant Support Program was established to assist applicants that might otherwise be excluded from the program due to the cost of the application fee. The Working Group has provided recommendations to enhance the Applicant Support Program so that it better serves this goal in subsequent procedures. Ultimately, the Working Group did not come to any agreement to recommend charging different fees for different types of applications and further, did not agree on a feasible path for implementing such an approach; as discussed during deliberations for Topic 4: TLD Types, the Working Group is cognizant of the unintentional impacts and potentially inappropriate incentives created by the establishment of different application tracks. Therefore, the Working Group recommends maintaining the single base fee charged in the 2012 application round.

The Working Group has provided implementation guidance on the Technical Evaluation Fee, taking into account that technical and operational evaluation for the core registry may occur as part of the pre-evaluation process or as part of the application process.

Rationale for Affirmations with Modification 15.3 and 15.4 and Implementation Guidance 15.5 and 15.6: The Working Group supports the overall approach to funding outlined prior to the 2012 application round, namely, that the New gTLD Program should be self sustaining without the need for funding from other sources and that the program should operate on a cost recovery basis with the goal of being revenue neutral. The Working Group believes that in developing a cost structure to determine application fees, the only historical costs that should be factored in are actual costs directly related to the implementation of the New gTLD Program.

The Working Group notes that there may be certain one-time costs, such as those associated with the development of technical systems, incurred prior to the first subsequent round that will also support the operation of additional future rounds. ICANN org may want to consider how these costs should be applied in calculating cost recovery and whether the costs should be spread over multiple rounds in the cost recovery calculation.

The Working Group believes that it is appropriate to establish an application fee floor, or minimum application fee that would apply regardless of projected program costs that would need to be recovered through application fees collected. The purpose of an application fee floor is to deter speculation and potential warehousing of TLDs, as well as mitigate against the use of TLDs for abusive or malicious purposes. The Working Group's support for a fee floor is also based on the recognition that the operation of a domain name registry is akin to the operation of a critical part of the Internet infrastructure.

The Working Group envisions the fee floor concept to be implemented as follows. ICANN org conducts an analysis to determine an appropriate fee floor, X, based on the principles described above. ICANN org also conducts an analysis prior to each application round to calculate an appropriate application fee based on the principle of

cost recovery, Y. If Y is higher than X, ICANN uses fee Y, the fee based on the cost recovery calculation. If Y falls below X, the fee floor applies. As an example, and purely as an example, a fee floor (X) of $150,000 will be used to illustrate the concept. If the fee floor (X) is $150,000 and the fee based on cost recovery (Y) is estimated at $200,000, the fee based on cost recovery applies ($200,000). Alternately, if the fee based on cost recovery (Y) is estimated at $100,000, the fee floor applies ($150,000).

The Working Group emphasizes that ICANN should be fully transparent about how the application fee has been developed, explaining and documenting all cost assumptions.

The Working Group agreed that while cost recovery is the objective of budget planning for the New gTLD Program, it can be difficult to project costs precisely due to numerous variables that are hard to predict, especially the number of applications that will be received in a given application window. Therefore the Working Group agreed that it is important for ICANN to have a clear plan to address any budget surpluses or shortfalls that might take place. The Working Group agreed that in principle, as the fee is set to fund program costs, any fee charged that is in excess of what is needed should be returned, at least in part, to applicants either in the form of a refund or a credit towards future fees, where applicable. A small percentage of excess fees may also be used for costs associated costs of maintaining the capability to assemble future subsequent rounds.

The Working Group notes that if ICANN is unable to locate the applicant for the return of excess fees, the amount of the excess for that applicant should be used for the purposes described in Recommendation 15.7. Further, to the extent that excess fees per applicant are lower than a predetermined amount, the Working Group believes that the funds should be used for the purposes described in Recommendation 15.7, because the administrative expense associated with refunding or crediting a very small amount may end up exceeding the amount returned. The Working Group used the amount of $1,000 as an example in the Implementation Guidance 15.6, but believes that the actual threshold amount should be determined in implementation.

Rationale for Recommendation 15.7 and Implementation Guidance 15.8: The Working Group agreed that if the use of an application fee floor (see explanation above) results in additional surplus, these funds must be placed in a segregated fund that is only used for the benefit of the New gTLD Program. In this regard, just as the New gTLD Program must not use funds from other sources, fees collected through the New gTLD Program should not be used to fund other programs or initiatives. The Working Group lists appropriate uses of excess fees collected that benefit the New gTLD Program. Finally, the Working Group agreed that it is important for ICANN to have a contingency fund to support the program if fees are insufficient to support program activities in the short term. The Working Group notes that the fund could later be replenished through additional application fees collected in subsequent rounds.

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

The Working Group considered ICANN org's request for guidance on what the fee floor amount should be, or criteria by which it is established, as well as any thoughts on ongoing reviews of that fee floor amount. While the Working Group did not come to an agreement on a specific amount or set of criteria, it noted that some of the public comments received on the Initial Report suggested further study in the implementation phase of what level of fee floor would effectively deter the behaviors that a fee floor seeks to prevent.

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

- This topic addresses the Technical Evaluation Fee, including that associated with the RSP pre-evaluation program. The RSP pre-evaluation program is further discussed under Topic 6.
- This topic mentions fee reduction associated with the Applicant Support Program. The Applicant Support Program is further discussed under Topic 17.
- Recommendation 15.7 states that in the event that an application fee floor is used to determine the application fee, excess fees received by ICANN must be used to benefit the New gTLD Program, including elements such as Applicant Support (see Topic 17) and a global communication and awareness campaign about the introduction and availability of new gTLDs (see also Topic 13: Communications).
- Program elements discussed throughout this report will impact the cost of operating the New gTLD Program and therefore the calculations associated with the cost recovery model.

Topic 16: Applications Submission Period

a. Recommendations and/or implementation guidelines

Recommendation 16.1: The Working Group recommends that for the next application window and subsequent application windows, absent "extenuating or extraordinary" circumstances, the application submission period must be a minimum of 12 and a maximum of 15 weeks in length.

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

Rationale for Recommendation 16.1: The Working Group believes that the application submission period should be long enough to provide a fair opportunity for all prospective applicants to submit an application, including newcomers to the program, those submitting community-based applications, and those applying for Applicant Support. The Working Group further notes that there is a link between the effectiveness of outreach and communications efforts prior to the application window and requirements for the length of the window itself. Namely, if ICANN's communications and outreach efforts are effective prior to the point at which the window opens, prospective applicants will be prepared to apply and will therefore need less time to actually submit the application.

Similarly, if processes and systems are predictable and accessible and customer support is readily available, less time may be required to apply. The Working Group anticipates that its recommendations regarding Topic 2: Predictability, Topic 13: Communications, Topic 14: Systems, and Topic 17: Applicant Support will assist in improving the applicant experience, but notes that further consideration of these program elements may need to be given before the length of the application submission period is finalized in the implementation phase.

In the 2012 round, there was a three (3) month application submission period specified in the Applicant Guidebook, meaning a three month window between the time that TLD applicants were able to enter the application system to the end of the time period in which applications would be accepted. While members of the Working Group had different opinions on the exact period of time that the window should be open, the Working Group ultimately agreed to recommend an application submission period of no less than 12 and no more than 15 weeks in length in order to be fair to all prospective applicants and to ensure predictability.

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

None.

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

- The length of the application submission period is closely related to the broader issue of how application windows are structured, a topic that is discussed under Topic 3: Applications Assessed in Rounds.
- In implementation, a number of program elements will need to be considered in tandem to ensure that there is sufficient time and appropriate resources available for prospective applicants to learn about the New gTLD Program, prepare, and then apply. Therefore, the application submission period should be considered in conjunction with topics such as Communications (Topic 13), Systems (Topic 14), Applicant Support (Topic 17), and Applicant Guidebook (Topic 12).

Topic 17: Applicant Support

a. Recommendations and/or implementation guidelines

Implementation Guideline B from the 2007 policy is affirmed with modification under Topic 15: Application Fees. Implementation Guideline B is also relevant to this topic.

Recommendation 17.1: 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 must be available for select applicants who meet evaluation

criteria through the Applicant Support Program. The Working Group further recommends new types of financial support for subsequent procedures that were not part of the Program in 2012, specifically, coverage of additional application fees (see Recommendation 17.2) and a bid credit, multiplier, or other similar mechanism that applies to a bid submitted by an applicant qualified for Applicant Support who participates in an ICANN Auction of Last Resort (see Recommendation 17.15 and Implementation Guidance 17.16 and 17.17). In addition, the Working Group recommends that ICANN facilitate non-financial assistance including the provision of pro-bono assistance to applicants in need. Further, ICANN must conduct outreach and awareness-raising activities during the Communications Period to both potential applicants and prospective pro-bono service providers.[96] The Working Group 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 for eligible applicants and facilitate the provision of pro-bono non-financial assistance to applicants in need." The revised language updates the original Implementation Guideline to:

- acknowledge that the Applicant Support Program was in place in the 2012 round
- include reference to pro-bono non-financial assistance in addition to fee reduction
- eliminate the reference to economies classified by the UN as least developed, as the Program is not limited to these applicants.

Recommendation 17.2: 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 and attorney fees related to the application process.

Recommendation 17.3: The Working Group recommends that ICANN improve outreach, awareness-raising, application evaluation, and program evaluation elements of the Applicant Support Program, as well as usability of the Program, as proposed in the implementation guidance below.

> Implementation Guidance 17.4: Outreach and awareness-raising activities should be delivered well in advance of the application window opening, as longer lead times help to promote more widespread knowledge about the program. Such outreach and education should commence no later than the start of the Communications Period.[97]

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[96] In the 2012 round, the pro-bono assistance program was implemented through the Applicant Support Directory: https://newgtlds.icann.org/en/applicants/candidate-support/non-financial-support
[97] For additional recommendations regarding the Communications Period, please see Topic 13: Communications.

Implementation Guidance 17.5: A dedicated Implementation Review Team should be established and charged with developing implementation elements of the Applicant Support Program. In conducting its work, the Implementation Review Team should revisit the 2011 Final Report of the Joint Applicant Support Working Group[98] as well as the 2012 implementation of the Applicant Support program.

Implementation Guidance 17.6: Outreach efforts should not only target the Global South, but also those located in struggling regions that are further along in their development compared to underserved or underdeveloped regions. In addition, the evaluation criteria for Applicant Support must treat those applicants similar to those currently set forth in Criteria #1, Section 4 (Operation in a developing economy) of the Financial Assistance Handbook.[99]

Implementation Guidance 17.7: The Working Group supports Recommendation 6.1.b in the Program Implementation Review Report, which states: "6.1.b: Consider researching globally recognized procedures that could be adapted for the implementation of the Applicant Support Program."[100]

Implementation Guidance 17.8: 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, business case development, and application evaluation. Regional experts may be particularly helpful in providing insight on the development of business plans from different parts of the world.

Implementation Guidance 17.9: The dedicated Implementation Review Team[101] 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

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[98] http://dakar42.icann.org/meetings/dakar2011/presentation-jas-final-report-13sep11-en.pdf
[99]See https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf , pg 12.
[100] 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."
[101] 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.

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
  - number of enquiries about the program/level of interest expressed/number that considered applying
  - number of applicants
    - first-time applicants versus repeat applicants
    - applicants submitting a single application versus portfolio applicants
    - applications based on pre-existing trademarks
  - diversity and distribution of the applicant pool: geographic diversity, languages, scripts
- Other Elements of Program Implementation:
  - number of ICANN staff members and contractors supporting the Applicant Support Program
  - number of service providers offering pro-bono assistance and value of assistance offered/provided
  - number of applicants accessing/using pro-bono assistance
  - number of approved applicants for financial assistance
  - number of applicants who received bid credits, multiplier, other and were successful in auction
  - the value of the bid credits, multiplier, other
  - number of applicants who withdrew from auction
  - number of applicants who entered in to a business combination or other forms of joint ventures
  - length of time before any change of ownership occurred
- 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.
  - 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.

Implementation Guidance 17.10: The dedicated Implementation Review Team should consider how to allocate financial support in the case that available

funding cannot provide fee reductions to all applicants that meet the scoring requirement threshold.

Recommendation 17.11: 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."[102]

Recommendation 17.12: ICANN org must develop a plan for funding the Applicant Support Program, as detailed in the Implementation Guidelines below.

> Implementation Guideline 17.13: 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.[103] The amount of funding available to applicants should be determined and communicated before the commencement of the application round.

> Implementation Guideline 17.14: ICANN org should seek funding partners to help financially support the Applicant Support Program, as appropriate.

Recommendation 17.15: If an applicant qualifies for Applicant Support and is part of a contention set that is resolved through an ICANN Auction of Last Resort, a bid credit, multiplier, or other similar mechanism must apply to the bid submitted by that applicant.

> Implementation Guidance 17.16: Research should be conducted in the implementation phase to determine the exact nature and amount of the bid credit, multiplier, or other mechanism described in Recommendation 17.15. Research should also be completed to determine a maximum value associated with the bid credit, multiplier, or other mechanism.

> Implementation Guidance 17.17: If the applicant getting Applicant Support prevails in an auction, there should be restrictions placed on the applicant from assigning the Registry Agreement, and/or from any Change of Control for a period of no less than three (3) years. This restriction seeks to prevent gaming of the Applicant Support Program whereby an applicant transfers its ownership of a registry to a third party in exchange for any form of financial gain. However, assignments that become necessary for the following reasons shall be permitted:

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[102] 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."

[103] See Topic 15: Application Fees for implementation guidance regarding use of excess application fees resulting from establishment of a fee floor to fund the Applicant Support Program and other New gTLD Program elements.

- Assignments due to the TLD being unable to meet its financial obligations and unable to secure financing or restructure operations to carry out operations in the short-term
- Assignments due to death or retirement of a majority shareholder
- Assignments due to EBERO
- Assignments to affiliates or subsidiaries
- Assignments required by competition authorities

All assignments after such time shall be governed under the then-current Registry Agreement standard provisions; provided that any Assignment or Change of Control after the third (3rd) year, but prior to the seventh (7th) year, shall require the applicant to repay the full amount of financial support received through the ASP Program, including application fees and any bid credit, multiplier, or related benefits, plus an additional ten percent (10%).

Recommendation 17.18: Unless the Support Applicant Review Panel (SARP) reasonably believes there was willful gaming, applicants who are not awarded Applicant Support (whether "Qualified" or "Disqualified[104]") must have the option to pay the balance of the full standard application fee and transfer to the standard application process. Applicants must be given 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 to the other elements of the New gTLD Program or to any other applicants for a string in which its application may be in a contention set.

Recommendation 17.19: The Financial Assistance Handbook[105] 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

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 and implementation guidance to support improving the program in subsequent procedures.

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[104] See https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf.
[105] 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

Rationale for Recommendation 17.1: The Working Group believes that 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,"[106] as was the case in the 2012 round and also recommends additional elements to include as part of financial assistance that were not part of the Program in 2012. The Working Group further supports ICANN's facilitation of non-financial pro-bono assistance to applicants in need. The Working Group emphasizes that ICANN must conduct outreach and awareness-raising activities during the Communications Period to both potential applicants and prospective pro-bono service providers to ensure the success of this initiative. The Working Group 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.[107] 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 a recommendation from the New gTLD Subsequent Procedures PDP Working Group that the pro bono assistance program continue. Recommendation 17.1 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 17.2: 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.

Rationale for Recommendation 17.3 and Implementation Guidance 17.4-17.10: The Working Group believes that there are opportunities for improvement in the outreach, awareness-raising, application evaluation, and program evaluation elements of the Applicant Support Program, as well as usability of the 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

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

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.[108]

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.[109] 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 agrees that outreach and awareness-raising activities are critical to the success of the program, and notes in particular that it is important to create awareness about different possible business models for operating a TLD.

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 Working Group may want to work on a definition of the Global South. Recommendation 17.3 and associated implementation guidance 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.

The Working Group believes that an important potential target of the Applicant Support Program are those located in struggling regions that are further along in their development compared to underserved or underdeveloped regions, 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.

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[108] 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
[109] https://atlarge.icann.org/advice_statements/8071

Therefore, the Working Group recommends that outreach efforts and application criteria target prospective applicants from these areas, noting that further work may be needed in the implementation phase to define the target population.

The Working Group agrees with the Program Implementation Review Report 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. The Working Group notes that ICANN org is currently undertaking work to define and standardize usage of terminology related to underserved and underrepresented regions in ICANN org's work, with a focus on consistently using terminology across programs. The Working Group expects that the Implementation Review Team will continue to follow this work as it develops and draws on any applicable takeaways, as appropriate, in the implementation of the Applicant Support Program.

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 may lack sufficient infrastructure to support a gTLD, or there may be other factors that prevent their pursuit of a gTLD.

This non-exhaustive list provided in Implementation Guidance 17.9 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.

The Working Group considered that in subsequent rounds it may be the case that there are not sufficient funds available to provide fee reductions to all applicants that meet threshold scoring requirements. The Working Group reviewed the 2012 approach[110] to

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[110] See page 17 of the 2012 Financial Assistance Handbook, available at:
https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf

this issue as well as public comments received on the Working Group's Initial Report,[111] but did not come to an agreement on any specific recommendations in this regard. The Working Group believes that this topic should be considered further by the dedicated Implementation Review Team.

Rationale for Recommendation 17.11: 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 Program Implementation Review Report, possible areas of improvement include publication of processes, format of the final report, and documentation of rationale for decisions.

Rationale for Recommendation 17.12 and Implementation Guidance 17.13 and 17.14: 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 17.15 and Implementation Guidance 17.16 and 17.17: By definition, applicants qualified to receive Applicant Support have demonstrated that they have limited financial resources available to apply for a TLD. Applicants with limited financial resources are expected to be disadvantaged when participating in auctions of last resort. The Working Group agreed that applicants qualified for Applicant Support should receive some form of special treatment in contention sets with standard applicants.

The Working Group considered a proposal from the ALAC submitted through public comment on the Initial Report that an applicant qualified to receive Applicant Support should be given priority in any string contention set, and not be subjected to any further string contention resolution process. There was insufficient support within the Working Group to move forward with this proposal. The Working Group reached agreement that rather than giving absolute priority to Applicant Support recipients, it is more appropriate to increase the chances of applicants qualified to receive Applicant Support winning at auction. The Working Group therefore recommends applying a bid credit, multiplier, or other similar mechanism for bids submitted by such applicants to increase their chances of success at auction. The Working Group suggests that in the implementation phase, appropriate expertise and research should be leveraged to determine the exact nature and amount of the bid credit, multiplier, or other similar mechanism as well as the maximum value associated with the bid credit, multiplier, or other mechanism. To reduce the risk of gaming, the Working Group suggests additional restrictions on assigning the Registry

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[111] Question 2.5.4.e.3 in the Initial Report asked for community input on the following: "If there are more applicants than funds, what evaluation criteria should be used to determine how to disperse the funds: by region, number of points earned in the evaluation process, type of application, communities represented, other?" The Initial Report is available at: https://gnso.icann.org/en/issues/new-gtlds/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf

Agreement and/or Change of Control for those registry operators that have benefited from a bid credit, multiplier, or similar mechanism.

Rationale for Recommendation 17.18: 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's recommendation extends this option to any Applicant Support candidates who are not awarded Applicant Support, whether "Qualified" or "Disqualified[112]". 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 included in the recommendation that if the SARP reasonably believes there was willful gaming, application transfer should not be permitted. The Working Group discussed additional potential measures to reduce the risk of gaming, for example a quick look mechanism like that discussed under Topic 31: Objections. The Working Group suggests that further consideration may be given to gaming prevention measures in the implementation phase.

Rationale for Recommendation 17.19: The Working Group believes that in support 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

The Working Group considered whether the Applicant Support Program should include the reduction or elimination of ongoing registry fees specified in Article 6 of the Registry Agreement for eligible candidates. The Working Group's Initial Report included a preliminary recommendation that the Applicant Support Program should include

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[112] See https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf.

coverage of such fees.[113] The Working Group has removed this element in the above recommendations, noting that different perspectives were expressed on the topic in public comment on the Initial Report and in Working Group discussions.

Those that oppose coverage of registry fees note that financial support provided directly by ICANN in the 2012 round was limited to costs associated with the application process. In this view, the Applicant Support Program was never intended to subsidize registries, and further, this is not ICANN's responsibility. From this perspective, there are security and stability concerns associated with registries that are not financially self-sustaining.

Those that support coverage of registry fees have expressed that ICANN should have an interest in the success of registries beyond the application process. From this perspective, a registry may be stable but may still require financial assistance to be successful. As an example, a registry with limited revenue could be supported through pro bono services from an EBERO registry service provider. The registry may be stable but still rely on coverage of registry fees to remain financially viable.

As a compromise, a proposal was put forward that ICANN should cover registry fees for a limited period of time. The Working Group did not come to any agreement on this proposal.

The Working Group noted that the recommendation to allow unsuccessful Applicant Support candidates to transfer to a standard application raises new questions about the 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. The Working Group did not come to a conclusion on this proposal.

The GAC's ICANN67 Communiqué[114] included a summary of GAC discussions on the Working Group's draft recommendations regarding Applicant Support. The Working Group reviewed the Communiqué. On 4 May 2020, the GAC provided consolidated input from individual GAC members on the topics discussed at ICANN67, including Applicant

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[113] Preliminary Recommendation 2.5.4.c.7 in the Initial Report states: "Additionally, financial support should go beyond the application fee, such as including application writing fees, related attorney fees, and ICANN registry-level fees." See https://gnso.icann.org/en/issues/new-gtlds/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf

[114] https://gac.icann.org/contentMigrated/icann67-gac-communique

Support.[115] In this informal input, most comments expressed support for the draft recommendations on this topic. Several GAC members also provided specific suggestions regarding recommendations on this topic, for example several comments encouraged providing greater detail in the definition of target populations.[116]

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

- The Working Group discusses under this topic ICANN org's work to define and standardize usage of terminology related to underserved and underrepresented regions in ICANN org's work, which may inform work conducted by the IRT.
- This topic addresses outreach and awareness-raising activities specifically related to the Applicant Support Program. Outreach and awareness-raising activities about the New gTLD Program more broadly are discussed under Topic 13: Communications.
- This topic discusses the provision of a bid credit, multiplier or other similar mechanism for bids submitted by applicants eligible to receive Applicant Support who participate in auctions of last resort to resolve contention. Further discussion of auctions of last resort is included under Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets.

Topic 18: Terms & Conditions

a. Recommendations and/or implementation guidelines

Recommendation 18.1: Unless required by specific laws, ICANN Board members' fiduciary duties, or the ICANN Bylaws, ICANN must only reject an application if done so in accordance with the provisions of the Applicant Guidebook. In the event an application is rejected, ICANN org must cite with specificity the reason in accordance with the Applicant Guidebook, or if applicable, the specific law and/or ICANN Bylaws for not allowing an application to proceed. This recommendation constitutes a revision to Section 3 of the Terms and Conditions from the 2012 round.

> Implementation Guidance 18.2: ICANN should not publish the specific reason for the rejection of an application where that reason is based on confidential information submitted by the applicant (but may post a generalized categorical reasoning for the rejection). This implementation guidance does not prevent the applicant from disclosing information about its own application. For example, if an applicant's application is denied because of insufficient financial resources, ICANN may publish that the applicant's application has been rejected for not

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passing the financial evaluation, but should not publish the specific details except to the applicant itself.

Recommendation 18.3: In subsequent rounds, the Terms of Use must only contain a covenant not to sue if, and only if, the appeals/challenge mechanisms set forth under Topic 32 of this report are introduced into the program (in addition to the accountability mechanisms set forth in the current ICANN Bylaws). This recommendation is in reference to Section 6 of the Terms and Conditions from the 2012 round.

Recommendation 18.4: Applicants must be allowed some type of refund if they decide to withdraw an application because substantive changes are made to the Applicant Guidebook or program processes and such changes have, or are reasonably likely to have, a material impact on applicants.[117]

> Implementation Guidance 18.5: If the risk of name collisions will be determined after applications are submitted, ICANN should provide a full refund to applicants in cases where a new gTLD is applied for but later is not approved because of risk of name collision.

Recommendation 18.6: Access to confidential parts of the application should be appropriately limited, as detailed in the following implementation guidance.

> Implementation Guidance 18.7: Confidentiality provisions in the Terms and Conditions should limit access to confidential parts of the application to those individuals and entities that need to access that information, including those within ICANN org as well as any third parties conducting application evaluations or providing dispute or appeals services, if applicable.

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

The Working Group reviewed the Terms and Conditions from the 2012 round with a view towards ensuring that the Terms and Conditions provide for fairness to applicants, and also provide transparency and accountability in program processes and decisions.

Rationale for Recommendation 18.1 and Implementation Guidance 18.2: The Working Group agreed that it must be clear to the applicant why an application was rejected and that any rejection must be justified under provisions of the Applicant Guidebook unless required by specific laws, ICANN Board members' fiduciary duties, or the ICANN Bylaws. The purpose of this recommendation is to guard against arbitrary rejection of an application and ensure that there is transparency when rejections occur. To protect the privacy of applicants, the Working Group believes that ICANN should not publish the detailed reason for rejecting an application if that reason is based on confidential information submitted by the applicant.

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[117] This refund would differ from the normal refund schedule.

Rationale for Recommendation 18.3: Working Group members expressed different views about whether the covenant not to sue ICANN was appropriate and necessary in subsequent procedures, and therefore did not make a recommendation about whether the covenant should be retained. Working Group members agreed that if the covenant remains in place, it is important for applicants and other parties to have appropriate channels to address concerns that ICANN (or its designees/contractors) acted inconsistently (or failed to act consistently) with the Applicant Guidebook through a limited appeals mechanism, as recommended under Topic 32.

Rationale for Recommendation 18.4 and Implementation Guidance 18.5: In connection with recommendations under Topic 2: Predictability, the Working Group agreed that there should be a clear and consistent framework for handling changes in the New gTLD Program, including changes to the Applicant Guidebook. The Working Group recommends that an applicant must be eligible for some type of refund if they decide to withdraw an application because substantive changes are made to the Applicant Guidebook or program processes and such changes have, or are reasonably likely to have, a material impact on applicants. The Working Group expects that the Implementation Review Team will conduct further work regarding the details of this refund. The Working Group also provided implementation guidance regarding recourse for cases where an applicant applies for a string and that application is later disqualified because of risk of name collision.

Rationale for Recommendation 18.6 and Implementation Guidance 18.7: The Working Group believes that the Terms and Conditions should provide limitations on who may access confidential parts of the application, in order to ensure that such information remains confidential.

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

None.

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

- This topic recommends that the Terms of Use must only contain a covenant not to sue if a challenge/appeal mechanism is established. Recommendations regarding the establishment of a challenge/appeal mechanism are included under Topic 32.
- This topic recommends refunds in cases where changes to the program or Applicant Guidebook have a material impact on applicants. See Topic 2: Predictability for further discussion of measures to support predictability when such changes are needed.
- This topic provides implementation guidance regarding refunds in the case of applications not approved because of name collision risk. Further discussion of name collisions and the work of the Name Collision Analysis Project is included under Topic 29: Name Collisions.

- Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets affirms with modification Implementation Guideline F from 2007. The modification states that resolution of contention between applicants must be in accordance with Terms and Conditions.
- Topic 20: Application Change Requests includes a recommendation to allow application changes to support the settling of contention sets through business combinations or other forms of joint ventures. Existing language in the Terms and Conditions would likely need to be reconsidered in light of this recommendation.
- Topic 6: RSP Pre-Evaluation includes implementation guidance that it may be appropriate to require an RSP to agree to a more limited set of click-wrap terms and conditions when submitting their application for the pre-evaluation process.

2.6 Deliberations and Recommendations: Application Processing

Topic 19: Application Queuing

a. Recommendations and/or implementation guidelines

Affirmation 19.1: The Working Group supports the approach ultimately taken to application queuing during the 2012 round, in which ICANN conducted drawings to randomize the order of processing applications within an application window, and therefore affirms the use of a "prioritization draw" for subsequent procedures. The Working Group acknowledges that there may be possible adjustments or alternatives to the logistics of the prioritization draw used in the 2012 round that either would improve on existing processes or be necessitated under applicable law.[118] The Working Group supports such improvements and provides some examples in Implementation Guidance 19.2. The Working Group notes that in the 2012 round, the implementation of drawings included prioritization of IDN applications. This Affirmation does not address the prioritization of IDNs. Please see below for additional information on this issue. The Working Group acknowledges that continuing to use the randomized drawing approach is contingent upon local law and the ability of ICANN to obtain the necessary license to conduct such drawings, but advises that ICANN must not under any circumstances attempt to create a "skills-based" system like "digital archery" to determine the processing order of applications in subsequent procedures. This affirmation updates and replaces Implementation Guideline D from 2007 which recommended a first-come first served method of processing applications.[119]

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[118] One example may be exploring whether the prioritization draw must be in person as opposed to virtual.
[119] Implementation Guideline D from 2007 stated: "A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary. Applications will be time and date stamped on receipt."

Implementation Guidance 19.2: Procedures related to application queuing should be simplified and streamlined to the extent possible. For example, applicants could be provided the opportunity to pay the optional fee for participating in the drawing along with payment for the application. Another suggestion is to explore ways to assign a prioritization number during the application process without the need for a distinctly separate drawing event.

Recommendation 19.3: All applications must be processed on a rolling basis, based on assigned priority numbers. While the 2012 AGB prescribed batches of 500 applications, ICANN org noticed during that round that moving through the priority list without splitting the applications into batches was more efficient. The Working Group affirms that approach by not recommending batches. However, if the volume of Internationalized Domain Names (IDN) applications received equals or exceeds 125, applications will be assigned priority numbers consistent with the formula below.

The Working Group recommends that the following formula must be used with respect to giving priority to IDN applications:

- First 500 applications
  - If there are 125 applications or more for IDN strings that elect to participate in the prioritization draw, the first 25% of applications assigned priority numbers in the first group shall be those applications for IDN strings that elect to participate in the prioritization draw. The remaining 75% of applications in the group shall consist of both IDN and non-IDN applications that elect to participate in the prioritization draw.
  - If there are less than 125 applications for IDN strings that elect to participate in the prioritization draw, then all such applications shall be assigned priority numbers prior to any non-IDN application.
- Each subsequent group of those electing to participate in the prioritization draw
  - For each subsequent group, the first 10% of each group of applications must consist of IDN applications until there are no more IDN applications.
  - The remaining applications in each group shall be selected at random out of the pool of IDN and non-IDN applications that remain.
- Processing of applications which do not elect to participate in the prioritization draw
  - When all of the applications that have elected to participate in the prioritization draw have been assigned priority numbers, ICANN shall assign priority numbers to the remaining applications in groups of 500 applications.
  - The first 10% of each group of applications must consist of IDN applications until there are no more IDN applications.

○ The remaining applications in each group shall be selected at random out of the pool of IDN and non-IDN applications that remain.

Recommendation 19.4: Any processes put into place for application queuing should be clear, predictable, finalized and published in the Applicant Guidebook. The recommendation to establish processes in advance is consistent with Recommendation 1.2.a in the Program Implementation Review Report, which states: "Assign priority numbers to applications prior to commencement of application processing."

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

Rationale for Affirmation 19.1, Implementation Guidance 19.2, and Recommendations 19.3 and 19.4: The Working Group agreed that predictability is a key factor in developing recommendations related to application queuing in subsequent procedures. Reflecting on the challenges associated with digital archery[120] and the resulting need to establish an alternate method application queuing, the Working Group agreed on the importance of establishing an effective and reliable system that is ready to use when it is needed to establish priority order for applications. The Working Group felt that the drawing method ultimately adopted was fit for purpose, but also noted that the system should be simplified where possible to make the process simpler for applicants. The Working Group did not want to be prescriptive in putting forward changes to streamline the process, because the Working Group understands that ICANN org will need to conduct additional legal analysis on requirements and restrictions under local law before implementing any improvements. Therefore the Working Group has provided implementation guidance rather than recommendations in this regard.

The Working Group notes that in the 2012 round a decision was made by ICANN org to prioritize applications for IDN strings.[121] Although there was a 30-day public comment period[122], the decision to prioritize IDN strings was never subject to policy review. Taking into account comments received on this issue, both in support and against prioritizing IDNs, the Working Group put forward Recommendation 19.3, which seeks to create a compromise between the different viewpoints by ensuring that IDNs are in fact being prioritized, but not to the extent where all other applications would be significantly delayed.

The Working Group acknowledges that may not be the simplest solution, but it is one that the Working Group believes is necessary.

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[120] See Board Resolutions initiating digital archery (https://www.icann.org/resources/board-material/resolutions-2012-03-28-en) and terminating digital archery (https://features.icann.org/2012-06-27-digital-archery).
[121] See http://newgtlds.icann.org/en/applicants/batching/drawing-prioritization-10oct12-en.pdf and https://newgtlds.icann.org/en/applicants/prioritization-draw
[122] See https://forum.icann.org/lists/drawing-prioritization/

The following is an example to illustrate how Recommendation 19.3 would work in practice drawing on hypothetical numbers.

Assume ICANN receives 3,000 applications. There are 1,200 applications for IDN strings and 1,800 applications for non-IDN strings. 1,000 of the IDN strings and 1,000 of the non-IDN strings elect to participate in the prioritization draw. The remaining 200 IDN strings and 800 non-IDN strings have declined to participate in the prioritization draw. ICANN places the applications in 6 groups of 500 applications in the following manner:

- Group 1: 125 of the 1,000 IDN applications (selected during the prioritization draw) shall be assigned priority numbers first. The remaining 750 IDN applications shall be combined with the 1,000 non-IDN applications. Of those 1,750 applications, 375 of them shall be selected at random to be assigned priority numbers in the first batch.
- Group 2: Assume there are 700 IDN applications and 800 non-IDN applications remaining that have elected to participate in the prioritization draw. In the second group, the first 50 applications assigned priority numbers shall be for IDN strings selected at random. The remaining 450 applications assigned priority numbers in the second group shall be selected at random from the pool of both the 800 non-IDN applications and the remaining 650 IDN applications.
- Group 3: Assume that there are now 400 IDN applications and 600 non-IDN applications that have elected to participate in the prioritization draw. In the third group, the first 50 applications assigned priority numbers shall be for IDN strings selected at random. The remaining 450 applications assigned priority numbers in the third group shall be selected at random from the pool of both the 600 non-IDN applications and the remaining 400 IDN applications.
- Group 4: Assume there are now only 25 IDN applications and 475 non-IDN applications for the last group that has elected to participate in the prioritization draw. In this case only 5% of the last group is comprised of IDN applications. Therefore all of the remaining IDN applications will be assigned priority numbers in the last group prior to the remaining 475 non-IDN strings.
- Group 5: There are now 200 IDN strings and 800 non-IDN strings that have elected not to participate in the prioritization draw. The first 50 applications processed in Group 5 shall be IDN strings. The remaining 450 applications assigned priority numbers shall be selected at random from the pool of both the 800 non-IDN applications and the remaining 150 IDN applications.
- Group 6: Assume of the remaining 500 applications, 30 of them are for IDN strings and 470 of them are for non-IDN strings. In this case only 7.5% of the last group is comprised of IDN applications. Therefore all of the remaining IDN applications will be assigned priority numbers in the last group prior to the remaining 470 non-IDN strings.

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

The Working Group reviewed public comments on the Initial Report that considered whether certain types of applications or strings should receive priority in the order of processing. Some comments supported prioritizing applications for Applicant Support, community-based applications, or all applications in a contention set that contains one or more community-based application(s). In the case of community-based applications, it was raised that the processing time for these applications is longer than standard applications, and therefore it would make sense to begin processing them earlier.

Specifically on the topic of prioritizing entire contention sets including community-based applications, the Working Group considered a proposed recommendation put forward by one member: "All community applications in contention sets should be prioritized for Initial Evaluation if they provide advance commitment to enter the Community Priority Evaluation immediately up completing Initial Evaluation." The Working Group member noted that the processing time for these applications is longer than standard applications, and therefore it would make sense to begin processing them earlier. Further, in the 2012 round, Community Priority Evaluations (CPE) were held until the entire contention set was through Initial Evaluation. The member noted that CPE is the quickest way to resolve a contention set, and a positive CPE result could spare standard applicants in the contention set any expense for Initial Evaluation, therefore creating greater efficiency in the process and savings for members of the contention set.

The Working Group also noted comments that supported treating all applications equally in the drawing process. Given the diversity of views expressed by the community and in the Working Group, no recommendations have been put forward on the prioritization of additional types of strings or applications beyond IDNs.

The Initial Report included a preliminary recommendation that priority numbers should be transferable between applications in an applicant portfolio. The Working Group reviewed input received through public comment on the Initial Report that allowing such transfers could create a secondary market for drawing numbers. The Working Group considered that if numbers were only transferable between applications with the same owner, there may not be a risk of a secondary market forming. The Working Group did not come to a conclusion about whether to move forward with this potential recommendation and therefore it is not included in the Final Report.

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

- This topic provides recommendations regarding the prioritization of IDN applications. Additional recommendations regarding IDNs are included under Topic 25: IDNs.

Topic 20: Application Change Requests

a. Recommendations and/or implementation guidelines

Affirmation 20.1: The Working Group supports maintaining a high-level, criteria-based change request process, as was employed in the 2012 application round.

> Implementation Guidance 20.2: ICANN org should provide guidance on both changes that will likely be approved and changes that will likely not be approved.

> Implementation Guidance 20.3: ICANN org should identify in the Applicant Guidebook the types of changes that will require a re-evaluation of some or all of the application and which do not require any re-evaluation.

Recommendation 20.4: ICANN org must document the types of changes which are required to be posted for an operational comment period[123] and which are not required to be posted for an operational comment period. The following is a non-exhaustive list of changes that must require an operational comment period:
- The addition of Registry Voluntary Commitments in response to public comments, objections, whether formal or informal, GAC Consensus Advice, GAC Early Warnings, or other comments from the GAC
- Changes to Registry Voluntary Commitments in response to public comments, objections, whether formal or informal, GAC Consensus Advice, GAC Early Warnings, or other comments from the GAC
- Changes associated with the formation of joint ventures established to resolve string contention (see Recommendation 20.6 below)
- Changes to the applied-for string (see Recommendation 20.8 below)

In the 2012 round, an operational comment period was not required for certain types of application changes.[124] The Working Group believes that an operational comment period continues to be unnecessary for these types of changes in subsequent rounds.

> Implementation Guidance 20.5: Community members should have the option of being notified if an applicant submits an application change request that requires an operational comment period to be opened at the commencement of that operational comment period.

Recommendation 20.6: The Working Group recommends allowing application changes to support the settling of contention sets through business combinations or other forms of joint ventures. In the event of such a combination or joint venture, ICANN org may require that re-evaluation is needed to ensure that the new combined venture or entity still meets the requirements of the program. The applicant must be responsible for additional, material costs incurred by ICANN due to re-evaluation and the application could be subject to delays.

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[123] A 30-day comment period giving the public the opportunity to comment on any change to a public part of an application, including PICs.
[124] Please see https://newgtlds.icann.org/en/applicants/global-support/change-requests#change-requests-comment

Implementation Guidance 20.7: ICANN org should explore the possibility of allowing applicants to request that the evaluation of their own application is delayed by 60-90 days so that they can submit an applicant change request on the basis of business combination or other form of joint venture. This request would need to be made prior to Initial Evaluation of the application.

Recommendation 20.8: The Working Group recommends allowing .Brand TLDs to change the applied-for string as a result of a contention set where (a) the change adds descriptive word to the string, (b) the descriptive word is in the description of goods and services of the Trademark Registration, (c) such a change does not create a new contention set or expand an existing contention set, (d) the change triggers a new operational comment period and opportunity for objection and, (e) the new string complies with all New gTLD Program requirements. When the .Brand applicant changes the applied-for string, the new string will also be considered a .Brand. The Working Group recognizes that an exception or a modification to Specification 13 will be needed to implement this recommendation. The Working Group further recognizes that in order to implement this recommendation, applications seeking to change their applied-for string will need to be evaluated for eligibility as a .Brand before the string change request can be accepted. This may occur either by ICANN specifically evaluating those individual applications during Initial Evaluation or by evaluating all applicants that elect to be .Brands during Initial Evaluation.

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

Rationale for Affirmation 20.1 and Implementation Guidance 20.2 and 20.3: The Working Group agreed that it is important to have a framework for considering and responding to change requests that is clear, consistent, fair and predictable. The Working Group generally agreed that the criteria-based framework[125] developed to address change requests in the 2012 round met these objectives, and that a similar approach continues to be appropriate for subsequent procedures. The Working Group considered that it might be helpful to provide additional specific information to applicants about the way that different types of change requests will be handled in order to increase predictability and clarity. Specifically, the Working Group believes that ICANN org should provide additional guidance on the types of requests that will be accepted or rejected and the types of changes that will or will not require re-evaluation.

Rationale for Recommendation 20.4 and Implementation Guidance 20.5: The Working Group believes that it is important for the community to have an opportunity to review and provide input on certain types of proposed changes to an application. The Working Group's recommendations highlight specific types of changes which must be subject to an operational comment period.

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[125] https://newgtlds.icann.org/en/applicants/global-support/change-requests

To facilitate community input on application changes, the Working Group has provided implementation guidance in support of informing the community when an application change request triggers an operational comment period.

Rationale for Recommendation 20.6 and Implementation Guidance 20.7: The Working Group sees merit in allowing applicants in a contention set to form a joint venture and make corresponding changes to the application. The establishment of joint ventures allows applicants to come to mutually beneficial arrangements and avoid resolving contention through auctions of last resort. The Working Group considered that the formation of joint ventures may cause delays and may require applicants to go through elements of evaluation again and incur resulting costs, but nonetheless considered this an appropriate change to the program that could help to reduce the need for ICANN Auctions of Last Resort. The Working Group further suggests that ICANN org should consider allowing applicants to request that the evaluation of their own application is delayed by 60-90 days so that they can submit an applicant change request on the basis of business combination or other form of joint venture prior to the Initial Evaluation. The purpose is to save time and costs by facilitating evaluation (instead of re-evaluation) of the new combined venture or entity. The Working Group notes that Module 6 of the Applicant Guidebook, Top-Level Domain Application – Terms and Conditions, has a requirement that: "Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application." This language would likely need to be reconsidered in light of Recommendation 20.6.

Rationale for Recommendation 20.8: The Working Group sees merit in allowing .Brands in contention to change their applied-for string, noting the importance of having appropriate guardrails in place to avoid gaming. Applicants for .Brand strings will be given the opportunity to continue with the application process for a change in string that is linked to their brand without the need for an ICANN Auction of Last Resort to resolve contention, contingent on process guardrails which ensure that changes in the applied-for string occur only under narrow circumstances, limit impact on the New gTLD Program more broadly, and are subject to operational comment and objections processes.

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

The Working Group considered different perspectives included in public comment on the Supplemental Initial Report and raised within the Working Group on whether an applicant should be able to change the applied-for string because the original string is in a contention set or in response to an objection. Those who supported this idea expressed that it could be an effective means for eliminating contention while avoiding the need for an ICANN Auction of Last Resort. A number of those supporting the ability of an applicant to change the applied-for string provided caveats for this support. For example, some only favored allowing a change if the new string does not create a new contention set or result in the application entering into another existing contention set. Others suggested that the new string should be closely connected to the original string.

Those opposing the idea raised concerns that allowing applicants to change the applied-for string encouraged applicants to game the system and allowed applicants who opted to change their application to cherry-pick uncontended strings, providing an unfair advantage compared to those who follow the standard application process. Another concern raised is that by allowing applicants to change the applied-for string, it becomes more difficult for the public and the ICANN community to monitor applications and raise objections where appropriate. Finally, it was noted that any changes to the applied-for string would necessitate a repeat of the string similarity evaluation of all applications, causing delays and disruptions to all applications, including those that are not in a contention set. This would impact program timelines and costs.

The Working Group considered a more limited proposal that would allow .Brand TLDs to change the applied-for string as a result of a contention set under specific circumstances. The Working Group agreed that this narrow proposal provided a common-sense solution to resolving contention among .Brand applications and included appropriate guardrails to protect against potential gaming. Following extensive discussion, this proposal was included in the recommendations above.

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

- This topic includes a recommendation to allow for the formation of joint ventures to resolve contention. Further discussion of private resolution of contention is discussed under Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets.
- This topic addresses types of application changes that do and do not require an operational comment period. Discussion of tools and processes associated with application comment are included under Topic 28: Role of Application Comment.
- This topic discusses certain types of application changes including adding or modifying Registry Voluntary Commitments in response to public comments, objections, GAC Consensus Advice, GAC Early Warnings or other comments from the GAC. These program elements are discussed under the following topics: Topic 28: Role of Application Comment, Topic 31: Objections, Topic 30: GAC Early Warning and GAC Consensus Advice, and Topic 9: Registry Voluntary Commitments / Public Interest Commitments.

2.7 Deliberations and Recommendations: Application Evaluation/Criteria

Topic 21: Reserved Names[126]

a. Recommendations and/or implementation guidelines

Recommendation 2 from the 2007 policy is affirmed under Topic 24: String Similarity Evaluations. Recommendation 2 is also relevant to this topic.

Affirmation 21.1: The Working Group affirms Recommendation 5 from the 2007 policy, which states: "Strings must not be a Reserved Word."

Affirmation 21.2: The Working Group supports continuing to reserve as unavailable[127] for delegation those strings at the top level that were considered Reserved Names and were unavailable for delegation in the 2012 round.[128]

Affirmation 21.3: The Working Group acknowledges the reservation at the top level of Special-Use Domain Names through the procedure described in IETF RFC 6761.[129]

Recommendation 21.4: The Working Group recommends reserving as unavailable for delegation at the top level the acronym associated with Public Technical Identifiers, "PTI".

Affirmation 21.5: The Working Group supports continuing to reserve as unavailable for registration those strings that are on the then-current schedule of Reserved Names at the second level. The schedule may only change through the then-current process for making such changes.

Recommendation 21.6: The Working Group recommends updating Specification 5 of the Registry Agreement (Schedule of Reserved Names) to include the measures for second-level Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes adopted by the ICANN Board on 8 November 2016.[130]

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

Rationale for Affirmations 21.1, 21.2, and 21.5: The Working Group believes that the general framework created by the 2007 policy and subsequent implementation with respect to Unavailable/Reserved Names at the top and second levels remains appropriate

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[126] This Final Report contains recommendations and deliberations regarding all second-level domain name reservations (including geographic names at the second level), and for all top-level strings except those pertaining to geographic strings at the top level. Geographic strings at the top-level were addressed by Work Track 5. Please see Annex J for the Final Report produced by Work Track 5.

[127] "Unavailable Names", referred to in 2012 AGB as "Reserved Names."

[128] See section 2.2.1.2.1 of the 2012 Applicant Guidebook.

[129] See https://tools.ietf.org/html/rfc6761.

[130] The Working Group notes that discussions on this topic are ongoing, and this recommendation is subject to the outcomes of related discussions.

for subsequent procedures. Therefore, the Working Group affirms Recommendation 5 from the 2007 policy, which prohibits the use of "Reserved Word(s)", as well as Recommendation 2 which prohibits strings at the top level that are confusingly similar to existing TLDs. The Working Group further affirms that strings that were unavailable at the top level in the 2012 round should remain unavailable and that strings at the second level that are on the then-current schedule of Reserved Names at the second level should continue to be reserved. In developing this affirmation, the Working Group considered the GAC Principles on New gTLDs[131] and noted that the final version of the 2012 Applicant Guidebook took into account the GAC Principles, including provisions regarding unavailable/Reserved Names.

Rationale for Affirmation 21.3: The Working Group considered the reservation of Special Use Domain Names in the context of the recommendations from the SSAC contained in SAC090.[132] The Working Group acknowledges work by the Internet Engineering Task Force with respect to Special-Use Domain Names, including documentation on how to establish that it is appropriate to reserve such a name, and the procedure for doing so as described in RFC 6761. Taking into account the limited and judicious usage of the RFC 6761 process, the Working Group acknowledges that ICANN reserves names in the New gTLD Program established as Special-Use Domain Names using the procedure described under RFC 6761.[133]

The Working Group reviewed the SSAC Advisory on Private Use TLDs (SAC113).[134] At the time of writing this Final Report, SAC113 was in the hands of the ICANN Board. As work is ongoing in this regard, the Working Group does not feel it is appropriate to comment further but encourages the IRT to monitor efforts on this topic.

Rationale for Recommendation 21.4: The Working Group considered that Public Technical Identifiers (PTI) was incorporated in August 2016 as an affiliate of ICANN with the primary responsibility of operating the IANA functions. The acronym "PTI" is not included in the list of Unavailable/Reserved Names from the 2012 round because PTI had not yet been established at the time the list was developed. The Working Group recommends that for subsequent procedures, the string "PTI" should be reserved and unavailable for delegation at the top level.

Rationale for Recommendation 21.6: Specification 5, Section 2 of the New gTLD Registry Agreement requires registry operators to reserve two-character ASCII labels

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[131] https://gac.icann.org/contentMigrated/gac-principles-regarding-new-gtlds
[132] See https://www.icann.org/en/system/files/files/sac-090-en.pdf. The ICANN Board accepted the recommendations in SAC090 and asked ask the Subsequent Procedures PDP to include recommendations 1-4 in its work: https://www.icann.org/en/system/files/files/resolutions-board-action-ssac-advice-scorecard-08jun18-en.pdf
[133] For broader context on the technical work carried out by the Internet Assigned Numbers Authority on behalf of the Internet Engineering Task Force, see the Memorandum of Understanding between the IETF and ICANN signed on March 1, 2000 and ratified by the ICANN Board on March 10, 2000: https://tools.ietf.org/rfc/rfc2860.
[134] https://www.icann.org/en/system/files/files/sac-113-en.pdf

within the TLD at the second level. The Working Group notes developments regarding the registration of two-character domain names and recommends that ICANN update Specification 5, Section 2 to be consistent with these changes. Specifically, as of 1 December 2014, ICANN authorized all new gTLD registries to release all digit/digit, digit/letter, and letter/digit two-character ASCII labels for registration to third parties and activation in the DNS at the second level.[135] Further, effective 13 December 2016, ICANN authorized all new gTLD registries to release for registration to third parties and activation in the DNS at the second level all two-character letter/letter ASCII labels not previously authorized by ICANN for release and not otherwise required to be reserved, subject to implementing "Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes."[136] The Working Group recommends updating Specification 5, Section 2 to reflect these authorizations and the "Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes." The Working Group has reviewed relevant GAC Consensus Advice in relation to this issue as well as ICANN org's documentation explaining how implementation is consistent with GAC Consensus Advice.[137] [138] The Working Group understands that conversations regarding implementation continues to take place, and that Specification 5 could be updated, as necessary, to reflect any further developments.

In developing recommendations regarding Reserved Names, the Working Group reviewed and discussed relevant SSAC Advice, and specifically recommendations contained in SAC090.

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

The Working Group discussed a proposal included in public comment on the Initial Report to reserve at the top level currency codes included in the International Organization for Standardization (ISO) 4217 list. One perspective presented within the Working Group was that currency codes should be reserved by ICANN until there is a clear agreement with the international Central Banks (e.g. through IMF or BSI) as to whether these codes could be delegated and to which entities, not excluding themselves. The Working Group did not come to agreement on any clear justification to recommend preventative measures for these codes. No clear risk or threat was identified in discussion. The Working Group noted that to the extent that an applicant applied for a string matching a currency code with the intent to use the TLD in association with the currency, there would be an opportunity for concerned parties to raise objections. GAC members could take action through GAC Early Warning or GAC Consensus Advice. The

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[135] https://www.icann.org/en/system/files/files/spec5-amend-two-char-01dec14-en.pdf

[136] https://www.icann.org/en/system/files/files/two-character-ltr-ltr-authorization-release-13dec16-en.html

[137]https://www.icann.org/en/system/files/files/summary-documents-two-character-ascii-labels-22jan19-en.pdf

[138] See also ICANN Board resolution: https://www.icann.org/resources/board-material/resolutions-2016-11-08-en#2.a

Working Group generally believed that these existing measures are sufficient to address potential concerns about confusion or misuse, and therefore did not make any recommendations to reserve currency codes.

The Initial Report requested community input on the possibility of removing the reservation of two-character letter-number combinations at the top level. The Working Group noted that in the 2012 round, digits were disallowed entirely, so any recommendation on this issue would be contingent on the removal of that additional restriction. The Working Group reviewed public comments on this issue, which included a substantial number of responses raising concern about potential confusion with country code top-level domains. The Working Group considered that one possible means of addressing potential confusion would be to conduct an analysis as part of the string similarity review. The Working Group ultimately did not come to a conclusion on this issue and therefore did not put forward a recommendation to eliminate reservation of two-character letter-number combinations at the top level.

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

- Adopted policy recommendations from a separate Working Group regarding the top-level protections of International Governmental Organizations (IGOs), International Olympic Committee (IOC), and International Non-Governmental Organizations (INGOs), and RCRC Movement (Red Cross) will be integrated into the Applicant Guidebook.[139]
- The topic of Geographic Names at the Top Level is addressed in the Final Report of the Subsequent Procedures PDP Working Group's Work Track 5 (see Annex J). The Work Track 5 Final Report includes recommendations regarding the reservation of certain strings at the top level.

Topic 21.1: Geographic Names at the Top-Level

Please see Annex J, which contains the Final Report of Work Track 5 on Geographic Names at the Top Level.

Topic 22: Registrant Protections

a. Recommendations and/or implementation guidelines

Principle D from the 2007 policy is affirmed under Topic 27: Applicant Reviews: Technical/Operational, Financial, and Registry Services. Principle D is also relevant to this topic.

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[139] See https://gnso.icann.org/en/group-activities/active/igo-ingo

Affirmation 22.1: The Working Group affirms existing registrant protections used in the 2012 round, including the Emergency Back-end Registry Operator (EBERO)[140] and associated triggers for an EBERO event and critical registry functions. In addition, as described under Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services, the substantive technical and operational evaluation is being maintained and therefore, protections against registry failure, including registry continuity, registry transition, and failover testing continue to be important registrant protections. The Working Group also supports the registrant protections contained in Specification 6 of the Registry Agreement.[141]

Affirmation 22.2: Background screenings should be conducted during Initial Evaluation, as was the case in the 2012 round.

> Implementation Guidance 22.3: If there is a change in the application that requires additional or repeat background screening (for example, a change in applying entity or change to major shareholders, officers, or directors of the applying entity) this additional background screening should occur prior to execution of the Registry Agreement. Deferring the re-screening until just prior to execution of the Registry Agreement represents a change to the process from 2012.

Recommendation 22.4: The Working Group supports Recommendation 2.2.b. in the Program Implementation Review Report, which states: "Consider whether the background screening procedures and criteria could be adjusted to account for a meaningful review in a variety of cases (e.g., newly formed entities, publicly traded companies, companies in jurisdictions that do not provide readily available information)."

Recommendation 22.5: The Working Group supports Recommendation 7.1.a. in the Program Implementation Review Report, which states: "Explore whether there are more effective and efficient ways to fund emergency back-end registry operator in the event of a TLD failure [other than requiring Continuing Operations Instruments]."

> Implementation Guidance 22.6: To the extent that it is determined that a Continued Operations Instrument will be required, it should not be part of the financial evaluation. It should only be required at the time of executing the Registry Agreement.

Recommendation 22.7: TLDs that have exemptions from the Code of Conduct (Specification 9), including .Brand TLDs qualified for Specification 13, must also receive an exemption from Continued Operations Instrument (COI) requirements or requirements for the successor to the COI.

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[140] For more information about EBERO, see: https://www.icann.org/resources/pages/ebero-2013-04-02-en
[141] Specifically Section 2.2 (prohibition on Wildcards), Section 3 (Continuity), Section 4 (Abuse Mitigation) and Section 5 (Initial and Renewal Periods). Section 6 deals with Name Collision and is addressed separately under Topic 29 of this report.

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

Rationale for Affirmation 22.1: The Working Group believes that it is important that the New gTLD Program continue to incorporate measures into the application process and program implementation that provide protection for registrants. On the whole, the Working Group considers the existing registrant protections to be appropriate in subsequent procedures.

Rationale for Affirmation 22.2 and Implementation Guidance 22.3: The Working Group notes that Program Implementation Review Report (PIRR) Recommendation 2.2.a states: "Consider whether background screening should be performed during IE or at the time of contract execution." The Working Group reviewed that in the 2012 round, background screening took place during Initial Evaluation. Per the PIRR, "The timing was intended to prevent applicants that did not meet the eligibility criteria from progressing beyond IE and participating in downstream processes which could affect other applicants (e.g., objections, contention resolution)." The Working Group supports this rationale as a basis for maintaining background screening as part of IE. The Working Group notes that in the 2012 round, if a change request was submitted during the course of Initial Evaluation, the re-screening would occur during Initial Evaluation. The Working Group suggests deferring the re-screening until just prior to execution of the Registry Agreement, which would be a departure from the 2012 practice. The Working Group notes concerns that deferring re-screening until execution of the RA could result in an applicant that would otherwise be disqualified taking part in string contention resolution. A similar concern could potentially apply to objections. The Working Group encourages further consideration of this issue in the implementation phase.

The PIRR discusses that because the period between the application submission deadline and the signing of Registry Agreements was longer than anticipated, many applicants submitted application changes that required repeat background screening (for example, due to changes in officers or directors of the applying entity). The Working Group anticipates ICANN will be able to process applications more efficiently in subsequent procedures drawing on lessons learned from the 2012 round. If the application processing period is shorter, there will likely be fewer application changes that occur during the normal course of business. As a result, the volume of repeat background screenings will likely be more manageable.

Rationale for Recommendations 22.4 and 22.5 and Implementation Guidance 22.6: The Working Group notes areas of potential improvement raised by Working Group members and in public comment regarding background screenings and funding of EBERO. It therefore agrees with the corresponding recommendations included in the Program Implementation Review Report, 2.2.b and 7.1.a. To simplify requirements for applicants, the Working Group believes that if the Continued Operations Instrument is required in subsequent rounds, it should only be required at the time of executing a Registry Agreement.

Rationale for Recommendation 22.7: The Working Group agreed that all registrant protections from the 2012 round are appropriate and important in the case of open TLDs. However, the Working Group believes that EBERO requirements should not apply in business models where there are no registrants in need of such protections in the event of a TLD failure. In particular, the Working Group believes that gTLDs that are exempt from Specification 9 (including .Brand TLDs qualified for Specification 13) should also be exempt from Continued Operations Instrument requirements.

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

The Working Group is monitoring the work of the second Security, Stability, and Resiliency Review (SSR2) and considered Recommendation 26 included the SSR2 draft report[142] to "Document, Improve, and Test the EBERO Processes." In preliminary discussions, Working Group members responded positively to Recommendation 26.5 of the draft report, which states: "ICANN org should publicly document the ERERO processes, including decision points, actions, and exceptions. The document should describe the dependencies for every decision, action, and exception." As of the time of writing of this Final Report, the SSR2's work has not yet completed, and therefore the Working Group has not put forward any recommendations in this regard.

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

- Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services includes recommendations to maintain the substantive technical and operational evaluation. Protections against registry failure, including registry continuity, registry transition, and failover testing continue to be important registrant protections.
- The Working Group notes the work of the second Security, Stability, and Resiliency Review (SSR2) in relation to the EBERO process.

Topic 23: Closed Generics (also known as Exclusive Generics)

a. Recommendations and/or implementation guidelines

No Agreement 23.1: The Working Group notes that in the 2012 round of the New gTLD Program, a decision was made by the ICANN Board[143] to either (a) "submit a change request to no longer be an exclusive generic TLD", (b) "withdraw their application" or (c) "maintain their plan to operate an exclusive generic TLD," which would operate to defer their application to the next round of the New gTLD Program, subject to rules developed for the next round, to allow time for the GNSO to develop policy advice

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[142] https://www.icann.org/en/system/files/files/ssr2-review-24jan20-en.pdf
[143] https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a

concerning exclusive generic TLDs." All applicants in 2012 chose either options (a) or (b). The result was that no exclusive generic gTLDs (also called "Closed Generic" gTLDs) were delegated in the first round.

It was the expectation of the ICANN Board that the GNSO would "develop policy advice concerning exclusive generic TLDs."[144] Although the Working Group has had numerous discussions about this topic, and received extensive comments from the community, including members of the Governmental Advisory Committee, the Working Group was not able to agree on "policy advice concerning exclusive generic TLDs."

Questions within the Working Group arose on the impact of a failure to develop any policy advice concerning exclusive generic TLDs. Following the approach the Working Group has taken on other issues where there is no agreement on changes to the implementation of the new gTLD program, the Working Group would normally recommend applying the status quo (i.e., no changes to 2012 implementation recommended). However, in this unique case, the Working Group was not able to agree on what the status quo actually was given the Board's expectation that the Working Group would develop policy on this matter. In the absence of agreement on any policy, the Working Group debated, and was unable to come to agreement on, whether the status quo meant that either (i) Closed Generics would be allowed (as there were no provisions in the final Applicant Guidebook that prohibited them), (ii) Closed Generics would not be allowed (noting that none were delegated in the 2012 round), or (iii) Closed Generics would be allowed if they serve a public interest goal (in accordance with the GAC Consensus Advice that was accepted by the Board).

The Working Group understands that members of the community expected the GNSO through this PDP to resolve the issue of whether or not Closed Generics would be allowed in subsequent rounds of new gTLDs. However, it became clear during Working Group deliberations that some members of the Working Group strongly supported a policy that allowed all Closed Generic applications to proceed, others strongly supported a policy that banned all forms of Closed Generic applications, and a number of members supported the GAC Advice which provides that Closed Generics should be allowed if they serve a public interest goal. But even amongst those members that supported the latter, there was no agreement on (a) how to define the public interest, (b) who would make the determination as to whether the application supported a public interest goal, and (c) how would such a requirement be enforced.

The Working Group believes that if this issue were to be considered in future policy work, it should also involve experts in the areas of competition law, public policy, and economics. In addition, it should be performed by those in the community that are not associated with any past, present, or expectations of future work in connection with new gTLD applications or objections to new gTLD applications. Absent such independence, any future work is unlikely to result in an outcome any different than the one achieved in this Working Group.

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[144] https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a

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

Rationale for No Agreement 23.1: The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013.[145] 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 required applicants for exclusive generic strings to either (a) "submit a change request to no longer be an exclusive generic TLD", (b) "withdraw their application" or (c) "maintain their plan to operate an exclusive generic TLD," which would operate to defer their application to the next round of the New gTLD Program, subject to rules developed for the next round, to allow time for the GNSO to develop policy advice concerning exclusive generic TLD. In addition, the Board requested that the GNSO consider this topic in future policy development work for subsequent procedures.[146] 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. There also continue to be different and strongly-held views on the alleged harms and merits of Closed Generics. In reviewing public comments on the Initial Report and continuing its deliberations, the Working Group revisited the alleged harms and merits summarized in the Initial Report, which will not be repeated here.[147]

Four options were discussed as part of the early deliberations of the Working Group 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 Consensus Advice included in the Beijing Communiqué on Category 2.2 Safeguards, and specifically the Advice that "For strings representing generic terms, exclusive registry access should serve a public interest goal."[148] The Working Group was careful to note that the implementation in 2012 was not necessarily representative of the GAC Consensus Advice, which appeared to envision a scenario where an exclusive registry (i.e., Closed

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[145] See https://gac.icann.org/contentMigrated/icann46-beijing-communique
[146] https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a
[147] See Initial Report section 2.7.3 beginning on page 119: https://gnso.icann.org/sites/default/files/file/field-file-attach/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf
[148] https://gac.icann.org/contentMigrated/icann46-beijing-communique

Generic) could be acceptable. Therefore, four options were considered by the Working Group in initial deliberations that took place prior to the introduction of new proposals:

- 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 were expressed on these options within the Working Group and in the responses received through public comment on the Initial Report. There was also a split within the comments received by the Working Group from the Governmental Advisory Committee. 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 possible ways to implement options 2 and/or 3, which could be considered further if the Board selects one of these options.

Specifically, the Working Group reviewed a first round of proposals put forward by some Working Group members regarding treatment of Closed Generics in subsequent rounds that most closely related to option 2 (where Closed Generics could be allowed if the applicant was able to demonstrate that their application for the string served a public interest goal).
- Some Working Group members felt that it may not be possible to define the public interest, but it may be possible to entrust an entity to judge whether a proposed Closed Generic is or is not in the public interest. For example, one Working Group member suggested allowing Closed Generic applications in line with GAC Consensus 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.
  - Some Working Group members expressed different perspectives on whether the decision by the Board should be appealable through the ICANN Reconsideration process or Independent Review Process (IRP) 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, or perhaps public entities and non-profits. This limitation was proposed by one Working Group member as a potentially reasonable way to restrict the applicant pool that is aligned with the objective of serving the public interest.
  - An additional supplemental proposal from a Working Group member suggested additional contractual enforcement provisions in the relevant Registry Agreement (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 Generic 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) registry operator 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.
- Some Working Group members suggested factors that could be considered in developing a framework for evaluating Closed Generic applications if the Board chooses to allow such applications. Some members suggested examining the meaning and specificity of the word, the extent to which the application serves the public interest, the proposed use of the string, and the parties affected by the TLD being operated as a Closed Generic.

- One Working Group member suggested, and some other Working Group members supported, using the following specific questions as a basis to develop a framework:

  1. Why is the selected string necessary for your registry / Why did you choose this string at the exclusion of others?
  2. How does the proposed closed registry serve the public interest?
  3. How is the proposed use of the string innovative in nature? How does the proposed mission and purpose of the registry support such use?

4. What is the likely effect on competition of awarding the proposed closed registry for the same or similar goods and/or services? Is it minimal or is it vast?[149] Why must it be closed?

5. Is there more than one proposed closed registry application for the same string? If so, should the applications be evaluated against each other to determine which one serves the public interest better or should both of them proceed to a mechanism of last resort?

6. Should there be restrictions on resale of the proposed Closed Registry, and if so, what restrictions?

7. What specific Registry Voluntary Commitments are proposed by the registry and how can these be effectively monitored and enforced? Would additional fees be due from such a registry in order to pay for enforcement of the RVCs, e.g. by ICANN Compliance staff set up for this purpose?

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

Prior to publication of the draft Final Report, the Working Group asked Working Group members to contribute additional proposals for consideration to help identify circumstances when a Closed Generic may be permitted. During the public comment period, the Working Group requested community input on the proposals received:

- A Proposal for Public Interest Closed Generic gTLDs (PICG TLDs), submitted by Alan Greenberg, Kathy Kleiman, George Sadowsky, and Greg Shatan.
- The Case for Delegating Closed Generics, submitted by Kurt Pritz, Marc Trachtenberg, Mike Rodenbaugh.
- Closed Generics Proposal, submitted by Jeff Neuman in his individual capacity.

Ultimately, different perspectives were expressed on these proposals, and the Working Group did not come to any agreement on the proposals.

The Working Group 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."[150] The Working Group discussed challenges associated with defining the public interest and noted that the definition may impact whether it is possible to have Closed Generics that are in the public interest.

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[149] Some Working Group members expressed that if a proposed Closed Generic effectively eliminates competition by using a term which defines a category, industry, or field of goods or services, it should not be allowed to proceed. Some members suggested that applicants should be required to obtain letters of support or non-objection from potential competitors as evidence that the proposed Closed Generic does not eliminate competition. Other Working Group members suggested that it is not realistic to require such letters. Instead, evaluators should be responsible for assessing the potential impact on competition.
[150] https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000046.html

The Working Group considered an approach to defining the public interest focused on identifying specific behaviors or practices that policy should prevent. Some Working Group members stated, for example, that anti-competitive behavior should be avoided. Others provided the perspective that this term needs to be more specifically and clearly defined if the Working Group is to design targeted provisions to avoid anti-competitive behavior, and further pointed out that it may not always be possible to identify potential competitors. In further discussing the prevention of anti-competitive behavior, some Working Group members stated that if Closed Generic strings are permitted, there should be requirements that they are used within a specific period of time. The Working Group noted the different perspectives on requirements for the use of a TLD, which are described in further detail under Topic 40: TLD Rollout. The Working Group ultimately did not come to agreement about whether such an approach is appropriate for defining public interest.

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.

The GAC's ICANN67 Communiqué[151] included a summary of GAC discussions on the Working Group's draft outputs regarding Closed Generics. The Working Group reviewed the Communiqué. On 4 May 2020, the GAC provided consolidated input from individual GAC members on the topics discussed at ICANN67, including Closed Generics.[152] The Working Group discussed the input received from GAC members on this topic, while also taking into account the other perspectives on this issue put forward by SO/Acs, ICANN community members, and other interested parties.[153] In summary, just as there was no agreement within the Working Group on this issue, there seemed to be no

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[151] https://gac.icann.org/contentMigrated/icann67-gac-communique
[152] See
https://community.icann.org/download/attachments/93129620/GAC%20Written%20Consultation_%20Input%20Received-%20Updated%209%20May.pdf?version=1&modificationDate=1589186135000&api=v2
[153] For additional information about these perspectives, see responses to Community Comment 2 (https://community.icann.org/pages/viewpage.action?pageId=63155738) the Working Group's Initial Report (https://gnso.icann.org/sites/default/files/file/field-file-attach/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf) and public comment on the Initial Report (https://www.icann.org/public-comments/gtld-subsequent-procedures-initial-2018-07-03-en).

agreement within many of these groups (including the GAC) on the conditions for which Closed Generics could be allowed. The Working Group also reviewed the GAC's ICANN68 Communiqué,[154] which discussed the views of some GAC members on the topic of Closed Generics.

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

None identified at this time.

Topic 24: String Similarity Evaluations

a. Recommendations and/or implementation guidelines

Affirmation 24.1: The Working Group affirms Recommendation 2 from the 2007 policy, which states "Strings must not be confusingly similar to an existing top-level domain or a Reserved Name."

Affirmation 24.2: Subject to the recommendations below, the Working Group affirms the standard used in the String Similarity Review from the 2012 round to determine whether an applied-for string is "similar" to any existing TLD, any other applied-for strings, Reserved Names, and in the case of 2-character IDNs, any single character or any 2-character ASCII string. According to Section 2.2.1 of the 2012 Applicant Guidebook, "similar" means "strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone." In the 2012 round, the String Similarity Panel was tasked with identifying "visual string similarities that would create a probability of user confusion."[155] The Working Group affirms the visual standard for determining similarity with the updates included in the recommendations below.

Recommendation 24.3: The Working Group recommends updating the standards of both (a) confusing similarity to an existing top-level domain or a Reserved Name, and (b) similarity for purposes of determining string contention, to address singular and plural versions of the same word, noting that this was an area where there was insufficient clarity in the 2012 round. Specifically, the Working Group recommends prohibiting plurals and singulars of the same word within the same language/script in order to reduce the risk of consumer confusion. For example, the TLDs .EXAMPLE[156] and .EXAMPLES may not both be delegated because they are considered confusingly similar. This expands the scope of the String Similarity Review to encompass singulars/plurals of TLDs on a per-language/script basis.

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[154] https://gac.icann.org/contentMigrated/icann68-gac-communique
[155] See Applicant Guidebook section 2.2.1.1.1
[156] .EXAMPLE is used here for illustrative purposes only. The Working Group is aware that technically .EXAMPLE cannot be delegated at all because it is one of the names already reserved from delegation as a Special Use name.

- An application for a single/plural variation of an existing TLD or Reserved Name will not be permitted if the intended use of the applied-for string is the single/plural version of the existing TLD or Reserved Name. For example, if there is an existing TLD .SPRINGS that is used in connection with elastic objects and a new application for .SPRING that is also intended to be used in connection with elastic objects, .SPRING will not be permitted.
- If there is an application for the singular version of a word and an application for a plural version of the same word in the same language/script during the same application window, these applications will be placed in a contention set, because they are confusingly similar.
- Applications will not automatically be placed in the same contention set because they appear visually to be a single and plural of one another but have different intended uses. For example, .SPRING and .SPRINGS could both be allowed if one refers to the season and the other refers to elastic objects, because they are not singular and plural versions of the same word. However, if both are intended to be used in connection with the elastic object, then they will be placed into the same contention set. Similarly, if an existing TLD .SPRING is used in connection with the season and a new application for .SPRINGS is intended to be used in connection with elastic objects, the new application will not be automatically disqualified.

The Working Group recommends using a dictionary to determine the singular and plural version of the string for the specific language. The Working Group recognizes that singulars and plurals may not visually resemble each other in multiple languages and scripts globally. Nonetheless, if by using a dictionary, two strings are determined to be the singular or plural of each other, and their intended use is substantially similar, then both should not be eligible for delegation.

> Implementation Guidance 24.4: All applicants should be required to respond to an application question asking the applicant to explain the scope of intended use of the TLD, including any ways the applicant does not intend to use the TLD. If two or more applicants in the same round apply for strings that appear visually to be a single and plural of one another, and it is not clear to evaluators based on the applications whether the intended use is the same or different and therefore whether one string is a singular or plural of another, ICANN should issue a Clarifying Question.

Recommendation 24.5: If two applications are submitted during the same application window for strings that create the probability of a user assuming that they are single and plural versions of the same word, but the applicants intend to use the strings in connection with two different meanings,[157] the applications will only be able to proceed if each of the applicants agrees to the inclusion of a mandatory Public Interest Commitment

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[157] As an example, if the two applicants applied for .SPRING and .SPRINGS, one might intend to use the TLD .SPRING in connection with the season and the other might intend to use the TLD .SPRINGS in connection with the elastic object.

(PIC) in its Registry Agreement. The mandatory PIC must include a commitment by the registry to use the TLD in line with the intended use presented in the application, and must also include a commitment by the registry that it will require registrants to use domains under the TLD in line with the intended use stated in the application.

Recommendation 24.6: Eliminate the use of the SWORD tool in subsequent procedures.

Recommendation 24.7: The deadline for filing a String Confusion Objection must be no less than thirty (30) days after the release of the String Similarity Evaluation results. This recommendation is consistent with Program Implementation Review Report Recommendation 2.3.a.[158]

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

The Working Group notes that Recommendation 2.3.b from the Program Implementation Review Report states: "Consider any additional policy guidance provided to ICANN on the topic of string similarity." The Working Group anticipates that ICANN org will leverage the above recommendations in the development of String Similarity Review processes for subsequent procedures.

Rationale for Affirmations 24.1 and 24.2: Subject to the recommendations included under this topic, the Working Group believes that existing policy and implementation related to the String Similarity Review remain appropriate. Therefore the Working Group affirms Recommendation 2 from 2007 and the existing evaluation standard described in the Applicant Guidebook, as amended by the Working Group's recommendations.

Rationale for Recommendations 24.3 and 24.5 and Implementation Guidance 24.4: Neither GNSO policy from 2007 nor the 2012 Applicant Guidebook defined a specific rule regarding singulars and plurals of the same string, and in the 2012 application evaluation process, the String Similarity Evaluation Panel did not find singular and plural versions of strings to be visually confusingly similar. The GAC,[159] the ALAC,[160] the ICANN Board,[161] and the Final Issue Report on New gTLD Subsequent Procedures[162] have raised that existing guidance does not address the issue of singulars and plurals of the same word and that additional guidelines may be needed. The Working Group's recommendation to prohibit singulars and plurals of the same word within the same language/script and to expand the scope of the String Similarity Review to include

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[158] PIRR Recommendation 2.3.a states: "Review the relative timing of the String Similarity evaluation and the Objections process."

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

[160] https://atlarge.icann.org/advice_statements/7151

[161] https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf

[162] See section 4.4.2 of the Final Issue Report on New gTLD Subsequent Procedures.

singulars/plurals provides a clear, consistent standard for subsequent procedures that will provide greater predictability for applicants.

The Working Group's recommendation that singular/plural versions of the same string should be considered confusingly similar only applies when both strings are intended to be used in connection with the same meaning of the word. In the case where two applications are submitted during the same application window for strings that create the probability of a user assuming that they are single and plural versions of the same word, but the applicants intend to use the strings in connection with two different meanings, both strings may be permitted to proceed. The Working Group understands that in such cases, there needs to be a means for the registries to commit to the use stated in the application and a method for enforcing adherence to this commitment. The Working Group believes that a mandatory PIC will serve this need.

The Working Group notes that Recommendation 35 from the Competition, Consumer Trust, and Consumer Choice Review Team states: "The Subsequent Procedures PDP should consider adopting new policies to avoid the potential for inconsistent results in string confusion objections. In particular, the PDP should consider the following possibilities: 1) Determining through the initial string similarity review process that singular and plural versions of the same gTLD string should not be delegated 2) Avoiding disparities in similar disputes by ensuring that all similar cases of plural versus singular strings are examined by the same expert panelist 3) Introducing a post dispute resolution panel review mechanism."[163] This recommendation was directed at the Subsequent Procedures PDP Working Group. In its 2019 resolution on the CCT-RT Final Report and recommendations,[164] the ICANN Board passed Recommendation 35 through to the Subsequent Procedures PDP.[165] The Working Group's recommendation addresses the component of Recommendation 35 concerning singulars and plurals. See Topic 32: Limited Challenge/Appeal Mechanism for further information about the Working Group's recommendations regarding part 3 of CCT-RT Recommendation 35.

Rationale for Recommendation 24.6: The Working Group agreed that there was insufficient correlation between the results of the SWORD Tool and the outcomes of the String Similarity Review, indicating that the SWORD Tool, as implemented, was not a helpful resource for evaluators and especially for applicants, where the SWORD results could be counterproductive. Given the limited utility of SWORD Tool to provide consistent and predictable results, the Working Group believes that it should not be used in subsequent procedures. The Working Group leaves open the possibility that in the implementation phase, an alternate tool may be leveraged to address the issues experienced in the 2012 round.

Rationale for Recommendation 24.7: The Working Group notes that the delay in releasing String Similarity Evaluation results during the 2012 round caused those wishing

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[163] https://www.icann.org/en/system/files/files/cct-final-08sep18-en.pdf
[164] https://www.icann.org/resources/board-material/resolutions-2019-03-01-en
[165] https://www.icann.org/en/system/files/files/resolutions-final-cct-recs-scorecard-01mar19-en.pdf

to file a String Confusion Objection to only have two weeks to file the String Confusion Objection, which many viewed as too short. Therefore, the Working Group recommends that there be at least thirty (30) days between the publication of the String Similarity Evaluation results and the deadline for filing a String Confusion Objection.

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

In reviewing input received through public comment on the Initial Report and engaging in additional discussion with ICANN org, the Working Group considered several issues that are relevant to the String Similarity Review.

The Working Group considered that in the TLD environment, an applicant may suggest a particular language of a label when applying for a TLD and operating that TLD, but the user might not relate to the label in the same language. The Working Group discussed the following questions:
- How should it be handled if there are two strings which belong to two different languages from the applicant point of view, but they represent singular/plural form of the same word in a particular language?
- What should be the primary consideration in developing rules – the intent of the applicant or possible confusion by the user?

From one perspective, the only way to address potential concerns about end user confusion in the application process is to look at the intent of the applicant, because the TLD has not yet been launched. From another perspective, the user may still ultimately be confused by the end result if the sole focus is on the intent of the applicant.

The Working Group considered a related issue raised by the SSAC in public comment, which stated "It may not be possible for rules regarding string similarity to be as simple or straightforward as the above referenced preliminary recommendations state. For example, singular and plural noun forms are represented differently by different languages."

The Working Group reviewed that in its draft recommendations, there is a suggestion to use a dictionary to determine singular/plural versions of a word. It was noted that a word may be identical in many languages but generate different plural forms in each of the languages. From one perspective, examples of this issue may be considered edge cases. The primary goal of developing policy on this topic is to prevent clear cases where the applied-for TLD is a singular or plural of an existing TLD. From this perspective, edge cases can be handled through additional contract language.

The Working Group discussed that there are different forms of inflection beyond pluralization in many languages. Inflectional morphology refers to cases where words change in grammatical form but not meaning. For example, in addition to inflection associated with singular/plural forms of a word, nouns in some languages inflect for gender. Further, it is not only nouns where inflection comes into play. Verb conjugation

is a form of inflection, as well. By way of example, "decide" and "decides" are different forms of the verb inflected for agreement with the singular and plural subjects. The Working Group discussed the following questions:

- Does it make sense that the "s" would differentiate between two forms of a noun and not two forms of a verb for the purposes of defining confusing similarity?
- If a grammatical category like singular or plural is confusingly similar, why not also consider other grammatical categories confusingly similar like masculine and feminine or different tenses?
- Is there a way to make the framework for determining confusing similarity manageable so that it is predictable to the applicant?

The Working Group received feedback from ICANN org that from a linguistics perspective, inflection on a per-language basis is fairly well understood and bounded. Inflections are given in many dictionaries, which makes it possible to apply rules about inflection consistently.

The Working Group considered input from the SSAC received through public comment on the Initial Report: "Beyond visual similarity, trying to determine confusability based on the meaning of words is fundamentally misguided, as domain names are not semantically words in any language." The Working Group considered an alternate point of view that the SSAC's statement may be true from a purely technical perspective, but many of the gTLDs now delegated have semantic intent.

The Working Group conducted a comparison between the gTLD String Similarity Review and the review for string similarity that takes place as part of the IDN ccTLD Fast Track Process[166] to determine if any additional harmonization between the two processes may be appropriate. The Working Group noted that both reviews focus on a similar standard for visual similarity. In addition, both processes compare requested/applied-for TLDs against existing TLDs, Reserved Names, and other applied-for strings (ccTLDs or gTLDs). The Working Group reviewed that in the ccTLD process, a second review can be requested by the requestor if the applied-for string is found to be confusingly similar by the DNS Stability Panel's initial review. An external and independent Extended Process Similarity Review Panel ("EPSRP") conducts a second review using a different standard based on a "behavioral metric." The behavioral metric "provides quantitative and statistical evidence about the likelihood of confusing two possible strings and its methods are open and repeatable to enable replication by third parties."[167] The Working Group considered whether the GNSO process might benefit from a secondary review like that available through the ccNSO process. The Working Group ultimately agreed that such a process would be too costly as a component of the application review process. The Working Group also considered whether the standard used by the EPSRP could be adopted in considering challenges to the results of String

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[166] For more information about the IDN ccTLD Fast Track Process, see:
https://www.icann.org/en/system/files/files/idn-cctld-implementation-plan-28mar19-en.pdf
[167] See Guidelines for the Extended Process Similarity Review Panel (EPSRP) for the IDN ccTLD Fast Track Process: https://www.icann.org/en/system/files/files/epsrp-guidelines-04dec13-en.pdf

Similarity Evaluations. For additional information on this issue, please see Topic 32: Limited Challenge/Appeal Mechanism.

The Working Group considered whether synonyms should be included in the String Similarity Review for those strings associated with highly-regulated sectors and those representing verified TLDs. The example of .DOCTOR and .PHYSICIAN was raised in discussion. Public comments on the Initial Report expressed diverging perspectives on this issue. The Working Group further considered whether exact translations of these strings should be included in the String Similarity Review, but did not conclude the discussion with any recommendations. See Topic 31: Objections for further discussion of potential protections for exact translations of strings associated with highly-regulated sectors.

The Working Group considered a proposal put forward in public comment on the Initial Report that homonyms should be included in the String Similarity Review. From one perspective, homonyms may cause user confusion, for example in the 2012 round, an application for .thai phonetically clashed with existing . ไทย (Thai IDN ccTLD). Some Working Group members felt that there is the possibility of end-user confusion if two TLD strings are spelled differently but pronounced the same. Other Working Group members did not feel that there was a clear problem to address through policy with respect to homonyms. It was raised that even if the Working Group agreed that there was a well-defined problem that needed to be solved, it might not be possible to develop clear rules on homonyms that could be fairly enforced. Some Working Group members raised that even within a language, there may be different pronunciations of a word. Across languages, it is even more difficult to determine whether words are pronounced the same. The Working Group did not conclude the discussion with any recommendations.

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

- The String Similarity Review is distinct from, but related to, the String Confusion Objection. Under this topic, the Working Group has made a recommendation about the relative timing of the two processes. The String Confusion Objection process is discussed further under Topic 31: Objections.
- The Working Group has recommended under this topic introducing a mandatory PIC as a means for registries to commit to the use stated in the application. Mandatory PICs are further discussed under Topic 9: Registry Voluntary Commitments / Public Interest Commitments.
- Regarding work external to this PDP, the Working Group conducted a comparison between the gTLD String Similarity Review and the review for string similarity that takes place as part of the IDN ccTLD Fast Track Process to analyze whether any additional alignment is appropriate between the two processes.

Topic 25: Internationalized Domain Names (IDNs)

a. Recommendations and/or implementation guidelines

Affirmation with Modification 25.1: With the change in italicized text, the Working Group affirms Principle B from the 2007 policy: "Internationalised domain name (IDNs) new generic top-level domains *should continue to be an integral part of the New gTLD Program.*" Principle B originally stated, "Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root."

Recommendation 25.2: Compliance with Root Zone Label Generation Rules (RZ-LGR[168], RZ-LGR-2, and any future RZ-LGR rules sets) must be required for the generation of TLDs and variants[169] labels, including the determination of whether the label is blocked or allocatable. IDN TLDs must comply with IDNA2008 (RFCs 5890-5895) or its successor(s). To the extent possible, and consistent with Implementation Guidance 26.10, algorithmic checking of TLDs should be utilized.

> Implementation Guidance 25.3: If a script is not yet integrated into the RZ-LGR, applicants should be able to apply for a string in that script, and it should be processed up to but not including contracting. Applicants under such circumstances should be warned of the possibility that the applied-for string may never be delegated and they will be responsible for any additional evaluation costs.

Recommendation 25.4: Single character[170] gTLDs may be allowed for limited script/language combinations where a character is an ideograph (or ideogram) and do not introduce confusion risks that rise above commonplace similarities, consistent with SSAC[171] and Joint ccNSO-GNSO IDN Workgroup (JIG)[172] reports.

Recommendation 25.5: IDN gTLDs identified as variant TLDs of already existing or applied for gTLDs will be allowed only if labels are allocated to the same entity and, when delegated, only if they have the same back-end registry service provider. This policy must be captured in relevant Registry Agreements[173].

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[168] To see the current versions of RZ-LGRs, see: https://www.icann.org/resources/pages/generation-panel-2015-06-21-en

[169] For more information about the definition of IDN variants as well as examples, please see section 2 of IDN Variant TLD Implementation: Motivation, Premises and Framework, available at https://www.icann.org/en/system/files/files/idn-variant-tld-motivation-premises-framework-25jan19-en.pdf

[170] Meaning a character in a U-label.

[171] See report here: https://www.icann.org/en/system/files/files/sac-052-en.pdf

[172] See report here: https://ccnso.icann.org/sites/default/files/filefield_22667/jig-final-report-single-character-idns-08mar11-en.pdf

[173] The Working Group did not discuss the process by which an existing registry operator could apply for, or be given, a variant for its existing gTLD. Nor has it discussed the process by which an applicant applying for a new IDN gTLD could seek and obtain any allocatable variant(s).

Recommendation 25.6: A given second-level label under any allocated variant TLD must only be allocated to the same entity/registrant, or else withheld for possible allocation only to that entity (e.g., s1 under {t1, t1v1, …}, e.g., s1.t1 and s1.t1v1).

Recommendation 25.7: For second-level variant labels that arise from a registration based on a second-level IDN table, all allocatable variant labels in the set must only be allocated to the same entity or withheld for possible allocation only to that entity (e.g., all allocatable second-level labels {s1, s1v1, …} under all allocated variant TLD labels {t1, t1v1, …}).

Recommendation 25.8: Second-level labels derived from Recommendation 25.6 or Recommendation 25.7 are not required to act, behave, or be perceived as identical.

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

Rationale for Affirmation with Modification 25.1: The Working Group continues to support IDNs being available in the New gTLD Program. The modification here is merely grammatical to note that IDNs already exist in the DNS.

Rationale for Recommendation 25.2 and Implementation Guidance 25.3: The Working Group understands that label generation rules provide a consistent and predictable set of permissible code points for IDN TLDs, as well as a mechanism to determine whether there are variant labels (and if so, what they are). Evaluating all TLDs using Root Zone Label Generation Rules (RZ-LGR) allows for a consistent approach and one that complies with community-driven and community-vetted outcomes. Further to the purpose of consistency and efficiency, the Working Group welcomes any automation of the RZ-LGR in the evaluation processes, although it recognizes that automation may not be feasible in some circumstances.

While the Working Group is fully supportive of requiring IDN TLDs to comply with RZ-LGR, it's cognizant that this may impact potential applicants who want to apply for an application in a script that is not yet integrated into the RZ-LGR. The Working Group believes that applicants should be provided the opportunity to apply for a string in a script that is not yet integrated into the RZ-LGR, and it should be processed up to but not including contracting. It should of course not be delegated until it is compliant. The Working Group believes the burden in this case is on the applicant, who may have to wait for an indeterminate amount of time but is not aware of any other serious concerns.

Rationale for Recommendation 25.4: The Working Group believes that single-character gTLDs should be allowed for limited script/language combinations where a character is an ideograph (or ideogram), in support of choice and innovation, but recognizes that care should be taken in doing so. The Working Group believes that it is appropriate to limit single-character gTLDs to only certain scripts and languages, though it does not believe it has the relevant expertise to make this determination. The Working Group would welcome the identification of the limited set of scripts and languages and potentially a

specific list of allowable single-character gTLDs (e.g., during implementation), which will substantially increase the predictability of what will likely still remain a case-by-case, manual process. This conservative approach is consistent with both the SSAC and Joint ccNSO-GNSO IDN Workgroup (JIG) reports.

Rationale for Recommendations 25.5: In support of security and stability, and in light of the fact that variant TLDs are considered to essentially be identical, the Working Group believes that variant TLDs must be operated by the same registry operator and must have the same back-end registry service provider if delegated. In its discussion regarding whether variants must have the same back-end registry service provider, the Working Group noted ICANN org's Recommendations for Managing IDN Variant Top-Level Domains, which state: "For feasible and consistent implementation of these requirements, the same back-end registry service provider, if applicable, must be employed for operating all the activated IDN variant TLDs by the registry operator."[174]. To the extent that the TLD were to change hands at any point after delegation, the variant TLDs must remain linked contractually, which should be considered a persistent requirement (e.g., this would inpact gTLD registry transition procedures, including EBERO). In reviewing the draft final recommendations, some limited discussion took place regarding how an applicant would be able to seek to obtain allocatable variant TLDs, for both existing gTLDs and new gTLDs. In the ICANN Org paper referenced above, Section 3.3.1 recommends that the application process and fee apply to variant labels, similar to any gTLD label, which is consistent and furthers the principle of conservative allocation of variants. However, some Working Group members believe that allocatable variant TLDs should be made available to IDN gTLD registry operators and applicants, with only limited procedures and costs in place. As these deliberations arose late in the Working Group's life cycle, the group elected to only recommend the "same entity" principle for variant TLDs but refrained from providing recommendations on how variant TLDs can be obtained. The Working Group notes that the GNSO Council initiated an IDN Scoping Team, which delivered its Final Report[175] to the Council in February of 2020. At the time of this writing, the GNSO Council has convened a small team to prepare a draft charter and an Expedited Policy Development Process (EPDP) initiation request, in advance of potentially initiating an EPDP specifically focused on IDNs and in particular, variant TLDs.

Rationale for Recommendations 25.6-25.8: For similar reasons as indicated in the rationale for Recommendation 25.5 (i.e., security and stability, that variant TLDs should be considered as identical), the Working Group believes that second-level variants labels should only be allocated (or reserved for allocation) to the same registrant. This applies both when it is a certain second-level label under multiple variant IDN TLDs (e.g., s1 under {t1, t1v1, ...}, e.g., s1.t1 and s1.t1v1) and variants at the second-level derived from

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[174] See the set of documents here https://www.icann.org/resources/pages/idn-variant-tld-implementation-2018-07-26-en and in particular, document three here directly
https://www.icann.org/en/system/files/files/idn-variant-tld-recommendations-analysis-25jan19-en.pdf
[175] The IDN Scoping Team Final Report is available here:
https://gnso.icann.org/sites/default/files/file/field-file-attach/idn-scoping-team-final-report-17jan20-en.pdf

the registry operator's approved IDN table (e.g., all allocatable second-level labels {s1, s1v1, …} under all allocated variant TLD labels {t1, t1v1, …})[176]. However, the Working Group, in taking note of public comments received from the SSAC, agrees that second-level variants should not be required to behave exactly the same. Ensuring that second-level domains behave the same has not been found to be technically feasible in the DNS. In addition, there are practical reasons for second-level variants to not be the same (e.g., Simplified and Traditional Chinese second-level variants could have the content on the respective web pages available in Simplified or Traditional Chinese, consistent with the DNS label).

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

None.

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

- Work may be initiated by the GNSO Council in reaction to the IDN Scoping Team Final Report[177]. The Working Group had performed much of its work on IDNs prior to the initiation of the Scoping Team. As such, the Working Group has elected to deliver its recommendations, aware that subsequent work may be convened.

Topic 26: Security and Stability

a. Recommendations and/or implementation guidelines

Principle A from the 2007 policy is affirmed under Topic 1: Continuing Subsequent Procedures. Principle A is also relevant to this topic.

Affirmation 26.1: The Working Group affirms Recommendation 4 from the 2007 policy, which states: "Strings must not cause any technical instability."

Recommendation 26.2: ICANN must honor and review the principle of conservatism when adding new gTLDs to the root zone.

Recommendation 26.3: ICANN must focus on the rate of change for the root zone over smaller periods of time (e.g., monthly) rather than the total number of delegated strings for a given calendar year.

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[176] The Working Group considered the IDN variant TLD recommendations here: https://www.icann.org/en/system/files/files/idn-variant-tld-recommendations-analysis-25jan19-en.pdf
[177] GNSO Council IDN Scoping Team Final Report: https://gnso.icann.org/sites/default/files/file/field-file-attach/idn-scoping-team-final-report-17jan20-en.pdf

Implementation Guidance 26.4: The number of TLDs delegated in the root zone should not increase by more than approximately 5 percent per month, with the understanding that there may be minor variations from time-to-time.

Implementation Guidance 26.5: ICANN should structure its obligations to new gTLD registries so that it can delay their addition to the root zone in case of DNS service instabilities. Objective criteria should be developed to determine what could be classified as a "service instability."

Implementation Guidance 26.6: ICANN should investigate and catalog the long term obligations for root zone operators of maintaining a larger root zone.

Implementation Guidance 26.7: ICANN org should consult with PTI, the Root Zone Maintainer, the root operators via RSSAC, and the larger DNS technical community on the implementation of these recommendations.

Implementation Guidance 26.8: ICANN should continue to work with the community on mechanisms to monitor the root and develop procedures to ensure that any root zone scaling issues are detected in a timely manner.

Recommendation 26.9: In connection to the affirmation of Recommendation 4 from the 2007 policy, Emoji in domain names, at any level, must not be allowed.

Implementation Guidance 26.10: The application submission system should do all feasible algorithmic checking of TLDs, including against RZ-LGRs and ASCII string requirements, to better ensure that only valid ASCII and IDN TLDs can be submitted. A proposed TLD might be algorithmically found to be valid, algorithmically found to be invalid, or verifying its validity may not be possible using algorithmic checking. Only in the latter case, when a proposed TLD doesn't fit all the conditions for automatic checking, a manual review should occur to validate or invalidate the TLD.

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

Rationale for Affirmation 26.1, Recommendations 26.2 and 26.3, and Implementation Guidance 26.4: In delegating new gTLDs, the Working Group agrees with the RSSAC that "trouble free access to the root zone is one of the very few things that are critical for all Internet users," and therefore, ICANN should honor the principle of conservatism when adding new gTLDs to the root zone. The Working Group supports both the RSSAC and SSAC advice that an overall cap of 1000 annually is not the appropriate measure of

stability, rather, it is the rate of delegation (adding names to the root).[178] The Working Group recommends that further work be done on establishment of an appropriate rate of delegation from a technical standpoint. The Working Group suggests that number of TLDs delegated in the root zone should not increase by more than approximately 5% per month. If for any reason it believes a different percentage should apply, ICANN should work with the IRT on this issue if the Applicant Guidebook has not yet been published or the Predictability Framework if the Applicant Guidebook has already been published. Although the Working Group discussed operational and community concerns about the ability to evaluate new gTLDs, it noted that the recommendations under this topic relate only to the technical concerns of rating or capping the adding of new gTLDs to the root zone, from a Security and Stability risk assessed perspective.

Rationale for Implementation Guidance 26.5-26.8: The Working Group supports the recommendations proposed by the SSAC that ICANN should structure its obligations to new gTLD registries so that it can delay their addition to the root zone in case of DNS service instabilities. The Working Group also agrees with the SSAC recommendation that ICANN should investigate and catalog the long term obligations of maintaining a larger root zone. In addition, in accordance with the comments received from ICANN's Office of the Chief Technology Officer (OCTO), the Working Group recommends that ICANN org consult with PTI, the Root Zone Maintainer, the root operators via RSSAC, and the larger DNS technical community on these recommendations.

With respect to an early warning system, the Working Group notes that ICANN's Office of the Chief Technology Officer published "Recommendations for Early Warning for Root Zone Scaling" (OCTO-015)[179] for public comment on 5 October 2020. This document describes the initial desire for an early warning system, outlines proposals that were ultimately abandoned, and details a new proposal for a non-technical means for providing an early warning that the root zone is growing too rapidly. The Working Group supports continuing work on this topic.

Rationale for Recommendation 26.9: The Working Group agreed that it supports the SSAC position that Emoji in domain names at any level should not be allowed.[180] The Working Group notes comments from ICANN org on the draft Final Report that emojis

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[178] See RSSAC031: Response to the GNSO Policy Development Process (PDP) Working Group on the new Generic Top Level Domains (gTLDs) Subsequent Procedures at https://www.icann.org/en/system/files/files/rssac-031-02feb18-en.pdf and SAC100: SSAC Response to the New gTLD Subsequent Procedures Policy Development Process Working Group Request Regarding Root Scaling at https://www.icann.org/en/system/files/files/sac-100-en.pdf; The SSAC recommendations are: Recommendation (1): ICANN should continue developing the monitoring and early warning capability with respect to root zone scaling. Recommendation (2): ICANN should focus on the rate of change for the root zone, rather than the total number of delegated strings for a given calendar year. Recommendation (3): ICANN should structure its obligations to new gTLD registries so that it can delay their addition to the root zone in case of DNS service instabilities. Recommendation (4): ICANN should investigate and catalog the long term obligations of maintaining a larger root zone.
[179] https://www.icann.org/en/system/files/files/octo-015-01oct20-en.pdf
[180] See SAC095 SSAC Advisory on the Use of Emoji in Domain Names (25 May 2017) at: https://www.icann.org/en/system/files/files/sac-095-en.pdf

are already not permitted by the underlying technology, e.g., adherence to the Internationalizing Domain Names in Applications (IDNA) specification, and that the standard would need to be willfully broken in order to support them. The Working Group discussed the comments from the Registry Stakeholder Group that the Working Group's recommendations should not interfere with already registered Emoji second level domains (SLDs) in gTLDs. The Working Group noted that recommendations relating to already registered Emoji SLDs would not be in its jurisdiction.

Rationale for Implementation Guidance 26.10: The Working Group agreed that the application submission system should do all feasible algorithmic checking of TLDs, noting that ICANN org in its comments agreed that from a system development perspective, automation could be built into the application system to check applied-for gTLDs against specific lists, such as the Reserved Names list, ISO-3166 list, and the Root Zone LGR. ICANN org further noted that some level of algorithmic checking of applied-for gTLDs is also possible. The availability of a deterministic list of labels and whether the RZ-LGR is defined for the scripts of these labels would determine the complexity of the implementation of algorithmic checks.

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

None.

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

- Recommendations included under Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services; Topic 39: Registry System Testing; and Topic 29: Name Collisions support the policy that "Strings must not cause any technical instability."
- This topic includes implementation guidance that the application submission system should do all feasible algorithmic checking of TLDs, including against RZ-LGRs and ASCII string requirements, to better ensure that only valid ASCII and IDN TLDs can be submitted. Further discussion and recommendations regarding IDNs are included under Topic 25: IDNs.

Topic 27: Applicant Reviews: Technical & Operational, Financial and Registry Services

a. Recommendations and/or implementation guidelines

Affirmation 27.1: The Working Group affirms several Principles and Recommendations from the 2007 policy relative to Applicant Reviews:

- Principle D: "A set of technical criteria must be used for assessing a new gTLD registry applicant to minimize the risk of harming the operational stability, security and global interoperability of the Internet."
- Principle E: "A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN's registry agreement."
- Recommendation 1: "ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedures for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process."
- Recommendation 9: "There must be a clear and pre-published application process using objective and measurable criteria."
- Recommendation 18 (with slight modification): "If an applicant offers an IDN service, then ICANN's *then current* IDN guidelines must be followed."

Overall Evaluation

Recommendation 27.2: Evaluation scores on all questions should be limited to a pass/fail scale (0-1 points only).

Recommendation 27.3: All application evaluation questions and any accompanying guidance must be written such that it maximizes predictability and minimizes the likelihood of Clarifying Questions (CQs).

> Implementation Guidance 27.4: In order to meet the objectives of the relevant recommendation, ICANN org should at a minimum, conduct a detailed analysis of CQs and CQ responses, additional guidance to the Applicant Guidebook, Knowledge Articles, and Supplemental Notes from the 2012 round of the New gTLD Program to better understand the basis for applicants' providing unanticipated responses to the 2012 questions and therefore, how to improve the clarity of questions in the future. This implementation guidance is consistent with Recommendations 2.6.b and 2.7.b from ICANN org's Program Implementation Review Report[181].

Recommendation 27.5: ICANN org must publish CQs and CQ responses related to public questions. ICANN org may redact certain parts of the CQ and CQ response if there is

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[181] Recommendation 2.6.b states: "Review Technical and Operational Capability CQs and responses to determine whether improvements to the application questions can be made"; Recommendation 2.7.b states: "Review Financial Capability CQs and responses to determine whether improvements to the application questions can be made."

nonpublic information directly contained in these materials or if publication in full is likely to allow the inference of nonpublic or confidential information.

Technical and Operational Evaluation

<u>Affirmation with Modification 27.6:</u> The Working Group affirms Recommendation 7 from the 2007 policy with the following proposed additional text in italics: "Applicants must be able to demonstrate their technical *and operational* capability to run a registry operation for the purpose that the applicant sets out, *either by submitting it to evaluation at application time or agreeing to use an RSP that has successfully completed pre-evaluation as part of the RSP pre-evaluation program.*[182]

<u>Affirmation 27.7:</u> While affording the improvements to clarity that will result from Recommendation 27.3, ICANN org should retain the same substantive framework for the technical and operational questions utilized in the 2012 round of the New gTLD Program. The exception to this affirmation is Q30b – Security Policy.

> <u>Implementation Guidance 27.8</u>: A mechanism(s) should be established to meet the spirit of the goals embodied within Q30b – Security Policy without requiring applicants to provide their full security policy. The Applicant Guidebook should clearly explain how the mechanism meets these goals and may draw on explanatory text included in the Attachment to Module 2: Evaluation Questions and Criteria from the 2012 Applicant Guidebook.[183]

<u>Recommendation 27.9:</u> The technical and operational evaluation must be done in an efficient manner as described in the implementation guidance below.

> <u>Implementation Guidance 27.10</u>: ICANN org or its designee should aggregate and/or consolidate the technical and operational evaluation across applications to the extent feasible where the applications, for all intents and purposes, share identical responses to the relevant questions, particularly as it relates to the proposed registry services. This is intended to apply even when an applicant indicates that it will not use a pre-evaluated RSP. For example, if an applicant submits multiple applications or multiple applications are submitted from different applicants that share a common technical infrastructure, the technical and operational evaluation may only need to be performed once for the first application processed and then applied to subsequent applications. Additional evaluation would only need to occur for subsequent applications if a new service is being proposed or the application includes a new element that requires additional evaluation of services.

<u>Recommendation 27.11:</u> Consistent with Implementation Guidance 39.6 under Topic 39: Registry System Testing, the technical and operational evaluation must emphasize

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[182] Please see Topic 6 of this report for additional information about the RSP pre-evaluation program.
[183] See pages A1-4 of the Attachment to Module 2.

evaluation of elements that are specific to the application and/or applied-for TLD and should avoid evaluating elements that have already been thoroughly considered either as part of the RSP pre-evaluation program or previously in connection with another application and/or applied-for TLD.

> Implementation Guidance 27.12: Applications should have a streamlined technical and operational evaluation if the applicant has either selected a pre-evaluated RSP in its application submission or if it commits to only using a pre-evaluated RSP during the evaluation phase, and actually selects its chosen pre-evaluated RSP during the transition to delegation phase.

Recommendation 27.13: When responding to questions, applicants must identify which services are being outsourced to be performed by third parties.

Recommendation 27.14: The technical and operational evaluation must also consider the total number of TLDs and expected registrations for an applicant's given RSP.

Financial Evaluation

Recommendation 27.15: The Working Group recommends that the financial evaluation must focus on ensuring that an applicant is able to demonstrate financial wherewithal and assure long-term survivability of the registry, thus reducing the security and stability risk to the DNS. The Working Group believes that the following implementation guidance will simplify the process but still allow for meaningful assurance of an applicant's financial capabilities, while duly taking into account how the applicant will operate its registry.

> Implementation Guidance 27.16: As part of the financial evaluation, ICANN should not evaluate proposed business models, nor provide sample business models and/or tools for applicants to demonstrate financial wherewithal. The Applicant Guidebook should provide applicants with a list of resources to get information on RSPs, Stakeholder Groups and associations from which applicants can get information.

> Implementation Guidance 27.17: The evaluation should determine whether an applicant will be able to withstand missing revenue goals, exceeding expenses, funding shortfalls, or the inability to manage multiple TLDs in the case of registries that are dependent upon the sale of registrations. This evaluation must recognize and take into account the different ways to operate a registry, including instances where there is no reliance on the sale of third party registrations to generate revenue for the registry. Therefore, determining the financial wherewithal of an applicant to sustain the maintenance of a TLD may require different criteria for different types of registries; criteria should not be established in a "one-size-fits-all" manner.

Implementation Guidance 27.18: If any of the following conditions are met, an applicant should be allowed to self-certify that it is able to meet the goals as described in Implementation Guidance 27.17. This self-certification will serve as evidence that the applicant has the financial wherewithal to support its application for the TLD.

i. If the applicant is a publicly traded corporation, or an affiliate as defined in the current Registry Agreement, listed and in good standing on any of the world's largest 25 stock exchanges (as listed by the World Federation of Exchanges);

ii. If the applicant and/or its officers are bound by law in its jurisdiction to represent financials accurately and the applicant is is good standing in that jurisdiction; or,

iii. If the applicant is a current registry operator or an affiliate (as defined in the current Registry Agreement) of a current registry operator that is not in default on any of its financial obligations under its applicable Registry Agreements, and has not previously triggered the utilization of its Continued Operations Instrument.

If the applicant is unable to meet the requirements for self-certification, the applicant must provide credible third-party certification of its ability to meet the goals as described in Implementation Guidance 27.17.

Affirmation with Modification 27.19: The Working Group affirms Recommendation 8 from the 2007 policy with the following proposed additional text in italics: "Applicants must be able to demonstrate their financial and organizational operational capability *in tandem for all currently-owned and applied-for TLDs that would become part of a single registry family.*"

Therefore, applicants must identify whether the financial statements in its application apply to all of its applications, a subset of them or a single application (where that applicant and/or its affiliates have multiple applications).

Implementation Guidance 27.20: The following is a tentative but exhaustive set of financial questions:

- "Identify whether this financial information is shared with another application(s)" (not scored).
- "Provide financial statements (audited and self-certified by an officer where applicable or audited and independently certified if unable to meet the requirements for self-certification)" (0-1 scoring) (certification posted).
- "Provide a declaration, self-certified by an officer where applicable or independently certified if unable to meet the requirements for self-certification, that the applicant will be able to withstand missing revenue goals, exceeding expenses, funding shortfalls, and will have the ability to

manage multiple TLDs where the registries are dependent upon the sale of registrations" (0-1 scoring) (publicly posted).

Registry Services

Recommendation 27.21: A certain set of optional pre-approved additional registry services will not require registry services evaluation and those selected by the applicant at the time application submission will automatically be included in the applicant's Exhibit A upon contract execution. That list will include those that are included in the base Registry Agreement and on the *Fast Track RSEP Process and Standard Authorization Language[184]* page as of the drafting of this report and as updated from time to time.

Recommendation 27.22: Any additional optional registry services not included on the pre-approved list must be reviewed in a timely manner to determine if they might raise significant stability or security issues. Criteria used to evaluate those non-pre-approved registry services must be consistent with the criteria applied to existing registries that propose new registry services and should not result in additional fees. However, if that initial assessment determines that the proposed registry services might raise significant stability or security issues, the application will be subject to extended review by the Registry Services Technical Evaluation Panel (RSTEP). Applicants will be subject to additional fees under this circumstance.

> Implementation Guidance 27.23: The Registry Services Evaluation Policy (RSEP) Process Workflow should be amended to fit within the new gTLD processes and timelines (e.g., using priority number to order evaluation, using Clarifying Questions to address issues).

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

Rationale for Affirmation 27.1: The Working Group believes that the policy recommendations included in Principles D and E and Recommendations 1, 9, and 18 continue to be appropriate in the context of applicant reviews and therefore affirms these Principles and Recommendations for subsequent procedures.

Overall Evaluation

Rationale for Recommendation 27.2: The Working Group agreed with a recommendation from ICANN org to simplify the scoring framework. The input[185] noted that the 2012

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[184] These optional additional services include Bulk Transfer After Partial Portfolio Acquisition (BTAPPA), Registry Lock, Block Services, and/or validation services as examples. See page here: https://www.icann.org/resources/pages/fast-track-rsep-process-authorization-language-2019-06-14-en
[185] See ICANN org response here: https://community.icann.org/download/attachments/58735969/Response%20to%20WT4%20re%20RST%20improvements.pdf?version=2&modificationDate=1502939084000&api=v2

scoring framework "...added complexity to the evaluation process with little benefit. ICANN recommends defining the criteria such that a passing score equates to the desired amount of capability to run a registry, and removing the option for 2 points." This input was in respect of the technical and operational evaluation, but the Working Group believes that it applies equally to the financial evaluation as well.

Rationale for Recommendations 27.3 and 27.5 and Implementation Guidance 27.4: The Working Group believes that in support of transparency, the Clarifying Questions (CQs) and responses to those CQs should be published for all publicly posted application questions. However, the Working Group recognizes that CQs and their responses for publicly posted application questions may inadvertently share private information. Respecting the privacy and confidentiality of responses is important.

The Working Group believes that the number of CQs in the 2012 round were excessive, indicating a lack of clarity in the way that the application questions were phrased and/or presented. Accordingly, there is support for a thorough examination during the implementation of these policy recommendations of why there were so many CQs in 2012 and how they can be significantly reduced in future rounds. This review should be completed prior to the finalization of the Applicant Guidebook and duly considered in adjusting the questions as applicable.

Technical and Operational Evaluation

Rationale for Affirmation with Modification 27.6: This modification is intended to make it clear that an applicant is able to provide its own technical infrastructure or to leverage a pre-evaluated RSP.

Rationale for Affirmation 27.7: The Working Group believes that the substantive elements of the technical and operational questions provide the correct basis for evaluating whether an applicant or its RSP have the requisite technical and operational capabilities.

Rationale for Recommendation 27.9 and Implementation Guidance 27.10: In the 2012 round of the New gTLD Program, all applications were evaluated independently and individually, with all evaluation steps repeated for applications that were essentially identical and/or shared the same registry service provider (RSP). The Working Group believes that aggregating and consolidating evaluations as much as feasible will help correct what was perceived as a great source of inefficiencies for ICANN org and applicants, as well as potentially a source for inconsistencies in evaluations.

Rationale for Recommendation 27.11 and Implementation Guidance 27.12: In the 2012 round of the New gTLD Program, all applications were evaluated independently and individually, resulting in evaluation steps being repeated for applications that shared the same registry service provider (RSP). This inefficiency is expected to be reduced greatly by introducing an RSP pre-evaluation process, though the Working Group recognizes that

applications may still require some level of evaluation if they contain specific or unique characteristics.

Rationale for Recommendation 27.13: The Working Group believes that in order to reduce the risk of misinterpretation or ambiguity, it is important to understand if a party other than the applying entity will be providing a specific service.

Rationale for Recommendation 27.14: The Working Group believes that it is important for the security and stability of the DNS to assess an RSP's ability to scale to address growth in the number of registries the RSP supports, as well as growth of domains under management within those registries. The Working Group acknowledges that it may be challenging to assess scalability.

Financial Evaluation

Rationale for Recommendation 27.15, Implementation Guidance 27.16-27.18 and 27.20, and Affirmation with Modification 27.19: The Working Group believes that the way the financial evaluation was framed in the 2012 round did not meaningfully assess the applicant's financial capabilities. The applicant's financial capabilities were assessed against a projections model, which was completed at the applicant's discretion, and drove consideration of funding, costs and the sizing requirements for Continuing Operations Instrument (COI). While the Working Group agreed with ICANN org that ICANN org is not in a position to evaluate an applicant's business model and projections, this meant that the plan was not questioned during the evaluation process. The Working Group believes that in most cases, registries have not seen their delegated TLDs match the projections contained in their applications. As a result, the Working Group has proposed a model that while streamlined, is expected to more meaningfully assess an applicant's long term financial capabilities to support its chosen registry model.

The Working Group believes that basing the financial evaluation off of the financial projections model was also problematic in that it seemed to assume that the registry would be sustained by third party domain registrations. As was demonstrated in the 2012 round, there are many registries that are not following that type of registry model. The Working Group believes that the applicant is in the best position and has the proper incentives to ensure there is adequate funding for the applicant's registry model type to support at least the critical registry services, even in worst-case scenarios. However, the Working Group believes that there must at least be self-certification of this assessment by the applicant, where that applicant meets certain thresholds of trust. If those thresholds are not met, then it makes sense that a third party will instead need to certify the applicant meets the financial capability goals. The Working Group also believes that it is important to have a holistic understanding of the applicant's funding, relative to the overall number applications being submitted.

Registry Services

Rationale for Recommendation 27.21: Question 23, which is where applicants provided the proposed registry services needed to support their registry, was a source of applicant confusion where over 50% of applications required CQs. With the open text nature of the question, there was also difficulty in translating the applicant's responses into contractual language. In the 2012 round, the proposed registry services were highly homogenous and provided by a small set of RSPs. The Working Group believes that this process can be greatly simplified by relying on a set of pre-approved registry services (e.g., selected by checkbox rather than an open text field). The registry services contained in the base Registry Agreement and those that have been shown to be regularly approved via the RSEP Process make sense to be included on the pre-approved list.

Rationale for Recommendation 27.22 and Implementation Guidance 27.23: The Working Group agreed that applicants should be able to submit non pre-approved registry services, with some believing that applicants should be encouraged or even required to submit all proposed registry services at the time of application submission. This recommendation is intended to minimize the impact on applicants that submit non pre-approved registry services by ensuring that they are not subject to undue delays or costs for any initial assessments and that if an extended review is needed, that the RSEP Process be no different than for an existing registry.

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

Rationale for Implementation Guidance 27.8: In reviewing public comments on the Initial Report, concerns were expressed about the preliminary recommendation to eliminate the requirement for applicants to submit their security policy. The Working Group believes that requiring applicants to submit their security policy introduces risk to applicants, in the event that the policy falls into the wrong hands. However, the SSAC expressed concerns that removing this requirement would weaken the ability to evaluate applicants' expertise to assure the secure and stable operation of the registry. The Working Group considered how to meet the spirit of the SSAC's concerns without requiring applicants to provide the full security policy. There were suggestions of on-site visits, posing yes/no questions or check boxes, asking how often the policy is activated and reviewed/updated as examples. The Working Group did not agree on the precise method for balancing the concerns of applicants and the SSAC, but believe they are both important considerations. The Working Group believes that the evaluation process should continue to validate the adequacy of an applicant's security policy, which is consistent with the goal to allow applicants to demonstrate its expertise and assure the secure and stable operation of the registry.

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

- This topic includes recommendations to maintain the substantive technical and operational evaluation. Protections against registry failure, including registry continuity, registry transition, and failover testing continue to be important

registrant protections. Further discussion of registrant protections is included under Topic 22: Registrant Protections.

- The Working Group has recommended that elements of technical and operational capability can optionally be evaluated in advance through the RSP pre-evaluation program. Additional discussion and recommendations related to the RSP pre-evaluation program are included under Topic 6: RSP Pre-Evaluation.

Topic 28: Role of Application Comment

a. Recommendations and/or implementation guidelines

Implementation Guideline C from the 2007 policy is affirmed under Topic 13: Communications. Implementation Guideline C is also relevant to this topic.

Affirmation 28.1: Section 1.1.2.3 of the 2012 Applicant Guidebook states "ICANN will open a comment period (the Application Comment Period) at the time applications are publicly posted on ICANN's website . . . This period will allow time for the community to review and submit comments on posted application materials." The Working Group affirms that as was the case in the 2012 round, community members must have the opportunity to comment during the Application Comment Period on applications submitted. Comments must be published online as they were in the 2012 round so that they are available for all interested parties to review.

Affirmation 28.2: As was the case in the 2012 round, when an application comment might cause an evaluator to reduce scoring, ICANN must issue a Clarifying Question to the applicant and give the applicant an opportunity to respond to the comment.

Recommendation 28.3: For purposes of transparency and to reduce the possibility of gaming, there must be clear and accurate information available about the identity of a person commenting on an application as described in the implementation guidance below.

> Implementation Guidance 28.4: The system used to collect application comment should continue to require that affirmative confirmation be received for email addresses prior to use in submission of comments. To the extent possible, ICANN org should seek to verify the identity of the person submitting the comment.

> Implementation Guidance 28.5: In addition, each commenter should be asked whether they are employed by, are under contract with, have a financial interest in, or are submitting the comment on behalf of an applicant. If so, they must reveal that relationship and whether their comment is being filed on behalf of that applicant.

Recommendation 28.6: Systems supporting application comment must emphasize usability for those submitting comments and those reviewing the comments submitted.

This recommendation is consistent with Program Implementation Review Report Recommendation 1.3.a, which states: "Explore implementing additional functionality that will improve the usability of the Application Comment Forum."

> Implementation Guidance 28.7: The system used to collect application comment should better support filtering and sorting of comments to help those reviewing comments find relevant responses, particularly when there is a large number of entries. One example is an ability to search comments for substantive text within the comment itself. In the 2012 new gTLD round a search could be done on categories of comments, but not a search of the actual text within the comment itself.

> Implementation Guidance 28.8: The system used to collect application comment should allow those submitting comments to include attachments. ICANN should investigate whether there are any commercially reasonable mechanisms to search attachments.

Recommendation 28.9: The New gTLD Program must be clear and transparent about the role of application comment in the evaluation of applications.

> Implementation Guidance 28.10: The Implementation Review Team should develop guidelines about how public comments are to be utilized or taken into account by the relevant evaluators and panels, and these guidelines should be included in the Applicant Guidebook. The Applicant Guidebook should also be clear to what extent different types of comments will or will not impact scoring.

Recommendation 28.11: Applicants must have a clear, consistent, and fair opportunity to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.

> Implementation Guidance 28.12: Applicants should be given a fixed amount of time to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.

Recommendation 28.13: ICANN must create a mechanism for third-parties to submit information related to confidential portions of the application, which may not be appropriate to submit through public comment. At a minimum, ICANN must confirm receipt and that the information is being reviewed. The applicant must be fully informed of the submitted information and be able to respond through the same mechanism.

Recommendation 28.14: A single Application Comment Period must apply to both standard and community-based applications. To the extent that third-parties submit expressions of support for or opposition to a community-based application, these comments must be submitted during the Application Comment Period if they are to be considered during Community Priority Evaluation.

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

Rationale for Affirmations 28.1-28.2: The Working Group agreed that it is important for ICANN to continue to maintain lines of communication with applicants and the public in subsequent procedures, including through application comment. It therefore affirmed Implementation Guideline C from 2007 and continued use of an Application Comment Period in subsequent procedures. The Working Group further agreed that in cases where application comments might impact scoring of an application, the applicant should have an opportunity to respond through Clarifying Questions, as was the case in the 2012 round. This practice ensures that evaluators take into account different perspectives and information before making adjustments to a score.

Rationale for Recommendation 28.3 and Implementation Guidance 28.4 and 28.5: In the 2012 round, in order to submit a comment, a user first needed to create an account by providing name, email address, and optionally affiliation. The system sent an email to the email address provided and affirmative confirmation from the email address needed to be received by the system before an account was created. This functionality verified that there was a person attached to the email account. The Working Group raised concern, however, that this system did not verify that the person creating the account was who he or she claimed to be. The Working Group noted commenters could potentially misrepresent who they were or who they represented and "game" the system to disadvantage certain applicants. Recognizing that evaluation panelists perform due diligence in considering application comment, and the challenge of confirming the true identity of all contributors to public comment, the Working Group nevertheless encourages ICANN to seek opportunities to verify the identity of commenters in a meaningful way to reduce the risk of gaming and further to require commenters to disclose any relationship with an applicant for the sake of transparency. The Working Group notes that further consideration may need to be given to specific implementation elements, for example whether there should be consequences to the applicant if a commenter does not disclose a relationship with that applicant.

Rationale for Recommendation 28.6 and Implementation Guidance 28.7 and 28.8: The Working Group raised concern about usability challenges with the public comment forum and considered possible ways to improve related systems. In particular, the Working Group noted that some users found it difficult to sort large volumes of comments in a meaningful way and some commenters found it limiting that they were unable to include attachments with their submissions. The Working Group notes that some sorting functionality was available in the 2012 round, but encourages ICANN to look for more opportunities to help those reviewing comments do so in an efficient manner. In addition, the Working Group acknowledges feedback from ICANN org that allowing attachments may make searchability of comments more difficult and may increase time and cost of processing comments by the relevant evaluation panels, but still encourages ICANN org to consider this potential change, because it would allow commenters to supply more detailed supporting documentation. The Working Group encourages ICANN to explore tools that allow users to search text included in attachments.

Rationale for Recommendation 28.9 and Implementation Guidance 28.10: The Working Group agreed that applicants in the 2012 round did not always have sufficient clarity about how application comments were being taken into account in the application evaluation process. While applicants were given the opportunity to respond through Clarifying Questions to any comments that might impact scoring, the Working Group believes that there would be greater transparency and accountability in the evaluation process if the Implementation Review Team developed more specific guidelines about how comments should be used and taken into account in the evaluation process. Any such guidelines should be incorporated into the Applicant Guidebook so that all potential applicants and commenters have the same baseline knowledge with which to operate.

Rationale for Recommendation 28.11 and Implementation Guidance 28.12: The Working Group believes that, to the extent possible, evaluators should have a full picture of the different perspectives on an application, including arguments or evidence from the applicant itself. Therefore, the Working Group believes that while applicants had the ability to respond to any comment in the 2012 round, applicants should have a dedicated period of time to reply to any comments posted in the public comment forum.

The Working Group notes that if an applicant proposes changes to the application in response to public comments, additional processes apply, including an additional public comment period, where applicable. Please see Topic 20: Application Change Requests for discussion of processes related to changes in the application.

Rationale for Recommendation 28.13: The Working Group acknowledges that third-parties may want to submit information pertaining to confidential portions of an application, and that these third-parties may not feel comfortable submitting this information publicly through public comment. As an example, a community member may want to send ICANN information relevant to the background screening for an applicant and may prefer to do so privately. The Working Group recommends that ICANN create a process to allow for the private submission of such information.

Rationale for Recommendation 28.14: In order to provide the same level of predictability to all applicants, the Working Group believes that it is appropriate to have a single Application Comment Period that applies to both standard and community-based applications.

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

In discussion of Implementation Guidance 28.13, which states that applicants should be given a fixed amount of time to respond to public comments, the Working Group discussed whether the community should have an opportunity to comment following the window for applicants to comment. The Working Group did not come to a conclusion on this issue and notes that it may be an item for consideration in the implementation phase.

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

- Topic 20: Application Change Requests addresses processes related to changes in the application, including an additional public comment period, where appropriate.
- This topic includes a recommendation that the public comment period for Community Priority Evaluation applications should be the same as the public comment period for standard applications. Consideration of Community Priority Evaluation applications more broadly is included under Topic 34: Community Applications.
- This topic includes a recommendation and implementation guidance regarding systems supporting application comment. Recommendations on systems that are "applicant-facing" are included under Topic 14: Systems.
- Application comment is closely tied to communications with both the ICANN community and applicants. The subject of communications is covered more broadly under Topic 28: Role of Application Comment.

Topic 29: Name Collisions

a. Recommendations and/or implementation guidelines

Recommendation 4 from the 2007 policy is affirmed under Topic 26: Security and Stability. Recommendation 4 is also relevant to this topic.

Recommendation 29.1: ICANN must have ready prior to the opening of the Application Submission Period a mechanism to evaluate the risk of name collisions in the New gTLD evaluation process as well as during the transition to delegation phase.

Affirmation 29.2: The Working Group affirms continued use of the New gTLD Collision Occurrence Management framework unless and until the ICANN Board adopts a new mitigation framework. This includes not changing the controlled interruption duration and the required readiness for human-life threatening conditions for currently delegated gTLDs and future new gTLDs.[186]

> Implementation Guidance 29.3: To the extent possible, ICANN should seek to identify high-risk strings in advance of opening the Application Submission Period, which should constitute a "Do Not Apply" list. ICANN should also seek

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[186] "Registry Operators will implement a period of, at least, 90 days of continuous controlled interruption. ICANN will monitor and time the implementation of the measure, primarily using the zone files that are transferred to ICANN from new gTLD registries once they are delegated (per Specification 4 off the new gTLD Registry Agreement).", 3. Controlled Interruption, and 7. Emergency Response, pages 2 and 4, in the New gTLD Collision Occurrence Management framework. See: https://www.icann.org/en/system/files/files/name-collision-framework-30jul14-en.pdf.

to identify aggravated risk strings in advance of the next application window opening and whether it would require a specific name collision mitigation framework.

Implementation Guidance 29.4: To the extent possible, all applied-for strings should be subject to a DNS Stability evaluation to determine whether they represent a name collision risk.

Implementation Guidance 29.5: The ICANN community should develop name collision risk criteria and a test to provide information to an applicant for any given string after the application window closes so that the applicant can determine if they should move forward with evaluation.

Implementation Guidance 29.6: If controlled interruption (CI) for a specific label (usually a 2nd-level domain) is found to cause disruption, ICANN may decide to allow CI to be disabled for that label while the disruption is fixed, provided that the minimum CI period is still applied to that label.

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

Rationale for Recommendation 29.1: The Working Group agreed that the recommendation that ICANN must include a mechanism to evaluate the risk of name collisions in the TLD evaluation process as well during the transition to delegation phase is still relevant, with the addition of the requirement for such a mechanism to be ready prior to the next application period. The Working Group agreed that the requirement for a mechanism would promote predictability for applicants and other parties. In response to concerns raised in comments, the Working Group agreed that it did not have to recommend what the mechanism is.

Rationale for Affirmation 29.2: In its deliberations the Working Group noted that while there was some support for some aspects of a new mitigation strategy relating to evaluation of high and aggravated-risk strings, and disabling controlled interruption, there was considerable disagreement concerning the form of a new mitigation framework. The Working Group noted that in its Final Report,[187] JAS Global Advisors does believe that the previous mitigation measures have worked. The Working Group noted also that no data that has been presented has shown that the previous mitigation measures haven't worked. The Working Group acknowledged that there are a number of groups that think that the launch of the next round should be dependent on the outcome of the NCAP studies, while noting that at the time of deliberation it was unclear whether the NCAP studies would be completed by the time subsequent gTLDs are ready to launch.

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[187] See "Mitigating the Risk of DNS Namespace Collisions Final Report," a report by JAS Global Advisors ("JAS"). June 2014 at https://www.icann.org/en/system/files/files/name-collision-mitigation-study-06jun14-en.pdf .

With respect to the NCAP, the Working Group reviewed the Board resolution on its creation as well as in directing ICANN org to initiate Study 1.[188] The Working Group agreed that it is up to the ICANN community and ICANN Board of Directors to determine any dependencies between the NCAP and the next round of new gTLD applications. To gain some clarification from the ICANN Board concerning possible dependencies with the ongoing work of the NCAP, the GNSO Council sent a letter on 20 September 2019 requesting guidance from the ICANN Board of Directors concerning its views related to "dependencies, if any, between the NCAP and the ongoing policy work of the New gTLD Subsequent Procedures PDP."[189] In its response on 1 November 2019 Cherine Chalaby, then Chairman of the ICANN Board, noted that the "Board has not sought to establish a new dependency on completion of the PDP work based on commissioning NCAP Study 1", which had not yet started at that time, but that "upon completion of Study 1, the Board can determine in consultation with the community whether additional NCAP work is necessary and, if so, which elements should be a dependency for any of the other future milestones noted in your letter."[190] At the time of the Working Group deliberations on the public comments the GNSO Council had not yet sent its letter to the ICANN Board, but the Working Group agreed that it needed to plan for a circumstance where the NCAP work is either not completed or they choose not to go on with Study 2 or 3.

The Working Group notes that ICANN org, in cooperation with the NCAP Discussion Group, has since completed its Study 1 and published the Study 1 report,[191] leveraging an outside consultant. The consultant who produced the Study 1 report made the following conclusions relating to Studies 2 and 3: "Regarding Study 2, analyzing datasets is unlikely to identify significant root causes for name collisions that have not already been identified. New causes for name collisions are far more likely to be found by investigating TLD candidates for potential delegation on a case by case basis. Regarding Study 3, controlled interruption has already proven an effective mitigation strategy, and there does not appear to be a need to identify, analyze, and test alternatives for the vast majority of TLD candidates. All of that being said, this does not mean further study should not be conducted into name collision risks and the feasibility of potentially delegating additional domains that are likely to cause name collisions. Most notably, the Study 3 question of how to mitigate name collisions for potential delegation of the corp, home, and mail TLDs is still unresolved. However, the proposals for Studies 2 and 3,

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[188] Specifically, in November 2017 the ICANN Board asked the ICANN Security and Stability Advisory Committee (SSAC) to study the impact of name collisions and advise the Board on their effects and possible mitigation. In response, the SSAC started the NCAP effort and designed Study 1, the first of three name collision studies intended to address the Board's request. See: https://www.icann.org/resources/board-material/resolutions-2019-03-14-en

[189] See GNSO Council Response to ICANN Board on potential dependencies between the Name Collisions Analysis Project (NCAP) and New gTLD Subsequent Procedures at: https://gnso.icann.org/sites/default/files/file/field-file-attach/drazek-et-al-to-chalaby-2-20sep19-en.pdf.

[190] See https://gnso.icann.org/sites/default/files/file/field-file-attach/chalaby-to-drazek-et-al-01nov19-en.pdf.

[191] https://www.icann.org/en/system/files/files/ncap-study-1-report-19jun20-en.pdf

which were developed years ago, do not seem to be effective ways of achieving the intended goals."

The Working Group notes that the SSAC and the NCAP Discussion Group are currently working on a new scope of work for Study 2 which must be approved by the ICANN Board prior to commencement. The Board will not likely be acting on Study 2 until after the Working Group publishes its Final Report.

Given that the Working Group did not agree on a new mitigation framework, the Working Group affirms continued use of the New gTLD Collision Occurrence Management framework unless and until the ICANN Board adopts a new mitigation framework.

Rationale for Implementation Guidance 29.3 and 29.4: The Working Group agreed that to the extent possible, ICANN should seek to identify high-risk strings in advance of opening the application submission period, which should constitute a "Do Not Apply" list. ICANN should also seek to identify aggravated strings in advance of the next application window opening and whether it would require a specific name collision mitigation framework. However, to the extent possible, all applied-for strings should be subject to a DNS Stability evaluation to determine whether they represent risk of name collision. The Working Group's justification for including this implementation guidance is that high-risk strings are likely to cause technical instability by definition, so these should not be able to be delegated. In addition, the Working Group agreed that identifying high-risk and aggravated-risk strings early in the process would promote predictability for applicants and other parties to the extent possible.

Rationale for Implementation Guidance 29.5: The Working Group agreed that the ICANN community should develop name collision risk criteria and a test to provide information to an applicant for any given string after the application window closes so that the applicant can determine if they should move forward with evaluation. The Working Group reviewed the SSAC's advice in SAC090 and agreed that Recommendation 2, part 3 may provide guidance concerning the development of criteria and a test.[192]

The Working Group acknowledges that the Name Collision Analysis Project work in relation to Board Resolutions 2017.11.02.29 – 2017.11.02.31 is ongoing and that the Board advised the Working Group in public comment on the Subsequent Procedures Initial Report to work together with the NCAP Discussion Group on the topic of name collisions. Accordingly, some Subsequent Procedures Working Group members are participating in the NCAP.

Rationale for Implementation Guidance 29.6: The Working Group agreed that if controlled interruption (CI) for a specific label is found to cause disruption, ICANN may

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[192] See SAC090 SSAC Advisory on the Stability of the Domain Namespace (22 December 2016) at https://www.icann.org/en/system/files/files/sac-090-en.pdf.

decide to disable CI for that label while the disruption is fixed, provided that the minimum CI period is still applied to that string. The Working Group noted that this recommendation is one on which the Working Group's Work Track 4 reached consensus. The Working Group agreed that there was support to include this item as implementation guidance.

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

In its deliberations, the Working Group discussed those comments to the Initial Report, including from the ALAC, that said that the NCAP work should be completed before any new round begins.[193] Subsequent to those deliberations and to gain some clarification from the ICANN Board concerning possible dependencies with the ongoing work of the NCAP, the GNSO Council sent a letter on 20 September 2019 requesting guidance from the ICANN Board of Directors concerning its views related to "dependencies, if any, between the NCAP and the ongoing policy work of the New gTLD Subsequent Procedures PDP."[194] In its response on 01 November 2019 Cherine Chalaby, then Chairman of the ICANN Board, noted that the "Board has not sought to establish a new dependency on completion of the PDP work based on commissioning NCAP Study 1", (which had not yet started at that time), but that "upon completion of Study 1, the Board can determine in consultation with the community whether additional NCAP work is necessary and, if so, which elements should be a dependency for any of the other future milestones noted in your letter."[195] The Working Group notes that the Board will not be acting on Study 2 until after the Working Group publishes its Final Report.

Since its deliberations on the comments to the Initial Report, the Working Group has continued to discuss the issue of whether the completion of the NCAP studies is a contingency for the Working Group to complete its work. In reviewing the NCAP's work as well as the Board's response to the GNSO Council, the Working Group believes that the completion of the NCAP's studies and SSAC work are not necessarily a contingency for the PDP Working Group to complete its work, but as the Board notes, "the Board can determine in consultation with the community whether additional NCAP work is necessary and, if so, which elements should be a dependency for any of the other future milestones".

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[193] In its comments on the Initial Report, the ALAC stated, "In several places in our response, the ALAC defer to the SSAC for further recommendations. This includes areas such as dotless domains and name collisions. Again, we reiterate, there is no cause for urgency surrounding the further introduction of gTLDs and due time should be given to the SSAC to explore the security and stability implications of various proposals before any New round should begin." See: https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/attachments/20180926/8dbfd251/AL-ALAC-ST-0926-01-00-EN-0001.pdf.

[194] See GNSO Council response to ICANN Board on potential dependencies between the Name Collisions Analysis Project (NCAP) and New gTLD Subsequent Procedures at: https://gnso.icann.org/sites/default/files/file/field-file-attach/drazek-et-al-to-chalaby-2-20sep19-en.pdf.

[195] See https://gnso.icann.org/sites/default/files/file/field-file-attach/chalaby-to-drazek-et-al-01nov19-en.pdf.

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

- The recommendations under this topic seek to promote security and stability of the DNS, a subject this is addressed more broadly under Topic 26: Security and Stability.

2.8 Dispute Proceedings

Topic 30: GAC Consensus Advice and GAC Early Warning

a. Recommendations and/or implementation guidelines

Affirmation 30.1: The Working Group acknowledges the ability of the GAC to issue GAC Consensus Advice in accordance with the ICANN Bylaws. In addition, subject to the recommendations below, the Working Group supports the 2012 implementation of GAC Early Warnings. 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 30.2: To the extent that the GAC provides GAC Consensus Advice (as defined in the ICANN Bylaws) in the future on categories of TLDs, the GAC should provide this Advice prior to the finalization and publication of the next Applicant Guidebook. In the event that GAC Consensus Advice is issued after the finalization and publication of the Applicant Guidebook and whether the GAC Consensus Advice applies to categories, groups or classes of applications or string types, or to a particular string, the ICANN Board should take into account the circumstances resulting in such timing and the possible detrimental effect of such timing in determining whether to accept or override such GAC Consensus Advice as provided in the Bylaws.

Recommendation 30.3: As stated in the ICANN Bylaws, GAC Consensus Advice must include a clearly articulated rationale.[196] The Working Group recommends that GAC Consensus 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

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[196] 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.

international agreements or where they may affect public policy issues."[197]

Recommendation 30.4: Section 3.1 of the 2012 Applicant Guidebook states that GAC Consensus 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.[198] The Working Group further notes that the language may have the unintended consequence of hampering the ability of the Board to facilitate a solution that mitigates concerns and is mutually acceptable to the applicant and the GAC as described in the relevant Bylaws language. Such a solution could allow an application to proceed. In place of the omitted language, the Working Group recommends including in the Applicant Guidebook a reference to applicable Bylaws provisions that describe the voting threshold for the ICANN Board to reject GAC Consensus Advice.[199]

Recommendation 30.5: The Working Group recommends that GAC Early Warnings are issued during a period that is concurrent with the Application Comment Period.[200] 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.

Recommendation 30.6: 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 30.7: Applicants must be allowed to change their applications, including the addition or modification of Registry Voluntary Commitments (RVCs, formerly voluntary PICs), to address GAC Early Warnings, GAC Consensus Advice,

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[197] 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.

[198] 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."

[199] See section 12.2(a)(x) of the current ICANN Bylaws: https://www.icann.org/resources/pages/governance/bylaws-en/#article12

[200] See Topic 28 of this report for discussion of the Application Comment Period.

and/or other comments from the GAC.[201] Relevant GAC members are strongly encouraged to make themselves available during a specified period of time for direct dialogue[202] with applicants impacted by GAC Early Warnings, GAC Consensus Advice, or comments to determine if a mutually acceptable solution can be found.

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

Rationale for Affirmation 30.1: 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 acknowledges the role of GAC Consensus Advice as defined in the ICANN Bylaws. The Working Group supports continuation of these mechanisms in subsequent rounds, subject to the recommendations included in this report.

Rationale for Implementation Guidance 30.2: GAC Consensus Advice in the 2012 round was provided for whole categories of applications, whereas the 2012 Applicant Guidebook states that Consensus Advice is to be provided for individual applications. The Working Group reviewed that when the GAC initially issued Consensus 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 support of predictability, if the GAC issues Consensus Advice on categories in the future, this Consensus Advice should be given by the GAC before the next version of Applicant Guidebook is finalized and published, so that prospective applicants and the Internet community fully understand the implications and scope of the Consensus Advice before the application process begins. To further support predictability for applicants, if GAC Consensus Advice is issued after the next version of Applicant Guidebook is finalized and published, whether the GAC Consensus Advice applies to categories, groups or classes of applications or string types, or to a particular string, the ICANN Board should take into account the circumstances resulting in such timing and the possible detrimental effect of such timing in determining whether to accept or override such GAC Consensus Advice as provided in the Bylaws.

In developing this implementation guidance, the Working Group considered input from individual GAC members on an early draft of the text.[203] A number of GAC members emphasized that it is important for the GAC to have flexibility in providing Consensus

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[201] The addition or modification of RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendations set forth under Topic 20: Application Change Requests including, but not limited to, an operational comment period in accordance with ICANN's standard procedures and timeframes.

[202] 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.

[203] https://community.icann.org/download/attachments/93129620/GAC%20Written%20Consultation_%20Input%20Received-%20Updated%209%20May.pdf?version=1&modificationDate=1589186135000&api=v2

Advice. Noting this input, the Working Group revised the implementation guidance to provide for flexibility while also encouraging the Board to consider all relevant factors when making a decision on GAC Consensus Advice.

Rationale for Recommendation 30.3: The ICANN Bylaws require that Advice provided by Advisory Committees must be clear, unambiguous and accompanied by a rationale.[204] The Working Group notes that CCT-RT Recommendation 33[205] specifically references this requirement with respect to GAC Consensus Advice related to gTLDs. The Working Group emphasizes that by providing a rationale that is in line with the scope of GAC Consensus 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 Consensus 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 30.4: 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 Bylaws section 12.2, which describes the role of the GAC and GAC Consensus Advice. Noting that the Bylaws do not indicate that GAC Consensus Advice "will create a strong presumption for the ICANN Board that the application should not be approved,"[206] 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 Consensus Advice and allows for the delegation of a string if the underlying concerns that gave rise to the GAC Consensus Advice are addressed. Allowing for mutually acceptable solutions is consistent with the relevant section of the Bylaws.

The Working Group considered input from individual GAC members regarding this recommendation,[207] noting that a number of GAC members, although not all, favored retaining the existing "strong presumption" language in the Applicant Guidebook. The

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[204] See Section 12.3. PROCEDURES of the ICANN Bylaws
https://www.icann.org/resources/pages/governance/bylaws-en
[205] 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."
[206] 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
[207]
https://community.icann.org/download/attachments/93129620/GAC%20Written%20Consultation_%20Input%20Received-%20Updated%209%20May.pdf?version=1&modificationDate=1589186135000&api=v2

Working Group appreciates this input but nonetheless believes that it is appropriate to omit the language for the reasons stated above.

Rationale for Recommendation 30.5: 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.

Rationale for Recommendation 30.6: 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 30.7: The Working Group believes that to the extent that applicants can address concerns raised in GAC Early Warnings, GAC Consensus Advice, or other comments from the GAC through public comment, or by an SO/AC in another manner 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 an operational comment period and evaluation by ICANN as discussed under Topic 20: 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 Consensus 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 reviewed public comments submitted by the GAC in response to the Working Group's Initial Report and draft Final Report. The Working Group noted the GAC's openness to discussion on opportunities to increase the transparency and fairness in the GAC Early Warning and GAC Consensus Advice process and further noted the GAC's position that the PDP should not make recommendations on GAC activities. In discussion of these comments, Working Group members agreed that it is within the PDP's remit to make recommendations regarding ICANN processes as they apply specifically to future rounds of the New gTLD Program. Therefore, the Working Group determined that it is appropriate to make recommendations with a focus exclusively on GAC Early Warning and GAC Consensus Advice as they apply to subsequent rounds.

The GAC's ICANN67 Communiqué[208] included a summary of GAC discussions on the Working Group's draft recommendations regarding GAC Consensus Advice and GAC Early Warning. The Working Group reviewed the Communiqué. On 4 May 2020, the GAC provided consolidated input from individual GAC members on the topics discussed at ICANN67, including GAC Early Warnings and GAC Consensus Advice.[209] In this informal input, a number of commenters reiterated the important role the GAC Early Warning and GAC Consensus Advice play in the New gTLD Program. Some comments raised that the PDP should not make recommendations that limit the scope of GAC Consensus Advice. Another theme in the comments was concern raised by some about the draft recommendation to omit language from the Applicant Guidebook that GAC Consensus Advice "will create a strong presumption for the ICANN Board that the application should not be approved." However, these concerns were not universal among commenters.[210]

The Working Group considered 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 targets of the recommendations, including the New gTLD Subsequent Procedures Working Group. 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."

As noted in sub-topic b above, the Working Group believes that Recommendation 30.3 is consistent with the CCT-RT's recommendation that GAC Consensus Advice is "enunciated, actionable and accompanied by a rationale."

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 and GAC Consensus Advice processes (Working Group Recommendation 30.7) provides a potential means to "challenge assertions of fact by GAC members." The Working Group further believes that the substantive appeals

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[208] https://gac.icann.org/contentMigrated/icann67-gac-communique
[209]
https://community.icann.org/download/attachments/93129620/GAC%20Written%20Consultation_%20Input%20Received-%20Updated%209%20May.pdf?version=1&modificationDate=1589186135000&api=v2
[210] This reference to informal GAC input is not intended to be a comprehensive summary of all comments. Please review the compilation of comments for full text of the input received.

mechanism proposed under Topic 32: Limited Challenge/Appeal Mechanism addresses the need for an appeals mechanism expressed by the CCT-RT.

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

- This topic includes a recommendation that applicants must be allowed to change their applications, including the addition or modification of Registry Voluntary Commitments (RVCs), to address GAC Early Warnings and/or GAC Consensus Advice. RVCs are discussed under Topic 9: Registry Voluntary Commitments / Public Interest Commitments. Changes to applications are discussed under Topic 20: Application Change Requests.
- This topic includes a recommendation that GAC Early Warnings are issued during a period that is concurrent with the Application Comment Period. Additional discussion of the Application Comment Period in included under Topic 28: Role of Application Comment.

Topic 31: Objections

a. Recommendations and/or implementation guidelines

Recommendation 2 from the 2007 policy is affirmed under Topic 24: String Similarity Evaluations. Recommendation 2 is also relevant to this topic.

Recommendation 3 from the 2007 policy is affirmed under Topic 10: Applicant Freedom of Expression. Recommendation 3 is also relevant to this topic.

Affirmation 31.1: Subject to the recommendations/implementation guidance below, The Working Group affirms the following recommendations and implementation guidance from 2007:

- Recommendation 6: "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 20: "An application will be rejected if it is determined, based on public comments or otherwise, that there is substantial opposition to it from among significant established institutions of the economic sector, or cultural or language community, to which it is targeted or which it is intended to support."

- Implementation Guideline H: "External dispute providers will give decisions on objections."
- Implementation Guideline P (IG P, including subheadings on process and guidelines, refers specifically to the Community Objection): "The following process, definitions and guidelines refer to Recommendation 20.

Process

Opposition must be objection based.

Determination will be made by a dispute resolution panel constituted for the purpose.

The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).

Guidelines

The task of the panel is the determination of substantial opposition.

a) substantial – in determining substantial the panel will assess the following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment

b) significant portion – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.

c) community – community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted.

d) explicitly targeting – explicitly targeting means there is a description of the intended use of the TLD in the application.

e) implicitly targeting – implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.

f) established institution – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years.

Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community.

The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

g) formal existence – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar.

h) detriment – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely.”

- Implementation Guideline Q: “ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.”

Affirmation with Modification 31.2: Recommendation 12 from 2007 states: “Dispute resolution and challenge processes must be established prior to the start of the process.” Consistent with Implementation Guidance 31.12 below, the Working Group affirms Recommendation 12 with the following modification in italicized text: “Dispute resolution and challenge processes must be established prior to the start of the process, *the details of which must be published in the Applicant Guidebook*.”

Affirmation with Modification 31.3: Implementation Guideline R from 2007 states: “Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated.” The Working Group modifies this Implementation Guideline to read: “Once a response to the formal objection has been filed by the applicant(s), there may be a cooling off period for negotiation or compromise by agreement of both parties if the parties formally notify the dispute resolution provider that they would like to initiate a cooling off period.”

Affirmation 31.4: The Working Group affirms the overall approach to the public objection and dispute resolution process described in Section 3.2 of the 2012 Applicant Guidebook, subject to the recommendations below. The Working Group further affirms that parties with standing should continue to be able to file formal objections with designated third-party dispute resolution providers on specific applications based on the following grounds: (i) String Confusion Objection (ii) Existing Legal Rights Objection (iii) Limited Public Interest Objection (iv) Community Objection.

Implementation Guidance 31.5: Where possible, costs associated with filing a formal objection should be reduced while maintaining the quality and integrity of the objections process.

Implementation Guidance 31.6: Information about fees that were charged by dispute resolution service providers in previously filed formal objections should be accessible for future review.

Implementation Guidance 31.7: Consideration should be given to whether there were barriers to filing a formal objection in the 2012 round, and if so, whether those barriers can and should be reduced in subsequent procedures. Specifically, the Working Group suggests further consideration of the time required to file a formal objection, the expertise required, and limited awareness of the opportunity to file.

Affirmation 31.8: The Working Group affirms that the role of the Independent Objector (IO) should exist in subsequent procedures,[211] subject to the changes introduced from other recommendations, and the implementation guidance below. The Working Group further affirms that the IO should be given the opportunity to file only Community and/or Limited Public Interest objections when doing so serves the best interests of the public who use the global Internet.

Implementation Guidance 31.9: A mechanism should be established (e.g., standing panel of multiple IO panelists) that mitigates the possible conflict of interest issues that may arise from having a single panelist serving as the IO.

Recommendation 31.10: For all types of formal objections, the parties to a proceeding must be given the opportunity to mutually agree upon a single panelist or a three-person panel, bearing the costs accordingly. Following the model of the Limited Public Interest Objection in the 2012 round, absent agreement from all parties to have a three-expert panel, the default will be a one-expert panel.

Recommendation 31.11: ICANN must provide transparency and clarity in the processes used to handle the filing and processing of formal objections, including the resources and supplemental guidance used by dispute resolution provider panelists to arrive at a decision, expert panelist selection criteria and processes, and filing deadlines. The following implementation guidance provides additional direction in this regard.

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[211] Section 3.2.5 of the 2012 Applicant Guidebook describes the role of the Independent Objector. The Working Group believes that a number of existing practices for the IO should be maintained. These include:
- ICANN org continuing to provide the budget for the IO;
- The IO continuing to be limited to filing objections for Limited Public Interest and Community Objections;
- Continuing to require that a relevant public comment be submitted in order to file an objection;
- Impose no limit on the number of objections the IO may file, subject to budgetary constraints; and,
- Continue to require extraordinary circumstances to file an objection where an objection has already been filed by another entity on the same ground.

Implementation Guidance 31.12: All criteria and/or processes to be used by panelists for the filing of, response to, and evaluation of each formal objection should be included in the Applicant Guidebook.

Implementation Guidance 31.13: Information about fees and refunds for the dispute resolution processes should be readily available prior to the commencement/opening of the application submission period.

Implementation Guidance 31.14: Prior to the launch of the application submission period, to the extent that dispute resolution panelists draw on other guidance, processes and/or sources of information to assist them with processing and making decisions, such information should be made publicly available and easily found, either on their respective websites or preferably, in a central location.

Recommendation 31.15 The "quick look" mechanism, which applied to only the Limited Public Interest Objection in the 2012 round, must be developed by the Implementation Review Team for all formal objection types. The "quick look" is designed to identify and eliminate frivolous and/or abusive objections.[212]

Recommendation 31.16: Applicants must have the opportunity to amend an application or add Registry Voluntary Commitments (RVCs) in response to concerns raised in a formal objection. All these amendments and RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendations set forth under Topic 20: Application Change Requests including, but not limited to, an operational comment period in accordance with ICANN's standard procedures and timeframes.

Recommendation 31.17: To the extent that RVCs are used to resolve a formal objection either (a) as a settlement between the objector(s) and the applicant(s) or (b) as a remedy ordered by an applicable dispute panelist, those RVCs must be included in the applicable applicant(s) Registry Agreement(s) as binding contractual commitments enforceable by ICANN through the PICDRP.

Recommendation 31.18: ICANN must reduce the risk of inconsistent outcomes in the String Confusion Objection Process, especially where an objector seeks to object to multiple applications for the same string. The following implementation guidance provides additional direction in this regard.

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[212] The Working Group expects the Implementation Review Team to determine in greater detail how the quick look mechanism will identify and eliminate frivolous and/or abusive objections for each objection type. The Working Group anticipates that standing will be one of issues that the quick look mechanism will review, where applicable.

Implementation Guidance 31.19: ICANN should allow a single String Confusion Objection to be filed against all applicants for a particular string, rather than requiring a unique objection to be filed against each application. Specifically:

- An objector may file a single objection that extends to all applications for an identical string.
- Given that an objection that encompasses several applications would require more work to process and review, the string confusion dispute resolution service provider (DSRP) could introduce a tiered pricing structure for these sets. Each applicant for that identical string should still prepare a response to the objection.
- The same panel should review all documentation associated with the objection. Each response should be reviewed on its own merits.
- The panel should issue a single determination that identifies which applications should be in contention. Any outcome that results in indirect[213] contention should be explained as part of the DRSP's determination.

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

Rationale for Affirmations 31.1, 3.1.4, and 31.8, Affirmations with Modification 31.2 and 31.3, and Implementation Guidance 31.5-31.7 and 31.9: The Working Group believes that the ground for formal objections and the general approach taken in the 2012 round to formal objections processes continues to be appropriate in subsequent procedures, and therefore affirms relevant recommendations and implementation guidelines from 2007, as well as the relevant sections of the 2012 Applicant Guidebook, subject to the recommendations and implementation guidance included in this report. The Working Group provided implementation guidance that ICANN should investigate barriers to filing formal objections and reduce those barriers where possible. Cost of filing formal objections is one potential barrier that the Working Group discussed extensively. The Working Group provided implementation guidance that costs should be better understood and reduced where feasible while maintaining the quality and integrity of the formal objections process.

The Working Group expressed concerns about the effectiveness of and performance by the Independent Objector (IO), but believes that the role should be maintained, with similar rules and procedures in place, though it notes that stricter adherence to constraints may improve effectiveness. The Working Group agreed that there may be conflict of interest issues with relying on a single panelist to serve in the IO role. While the Working

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[213] Per Applicant Guidebook Module 4 (p 4-3): "Two strings are in direct contention if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another. Two strings are in indirect contention if they are both in direct contention with a third string, but not with one another."

Group did not reach agreement on the specific mechanism to mitigate conflicts of interest for the IO, it nevertheless recognized the need for a mechanism.

The Working Group modified Recommendation 12 from 2007 to clarify that the details of dispute resolution and challenge processes must be published in the Applicant Guidebook. This modification updates the recommendation to be consistent with the implementation guidance under this topic.

The Working modified Implementation Guideline R from 2007 to indicate that a cooling off period for negotiation or compromise should only apply if both parties to a formal objection agree and request such a period. The Working Group does not believe that it is necessary or appropriate to universally mandate a cooling off period, which was required in the 2012 round.

Rationale for Recommendation 31.10: The Working Group acknowledges that there are potential costs and benefits to dispute resolution provider panels composed of one or three expert panelist(s). Panels containing three panelists may be more reliable and less likely to result in the inconsistent application of formal objection criteria, procedures, or outcomes compared to panels composed of a single expert. At the same time, these larger panels are more costly. The Working Group believes that parties to the proceeding are in the best position to weigh the potential tradeoffs between cost and consistency and make this decision, and therefore recommends that they should collectively have the option to mutually agree whether the formal objection is considered by a one or three expert panel, bearing the costs accordingly.

Rationale for Recommendation 31.11 and Implementation Guidance 31.12-31.14: The Working Group put forward recommendations and implementation guidance aimed at increasing transparency and clarity in processes associated with filing and processing formal objections. The Working Group believes that by publishing all objections criteria and detailed processes, along with any supplemental information from the dispute resolution service providers, ICANN will provide greater transparency and clarity in formal objections processes. The Working Group believes this is critical to ensuring that parties to formal objections have equal access to procedural information and clearer expectations on what may be required of them. In doing so, it may also help to ensure that outcomes of formal objections decisions are as consistent as possible in subsequent application rounds. Also in support of clarity and transparency, the Working Group provided implementation guidance regarding the publication of information about fees and refunds for the dispute resolution processes, as well as the publication of any guidance, processes and/or sources of information used by dispute resolution service providers to assist them with making decisions.

Rationale for Recommendation 31.15: The Working Group believes that the "quick look" mechanism was an important tool in the 2012 application round to identify frivolous objections quickly at the beginning of the Limited Public Interest Objection process, and thereby avoid unnecessary delays and costs to the applicant. The Working Group believes that the "quick look" mechanism can provide similar benefits for other formal objection

types, and therefore recommends extending the mechanism to all formal objections processes in subsequent rounds.

Rationale for Recommendation 31.16 and 31.17: The Working Group agreed that it is important for applicants to have an opportunity to make commitments or change an application in response to concerns that have been raised through the formal objections process. The Working Group believes that by providing greater flexibility to applicants, the process may allow mutually satisfactory outcomes, and if successful, allow the application to move forward. Mitigating concerns in objections in this manner may also reduce the number of objections that require formal proceedings to reach resolution. In support of accountability, these RVCs should be included in the applicable applicant(s) Registry Agreement(s) as binding contractual commitments enforceable by ICANN through the PICDRP.

Rationale for Recommendation 31.18 and Implementation Guidance 31.19: Following the 2012 round, concerns were raised about perceived inconsistent outcomes of String Confusion Objections. The Working Group reviewed key developments regarding the String Confusion Objection in the 2012 round, including publication of the *Proposed Review Mechanism to Address Perceived Inconsistent Expert Determinations on String Confusion Objections*[214] and the New gTLD Program Committee (NGPC) resolution identifying three String Confusion Objection Expert Determinations as not being in the best interest of the New gTLD Program and the Internet community.[215] The Working Group also considered concerns regarding cases of singular and plural versions of the same string. The Working Group reviewed relevant documentation, including the NGPC resolution, determining that no changes were needed to the existing mechanisms in the Applicant Guidebook to address potential consumer confusion resulting from allowing singular and plural versions of the same string.[216] The Working Group noted that some community members remain concerned that there is not sufficient guidance on this issue. The Working Group considered the CCT-RT's Recommendation 35[217] on this topic, discussed potential solutions extensively, and put forward a recommendation and implementation guidance that seeks to reduce the risk of inconsistent outcomes by allowing an objector to file a single objection that would extend to all applications for an identical string.

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

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[214] https://www.icann.org/public-comments/sco-framework-principles-2014-02-11-en
[215] https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b
[216] https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-25-en#2.d
[217] CCT-RT Recommendation 35 states: "The Subsequent Procedures PDP should consider adopting new policies to avoid the potential for inconsistent results in string confusion objections. In particular, the PDP should consider the following possibilities: 1) Determining through the initial string similarity review process that singular and plural versions of the same gTLD string should not be delegated 2) Avoiding disparities in similar disputes by ensuring that all similar cases of plural versus singular strings are examined by the same expert panelist 3) Introducing a post dispute resolution panel review mechanism." This recommendation was passed through by the Board.

The Working Group discussed a proposal that there should be grounds for a formal objection if an applied-for string is an exact translation[218] of an existing TLD string that is in a highly regulated sector, and the applied-for string would not employ the same safeguards as the existing TLD, subject to the applicant's governing law. This proposal would potentially require creating a new type of objection.[219] The rationale for this proposal is that end-users may be confused and assume that both strings have the same safeguards in place. A concern was raised that this proposal could potentially harm competition and discourage the use of innovative business models. The Working Group determined that because the Working Group agreed upon Category 1 restrictions for regulated strings, there is no need for the objection process.

The Working Group discussed the possibility of extending formal objections mechanisms in other ways, for example, allowing objections if an applicant applies for a synonym of an existing Verified TLD without offering the same protections as the Verified TLD, or allowing formal objections if an applicant applies for a homonym of an existing TLD where the spelling of the two words is different but the pronunciation is the same. The Working Group did not agree to include any recommendations on these issues under this topic in the report.

The Working Group has also discussed strings associated with highly regulated sectors and Verified TLDs in the context of application evaluation criteria. Please see Topic 9: Registry Commitments / Public Interest Commitments and Topic 24: String Similarity Evaluation for additional information. Topic 9: Registry Commitments / Public Interest Commitments also includes a discussion of CCT-RT Recommendation 12.[220]

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

- This topic includes a recommendation that applicants may amend an application or add Registry Voluntary Commitments (RVCs) in response to concerns raised in a formal objection, and that these changes will be considered application changes. Additional information about RVCs and application changes are included under

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[218] "Translation" in this context refers to two words that are translations of one another in two different languages, for example "pharmacy" in English and "farmacia" in Spanish.

[219] The Working Group noted that the new type of objection could share certain elements of the Limited Public Interest Objection, namely that anyone with standing could bring that objection, including perhaps the Independent Objector.

[220] CCT-RT Recommendation 12 states: "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."

Topic 9: Registry Voluntary Commitments / Public Interest Commitments and Topic 20: Application Change Requests.

- This topic discusses Verified TLDs and strings associated with highly regulated sectors specifically in the context of formal objections. Additional discussion of these subjects is included under Topic 9: Registry Voluntary Commitments / Public Interest Commitments.
- This topic addresses the String Confusion Objection. Recommendations regarding the String Similarity Review are included under Topic 24: String Similarity Evaluations.
- This topic addresses the Community Objection. Recommendations regarding the evaluation process for community-based applications are included under Topic 34: Community Applications.
- Topic 32: Limited Challenge/Appeal Mechanism provides recommendations for a mechanism that allows parties to appeal objections decisions under limited circumstances.

Topic 32: Limited Challenge / Appeal Mechanism

a. Recommendations and/or implementation guidelines

Recommendation 12 from the 2007 policy is affirmed with modification under Topic 31: Objections. Recommendation 12 is also relevant to this topic.

Recommendation 32.1: The Working Group recommends that ICANN establish a mechanism that allows specific parties to challenge or appeal certain types of actions or inactions that appear to be inconsistent with the Applicant Guidebook.[221]

The new substantive challenge/appeal mechanism is not a substitute or replacement for the accountability mechanisms in the ICANN Bylaws that may be invoked to determine whether ICANN staff or Board violated the Bylaws by making or not making a certain decision. Implementation of this mechanism must not conflict with, be inconsistent with, or impinge access to accountability mechanisms under the ICANN Bylaws.

The Working Group recommends that the limited challenge/appeal mechanism applies to the following types of evaluations and formal objections decisions[222]:

  Evaluation Challenges

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[221] Examples of such actions or inactions include where an evaluator misapplies the Guidebook or omits Guidebook criteria or where a panel relies on incorrect information or standard to decide an objection.
[222] The list of challenges and appeals herein are based on the current and envisaged processes and procedures for the New gTLD Program. In the event that additional evaluation elements and/or objections are added, modified or removed from the program, the challenges and/or appeals may have to be modified as appropriate.

1. Background Screening
2. String Similarity
3. DNS Stability
4. Geographic Names
5. Technical / Operational Evaluation
6. Financial Evaluation
7. Registry Services Evaluation
8. Community Priority Evaluation
9. Applicant Support
10. RSP Pre-Evaluation

Appeals of Formal Objections Decisions
1. String Confusion Objection
2. Legal Rights Objection
3. Limited Public Interest Objection
4. Community Objection
5. Conflict of Interest of Panelists

Recommendation 32.2: In support of transparency, clear procedures and rules must be established for challenge/appeal processes as described in the implementation guidance below.

Implementation Guidance 32.3: Parties with standing to file a challenge/appeal should vary depending on the process being challenged/appealed. The Working Group's guidance on this issue is summarized in Annex F.

Implementation Guidance 32.4: The type of decision that may be challenged/appealed should vary depending on the process being challenged/appealed. The Working Group's guidance on this issue is summarized in Annex F.

Implementation Guidance 32.5: The Working Group's guidance on the arbiter for each type of challenge/appeal is summarized in Annex F. In the case of challenges to evaluation decisions, the arbiter should typically be from the entity that conducted the original evaluation, but the person(s) responsible for making the ultimate decision in the appeal must be different from those that were responsible for the evaluation. In the case of an appeal of a formal objection decision, the arbiter will typically be a panelist or multiple panelists from the entity that handled the original formal objection, but will not be the same panelist(s) that provided the original formal objection decision.

The Working Group recognizes that ICANN itself may be an evaluator for any of the application evaluation components. This would not change the types of challenges allowed as set forth in Annex F. The arbiter of a challenge where

ICANN itself was the evaluator should be a person or persons within ICANN that were not involved in the ultimate evaluation decision. If possible, the Working Group also recommends that the challenge process should be done under the supervision of the ICANN Ombudsman.

Implementation Guidance 32.6: For all types of appeals to formal objections, the parties to a proceeding must be given the opportunity to mutually agree upon a single panelist or a three-person panel, bearing the costs accordingly.[223] Following the model of the Limited Public Interest Objection in the 2012 round, absent agreement from all parties to have a three-expert panel, the default will be a one-expert panel.

Implementation Guidance 32.7: All challenges and appeals except for the conflict of interest appeals should be reviewed under the "clearly erroneous"[224] standard. Conflict of interests should be reviewed under a "de novo"[225] standard.

Implementation Guidance 32.8: The Working Group's guidance on the party bearing the cost of a challenge/appeal is summarized in Annex F. Regarding appeals filed by the Independent Objector and ALAC, the Working Group notes that in the 2012 round, ICANN designated a budget for the IO. The Working Group believes that this should continue to be the case in subsequent procedures, and that ALAC should similarly have a budget provided by ICANN. The IO and ALAC should pay for any costs related to the appeal out of the budget provided.

Implementation Guidance 32.9: The Working Group's guidance on the remedy for a successful challenge/appeal is summarized in Annex F.

Recommendation 32.10: The limited challenge/appeal process must be designed in a manner that does not cause excessive, unnecessary costs or delays in the application process, as described in the implementation guidance below.

Implementation Guidance 32.11: A designated time frame should be established in which challenges and appeals may be filed. The Working Group's guidance on the time frame for filing appeals is summarized in Annex F.

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[223] Under Topic 31: Objections, the Working Group recommends that parties to a formal objections proceeding have the opportunity to mutually agree on whether to use a single panelist or a three-person panel, bearing the costs accordingly. This recommendation extends the same opportunity for appeals of objections decisions.
[224] Under a clearly erroneous standard of review, the appeals panel must accept the evaluator's or dispute panel's findings of fact unless (1) the panel failed to follow the appropriate procedures or (2) failed to consider/solicit necessary material evidence or information.
[225] Under a de novo standard of review, the appeals panel is deciding the issues without reference to any of the conclusions or assumptions made by the evaluator/dispute panel. It can refer to the evaluator/dispute panel to determine the facts, but it need not defer to any of the findings or conclusions. It would be as if the appeals panel is hearing the facts for the first time.

Implementation Guidance 32.12: The limited challenge/appeal mechanism should include a "quick look" step at the beginning of the process to identify and eliminate frivolous challenges/appeals.

Implementation Guidance 32.13: A party should be limited to a single round of challenge/appeal for an issue. With the exception of challenges to conflict of interest determinations, parties should only be permitted to challenge/appeal the final decision on an evaluation or objection and should not be permitted to file "interlocutory" appeals as the process progresses. Parties should be able to appeal a conflict of interest determination prior to the objection panel hearing the formal objection.

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

Rationale for Recommendation 32.1: In the 2012 application round, there was no challenge/appeal mechanism specifically designed to address decisions made as part of the New gTLD Program. The Working Group considered that in some cases, parties used ICANN's accountability mechanisms to challenge the outcome of formal objections decisions from the 2012 round, and that following two such instances,[226] [227] the New gTLD Program Committee (NGPC) adopted a Final Review Mechanism for a limited set of formal objections.[228] The Working Group noted that the NGPC recommended further consideration of this issue in developing policy for subsequent rounds: ". . . the development of rules and processes for future rounds of the New gTLD Program (to be developed through the multi-stakeholder process) should explore whether a there is a need for a formal review process with respect to Expert Determinations."[229] The Working Group believes that a targeted and limited challenge/appeals process is an appropriate and necessary element of the New gTLD Program going forward. Such a mechanism will ensure that applicants and other interested parties have fair, clear, and predictable means to address specific types of actions or inactions that are inconsistent with the Applicant Guidebook.

This recommendation is consistent with Program Implementation Review Report Recommendation 3.2.a, which states: "Explore a potential review mechanism for the next round." It is also responsive to CCT-RT Recommendation 35, which was directed at the Subsequent Procedures Working Group and passed through by the ICANN Board. Recommendation 35 states: "The Subsequent Procedures PDP should consider adopting new policies to avoid the potential for inconsistent results in string confusion objections. In particular, the PDP should consider the following possibilities: 1) Determining through

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[226] See Reconsideration Request 13-9: Amazon EU S.á.r.l: https://www.icann.org/resources/pages/13-9-2014-02-13-en

[227] See Reconsideration Request 13-10: Commercial Connect, LLC: https://www.icann.org/resources/pages/13-10-2014-02-13-en

[228] https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b

[229] https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b.rationale

the initial string similarity review process that singular and plural versions of the same gTLD string should not be delegated 2) Avoiding disparities in similar disputes by ensuring that all similar cases of plural versus singular strings are examined by the same expert panelist 3) **Introducing a post dispute resolution panel review mechanism**.”

Rationale for Recommendation 32.2: The Working Group believes that challenges/appeals should be subject to clear procedures and rules in order to ensure transparency and predictability for all parties.

Rationale for Implementation Guidance 32.3: In general, the Working Group believes that parties affected by an evaluation or objections decision should have the opportunity to file a challenge/appeal under limited circumstances. The affected parties for each type of evaluation and objection under different circumstances are outlined in Annex F.

Rationale for Implementation Guidance 32.4: The Working Group has provided a summary of specific types of actions or inactions that are inconsistent with the Applicant Guidebook for each type of evaluation and objection decision, and therefore should be eligible for challenge/appeal. Details are outlined in Annex F.

Rationale for Implementation Guidance 32.5: The Working Group believes that it is important for the mechanism to remain lightweight and cost-effective, and therefore believes that it is appropriate to use the original entity/panel that conducted the evaluation or handled the objection to also consider the challenge/appeal. In both cases, the ultimate decision maker(s) within the entity/panel handling the challenge/appeal should be different than those that conducted the original evaluation or considered the original objection. The Working Group discussed whether there would be a large enough number of experts in all evaluation entities to ensure that a different individual(s) within the entity could serve as the arbiter of challenge. This question may require further consideration in the implementation phase. The Working Group considered a proposal in which an alternate evaluation provider/entity would consider the challenge. The Working Group noted, however, that in some cases there was only a single evaluation entity used in the 2012 round for a specific type of evaluation (for example, Community Priority Evaluation and the Application Support Program). The Working Group understands that there could be significant cost implications if additional providers needed to be onboarded in subsequent rounds solely for the purpose of addressing evaluation challenges. The Working Group considered the idea that in cases where there was a single evaluation provider, ICANN org could be the arbiter of a challenge. The Working Group did not come to a conclusion on whether this would be an appropriate path forward. On balance, the Working Group agreed that the “same-provider” approach would be the most efficient and cost-effective solution.

Rationale for Implementation Guidance 32.6: The Working Group acknowledges that there are potential costs and benefits to dispute resolution provider panels composed of one or three expert panelist(s). Panels containing three panelists may be more reliable and less likely to result in the inconsistent application of criteria, procedures, or outcomes compared to panels composed of a single expert. At the same time, these larger panels are

more costly. The Working Group believes that parties to the appeal are in the best position to weigh the potential tradeoffs between cost and consistency and make this decision, and therefore recommends that they should collectively have the option to mutually agree whether the appeal of an objection is considered by a one- or three-expert panel, bearing the costs accordingly.

Rationale for Implementation Guidance 32.7: The Working Group recognizes that reviews under the de novo standard would be time consuming and costly, and further that such reviews could substantially delay applications. The Working Group expects ICANN to have a thorough screening process to pick its evaluators/panelists and believes that deference should be given to the determinations that evaluators/panels make. Therefore, it believes that the clearly erroneous standard is sufficient and appropriate in most cases. As an exception, the Working Group believes that determinations related to panelists' conflict of interest should use the de novo standard of review because the original determination could be made by the party against whom the assertion of a conflict is made.

Rationale for Implementation Guidance 32.8: The party bearing the cost of the challenge/appeal will depend on what is being challenged/appealed, as well as the outcome of the challenge/appeal. In general, the Working Group believes that in the case of evaluation, the filing party should pay for the challenge. In general, the Working Group believes for appeals of objections decisions, the non-prevailing party should bear the cost of the proceeding fees charged by the third-party arbiter.

The Working Group considered whether it is appropriate to give partial refunds to those who are successful in challenging an evaluation decision. For example, one Working Group member proposed that a partial refund could be applied in limited cases where there is an additional finding of clear error on the part of the evaluator or fundamental failure to apply the standards. Other Working Group members noted challenges in implementing such a standard. Ultimately, the Working Group determined that the most appropriate path forward is to ensure that fees are modest, transparent, and flat, so that they are not an excessive burden on those who want to file challenges.

Rationale for Implementation Guidance 32.9: The remedy will be dependent upon what is being challenged/appealed, but the Working Group believes that it should typically involve a reversal of the original decision in some form, as outlined in Annex F.

Rationale for Recommendation 32.10 and Implementation Guidance 32.11-.32.13: The Working Group believes that the new challenge/appeals mechanism must operate in an efficient manner that does not result in excessive costs or process delays. The Working Group has provided implementation guidance for specific measures in this regard. Specifically, a "quick look" mechanism is proposed to avoid unnecessary costs and delays associated with frivolous challenges/appeals. In addition, the Working Group suggests that ICANN set a designated time frame in which challenges/appeals may be filed. Additional detail is available in Annex F. Finally, the Working Group provides

guidance that ICANN should prevent parties from filing multiple appeals for the same matter to avoid excessive delays.

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

The Working Group discussed different perspectives about whether ICANN should fund appeals filed by the ALAC on formal objections decisions. The Working Group considered that if the ALAC filed a Community Objection or Limited Public Interest Objection and the panel made a determination in the applicant's favor that the ALAC felt was incorrect, the ALAC should be in a position to file an appeal. Some Working Group members raised concern that if ICANN funded the original formal objection and also funded an appeal that was ultimately unsuccessful, ICANN would effectively pay twice for the formal objection.

From another perspective, the ALAC has no independent funding, and therefore would be unable to file an appeal absent funding from ICANN. In this view, without funding to file appeals, the ALAC would be denied the ability to fulfill its duty under the Bylaws as the primary organizational constituency for the voice and concerns of the individual Internet user. Further, some believe that the question of standing for the ALAC to file a formal objection and appeal is beyond the scope of the Subsequent Procedures PDP Working Group.

The Working Group discussed several proposals on this topic, for example providing a numerical limit on the number of appeals that the ALAC could file or providing a budget for funding such appeals commensurate with the number of applications received. It was noted that it could be difficult for the ALAC to strategically allocate a limited budget for appeals because the relative timing of different appeals processes is difficult to predict. The Working Group also considered a proposal that would require the ALAC to convince ICANN to fund an appeal based on the merits of the case. ICANN would only fund appeals that it deemed likely to succeed. A variation on this proposal suggested that ICANN could delegate the responsibility to a third party to decide which ALAC appeals to fund. The Working Group ultimately agreed that it was most logical to give the ALAC a finite budget from which it could pay for appeals.

The Working Group discussed who should serve as the arbiter in cases where a party appeals the determination that an objection panelist has no conflict of interest. In such a case, the applicant or objector has submitted a filing with the provider stating that they believe that the panelist has a conflict of interest. The provider has determined that there is no conflict of interest. The applicant or objector then appeals this decision. The Working Group considered the possibility that a panel of ICANN community members could serve as the arbiter of such an appeal, but did not come to agreement on this point. The Working Group ultimately decided that the IRT is best positioned to make a decision on this matter.

In considering challenges to String Similarity Reviews, the Working Group reviewed elements of the IDN ccTLD Fast Track Process[230] that evaluate whether a requested ccTLD string is confusingly similar to other existing or applied-for TLDs:

- Initial DNS Stability Evaluation conducted by a DNS Stability Panel. This evaluation includes a string similarity review.
- A second review can be requested by the applicant if the applied-for string is found to be confusingly similar by the DNS Stability Panel. An external and independent Extended Process Similarity Review Panel ("EPSRP") conducts a second review using a different standard (described below).

For further discussion of IDN ccTLD Fast Track Process as it relates to the New gTLD String Similarity Evaluation, please see Topic 24: String Similarity Evaluations. In the context of challenges to String Similarity Reviews, the Working Group discussed whether it might be appropriate to consider challenges under a different standard than the original String Similarity Evaluation, and specifically whether the standard used by the EPSRP should be used for these challenges. The EPSPR conducts its analysis using a "behavioral metric." The behavioral metric "provides quantitative and statistical evidence about the likelihood of confusing two possible strings and its methods are open and repeatable to enable replication by third parties."[231] The Working Group considered whether such a methodology could provide a more accurate determination of string similarity, but did not come to a conclusion on this issue.

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

- As described under this topic, certain parties can challenge the outcome of specific elements of the evaluation process. The evaluation processes themselves are discussed further in other parts of this report:
  - Topic 22: Registrant Protections (Background Screening)
  - Topic 24: String Similarity Evaluations
  - Annex J: Work Track 5 Final Report on Geographic Names at the Top Level
  - Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services
  - Topic 34: Community Applications
  - Topic 17: Applicant Support Program
  - Topic 6: RSP Pre-Evaluation
- As described under this topic, parties can appeal formal objections decisions. The objections processes themselves are discussed further under Topic 31: Objections.
- Under Topic 18: Terms and Conditions, the Working Group recommends that Terms of Use must only contain a covenant not to sue if, and only if, the appeals/challenge mechanism is adopted.

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[230] https://www.icann.org/en/system/files/files/epsrp-guidelines-04dec13-en.pdf

[231] See Guidelines for the Extended Process Similarity Review Panel (EPSRP) for the IDN ccTLD Fast Track Process: https://www.icann.org/en/system/files/files/epsrp-guidelines-04dec13-en.pdf

● The Working Group discussed the IDN ccTLD Fast Track Process in considering the standard for challenges associated with the results of String Similarity Evaluations.

Topic 33: Dispute Resolution Procedures After Delegation

** This topic is limited to the two Dispute Resolution Procedures available after delegation that the Working Group considers to be within its remit: The Registration Restrictions Dispute Resolution Procedure (RRDRP) and the Public Interest Commitment Dispute Resolution Procedure (PICDRP). The Trademark Post-Delegation Dispute Resolution Procedure is within the remit of the Review of All Rights Protection Mechanisms in All gTLDs PDP Working Group.

a. Recommendations and/or implementation guidelines

Affirmation 33.1: The Working Group affirms that the Public Interest Commitment Dispute Resolution Procedure (PICDRP)[232] and the Registration Restrictions Dispute Resolution Procedure (RRDRP) should remain available to those harmed by a new gTLD registry operator's conduct, subject to the recommendation below.

Recommendation 33.2: For the Public Interest Commitment Dispute Resolution Procedure (PICDRP) and the Registration Restrictions Dispute Resolution Procedure (RRDRP), clearer, more detailed, and better-defined guidance on the scope of the procedure, the role of all parties, and the adjudication process must be publicly available.

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

Rationale for Affirmation 33.1 and Recommendation 33.2: The Working Group believes that post-delegation dispute resolution procedures continue to be appropriate mechanisms to provide those harmed by a new gTLD registry operator's conduct an avenue to complain about that conduct. The Working Group believes, however, that in support of transparency and predictability, clearer and more detailed documentation for these procedures should be published.

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

The Working Group did not conduct an exhaustive review of the PICDRP, because at the beginning of the PDP, no PICDRP cases had been filed. Since that time, only two cases had been filed, which the Working Group felt was too few to support an intensive review.

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[232] The PICDRP will apply to both mandatory PICs and Registry Voluntary Commitments, formerly called voluntary PICs.

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

- This topic provides recommendations about the PICDRP, the dispute resolution procedure associated with Registry Voluntary Commitments (RVCs) and mandatory Public Interest Commitments (PICs). RVCs and PICs are discussed further under Topic 9: Registry Voluntary Commitments / Public Interest Commitments.

2.9 Deliberations and Recommendations: String Contention Resolution

Topic 34: Community Applications

a. Recommendations and/or implementation guidelines

Implementation Guideline F from the 2007 policy is affirmed with modification under Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets. Implementation Guideline F is also relevant to this topic.

Affirmation with Modification 34.1: The Working Group affirms the continued prioritization of applications in contention sets that have passed Community Priority Evaluation (CPE). The Working Group further affirms Implementation Guideline H* from the 2007 policy, with one small modification: "Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions: (i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and (ii) a formal objection process is initiated. Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P." This modified text removes the following sentence under (ii) in order to be consistent with 2012 implementation: "Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim."

> Implementation Guidance 34.2: In the 2012 Applicant Guidebook, the following text is included under definitions for Criterion 1-A Delineation, " "Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low." The corresponding Evaluation Guidelines from the 2012 round include a non-exhaustive list of "elements of straight-forward member definitions." This list should continue to include elements applicable to economic communities with a formal membership structure, but it should also include elements applicable to communities that are not economic in nature, including linguistic and cultural communities, that have clear and straight-forward membership definition. The term "member" in this context should be interpreted

broadly enough to include communities that do not have "card carrying" members. Further, the Evaluation Guidelines should include provisions that allow communities which are not economic in nature (and which therefore may not have clear and straight-forward membership structure) with an equal opportunity to score a full 2 points on the Delineation Criterion, as well as an opportunity to score a single point if some but not all elements of this criterion are met.

Implementation Guidance 34.3: In the 2012 Applicant Guidebook, the following text is included under Definitions for CPE Criterion 1-A Delineation: "Notably, as "community" is used throughout the application, there should be: . . . (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed). . ." and " "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007." The corresponding section of the CPE Evalution Guidelines states, "The following questions must be scored when evaluating the application: . . *Has the community been active since at least September 2007?"* For subsequent procedures, references to "September 2007" should be changed to "the beginning of the then current application submission period."

Implementation Guidance 34.4: In the 2012 Applicant Guidebook, in order to succeed in a Community Priority Evaluation, Criterion 1-A stated that a community should have the requisite "awareness and recognition" among its members ("Delineation"). The Working Group recommends that this criterion must take into consideration the views of the relevant community-related experts, especially in cases where recognition of the community is not measurable (eg., where such recognition is prevented by national law).

Implementation Guidance 34.5: In the 2012 Applicant Guidebook, the following text is included under Definitions for CPE Criterion 1-A Delineation: " "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities." The interpretation in the Evaluation Guidelines of the term "mainly" should make clear that it is possible for more than one entity to administer and/or represent a community. The Guidelines should further make clear that an organization that represents a community should be treated on equal footing with one that administers a community.

Implementation Guidance 34.6: In the 2012 Applicant Guidebook, text regarding CPE Criterion 2-A Nexus includes guidance on scoring in relation to the criterion. Corresponding text included in the Evaluation Guidelines should be more specific and clear regarding scoring to eliminate any ambiguity in interpretation. The Working Group suggests the following text to include in the Evaluation Guidelines: "With respect to "Nexus", for a score of 3, the essential aspect is that the applied-for string matches the name of the community. Where an exact match is not established but the applied-for string is established as commonly known by

others as a well-known short-form or abbreviation of the community, it will also be eligible for a score of 3. Where the applied-for string does not match the name of the community or is not a well-known short-form or abbreviation of the community, it may score a 2 if it identifies the community – i.e. closely describes either the community or a reasonably understood boundary of the community members, without over-reaching substantially beyond the community. An applied-for string which identified the community but over-reaches substantially into a community will score a zero."

Implementation Guidance 34.7: In the 2012 Applicant Guidebook, text regarding CPE Criterion 2-B Uniqueness includes the following definition: " "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community." The corresponding Evaluation Guidelines should make clear that there are two distinct paths to establish if an applied for string identifies the community: 1. Describing the community OR 2. Describing the community members. The Guidelines should explicitly state that these paths are not interconnected or contingent on one another.

Implementation Guidance 34.8: The Evaulation Guidelines regarding Criterion 2-B Uniqueness should make clear that evaluators should not be making a qualitative assessment of whether the a term is the most appropriate or descriptive term for a given community compared to other possible terms. Instead, they should be examining whether this is a term that the public in general associates with this community as opposed to another meaning.

Implementation Guidance 34.9: CPE Evaluation Guidelines regarding scoring for Criterion 4-A Support should make clear that it is not assumed for the purposes of scoring that only a single organization will serve as the representative for an entire community and that other considerations may be taken into account in scoring for this criterion if multiple organizations represent a community.

Implementation Guidance 34.10: The following text included in the 2012 Applicant Guidebook Section 4.2.3 Community Priority Evaluation Criteria should also be incorporated into the CPE Evaluation Guidelines: "The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any "double-counting" – any negative aspect found in assessing an application for one criterion should only be counted there and should not affect the assessment for other criteria."

Implementation Guidance 34.11: The Working Group urges the Implementation Review Team to consider 1. Changing the passing score for achieving community priority status from a numerical score to a percentage of the total number of possible points and 2. Lowering the threshold for achieving community-based status from the 87.5% of the total available evaluation points (14 out of 16 points) as was the case in the 2012 round to 75-80% of the total available points.

Recommendation 34.12: The process to develop evaluation and selection criteria that will be used to choose a Community Priority Evaluation Provider (CPE Provider) must include mechanisms to ensure appropriate feedback from the ICANN community. In addition, any terms included in the contract between ICANN org and the CPE Provider regarding the CPE process must be subject to public comment.

Recommendation 34.13: The Community Priority Evaluation (CPE) process must be efficient, transparent and predictable.

> Implementation Guidance 34.14: To support predictability, the CPE guidelines, or as amended, should be considered a part of the policy adopted by the Working Group.

> Implementation Guidance 34.15: ICANN org should examine ways to make the CPE process more efficient in terms of costs and timing.

Recommendation 34.16: 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 34.17: Evaluators must continue to be able to send Clarifying Questions to CPE applicants but further, must be able to engage in written dialogue with them as well.

Recommendation 34.18: Evaluators must 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.

Recommendation 34.19: Letters of opposition to a community-based application, if any, must be considered in balance with documented support for the application.

> Implementation Guidance 34.20: The 2012 Applicant Guidebook includes the following text regarding scoring for CPE Criterion 4-B Opposition: "Opposition: 2= No opposition of relevance; 1= Relevant opposition from one group of non-negligible size; 0= Relevant opposition from two or more groups of non-negligible size." In listing considerations for determining whether an organization is of "non-neglible size," the Evaluation Guidelines should include text indicating that the determination of what is non-neglible must be relative to the size of the community that that applicant is proporting to serve.

Recommendation 34.21: If the Community Priority Evaluation Panel conducts independent research while evaluating an application, limitations on this research and additional requirements must apply. The Working Group recommends including the following text in the Applicant Guidebook: "The Community Priority Evaluation Panel

may perform independent research deemed necessary to evaluate the application (the "Limited Research"), provided, however, that the evaluator shall disclose the results of such Limited Research to the applicant and the applicant shall have an opportunity to respond. The applicant shall be provided 30 days to respond before the evaluation decision is rendered. When conducting any such Limited Research, panelists are cautioned not to assume an advocacy role either for or against the applicant or application."

> Implementation Guideline 34.22: To support transparency, if the Community Priority Evaluation Panel relied on research for the decision it should be cited and a link to the information provided.

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.[233] The Working Group offers the above recommendations and implementation guidance in an effort to guide improvements in the Community Priority Evaluation process.

The Working Group believes that the Applicant Guidebook reflected the ICANN community's perspective on how community-based applications should be evaluated. That said, the Community Priority Evaluation Guidelines[234] ("Guidelines"), which served as the reference manual for the CPE evaluator, fell short of meeting the expectations of the ICANN community both in terms of transparency and in substance. As stated in Recommendation 34.16, all criteria, guidelines and any other relevant material must be made available to applicants in, or at least at the same time as, the Applicant Guidebook. It is only logical that applicants are aware of all of the criteria by which they will be measured.

In addition, in the view of the Working Group, as well as many of the public comments it received, the Guidelines were explicitly (and in practice) biased towards favoring economic-based communities and disadvantaged non-economic communities such as cultural, linguistic, ethnic groupings, Indigenous, minority and civil society advocacy groups and communities. Therefore, many of the recommendations and implementation guidance are geared towards providing greater clarity but also flexibility to the CPE evaluators in using the criteria to assess whether an application should gain community status and ultimately priority in a contention set.

With these changes, the Working Group believes that the Community Priority Evaluation process reflects to a greater extent the purposes set forth in the original GNSO policies

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[233] See 17 November 2014 Board resolution: https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf

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

and will hopefully reduce the number of complaints the CPE process receives compared to the 2012 new gTLD application round.

Rationale for Affirmation 34.1: 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 this approach as well as Implementation Guideline H* from 2007, with one small modification as indicated.

Rationale for Implementation Guidance 34.2: The Working Group notes that some communities have a clear and straightforward membership definition by having "card carrying" members, others have a clear and straightforward membership definition without having "card carrying" members, and an additional set of legitimate communities (particularly cultural and linguistic communities) may not have clear and straight-forward membership definition at all. The Working Group believes that the 2012 Evaluation Guidelines interpreted Applicant Guidebook provisions regarding Delineation too narrowly to focus exclusively on communities and associations that are economic in nature. This implementation guidance seeks to ensure that cultural and linguistic communities also have a path to success with respect to the Delineation Criterion.

Rationale for Implementation Guidance 34.3: In the 2012 round, a community was considered "pre-existing" for the purposes of CPE if the community had been "active as such since before the new gTLD policy recommendations were completed in September 2007." The Working Group believes that the time period used in this definition is arbitrary and further believes that legitimate communities may exist that have been active for a relatively short period of time. The Working Group understands that the original criterion may have sought to prevent the formation of communities solely for the purpose of CPE, but considers the risk of "gaming" in this regard to be low. Therefore the Working Group believes that it is sufficient and appropriate to require only that the community has been existence since the beginning of the then current application submission period.

Rationale for Implementation Guidance 34.4: The Working Group supports leveraging experts with knowledge of the communities in question in determining if there is the requisite "awareness and recognition" among members of the community, especially in cases where recognition of the community is not measurable (e.g., where such recognition is prevented by national law).

Rationale for Implementation Guidance 34.5: The Working Group emphasizes that the Evaluation Guidelines should not be interpreted for scoring purposes to mean that there can only be one entity to administer a community. The Evaluation Guidelines should further be clear that an organization that serves as a representative (as opposed to an administrator) of the community should be treated on equal footing with one that is administrative in nature. The Working Group believes that the Evaluation Guidelines should be clearer in this regard.

Rationale for Implementation Guidance 34.6: The Working Group believes that clear guidance regarding scoring in relation to the Nexus Criterion should be included in the Evaluation Guidelines and has suggested text in this regard.

Rationale for Implementation Guidance 34.7: The Working Group believes that the intent of the Applicant Guidebook was clear with respect to the definition of Identify, but that EIU mistakenly interpreted the text to mean that the applied for string must closely describe both the community and the community members rather than providing for two different tracks as indicated in the Applicant Guidebook text. It is the Working Group's view that the Evaluation Guidelines should be updated to reflect the intent of the Applicant Guidebook to prevent possible misinterpretation.

Rationale for Implementation Guidance 34.8: The Working Group believes that it is important to clarify the Evaluation Guidelines regarding Criterion 2-B Uniqueness to indicate not only the factors that should be taken into account with respect to the criterion, but also factors that should not be taken into account to prevent possible misinterpretation.

Rationale for Implementation Guidance 34.9: The Working Group believes that the Application Guidelines should be explicit that multiple organizations may represent the same community simultaneously and and that Application Guidelines should emphasize that if there is more than one organization representing a community, the additional questions provided should be considered to determine scoring.

Rationale for Implementation Guidance 34.10: The Working Group seeks to ensure that each CPE evaluation criterion is fully independent of other criteria with respect to scoring of applications. To reinforce the importance of this principle, the Working Group believes that text in the 2012 Applicant Guidebook regarding this issue should also be incorporated into the Evaluation Guidelines.

Rationale for Implementation Guidance 34.11: The Working Group believes that ICANN org and the community should be given more flexibility to implement a new scoring mechanism, if appropriate, that encompasses all of the policy changes that the Working Group has recommended. Therefore the Working Group proposes changing the passing score for achieving community priority status from a numerical score to a percentage of the total number of possible points. The Working Group notes that the scoring framework from the 2012 round was rigid and required an applicant to receive a perfect or nearly perfect score on every evaluation criteria in order to receive community priority status. As a result, very few applications were able to achieve community status. Given the Working Group's affirmation of the importance of the prioritization of community-based applications, the Working Group suggests lowering the threshold for achieving community-based status from the 87.5% of the total available evaluation points (14 out of 16 points) as was the case in the 2012 round to 75-80%.

Rationale for recommendation 34.12: The Working Group believes that there should be greater transparency and a role for the ICANN community in the process to develop

evaluation and selection criteria that will be used to choose a Community Priority Evaluation Provider (CPE Provider).

Rationale for Recommendations 34.13 and 34.16 and Implementation Guidance 34.14: 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.

Rationale for Implementation Guidance 34.15: 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 Group 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.

Rationale for Recommendations 34.17 and 34.18: In the 2012 application round, evaluators could submit Clarifying Questions (CQs) to CPE applicants through ICANN org.[235] 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 that application.

Rationale for Recommendation 34.19 and Implementation Guidance 34.20: The Working Group believes that the the 2012 Evaluation Guidelines were not sufficiently clear in defining "relevance" under Criterion 4-B Opposition, which may have resulted in panelists evaluating letters of opposition in isolation without also considering the level of support for an application. The Working Group therefore recommends that it must be clear that any letters of opposition are to be considered in balance with documented support for an application. The Working Group has suggested an update to the Evaluation Guidelines to ensure that one misaligned community member/entity does not have the power to impact CPE scores of a largely aligned community.

Rationale for Recommendation 34.21 and Implementation Guidance 34.22: Section 4.2.3 of the 2012 Applicant Guidebook states: "The [Community Priority Evaluation Panel] may also perform independent research, if deemed necessary to reach informed scoring decisions." To reduce the risk of introducing inaccurate information and bias into the evaluation process and to support transparency, the Working Group has provided

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[235] For specific information about the circumstances under which CQs were issued in CPE, please see 126-127 of the Program Implementation Review Report.

alternate language to include in the Applicant Guidebook for subsequent procedures. To promote transparency, the Working Group suggests that if the Community Priority Evaluation Panel relied on research for the decision it should be cited and a link to the information provided.

In developing recommendations on this topic, the Working Group reviewed relevant GAC Consensus Advice included in the Beijing Communiqué (ICANN46),[236] Durban Communiqué (ICANN47),[237] Singapore Communiqué (ICANN49),[238] Los Angeles Communiqué (ICANN51),[239] Buenos Aires Communiqué (ICANN53),[240] and Dublin Communiqué (ICANN54).[241] The Working Group further reviewed relevant At-Large Statements on Community Expertise in Community Priority Evaluation[242] and

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[236] "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

[237] "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

[238] "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

[239] "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

[240] "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

[241] "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

[242] "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

Preferential Treatment for Community Applications in String Contention.[243] The Working Group has not identified any conflicts between the Working Group's recommendations 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 challenge/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 Topic 32: Limited Challenge/Appeal Mechanism 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 Working Group. The ICANN Board passed this recommendation through to the Working Group. The Working Group has extensively discussed this in the Community Priority Evaluation process and put forward the above recommendations and implementation guidance 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 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 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 to which the proposed gTLD relates. In reviewing this proposal, it was raised that most community applicants felt that they were solving a problem within the community they served, and therefore it is unclear why this criterion should be used to grant "extra credit." It was further raised that the proposal lacks detail about the definition of "a problem inside a community." The Working Group did not make a recommendation on this issue.

The Working Group considered input regarding the composition of the CPE panel. Specifically the Working Group noted the perspective that those evaluating community

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[243] "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

applications should have significant expertise in applying the concept of "community." The Working Group did not come to any conclusions on this point.

The Working Group notes the perspective raised in discussions that additional steps should be taken to ensure the legitimacy of any opposition expressed to the community-based application. Specifically, the Working Group notes the suggestion that those raising opposition should be prepared to engage in an ongoing dialogue regarding their opposition. It also notes the suggestion that a public and transparent verification process should be conducted on any opposition letter to ensure that the author of the letter represents the organization that it claims to represent.

The GAC's ICANN67 Communiqué[244] included a summary of GAC discussions on the Working Group's draft recommendations regarding community applications. The Working Group reviewed the Communiqué. On 4 May 2020, the GAC provided consolidated input from individual GAC members on the topics discussed at ICANN67, including community applications.[245] In this informal input, many of the respondents expressed support for the draft recommendations on this topic, although some expressed that they still have outstanding concerns about the CPE process and its effectiveness. Several respondents noted that additional details would need to be filled in to ensure that concerns about CPE from the 2012 round are addressed in the implementation of subsequent rounds. In addition, a few comments made specific suggestions about possible changes to the CPE process and criteria.[246]

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

- This topic addresses the Community Priority Evaluation. Discussion of Community Objections is included under Topic 31: Objections.
- A recommendation on the length of and timing of the Application Comment Period for Community-Based Applications is included under Topic 28: Role of Application Comment.

Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets

a. Recommendations and/or implementation guidelines

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[244] https://gac.icann.org/contentMigrated/icann67-gac-communique

[245]

https://community.icann.org/download/attachments/93129620/GAC%20Written%20Consultation_%20Input%20Received-%20Updated%209%20May.pdf?version=1&modificationDate=1589186135000&api=v2

[246] This reference to informal GAC input is not intended to be a comprehensive summary of all comments. Please review the compilation of comments for full text of the input received.

Affirmation with Modification 35.1: Implementation Guideline F from 2007 states: "If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and; iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels."

The Working Group affirms this Implementation Guideline with the following changes in italicized text: "If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe *in accordance with the Applicant Guidebook and supporting documents* ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement, *contention will be resolved through an ICANN Auction of Last Resort* and; iii) *Expert panels may be used to make Community Priority Evaluation determinations*."

The revision to part i) specifies that any private resolution of contention must be in accordance with the Application Guidebook and supporting documents, including the Application Change request process and Terms and Conditions. Adjustments in the text of ii) and iii) describe in greater specificity program elements as they were implemented in the 2012 round, which will carry over into subsequent rounds.

Recommendation 35.2: Consistent with the Application Change processes set forth under Topic 20: Application Change Requests, the Applicant Guidebook (AGB) must reflect that applicants will be permitted to creatively resolve contention sets in a multitude of manners, including but not limited to business combinations or other forms of joint ventures and private resolutions (including private auctions).

- All private resolutions reached by means of forming business combinations or other joint ventures resulting in the withdrawal of one or more applications are subject to the Application Change processes set forth under Topic 20: Application Change Requests.
- Any materially modified application resulting from a private resolution will be subject to a new operational comment period on the changes as well as a new period to file objections; provided however, objections during this new period must be of the type that arise due to the changing circumstances of the application and not merely the type of objection that could have been filed against the surviving application or the withdrawn applications in the contention set during the initial objection filing period.
- All contention sets resolved through private resolution shall adhere to the transparency requirements set forth in the Contention Resolution Transparency Requirements in the relevant recommendation.

Recommendation 35.3: Applications must be submitted with a bona fide ("good faith") intention to operate the gTLD. Applicants must affirmatively attest to a bona fide intention to operate the gTLD clause for all applications that they submit.

- Evaluators and ICANN must be able to ask clarifying questions to any applicant it believes may not be submitting an application with a bona fide intention. Evaluators and ICANN shall use, but are not limited to, the "Factors" described below in their consideration of whether an application was submitted absent bona fide intention. These "Factors" will be taken into consideration and weighed against all of other facts and circumstances surrounding the impacted applicants and applications. The existence of any one or all of the "Factors" may not themselves be conclusive of an application made lacking a bona fide use intent.
- Applicants may mark portions of any such responses as "confidential" if the responses include proprietary business information.

The Working Group discussed the following potential non-exhaustive list of "Factors" that ICANN may consider in determining whether an application was submitted with a bona fide ("good faith") intention to operate the gTLD. Note that potential alternatives and additional language suggested by some Working Group members are included in brackets:

- If an applicant applies for [four] [five] or more strings that are within contention sets and participates in private auctions for more than fifty percent (50%) of those strings for which the losing bidder(s) receive the proceeds from the successful bidder, and the applicant loses each of the private auctions, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for each of those applications.
- Possible alternatives to the above bullet point:
  o [If an applicant participates in six or more private auctions and fifty percent (50%) or greater of its contention strings produce a financial windfall from losing.]
  o [If an applicant receives financial proceeds from losing greater than 49% of its total number of contention set applications that are resolved through private auctions.]
  o [If an applicant: a. Has six or more applications in contention sets; and b. 50% or more of the contention sets are resolved in private auctions; and c. 50% or more of the private auctions produce a financial windfall to the applicant.]
  o [If an applicant applies for 5 or more strings that are within contention sets and participated in 3 private auctions for which the applicant is the losing bidder and receives proceeds from the successful bidder it MUST send to the evaluators a detailed reconciliation statement of its auction fund receipts and expenditure immediately on completion of its final contention set resolution. In addition this may be considered a factor by the evaluators and ICANN in determining lack of bona fide intention to operate the gTLD for all of its applications and in doing so might stop all its applications from continuing to delegation.]
- If an applicant's string is not delegated into the root within two (2) years of the Effective Date of the Registry Agreement, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for that applicant.

- If an applicant is awarded a top-level domain and [sells or assigns] [attempts to sell] the TLD (separate and apart from a sale of all or substantially all of its non-TLD related assets) within (1) year, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for that applicant.
- [If an applicant with multiple applications resolves contention sets by means other than private auctions and does not win any TLDs.]

Consideration of whether an application was submitted with a bona fide intention to operate the gTLD must be determined by considering all of the facts and circumstances surrounding the impacted applicants and applications. The above factors may be considered by ICANN in determining such intent provided that there are no other credible explanations for the existence of those Factors.

Recommendation 35.4: ICANN Auctions of Last Resort must be conducted using the second-price auction method, consistent with following rules and procedural steps.
- Once the application submission period closes, the String Similarity Evaluation for all applied-for strings must be completed prior to any application information being revealed to anyone other than the evaluators and ICANN org.
- At the end of the String Similarity Evaluation period, applicants in contention sets will be informed of the number of other applications in their contention set, but no other information regarding the other applications will be shared. All applicants must submit a sealed bid for each relevant application ("Last Resort Sealed Bids"). Any applicant that does not submit a sealed bid at this time will be deemed to submit a bid of zero.
- Only after the window to submit Last Resort Bids closes, non-confidential information submitted by applicants in their applications will be published (i.e., "Reveal Day"), including the composition of contention sets and the nature of the applications, (e.g., community-based applications, .Brand applications, etc.). Beginning on Reveal Day, applicants may participate in various forms of private resolution, subject to the Contention Resolution Transparency Requirements set forth herein.
- All applications shall be evaluated and are subject to other application procedures (e.g., Initial Evaluation, Extended Evaluation, Objections, GAC Early Warning/Advice, Community Priority Evaluation). Some of these procedures may affect the composition of contention sets.
  - To the extent any contention sets are expanded, by having other applications added (e.g., String Confusion Objections, appeals to the String Similarity Evaluation), all applicants (including both the existing members of the contention set as well as the new members) will be allowed, but are not required, to submit a new Last Resort Sealed Bid.
  - To the extent any contention sets are shrunk, by having other applications removed from the process (e.g., withdrawal, losing objections, failing evaluation, Community Priority Evaluation identifying only community-based applications which prevailed, etc.), applicants will NOT be allowed to adjust their sealed bids. However, in the event of a partial resolution of a contention set through the formation of a business combination or joint

venture and the corresponding withdrawal of one or more applications, the remaining application AND each of the other existing applications in the contention set will be allowed, but are not required, to submit a new Last Resort Sealed Bid.

- ICANN Auctions of Last Resort shall only take place after all other evaluation procedures, objections, etc., similar to the 2012 round. In addition, the ICANN Auction of Last Resort cannot occur if one or more of the applications in the contention set is involved in an active appeal or ICANN Accountability mechanism or is in a new operational comment period or reevaluation due to private resolution.
  - Applicants in the contention set must be informed of the date of the ICANN Auction of Last Resort.
  - Deposits for the ICANN Auction of Last Resort will be collected a fixed amount of time prior to the auction being conducted.
  - On the ICANN Auction of Last Resort date, the applicant that submitted the highest Last Resort Sealed Bid amount pays the second-highest bid amount.
  - Once payment is received within the specified time period, the applicant may proceed to the transition to delegation.
  - Non-payment within the specified time period will result in disqualification of the applicant.

Recommendation 35.5: Applicants resolving string contention must adhere to the Contention Resolution Transparency Requirements as detailed below. Applicants disclosing relevant information will be subject to the Protections for Disclosing Applicants as detailed below.

Contention Resolution Transparency Requirements
- For Private Auction or Bidding Process / ICANN Auction of Last Resort: In the case of a private auction or an ICANN Auction of Last Resort, all parties in interest[247] to any agreements relating to participation of the applicant in the private auction or ICANN Auction of Last Resort must be disclosed to ICANN within 72 hours of resolution and ICANN must, in turn, publish the same within 72 hours of receipt. This includes:
  - A list of the real party or parties in interest in each applicant or application, including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant;

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[247] A party in interest is a person or entity who will benefit from the transaction even if the one participating in the transaction is someone else. This includes, but is not limited to any person or entity that has more than a *de minimus* ownership interest in an applicant, or who will be in a position to actually or potentially control the operation of an applicant.

- List the names and contact information[248] of any party holding 15% or more direct or indirect ownership of each applicant or application, whether voting or nonvoting, including the specific amount of the interest or percentage held;
- List the names and contact information[249] of all officers, directors, and other controlling interests in the applicant and/or the application;
- The amount paid (or payable) by the winner of the auction;
- The beneficiary(ies) of the proceeds of the bidding process and the respective distribution amounts;
- The beneficiary(ies) of the proceeds of the bidding process; and
- The value of the Applicant Support bidding credits or multiplier used, if applicable.[250]

- For Other Forms of Private Resolution: Where contention sets are privately resolved through a mechanism other than a private auction, the following must be disclosed:
  - The fact that the contention set (or part of a contention set), has been resolved privately (and the names of the parties involved);
  - Which applications are being withdrawn (if applicable);
  - Which applications are being maintained (if applicable);
  - If there will be a change in ownership of the applicant, or any changes to the officers, directors, key personnel, etc., along with the corresponding information;
  - All material information regarding any changes to information contained in the original application(s)(if any).

In the event that any arrangements to resolve string contention results in any material changes to the surviving application, such changes must be submitted through the Application Change process set forth under Topic 20: Application Change Requests.

Protections for Disclosing Applicants
- Except as otherwise set forth in the transparency requirements above, no participant in any private resolution process shall be required to disclose any proprietary information such as trade secrets, business plans, financial records, or personal information of officers and directors unless such information is otherwise required as part of a normal TLD application.

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[248] Contact Information will be subject to the same publication rules as contact information is treated in the application process.
[249] Same as above.
[250] We assume that Applicant Support bidding credits or multipliers would only be used in cases where the resolution sets were decided by an ICANN Auction of Last Resort, however, we note that it is theoretically possible that such credits or multipliers could be used during a private auction if all parties in the private auction agreed.

- The information obtained from the contention resolution process may not be used by ICANN for any purpose other than as necessary to evaluate the application, evaluate the New gTLD Program, or to otherwise comply with applicable law.

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

Rationale for Affirmation with Modification 35.1: The Working Group believes that Implementation Guideline F from 2007 should still apply, but has made several amendments to ensure that IG F is clear and up-to-date. The text is modified to indicate that private resolution of contention sets must be in accordance with the Applicant Guidebook and supporting documents. This revision aligns the text with the recommendation in this section to update the Applicant Guidebook to allow private resolution, and accompanying requirements. The text is further modified to more specifically describe program elements that were developed during implementation of the 2012 round after the policy was written, and which will carry forward to subsequent rounds.

The Working Group discussed a number of possible alternatives to ICANN Auctions of Last Resort for resolving contention sets, as detailed in the Supplemental Initial Report.[251] In examining the benefits and drawbacks of these alternatives and the different perspectives provided in public comment, the Working Group did not come to any agreement that there is a better option that would be widely supported by the community. Therefore, the Working Group affirms the use of ICANN Auctions of Last Resort as a method of last resort to resolve contention sets, though per Recommendation 35.4, the mechanism for conducting those auctions shall be different.

Rationale for Recommendations 35.2 and 35.3: The Working Group reviewed that in the 2012 application round, some applicants resolved contention by mutually agreeing to participate in private auctions where the auction price was equally divided by the "losing" bidders (minus an administrative fee for the auction provider). Some applicants that applied for multiple TLDs (called "Portfolio Applicants") leveraged funds from the private auctions they "lost" for financial positioning in the resolution of other contention sets. While not all Working Group members agree that private auctions are problematic, the Working Group noted that significant concerns have been raised within the community and by the ICANN Board[252] about the practice of applying for top-level

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[251] See https://gnso.icann.org/sites/default/files/file/field-file-attach/supplemental-report-01nov18-en.pdf
[252] In its public comment on the Working Groups Initial Report, the ICANN Board stated: ". . . the Board believes that applications should not be submitted as a means to engage in private auctions, including for the purpose of using private auctions as a method of financing their other applications. This not only increases the workload on processing but puts undue financial pressure on other applicants who have business plans and financing based on their intention to execute the plan described in the application. In particular, we are concerned about how gaming for the purpose of financing other applications, or with no

domains with the purpose of financial gain. This includes the utilization of proceeds from lost auctions towards future auctions.

The Working Group further considered that in the future, former 2012 applicants and potential new applicants will be aware that certain parties benefited from losing private auctions in the 2012 round, which will therefore become an incentive for potential applicants to submit applications for purposes other than to operate a gTLD.

Some in the Working Group's looked at the guidance from the ICANN Board in a more granular fashion, parsing out the Board concerns about applicants submitting an applicant with no intent to operate the gTLD, versus the practice of participating in private auctions, and versus the practice of leveraging financial gains in one private auction to resolve other contention sets.

The Working Group has elected to primarily target concerns about an applicant submitting an application with no intent to operate the gTLD. The group believes that requiring all applicants to agree to a clause that there is a bona fide intention to operate the gTLD for each and every application will mitigate this concern. The Working Group has also included a non-exhaustive list of potential "Factors" intended to help identify when an application may have been submitted without a bona fide intention to operate the gTLD. Those potential "Factors" are assumed to serve as the basis for enforcement of the bona fide intention clause.

By requiring all applicants to agree to the bona fide intention clause, some in the Working Group believe that the Board's primary concerns are mitigated and that private resolutions (including private auctions) as a mechanism to resolve string contention, can be permitted. The Working Group also believes that other creative mechanisms to resolve string contention should be permitted, such as business combinations and joint ventures, and these elements must be included in the Applicant Guidebook. As with any material changes to applications, any applications amended as a result of creative string contention resolution must be subject to the Application Change request process. In addition, because the underlying entity may be changing, the Working Group believes that allowing additional opportunity for objections is warranted.

Finally, some in the Working Group remain concerned that the practice of leveraging financial gains in one private auction to resolve other contention sets has not been addressed adequately. A proposal was put forward by these members that would require sealed bids for private auctions to be submitted at the same time. Some in the Working

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intent to operate the gTLD as stated in the application, can be reconciled with ICANN's Commitments and Core Values." See https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/attachments/20180926/a3fc7066/2018-09-26CherineChalabytoCLOandJeffNeumanBoardCommentonSubproInitialReport2-0001.pdf. The Board made additional comments in line with this statement in response to the Supplemental Initial Report. See https://mm.icann.org/pipermail/comments-new-gtld-subsequent-procedures-supp-initial-30oct18/attachments/20181218/b5e51bfa/2018-12-18CherineChalabytoCherylLangdon-OrrandJeffNeuman-0001.pdf

Group believe that this proposal would prevent the rolling of funds from one auction to another. The Working Group did not move forward with this proposal.

Rationale for Recommendation 35.4: The Working Group believes that second-price, sealed bid auctions are preferable to the ascending bid auctions used in the 2012 round ICANN Auctions of Last Resort. Some believe that this method eliminates collusion and bid rigging and is the preferred method used by governments to allocate critical resources. Further, some believe that bidders are forced to value the TLD in absolute terms and second price auctions reduce the risk of "bidding wars" that can occur in ascending bid auctions.

In its deliberations, the Working Group considered a number of possible options, which are included on the group's Wiki. In some cases, the options combined measures related to mitigating the submission of applications lacking bona fide intention, eliminating private auctions altogether, and the mechanism of last resort. The preference for a second-price, sealed bid auction mechanism was however a constant throughout the majority of the Working Group's deliberations on the topic.

Some in the Working Group have argued that requiring submission of sealed bids for ICANN Auctions of Last Resort before the identity of other applicants is known fails to recognize that the value of a TLD to an applicant may be different depending on who the other potential owners of the TLD are and that applicants should know all the facts available when determining what is an appropriate level to bid.

After carefully considering the pros and cons of each option, the Working Group provided the relevant recommendation and details about timing of bids, how the evaluation process should be conducted, and how the auction process should be conducted.

Rationale for Recommendation 35.5: By requiring all applicants to agree to the bona fide intention clause, some in the Working Group believe that the Board's primary concerns are mitigated and that private resolutions (including private auctions) as a mechanism to resolve string contention, should be permitted. However, some others in the Working Group still believe that private auctions (and similar private resolution mechanisms) may be a cause for concern, and believe that data must be collected to help determine in the future if a problem exists. These disclosure requirements serve as a requirement for some Working Group members to agree to allowing private resolutions, including private auctions. As such, the Working Group is requiring that when applicants resolve string contention, they must adhere to the Contention Resolution Transparency Requirements as detailed in the recommendation. To address concerns about the disclosure of such information, the Working Group also agreed on Protections for Disclosing Applicants, also included in the recommendation.

Some Working Group members believe that only requiring that "all material information regarding any changes to information contained in the original application(s) (if any)" is inadequate and should extend to, "all material terms of any arrangement." This more

expansive language was discussed by the Working Group as an alternative, however other Working Group members strongly oppose this view and point out that in many of the Working Group's discussions it has recognized the value of allowing greater flexibility to applicants to resolve conflicts outside of formal processes. From this perspective, terms of settlement/resolution may often be highly commercially sensitive, particularly where this might involve the resolution of a contention resolving an applicant's brand. In this view, requiring such disclosure would counteract the Working Group's intent to support amicable conflict resolution. Further, members with this viewpoint maintain that applicants resolving contention by means of private resolution should not be required to disclose any more information than is required of any other applicant for a TLD.

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

In considering the bona fide intention clause, the Working Group discussed examples of what would constitute a lack of bona fide intention and included a non-exhaustive list of potential indicative "Factors," though it believes identifying additional examples is helpful. The Working Group also discussed what the punitive measures should be if an application is found to have been submitted lacking a bona fide intention and discussed the potential loss of the registry, barring participation in any future rounds (both for the individuals as well as the entities (and their affiliates) involved), or financial penalties. In this respect, the Working Group discussed the timing of when such factors may be identified (e.g., likely after private auctions have taken place) and how that may impact potential punitive measures.

The Working Group noted that the GAC Communiqué for the ICANN68 Virtual Policy Forum[253] included discussion of some GAC members' views on private auctions. The Working Group reviewed this Communiqué as part of its deliberations.

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

- Additional discussion of requirements and processes associated with application changes is included under Topic 20: Application Change Requests.
- Topic 17: Applicant Support includes recommendations regarding a bid credit, multiplier, or similar mechanism that will apply to bids submitted by applicants that qualify for Applicant Support who participate in an ICANN Auction of Last Resort.
- Discussion of Terms & Condition and associated recommendations are included under Topic 18: Terms & Conditions.

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[253] https://gac.icann.org/contentMigrated/icann68-gac-communique

2.10 Deliberations and Recommendations: Contracting

Topic 36: Base Registry Agreement

a. Recommendations and/or implementation guidelines

Affirmation 36.1: The Working Group affirms the following recommendations and implementation guidelines from the 2007 policy:

- Principle F: "A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies."
- Recommendation 10: "There must be a base contract provided to applicants at the beginning of the application process."
- Recommendation 14: "The initial registry agreement term must be of a commercially reasonable length."
- Recommendation 15: "There must be a renewal expectancy."
- Recommendation 16: "Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved."
- Implementation Guideline J: "The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing marketplace."
- Implementation Guideline K: "ICANN should take a consistent approach to the establishment of registry fees."

Affirmation 36.2: The Working Group affirms the current practice of maintaining a single base Registry Agreement with "Specifications."

Recommendation 36.3: There must be a clearer, structured, and efficient method to apply for, negotiate, and obtain exemptions to certain provisions of the base Registry Agreement, subject to public notice and comment. A clear rationale must be included with any exemption request. This allows ICANN org to consider unique aspects of registry operators and TLD strings, as well as provides ICANN org the ability to accommodate a rapidly changing marketplace. The Working Group notes that consensus policy must not be the subject of individual Registry Agreement negotiations.

Recommendation 36.4: ICANN must add a contractual provision stating that the registry operator will not engage in fraudulent or deceptive practices. In the event that ICANN receives an order from a court that a registry has engaged in fraudulent or deceptive practices, ICANN may issue a notice of breach for such practices and allow the registry to cure such breach in accordance with the Registry Agreement. Further, in the event that there is a credible allegation by any third party of fraudulent or deceptive practices, other than as set forth in above, ICANN may, at its discretion, either commence dispute resolution actions under the Registry Agreement (Currently Article 5 of the Registry Agreement), or appoint a panel under the PICDRP. For the purposes of a credible claim

of fraudulent or deceptive practices the reporter (as defined by the PICDRP) must only specifically state the grounds of the alleged non-compliance, but not that it personally has been harmed as a result of the registry operator's act or omission.

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

Rationale for Affirmations 36.1 and 36.2 and Recommendations 36.3 and 36.4: The Working Group supports maintaining relevant policy recommendations and implementation guidelines from the 2012 round, including Principle F, Recommendations 10, 14, 15, and 16, and Implementation Guidelines J and K. In particular, the Working Group emphasizes that in support of predictability for applicants, the base Registry Agreement should be available to applicants at the beginning of the application process (Recommendation 10). The Working Group reviewed the Program Implementation Review Report's discussion of circumstances in the 2012 round that led to a series of revisions to the base Registry Agreement. The Working Group notes that the PIRR includes a recommendation aimed at addressing this issue (see Recommendation 5.1.a): "Explore the feasibility of finalizing the base Registry Agreement before applications are submitted or establishing a process for updating the Registry Agreement."

The Working Group considered the issue of whether there should continue to be a single base Registry Agreement with Specifications, or multiple Registry Agreements for different types of TLDs.[254] Absent a clear and compelling argument to change existing practice and acknowledging the detrimental effects multiple Registry Agreements would have on ICANN org (e.g., contracting, contractual compliance), the Working Group affirms the current implementation of a single base Registry Agreement with Specifications. The Working Group believes that the single base Registry Agreement is consistent with principles of predictability, fairness, simplicity, consistency and efficiency.

The Working Group agreed that the New gTLD Program should encourage innovation and allow ICANN to be more accommodating towards additional types of business models. In support of this goal, the Working Group believes that ICANN should seek opportunities to improve processes related to obtaining exemptions to certain provisions of the RA. The Working Group notes that it is important for ICANN to make a balanced determination about whether proposed modifications are in the public interest. To assist with this determination, it may be beneficial to require a clear rationale accompanying any request for an exemption and explicitly define criteria for which changes would be allowed.

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[254] This topic is connected to recommendation 5.1.b in the Program Implementation Review Report, which states: "Explore whether different application types could be defined in a fair and objective manner, and if there are to be different applicant types, consider whether there should be different versions of the Registry Agreement."

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

The Working Group considered a proposal from a Working Group member that there should be a question in the new gTLD application asking if the registry plans to request any exemptions to provisions of the base Registry Agreement. From one perspective, the public should have information about the registry's intentions in this regard as early as possible. Some Working Group members noted that stating the intent to request exemptions in the application should not be a prerequisite for later requesting and obtaining exemptions, because the registry may decide at a later stage to seek exemptions. The Working Group did not reach any agreement on this proposal.

The Working Group considered a suggestion received through public comment that SLA metrics should be equal, regardless of exemptions to certain requirements in the RA. Some support was expressed in the Working Group, but no specific recommendation on this issue has been put forward.

Following the public comment period on the Initial Report, the Working Group further discussed The Public Interest Commitment (PIC) Standing Panel Evaluation Report dated March 17, 2017 in the case of Adobe Systems Incorporated et al. v. Top Level Spectrum, Inc., d/b/a/ Fegistry, LLC et al., which states the following:

> *Second, the Panel notes that PIC (3)(a) of Specification 11 imposes no obligation on Respondent as the Registry Operator itself to avoid fraudulent and deceptive practices. Third, the Panel finds that Respondent's Registry Operator Agreement contains no covenant by the Respondent to not engage in fraudulent and deceptive practices.*[255]

In formulating Recommendation 36.4, "ICANN must add a contractual provision stating that the registry operator will not engage in fraudulent or deceptive practices. . ." the Working Group discussed two options for implementing the recommendation: the addition of a PIC or a provision in the Registry Agreement. A new PIC would allow third parties to file a complaint regarding fraudulent and deceptive practices. ICANN would then have the discretion to initiate a PICDRP using the third-party complaint. If a provision regarding fraudulent and deceptive practices would be included in the RA, enforcement would take place through ICANN exclusively. The Working Group did not come to an agreement on this issue.

The Working Group discussed public comments received in relation to the issue of premium pricing of domain names. The Working Group agreed that transparency is an important principle to observe and that provisions in the RA and RAA exist to require this transparency, and that it is important for ICANN to enforce these provisions. The Working Group did not agree to any further recommendations on this topic.

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[255] See https://www.icann.org/uploads/compliance_notice/attachment/911/serad-to-westerdal-16mar17.pdf P. 17.

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

- Enforcement of provisions of the Registry Agreement is discussed under Topic 41: Contractual Compliance.
- This topic discusses the possibility of introducing a mandatory Public Interest Commitment stating that the registry operator will not engage in fraudulent or deceptive practices. Mandatory Public Interest Commitments are discussed further under Topic 9: Registry Voluntary Commitments / Public Interest Commitments.

Topic 37: Registrar Non-Discrimination & Registry/Registrar Standardization

a. Recommendations and/or implementation guidelines

Recommendation 37.1: Recommendation 19 in the 2007 policy states: "Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars." The Working Group recommends updating Recommendation 19 to state: "Registries must use only ICANN accredited registrars in registering domain names, and may not discriminate among such accredited registrars *unless an exemption to the Registry Code of Conduct is granted as stated therein,*[256] *provided, however, that no such exemptions shall be granted without public comment.*"

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

Rationale for Recommendation 37.1: The Working Group's recommendation to update Recommendation 19 resolves the current inconsistency between existing policy from 2007 and current practice in the New gTLD Program. Namely, restrictions against registry and registrar cross-ownership from the 2000 and 2005 New gTLD rounds were removed after the 2007 policy was approved.[257] In place of these restrictions, ICANN included Specification 9 in the base Registry Agreement. Specification 9 contained a Registry Code of Conduct, which required registries to utilize accredited registrars and to maintain separate books and records with respect to cross-owned organizations. Certain exemptions to the Code of Conduct were subsequently approved by the ICANN Board of Directors, particularly with Brand TLD registries (in Specification 13) as well as with

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[256] See Specification 9 - Registry Operator Code of Conduct for additional information about Code of Conduct exemptions: https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html#specification9

[257] See https://features.icann.org/2011-01-25-cross-ownership-adopting-rationale

respect to entities that restricted their TLDs to only themselves and/or their affiliates and trademark licensees. The updated policy language acknowledges these exemptions.

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

The Working Group discussed specific circumstances in which it may be appropriate for ICANN to grant Code of Conduct exemptions. In particular the Working Group considered a proposal that if a registry makes a good faith effort to get registrars to carry a TLD, but is unable to do so after a given period of time, the registry should have the opportunity to seek a Code of Conduct exemption so that it can be its own registrar without needing to maintain separate books and records and legally separate entities. Under this proposal .Brands would still have Specification 13 and would not be affected. The Working Group requested input on this proposal as part of the public comment on the draft Final Report. Following the review of public comments and further deliberations, the Working Group did not reach any agreement that this proposal should be put forward as a recommendation.

The Working Group spent considerable time discussing whether registry operators that wanted to be registrars could complete the registrar accreditation process at the same time as during registry operator contracting and whether all of the provisions could be included in one overall agreement. This would especially apply in cases where a registry operator was given an exemption from the Code of Conduct. Although an exemption to the Code of Conduct means you can use a limited number of registrars, you still may only use "ICANN-accredited registrars." This means that if such an entity wanted to be its own registrar, it would have to still go through the lengthy ICANN accreditation process to become a registrar. The group discussed ways in which this could be combined with the Registry Agreement. Though the group believes this issue may be explored in the future, it is not making a recommendation on this area.

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

- Consideration of options to support registries that have difficulty attracting ICANN accredited registrars is included under Topic 38: Registrar Support for New gTLDs.

2.11 Deliberations and Recommendations: Pre-Delegation Testing

Topic 38: Registrar Support for New gTLDs

a. Recommendations and/or implementation guidelines

Recommendation 19 from the 2007 policy is relevant to this topic. The Working Group recommends updating the language of Recommendation 19 under Topic 37: Registrar Non-Discrimination / Registry/Registrar Standardization.

Affirmation 38.1: The Working Group affirms existing practice that it is up to a registrar to determine which gTLDs it carries.

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

Rationale for Affirmation 38.1: The Working Group considered public comments received on a series of proposals to assist TLD registries that have difficulty attracting ICANN accredited registrars, including small, specialized gTLDs and those attempting to implement innovative new business models. In reviewing public comments, the Working Group noted that there continues to be no strong agreement that this is an issue that should be addressed by ICANN or through policy. Public comments were equally divided on whether the proposals included in the Supplemental Initial Report should be pursued. Therefore, no recommendations are included on this topic.

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

The Working Group considered whether it would be beneficial and appropriate for ICANN to warn applicants in the New gTLD Program that delegating a gTLD does not guarantee registrations, and that registries will need to build a sales channel if their business model relies on sales. Some support was expressed for this proposal, but the Working Group did not reach agreement that this should be included in the recommendations.

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

- Under Topic 37: Registrar Non-Discrimination / Registry/Registrar Standardization, the Working Group considered a proposal that if a registry makes a good faith effort to get registrars to carry a TLD, but is unable to do so after a given period of time, the registry should have the opportunity to seek a Code of Conduct exemption. No recommendation was made in this regard.
- Also under Topic 37, the Working Group considered whether registry operators that wanted to be registrars could complete the registrar accreditation process at the same time as during registry operator contracting and whether all of the provisions could be included in one overall agreement. No recommendation was made in this regard.

Topic 39: Registry System Testing

a. Recommendations and/or implementation guidelines

Recommendation 7 from the 2007 policy is affirmed with modification under Topic 27: Applicant Reviews: Technical/Operational, Financial, and Registry Services. Recommendation 7 is also relevant to this topic.

Recommendation 8 from the 2007 policy is affirmed under Topic 36: Base Registry Agreement. Recommendation 8 is also relevant to this topic.

Recommendation 39.1: ICANN must develop a set of Registry System tests[258] designed to demonstrate the technical capabilities of the registry operator.

> Implementation Guidance 39.2: ICANN should include operational tests to assess readiness for Domain Name System Security Extensions (DNSSEC) contingencies (key roll-over, zone re-signing).

> Implementation Guidance 39.3: ICANN should only rely on self-certifications in cases where such testing could be detrimental or disruptive to test operationally (e.g., load testing). This guidance is consistent with Recommendation 5.2.b from ICANN org's Program Implementation Review Report.[259]

Recommendation 39.4: Registry System Testing (RST) must be efficient.

> Implementation Guidance 39.5: The testing of Internationalized Domain Name (IDN) tables should be removed if the applicant is using reference Label Generation Rules published by ICANN. To the extent an applicant is proposing tables that are reference Label Generation Rules, the tables should be reviewed during the evaluation process and the evaluator should utilize IDN tools available at the time of review.

> Implementation Guidance 39.6: To the extent practical, RST should not repeat testing that has already taken place during the testing of the RSP (including during RSP pre-evaluation) and should instead emphasize testing of elements that are specific to the application and/or applied-for TLD. This guidance is consistent with Recommendation 5.2.a and 5.2.c from ICANN org's Program Implementation Review Report.[260]

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[258] Note that there is an important distinction between "evaluation" and "testing." Evaluation includes review of an applicant's responses to written questions regarding capabilities that cannot be demonstrated until the registry is operational. Testing refers to ICANN org's assessment of a registry's capabilities through the tests it conducts.

[259] Recommendation 5.2.b states: "Consider which, if any, tests can be converted from self-certifying tests to operational tests."

[260] Recommendation 5.2.a states: "Consider which tests should be performed once per technical infrastructure implementation and which should be performed for each TLD." Recommendation 5.2.c states: "In considering an alternate approach to the Technical and Operational Capability evaluation, if an RSP accreditation program is considered, explore how Pre-Delegation Testing would be impacted."

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

Rationale for Recommendation 39.1 and Implementation Guidance 39.2 and 39.3: The Working Group noted that despite registries and RSPs passing Pre-Delegation Testing (PDT), there are still breaches of Service Level Agreements. Thus, the Working Group believes that there are practical improvements that should be made to the operational readiness testing to better ensure the security and stability of the DNS. The Working Group agreed with input[261] from ICANN org's Global Domains Division that recommended that instead of relying on self-certifications, there needed to be a stronger emphasis on testing of operational tasks, many of which have been shown to be the source of issues flagged by ICANN org's SLA Monitoring system. Testing the applicant/RSP's ability to do certain key operational tasks (e.g., key rollover, resigning TLD zone) could improve the chances of success when operating TLDs in production.

Rationale for Recommendation 39.4 and Implementation Guidance 39.5 and 39.6: The Working Group noted that the testing procedure was highly redundant, which increased time and cost spent by ICANN, applicants, and RSPs. As a result, the Working Group identified several areas and also agreed with input from ICANN org on aspects that could warrant change to enhance efficiency. Firstly, the Working Group agreed with ICANN org that to improve efficiency and precision, the review process for IDN tables, to the extent it is needed, should leverage IDN tools available at the time. The Working Group agreed that the testing of IDN tables may not be necessary if the applicant has proposed using reference Label Generation Rules published by ICANN org. The Working Group believed that the redundant nature of having every application complete RST was a key source for inefficiencies. The Working Group agreed that leveraging an RSP pre-evaluation program to test the technical infrastructure only once is helpful, but also agreed that testing components of an individual application is needed.

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

None.

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

- Additional discussion and recommendations related to testing as part of the RSP pre-evaluation program are included under Topic 6: RSP Pre-Evaluation.
- Topic 7: Metrics & Monitoring includes recommendations in relation to Service Level Agreement (SLA) Monitoring and the publication of SLA Monitoring data.

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[261] See input here:
https://community.icann.org/download/attachments/58735969/Response%20to%20WT4%20re%20RST%20improvements.pdf?version=2&modificationDate=1502939084000&api=v2

- Recommendations regarding Applicant Reviews are included under Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services.

2.12 Deliberations and Recommendations: Post-Delegation

Topic 40: TLD Rollout

a. Recommendations and/or implementation guidelines

Affirmation 40.1: The Working Group affirms Implementation Guideline I from 2007, which states: "An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process."

Affirmation 40.2: The Working Group supports maintaining the timeframes set forth in the 2012 Applicant Guidebook and base Registry Agreement; namely (i) that successful applicants continue to have nine (9) months following the date of being notified that it successfully completed the evaluation process to enter into a Registry Agreement, and (ii) that registry operators must complete all testing procedures for delegation of the TLD into the root zone within twelve (12) months of the Effective Date of the Registry Agreement. In addition, extensions to those time frames should continue to be available according to the same terms and conditions as they were allowed during the 2012 round.

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

Rationale for Affirmations 40.1 and 40.2: Although some members of the Working Group were in favor of trying to further define what it means to "use" a TLD, the Working Group ultimately affirms the existing definition for "use" of a gTLD (namely, delegation into the root and meeting all other contractual commitments with respect to required content). It believes that as was the case in the 2012 round, there should be a specified timeframe in which the gTLD should be used. Further the Working Group believes that the timeframes for gTLD rollout from the 2012 round continue to be appropriate in subsequent rounds. The Working Group acknowledges that the provision of extensions to applicants can result in programmatic delays and additional costs and that the lack of a time limit for launch of a gTLD also carries operational costs. The Working Group nonetheless believes that maintaining the existing rules strikes the right balance between establishing appropriate requirements while providing applicants with flexibility when extra time is needed to roll out a gTLD.

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

The Working Group discussed public comments providing different perspectives on whether any adjustments need to be made to the definition of "use" of a TLD and

whether any additional measures are needed to prevent possible squatting and/or warehousing of TLDs, noting that the Working Group did not come to agreement on definitions for terms "squatting" and "warehousing." The Working Group noted different points of view continue to be expressed on these topics. Some do not believe that the "squatting" or "warehousing" of TLDs is a documented problem that needs to be solved, and further believe measures to address these concerns should not be considered unless there is a clear definition of the associated terminology. From this perspective, existing requirements and definitions related to use are appropriate and sufficient. From another perspective, squatting and warehousing are significant concerns, and new definitions and requirements should be developed regarding how and when a TLD is used.

The Working Group considered a proposal put forward by a Working Group member that the new Registry Agreement should contain a clause that denies contract renewal if registries have not had a Sunrise registration phase. Specification 13 Brand registries would be exempted from this clause. Those supporting the proposal expressed that a gTLD should operate for the benefit of the Internet community, drawing on the analogy of public land use. From this perspective, if a gTLD is not "used" for an extended period, it is effectively taken out of circulation, closing off a segment of the gTLD space that could be used by someone else. From this point of view, "unused" TLDs are contrary to the intent of the New gTLD Program and provisions of the Applicant Guidebook.

Those opposing the proposal reiterated that there is no agreement of an issue or problem to solve, and further expressed that Sunrise is not an appropriate proxy for "use." From this perspective, the proposal forces all applicants and registry operators into the model of selling domain names to third parties, hampering innovation and new business models in the gTLD space. In this view, it can take time for businesses to find the right niche for their gTLD, and business plans can change over time. Setting an arbitrary deadline serves neither registries or the gTLD ecosystem. Some noted that delays, programmatic changes, and other circumstances during the course of the 2012 round impacted many registries' plans to launch, citing in particular the impact on registries from the Global South. While Working Group members expressed hope that there would be greater predictability in subsequent procedures, they noted the need for flexibility to support the ability of registries to navigate program requirements.

The Working Group did not come to an agreement on whether there is a problem to solve on this topic, and therefore did not put forward any new recommendations related to "use" of a TLD.

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

- Topic 26: Security and Stability addresses limits to the rate of delegation from a technical perspective.

Topic 41: Contractual Compliance

a. Recommendations and/or implementation guidelines

Affirmation 41.1: The Working Group affirms Recommendation 17 from the 2007 policy, which states: "A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination."

Recommendation 41.2: ICANN's Contractual Compliance Department should publish more detailed data on the activities of the department and the nature of the complaints handled; provided however, that ICANN should not publish specific information about any compliance action against a registry operator unless the alleged violation amounts to a clear breach of contract. To date, ICANN compliance provides summary statistics on the number of cases opened, generalized type of case, and whether and how long it takes to close. More information must be published on: (a) the context of the compliance action and whether it was closed due to action taken by the registry operator, or whether it was closed due to a finding that the registry operator was never out of compliance, and (b) standards and/or thresholds ICANN applies in assessing, and accepting each complaint for further action.

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

Rationale for Affirmation 41.1 and Recommendation 41.2: The Working Group supports existing policy Recommendation 17, noting that a clear compliance and sanctions process is important for ensuring that contracted parties meet their contractual obligations and face appropriate consequences when they fail to do so, including the potential for contract termination.

The Working Group believes that by providing additional data and corresponding insights based on that data about the activities of ICANN's Contractual Compliance department and the nature of complaints handled, ICANN can better support the community in evaluating the functioning of the New gTLD Program and developing policy on this topic in the future.

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

The Working Group discussed Initial Report public comment responses that provided different perspectives on whether there is evidence of the following issues, as well as different perspectives on whether these topics should be addressed by the PDP:

- Arbitrary and abusive pricing for premium domains targeting trademarks[262];
- Use of Reserved Names to circumvent Sunrise;

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[262] The Working Group notes, however, that some of these issues have since been addressed by the Rights Protection Mechanisms PDP. The PDP's Final Report is available at: https://gnso.icann.org/sites/default/files/file/field-file-attach/rpm-phase-1-proposed-24nov20-en.pdf

- Operating launch programs that differed materially from what was approved by ICANN.

The Working Group acknowledges concerns raised by some Working Group members but it did not come to agreement that recommendations should be put forward on these topics, and therefore none are included in this report.

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

- The Contractual Compliance function enforces provisions of the Registry Agreement. Recommendations and discussion regarding the base Registry Agreement itself are included in under Topic 36: Base Registry Agreement.

3 Conclusions and Next Steps

3.1 Preliminary Conclusions

The Working Group produced a series of outputs, of which there are 5 types: (a) Affirmation, (b) Affirmation with Modification, (c) Recommendation, (d) Implementation Guidance, and/or (e) No Agreement. These outputs are summarized in Annex B. Annex C provides the consensus designations for the outputs included in this Final Report. In summary, all but 1 of the topics received a designation of either Full Consensus or Consensus. More specifically, 25 topics received Full Consensus, 16 received Consensus and 1 received a designation of Strong Support but Significant Opposition. The Annex provides further detail about the consensus designations for specific outputs under each topic.

3.2 Next Steps

The Final Report and outputs are being delivered to the GNSO Council for its consideration. If adopted by the GNSO Council, they will be submitted to the ICANN Board for consideration.

4 Background

4.1 Process Background

On 25 June 2014, the GNSO Council created the New gTLD Subsequent Procedures Discussion Group. On 1 June 2015, the Discussion Group delivered its final deliverables with the GNSO Council.

- In response to the deliverables of the Discussion Group, on 24 June 2015, the GNSO Council resolved to request an Issue Report. In the Final Issue Report, ICANN staff recommended that the GNSO Council commence a PDP on New gTLD Subsequent Procedures.

- On 4 December 2015, ICANN staff published a Final Issue Report for the GNSO Council to consider the commencement of a Working Group.

- On 17 December 2015, the GNSO Council initiated a Policy Development Process and chartered the New gTLD Subsequent Procedures Working Group.

- On 21 January 2016, the GNSO Council resolved to adopt the Charter of the Working Group.

- On 27 January 2016, a Call for Volunteers was issued for the Working Group and the Working Group held its first meeting on 22 February 2016.

- On 3 July 2019, the first Initial Report was published for public comment and contained the output of the Working Group on the Overarching Issues as well as preliminary recommendations and questions for community feedback from Work Tracks 1-4.

- On 30 October 2018, a Supplemental Initial Report was published for public comment covering additional issues that were deemed to warrant deliberations by the Working Group.

- On 5 December 2018, the Working Group's Work Track 5 published a Supplemental Initial Report for public comment focused exclusively on the topic of geographic names at the top level.

- On 22 October 2019, Work Track 5 adopted its own Final Report by consensus and submitted it to the full Working Group for consideration.

- On 20 August 2020, a draft Final Report was published for public comment by the full Working Group.

4.2 Issue Background

The New gTLD Subsequent Procedures PDP Working Group was tasked with determining what, if any changes may be needed in regards to the existing GNSO's *Final Report on Introduction of New Generic Top-Level Domains*[263]. As the original policy recommendations as adopted by the GNSO Council and the ICANN Board have "been designed to produce a systemized and ongoing mechanisms for applicants to propose new top-level domains," those policy recommendations remain in place for subsequent rounds of the New gTLD Program unless the GNSO Council would decide to modify those policy recommendations via a policy development process. The work of the PDP follows the efforts of the New gTLD Subsequent Procedures Discussion Group (DG), which identified a set of subjects for this PDP to consider in their deliberations. The DG anticipated that the Working Group might complete its work by:

- Clarifying, amending or overriding existing policy principles, recommendations, and implementation guidelines;

- Developing new policy principles, recommendations, and implementation guidelines

4.2.1 Related Work by the GNSO and the Community

Several efforts within the community have connections to the work of this Working Group, which include but are not limited to:

- Competition, Consumer Trust & Consumer Choice Review Team (CCT-RT)

- The Security and Stability Advisory Committee (SSAC) reviews of previous guidance provided regarding the New gTLD Program and their determination if new advice may be needed.

- The Governmental Advisory Committee (GAC) has several working groups, focusing on community applications, underserved regions, and geographic names. More recently, the GAC has convened a Focal Group focused on New gTLD Subsequent Procedures.

- The Cross Community Working Group on the Use of Country and Territory Names (which concluded its work)

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[263] See the Final Report – Introduction of New Generic Top-Level Domains here: https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

- ■ PDP on the Review of All Rights Protection Mechanisms in All gTLDs

- ■ PDP on Protections of IGO and INGO Identifiers in All gTLDs

- ■ At the time of this writing, the GNSO Council has convened a small team to prepare a draft charter and an Expedited Policy Development Process (EPDP) initiation request, in advance of potentially initiating an EPDP specifically focused on IDNs and in particular, variant TLDs.

5 Approach Taken by the Working Group

5.1 Working Methodology

The New gTLD Subsequent Procedures PDP Working Group began its deliberations on 22 February 2016. It conducted its work primarily through weekly conference calls, in addition to email exchanges on its mailing list, with further discussions taking place during scheduled sessions at ICANN Public Meetings. All the Working Group's meetings are documented on its Wiki (https://community.icann.org/x/RgV1Aw). The Wiki also includes mailing list archives (http://mm.icann.org/pipermail/gnso-newgtld-wg/), draft documents, background materials and input received from ICANN's SO/Acs and the GNSO's Stakeholder Groups and Constituencies.

The Working Group also prepared a Work Plan (https://community.icann.org/x/NAp1Aw), which was reviewed on a regular basis. In accordance with the GNSO's PDP Manual, the Working Group solicited early input from ICANN's SO/ACs and the GNSO's SG/Cs, and considered all input received in response to this request. The Working Group scheduled and held working sessions at ICANN meetings. At these sessions, the Working Group collaborated with the community during deliberations and presented its preliminary findings and/or conclusions to the broader ICANN community for discussion and feedback. The Working Group met with other community organizations, especially the GAC and the ALAC, to discuss topics of particular interest to those groups (e.g., community-based applications, Applicant Support).

5.1.1 Working Group Membership

The members of the New gTLD Subsequent Procedures Working Group are below. Note, membership was also tracked for all of the Work Tracks as well, which can be found on the Working Group's Wiki[264]:

Group / Name	Affiliation
Holly Raiche	ALAC
Javier Rúa-Jovet	ALAC
Alan Greenberg	At-Large
Alfredo Calderon	At-Large

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[264] For Work Track membership see (WT1: https://community.icann.org/x/tw2bAw; WT2: https://community.icann.org/x/uw2bAw; WT3: https://community.icann.org/x/vw2bAw; and WT4: https://community.icann.org/x/ww2bAw)

Group / Name	Affiliation
Carlton Anthony Samuels	At-Large
Christopher Wilkinson	At-Large
Emmanuel Akin-Awokoya	At-Large
Harold Arcos	At-Large
Janvier Ngoulaye	At-Large
John Laprise	At-Large
José Alberto Barrueto Rodríguez	At-Large
Justine Chew	At-Large
Leon Felipe Sanchez	At-Large
Naeem Uddin	At-Large
Pascal Bekono	At-Large
Satish Babu	At-Large
Seun Ojedeji	At-Large
Vanda Scartezini	At-Large
Isabel Rutherfurd	CBUC
Margie Milam	CBUC
Phil Corwin	CBUC
Stephen Jadie Coates	CBUC
Trent Pulver	CBUC
Vivek Goyal	CBUC
Annebeth Lange	ccNSO
Mathieu Weill	ccNSO
Nick Wenban-Smith	ccNSO
Carlos Raul Gutierrez	CCT Liaison
Giacomo Mazzone	GAC

Group / Name	Affiliation
Iftikhar Hussain Shah	GAC
Jorge Cancio	GAC
Laxmi Prasad Yadav	GAC
Luisa Paez	GAC
Nick Shorey	GAC
Olga Cavalli	GAC
Rahul Gosain	GAC
Rida Tahir	GAC
Rita Houkayem	GAC
Taylor Bentley	GAC
Avri Doria	ICANN Board Liaison
Becky Burr	ICANN Board Liaison
Arshad Mohammed	Individual
Carlos Alberto Ribeiro	Individual
Carlos Watson	Individual
Ching Chiao	Individual
Chris Niemi	Individual
Christa Taylor	Individual
Christine Willett	Individual
Christopher Momanyi	Individual
Danny Glix	Individual
Dan Weinstein	Individual
David Rome	Individual
Dean Martin Smith	Individual
Dessalegn Mequanint Yehuala	Individual

Group / Name	Affiliation
Emanuele Sacchetto	Individual
George Sadowsky	Individual
George Soler	Individual
Guillaume Pahud	Individual
Hadia Elminiawi	Individual
Hong Hong	Individual
Iliya Bazlyankov	Individual
Jacob Williams	Individual
Jamie Baxter	Individual
Jay Westerdal	Individual
Jeffrey J. Neuman – co-chair	Individual
Jian C. Chang	Individual
Jim Prendergast	Individual
John Carr	Individual
Jonas Kölle	Individual
Jutta Croll	Individual
Karen Carlson	Individual
Karen Yu	Individual
Katrin Ohlmer	Individual
Kavouss Arasteh	Individual
Khaled Koubaa	Individual
Kurt Pritz	Individual
Laxmi Prasad Yadav	Individual
Liz Williams	Individual
Malgorzata Pek	Individual

Group / Name	Affiliation
Michael Casadevall	Individual
Mike Rodenbaugh	Individual
Nathalie Coupet	Individual
Nathaniel W. Edwards	Individual
Neli Marcheva	Individual
Phil Buckingham	Individual
Phil Lodico	Individual
Richard Padilla	Individual
Rudy Mendoza	Individual
Shiva Kanwar	Individual
Shreema Sarkar	Individual
Tim Johnson	Individual
Tom Dale	Individual
Tracy Hackshaw	Individual
Vaibhav Aggarwal	Individual
Victor Zhang	Individual
Wangari Kabiru	Individual
Yoshitaka Murakami	Individual
Zornitsa Marcheva	Individual
Anne Aikman-Scalese	IPC
Aslam Mohamed	IPC
Brian Scarpelli	IPC
Brian Winterfeldt	IPC
Clark Lackert	IPC
Greg Shatan	IPC

Group / Name	Affiliation
Flip Petillion (GNSO Council Liaison)	IPC
Griffin Barnett	IPC
Heather Forrest	IPC
Jannik Skou	IPC
Karen Bernstein	IPC
Kate Ellis	IPC
Kiran Malancharuvil	IPC
Liz Brodzinski	IPC
Marc Trachtenberg	IPC
Michael Flemming	IPC
Paul McGrady	IPC
Phillip Marano	IPC
Sophie Hey	IPC
Susan Payne	IPC
Vicky Sheckler	IPC
Akriti Bopanna	NCSG
Bruna Martins dos Santos	NCSG
Cheryl Langdon-Orr – co-chair	NCSG/At-Large
Collin Kurre	NCSG
Gangesh Varma	NCSG
Kathy Kleiman	NCSG
Robin Gross	NCSG
Sonigitu Ekpe	NCSG
Austin Ruckstuhl	NCUC
Christine Haight Farley	NCUC

Group / Name	Affiliation
Farzaneh Badii	NCUC
Jean Guillon	NCUC
Kris Seeburn	NCUC
Marília Maciel	NCUC
Monika Zalnieriute	NCUC
Olga Kyryliuk	NCUC
Peter Green (Zuan Zhang)	NCUC
Renata Aquino Ribeiro	NCUC
Stefania Milan	NCUC
Taiwo Peter Akinremi	NCUC
Yazid Akanho	NCUC
Harish Chowdhary	NCUC
Juan Manuel Rojas	NPOC
Klaus Stoll	NPOC
Poncelet Ileleji	NPOC
Rudi Vansnick	NPOC
Alexander Siffrin	RrSG
Ben Anderson	RrSG
Elisa Cooper	RrSG
Frederic Guillemaut	RrSG
James Bladel	RrSG
Marc Palau Potau	RrSG
Michele Neylon	RrSG
Pete LaMantia	RrSG/CBUC
Roger Carney	RrSg

Group / Name	Affiliation
Serena Lai	RrSG
Sophia Feng	RrSG
Theo Geurts	RrSG
Vlad Dinculescu	RrSG
Volker Greimann	RrSG
Alexander Schubert	RySG
Ashley Roberts	RySG
Bret Fausett	RySG
Dietmar Lenden	RySG
Donna Austin	RySG
Edmon Chung	RySG
Elaine Pruis	RySG
Erica Varlese	RySG
Gemma Keegan	RySG
Gertrude Levine	RySG
Heath Dixon	RySG
Jason Schaeffer	RySG
Jennifer Chung	RySG
Jessica Hooper	RySG
Jon Nevett	RySG
Jonathan Robinson	RySG
Judy Song Marshall	RySG
Julie Mowers	RySG
Ken Stubbs	RySG
Kristina Rosette	RySG

Group / Name	Affiliation
Limei Liu	RySG
Louis Houle	RySG
Marcelo Pinheiro Eid	RySG
Martin Sutton	RySG
Matthew Crossman	RySG
Maxim Alzoba	RySG
Quoc-Anh, Pham	RySG
Raymond Zylstra	RySG
Rob Hall	RySG
Rubens Kuhl	RySG
Samantha Demetriou	RySG
Sarah Langstone	RySG
Scott Harlan	RySG
Zack Coleman	RySG

The Statements of Interest of the Working Group members can be found at
https://community.icann.org/x/c4Lg.

The attendance records can be found at https://community.icann.org/x/9heAAw. The
email archives can be found at http://mm.icann.org/pipermail/gnso-newgtld-wg/.

In addition, there were 73 observers to the Working Group. Observers were allowed to
receive messages from the Working Group, but were not able to post to the mailing list
nor attend the Working Group meetings. As Observers, they were not required to submit
Statements of Interest. A list of the Observers can be found at:
https://community.icann.org/x/UplEB

* The following are the ICANN SO/Acs and GNSO Stakeholder Groups and
Constituencies for which Working Group members provided affiliations:

RrSG – Registrar Stakeholder Group

RySG – Registries Stakeholder Group
CBUC – Commercial and Business Users Constituency
NCSG – Non-Commercial Stakeholder Group
NCUC – Non-Commercial Users Constituency
NPOC – Not-for-Profit Operational Concerns Constituency
IPC – Intellectual Property Constituency
ALAC – At-Large Advisory Committee
ccNSO – Country Code Names Supporting Organization
GAC – Governmental Advisory Committee

6 Community Input

6.1 Request for Input

According to the GNSO's PDP Manual, a PDP Working Group should formally solicit statements from each GNSO Stakeholder Group and Constituency at an early stage of its deliberations. A PDP Working Group is also encouraged to seek the opinion of other ICANN Supporting Organizations and Advisory Committees who may have expertise, experience or an interest in the issue. As a result, the Working Group reached out to all ICANN Supporting Organizations and Advisory Committees as well as GNSO Stakeholder Groups and Constituencies with requests for input on multiple occasions.

Firstly, the Working Group sought to establish a historical catalog of Advice or Statements to support the Working Group's deliberations. In addition, the Working Group sought input on its overarching issues via Community Comment 1 (CC1) and then input on its remaining Charter topics via Community Comment 2 (CC2). In response to these various outreach efforts, statements were received from:

- The GNSO Business Constituency (BC)
- The GNSO Intellectual Property Constituency (IPC)
- The GNSO Internet Service Provider & Connectivity Provider Constituency (ISPCP)
- The GNSO Non-Commercial Users Constituency (NCUC)
- The Registries Stakeholder Group (RySG)
- The Registrars Stakeholder Group (RrSG)
- The At-Large Advisory Committee (ALAC)
- The Country Code Names Supporting Organization (ccNSO)
- The Governmental Advisory Committee (GAC)
- The Root Server System Advisory Committee (RSSAC)
- The Security and Stability Advisory Committee (SSAC)

1. The full records of outreach and response to the historical record of Statements and Advice can be found here: https://community.icann.org/x/2R6OAw.
2. The full records of outreach and response to CC1 can be found here: https://community.icann.org/x/3B6OAw.
3. The full records of outreach and response to CC2 can be found here: https://community.icann.org/x/Gq7DAw.

Community input was also sought through public comment on the Working Group's Initial Report, Supplemental Initial Reports, and draft Final Report. Input received on these documents can be found here: https://community.icann.org/x/e4mGBg.

6.2 Review of Input Received

All of the input received was reviewed by the Working Group as part of its deliberations on relevant topics.

Annex A – Charter

Working Group (WG) Charter

WG Name:	New gTLD Subsequent Procedures	
Section I: Working Group Identification		
Chartering Organization(s):	GNSO Council	
Charter Approval Date:	21 January 2016	
Name of WG Chair:	TBD	
Name(s) of Appointed Liaison(s):	Paul McGrady	
WG Workspace URL:	https://community.icann.org/display/NGSPP/New+gTLD+Subsequent+Procedures+PDP+Home	
WG Mailing List:	TBD	
GNSO Council Resolution:	**Title:**	Approval of the charter for the PDP WG on New gTLD Subsequent Procedures
	Ref # & Link:	http://gnso.icann.org/en/council/resolutions#20160121-2
Important Document Links:	• GNSO Policy Development Process Manual - http://gnso.icann.org/en/council/annex-2-pdp-manual-16may13-en.pdf • Annex A of the ICANN Bylaws - https://www.icann.org/resources/pages/governance/bylaws-en#AnnexA • Final Report – Introduction of New Generic Top-Level Domains - http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm	
Section II: Mission, Purpose, and Deliverables		
Mission & Scope:		

The New gTLD Subsequent Procedures PDP Working Group (WG) is tasked with calling upon the community's collective experiences from the 2012 New gTLD Program round to determine what, if any changes may need to be made to the existing *Introduction of New Generic Top-Level Domains* policy recommendations from 8 August 2007[265]. As the original policy recommendations as adopted by the GNSO Council and ICANN Board have "been designed to produce a systemized and ongoing mechanisms for applicants to propose new top-level domains", those policy recommendations remain in place for subsequent rounds of the New gTLD Program unless the GNSO Council would decide to modify those policy recommendations via a policy development process. The work of this WG follows the efforts of the New gTLD Subsequent Procedures Discussion Group (DG), which identified a set of issues for a future PDP-WG to consider in their deliberations. The DG saw the issues to address in this Working Group as:

- Clarifying, amending or overriding existing policy principles, recommendations, and implementation guidance;
- Developing new policy recommendations;
- Supplementing or developing new implementation guidance

In addition to the work of the DG, a number of review efforts are underway which may have an impact on the future work of this WG. Therefore, this WG should not be limited to the issues identified by the DG and should take into account the findings from the parallel efforts external to the WG.

As part of the WG deliberations, the WG should consider at a minimum, the elements below, which are found in further detail in the Final Issue Report. These elements have been organized in groupings suggested by the DG that may facilitate establishing teams to undertake the work. However, additional work methods, such as those described in the Final Issue Report, or other methods identified by the WG may be more appropriate to undertake the work. The list below in this charter is a starting point, and a suggested method of organization, but it is not intended to be exhaustive or impose constraints on this WG on how it operates or the issues it discusses, provided that the issues are directly related to new gTLD subsequent procedures. This WG may need to supplement this list, or reorganize it, to meet the needs of the WG as it moves deeper into the substantive policy discussions. If additional materials topics are identified, the WG should inform the GNSO Council, especially if amendment of this Charter is required. The fact that some issues are listed in the Final Issue Report and Appendices to the outputs of the DG, as opposed to inside the text of this Charter, is not intended to elevate some issues over others; the high-level issues below are simply to provide an illustrative guide to the issues that this Working Group will consider.

- **Group 1: Overall Process / Support / Outreach: Principles A and C; Recommendations 1, 9, 10, 12 and 13; Implementation Guidance A, B, C, D, E, M, N, O and Q; New Topics "Different TLD Types", "Application Submission Limits" and "Variable Fees"**
  - Cancelling Subsequent Procedures: Should there in fact be new gTLD subsequent procedures and if not, what are the justifications for and ramifications of discontinuing the program?

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[265] http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

- o Predictability: How can changes to the program introduced after launch (e.g., digital archery/prioritization issues, name collision, registry agreement changes, public interest commitments (PICs), etc.) be avoided?
- o Competition, Consumer Trust, and Consumer Choice: Did the implementation meet or discourage these goals?
  - ▪ *Note that per Section 9.3 of the Affirmation of Commitments, there is to be a community driven review of the New gTLD Program's impact on Competition, Consumer Trust, and Consumer Choice, taking into account the recommended metrics as identified by the Implementation Advisory Group for Competition, Consumer Trust, and Consumer Choice (IAG-CCT).*
- o Community Engagement: How can participation from the community be better encouraged and integrated during the policy development process, implementation, and execution?
- o Applicant Guidebook (AGB): Is the AGB the right implementation of the GNSO recommendations? If so, how can it be improved to ensure that it meets the needs of multiple audiences (e.g., applicants, those monitoring the policy implementation, registry service providers, escrow providers, etc.)
- o Clarity of Application Process: How can the application process avoid developing processes on an as-needed basis (e.g., clarifying question process, change request process, customer support, etc.)
- o Applications Assessed in Rounds: Has the scale of demand been made clear? Does the concept of rounds affect market behavior and should factors beyond demand affect the type of application acceptance mechanism?
- o Accreditation Programs: As there appears to be a limited set of technical service and Escrow providers, would the program benefit from an accreditation program for third party service providers? If so, would this simplify the application process with a set of pre-qualified providers to choose from? Are there other impacts that an accreditation program may have on the application process?
- o Systems: How can the systems used to support the New gTLD Program, such as TAS, Centralized Zone Data Service, Portal, etc. be made more robust, user friendly, and better integrated?
- o Application Fees: Evaluate accuracy of cost estimates and/or review the methodology to develop the cost model, while still adhering to the principle of cost recovery. Examine how payment processing can be improved.
- o Communications: Examine access to and content within knowledge base as well as communication methods between ICANN and the community.
- o Application Queuing: Review whether first come first served guidance remains relevant and if not, whether another mechanism is more appropriate.
- o Application Submission Period: Is three months the proper amount of time? Is the concept of a fixed period of time for accepting applications the right approach?
- o Support for Applicants from Developing Countries: Evaluate effectiveness of Applicant Support program to assess if the criteria were properly designed, outreach sufficient, monetary support sufficient, etc. In particular, was there enough outreach in developing economies to 1) contribute to the design and nature of the process and 2) to ensure awareness of the opportunity afforded?

- o Different TLD Types: Does the one-size-fits-all application and review process hamper innovation? Should things such as the application process, requirements, annual fees, contractual requirements, etc. be variable based on the TLD type? For instance, should an existing Registry Operator, that is fulfilling the requirements of its Registry Agreement, be subject to a different, more streamlined, application process?
- o Application Submission Limits: Should there be limits to the number of applications from a single applicant/group? Consider if the round could be restricted to a certain applicant type(s) (e.g., from least-developed countries) or other limiting factor.
- o Variable Fees: Should the New gTLD application fee be variable based on such factors as application type (e.g., open or closed registries), multiple identical applications, or other factor?
- **Group 2: Legal / Regulatory: Recommendations 5, 10, 14, 15, 16, 17 and 19; Implementation Guidance I, J, K and L; New Topics "Second-level Rights Protection Mechanisms", "Registry/Registrar Standardization", "Global Public Interest" and "IGO/INGO Protections"**
  - o Reserved Names: Review the composition of the reserved names list to determine if additions, modifications, or subtractions are needed (e.g., single letter, two letters, special characters, etc.). Evaluate if the implementation matched expectations (e.g., recommendations of the Reserved Names Working Group). Review whether geographic names requirements are appropriate.
    - ▪ *Note, the GNSO/ccNSO-chartered Cross Community Working Group on the Use of Country and Territory Names as Top-Level Domains is focused on a policy framework for country and territory names and efforts should be made to avoid duplicative work. In addition, capital city names, city names, etc. may also warrant discussion.*
  - o Base agreement: Perform comprehensive review of the base agreement, including investigating how and why it was amended after program launch, whether a single base agreement is appropriate, whether Public Interest Commitments (PICs) are the right mechanism to protect the public interest, etc. Should the Article 7.7 review process be amended to allow for customized reviews by different registry types?
  - o Registrant Protections. The original PDP assumed there would always be registrants and they would need protecting from the consequences of Registry failure, although it may not make sense to impose registrant protection obligations such as EBERO and the LOC when there are no registrants to protect, such as in a closed registry. Should more relevant rules be established for certain specific cases?
  - o Contractual Compliance: While no specific issues were identified, contractual compliance as it relates to New gTLDs may be considered in scope for discussion, though the role of contractual compliance (i.e., enforcing agreements) would not be considered within scope.
  - o Registrar Non-Discrimination: Are registrar requirements for registries still appropriate?
    - ▪ *Note, the development and implementation of Specification 13 for .brands was agreed to by the GNSO Council but deemed to be inconsistent with the historic Recommendation 19 because brands had not been considered in the original PDP.*
  - o TLD Rollout: Was adequate time allowed for rollout of TLD? When should recurring fees due to ICANN begin?

- o Second-Level Rights Protection Mechanisms: Proposing recommendations directly related to RPMs is beyond the remit of this PDP. There is an anticipated PDP on the "current state of all rights protection mechanisms (RPMs) implemented for both existing and new gTLDs, including but not limited to the UDRP and the URS...". Duplication or conflicting work between the New gTLD Subsequent Procedures PDP and the PDP on RPMs must be avoided. If topics related to RPMs are uncovered and discussed in the deliberations of this PDP, those topics should be relayed to the PDP on RPMs for resolution. To assure effective coordination between the two groups, a community liaison, who is a member of both Groups, is to be appointed jointly by both Groups and confirmed by the GNSO Council.
  - o Registry/Registrar Standardization: Consider whether the registry/registrar relationship should have additional standardization and regulation.
  - o Global Public Interest: Existing policy advice does not define the application of "Public Interest" analysis as a guideline for evaluation determinations. Consider issues identified in GAC Advice on safeguards, public interest commitments (PICs), and associated questions of contractual commitment and enforcement. It may be useful to consider the global public interest in the context of ICANN's limited technical coordination role, mission and core values and how it applies specifically to the New gTLD Program.
  - o IGO/INGO Protections: The PDP for Protection of IGO and INGO Identifiers in All gTLDs and PDP for IGO-INGO Access to Curative Rights Protection Mechanisms are expected to address a number of issues. While no additional work is envisioned, if there are any remaining or new issues for discussion, they could be deliberated in the context of this PDP.
  - o Closed Generics: Should there be restrictions around exclusive use of generics TLDs?
- **Group 3: String Contention / Objections & Disputes: Principle G; Recommendations 2, 3, 6, 12 and 20; Implementation Guidance F, H, P and R**
  - o Applicant's Freedom of Expression: Examine whether GAC Advice, community processes, and reserved names impacted this goal.
  - o String Similarity: Were string contention evaluation results consistent and effective in preventing user confusion? Were the string contention resolution mechanisms fair and efficient?
  - o Objections: Review rules around standing, fees, objection consolidation, consistency of proceedings and outcomes. Review functions and role of the independent objector. Consider oversight of process and appeal mechanisms.
  - o Accountability Mechanisms: Examine whether dispute resolution and challenge processes provide adequate redress options or if additional redress options specific to the program are needed.
    - ▪ *Note that the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) is comprehensively reviewing accountability mechanisms, so a portion of this topic may be beyond the scope of the New gTLD Subsequent Procedures PDP*
  - o Community Applications: Was the overall approach to communities consistent with recommendations and implementation guidance? Did the Community Priority Evaluation process achieve its purpose and result in anticipated outcomes? Were the recommendations adequate for community protection?
- **Group 4: Internationalized Domain Names: Principle B; Recommendation 18**

- Internationalized Domain Names and Universal Acceptance: Consider how to encourage adoption of gTLDs. Evaluate whether rules around IDNs properly accounted for recommendations from IDN WG. Determine and address policy guidance needed for the implementation of IDN variant TLDs.
  - *Note that the Universal Acceptance Steering Group has community support to lead the Universal Acceptance efforts and that conflicting effort and outcomes should be avoided.*
- **Group 5: Technical and Operations: Principles D, E and F; Recommendations 4, 7, and 8; New Topic "Name Collisions"**
  - Security and Stability: Were the proper questions asked to minimize the risk to the DNS and ensure that applicants will be able to meet their obligations in the registry agreement? Should there be non-scored questions and if so, how should they be presented? Were the proper criteria established to avoid causing technical instability? Is the impact to the DNS from new gTLDs fully understood?
  - Applicant Reviews: Technical/Operational and Financial: Were Financial and Technical criteria designed properly to allow applicants to demonstrate their capabilities while allowing evaluators to validate their capabilities? How can the criteria be streamlined and made clearer?
  - Name collisions: How should name collisions be incorporated into future new gTLD rounds? What measures may be needed to manage risks for 2012-round gTLDs beyond their 2-year anniversary of delegation, or gTLDs delegated prior to the 2012 round?

The WG, during its deliberations, should keep in mind that making substantive changes to the New gTLD Program may result in significant differences between registries from the 2012 round and future rounds. Where significant differences are identified, the WG should discuss the benefits to be realized from recommended changes against any possible negative impacts, such as creating an uneven playing field. As outlined in the PDP Manual, recommendations may take different forms including, for example, recommendations for consensus policies, best practices and/or implementation guidelines. The PDP WG is required to follow the steps and processes as outlined in Annex A of the ICANN Bylaws and the PDP Manual.

Objectives & Goals:
To develop an Initial Report and a Final Report addressing the issue of New gTLD Subsequent Procedures to be delivered to the GNSO Council, following the processes described in Annex A of the ICANN Bylaws and the PDP Manual.
Deliverables & Timeframes:
The WG shall respect the timelines and deliverables as outlined in Annex A of the ICANN Bylaws and the PDP Manual. As per the GNSO Working Group Guidelines, the WG shall develop a work plan that outlines the necessary steps and expected timing in order to achieve the milestones of the PDP as set out in Annex A of the ICANN Bylaws and the PDP Manual and submit this to the GNSO Council.

Section III: Formation, Staffing, and Organization

Membership Criteria:
The Working Group will be open to all interested in participating. New members who join after work has been completed will need to review previous documents and meeting transcripts.
Group Formation, Dependencies, & Dissolution:

This WG shall be a standard GNSO PDP Working Group. The GNSO Secretariat should circulate a 'Call for Volunteers' as widely as possible in order to ensure broad representation and participation in the Working Group, including:

- Publication of announcement on relevant ICANN web sites including but not limited to the GNSO and other Supporting Organizations and Advisory Committee web pages; and
- Distribution of the announcement to GNSO Stakeholder Groups, Constituencies and other ICANN Supporting Organizations and Advisory Committees

Working Group Roles, Functions, & Duties:

The ICANN Staff assigned to the WG will fully support the work of the Working Group as requested by the Chair including meeting support, document drafting, editing and distribution and other substantive contributions when deemed appropriate.

Staff assignments to the Working Group:
- GNSO Secretariat
- 2 ICANN policy staff members (Steve Chan, Julie Hedlund)

The standard WG roles, functions & duties shall be applicable as specified in Section 2.2 of the Working Group Guidelines.

Statements of Interest (SOI) Guidelines:

Each member of the Working Group is required to submit an SOI in accordance with Section 5 of the GNSO Operating Procedures.

Section IV: Rules of Engagement

Decision-Making Methodologies:

{Note: The following material was extracted from the Working Group Guidelines, Section 3.6. If a Chartering Organization wishes to deviate from the standard methodology for making decisions or empower the WG to decide its own decision-making methodology, this section should be amended as appropriate}.

The Chair will be responsible for designating each position as having one of the following designations:

- **Full consensus** – when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as **Unanimous Consensus.**
- **Consensus** – a position where only a small minority disagrees, but most agree. *[Note: For those that are unfamiliar with ICANN usage, you may associate the definition of 'Consensus' with other definitions and terms of art such as rough consensus or near consensus. It should be noted, however, that in the case of a GNSO PDP originated Working Group, all reports, especially Final Reports, must restrict themselves to the term 'Consensus' as this may have legal implications.]*
- **Strong support but significant opposition** – a position where, while most of the group supports a recommendation, there are a significant number of those who do not support it.
- **Divergence** (also referred to as **No Consensus**) – a position where there isn't strong support for any particular position, but many different points of view. Sometimes this is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is worth listing the issue in the report nonetheless.

- **Minority View** – refers to a proposal where a small number of people support the recommendation. This can happen in response to a **Consensus**, **Strong support but significant opposition**, and **No Consensus;** or, it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

In cases of **Consensus**, **Strong support but significant opposition**, and **No Consensus**, an effort should be made to document that variance in viewpoint and to present any **Minority View** recommendations that may have been made. Documentation of **Minority View** recommendations normally depends on text offered by the proponent(s). In all cases of **Divergence,** the WG Chair should encourage the submission of minority viewpoint(s).

The recommended method for discovering the consensus level designation on recommendations should work as follows:
   i.   After the group has discussed an issue long enough for all issues to have been raised, understood and discussed, the Chair, or Co-Chairs, make an evaluation of the designation and publish it for the group to review.
   ii. After the group has discussed the Chair's estimation of designation, the Chair, or Co-Chairs, should reevaluate and publish an updated evaluation.
   iii. Steps (i) and (ii) should continue until the Chair/Co-Chairs make an evaluation that is accepted by the group.
   iv. In rare case, a Chair may decide that the use of polls is reasonable. Some of the reasons for this might be:
        o   A decision needs to be made within a time frame that does not allow for the natural process of iteration and settling on a designation to occur.
        o   It becomes obvious after several iterations that it is impossible to arrive at a designation. This will happen most often when trying to discriminate between **Consensus** and **Strong support but Significant Opposition** or between **Strong support but Significant Opposition** and **Divergence.**

Care should be taken in using polls that they do not become votes. A liability with the use of polls is that, in situations where there is **Divergence** or **Strong Opposition**, there are often disagreements about the meanings of the poll questions or of the poll results.

Based upon the WG's needs, the Chair may direct that WG participants do not have to have their name explicitly associated with any Full Consensus or Consensus view/position. However, in all other cases and in those cases where a group member represents the minority viewpoint, their name must be explicitly linked, especially in those cases where polls where taken.

Consensus calls should always involve the entire Working Group and, for this reason, should take place on the designated mailing list to ensure that all Working Group members have the opportunity to fully participate in the consensus process. It is the role of the Chair to designate which level of consensus is reached and announce this designation to the Working Group. Member(s) of the Working Group should be able to challenge the designation of the Chair as part of the Working Group discussion. However, if disagreement persists, members of the WG may use the process set forth below to challenge the designation.

If several participants (see Note 1 below) in a WG disagree with the designation given to a position by the Chair or any other consensus call, they may follow these steps sequentially:

1. Send email to the Chair, copying the WG explaining why the decision is believed to be in error.
2. If the Chair still disagrees with the complainants, the Chair will forward the appeal to the CO liaison(s). The Chair must explain his or her reasoning in the response to the complainants and in the submission to the liaison. If the liaison(s) supports the Chair's position, the liaison(s) will provide their response to the complainants. The liaison(s) must explain their reasoning in the response. If the CO liaison disagrees with the Chair, the liaison will forward the appeal to the CO. Should the complainants disagree with the liaison support of the Chair's determination, the complainants may appeal to the Chair of the CO or their designated representative. If the CO agrees with the complainants' position, the CO should recommend remedial action to the Chair.
3. In the event of any appeal, the CO will attach a statement of the appeal to the WG and/or Board report. This statement should include all of the documentation from all steps in the appeals process and should include a statement from the CO (see Note 2 below).

Note 1: Any Working Group member may raise an issue for reconsideration; however, a formal appeal will require that that a single member demonstrates a sufficient amount of support before a formal appeal process can be invoked. In those cases where a single Working Group member is seeking reconsideration, the member will advise the Chair and/or Liaison of their issue and the Chair and/or Liaison will work with the dissenting member to investigate the issue and to determine if there is sufficient support for the reconsideration to initial a formal appeal process.

Note 2: It should be noted that ICANN also has other conflict resolution mechanisms available that could be considered in case any of the parties are dissatisfied with the outcome of this process.

Status Reporting:

As requested by the GNSO Council, taking into account the recommendation of the Council liaison to this group.

Problem/Issue Escalation & Resolution Processes:

{Note: the following material was extracted from Sections 3.4, 3.5, and 3.7 of the Working Group Guidelines and may be modified by the Chartering Organization at its discretion}

The WG will adhere to ICANN's Expected Standards of Behavior as documented in Section F of the ICANN Accountability and Transparency Frameworks and Principles, January 2008.

If a WG member feels that these standards are being abused, the affected party should appeal first to the Chair and Liaison and, if unsatisfactorily resolved, to the Chair of the Chartering Organization or their designated representative. It is important to emphasize that expressed disagreement is not, by itself, grounds for abusive behavior. It should also be taken into account that as a result of cultural differences and language barriers, statements may appear disrespectful or inappropriate to some but are not necessarily intended as such. However, it is expected that WG members make every effort to respect the principles outlined in ICANN's Expected Standards of Behavior as referenced above.

The Chair, in consultation with the Chartering Organization liaison(s), is empowered to restrict the participation of someone who seriously disrupts the Working Group. Any such restriction will be reviewed by the Chartering Organization. Generally, the participant should first be warned privately,

and then warned publicly before such a restriction is put into place. In extreme circumstances, this requirement may be bypassed.

Any WG member that believes that his/her contributions are being systematically ignored or discounted or wants to appeal a decision of the WG or CO should first discuss the circumstances with the WG Chair. In the event that the matter cannot be resolved satisfactorily, the WG member should request an opportunity to discuss the situation with the Chair of the Chartering Organization or their designated representative.

In addition, if any member of the WG is of the opinion that someone is not performing their role according to the criteria outlined in this Charter, the same appeals process may be invoked.

Closure & Working Group Self-Assessment:

The WG will close upon the delivery of the Final Report, unless assigned additional tasks or follow-up by the GNSO Council.

Section V: Charter Document History

Version	Date	Description
1.0	21 January 2016	Adopted by GNSO Council

Staff Contact:	Steve Chan	**Email:**	Policy-Staff@icann.org

Translations: If translations will be provided please indicate the languages below:											

Annex B – Table of Outputs

The following table includes all outputs from the 41 topics contained in this report, including those designated as Affirmation, Affirmation with Modification, Recommendation, Implementation Guidance, and No Agreement.

Summary of Outputs	
Topic	**Output**
Topic 1: Continuing Subsequent Procedures	Affirmation 1.1: The Working Group recommends that the existing policy contained in the 2012 Applicant Guidebook[266], that a "systematized manner of applying for gTLDs be developed in the long term," be maintained.
Topic 1: Continuing Subsequent Procedures	Affirmation 1.2: The Working Group affirms Principle A from the 2007 policy[267] and recommends that the New gTLD Program must continue to be administered "in an ongoing, orderly, timely and predictable way."
Topic 1: Continuing Subsequent Procedures	Affirmation 1.3: The Working Group affirms that the primary purposes of new gTLDs are to foster diversity, encourage competition, and enhance the utility of the DNS.
Topic 2: Predictability	Recommendation 2.1: ICANN must establish predictable, transparent, and fair processes and procedures for managing issues that arise in the New gTLD Program after the Applicant Guidebook is approved which may result in changes to the Program and its supporting processes. The Working Group recommends that ICANN org use the Predictability Framework detailed in Annex E of this Report as its guidance during implementation to achieve the goal of predictability in mitigating issues.

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[266] See section 1.1.6 of the Applicant Guidebook

[267] See the Final Report for the Introduction of New Generic Top-Level Domains here: https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

Summary of Outputs	
Topic	**Output**
	The Predictability Framework is principally: • A framework for analyzing the type/scope/context of an issue and if already known, the proposed or required Program change, to assist in determining the impact of the change and the process/mechanism that should be followed to address the issue. The framework is therefore a tool to help the community understand <u>how</u> an issue should be addressed as opposed to determining what the <u>solution</u> to the issue should be; the framework is not a mechanism to develop policy. The Framework is not intended to identify the solution to an issue but rather, to identify the proper mechanism to reach a solution in a consistent and procedurally sound manner. Therefore, this Framework <u>complements</u> the existing GNSO processes and procedures. It is not intended to be a substitute or replacement for those, nor should the Framework be seen as supplanting the GNSO Council's decision-making authority. In fact, the GNSO processes and procedures are incorporated into the Predictability Framework explicitly. In the event of a conflict, existing GNSO processes and procedures, including the GNSO Input Process, GNSO Guidance Process, and EPDP as contained in the Annexes to the GNSO Operating Procedures take precedence. Additionally, the Working Group recommends the formation of a Standing Predictability Implementation Review Team ("SPIRT") (Pronounced "spirit") to serve as the body responsible for reviewing potential issues related to the Program, to conduct analysis utilizing the framework, and to recommend the process/mechanism that should be followed to address the issue (i.e., utilize the Predictability Framework). The GNSO Council shall be responsible for oversight of the SPIRT and may review all recommendations of the SPIRT in accordance with the procedures outlined in the GNSO Operating Procedures and Annexes thereto.
Topic 2: Predictability	<u>Implementation Guidance 2.2</u>: The Working Group recognizes the challenges in determining the details of the framework and establishing the SPIRT and therefore emphasizes that implementation of both elements should focus on simplicity and clarity.

Summary of Outputs	
Topic	**Output**
Topic 2: Predictability	Implementation Guidance 2.3: Once the SPIRT has been formed, the ICANN Board/ICANN org should engage in dialogue with the SPIRT to determine the process required to consider future GAC Consensus Advice on new gTLDs where such GAC Consensus Advice could potentially have an impact on any applications or the program in general.
Topic 2: Predictability	Implementation Guidance 2.4: The SPIRT should be subject to a lean, focused review once it has undertaken enough work to support this review. The review should be supervised by the GNSO Council. The SPIRT should continue to operate during the period that the review takes place.
Topic 2: Predictability	Implementation Guidance 2.5: ICANN org should maintain and publish a change log or similar record to track changes to the New gTLD Program, especially those that arise and are addressed via the Predictability Framework and the SPIRT. The change log should contain a level of detail sufficient for the community to understand the scope and nature of the change without compromising security, the privacy of individuals, or confidentiality obligation owed to applicants or to other third parties. The GNSO Council should be informed of updates to the change log on a regular and timely basis. Interested parties should be able to subscribe to the change log to be informed of changes.
Topic 2: Predictability	Implementation Guidance 2.6: The Working Group acknowledges that there may be emergency circumstances which will require ICANN org to take an action that may impact the New gTLD Program. In such a case, the action should be narrowly tailored to address only the emergency situation. The ICANN Board should notify all impacted applicants (if any) and the SPIRT within 24 hours after the emergency situation. The notification should include the nature of the emergency, the action taken (or anticipated action) in response to the emergency, as well as expected impacts on the New gTLD Program. That notification will be considered a referral to the SPIRT of an issue if the SPIRT elects to address that issue.
Topic 2: Predictability	Recommendation 2.7: In the event significant issues arise that require resolution via the Predictability Framework, applicants should be afforded the opportunity to withdraw their application from the process and receive an appropriate refund consistent with the standard schedule of refunds.
Topic 2: Predictability	Implementation Guidance 2.8: Under the circumstances described in Recommendation 2.7, a refund should be permitted on an exceptional basis even if it does not follow the refund schedule.

Summary of Outputs	
Topic	**Output**
Topic 3: Applications Assessed in Rounds	Affirmation with Modification 3.1: The Working Group affirms recommendation 13 from the 2007 policy, which states: "Applications must initially be assessed in rounds until the scale of demand is clear." However, the Working Group believes that the recommendation should be revised to simply read, "Applications must be assessed in rounds."
Topic 3: Applications Assessed in Rounds	Recommendation 3.2: Upon the commencement of the next Application Submission Period, there must be clarity around the timing and/or criteria for initiating subsequent procedures from that point forth. More specifically, prior to the commencement of the next Application Submission Period, ICANN must publish either (a) the date in which the next subsequent round of new gTLDs will take place or (b) the specific set of criteria and/or events that must occur prior to the opening up of the next subsequent round.
Topic 3: Applications Assessed in Rounds	Implementation Guidance 3.3: A new round may initiate even if steps related to application processing and delegation from previous application rounds have not been fully completed.
Topic 3: Applications Assessed in Rounds	Implementation Guidance 3.4: Where a TLD has already been delegated, no application for that string will be allowed for a string in a subsequent round. It should in general not be possible to apply for a string that is still being processed from a previous application round, i.e. - If there is an application that has a status of "Active", "Applicant Support", "In Contracting", "On-hold" or "In PDT", a new application for that string will not be allowed in a subsequent round. However, - If all applications for a particular string have been Withdrawn in a given round, meaning that no registry operator has signed (or will be eligible to sign) a Registry Agreement for the string in that round, new applications for the string will be allowed in a subsequent round.

Summary of Outputs	
Topic	**Output**

	● If all applications for a given string have a status of "Will Not Proceed", an application for the TLD will only be allowed if:
	    ○ All appeals and/or accountability mechanisms have proceeded through final disposition and no applications for the string have succeeded in such appeals and/or accountability mechanisms; or
	    ○ All applicable time limitations (statute of limitations) have expired such that all applicants for a particular string would not be in a position to file an appeal or accountability mechanism with respect to the string.
	● If all applications for a given string have a status of "Not Approved", an application for the TLD string will only be allowed if:
	    ○ All appeals and/or accountability mechanisms have proceeded through final disposition and no applications for the string have succeeded in such appeals and/or accountability mechanisms; or
	    ○ All applicable time limitations (statute of limitations) have expired such that all applicants for a particular string would not be in a position to file an appeal or accountability mechanism with respect to the string; and
	    ○ The ICANN Board has not approved new policies or procedures that would allow one or more of the applicants from the prior round to cure the reasons for which it was placed in the "Not Approved" category, but has approved new policies or procedures that would allow an applicant to apply for the string in any subsequent round. In the event that there are new policies or procedures put into place which would allow applications for strings which were "Not Approved" in a prior round, the ICANN Board must make a determination as to whether the applicants in the prior round have any preferential rights for those strings if such prior applicants commit to adopt such new policies or procedures at the time such policies or procedures are put into place.

Summary of Outputs	
Topic	**Output**
	• Once a string has been delegated, ICANN should be able to force other applications for the string to withdraw/close out, unless an applicant provides ICANN good reason to keep the application in "Active" status. Such reason could include the fact that there are ongoing accountability mechanisms and/or litigation with respect to the given string. In addition, • If a registry operator has terminated its Registry Agreement and (i) the TLD has not been reassigned to a different registry operator, and (ii) in the case of a Specification 13 Brand TLD, it is more than 2 years following the Expiration Date (See RA Section 4.5(a)), then applications will be allowed to be submitted during a subsequent round.
Topic 3: Applications Assessed in Rounds	Recommendation 3.5: Absent extraordinary circumstances application procedures must take place at predictable, regularly occurring intervals without indeterminable periods of review unless the GNSO Council recommends pausing the program and such recommendation is approved by the Board. Such extraordinary circumstances must be subject to the Predictability Framework under Topic 2 of this Report. Unless and until other procedures are recommended by the GNSO Council and approved by the ICANN Board, ICANN must only use "rounds" to administer the New gTLD Program.
Topic 3: Applications Assessed in Rounds	Recommendation 3.6: Absent extraordinary circumstances, future reviews and/or policy development processes, including the next Competition, Consumer Choice & Consumer Trust (CCT) Review, should take place concurrently with subsequent application rounds. In other words, future reviews and/or policy development processes must not stop or delay subsequent new gTLD rounds.
Topic 3: Applications Assessed in Rounds	Recommendation 3.7: If the outputs of any reviews and/or policy development processes has, or could reasonably have, a material impact on the manner in which application procedures are conducted, such changes must only apply to the opening of the application procedure subsequent to the adoption of the relevant recommendations by the ICANN Board.

Summary of Outputs	
Topic	**Output**

Topic 4: Different TLD Types	<u>Recommendation 4.1</u>: The Working Group recommends differential treatment for certain applications based on either the application type, the string type, or the applicant type. Such differential treatment may apply in one or more of the following elements of the New gTLD Program: Applicant eligibility[268]; Application evaluation process/requirements[269]; Order of processing; String contention[270]; Objections[271]; Contractual provisions.
	
	● Different application types:
	    ○ Standard
	    ○ Community-Based (for different application questions, Community Priority Evaluation, and contractual requirements)[272]
	    ○ Geographic Names (for different application questions)[273]
	    ○ Specification 13 (.Brand TLDs) (for different application questions and contractual requirements)[274]
	
	● Different string types:
	    ○ Geographic Names (for different application questions)[275]
	    ○ IDN TLDs (priority in order of processing)[276]
	    ○ Variant TLDs[277]

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[268] See section 1.2.1 of the 2012 Applicant Guidebook.

[269] See Module 2 of the 2012 Applicant Guidebook.

[270] See Module 4 of the 2012 Applicant Guidebook.

[271] See Module 3 of the 2012 Applicant Guidebook.

[272] As defined under Topic 34: Community Applications.

[273] As defined in Annex J: Final Report of Work Track 5 on Geographic Names at the Top Level.

[274] See Topic 22: Registrant Protections, Topic 9: Registry Voluntary Commitments / Public Interest Commitments, and Topic 20: Application Change Requests for recommendations impacting .Brand applicants.

[275] As defined in Annex J: Final Report of Work Track 5 on Geographic Names at the Top Level.

[276] As defined under Topic 19: Application Queuing.

[277] As defined under Topic 25: IDNs.

Summary of Outputs	
Topic	**Output**

	○ Strings subject to Category 1 Safeguards[278]
	
	    ● Different Applicant Types:
	       ○ Intergovernmental organizations or governmental entities (for different contractual requirements)
	       ○ Applicants eligible for Applicant Support[279]

Topic 4: Different TLD Types	Recommendation 4.2: Other than the types listed in Recommendation 4.1, creating additional application types[280] must only be done under exceptional circumstances.[281] Creating additional application types, string types, or applicant types must be done solely when differential treatment is warranted and is NOT intended to validate or invalidate any other differences in applications.
Topic 4: Different TLD Types	Implementation Guidance 4.3: To the extent that in the future, the then-current application process and/or base agreement unduly impedes an otherwise allowable TLD application by application type, string type, or applicant type, there should be a predictable community process by which potential changes can be considered. This process should follow the Predictability Framework discussed under Topic 2. See also the recommendation under Topic 36: Base Registry Agreement regarding processes for obtaining exemptions to certain provisions of the base Registry Agreement.

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[278] As defined under Topic 9: Registry Voluntary Commitments / Public Interest Commitments.

[279] As identified under Topic 17: Applicant Support.

[280] In the 2012 round, there were only two types of applications, standard and community-based. Per the 2012 AGB, it stated that, "A standard gTLD can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. A standard applicant may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions. Standard simply means here that the applicant has not designated the application as community-based." The WG believes that there is a difference between the **type of application** versus the **type of string**, and they are not necessarily dependent upon one another. For instance, a standard application can apply for a geographic names string. In addition, the **type of applicant** may have additional impacts on the process or contracting.

[281] The Working Group notes that the so-called 'Closed Generic' application type is a separate type of application treated under Topic 23 of this report. The recommendation and implementation guidance provided under this topic is not intended to apply to Closed Generics, as that subject needs further policy work.

Summary of Outputs	
Topic	**Output**
Topic 5: Application Submission Limits	<u>Affirmation 5.1</u>: In the 2012 application round, no limits were placed on the number of applications in total or from any particular entity. The Working Group is not recommending any changes to this practice and therefore affirms the existing implementation.
Topic 6: RSP Pre-Evaluation	<u>Affirmation 6.1</u>: The Working Group affirms Principle C of the 2007 policy, which states: "The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition, the introduction of a new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service provider diversity."
Topic 6: RSP Pre-Evaluation	<u>Recommendation 6.2</u>: The Working Group recommends establishing a program in which registry service providers ("RSPs")[282] may receive pre-evaluation by ICANN if they pass the required technical evaluation and testing conducted by ICANN, or their selected third party provider. The only difference between a pre-evaluated RSP and one that is evaluated during the application evaluation process is the timing of when the evaluation and testing takes place; Therefore, all criteria for evaluation and testing must be the same.
Topic 6: RSP Pre-Evaluation	<u>Recommendation 6.3</u>: Participation in the RSP pre-evaluation process must be voluntary and the existence of the process shall not preclude an applicant from providing its own registry services or providing registry services to other new gTLD registry operators, provided that the applicant passes technical evaluation and testing during the standard application process.
Topic 6: RSP Pre-Evaluation	<u>Recommendation 6.4</u>: The RSP pre-evaluation process shall be open to all entities seeking such evaluation, including both new and incumbent RSPs. For the initial RSP pre-evaluation process, both the evaluation criteria and testing requirements shall be the same regardless of whether the RSP applying for evaluation is a new RSP or an incumbent RSP.

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[282] The term "Registry Services Provider" or "RSP" refers to the entity that performs the critical registry services on behalf of a registry operator. In some cases, this may be the same entity as the registry operator itself; in other cases, this may be a third party to whom the registry operator subcontracts those services.

Summary of Outputs	
Topic	**Output**
Topic 6: RSP Pre-Evaluation	Recommendation 6.5: Pre-evaluation occurs prior to each application round and only applies to that specific round. Reassessment must occur prior to each subsequent application round.
Topic 6: RSP Pre-Evaluation	Implementation Guidance 6.6: With respect to each subsequent round, ICANN org may establish a separate process for reassessments that is more streamlined compared to the evaluation and testing of those entities seeking RSP pre-evaluation for the first time.
Topic 6: RSP Pre-Evaluation	Implementation Guidance 6.7: It may be appropriate to require an RSP to agree to a more limited set of click-wrap terms and conditions when submitting their application for the pre-evaluation process. Such an agreement would be limited to the terms and conditions of the pre-evaluation program and may not create an ongoing direct contractual relationship between ICANN and the RSP nor be interpreted in any way to make an RSP a "contracted party" as that term is used in the ICANN community.
Topic 6: RSP Pre-Evaluation	Recommendation 6.8: The RSP pre-evaluation program must be funded by those seeking pre-evaluation on a cost-recovery basis. Costs of the program should be established during the implementation phase by the Implementation Review Team in collaboration with ICANN org.
Topic 6: RSP Pre-Evaluation	Recommendation 6.9: A list of pre-evaluated RSPs must be published on ICANN's website with all of the other new gTLD materials and must be available to be used by potential applicants with an adequate amount of time to determine if they wish to apply for a gTLD using a pre-evaluated RSP.
Topic 7: Metrics and Monitoring	Recommendation 7.1: Meaningful metrics must be identified to understand the impact of the New gTLD Program. To review metrics, data must be collected at a logical time to create a basis against which future data can be compared.
Topic 7: Metrics and Monitoring	Implementation Guidance 7.2: Metrics collected to understand the impact of New gTLD Program should, broadly speaking, focus on the areas of trust, competition, and choice. The Working Group notes that the Competition,

Summary of Outputs	
Topic	**Output**
	Consumer Trust and Consumer Choice Review's 2018 Final Report[283] includes a series of recommendations regarding metrics. Work related to the development of metrics should be in accordance with CCT-RT recommendations currently adopted by the Board, as well as those adopted in the future. The Working Group suggests the following possible metrics for further consideration in the implementation phase: - The presence of new gTLDs in lists of highly used websites, such as Alexa 1 Million and Cisco Umbrella 1 Million - Recognition of specific gTLDs in niches, communities, and verticals - Annual growth of new gTLDs as compared to legacy TLDs and previous application rounds, i.e., comparing the growth of TLDs approved in 2012 with TLDs approved in subsequent rounds - Number of new registries and registrars year over year - Locations of new registries and registrars year over year, in an effort to see how subsequent rounds affects diversity in the marketplace - Categories of gTLDs offered and diversity metrics within those categories
Topic 7: Metrics and Monitoring	Recommendation 7.3: ICANN org must establish metrics and service level requirements for each phase of the application process including each during the review, evaluation, contracting and transition to delegation stages. ICANN must report on a monthly basis on its performance with respect to these key performance indicators.
Topic 7: Metrics and Monitoring	Recommendation 7.4: ICANN org must further develop its Service Level Agreement (SLA) monitoring to allow for more robust ongoing monitoring of TLD operations.
Topic 7: Metrics and Monitoring	Recommendation 7.5: ICANN org must publish anonymized, aggregate SLA monitoring data on a regular basis.

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[283] See https://www.icann.org/en/system/files/files/cct-final-08sep18-en.pdf

Summary of Outputs	
Topic	**Output**
Topic 7: Metrics and Monitoring	Implementation Guidance 7.6: ICANN org should publish 1. The thresholds on the five critical registry functions that it has used to determine the triggering of an EBERO event 2. The number of events that have triggered or come close to triggering EBERO since launch of EBERO for the 2012 round.
Topic 8: Conflicts of Interest	Recommendation 8.1: ICANN must develop a transparent process to ensure that dispute resolution service provider panelists, Independent Objectors, and application evaluators are free from conflicts of interest. This process must serve as a supplement to the existing Code of Conduct Guidelines for Panelists, Conflict of Interest Guidelines for Panelists, and ICANN Board Conflicts of Interest Policy.[284]
Topic 9: Registry Voluntary	Recommendation 9.1: Mandatory Public Interest Commitments (PICs) currently captured in Specification 11 3(a)-(d) of the Registry Agreement[285] must continue to be included in Registry Agreements for gTLDs in subsequent

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[284] https://www.icann.org/resources/pages/governance/coi-en#:~:text=The%20purpose%20of%20this%20Board,the%20Internet%20community%2C%20as%20a

[285]The relevant sections are as follows:

3. Registry Operator agrees to perform the following specific public interest commitments, which commitments shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN (posted at http://www.icann.org/en/resources/registries/picdrp), which may be revised in immaterial respects by ICANN from time to time (the "PICDRP"). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

(a) Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

(b) Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.

Summary of Outputs	
Topic	**Output**
Commitments / Public Interest Commitments	procedures. Noting that mandatory PICs were not included in the 2007 recommendations, this recommendation puts existing practice into policy. One adjustment to the 2012 implementation is included in the following recommendation (Recommendation 9.2).[286]
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<u>Recommendation 9.2</u>: Provide single-registrant TLDs with exemptions and/or waivers to mandatory PICs included in Specification 11 3(a) and Specification 11 3(b).[287]
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<u>Affirmation 9.3</u>: The Working Group affirms the framework established by the New gTLD Program Committee (NGPC) to apply additional Safeguards to certain new gTLD strings that were deemed applicable to highly sensitive or

(c) Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.

(d) Registry Operator of a "Generic String" TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person's or entity's "Affiliates" (as defined in Section 2.9(c) of the Registry Agreement). "Generic String" means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.

For full detail, see the 31 June 2017 Registry Agreement here: https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.pdf

[286] In addition to the existing mandatory PICs discussed under this topic, Topic 24: String Similarity Evaluations includes a recommendation to introduce a new mandatory PIC that would be required in cases where two applications are submitted during the same application window for strings that create the probability of a user assuming that they are single and plural versions of the same word, but the applicants intend to use the strings in connection with two different meanings. The applicants would commit to the use stated in the application via a mandatory PIC.

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

Summary of Outputs	
Topic	**Output**
	regulated industries,[288] as established in response to the Governmental Advisory Committee (GAC) Beijing Communiqué.[289]

This framework includes ten (10) Safeguards of different levels implemented amongst a set of four groups with ascending levels of requirements:

1) Regulated Sectors/Open Entry Requirements in Multiple Jurisdictions: Category 1 Safeguards 1-3 applicable
2) Highly-Regulated Sectors/Closed Entry Requirements in Multiple Jurisdictions: Category 1 Safeguards 1-8 applicable
3) Potential for Cyber Bullying/Harassment: Category 1 Safeguards 1-9 applicable
4) Inherently Governmental Functions: Category 1 Safeguards 1-8 and 10 applicable

Strings that fall into these categories require the adoption of the relevant Category 1 Safeguards as contractually binding requirements in Specification 11 of the Registry Agreement (i.e., as mandatory Public Interest Commitments, or PICs).

The Working Group affirms:
a) The four groups described in the NGPC's scorecard;
b) The four groups' varying levels of required Category 1 Safeguards; and,
c) The integration of the relevant Category 1 Safeguards into the Registry Agreement, by way of PICs.

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[288] See the relevant NGPC scorecard here: https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf
[289] See Beijing Communiqué (https://gac.icann.org/contentMigrated/icann46-beijing-communique): "Strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm."

Summary of Outputs	
Topic	**Output**
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	Recommendation 9.4: The Working Group recommends establishing a process to determine if an applied-for string falls into one of four groups defined by the NGPC framework for new gTLD strings deemed to be applicable to highly sensitive or regulated industries. This process must be included in the Applicant Guidebook along with information about the ramifications of a string being found to fall into one of the four groups.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	Implementation Guidance 9.5: Applicants may choose to self-identify if they believe that their string falls into one of the four groups. This designation will be confirmed, or not, using the process outlined below in Implementation Guidance 9.6.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	Implementation Guidance 9.6: During the evaluation process, each applied-for string should be evaluated to determine whether it falls into one of the four groups, and therefore is subject to the applicable Safeguards. An evaluation panel should be established for this purpose, the details of which will be determined in the implementation phase. The panel should be composed of experts in regulated industries, who will also be empowered to draw on the input of other experts in relevant fields.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	Implementation Guidance 9.7: The panel evaluating whether a string is applicable to highly sensitive or regulated industries should conduct its evaluation of the string after the Application Comment Period is complete.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	Recommendation 9.8: If an applied-for string is determined to fall into one of the four groups of strings applicable to highly sensitive or regulated industries, the relevant Category 1 Safeguards must be integrated into the Registry Agreement as mandatory Public Interest Commitments.

Summary of Outputs	
Topic	**Output**
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<u>Recommendation 9.9:</u> ICANN must allow applicants to submit Registry Voluntary Commitments (RVCs) (previously called voluntary PICs) in subsequent rounds in their applications or to respond to public comments, objections, whether formal or informal, GAC Early Warnings, GAC Consensus Advice, and/or other comments from the GAC. 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 under topic 20: Application Changes Requests, including, but not limited to, an operational comment period[290] in accordance with ICANN's standard procedures and timeframes.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<u>Recommendation 9.10:</u> RVCs must continue to be included in the applicant's Registry Agreement.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<u>Implementation Guidance 9.11</u>: The Public Interest Commitment Dispute Resolution Process (PICDRP) and associated processes[291] should be updated to equally apply to RVCs.[292]
Topic 9: Registry Voluntary Commitments / Public Interest	<u>Recommendation 9.12:</u> 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

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[290] a 30-day comment period giving the public the opportunity to comment on any change to a public part of an application.
[291] "Associated processes" refers to all existing processes relevant to what were formerly known as voluntary PICs.
[292] For additional discussion of the PICDRP, see Topic 33: Dispute Resolution Procedures After Delegation.

Summary of Outputs	
Topic	**Output**
Commitments	Early Warning, GAC Consensus Advice, or other comments from the GAC)) to understand if the RVC addresses the underlying concern(s).
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	Recommendation 9.13: 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.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	Implementation Guidance 9.14: The Working Group notes that the CCT-RT's recommendation 25[293] has recommended developing an "organized, searchable online database" for RVCs. The Working Group agrees and believes that ICANN org should evaluate this recommendation in the implementation phase and determine the best method for ensuring that RVCs are widely accessible.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	Recommendation 9.15: The Working Group acknowledges ongoing important work in the community on the topic of

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[293] CCT-RT Recommendation 25 states: "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 so 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."

Summary of Outputs	
Topic	**Output**
	DNS abuse[294] and believes that 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

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[294] The Working Group did not attempt to define the term "DNS abuse" in the course of its discussions and is not endorsing any particular definition of this term. The Working Group notes, however, that the CCT-RT used the following definition to support its work: "Intentionally deceptive, conniving, or unsolicited activities that actively make use of the DNS and/or the procedures used to register domain names." See p. 3 of the "New gTLD Program Safeguards Against DNS Abuse: Revised Report" (2016) for additional context on this definition: https://www.icann.org/news/announcement-2016-07-18-en. The CCT-RT used the term "DNS Security Abuse" in its Final Report to refer to specific, technical forms of abusive behavior: spam, phishing, and malware distribution in the DNS. The CCT-RT also drew on the Registration Abuse Policies Working Group's Final Report, which provides additional detail about how abuse has been characterized by the ICANN Community: https://gnso.icann.org/sites/default/files/filefield_12530/rap-wg-final-report-29may10-en.pdf

Summary of Outputs	
Topic	**Output**
	recommendations, which includes 14,[295] 15,[296] and 16.[297] Note, however, that at the time of the drafting of this report, the ICANN Board only approved Recommendation 16. Recommendations 14 and 15 remain in a "Pending" status.[298]
Topic 10: Applicant Freedom of Expression	Affirmation 10.1: The Working Group affirms Principle G from the 2007 policy, which states: "The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law." The Working Group further affirms Recommendation 3: "Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industrial Property (in particular trademark

[295] 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."

[296] 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."

[297] 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."

[298] See relevant Board scorecards here: https://www.icann.org/en/system/files/files/resolutions-final-cct-recs-scorecard-01mar19-en.pdf and here: https://www.icann.org/en/system/files/files/cct-pending-recs-board-action-22oct20-en.pdf

Summary of Outputs	
Topic	**Output**
	rights), the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (in particular freedom of speech rights)."
Topic 10: Applicant Freedom of Expression	Implementation Guidance 10.2: As the ICANN organization and community incorporate human rights into ICANN's processes in line with the recommendations of CCWG-Accountability Work Stream 2, they should consider the application of this work to elements of the New gTLD Program. Specifically, the Working Group suggests further consideration of applicant freedom of expression rights in the TLD proposed during pre-application through delegation stages of the process. Applicant freedom of expression should be balanced with other third party[299] rights recognized in the 2012 Applicant Guidebook as modified by this PDP, legitimate interests, the principle of fairness, and "generally accepted legal norms of morality and public order that are recognized under principles of international law." For example, it may be beneficial to include concrete case studies or examples in guidance to evaluators and dispute resolution service providers to ensure that criteria are correctly and consistently applied in support of the applicable principles and rights.
Topic 11: Universal Acceptance	Affirmation 11.1: The Working Group welcomes and encourages the work of the Universal Acceptance Initiative[300] and the Universal Acceptance Steering Group.[301]
Topic 11: Universal Acceptance	Affirmation 11.2: The Working Group affirms 2012 implementation elements addressing Universal Acceptance issues, and in particular, guidance provided in section 1.2.4 of the Applicant Guidebook ("Notice concerning Technical Acceptance Issues with New gTLDs"), as well as clause 1.2 of the Registry Agreement ("Technical Feasibility of String").

[299] The term "third party" in this context includes the Independent Objector as well as any parties on behalf of whom the Independent Objector is acting.
[300] Additional information about the Universal Acceptance Initiative is available at: https://www.icann.org/resources/pages/universal-acceptance-initiative-2014-10-03-en
[301] Additional information about the Universal Acceptance Steering Group is available at: https://uasg.tech/

Summary of Outputs	
Topic	**Output**
Topic 11: Universal Acceptance	Recommendation 11.3: Applicants should be made aware of Universal Acceptance challenges in ASCII and IDN TLDs. Applicants must be given access to all applicable information about Universal Acceptance currently maintained on ICANN's Universal Acceptance Initiative page, through the Universal Acceptance Steering Group, as well as future efforts.
Topic 11: Universal Acceptance	Implementation Guidance 11.4: ICANN should include more detailed information regarding Universal Acceptance issues either directly in the Applicant Guidebook or by reference in the Applicant Guidebook to additional resources produced by the Universal Acceptance Steering Group or other related efforts.
Topic 12: Applicant Guidebook	Affirmation 12.1: The Working Group affirms that an Applicant Guidebook should be utilized for future new gTLD processes as was the case in the implementation of the 2012 application round. The Working Group further affirms that the Applicant Guidebook should continue to be available in the 6 United Nations languages as was the case in the 2012 application round.
Topic 12: Applicant Guidebook	Affirmation 12.2: The Working Group affirms Implementation Guideline A from the 2007 policy, which states: "The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains."
Topic 12: Applicant Guidebook	Affirmation with Modification 12.3: With the substitution included in italicized text, the Working Group affirms Implementation Guideline E from the 2007 policy: "The *commencement of the* application submission period will be at least four (4) months after the issue of the *Applicant Guidebook* and ICANN will promote the opening of the applicant round." The term "Request for Proposal" in the original Implementation Guideline has been substituted with "Applicant Guidebook" to reflect the actual name of the document used in 2012 and the "application submission period" has been replaced with the "commencement of the application submission period."
Topic 12: Applicant Guidebook	Recommendation 12.4: The Working Group recommends focusing on the user when drafting future versions of the Applicant Guidebook (AGB) and prioritizing usability, clarity, and practicality in developing the AGB for future new gTLD processes. The AGB should effectively address the needs of new applicants as well as those already familiar with the application process. It should also effectively serve those who do not speak English as a first language in

Summary of Outputs	
Topic	**Output**
	addition to native English speakers.
Topic 12: Applicant Guidebook	Implementation Guidance 12.5: To promote usability and clarity, write the Applicant Guidebook using Plain Language standards to the extent possible and avoid complex legal terminology when it is not necessary.[302]
Topic 12: Applicant Guidebook	Implementation Guidance 12.6: To ensure that the AGB is a practical resource for users, the core text of the AGB should be focused on the application process. Historical context and policy should be included in appendices or a companion guide, while remaining linked to relevant AGB provisions. The Working Group suggests including step-by-step instructions for applicants with clear guidance about how the process may vary in the case of applications for different categories of TLDs or other variable situations.
Topic 12: Applicant Guidebook	Implementation Guidance 12.7: In service of usability, ICANN org should ensure that the AGB has a robust Table of Contents and Index. The online version should be tagged and searchable, so that users may easily find sections of text that are applicable to them.
Topic 12: Applicant Guidebook	Recommendation 12.8: The English version of the Applicant Guidebook must be issued at least four (4) months prior to the commencement of the applicant submission period.
Topic 12: Applicant Guidebook	Recommendation 12.9: All other translated versions of the Applicant Guidebook, including in the 6 UN languages, must be available no later than two (2) months prior to the commencement of the application submission period.
Topic 12: Applicant Guidebook	Implementation Guidance 12.10: All translations of the final Applicant Guidebook should be available at or as close as possible in time to the point at which the English version is published, but in no event later than two (2) months prior to the commencement of the application submission period.
Topic 12: Applicant	Recommendation 12.11: Application fees for each application must be published in that round's Applicant Guidebook.

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[302] https://www.plainlanguage.gov/about/definitions/

Summary of Outputs	
Topic	**Output**
Guidebook	
Topic 13: Communications	Affirmation 13.1: The Working Group affirms Implementation Guideline C and Implementation Guideline M from the 2007 Final Report: ● Implementation Guideline C: "ICANN will provide frequent communications with applicants and the public including comment forums which will be used to inform evaluation panels."[303] ● Implementation Guideline M: "ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way that no longer requires all participants in the conversation to be able to read and write English."
Topic 13: Communications	Recommendation 13.2: The Working Group believes that an effective communications strategy and plan is needed to support the goals of the program referenced in Affirmation 6.1. Accordingly, the Working Group recommends that the New gTLD communications plan must be developed with timeliness, broad outreach and accessibility as key priorities. The communications plan must be targeted to achieve the goals of the New gTLD Program as articulated. The plan must include a Communications Period commensurate in length to achieve those goals.
Topic 13: Communications	Implementation Guidance 13.3: For timeliness, the Working Group believes that for the next subsequent round, the Communications Period should begin at least six (6) months prior to the beginning of the application submission period. Essentially, the communications plan should be commensurate with the time needed to perform elements like the non-exhaustive list below: ● Outreach related to Applicant Support ● Establishing and allowing interested parties to engage in the RSP pre-evaluation process
Topic 13: Communications	Implementation Guidance 13.4: Consistent with the recommendations under Topic 3: Applications Assessed in Rounds, the Working Group believes that a shorter Communications Period (i.e., less than the minimum 6 months stated above)

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[303] Usage of comments to inform evaluation panels is addressed more specifically under Topic 28: Role of Application Comment.

Summary of Outputs	
Topic	**Output**
	may be needed for subsequent rounds if and when a steady state for application submission periods is established.
Topic 13: Communications	Implementation Guidance 13.5: For broad outreach, the Working Group believes that consistent with recommendation 8.4.b[304] from the Program Implementation Review Report, the program should "Leverage ICANN's Global Stakeholder Engagement (GSE) team to promote awareness of the New gTLD Program within their regions/constituencies." The Working Group believes that the GSE team should be leveraged to support the dissemination of program information and support education and overall outreach. The various Supporting Organizations and Advisory Committees are also important partners in sharing information.
Topic 13: Communications	Implementation Guidance 13.6: For accessibility, the Working Group stresses the need for a single, well-designed website dedicated to the New gTLD Program to support the sharing and accessibility of program information, which is consistent with recommendation 8.4.a[305] from the Program Implementation Review Report. Once on the site, broadly speaking, users should be able to obtain information they are seeking in an effective manner. To that end, the Working Group has suggested specific elements for consideration: ● Continue to maintain an online knowledge database, but ensure that it is robust, is easy to search and navigate, is updated on a timely basis, and emphasizes issues with wide-ranging impact. In addition, to the extent possible, all items in the online knowledge database should reference applicable sections of the Applicant Guidebook to which the items relate. ● Create an opt-in based notification system for applicants to receive program updates, updates to the online knowledge database, and application-specific updates.

[304] http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf
[305] Recommendation 8.4.a states: "Consolidate all next round program information into a single site and make information as accessible as possible." See http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf

Summary of Outputs	
Topic	**Output**
Topic 13: Communications	Implementation Guidance 13.7: For timeliness and accessibility as it relates to applicant communications, the Working Group believes that robust customer support is needed to address substantive and logistical questions as well as inquiries regarding use of applicant-facing systems.[306] Real-time communication methods are preferred (e.g., telephone, online chat), but the Working Group recognizes that these forms of communication may be costly. Further, the Working Group also recognizes that there may need to be different methods utilized. For instance, technical support for submitting an application may be different than responding to substantive inquiries about completing an application.
Topic 14: Systems	Affirmation 14.1: The Working Group affirms Implementation Guideline O from the 2007 Final Report, which states: "ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations." The Working Group further affirms Implementation Guideline L, which states: "The use of personal data must be limited to the purpose for which it is collected."
Topic 14: Systems	Recommendation 14.2: The design, development, and deployment of applicant-facing systems must prioritize security, stability, usability, and a positive user experience following industry best practices.
Topic 14: Systems	Implementation Guidance 14.3: In support of security, stability, usability, and a positive user experience, systems should be designed and developed well in advance of the point that they need to be used by applicants, so that there is sufficient time for system testing without causing undue delay. System tests should follow industry best practices and ensure that all tools meet security, stability, and usability requirements and that confidential data will be kept private.[307]

[306] The Working Group agrees with Recommendation 8.5.a in the Program Implementation Review Report, which states: "Consider customer service to be a critical function of the organization, and ensure that the Customer Service Center has the appropriate resources to support the ongoing and future activities of the New gTLD Program." See http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf
[307] This recommendation is consistent with Recommendation 8.1.a in the Program Implementation Review Report, which states: "In developing timelines for future application rounds, provide an appropriate amount of time to allow for the use of best practices in system development." See http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf

Summary of Outputs	
Topic	**Output**
Topic 14: Systems	Implementation Guidance 14.4: In support of improved usability, the Working Group advises that ICANN org should leverage prospective end-users to beta test systems, perhaps by setting up an Operational Test and Evaluation environment. The Working Group notes that if beta testing is conducted, it must be done in an open and transparent manner that does not provide the testers with an unfair advantage in the application process.[308] The Working Group notes however that the mere access to beta testing does not in and of itself constitute such an unfair advantage. It further notes that ICANN org did not have an end user beta testing program in 2012 because it believed that allowing some users to have access to the system for beta testing provided those users with an unfair advantage over others. The Working Group does not agree with ICANN org's assertion from that time period.
Topic 14: Systems	Implementation Guidance 14.5: In support of improved usability, the Working Group suggests integrating systems to the extent possible and simplifying login management. Specifically, if the use of multiple systems are required, the Working Group encourages enabling users to access different systems using a single login and, as recommended in the Program Implementation Review Report (recommendation 1.1.b), "Implement a system that would allow applicants the flexibility to associate as many applications as desired to a single user account."
Topic 14: Systems	Implementation Guidance 14.6: In support of improved usability, the Working Group suggests that specific data entry fields in applicant-facing systems should accept both ASCII and non-ASCII characters. Although the Working Group recognizes that English is the authoritative language for the New gTLD Program, there are a number of fields including the applied-for string, applicant's name, and contact information (including email addresses) that should be collected and displayed in their native language / script. In addition, systems should accept standard nomenclature and terminology for services being proposed by the applicant, including associated characters.

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[308] This implementation guidance is consistent with Recommendation 8.1.b in the Program Implementation Review Report, which states: "Explore beta testing for systems to allow for lessons learned, to increase effectiveness of such systems, and to provide further transparency, clarity, and opportunity for preparation to applicants." See http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf

Summary of Outputs	
Topic	**Output**
Topic 14: Systems	<u>Implementation Guidance 14.7:</u> The Working Group suggests a number of feature enhancements to support an improved user experience. Specifically, the Working Group suggests the following capabilities for applicant-facing systems: - Provide applicants with automated confirmation emails when information or documentation is submitted. Where applicable, applicants should also receive confirmation of payments. - Provide applicants with automated invoices for application-related fees. - Allow applicants to view historical changes that have been made to the application by any system user, including ICANN org, both during the application and evaluation phases. - Allow applicants to upload application documents into the application system for additional questions where this was not possible in the 2012 round. - Allow applicants to auto-fill information/documentation in multiple fields across applications. This functionality should only be enabled in a limited number of fields where it would be appropriate for responses to be identical. It should not be possible to auto-fill responses to questions corresponding to the following questions in the 2012 Applicant Guidebook: 16,[309] 18(a),[310] 18(b),[311] 19,[312] 20,[313] 21,[314] 22,[315] and 23[316] (for question 23, autofill should not be allowed only if services are specified that are not pre-approved). It should not be possible to auto-fill Registry Voluntary Commitments (formerly called voluntary PICs). - Allow applicants to specify additional contacts to receive communication about the application and/or

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[309] This question asks the applicant for a description of applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string.
[310] This question asks the applicant to describe the mission/purpose of the proposed gTLD.
[311] This question asks the applicant how the proposed gTLD will benefit registrants, Internet users, and others.
[312] This question asks the applicant if the application is for a community-based TLD.
[313] This question asks community-based applicants for additional information about the community that the applicant is committing to serve.
[314] This question asks the applicant if the application is for a geographic name, and if so, requests supporting documentation, where applicable.
[315] This question asks the applicant to describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD.
[316] This question asks the applicant to provide the name and full description of all the Registry Services to be provided.

Summary of Outputs	
Topic	**Output**
	access the application and specify different levels of access for these additional points of contact.
Topic 14: Systems	Recommendation 14.8: The principles of predictability and transparency must be observed in the deployment and operation of applicant-facing systems.
Topic 14: Systems	Implementation Guidance 14.9: To ensure predictability and minimize obstacles and legal burdens for applicants, any Agreements or Terms of Use associated with systems access (including those required to be "clicked-through") should be finalized in advance of the Applicant Guidebook's publication and published with the Applicant Guidebook.[317]
Topic 14: Systems	Implementation Guidance 14.10: In service of transparency, once the systems are in use, ICANN should communicate any system changes that may impact applicants or the application process. Processes described under Topic 2: Predictability should be followed.
Topic 14: Systems	Recommendation 14.11: With respect to its operation and administration of the systems, ICANN must retain the ability to act in emergency situations, including those where immediate action is necessary to remedy any service interruption, interference, service obstruction or other imminent threat to the systems, provided that ICANN gives notice to all impacted users of the affected system(s) as soon as reasonably practicable after such action has been taken. If such action involves any downtime to the system(s), ICANN shall provide updates to impacted users as to the root cause of the downtime, the impact of the downtime event on impacters users of the system(s), and when normal service can be restored.
Topic 15: Application Fees	Affirmation 15.1: Subject to Implementation Guidance 15.2 below, the Working Group affirms that as was the case in the 2012 round, all applications in subsequent procedures should pay the same base application fee regardless of the type of application or the number of applications that the same applicant submits. This would not preclude the possibility of additional fees in certain circumstances, as was the case in the 2012 round of the program (e.g.,

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[317] This implementation guidance refers to all Agreements and Terms of Use other than the Registry Agreement and Applicant Terms of Use.

Summary of Outputs	
Topic	**Output**
	Community Priority Evaluation, Registry Service Evaluation Process, etc.).The Working Group notes that as was the case in the 2012 round, successful candidates for the Applicant Support Program will be eligible for a reduced application fee.
Topic 15: Application Fees	Implementation Guidance 15.2: Fees for the technical and operational evaluation for the core registry services should be charged to an applicant if they are using a registry service provider that is not pre-evaluated ("Technical Evaluation Fee"). The Technical Evaluation Fee should be the same regardless of whether the evaluation occurs as part of the pre-evaluation process or as part of the application process. For example, if the Technical Evaluation Fee portion of the overall application fee is $US25,000, that portion of the application fee should only be charged to those applicants that do not select a pre-evaluated registry service provider.
Topic 15: Application Fees	Affirmation with Modification 15.3: With the addition of the italicized text, the Working Group affirms Implementation Guideline B from 2007: "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*." The Working Group believes, however, that for subsequent procedures the only historical costs that should be part of the cost structure in determining application fees are those actual costs directly related to the implementation of the New gTLD Program.
Topic 15: Application Fees	Affirmation with Modification 15.4: The Working Group affirms the principle of cost recovery reflected in the 2012 Applicant Guidebook: "The gTLD evaluation fee is set to recover costs associated with the new gTLD program. The fee is set to ensure that the program is fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions." For the next application round and each subsequent round, an assessment must take place prior to each round to estimate the application fee that would be necessary to achieve cost recovery. In the event that the estimated application fee, based on the revenue neutral principle, falls below a predetermined threshold amount (i.e., the application fee floor), the actual application fee should be set at that higher application fee floor instead. The development of the application fee must be fully transparent with all cost assumptions explained and documented.

Summary of Outputs	
Topic	**Output**
	In managing funds for the New gTLD Program, ICANN must have a plan in place for managing any excess fees collected or budget shortfalls experienced. The plan for the management and disbursement of excess fees, if applicable, must be communicated in advance of accepting applications and collecting fees for subsequent procedures. The implementation guidance below describes in more detail how this should be accomplished.
Topic 15: Application Fees	Implementation Guidance 15.5: Although ICANN must operate the new gTLD Program on a cost recovery basis (subject to any floors as set forth in this report) ICANN org may set aside a certain small percentage of excess fees (to the extent there are excess fees) to apply towards covering the costs of maintaining the capability to assemble future subsequent rounds of new gTLDs with minimum delay and to ensure that the new gTLD Program is able to continue into the future. Examples of such costs include retaining staff with program expertise and maintaining requisite systems. Any excess fees set aside by ICANN for this purpose should be explicitly recorded and justified.
Topic 15: Application Fees	Implementation Guidance 15.6: If excess fees are collected in subsequent procedures and the cost recovery model is followed (i.e., the application fee floor is not implemented) any excess fees should be returned to applicants where possible in the form of a refund or a credit towards future fees, where applicable. ICANN may establish a schedule for the disbursement of refunds upon the achievement of specified milestones. For illustrative purposes only, such a schedule could establish that once 50% of the applications have been fully processed (eg., delegated, withdrawn, or not approved), ICANN would issue a payment of 25% of the excess fees back to the applicants. The disbursement mechanism must be communicated before applicants submit applications and fees to ICANN. If ICANN is unable to locate the applicant for the return of excess fees, the amount of the excess for that applicant should be used for the purposes described in Recommendation 15.7. Further, to the extent that excess fees per applicant are lower than a predetermined amount, for example $US1,000, the funds should not be refunded to the applicant, but rather should be used for the purposes described in Recommendation 15.7. ICANN org should further explore the issues related to the management of excess fees with the Implementation Review Team and ensure that the resulting implementation is clearly documented in the Applicant Guidebook.
Topic 15: Application Fees	Recommendation 15.7: In the event that an application fee floor is used to determine the application fee, excess fees received by ICANN must be used to benefit the New gTLD Program and not any other ICANN program or purpose;

Summary of Outputs	
Topic	**Output**
	that includes one or more of the following elements of the New gTLD Program: (a) a global communication and awareness campaign about the introduction and availability of new gTLDs; (b) long-term program needs such as system upgrades, fixed assets, etc.; (c) Applicant Support Program; (d) top-up of any shortfall in the segregated fund as described below; or (e) other purpose(s) that benefits the New gTLD Program.
Topic 15: Application Fees	Implementation Guidance 15.8: To help alleviate the potential burden of an overall budget shortfall, a separate segregated fund should be set up that can be used to absorb any shortfalls and topped-up in a later round. The amount of the contingency should be a predetermined value that is reviewed periodically to ensure its adequacy.
Topic 16: Application Submission Period	Recommendation 16.1: The Working Group recommends that for the next application window and subsequent application windows, absent "extenuating or extraordinary" circumstances, the application submission period must be a minimum of 12 and a maximum of 15 weeks in length.
Topic 17: Applicant Support	Recommendation 17.1: 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 must be available for select applicants who meet evaluation criteria through the Applicant Support Program. The Working Group further recommends new types of financial support for subsequent procedures that were not part of the Program in 2012, specifically, coverage of additional application fees (see Recommendation 17.2) and a bid credit, multiplier, or other similar mechanism that applies to a bid submitted by an applicant qualified for Applicant Support who participates in an ICANN Auction of Last Resort (see Recommendation 17.15 and Implementation Guidance 17.16 and 17.17). In addition, the Working Group recommends that ICANN facilitate non-financial assistance including the provision of pro-bono assistance to applicants in need. Further, ICANN must conduct outreach and awareness-raising activities during the Communications

Summary of Outputs	
Topic	**Output**
	Period to both potential applicants and prospective pro-bono service providers.[318] The Working Group 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 for eligible applicants and facilitate the provision of pro-bono non-financial assistance to applicants in need." The revised language updates the original Implementation Guideline to: ● acknowledge that the Applicant Support Program was in place in the 2012 round ● include reference to pro-bono non-financial assistance in addition to fee reduction ● eliminate the reference to economies classified by the UN as least developed, as the Program is not limited to these applicants.
Topic 17: Applicant Support	Recommendation 17.2: 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 and attorney fees related to the application process.
Topic 17: Applicant Support	Recommendation 17.3: The Working Group recommends that ICANN improve outreach, awareness-raising, application evaluation, and program evaluation elements of the Applicant Support Program, as well as usability of the Program, as proposed in the implementation guidance below.
Topic 17: Applicant Support	Implementation Guidance 17.4: Outreach and awareness-raising activities should be delivered well in advance of the application window opening, as longer lead times help to promote more widespread knowledge about the program. Such outreach and education should commence no later than the start of the Communications Period.[319]

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[318] In the 2012 round, the pro-bono assistance program was implemented through the Applicant Support Directory: https://newgtlds.icann.org/en/applicants/candidate-support/non-financial-support

[319] For additional recommendations regarding the Communications Period, please see Topic 13: Communications.

Summary of Outputs	
Topic	**Output**
Topic 17: Applicant Support	Implementation Guidance 17.5: A dedicated Implementation Review Team should be established and charged with developing implementation elements of the Applicant Support Program. In conducting its work, the Implementation Review Team should revisit the 2011 Final Report of the Joint Applicant Support Working Group[320] as well as the 2012 implementation of the Applicant Support program.
Topic 17: Applicant Support	Implementation Guidance 17.6: Outreach efforts should not only target the Global South, but also those located in struggling regions that are further along in their development compared to underserved or underdeveloped regions. In addition, the evaluation criteria for Applicant Support must treat those applicants similar to those currently set forth in Criteria #1, Section 4 (Operation in a developing economy) of the Financial Assistance Handbook.[321]
Topic 17: Applicant Support	Implementation Guidance 17.7: The Working Group supports Recommendation 6.1.b in the Program Implementation Review Report, which states: "6.1.b: Consider researching globally recognized procedures that could be adapted for the implementation of the Applicant Support Program."[322]
Topic 17: Applicant Support	Implementation Guidance 17.8: 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, business case development, and application evaluation. Regional experts may be particularly helpful in providing insight on the development of business plans from different parts of the world.

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[320] http://dakar42.icann.org/meetings/dakar2011/presentation-jas-final-report-13sep11-en.pdf

[321] See https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf , pg 12.

[322] 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."

Summary of Outputs	
Topic	**Output**

Topic 17: Applicant Support	Implementation Guidance 17.9: The dedicated Implementation Review Team[323] 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
	   ○ number of enquiries about the program/level of interest expressed/number that considered applying
	   ○ number of applicants
	      ■ first-time applicants versus repeat applicants
	      ■ applicants submitting a single application versus portfolio applicants
	      ■ applications based on pre-existing trademarks
	   ○ diversity and distribution of the applicant pool: geographic diversity, languages, scripts
	• Other Elements of Program Implementation:
	   ○ number of ICANN staff members and contractors supporting the Applicant Support Program
	   ○ number of service providers offering pro-bono assistance and value of assistance offered/provided
	   ○ number of applicants accessing/using pro-bono assistance
	   ○ number of approved applicants for financial assistance
	   ○ number of applicants who received bid credits, multiplier, other and were successful in auction
	   ○ the value of the bid credits, multiplier, other

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[323] 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.

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Topic	**Output**

	○ number of applicants who withdrew from auction
	      ○ number of applicants who entered in to a business combination or other forms of joint ventures
	      ○ length of time before any change of ownership occurred
	  ● 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.
	      ○ 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.

Topic 17: Applicant Support	Implementation Guidance 17.10: The dedicated Implementation Review Team should consider how to allocate financial support in the case that available funding cannot provide fee reductions to all applicants that meet the scoring requirement threshold.
Topic 17: Applicant Support	Recommendation 17.11: 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."[324]
Topic 17: Applicant Support	Recommendation 17.12: ICANN org must develop a plan for funding the Applicant Support Program, as detailed in the Implementation Guidelines below.

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[324] 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."

Summary of Outputs	
Topic	**Output**
Topic 17: Applicant Support	Implementation Guideline 17.13: 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.[325] The amount of funding available to applicants should be determined and communicated before the commencement of the application round.
Topic 17: Applicant Support	Implementation Guideline 17.14: ICANN org should seek funding partners to help financially support the Applicant Support Program, as appropriate.
Topic 17: Applicant Support	Recommendation 17.15: If an applicant qualifies for Applicant Support and is part of a contention set that is resolved through an ICANN Auction of Last Resort, a bid credit, multiplier, or other similar mechanism must apply to the bid submitted by that applicant.
Topic 17: Applicant Support	Implementation Guidance 17.16: Research should be conducted in the implementation phase to determine the exact nature and amount of the bid credit, multiplier, or other mechanism described in Recommendation 17.15. Research should also be completed to determine a maximum value associated with the bid credit, multiplier, or other mechanism.
Topic 17: Applicant Support	Implementation Guidance 17.17: If the applicant getting Applicant Support prevails in an auction, there should be restrictions placed on the applicant from assigning the Registry Agreement, and/or from any Change of Control for a period of no less than three (3) years. This restriction seeks to prevent gaming of the Applicant Support Program whereby an applicant transfers its ownership of a registry to a third party in exchange for any form of financial gain. However, assignments that become necessary for the following reasons shall be permitted: ● Assignments due to the TLD being unable to meet its financial obligations and unable to secure financing or restructure operations to carry out operations in the short-term ● Assignments due to death or retirement of a majority shareholder ● Assignments due to EBERO

[325] See Topic 15: Application Fees for implementation guidance regarding use of excess application fees resulting from establishment of a fee floor to fund the Applicant Support Program and other New gTLD Program elements.

Summary of Outputs	
Topic	**Output**
	• Assignments to affiliates or subsidiaries • Assignments required by competition authorities All assignments after such time shall be governed under the then-current Registry Agreement standard provisions; provided that any Assignment or Change of Control after the third (3rd) year, but prior to the seventh (7th) year, shall require the applicant to repay the full amount of financial support received through the ASP Program, including application fees and any bid credit, multiplier, or related benefits, plus an additional ten percent (10%).
Topic 17: Applicant Support	Recommendation 17.18: Unless the Support Applicant Review Panel (SARP) reasonably believes there was willful gaming, applicants who are not awarded Applicant Support (whether "Qualified" or "Disqualified[326]") must have the option to pay the balance of the full standard application fee and transfer to the standard application process. Applicants must be given 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 to the other elements of the New gTLD Program or to any other applicants for a string in which its application may be in a contention set.
Topic 17: Applicant Support	Recommendation 17.19: The Financial Assistance Handbook[327] or its successor, subject to the changes included in the above recommendations, must be incorporated into the Applicant Guidebook for subsequent rounds.
Topic 18: Terms & Conditions	Recommendation 18.1: Unless required by specific laws, ICANN Board members' fiduciary duties, or the ICANN Bylaws, ICANN must only reject an application if done so in accordance with the provisions of the Applicant Guidebook. In the event an application is rejected, ICANN org must cite with specificity the reason in accordance with the Applicant Guidebook, or if applicable, the specific law and/or ICANN Bylaws for not allowing an application to

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[326] See https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf.

[327] 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

Summary of Outputs	
Topic	**Output**
	proceed. This recommendation constitutes a revision to Section 3 of the Terms and Conditions from the 2012 round.
Topic 18: Terms & Conditions	Implementation Guidance 18.2: ICANN should not publish the specific reason for the rejection of an application where that reason is based on confidential information submitted by the applicant (but may post a generalized categorical reasoning for the rejection). This implementation guidance does not prevent the applicant from disclosing information about its own application. For example, if an applicant's application is denied because of insufficient financial resources, ICANN may publish that the applicant's application has been rejected for not passing the financial evaluation, but should not publish the specific details except to the applicant itself.
Topic 18: Terms & Conditions	Recommendation 18.3: In subsequent rounds, the Terms of Use must only contain a covenant not to sue if, and only if, the appeals/challenge mechanisms set forth under Topic 32 of this report are introduced into the program (in addition to the accountability mechanisms set forth in the current ICANN Bylaws). This recommendation is in reference to Section 6 of the Terms and Conditions from the 2012 round.
Topic 18: Terms & Conditions	Recommendation 18.4: Applicants must be allowed some type of refund if they decide to withdraw an application because substantive changes are made to the Applicant Guidebook or program processes and such changes have, or are reasonably likely to have, a material impact on applicants.[328]
Topic 18: Terms & Conditions	Implementation Guidance 18.5: If the risk of name collisions will be determined after applications are submitted, ICANN should provide a full refund to applicants in cases where a new gTLD is applied for but later is not approved because of risk of name collision.
Topic 18: Terms & Conditions	Recommendation 18.6: Access to confidential parts of the application should be appropriately limited, as detailed in the following implementation guidance.

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[328] This refund would differ from the normal refund schedule.

Summary of Outputs	
Topic	**Output**
Topic 18: Terms & Conditions	Implementation Guidance 18.7: Confidentiality provisions in the Terms and Conditions should limit access to confidential parts of the application to those individuals and entities that need to access that information, including those within ICANN org as well as any third parties conducting application evaluations or providing dispute or appeals services, if applicable.
Topic 19: Application Queuing	Affirmation 19.1: The Working Group supports the approach ultimately taken to application queuing during the 2012 round, in which ICANN conducted drawings to randomize the order of processing applications within an application window, and therefore affirms the use of a "prioritization draw" for subsequent procedures. The Working Group acknowledges that there may be possible adjustments or alternatives to the logistics of the prioritization draw used in the 2012 round that either would improve on existing processes or be necessitated under applicable law.[329] The Working Group supports such improvements and provides some examples in Implementation Guidance 19.2. The Working Group notes that in the 2012 round, the implementation of drawings included prioritization of IDN applications. This Affirmation does not address the prioritization of IDNs. Please see below for additional information on this issue. The Working Group acknowledges that continuing to use the randomized drawing approach is contingent upon local law and the ability of ICANN to obtain the necessary license to conduct such drawings, but advises that ICANN must not under any circumstances attempt to create a "skills-based" system like "digital archery" to determine the processing order of applications in subsequent procedures. This affirmation updates and replaces Implementation Guideline D from 2007 which recommended a first-come first served method of processing applications.[330]
Topic 19: Application Queuing	Implementation Guidance 19.2: Procedures related to application queuing should be simplified and streamlined to the extent possible. For example, applicants could be provided the opportunity to pay the optional fee for participating in the drawing along with payment for the application. Another suggestion is to explore ways to assign a prioritization number during the application process without the need for a distinctly separate drawing event.

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[329] One example may be exploring whether the prioritization draw must be in person as opposed to virtual.

[330] Implementation Guideline D from 2007 stated: "A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary. Applications will be time and date stamped on receipt."

Summary of Outputs	
Topic	**Output**

Topic 19: Application Queuing	Recommendation 19.3: All applications must be processed on a rolling basis, based on assigned priority numbers. While the 2012 AGB prescribed batches of 500 applications, ICANN org noticed during that round that moving through the priority list without splitting the applications into batches was more efficient. The Working Group affirms that approach by not recommending batches. However, if the volume of Internationalized Domain Names (IDN) applications received equals or exceeds 125, applications will be assigned priority numbers consistent with the formula below.
	
	 The Working Group recommends that the following formula must be used with respect to giving priority to IDN applications:
	
	 ● First 500 applications
	     ○ If there are 125 applications or more for IDN strings that elect to participate in the prioritization draw, the first 25% of applications assigned priority numbers in the first group shall be those applications for IDN strings that elect to participate in the prioritization draw. The remaining 75% of applications in the group shall consist of both IDN and non-IDN applications that elect to participate in the prioritization draw.
	     ○ If there are less than 125 applications for IDN strings that elect to participate in the prioritization draw, then all such applications shall be assigned priority numbers prior to any non-IDN application.
	 ● Each subsequent group of those electing to participate in the prioritization draw
	     ○ For each subsequent group, the first 10% of each group of applications must consist of IDN applications until there are no more IDN applications.
	     ○ The remaining applications in each group shall be selected at random out of the pool of IDN and non-IDN applications that remain.
	 ● Processing of applications which do not elect to participate in the prioritization draw
	     ○ When all of the applications that have elected to participate in the prioritization draw have been assigned priority numbers, ICANN shall assign priority numbers to the remaining applications in groups of 500 applications.
	     ○ The first 10% of each group of applications must consist of IDN applications until there are no more IDN applications.

Summary of Outputs	
Topic	**Output**
	○ The remaining applications in each group shall be selected at random out of the pool of IDN and non-IDN applications that remain.
Topic 19: Application Queuing	Recommendation 19.4: Any processes put into place for application queuing should be clear, predictable, finalized and published in the Applicant Guidebook. The recommendation to establish processes in advance is consistent with Recommendation 1.2.a in the Program Implementation Review Report, which states: "Assign priority numbers to applications prior to commencement of application processing."
Topic 20: Application Change Requests	Affirmation 20.1: The Working Group supports maintaining a high-level, criteria-based change request process, as was employed in the 2012 application round.
Topic 20: Application Change Requests	Implementation Guidance 20.2: ICANN org should provide guidance on both changes that will likely be approved and changes that will likely not be approved.
Topic 20: Application Change Requests	Implementation Guidance 20.3: ICANN org should identify in the Applicant Guidebook the types of changes that will require a re-evaluation of some or all of the application and which do not require any re-evaluation.
Topic 20: Application Change Requests	Recommendation 20.4: ICANN org must document the types of changes which are required to be posted for an operational comment period[331] and which are not required to be posted for an operational comment period. The following is a non-exhaustive list of changes that must require an operational comment period: ● The addition of Registry Voluntary Commitments in response to public comments, objections, whether formal or informal, GAC Consensus Advice, GAC Early Warnings, or other comments from the GAC ● Changes to Registry Voluntary Commitments in response to public comments, objections, whether formal or informal, GAC Consensus Advice, GAC Early Warnings, or other comments from the GAC

[331] A 30-day comment period giving the public the opportunity to comment on any change to a public part of an application, including PICs.

Summary of Outputs	
Topic	**Output**
	• Changes associated with the formation of joint ventures established to resolve string contention (see Recommendation 20.6 below) • Changes to the applied-for string (see Recommendation 20.8 below) In the 2012 round, an operational comment period was not required for certain types of application changes.[332] The Working Group believes that an operational comment period continues to be unnecessary for these types of changes in subsequent rounds.
Topic 20: Application Change Requests	Implementation Guidance 20.5: Community members should have the option of being notified if an applicant submits an application change request that requires an operational comment period to be opened at the commencement of that operational comment period.
Topic 20: Application Change Requests	Recommendation 20.6: The Working Group recommends allowing application changes to support the settling of contention sets through business combinations or other forms of joint ventures. In the event of such a combination or joint venture, ICANN org may require that re-evaluation is needed to ensure that the new combined venture or entity still meets the requirements of the program. The applicant must be responsible for additional, material costs incurred by ICANN due to re-evaluation and the application could be subject to delays.
Topic 20: Application Change Requests	Implementation Guidance 20.7: ICANN org should explore the possibility of allowing applicants to request that the evaluation of their own application is delayed by 60-90 days so that they can submit an applicant change request on the basis of business combination or other form of joint venture. This request would need to be made prior to Initial Evaluation of the application.
Topic 20: Application Change Requests	Recommendation 20.8: The Working Group recommends allowing .Brand TLDs to change the applied-for string as a result of a contention set where (a) the change adds descriptive word to the string, (b) the descriptive word is in the description of goods and services of the Trademark Registration, (c) such a change does not create a new contention set

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[332] Please see https://newgtlds.icann.org/en/applicants/global-support/change-requests#change-requests-comment

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Topic	**Output**
	or expand an existing contention set, (d) the change triggers a new operational comment period and opportunity for objection and, (e) the new string complies with all New gTLD Program requirements. When the .Brand applicant changes the applied-for string, the new string will also be considered a .Brand. The Working Group recognizes that an exception or a modification to Specification 13 will be needed to implement this recommendation. The Working Group further recognizes that in order to implement this recommendation, applications seeking to change their applied-for string will need to be evaluated for eligibility as a .brand before the string change request can be accepted. This may occur either by ICANN specifically evaluating those individual applications during Initial Evaluation or by evaluating all applicants that elect to be .brands during Initial Evaluation.
Topic 21: Reserved Names	Affirmation 21.1: The Working Group affirms Recommendation 5 from the 2007 policy, which states: "Strings must not be a Reserved Word."
Topic 21: Reserved Names	Affirmation 21.2: The Working Group supports continuing to reserve as unavailable[333] for delegation those strings at the top level that were considered Reserved Names and were unavailable for delegation in the 2012 round.[334]
Topic 21: Reserved Names	Affirmation 21.3: The Working Group acknowledges the reservation at the top level of Special-Use Domain Names through the procedure described in IETF RFC 6761.[335]
Topic 21: Reserved Names	Recommendation 21.4: The Working Group recommends reserving as unavailable for delegation at the top level the acronym associated with Public Technical Identifiers, "PTI".
Topic 21: Reserved	Affirmation 21.5: The Working Group supports continuing to reserve as unavailable for registration those strings that

[333] "Unavailable Names", referred to in 2012 AGB as "Reserved Names."
[334] See section 2.2.1.2.1 of the 2012 Applicant Guidebook.
[335] See https://tools.ietf.org/html/rfc6761.

Summary of Outputs	
Topic	**Output**
Names	are on the then-current schedule of Reserved Names at the second level. The schedule may only change through the then-current process for making such changes.
Topic 21: Reserved Names	Recommendation 21.6: The Working Group recommends updating Specification 5 of the Registry Agreement (Schedule of Reserved Names) to include the measures for second-level Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes adopted by the ICANN Board on 8 November 2016.[336]
Topic 22: Registrant Protections	Affirmation 22.1: The Working Group affirms existing registrant protections used in the 2012 round, including the Emergency Back-end Registry Operator (EBERO)[337] and associated triggers for an EBERO event and critical registry functions. In addition, as described under Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services, the substantive technical and operational evaluation is being maintained and therefore, protections against registry failure, including registry continuity, registry transition, and failover testing continue to be important registrant protections. The Working Group also supports the registrant protections contained in Specification 6 of the Registry Agreement.[338]
Topic 22: Registrant Protections	Affirmation 22.2: Background screenings should be conducted during Initial Evaluation, as was the case in the 2012 round.
Topic 22: Registrant Protections	Implementation Guidance 22.3: If there is a change in the application that requires additional or repeat background screening (for example, a change in applying entity or change to major shareholders, officers, or directors of the applying entity) this additional background screening should occur prior to execution of the Registry Agreement. Deferring the re-screening until just prior to execution of the Registry Agreement represents a change to the process from 2012.

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[336] The Working Group notes that discussions on this topic are ongoing, and this recommendation is subject to the outcomes of related discussions.

[337] For more information about EBERO, see: https://www.icann.org/resources/pages/ebero-2013-04-02-en

[338] Specifically Section 2.2 (prohibition on Wildcards), Section 3 (Continuity), Section 4 (Abuse Mitigation) and Section 5 (Initial and Renewal Periods). Section 6 deals with Name Collision and is addressed separately under Topic 29 of this report.

Summary of Outputs	
Topic	**Output**
Topic 22: Registrant Protections	Recommendation 22.4: The Working Group supports recommendation 2.2.b. in the Program Implementation Review Report, which states: "Consider whether the background screening procedures and criteria could be adjusted to account for a meaningful review in a variety of cases (e.g., newly formed entities, publicly traded companies, companies in jurisdictions that do not provide readily available information)."
Topic 22: Registrant Protections	Recommendation 22.5: The Working Group supports recommendation 7.1.a. in the Program Implementation Review Report, which states: "Explore whether there are more effective and efficient ways to fund emergency back-end registry operator in the event of a TLD failure [other than requiring Continuing Operations Instruments]."
Topic 22: Registrant Protections	Implementation Guidance 22.6: To the extent that it is determined that a Continued Operations Instrument will be required, it should not be part of the financial evaluation. It should only be required at the time of executing the Registry Agreement.
Topic 22: Registrant Protections	Recommendation 22.7: TLDs that have exemptions from the Code of Conduct (Specification 9), including .Brand TLDs qualified for Specification 13, must also receive an exemption from Continued Operations Instrument (COI) requirements or requirements for the successor to the COI.
Topic 23: Closed Generics	No Agreement 23.1: The Working Group notes that in the 2012 round of the New gTLD Program, a decision was made by the ICANN Board[339] to either (a) "submit a change request to no longer be an exclusive generic TLD", (b) "withdraw their application" or (c) "maintain their plan to operate an exclusive generic TLD," which would operate to defer their application to the next round of the New gTLD Program, subject to rules developed for the next round, to allow time for the GNSO to develop policy advice concerning exclusive generic TLDs." All applicants in 2012 chose either options (a) or (b). The result was that no exclusive generic gTLDs (also called "Closed Generic" gTLDs) were delegated in the first round.

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[339] https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a

Summary of Outputs	
Topic	**Output**
	It was the expectation of the ICANN Board that the GNSO would "develop policy advice concerning exclusive generic TLDs."[340] Although the Working Group has had numerous discussions about this topic, and received extensive comments from the community, including members of the Governmental Advisory Committee, the Working Group was not able to agree on "policy advice concerning exclusive generic TLDs." Questions within the Working Group arose on the impact of a failure to develop any policy advice concerning exclusive generic TLDs. Following the approach the Working Group has taken on other issues where there is no agreement on changes to the implementation of the new gTLD program, the Working Group would normally recommend applying the Status Quo (i.e., no changes to 2012 implementation recommended). However, in this unique case, the Working Group was not able to agree on what the Status Quo actually was given the Board's expectation that the Working Group would develop policy on this matter. In the absence of agreement on any policy, the Working Group debated, and was unable to come to agreement on, whether the status quo meant that either (i) Closed Generics would be allowed (as there were no provisions in the final Applicant Guidebook that prohibited them), (ii) Closed Generics would not be allowed (noting that none were delegated in the 2012 round), or (iii) Closed Generics would be allowed if they serve a public interest goal (in accordance with the GAC Consensus Advice that was accepted by the Board). The Working Group understands that members of the community expected the GNSO through this PDP to resolve the issue of whether or not Closed Generics would be allowed in subsequent rounds of new gTLDs. However, it became clear during Working Group deliberations that some members of the Working Group strongly supported a policy that allowed all Closed Generic applications to proceed, others strongly supported a policy that banned all forms of Closed Generic applications, and a number of members supported the GAC Advice which provides that Closed Generics should be allowed if they serve a public interest goal. But even amongst those members that supported the latter, there was no agreement on (a) how to define the public interest, (b) who would make the determination as to whether the application supported a public interest goal, and (c) how would such a requirement be enforced.

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[340] https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a

Summary of Outputs	
Topic	**Output**
	The Working Group believes that if this issue were to be considered in future policy work, it should also involve experts in the areas of competition law, public policy, and economics. In addition, it should be performed by those in the community that are not associated with any past, present, or expectations of future work in connection with new gTLD applications or objections to new gTLD applications. Absent such independence, any future work is unlikely to result in an outcome any different than the one achieved in this Working Group.
Topic 24: String Similarity Evaluations	Affirmation 24.1: The Working Group affirms Recommendation 2 from the 2007 policy, which states "Strings must not be confusingly similar to an existing top-level domain or a Reserved Name."
Topic 24: String Similarity Evaluations	Affirmation 24.2: Subject to the recommendations below, the Working Group affirms the standard used in the String Similarity Review from the 2012 round to determine whether an applied-for string is "similar" to any existing TLD, any other applied-for strings, Reserved Names, and in the case of 2-character IDNs, any single character or any 2-character ASCII string. According to Section 2.2.1 of the 2012 Applicant Guidebook, "similar" means "strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone." In the 2012 round, the String Similarity Panel was tasked with identifying "visual string similarities that would create a probability of user confusion."[341] The Working Group affirms the visual standard for determining similarity with the updates included in the recommendations below.
Topic 24: String Similarity Evaluations	Recommendation 24.3: The Working Group recommends updating the standards of both (a) confusing similarity to an existing top-level domain or a Reserved Name, and (b) similarity for purposes of determining string contention, to address singular and plural versions of the same word, noting that this was an area where there was insufficient clarity in the 2012 round. Specifically, the Working Group recommends prohibiting plurals and singulars of the same word within the same language/script in order to reduce the risk of consumer confusion. For example, the TLDs

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[341] See Applicant Guidebook section 2.2.1.1.1

Summary of Outputs	
Topic	**Output**
	.EXAMPLE[342] and .EXAMPLES may not both be delegated because they are considered confusingly similar. This expands the scope of the String Similarity Review to encompass singulars/plurals of TLDs on a per-language/script basis. - An application for a single/plural variation of an existing TLD or Reserved Name will not be permitted if the intended use of the applied-for string is the single/plural version of the existing TLD or Reserved Name. For example, if there is an existing TLD .SPRINGS that is used in connection with elastic objects and a new application for .SPRING that is also intended to be used in connection with elastic objects, .SPRING will not be permitted. - If there is an application for the singular version of a word and an application for a plural version of the same word in the same language/script during the same application window, these applications will be placed in a contention set, because they are confusingly similar. - Applications will not automatically be placed in the same contention set because they appear visually to be a single and plural of one another but have different intended uses. For example, .SPRING and .SPRINGS could both be allowed if one refers to the season and the other refers to elastic objects, because they are not singular and plural versions of the same word. However, if both are intended to be used in connection with the elastic object, then they will be placed into the same contention set. Similarly, if an existing TLD .SPRING is used in connection with the season and a new application for .SPRINGS is intended to be used in connection with elastic objects, the new application will not be automatically disqualified. The Working Group recommends using a dictionary to determine the singular and plural version of the string for the specific language. The Working Group recognizes that singulars and plurals may not visually resemble each other in multiple languages and scripts globally. Nonetheless, if by using a dictionary, two strings are determined to be the singular or plural of each other, and their intended use is substantially similar, then both should not be eligible for delegation.

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[342] .EXAMPLE is used here for illustrative purposes only. The Working Group is aware that technically .EXAMPLE cannot be delegated at all because it is one of the names already reserved from delegation as a Special Use name.

Summary of Outputs	
Topic	**Output**
Topic 24: String Similarity Evaluations	Implementation Guidance 24.4: All applicants should be required to respond to an application question asking the applicant to explain the scope of intended use of the TLD, including any ways the applicant does not intend to use the TLD. If two or more applicants in the same round apply for strings that appear visually to be a single and plural of one another, and it is not clear to evaluators based on the applications whether the intended use is the same or different and therefore whether one string is a singular or plural of another, ICANN should issue a Clarifying Question.
Topic 24: String Similarity Evaluations	Recommendation 24.5: If two applications are submitted during the same application window for strings that create the probability of a user assuming that they are single and plural versions of the same word, but the applicants intend to use the strings in connection with two different meanings,[343] the applications will only be able to proceed if each of the applicants agrees to the inclusion of a mandatory Public Interest Commitment (PIC) in its Registry Agreement. The mandatory PIC must include a commitment by the registry to use the TLD in line with the intended use presented in the application, and must also include a commitment by the registry that it will require registrants to use domains under the TLD in line with the intended use stated in the application.
Topic 24: String Similarity Evaluations	Recommendation 24.6: Eliminate the use of the SWORD tool in subsequent procedures.
Topic 24: String Similarity Evaluations	Recommendation 24.7: The deadline for filing a String Confusion Objection must be no less than thirty (30) days after the release of the String Similarity Evaluation results. This recommendation is consistent with Program Implementation Review Report recommendation 2.3.a.[344]
Topic 25: IDNs	Affirmation with Modification 25.1: With the change in italicized text, the Working Group affirms Principle B from the 2007 policy: "Internationalised domain name (IDNs) new generic top-level domains *should continue to be an integral*

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[343] As an example, if the two applicants applied for .SPRING and .SPRINGS, one might intend to use the TLD .SPRING in connection with the season and the other might intend to use the TLD .SPRINGS in connection with the elastic object.
[344] PIRR Recommendation 2.3.a states: "Review the relative timing of the String Similarity evaluation and the Objections process."

Summary of Outputs	
Topic	**Output**
	part of the New gTLD Program." Principle B originally stated, "Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root."
Topic 25: IDNs	Recommendation 25.2: Compliance with Root Zone Label Generation Rules (RZ-LGR[345], RZ-LGR-2, and any future RZ-LGR rules sets) must be required for the generation of TLDs and variants[346] labels, including the determination of whether the label is blocked or allocatable. IDN TLDs must comply with IDNA2008 (RFCs 5890-5895) or its successor(s). To the extent possible, and consistent with Implementation Guidance 26.10, algorithmic checking of TLDs should be utilized.
Topic 25: IDNs	Implementation Guidance 25.3: If a script is not yet integrated into the RZ-LGR, applicants should be able to apply for a string in that script, and it should be processed up to but not including contracting. Applicants under such circumstances should be warned of the possibility that the applied-for string may never be delegated and they will be responsible for any additional evaluation costs.
Topic 25: IDNs	Recommendation 25.4: Single character[347] gTLDs may be allowed for limited script/language combinations where a character is an ideograph (or ideogram) and do not introduce confusion risks that rise above commonplace similarities, consistent with SSAC[348] and Joint ccNSO-GNSO IDN Workgroup (JIG)[349] reports.
Topic 25: IDNs	Recommendation 25.5: IDN gTLDs identified as variant TLDs of already existing or applied for gTLDs will be allowed only if labels are allocated to the same entity and, when delegated, only if they have the same back-end registry

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[345] To see the current versions of RZ-LGRs, see: https://www.icann.org/resources/pages/generation-panel-2015-06-21-en
[346] For more information about the definition of IDN variants as well as examples, please see section 2 of IDN Variant TLD Implementation: Motivation, Premises and Framework, available at https://www.icann.org/en/system/files/files/idn-variant-tld-motivation-premises-framework-25jan19-en.pdf
[347] Meaning a character in a U-label.
[348] See report here: https://www.icann.org/en/system/files/files/sac-052-en.pdf
[349] See report here: https://ccnso.icann.org/sites/default/files/filefield_22667/jig-final-report-single-character-idns-08mar11-en.pdf

Summary of Outputs	
Topic	**Output**
	service provider. This policy must be captured in relevant Registry Agreements[350].
Topic 25: IDNs	Recommendation 25.6: A given second-level label under any allocated variant TLD must only be allocated to the same entity/registrant, or else withheld for possible allocation only to that entity (e.g., s1 under {t1, t1v1, …}, e.g., s1.t1 and s1.t1v1).
Topic 25: IDNs	Recommendation 25.7: For second-level variant labels that arise from a registration based on a second-level IDN table, all allocatable variant labels in the set must only be allocated to the same entity or withheld for possible allocation only to that entity (e.g., all allocatable second-level labels {s1, s1v1, …} under all allocated variant TLD labels {t1, t1v1, …}).
Topic 25: IDNs	Recommendation 25.8: Second-level labels derived from Recommendation 25.6 or Recommendation 25.7 are not required to act, behave, or be perceived as identical.
Topic 26: Security and Stability	Affirmation 26.1: The Working Group affirms Recommendation 4 from the 2007 policy, which states: "Strings must not cause any technical instability."
Topic 26: Security and Stability	Recommendation 26.2: ICANN must honor and review the principle of conservatism when adding new gTLDs to the root zone.
Topic 26: Security and Stability	Recommendation 26.3: ICANN must focus on the rate of change for the root zone over smaller periods of time (e.g., monthly) rather than the total number of delegated strings for a given calendar year.

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[350] The Working Group did not discuss the process by which an existing registry operator could apply for, or be given, a variant for its existing gTLD. Nor has it discussed the process by which an applicant applying for a new IDN gTLD could seek and obtain any allocatable variant(s).

Summary of Outputs	
Topic	**Output**
Topic 26: Security and Stability	Implementation Guidance 26.4: The number of TLDs delegated in the root zone should not increase by more than approximately 5 percent per month, with the understanding that there may be minor variations from time-to-time.
Topic 26: Security and Stability	Implementation Guidance 26.5: ICANN should structure its obligations to new gTLD registries so that it can delay their addition to the root zone in case of DNS service instabilities. Objective criteria should be developed to determine what could be classified as a "service instability."
Topic 26: Security and Stability	Implementation Guidance 26.6: ICANN should investigate and catalog the long term obligations for root zone operators of maintaining a larger root zone.
Topic 26: Security and Stability	Implementation Guidance 26.7: ICANN org should consult with PTI, the Root Zone Maintainer, the root operators via RSSAC, and the larger DNS technical community on the implementation of these recommendations.
Topic 26: Security and Stability	Implementation Guidance 26.8: ICANN should continue to work with the community on mechanisms to monitor the root and develop procedures to ensure that any root zone scaling issues are detected in a timely manner.
Topic 26: Security and Stability	Recommendation 26.9: In connection to the affirmation of Recommendation 4 from the 2007 policy, Emoji in domain names, at any level, must not be allowed.
Topic 26: Security and Stability	Implementation Guidance 26.10: The application submission system should do all feasible algorithmic checking of TLDs, including against RZ-LGRs and ASCII string requirements, to better ensure that only valid ASCII and IDN TLDs can be submitted. A proposed TLD might be algorithmically found to be valid, algorithmically found to be invalid, or verifying its validity may not be possible using algorithmic checking. Only in the latter case, when a proposed TLD doesn't fit all the conditions for automatic checking, a manual review should occur to validate or invalidate the TLD.

Summary of Outputs	
Topic	**Output**
Topic 27: Applicant Reviews	Affirmation 27.1: The Working Group affirms several Principles and Recommendations from the 2007 policy relative to Applicant Reviews: • Principle D: "A set of technical criteria must be used for assessing a new gTLD registry applicant to minimize the risk of harming the operational stability, security and global interoperability of the Internet." • Principle E: "A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN's registry agreement." • Recommendation 1: "ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedures for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process." • Recommendation 9: "There must be a clear and pre-published application process using objective and measurable criteria." • Recommendation 18 (with slight modification): "If an applicant offers an IDN service, then ICANN's *then current* IDN guidelines must be followed."
Topic 27: Applicant Reviews	Recommendation 27.2: Evaluation scores on all questions should be limited to a pass/fail scale (0-1 points only).
Topic 27: Applicant Reviews	Recommendation 27.3: All application evaluation questions and any accompanying guidance must be written such that it maximizes predictability and minimizes the likelihood of Clarifying Questions (CQs).
Topic 27: Applicant Reviews	Implementation Guidance 27.4: In order to meet the objectives of the relevant recommendation, ICANN org should at a minimum, conduct a detailed analysis of CQs and CQ responses, additional guidance to the Applicant Guidebook, Knowledge Articles, and Supplemental Notes from the 2012 round of the New gTLD Program to better understand the basis for applicants' providing unanticipated responses to the 2012 questions and therefore, how to improve the clarity

Summary of Outputs	
Topic	**Output**
	of questions in the future. This implementation guidance is consistent with recommendations 2.6.b and 2.7.b from ICANN org's Program Implementation Review Report[351].
Topic 27: Applicant Reviews	Recommendation 27.5: ICANN org must publish CQs and CQ responses related to public questions. ICANN org may redact certain parts of the CQ and CQ response if there is nonpublic information directly contained in these materials or if publication in full is likely to allow the inference of nonpublic or confidential information.
Topic 27: Applicant Reviews	Affirmation with Modification 27.6: The Working Group affirms recommendation 7 from the 2007 policy with the following proposed additional text in italics: "Applicants must be able to demonstrate their technical *and operational* capability to run a registry operation for the purpose that the applicant sets out, *either by submitting it to evaluation at application time or agreeing to use an RSP that has successfully completed pre-evaluation as part of the RSP pre-evaluation program.*[352]
Topic 27: Applicant Reviews	Affirmation 27.7: While affording the improvements to clarity that will result from Recommendation 27.3, ICANN org should retain the same substantive framework for the technical and operational questions utilized in the 2012 round of the New gTLD Program. The exception to this affirmation is Q30b - Security Policy.
Topic 27: Applicant Reviews	Implementation Guidance 27.8: A mechanism(s) should be established to meet the spirit of the goals embodied within Q30b - Security Policy without requiring applicants to provide their full security policy. The Applicant Guidebook should clearly explain how the mechanism meets these goals and may draw on explanatory text included in the Attachment to Module 2: Evaluation Questions and Criteria from the 2012 Applicant Guidebook.[353]

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[351] Recommendation 2.6.b states: "Review Technical and Operational Capability CQs and responses to determine whether improvements to the application questions can be made"; Recommendation 2.7.b states: "Review Financial Capability CQs and responses to determine whether improvements to the application questions can be made."

[352] Please see Topic 6 of this report for additional information about the RSP pre-evaluation program.

[353] See pages A1-4 of the Attachment to Module 2.

Summary of Outputs	
Topic	**Output**
Topic 27: Applicant Reviews	Recommendation 27.9: The technical and operational evaluation must be done in an efficient manner as described in the implementation guidance below.
Topic 27: Applicant Reviews	Implementation Guidance 27.10: ICANN org or its designee should aggregate and/or consolidate the technical and operational evaluation across applications to the extent feasible where the applications, for all intents and purposes, share identical responses to the relevant questions, particularly as it relates to the proposed registry services. This is intended to apply even when an applicant indicates that it will not use a pre-evaluated RSP. For example, if an applicant submits multiple applications or multiple applications are submitted from different applicants that share a common technical infrastructure, the technical and operational evaluation may only need to be performed once for the first application processed and then applied to subsequent applications. Additional evaluation would only need to occur for subsequent applications if a new service is being proposed or the application includes a new element that requires additional evaluation of services.
Topic 27: Applicant Reviews	Recommendation 27.11: Consistent with Implementation Guidance 39.6 under Topic 39: Registry System Testing, the technical and operational evaluation must emphasize evaluation of elements that are specific to the application and/or applied-for TLD and should avoid evaluating elements that have already been thoroughly considered either as part of the RSP pre-evaluation program or previously in connection with another application and/or applied-for TLD.
Topic 27: Applicant Reviews	Implementation Guidance 27.12: Applications should have a streamlined technical and operational evaluation if the applicant has either selected a pre-evaluated RSP in its application submission or if it commits to only using a pre-evaluated RSP during the evaluation phase, and actually selects its chosen pre-evaluated RSP during the transition to delegation phase.
Topic 27: Applicant Reviews	Recommendation 27.13: When responding to questions, applicants must identify which services are being outsourced to be performed by third parties.
Topic 27: Applicant Reviews	Recommendation 27.14: The technical and operational evaluation must also consider the total number of TLDs and expected registrations for an applicant's given RSP.

Summary of Outputs	
Topic	**Output**
Topic 27: Applicant Reviews	Recommendation 27.15: The Working Group recommends that the financial evaluation must focus on ensuring that an applicant is able to demonstrate financial wherewithal and assure long-term survivability of the registry, thus reducing the security and stability risk to the DNS. The Working Group believes that the following implementation guidance will simplify the process but still allow for meaningful assurance of an applicant's financial capabilities, while duly taking into account how the applicant will operate its registry.
Topic 27: Applicant Reviews	Implementation Guidance 27.16: As part of the financial evaluation, ICANN should not evaluate proposed business models, nor provide sample business models and/or tools for applicants to demonstrate financial wherewithal. The Applicant Guidebook should provide applicants with a list of resources to get information on RSPs, Stakeholder Groups and associations from which applicants can get information.
Topic 27: Applicant Reviews	Implementation Guidance 27.17: The evaluation should determine whether an applicant will be able to withstand missing revenue goals, exceeding expenses, funding shortfalls, or the inability to manage multiple TLDs in the case of registries that are dependent upon the sale of registrations. This evaluation must recognize and take into account the different ways to operate a registry, including instances where there is no reliance on the sale of third party registrations to generate revenue for the registry. Therefore, determining the financial wherewithal of an applicant to sustain the maintenance of a TLD may require different criteria for different types of registries; criteria should not be established in a "one-size-fits-all" manner.

Topic 27: Applicant Reviews	Implementation Guidance 27.18: If any of the following conditions are met, an applicant should be allowed to self-certify that it is able to meet the goals as described in Implementation Guidance 27.17. This self-certification will serve as evidence that the applicant has the financial wherewithal to support its application for the TLD.
	    i. If the applicant is a publicly traded corporation, or an affiliate as defined in the current Registry Agreement, listed and in good standing on any of the world's largest 25 stock exchanges (as listed by the World Federation of Exchanges);
	    ii. If the applicant and/or its officers are bound by law in its jurisdiction to represent financials accurately and the applicant is is good standing in that jurisdiction; or,
	    iii. If the applicant is a current registry operator or an affiliate (as defined in the current Registry Agreement) of a current registry operator that is not in default on any of its financial obligations under its applicable Registry

Summary of Outputs	
Topic	**Output**
	Agreements, and has not previously triggered the utilization of its Continued Operations Instrument. If the applicant is unable to meet the requirements for self-certification, the applicant must provide credible third-party certification of its ability to meet the goals as described in Implementation Guidance 27.17.
Topic 27: Applicant Reviews	<u>Affirmation with Modification 27.19</u>: The Working Group affirms Recommendation 8 from the 2007 policy with the following proposed additional text in italics: "Applicants must be able to demonstrate their financial and organizational operational capability *in tandem for all currently-owned and applied-for TLDs that would become part of a single registry family.*" Therefore, applicants must identify whether the financial statements in its application apply to all of its applications, a subset of them or a single application (where that applicant and/or its affiliates have multiple applications).
Topic 27: Applicant Reviews	<u>Implementation Guidance 27.20</u>: The following is a tentative but exhaustive set of financial questions: ● "Identify whether this financial information is shared with another application(s)" (not scored). ● "Provide financial statements (audited and self-certified by an officer where applicable or audited and independently certified if unable to meet the requirements for self-certification)" (0-1 scoring) (certification posted). ● "Provide a declaration, self-certified by an officer where applicable or independently certified if unable to meet the requirements for self-certification, that the applicant will be able to withstand missing revenue goals, exceeding expenses, funding shortfalls, and will have the ability to manage multiple TLDs where the registries are dependent upon the sale of registrations" (0-1 scoring) (publicly posted).
Topic 27: Applicant Reviews	<u>Recommendation 27.21</u>: A certain set of optional pre-approved additional registry services will not require registry services evaluation and those selected by the applicant at the time application submission will automatically be included in the applicant's Exhibit A upon contract execution. That list will include those that are included in the base

Summary of Outputs	
Topic	**Output**
	Registry Agreement and on the *Fast Track RSEP Process and Standard Authorization Language*[354] page as of the drafting of this report and as updated from time to time.
Topic 27: Applicant Reviews	Recommendation 27.22: Any additional optional registry services not included on the pre-approved list must be reviewed in a timely manner to determine if they might raise significant stability or security issues. Criteria used to evaluate those non-pre-approved registry services must be consistent with the criteria applied to existing registries that propose new registry services and should not result in additional fees. However, if that initial assessment determines that the proposed registry services might raise significant stability or security issues, the application will be subject to extended review by the Registry Services Technical Evaluation Panel (RSTEP). Applicants will be subject to additional fees under this circumstance.
Topic 27: Applicant Reviews	Implementation Guidance 27.23: The Registry Services Evaluation Policy (RSEP) Process Workflow should be amended to fit within the new gTLD processes and timelines (e.g., using priority number to order evaluation, using Clarifying Questions to address issues).
Topic 28: Role of Application Comment	Affirmation 28.1: Section 1.1.2.3 of the 2012 Applicant Guidebook states "ICANN will open a comment period (the Application Comment Period) at the time applications are publicly posted on ICANN's website . . . This period will allow time for the community to review and submit comments on posted application materials." The Working Group affirms that as was the case in the 2012 round, community members must have the opportunity to comment during the Application Comment Period on applications submitted. Comments must be published online as they were in the 2012 round so that they are available for all interested parties to review.
Topic 28: Role of Application Comment	Affirmation 28.2: As was the case in the 2012 round, when an application comment might cause an evaluator to reduce scoring, ICANN must issue a Clarifying Question to the applicant and give the applicant an opportunity to respond to the comment.

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[354] These optional additional services include Bulk Transfer After Partial Portfolio Acquisition (BTAPPA), Registry Lock, Block Services, and/or validation services as examples. See page here: https://www.icann.org/resources/pages/fast-track-rsep-process-authorization-language-2019-06-14-en

Summary of Outputs	
Topic	**Output**
Topic 28: Role of Application Comment	Recommendation 28.3: For purposes of transparency and to reduce the possibility of gaming, there must be clear and accurate information available about the identity of a person commenting on an application as described in the implementation guidance below.
Topic 28: Role of Application Comment	Implementation Guidance 28.4: The system used to collect application comment should continue to require that affirmative confirmation be received for email addresses prior to use in submission of comments. To the extent possible, ICANN org should seek to verify the identity of the person submitting the comment.
Topic 28: Role of Application Comment	Implementation Guidance 28.5: In addition, each commenter should be asked whether they are employed by, are under contract with, have a financial interest in, or are submitting the comment on behalf of an applicant. If so, they must reveal that relationship and whether their comment is being filed on behalf of that applicant.
Topic 28: Role of Application Comment	Recommendation 28.6: Systems supporting application comment must emphasize usability for those submitting comments and those reviewing the comments submitted. This recommendation is consistent with Program Implementation Review Report recommendation 1.3.a, which states: "Explore implementing additional functionality that will improve the usability of the Application Comment Forum."
Topic 28: Role of Application Comment	Implementation Guidance 28.7: The system used to collect application comment should better support filtering and sorting of comments to help those reviewing comments find relevant responses, particularly when there is a large number of entries. One example is an ability to search comments for substantive text within the comment itself. In the 2012 new gTLD round a search could be done on categories of comments, but not a search of the actual text within the comment itself.
Topic 28: Role of Application Comment	Implementation Guidance 28.8: The system used to collect application comment should allow those submitting comments to include attachments. ICANN should investigate whether there are any commercially reasonable mechanisms to search attachments.
Topic 28: Role of Application	Recommendation 28.9: The New gTLD Program must be clear and transparent about the role of application comment in the evaluation of applications.

Summary of Outputs	
Topic	**Output**
Comment	
Topic 28: Role of Application Comment	Implementation Guidance 28.10: The Implementation Review Team should develop guidelines about how public comments are to be utilized or taken into account by the relevant evaluators and panels, and these guidelines should be included in the Applicant Guidebook. The Applicant Guidebook should also be clear to what extent different types of comments will or will not impact scoring.
Topic 28: Role of Application Comment	Recommendation 28.11: Applicants must have a clear, consistent, and fair opportunity to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.
Topic 28: Role of Application Comment	Implementation Guidance 28.12: Applicants should be given a fixed amount of time to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.
Topic 28: Role of Application Comment	Recommendation 28.13: ICANN must create a mechanism for third-parties to submit information related to confidential portions of the application, which may not be appropriate to submit through public comment. At a minimum, ICANN must confirm receipt and that the information is being reviewed. The applicant must be fully informed of the submitted information and be able to respond through the same mechanism.
Topic 28: Role of Application Comment	Recommendation 28.14: A single Application Comment Period must apply to both standard and community-based applications. To the extent that third-parties submit expressions of support for or opposition to a community-based application, these comments must be submitted during the Application Comment Period if they are to be considered during Community Priority Evaluation.
Topic 29: Name Collisions	Recommendation 29.1: ICANN must have ready prior to the opening of the application submission period a mechanism to evaluate the risk of name collisions in the New gTLD evaluation process as well as during the transition to delegation phase.

Summary of Outputs	
Topic	**Output**
Topic 29: Name Collisions	Affirmation 29.2: The Working Group affirms continued use of the New gTLD Collision Occurrence Management framework unless and until the ICANN Board adopts a new mitigation framework. This includes not changing the controlled interruption duration and the required readiness for human-life threatening conditions for currently delegated gTLDs and future new gTLDs.[355]
Topic 29: Name Collisions	Implementation Guidance 29.3: To the extent possible, ICANN should seek to identify high-risk strings in advance of opening the application submission period, which should constitute a "Do Not Apply" list. ICANN should also seek to identify aggravated risk strings in advance of the next application window opening and whether it would require a specific name collision mitigation framework.
Topic 29: Name Collisions	Implementation Guidance 29.4: To the extent possible, all applied-for strings should be subject to a DNS Stability evaluation to determine whether they represent a name collision risk.
Topic 29: Name Collisions	Implementation Guidance 29.5: The ICANN community should develop name collision risk criteria and a test to provide information to an applicant for any given string after the application window closes so that the applicant can determine if they should move forward with evaluation.
Topic 29: Name Collisions	Implementation Guidance 29.6: If controlled interruption (CI) for a specific label (usually a 2nd-level domain) is found to cause disruption, ICANN may decide to allow CI to be disabled for that label while the disruption is fixed, provided that the minimum CI period is still applied to that label.

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[355] "Registry operators will implement a period of, at least, 90 days of continuous controlled interruption. ICANN will monitor and time the implementation of the measure, primarily using the zone files that are transferred to ICANN from new gTLD registries once they are delegated (per Specification 4 off the new gTLD Registry Agreement).", 3. Controlled Interruption, and 7. Emergency Response, pages 2 and 4, in the New gTLD Collision Occurrence Management framework. See: https://www.icann.org/en/system/files/files/name-collision-framework-30jul14-en.pdf.

Summary of Outputs	
Topic	**Output**
Topic 30: GAC Consensus Advice and GAC Early Warning	Affirmation 30.1: The Working Group acknowledges the ability of the GAC to issue GAC Consensus Advice in accordance with the ICANN Bylaws. In addition, subject to the recommendations below, the Working Group supports the 2012 implementation of GAC Early Warnings. 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."
Topic 30: GAC Consensus Advice and GAC Early Warning	Implementation Guidance 30.2: To the extent that the GAC provides GAC Consensus Advice (as defined in the ICANN Bylaws) in the future on categories of TLDs, the GAC should provide this Advice prior to the finalization and publication of the next Applicant Guidebook. In the event that GAC Consensus Advice is issued after the finalization and publication of the Applicant Guidebook and whether the GAC Consensus Advice applies to categories, groups or classes of applications or string types, or to a particular string, the ICANN Board should take into account the circumstances resulting in such timing and the possible detrimental effect of such timing in determining whether to accept or override such GAC Consensus Advice as provided in the Bylaws.
Topic 30: GAC Consensus Advice and GAC Early Warning	Recommendation 30.3: As stated in the ICANN Bylaws, GAC Consensus Advice must include a clearly articulated rationale.[356] The Working Group recommends that GAC Consensus 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."[357]

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[356] 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.
[357] 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.

Summary of Outputs	
Topic	**Output**
Topic 30: GAC Consensus Advice and GAC Early Warning	Recommendation 30.4: Section 3.1 of the 2012 Applicant Guidebook states that GAC Consensus 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.[358] The Working Group further notes that the language may have the unintended consequence of hampering the ability of the Board to facilitate a solution that mitigates concerns and is mutually acceptable to the applicant and the GAC as described in the relevant Bylaws language. Such a solution could allow an application to proceed. In place of the omitted language, the Working Group recommends including in the Applicant Guidebook a reference to applicable Bylaws provisions that describe the voting threshold for the ICANN Board to reject GAC Consensus Advice.[359]
Topic 30: GAC Consensus Advice and GAC Early Warning	Recommendation 30.5: The Working Group recommends that GAC Early Warnings are issued during a period that is concurrent with the Application Comment Period.[360] 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.
Topic 30: GAC Consensus Advice and GAC Early Warning	Recommendation 30.6: 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.

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[358] 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."
[359] See section 12.2(a)(x) of the current ICANN Bylaws: https://www.icann.org/resources/pages/governance/bylaws-en/#article12
[360] See Topic 28 of this report for discussion of the application comment period.

Summary of Outputs	
Topic	**Output**
Topic 30: GAC Consensus Advice and GAC Early Warning	<u>Recommendation 30.7</u>: Applicants must be allowed to change their applications, including the addition or modification of Registry Voluntary Commitments (RVCs, formerly voluntary PICs), to address GAC Early Warnings, GAC Consensus Advice, and/or other comments from the GAC.[361] Relevant GAC members are strongly encouraged to make themselves available during a specified period of time for direct dialogue[362] with applicants impacted by GAC Early Warnings, GAC Consensus Advice, or comments to determine if a mutually acceptable solution can be found.
Topic 31: Objections	<u>Affirmation 31.1</u>: Subject to the recommendations/implementation guidance below, The Working Group affirms the following recommendations and implementation guidance from 2007: • Recommendation 6: "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 20: "An application will be rejected if it is determined, based on public comments or otherwise, that there is substantial opposition to it from among significant established institutions of the economic sector, or cultural or language community, to which it is targeted or which it is intended to support." • Implementation Guideline H: "External dispute providers will give decisions on objections." • Implementation Guideline P (IG P, including subheadings on process and guidelines, refers specifically to the Community Objection): "The following process, definitions and guidelines refer to Recommendation 20. **Process**

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[361] The addition or modification of RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendations set forth under Topic 20: Application Change Requests including, but not limited to, an operational comment period in accordance with ICANN's standard procedures and timeframes.

[362] 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.

Summary of Outputs	
Topic	**Output**
	Opposition must be objection based. Determination will be made by a dispute resolution panel constituted for the purpose. The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection). **Guidelines** The task of the panel is the determination of substantial opposition. a) substantial – in determining substantial the panel will assess the following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment b) significant portion – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting. c) community – community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted. d) explicitly targeting – explicitly targeting means there is a description of the intended use of the TLD in the application. e) implicitly targeting – implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use. f) established institution – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years. Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community. The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

Summary of Outputs	
Topic	**Output**
	g) formal existence – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar. h) detriment – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely." • Implementation Guideline Q: "ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure."
Topic 31: Objections	Affirmation with Modification 31.2: Recommendation 12 from 2007 states: "Dispute resolution and challenge processes must be established prior to the start of the process." Consistent with Implementation Guidance 31.12 below, the Working Group affirms Recommendation 12 with the following modification in italicized text: "Dispute resolution and challenge processes must be established prior to the start of the process, *the details of which must be published in the Applicant Guidebook*."
Topic 31: Objections	Affirmation with Modification 31.3: Implementation Guideline R from 2007 states: "Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated." The Working Group modifies this Implementation Guideline to read: "Once a response to the formal objection has been filed by the applicant(s), there may be a cooling off period for negotiation or compromise by agreement of both parties if the parties formally notify the dispute resolution provider that they would like to initiate a cooling off period."
Topic 31: Objections	Affirmation 31.4: The Working Group affirms the overall approach to the public objection and dispute resolution process described in Section 3.2 of the 2012 Applicant Guidebook, subject to the recommendations below. The Working Group further affirms that parties with standing should continue to be able to file formal objections with designated third-party dispute resolution providers on specific applications based on the following grounds: (i) String Confusion Objection (ii) Existing Legal Rights Objection (iii) Limited Public Interest Objection (iv) Community Objection.

Summary of Outputs	
Topic	**Output**
Topic 31: Objections	Implementation Guidance 31.5: Where possible, costs associated with filing a formal objection should be reduced while maintaining the quality and integrity of the objections process.
Topic 31: Objections	Implementation Guidance 31.6: Information about fees that were charged by dispute resolution service providers in previously filed formal objections should be accessible for future review.
Topic 31: Objections	Implementation Guidance 31.7: Consideration should be given to whether there were barriers to filing a formal objection in the 2012 round, and if so, whether those barriers can and should be reduced in subsequent procedures. Specifically, the Working Group suggests further consideration of the time required to file a formal objection, the expertise required, and limited awareness of the opportunity to file.
Topic 31: Objections	Affirmation 31.8: The Working Group affirms that the role of the Independent Objector (IO) should exist in subsequent procedures,[363] subject to the changes introduced from other recommendations, and the implementation guidance below. The Working Group further affirms that the IO should be given the opportunity to file only Community and/or Limited Public Interest objections when doing so serves the best interests of the public who use the global Internet.
Topic 31: Objections	Implementation Guidance 31.9: A mechanism should be established (e.g., standing panel of multiple IO panelists) that mitigates the possible conflict of interest issues that may arise from having a single panelist serving as the IO.

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[363] Section 3.2.5 of the 2012 Applicant Guidebook describes the role of the Independent Objector. The Working Group believes that a number of existing practices for the IO should be maintained. These include:
- ICANN org continuing to provide the budget for the IO;
- The IO continuing to be limited to filing objections for Limited Public Interest and Community Objections;
- Continuing to require that a relevant public comment be submitted in order to file an objection;
- Impose no limit on the number of objections the IO may file, subject to budgetary constraints; and,
- Continue to require extraordinary circumstances to file an objection where an objection has already been filed by another entity on the same ground.

Summary of Outputs	
Topic	**Output**
Topic 31: Objections	Recommendation 31.10: For all types of formal objections, the parties to a proceeding must be given the opportunity to mutually agree upon a single panelist or a three-person panel, bearing the costs accordingly. Following the model of the Limited Public Interest Objection in the 2012 round, absent agreement from all parties to have a three-expert panel, the default will be a one-expert panel.
Topic 31: Objections	Recommendation 31.11: ICANN must provide transparency and clarity in the processes used to handle the filing and processing of formal objections, including the resources and supplemental guidance used by dispute resolution provider panelists to arrive at a decision, expert panelist selection criteria and processes, and filing deadlines. The following implementation guidance provides additional direction in this regard.
Topic 31: Objections	Implementation Guidance 31.12: All criteria and/or processes to be used by panelists for the filing of, response to, and evaluation of each formal objection should be included in the Applicant Guidebook.
Topic 31: Objections	Implementation Guidance 31.13: Information about fees and refunds for the dispute resolution processes should be readily available prior to the commencement/opening of the application submission period.
Topic 31: Objections	Implementation Guidance 31.14: Prior to the launch of the application submission period, to the extent that dispute resolution panelists draw on other guidance, processes and/or sources of information to assist them with processing and making decisions, such information should be made publicly available and easily found, either on their respective websites or preferably, in a central location.
Topic 31: Objections	Recommendation 31.15 The "quick look" mechanism, which applied to only the Limited Public Interest Objection in the 2012 round, must be developed by the Implementation Review Team for all formal objection types. The "quick

Summary of Outputs	
Topic	**Output**
	look" is designed to identify and eliminate frivolous and/or abusive objections.[364]
Topic 31: Objections	Recommendation 31.16: Applicants must have the opportunity to amend an application or add Registry Voluntary Commitments (RVCs) in response to concerns raised in a formal objection. All these amendments and RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendations set forth under Topic 20: Application Change Requests including, but not limited to, an operational comment period in accordance with ICANN's standard procedures and timeframes.
Topic 31: Objections	Recommendation 31.17: To the extent that RVCs are used to resolve a formal objection either (a) as a settlement between the objector(s) and the applicant(s) or (b) as a remedy ordered by an applicable dispute panelist, those RVCs must be included in the applicable applicant(s) Registry Agreement(s) as binding contractual commitments enforceable by ICANN through the PICDRP.
Topic 31: Objections	Recommendation 31.18: ICANN must reduce the risk of inconsistent outcomes in the String Confusion Objection Process, especially where an objector seeks to object to multiple applications for the same string. The following implementation guidance provides additional direction in this regard.
Topic 31: Objections	Implementation Guidance 31.19: ICANN should allow a single String Confusion Objection to be filed against all applicants for a particular string, rather than requiring a unique objection to be filed against each application. Specifically: • An objector may file a single objection that extends to all applications for an identical string. • Given that an objection that encompasses several applications would require more work to process and review, the string confusion dispute resolution service provider (DSRP) could introduce a tiered pricing structure for these sets. Each applicant for that identical string should still prepare a response to the objection.

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[364] The Working Group expects the Implementation Review Team to determine in greater detail how the quick look mechanism will identify and eliminate frivolous and/or abusive objections for each objection type. The Working Group anticipates that standing will be one of issues that the quick look mechanism will review, where applicable.

Summary of Outputs	
Topic	**Output**
	• The same panel should review all documentation associated with the objection. Each response should be reviewed on its own merits. • The panel should issue a single determination that identifies which applications should be in contention. Any outcome that results in indirect[365] contention should be explained as part of the DRSP's determination.
Topic 32: Limited Challenge/Appeal Mechanism	<u>Recommendation 32.1</u>: The Working Group recommends that ICANN establish a mechanism that allows specific parties to challenge or appeal certain types of actions or inactions that appear to be inconsistent with the Applicant Guidebook.[366] The new substantive challenge/appeal mechanism is not a substitute or replacement for the accountability mechanisms in the ICANN Bylaws that may be invoked to determine whether ICANN staff or Board violated the Bylaws by making or not making a certain decision. Implementation of this mechanism must not conflict with, be inconsistent with, or impinge access to accountability mechanisms under the ICANN Bylaws. The Working Group recommends that the limited challenge/appeal mechanism applies to the following types of evaluations and formal objections decisions[367]: **Evaluation Challenges** 1. Background Screening

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[365] Per Applicant Guidebook Module 4 (p 4-3): "Two strings are in direct contention if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another. Two strings are in indirect contention if they are both in direct contention with a third string, but not with one another."

[366] Examples of such actions or inactions include where an evaluator misapplies the Guidebook or omits Guidebook criteria or where a panel relies on incorrect information or standard to decide an objection.

[367] The list of challenges and appeals herein are based on the current and envisaged processes and procedures for the New gTLD Program. In the event that additional evaluation elements and/or objections are added, modified or removed from the program, the challenges and/or appeals may have to be modified as appropriate.

Summary of Outputs	
Topic	**Output**
	2. String Similarity 3. DNS Stability 4. Geographic Names 5. Technical / Operational Evaluation 6. Financial Evaluation 7. Registry Services Evaluation 8. Community Priority Evaluation 9. Applicant Support 10. RSP Pre-Evaluation **Appeals of Formal Objections Decisions** 1. String Confusion Objection 2. Legal Rights Objection 3. Limited Public Interest Objection 4. Community Objection 5. Conflict of Interest of Panelists
Topic 32: Limited Challenge/Appeal Mechanism	Recommendation 32.2: In support of transparency, clear procedures and rules must be established for challenge/appeal processes as described in the implementation guidance below.
Topic 32: Limited Challenge/Appeal Mechanism	Implementation Guidance 32.3: Parties with standing to file a challenge/appeal should vary depending on the process being challenged/appealed. The Working Group's guidance on this issue is summarized in Annex F.
Topic 32: Limited Challenge/Appeal Mechanism	Implementation Guidance 32.4: The type of decision that may be challenged/appealed should vary depending on the process being challenged/appealed. The Working Group's guidance on this issue is summarized in Annex F.

Summary of Outputs	
Topic	**Output**
Topic 32: Limited Challenge/Appeal Mechanism	Implementation Guidance 32.5: The Working Group's guidance on the arbiter for each type of challenge/appeal is summarized in Annex F. In the case of challenges to evaluation decisions, the arbiter should typically be from the entity that conducted the original evaluation, but the person(s) responsible for making the ultimate decision in the appeal must be different from those that were responsible for the evaluation. In the case of an appeal of a formal objection decision, the arbiter will typically be a panelist or multiple panelists from the entity that handled the original formal objection, but will not be the same panelist(s) that provided the original formal objection decision. The Working Group recognizes that ICANN itself may be an evaluator for any of the application evaluation components. This would not change the types of challenges allowed as set forth in Annex F. The arbiter of a challenge where ICANN itself was the evaluator should be a person or persons within ICANN that were not involved in the ultimate evaluation decision. If possible, the Working Group also recommends that the challenge process should be done under the supervision of the ICANN Ombudsman.
Topic 32: Limited Challenge/Appeal Mechanism	Implementation Guidance 32.6: For all types of appeals to formal objections, the parties to a proceeding must be given the opportunity to mutually agree upon a single panelist or a three-person panel, bearing the costs accordingly.[368] Following the model of the Limited Public Interest Objection in the 2012 round, absent agreement from all parties to have a three-expert panel, the default will be a one-expert panel.

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[368] Under Topic 31: Objections, the Working Group recommends that parties to a formal objections proceeding have the opportunity to mutually agree on whether to use a single panelist or a three-person panel, bearing the costs accordingly. This recommendation extends the same opportunity for appeals of objections decisions.

Summary of Outputs	
Topic	**Output**
Topic 32: Limited Challenge/Appeal Mechanism	Implementation Guidance 32.7: All challenges and appeals except for the conflict of interest appeals should be reviewed under the "clearly erroneous"[369] standard. Conflict of interests should be reviewed under a "de novo"[370] standard.
Topic 32: Limited Challenge/Appeal Mechanism	Implementation Guidance 32.8: The Working Group's guidance on the party bearing the cost of a challenge/appeal is summarized in Annex F. Regarding appeals filed by the Independent Objector and ALAC, the Working Group notes that in the 2012 round, ICANN designated a budget for the IO. The Working Group believes that this should continue to be the case in subsequent procedures, and that ALAC should similarly have a budget provided by ICANN. The IO and ALAC should pay for any costs related to the appeal out of the budget provided.
Topic 32: Limited Challenge/Appeal Mechanism	Implementation Guidance 32.9: The Working Group's guidance on the remedy for a successful challenge/appeal is summarized in Annex F.
Topic 32: Limited Challenge/Appeal Mechanism	Recommendation 32.10: The limited challenge/appeal process must be designed in a manner that does not cause excessive, unnecessary costs or delays in the application process, as described in the implementation guidance below.
Topic 32: Limited Challenge/Appeal Mechanism	Implementation Guidance 32.11: A designated time frame should be established in which challenges and appeals may be filed. The Working Group's guidance on the time frame for filing appeals is summarized in Annex F.

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[369] Under a clearly erroneous standard of review, the appeals panel must accept the evaluator's or dispute panel's findings of fact unless (1) the panel failed to follow the appropriate procedures or (2) failed to consider/solicit necessary material evidence or information.
[370] Under a de novo standard of review, the appeals panel is deciding the issues without reference to any of the conclusions or assumptions made by the evaluator/dispute panel. It can refer to the evaluator/dispute panel to determine the facts, but it need not defer to any of the findings or conclusions. It would be as if the appeals panel is hearing the facts for the first time.

Summary of Outputs	
Topic	**Output**
Topic 32: Limited Challenge/Appeal Mechanism	Implementation Guidance 32.12: The limited challenge/appeal mechanism should include a "quick look" step at the beginning of the process to identify and eliminate frivolous challenges/appeals.
Topic 32: Limited Challenge/Appeal Mechanism	Implementation Guidance 32.13: A party should be limited to a single round of challenge/appeal for an issue. With the exception of challenges to conflict of interest determinations, parties should only be permitted to challenge/appeal the final decision on an evaluation or objection and should not be permitted to file "interlocutory" appeals as the process progresses. Parties should be able to appeal a conflict of interest determination prior to the objection panel hearing the formal objection.
Topic 33: Dispute Resolution Procedures After Delegation	Affirmation 33.1: The Working Group affirms that the Public Interest Commitment Dispute Resolution Procedure (PICDRP)[371] and the Registration Restrictions Dispute Resolution Procedure (RRDRP) should remain available to those harmed by a new gTLD registry operator's conduct, subject to the recommendation below.
Topic 33: Dispute Resolution Procedures After Delegation	Recommendation 33.2: For the Public Interest Commitment Dispute Resolution Procedure (PICDRP) and the Registration Restrictions Dispute Resolution Procedure (RRDRP), clearer, more detailed, and better-defined guidance on the scope of the procedure, the role of all parties, and the adjudication process must be publicly available.
Topic 34: Community Applications	Affirmation with Modification 34.1: The Working Group affirms the continued prioritization of applications in contention sets that have passed Community Priority Evaluation (CPE). The Working Group further affirms Implementation Guideline H* from the 2007 policy, with one small modification: "Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions: (i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the

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[371] The PICDRP will apply to both mandatory PICs and Registry Voluntary Commitments, formerly called voluntary PICs.

Summary of Outputs	
Topic	**Output**
	application; and (ii) a formal objection process is initiated. Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P." This modified text removes the following sentence under (ii) in order to be consistent with 2012 implementation: "Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim."
Topic 34: Community Applications	Implementation Guidance 34.2: In the 2012 Applicant Guidebook, the following text is included under definitions for Criterion 1-A Delineation, " "Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low." The corresponding Evalution Guidelines from the 2012 round include a non-exhaustive list of "elements of straight-forward member definitions." This list should continue to include elements applicable to economic communities with a formal membership structure, but it should also include elements applicable to communities that are not economic in nature, including linguistic and cultural communities, that have clear and straight-forward membership definition. The term "member" in this context should be interpreted broadly enough to include communities that do not have "card carrying" members. Further, the Evaluation Guidelines should include provisions that allow communities which are not economic in nature (and which therefore may not have clear and straight-forward membership structure) with an equal opportunity to score a full 2 points on the Delineation Criterion, as well as an opportunity to score a single point if some but not all elements of this criterion are met.
Topic 34: Community Applications	Implementation Guidance 34.3: In the 2012 Applicant Guidebook, the following text is included under Definitions for CPE Criterion 1-A Delineation: "Notably, as "community" is used throughout the application, there should be: . . . (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed). . ." and " "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007." The corresponding section of the CPE Evalution Guidelines states, "The following questions must be scored when evaluating the application: . . *Has the community been active since at least September 2007?"* For subsequent procedures, references to "September 2007" should be changed to "the beginning of the then current application submission period."
Topic 34: Community Applications	Implementation Guidance 34.4: In the 2012 Applicant Guidebook, in order to succeed in a Community Priority Evaluation, Criterion 1-A stated that a community should have the requisite "awareness and recognition" among its

Summary of Outputs	
Topic	**Output**
	members ("Delineation"). The Working Group recommends that this criterion must take into consideration the views of the relevant community-related experts, especially in cases where recognition of the community is not measurable (eg., where such recognition is prevented by national law).
Topic 34: Community Applications	Implementation Guidance 34.5: In the 2012 Applicant Guidebook, the following text is included under Definitions for CPE Criterion 1-A Delineation: " "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities." The interpretation in the Evaluation Guidelines of the term "mainly" should make clear that it is possible for more than one entity to administer and/or represent a community. The Guidelines should further make clear that an organization that represents a community should be treated on equal footing with one that administers a community.
Topic 34: Community Applications	Implementation Guidance 34.6: In the 2012 Applicant Guidebook, text regarding CPE Criterion 2-A Nexus includes guidance on scoring in relation to the criterion. Corresponding text included in the Evaluation Guidelines should be more specific and clear regarding scoring to eliminate any ambiguity in interpretation. The Working Group suggests the following text to include in the Evaluation Guidelines: "With respect to "Nexus", for a score of 3, the essential aspect is that the applied-for string matches the name of the community. Where an exact match is not established but the applied-for string is established as commonly known by others as a well-known short-form or abbreviation of the community, it will also be eligible for a score of 3. Where the applied-for string does not match the name of the community or is not a well-known short-form or abbreviation of the community, it may score a 2 if it identifies the community - i.e. closely describes either the community or a reasonably understood boundary of the community members, without over-reaching substantially beyond the community. An applied-for string which identified the community but over-reaches substantially into a community will score a zero."
Topic 34: Community Applications	Implementation Guidance 34.7: In the 2012 Applicant Guidebook, text regarding CPE Criterion 2-B Uniqueness includes the following definition: " "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community." The corresponding Evaluation Guidelines should make clear that there are two distinct paths to establish if an applied for string identifies the community: 1. describing the community OR 2. describing the community members. The Guidelines should explicitly state that these paths are not interconnected or contingent on one another.

Summary of Outputs	
Topic	**Output**
Topic 34: Community Applications	Implementation Guidance 34.8: The Evaualation Guidelines regarding Criterion 2-B Uniqueness should make clear that evaluators should not be making a qualitative assessment of whether the a term is the most appropriate or descriptive term for a given community compared to other possible terms. Instead, they should be examining whether this is a term that the public in general associates with this community as opposed to another meaning.
Topic 34: Community Applications	Implementation Guidance 34.9: CPE Evaluation Guidelines regarding scoring for Criterion 4-A Support should make clear that it is not assumed for the purposes of scoring that only a single organization will serve as the representative for an entire community and that other considerations may be taken into account in scoring for this criterion if multiple organizations represent a community.
Topic 34: Community Applications	Implementation Guidance 34.10: The following text included in the 2012 Applicant Guidebook Section 4.2.3 Community Priority Evaluation Criteria should also be incorporated into the CPE Evaluation Guidelines: "The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any "double-counting" - any negative aspect found in assessing an application for one criterion should only be counted there and should not affect the assessment for other criteria."
Topic 34: Community Applications	Implementation Guidance 34.11: The Working Group urges the Implementation Review Team to consider 1. Changing the passing score for achieving community priority status from a numerical score to a percentage of the total number of possible points and 2. Lowering the threshold for achieving community-based status from the 87.5% of the total available evaluation points (14 out of 16 points) as was the case in the 2012 round to 75-80% of the total available points.
Topic 34: Community Applications	Recommendation 34.12: The process to develop evaluation and selection criteria that will be used to choose a Community Priority Evaluation Provider (CPE Provider) must include mechanisms to ensure appropriate feedback from the ICANN community. In addition, any terms included in the contract between ICANN org and the CPE Provider regarding the CPE process must be subject to public comment.
Topic 34: Community Applications	Recommendation 34.13: The Community Priority Evaluation (CPE) process must be efficient, transparent and predictable.

Summary of Outputs	
Topic	**Output**
Topic 34: Community Applications	Implementation Guidance 34.14: To support predictability, the CPE guidelines, or as amended, should be considered a part of the policy adopted by the Working Group.
Topic 34: Community Applications	Implementation Guidance 34.15: ICANN org should examine ways to make the CPE process more efficient in terms of costs and timing.
Topic 34: Community Applications	Recommendation 34.16: 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.
Topic 34: Community Applications	Recommendation 34.17: Evaluators must continue to be able to send Clarifying Questions to CPE applicants but further, must be able to engage in written dialogue with them as well.
Topic 34: Community Applications	Recommendation 34.18: Evaluators must 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.
Topic 34: Community Applications	Recommendation 34.19: Letters of opposition to a community-based application, if any, must be considered in balance with documented support for the application.
Topic 34: Community Applications	Implementation Guidance 34.20: The 2012 Applicant Guidebook includes the following text regarding scoring for CPE Criterion 4-B Opposition: "Opposition: 2= No opposition of relevance; 1= Relevant opposition from one group of non-negligible size; 0= Relevant opposition from two or more groups of non-negligible size." In listing considerations for determining whether an organization is of "non-neglible size," the Evaluation Guidelines should include text indicating that the determination of what is non-neglible must be relative to the size of the community that that applicant is proporting to serve.
Topic 34: Community Applications	Recommendation 34.21: If the Community Priority Evaluation Panel conducts independent research while evaluating an application, limitations on this research and additional requirements must apply. The Working Group recommends including the following text in the Applicant Guidebook: "The Community Priority Evaluation Panel may perform

Summary of Outputs	
Topic	**Output**
	independent research deemed necessary to evaluate the application (the "Limited Research"), provided, however, that the evaluator shall disclose the results of such Limited Research to the applicant and the applicant shall have an opportunity to respond. The applicant shall be provided 30 days to respond before the evaluation decision is rendered. When conducting any such Limited Research, panelists are cautioned not to assume an advocacy role either for or against the applicant or application."
Topic 34: Community Applications	Implementation Guideline 34.22: To support transparency, if the Community Priority Evaluation Panel relied on research for the decision it should be cited and a link to the information provided.
Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets	Affirmation with Modification 35.1: Implementation Guideline F from 2007 states: "If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and; iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels." The Working Group affirms this Implementation Guideline with the following changes in italicized text: "If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe *in accordance with the Applicant Guidebook and supporting documents* ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement, *contention will be resolved through an ICANN Auction of Last Resort* and; iii) *Expert panels may be used to make Community Priority Evaluation determinations*." The revision to part i) specifies that any private resolution of contention must be in accordance with the Application Guidebook and supporting documents, including the Application Change request process and Terms and Conditions. Adjustments in the text of ii) and iii) describe in greater specificity program elements as they were implemented in the 2012 round, which will carry over into subsequent rounds.
Topic 35: Auctions:	Recommendation 35.2: Consistent with the Application Change processes set forth under Topic 20: Application

Summary of Outputs	
Topic	**Output**
Mechanisms of Last Resort / Private Resolution of Contention Sets	Change Requests, the Applicant Guidebook (AGB) must reflect that applicants will be permitted to creatively resolve contention sets in a multitude of manners, including but not limited to business combinations or other forms of joint ventures and private resolutions (including private auctions). • All private resolutions reached by means of forming business combinations or other joint ventures resulting in the withdrawal of one or more applications are subject to the Application Change processes set forth under Topic 20: Application Change Requests. • Any materially modified application resulting from a private resolution will be subject to a new operational comment period on the changes as well as a new period to file objections; provided however, objections during this new period must be of the type that arise due to the changing circumstances of the application and not merely the type of objection that could have been filed against the surviving application or the withdrawn applications in the contention set during the initial objection filing period. • All contention sets resolved through private resolution shall adhere to the transparency requirements set forth in the Contention Resolution Transparency Requirements in the relevant recommendation.
Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets	<u>Recommendation 35.3</u>: Applications must be submitted with a bona fide ("good faith") intention to operate the gTLD. Applicants must affirmatively attest to a bona fide intention to operate the gTLD clause for all applications that they submit. • Evaluators and ICANN must be able to ask clarifying questions to any applicant it believes may not be submitting an application with a bona fide intention. Evaluators and ICANN shall use, but are not limited to, the "Factors" described below in their consideration of whether an application was submitted absent bona fide intention. These "Factors" will be taken into consideration and weighed against all of other facts and circumstances surrounding the impacted applicants and applications. The existence of any one or all of the "Factors" may not themselves be conclusive of an application made lacking a bona fide use intent. • Applicants may mark portions of any such responses as "confidential" if the responses include proprietary business information. The Working Group discussed the following potential non-exhaustive list of "Factors" that ICANN may consider in determining whether an application was submitted with a bona fide ("good faith") intention to operate the gTLD. Note

Summary of Outputs	
Topic	**Output**

	that potential alternatives and additional language suggested by some Working Group members are included in brackets:
	• If an Applicant applies for [four] [five] or more strings that are within contention sets and participates in private auctions for more than fifty percent (50%) of those strings for which the losing bidder(s) receive the proceeds from the successful bidder, and the applicant loses each of the private auctions, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for each of those applications.
	• Possible alternatives to the above bullet point:
	   o [If an applicant participates in six or more private auctions and fifty percent (50%) or greater of its contention strings produce a financial windfall from losing.]
	   o [If an applicant receives financial proceeds from losing greater than 49% of its total number of contention set applications that are resolved through private auctions.]
	   o [If an applicant: a. Has six or more applications in contention sets; and b. 50% or more of the contention sets are resolved in private auctions; and c. 50% or more of the private auctions produce a financial windfall to the applicant.]
	   o [If an applicant applies for 5 or more strings that are within contention sets and participated in 3 private auctions for which the applicant is the losing bidder and receives proceeds from the successful bidder it MUST send to the evaluators a detailed reconciliation statement of its auction fund receipts and expenditure immediately on completion of its final contention set resolution. In addition this may be considered a factor by the evaluators and ICANN in determining lack of bona fide intention to operate the gTLD for all of its applications and in doing so might stop all its applications from continuing to delegation.]
	• If an applicant's string is not delegated into the root within two (2) years of the Effective Date of the Registry Agreement, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for that applicant.
	• If an applicant is awarded a top-level domain and [sells or assigns] [attempts to sell] the TLD (separate and apart from a sale of all or substantially all of its non-TLD related assets) within (1) year, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for that applicant.
	• [If an applicant with multiple applications resolves contention sets by means other than private auctions and does not win any TLDs.]

Summary of Outputs	
Topic	**Output**
	Consideration of whether an application was submitted with a bona fide intention to operate the gTLD must be determined by considering all of the facts and circumstances surrounding the impacted applicants and applications. The above factors may be considered by ICANN in determining such intent provided that there are no other credible explanations for the existence of those Factors.

Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets	Recommendation 35.4: ICANN Auctions of Last Resort must be conducted using the second-price auction method, consistent with following rules and procedural steps.
	• Once the application submission period closes, the String Similarity Evaluation for all applied-for strings must be completed prior to any application information being revealed to anyone other than the evaluators and ICANN org.
	• At the end of the String Similarity Evaluation period, applicants in contention sets will be informed of the number of other applications in their contention set, but no other information regarding the other applications will be shared. All applicants must submit a sealed bid for each relevant application ("Last Resort Sealed Bids"). Any applicant that does not submit a sealed bid at this time will be deemed to submit a bid of zero.
	• Only after the window to submit Last Resort Bids closes, non-confidential information submitted by applicants in their applications will be published (i.e., "Reveal Day"), including the composition of contention sets and the nature of the applications, (e.g., community-based applications, .Brand applications, etc.). Beginning on Reveal Day, applicants may participate in various forms of private resolution, subject to the Contention Resolution Transparency Requirements set forth herein.
	• All applications shall be evaluated and are subject to other application procedures (e.g., Initial Evaluation, Extended Evaluation, Objections, GAC Early Warning/Advice, Community Priority Evaluation). Some of these procedures may affect the composition of contention sets.
	    o To the extent any contention sets are expanded, by having other applications added (e.g., String Confusion Objections, appeals to the String Similarity Evaluation), all applicants (including both the existing members of the contention set as well as the new members) will be allowed, but are not required, to submit a new Last Resort Sealed Bid.
	    o To the extent any contention sets are shrunk, by having other applications removed from the process (e.g., withdrawal, losing objections, failing evaluation, Community Priority Evaluation identifying only

Summary of Outputs	
Topic	**Output**

	community-based applications which prevailed, etc.), applicants will NOT be allowed to adjust their sealed bids. However, in the event of a partial resolution of a contention set through the formation of a business combination or joint venture and the corresponding withdrawal of one or more applications, the remaining application AND each of the other existing applications in the contention set will be allowed, but are not required, to submit a new Last Resort Sealed Bid.
	• ICANN Auctions of Last Resort shall only take place after all other evaluation procedures, objections, etc., similar to the 2012 round. In addition, the ICANN Auction of Last Resort cannot occur if one or more of the applications in the contention set is involved in an active appeal or ICANN Accountability mechanism or is in a new operational comment period or reevaluation due to private resolution.
	    o Applicants in the contention set must be informed of the date of the ICANN Auction of Last Resort.
	    o Deposits for the ICANN Auction of Last Resort will be collected a fixed amount of time prior to the auction being conducted.
	    o On the ICANN Auction of Last Resort date, the applicant that submitted the highest Last Resort Sealed Bid amount pays the second-highest bid amount.
	    o Once payment is received within the specified time period, the applicant may proceed to the transition to delegation.
	    o Non-payment within the specified time period will result in disqualification of the applicant.

Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets	<u>Recommendation 35.5</u>: Applicants resolving string contention must adhere to the Contention Resolution Transparency Requirements as detailed below. Applicants disclosing relevant information will be subject to the Protections for Disclosing Applicants as detailed below. **Contention Resolution Transparency Requirements** • <u>For Private Auction or Bidding Process / ICANN Auction of Last Resort</u>: In the case of a private auction or an

Summary of Outputs	
Topic	**Output**
	ICANN Auction of Last Resort, all parties in interest[372] to any agreements relating to participation of the applicant in the private auction or ICANN Auction of Last Resort must be disclosed to ICANN within 72 hours of resolution and ICANN must, in turn, publish the same within 72 hours of receipt. This includes: o A list of the real party or parties in interest in each applicant or application, including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant; o List the names and contact information[373] of any party holding 15% or more direct or indirect ownership of each applicant or application, whether voting or nonvoting, including the specific amount of the interest or percentage held; o List the names and contact information[374] of all officers, directors, and other controlling interests in the applicant and/or the application; o The amount paid (or payable) by the winner of the auction; o The beneficiary(ies) of the proceeds of the bidding process and the respective distribution amounts; o The beneficiary(ies) of the proceeds of the bidding process; and o The value of the Applicant Support bidding credits or multiplier used, if applicable.[375] • <u>For Other Forms of Private Resolution:</u> Where contention sets are privately resolved through a mechanism other than a private auction, the following must be disclosed:

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[372] A party in interest is a person or entity who will benefit from the transaction even if the one participating in the transaction is someone else. This includes, but is not limited to any person or entity that has more than a *de minimus* ownership interest in an applicant, or who will be in a position to actually or potentially control the operation of an applicant.

[373] Contact Information will be subject to the same publication rules as contact information is treated in the application process.

[374] Same as above.

[375] We assume that Applicant Support bidding credits or multipliers would only be used in cases where the resolution sets were decided by an ICANN Auction of Last Resort, however, we note that it is theoretically possible that such credits or multipliers could be used during a private auction if all parties in the private auction agreed.

Summary of Outputs	
Topic	**Output**

	o The fact that the contention set (or part of a contention set), has been resolved privately (and the names of the parties involved);
	  o Which applications are being withdrawn (if applicable);
	  o Which applications are being maintained (if applicable);
	  o If there will be a change in ownership of the applicant, or any changes to the officers, directors, key personnel, etc., along with the corresponding information;
	  o All material information regarding any changes to information contained in the original application(s)(if any).
	
	In the event that any arrangements to resolve string contention results in any material changes to the surviving application, such changes must be submitted through the Application Change process set forth under Topic 20: Application Change Requests.
	
	Protections for Disclosing Applicants
	 • Except as otherwise set forth in the transparency requirements above, no participant in any private resolution process shall be required to disclose any proprietary information such as trade secrets, business plans, financial records, or personal information of officers and directors unless such information is otherwise required as part of a normal TLD application.
	 • The information obtained from the contention resolution process may not be used by ICANN for any purpose other than as necessary to evaluate the application, evaluate the New gTLD Program, or to otherwise comply with applicable law.

Topic 36: Base Registry Agreement	<u>Affirmation 36.1</u>: The Working Group affirms the following recommendations and implementation guidelines from the 2007: • Principle F: "A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies." • Recommendation 10: "There must be a base contract provided to applicants at the beginning of the application process."

Summary of Outputs	
Topic	**Output**
	• Recommendation 14: "The initial registry agreement term must be of a commercially reasonable length." • Recommendation 15: "There must be a renewal expectancy." • Recommendation 16: "Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved." • Implementation Guideline J: "The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing marketplace." • Implementation Guideline K: "ICANN should take a consistent approach to the establishment of registry fees."
Topic 36: Base Registry Agreement	Affirmation 36.2: The Working Group affirms the current practice of maintaining a single base Registry Agreement with "Specifications."
Topic 36: Base Registry Agreement	Recommendation 36.3: There must be a clearer, structured, and efficient method to apply for, negotiate, and obtain exemptions to certain provisions of the base Registry Agreement, subject to public notice and comment. A clear rationale must be included with any exemption request. This allows ICANN org to consider unique aspects of registry operators and TLD strings, as well as provides ICANN org the ability to accommodate a rapidly changing marketplace. The Working Group notes that consensus policy must not be the subject of individual Registry Agreement negotiations.
Topic 36: Base Registry Agreement	Recommendation 36.4: ICANN must add a contractual provision stating that the registry operator will not engage in fraudulent or deceptive practices. In the event that ICANN receives an order from a court that a registry has engaged in fraudulent or deceptive practices, ICANN may issue a notice of breach for such practices and allow the registry to cure such breach in accordance with the Registry Agreement. Further, in the event that there is a credible allegation by any third party of fraudulent or deceptive practices, other than as set forth in above, ICANN may, at its discretion, either commence dispute resolution actions under the Registry Agreement (Currently Article 5 of the Registry Agreement), or appoint a panel under the PICDRP. For the purposes of a credible claim of fraudulent or deceptive practices the reporter (as defined by the PICDRP) must only specifically state the grounds of the alleged non-compliance, but not that it personally has been harmed as a result of the registry operator's act or omission.
Topic 37: Registrar Non-Discrimination /	Recommendation 37.1: Recommendation 19 in the 2007 policy states: "Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars." The Working

Summary of Outputs	
Topic	**Output**
Registry/Registrar Standardization	Group recommends updating Recommendation 19 to state: "Registries must use only ICANN accredited registrars in registering domain names, and may not discriminate among such accredited registrars *unless an exemption to the Registry Code of Conduct is granted as stated therein,*[376] *provided, however, that no such exemptions shall be granted without public comment.*"
Topic 38: Registrar Support for New gTLDs	Affirmation 38.1: The Working Group affirms existing practice that it is up to a registrar to determine which gTLDs it carries.
Topic 39: Registry System Testing	Recommendation 39.1: ICANN must develop a set of Registry System tests[377] designed to demonstrate the technical capabilities of the registry operator.
Topic 39: Registry System Testing	Implementation Guidance 39.2: ICANN should include operational tests to assess readiness for Domain Name System Security Extensions (DNSSEC) contingencies (key roll-over, zone re-signing).
Topic 39: Registry System Testing	Implementation Guidance 39.3: ICANN should only rely on self-certifications in cases where such testing could be detrimental or disruptive to test operationally (e.g., load testing). This guidance is consistent with recommendation 5.2.b from ICANN org's Program Implementation Review Report.[378]
Topic 39: Registry System Testing	Recommendation 39.4: Registry System Testing (RST) must be efficient.

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[376] See Specification 9 - Registry Operator Code of Conduct for additional information about Code of Conduct exemptions: https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html#specification9

[377] Note that there is an important distinction between "evaluation" and "testing." Evaluation includes review of an applicant's responses to written questions regarding capabilities that cannot be demonstrated until the registry is operational. Testing refers to ICANN org's assessment of a registry's capabilities through the tests it conducts.

[378] Recommendation 5.2.b states: "Consider which, if any, tests can be converted from self-certifying tests to operational tests."

Summary of Outputs	
Topic	**Output**
Topic 39: Registry System Testing	Implementation Guidance 39.5: The testing of Internationalized Domain Name (IDN) tables should be removed if the applicant is using reference Label Generation Rules published by ICANN. To the extent an applicant is proposing tables that are reference Label Generation Rules, the tables should be reviewed during the evaluation process and the evaluator should utilize IDN tools available at the time of review.
Topic 39: Registry System Testing	Implementation Guidance 39.6: To the extent practical, RST should not repeat testing that has already taken place during the testing of the RSP (including during *RSP pre-evaluation*) and should instead emphasize testing of elements that are specific to the application and/or applied-for TLD. This guidance is consistent with recommendation 5.2.a and 5.2.c from ICANN org's Program Implementation Review Report.[379]
Topic 40: TLD Rollout	Affirmation 40.1: The Working Group affirms Implementation Guideline I from 2007, which states: "An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process."
Topic 40: TLD Rollout	Affirmation 40.2: The Working Group supports maintaining the timeframes set forth in the 2012 Applicant Guidebook and base Registry Agreement; namely (i) that successful applicants continue to have nine (9) months following the date of being notified that it successfully completed the evaluation process to enter into a Registry Agreement, and (ii) that registry operators must complete all testing procedures for delegation of the TLD into the root zone within twelve (12) months of the Effective Date of the Registry Agreement. In addition, extensions to those time frames should continue to be available according to the same terms and conditions as they were allowed during the 2012 round.
Topic 41: Contractual Compliance	Affirmation 41.1: The Working Group affirms Recommendation 17 from the 2007 policy, which states: "A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination."

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[379] Recommendation 5.2.a states: "Consider which tests should be performed once per technical infrastructure implementation and which should be performed for each TLD." Recommendation 5.2.c states: "In considering an alternate approach to the Technical and Operational Capability evaluation, if an RSP accreditation program is considered, explore how Pre-Delegation Testing would be impacted."

Summary of Outputs	
Topic	**Output**
Topic 41: Contractual Compliance	Recommendation 41.2: ICANN's Contractual Compliance Department should publish more detailed data on the activities of the department and the nature of the complaints handled; provided however, that ICANN should not publish specific information about any compliance action against a registry operator unless the alleged violation amounts to a clear breach of contract. To date, ICANN compliance provides summary statistics on the number of cases opened, generalized type of case, and whether and how long it takes to close. More information must be published on: (a) the context of the compliance action and whether it was closed due to action taken by the registry operator, or whether it was closed due to a finding that the registry operator was never out of compliance, and (b) standards and/or thresholds ICANN applies in assessing, and accepting each complaint for further action.

Annex C – Consensus Designations

Annex C provides the consensus designations for the outputs included in this Final Report. In summary, all but 1 of the topics received a designation of either Full Consensus or Consensus. The Annex provides further detail about the consensus designations for specific outputs under each topic. More specifically, 25 topics received Full Consensus, 16 received Consensus and 1 received a designation of Strong Support but Significant Opposition. Within each of the topics that received either Consensus or Strong Support but Significant Opposition, the table sets forth those outputs within the topic that achieved Consensus or Full Consensus. For example, in Topic 2, the overall designation for the Topic is "Consensus." That said, Outputs 2.1, 2.2, 2.4, 2.5, 2.6, 2.7 and 2.8 had "Full Consensus", but Output 2.3 had Consensus.

Topic	Overall Topic Designation	Output Designation
Topic 1: Continuing Subsequent Procedures	Full Consensus	
Topic 2: Predictability	Consensus	Full Consensus on 2.1, 2.2, 2.4-2.8; Consensus on 2.3
Topic 3: Applications Assessed in Rounds	Consensus	Full Consensus on 3.1-3.5, and 3.7; Consensus on 3.6
Topic 4: Different TLD Types	Consensus	Full Consensus on 4.2 and 4.3; Consensus on 4.1
Topic 5: Applications Submission Limits	Full Consensus	
Topic 6: Registry Service Provider Pre-Evaluation	Full Consensus	
Topic 7: Metrics and Monitoring	Full Consensus	
Topic 8: Conflicts of Interest	Full Consensus	

Topic	Overall Topic Designation	Output Designation
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	Consensus	Full Consensus on 9.1-9.8, 9.13, and 9.14; Consensus on 9.9-9.12 and 9.15
Topic 10: Applicant Freedom of Expression	Full Consensus	
Topic 11: Universal Acceptance	Full Consensus	
Topic 12: Applicant Guidebook	Consensus	Full Consensus on 12.1-12.8; Consensus on 12.9 and 12.10
Topic 13: Communications	Full Consensus	
Topic 14: Systems	Full Consensus	
Topic 15: Application Fees	Consensus	Full Consensus on 15.2-15.6; Consensus on 15.1 and 15.7
Topic 16: Application Submission Period	Full Consensus	
Topic 17: Applicant Support	Consensus	Full Consensus on 17.2, 17.3, 17.5-17.14; Consensus on 17.1, 17.4, 17.15-17.18
Topic 18: Terms & Conditions	Consensus	Full Consensus on 18.1, 18.2 and 18.4-18.7; Consensus on 18.3 Consensus
Topic 19: Application Queuing	Full Consensus	
Topic 20: Application Change Requests	Full Consensus	
Topic 21: Reserved Names	Consensus	Full Consensus on 21.1-21.3 and 21.5-21.6; Consensus on 21.4

Topic	Overall Topic Designation	Output Designation
Topic 21.1: Geographic Names	Consensus	Consensus on the Work Track 5 Final Report
Topic 22: Registrant Protections	Full Consensus	
Topic 23: Closed Generics	Full Consensus	
Topic 24: String Similarity Evaluations	Consensus	Full Consensus on 24.1-24.2; Consensus on 24.3-24.6 Consensus
Topic 25: IDNs	Full Consensus	
Topic 26: Security and Stability	Full Consensus	
Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services	Consensus	Full Consensus on 27.1-27.17, and 27.18(i) and (ii); Consensus on 27.18(iii).
Topic 28: Role of Application Comment	Full Consensus	
Topic 29: Name Collisions	Consensus	Full Consensus on 29.1 and 29.3-29.6; Consensus on 29.2
Topic 30: GAC Consensus Advice and GAC Early Warning	Consensus	Full Consensus on 30.1, 30.5, and 30.7-30.19 ; Consensus on 30.2, 30.4 and 30.6.
Topic 31: Objections	Full Consensus	
Topic 32: Limited Challenge/Appeal Mechanism	Full Consensus	
Topic 33: Dispute Resolution Procedures After Delegation	Full Consensus	

Topic	Overall Topic Designation	Output Designation
Topic 34: Community Applications	**Consensus**	**Full Consensus on 34.2, 34.3, 34.5-34.10, 34.13-34.22; Consensus on 34.1, 34.4, 34.11 and 34.12**
Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets	Strong Support but Significant Opposition	Consensus on 35.1, 35.3, 35.5; Strong Support but Significant Opposition on 35.2* and 35.4

*There is Consensus on Recommendation 35.2 and each of the bullet points contained therein except to the extent that it mentions "private auctions". There is significant opposition to the use of Private Auctions as a means of private resolution of contention sets. |
Topic 36: Base Registry Agreement	**Full Consensus**	
Topic 37: Registrar Non-Discrimination / Registry/Registrar Standardization	**Full Consensus**	
Topic 38: Registrar Support for New gTLDs	**Full Consensus**	
Topic 39: Registry System Testing	**Full Consensus**	
Topic 40: TLD Rollout	**Full Consensus**	
Topic 41: Contractual Compliance	**Consensus**	**Full Consensus on 41.1; Consensus on 41.2**

Annex D – Introduction of New Generic Top-Level Domains Policy Recommendations (2007)

2007 Policy	Affirmed by the SubPro Working Group?	Report Topic Where Addressed
Principle A	Affirmed	Topic 1: Continuing Subsequent Procedures
Principle B	Affirmed with Modification	Topic 25: Internationalized Domain Names
Principle C	Affirmed	Topic 6: RSP Pre-Evaluation
Principle D	Affirmed	Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services
Principle E	Affirmed	Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services
Principle F	Affirmed	Topic 36: Base Registry Agreement
Principle G	Affirmed	Topic 10: Applicant Freedom of Expression
Recommendation 1	Affirmed	Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services
Recommendation 2	Affirmed	Topic 24: String Similarity Evaluations

2007 Policy	Affirmed by the SubPro Working Group?	Report Topic Where Addressed
Recommendation 3	Affirmed	Topic 10: Applicant Freedom of Expression
Recommendation 4	Affirmed	Topic 26: Security and Stability
Recommendation 5	Affirmed	Topic 21: Reserved Names
Recommendation 6	Affirmed	Topic 31: Objections
Recommendation 7	Affirmed with Modification	Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services
Recommendation 8	Affirmed with Modification	Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services
Recommendation 9	Affirmed	Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services
Recommendation 10	Affirmed	Topic 36: Base Registry Agreement
Recommendation 12	Affirmed with Modification	Topic 31: Objections
Recommendation 13	Affirmation with Modification	Topic 3: Applications Assessed in Rounds
Recommendation 14	Affirmed	Topic 36: Base Registry Agreement

2007 Policy	Affirmed by the SubPro Working Group?	Report Topic Where Addressed
Recommendation 15	Affirmed	Topic 36: Base Registry Agreement
Recommendation 16	Affirmed	Topic 36: Base Registry Agreement
Recommendation 17	Affirmed	Topic 41: Contractual Compliance
Recommendation 18	Affirmed with Modification	Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services
Recommendation 19	Recommendation to Update	Topic 37: Registrar Non-Discrimination / Registry/Registrar Standardization
Recommendation 20	Affirmed	Topic 31: Objections
IG A	Affirmed	Topic 12: Applicant Guidebook
IG B	Affirmed with Modification	Topic 15: Application Fees
IG C	Affirmed	Topic 13: Communications
IG D	Recommendation to Update	Topic 19: Application Queuing
IG E	Affirmed with Modification	Topic 12: Applicant Guidebook
IG F*	Affirmed with Modification	Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of

2007 Policy	Affirmed by the SubPro Working Group?	Report Topic Where Addressed
		Contention Sets
IG H*	Affirmed with Modification	Topic 34: Community Applications
IG H	Affirmed	Topic 31: Objections
IG I	Affirmed	Topic 40: TLD Rollout
IG J	Affirmed	Topic 36: Base Registry Agreement
IG K	Affirmed	Topic 36: Base Registry Agreement
IG L	Affirmed	Topic 14: Systems
IG M	Affirmed	Topic 13: Communications
IG N	Recommendation to Update	Topic 17: Applicant Support
IG O	Affirmed	Topic 14: Systems
IG P*	Affirmed	Topic 31: Objections
IG Q	Affirmed	Topic 31: Objections
IG R	Affirmed with Modification	Topic 31: Objections

Annex E – Topic 2: Predictability Framework

Overview

The Predictability Framework will be used to address issues that arise in the New gTLD Program after the Applicant Guidebook is approved which may result in changes to the program and its supporting processes. The Predictability Framework seeks to ensure that these issues are managed in a predictable, transparent, and fair manner.

Predictability Framework: Categories of Changes to the New gTLD Program after Approval of the Applicant Guidebook

Only the GNSO Council, ICANN Board or ICANN org may initiate action on an issue or proposed program change that needs to be analyzed to determine in which category it belongs. The category will assist in proposing an appropriate course of action for handling the change as outlined below.

1. **Operational: Changes to ICANN Organization Internal Processes**

    a. **Operational – Minor**

    Description: A minor change is defined as "A change to ICANN org's internal processes that does not have a material impact on applicants or other community members, change applications, or any of the processes set forth in the Applicant Guidebook." This usually involves no changes to the Applicant Guidebook, including the evaluation questions or scoring criteria, but may involve the way in which ICANN org or its third-party contractors meet their obligations under the Applicant Guidebook. Examples include:

    - A change in the internal process workflow for contracting or pre-delegation testing;
    - Changing back-end accounting systems;
    - ICANN org selecting or changing a subcontractor to perform assigned tasks under the Applicant Guidebook where the original selection process did not involve feedback from the ICANN community.
    - ICANN org rolling out an organization wide change the includes New gTLD Program processes but nevertheless has no material impact

    Process: ICANN org shall use the Framework to determine if an issue falls in this category. All minor ICANN org internal process changes may be implemented by ICANN org without a need for consultation but shall nevertheless be reported on subsequent to their implementation in a change log, or similar.

b. Operational – **Non-Minor**

Description: These are changes to ICANN org's internal processes that have (or are likely to have) a material effect on applicants or other community members. Examples include:

- A change in ICANN org's internal Service Level Agreements related to contracting or pre-delegation testing that adjusts the overall timeline;
- Changes made to the workflow for handling change requests (e.g., a procedural change rather than a change in the scope of allowable change requests).

Process: ICANN org shall use the Framework to determine if an issue falls in this category. ICANN org must inform the SPIRT of issues arising in this category and the SPIRT will have the option to collaborate with ICANN org as a solution is developed. The SPIRT will keep the GNSO Council informed about any work it is doing in this regard. All non-minor changes to ICANN org's internal processes must be communicated to all impacted (or reasonably foreseeable impacted parties), prior to deployment of the change, and shall be reported on subsequent to their implementation in a change log, or similar.[380]

c. Operational – **New Process or Significant Change to Internal Process**

Description: These are either of the following:

- New processes that are likely to have a material impact on applicants or community members. Examples include:
  - A new public comment platform/tool is intended to be utilized;
  - A new process/platform is created to submit an objection (for an existing objection type).
- OR Changes to ICANN org's internal processes that have (or are likely to have) a significant impact on applicants or other community members and is expected to:
  - Result in suspension of a round
  - Result in delay of a future round
  - Result in delay in processing of applications by more than 30 days
  - Target specific application types

Process: ICANN org must inform the SPIRT of issues arising in this category and the SPIRT will have the option to collaborate with ICANN org as a solution is developed. The GNSO Council or ICANN Board may also initiate action on an issue they believe to be in this category and request assistance from the SPIRT. Once changes are agreed, changes should be communicated to all impacted (or

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[380] Changes here are expected to be procedural in nature. To the extent that a change is envisioned to the scope or nature of a process (e.g., changes to the standing requirements or dispute resolution principles for objections), the issue is more appropriately considered under section (c) below.

reasonably foreseeable impacted) parties prior to deployment of the change, and shall be reported on subsequent to their implementation in a change log, or similar.

2. **Possible Policy Level – <u>Changes that May Have a Policy Implication</u>**

<u>d. Description</u>: These are potential changes to implementation that may materially differ from the original intent of the policy and could be considered creation of new policy. An example is the development of an application ordering mechanism (e.g., digital archery).

<u>Process</u>: If the GNSO Council, ICANN Board or ICANN org initiate action on an issue that they believe to be in this category, the Framework will be used to screen if there is a policy implication and recommend the mechanism by which the solution will be developed. Options could include:

- Recommending that the change is not significant (meaning that it is not likely to have a material impact on an affected party) and that the proposed change is consistent with existing recommendation(s) and ensuing policy implementation;
- Recommending that additional consideration by the community is needed. In such a case, the issue would be referred to the GNSO Council. The GNSO Council would then have the discretion to decide whether to handle the issue via a PDP, EPDP, GNSO Input Process (GIP), GNSO Guidance Process (GGP) or any other mechanism at its disposal which it deems appropriate.
- Under extraordinary circumstances, there could be a recommendation that the New gTLD Program be halted for a communicated amount of time. In such a case, the triggering mechanism and rationale for recommending this extraordinary action must be provided to the GNSO Council for its consideration.

All recommendations are subject to the review and oversight of the GNSO Council, who maintains the discretion on whether or not to adopt the recommendations.

3. **Possible Policy Level – <u>New Proposals that May Have Policy Implication</u>**

<u>e. Description</u>: These are new mechanisms that may be considered to be within the remit of policy development. Examples include[381]:

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[381] Note that some types of new mechanisms are so clearly within the remit of policy development that it is not necessary to involve the SPIRIT. An example would be a change to rights protection mechanisms that protect trademark owners in the new gTLD process.

- The development of a new contract specification (e.g., Public Interest Commitments);
- Creation of new exemptions to the Code of Conduct.

Process: If the GNSO Council, ICANN Board or ICANN org initiate action on an issue that they believe to be in this category, the Framework will be used to screen if there is a policy implication and recommend the mechanism by which the solution will be developed. Options could include:

- Recommending that the new proposal does not rise to the level of policy development (e.g., an implementation detail) and/or that the new proposal is consistent with existing recommendation(s) and ensuing policy implementation.
- Recommending that additional consideration is needed. In this case the issue shall be referred to the GNSO Council. The GNSO Council would then have the discretion to decide whether to handle the issue via a PDP, EPDP, to consider invoking the GNSO Input Process (GIP), or GNSO Guidance Process (GGP) or any other mechanism at its disposal which it deems appropriate.
- Under extraordinary circumstances, there could be a recommendation to the GNSO Council that the New gTLD Program could be halted for a communicated amount of time. In such a case, the triggering mechanism and rationale for recommending this extraordinary action must be provided to the GNSO Council for its consideration.

All recommendations are subject to the review and oversight of the GNSO Council, who maintains the discretion on whether or not to adopt the recommendations.

Utilizing the Predictability Framework: Role of the Standing Predictability Implementation Review Team (SPIRT)

Given the unique and complicated nature of the New gTLD Program, the Working Group recommends that a Standing Predictability Implementation Review Team (SPIRT) (pronounced "spirit") be established to utilize the Predictability Framework.

The SPIRT would therefore be the body empowered to provide input to the GNSO Council, the ICANN Board, ICANN org, and the ICANN community on issues regarding the new gTLD Program after the approval of the Applicant Guidebook. The SPIRT can, for example, review any potential change before it is made to determine which of the categories delineated above are relevant to the change. The following is a summary of when the GNSO Council, ICANN Board or ICANN org is expected to request involvement from the SPIRT:

Type of change	SPIRT involved	Notes
A – Operational – minor	no	ICANN org records all changes in change log.
B – Operational – non-minor	yes	ICANN org records all changes in change log.
C – Operational – new process or significant change to internal process	yes	ICANN org records all changes in change log. It is a SPIRT task to recommend when an otherwise operational change has a possible policy implication.
D – Possible policy level changes to existing processes	yes	
E – Possible policy level new proposals	yes	

The GNSO Council shall maintain a supervisory role over the SPIRT. Ultimately, the GNSO is "responsible for developing and recommending to the Board substantive policies relating to generic top-level domains."[382] It is also responsible for managing the policy development process of the GNSO.[383]

SPIRT Chartering

1. SPIRT Recruitment
   a. The Standing Predictability Implementation Review Team (SPIRT) volunteer recruitment process should take into account what areas of expertise are expected to be needed. Identification of necessary areas of expertise should preferably be done before issuing a call for volunteers. Additional expert participation in the SPIRT may be sought throughout implementation as needs are identified.
   b. The call for SPIRT volunteers should clearly identify the needed areas of expertise, the scope and approximate time frame of the work, the roles of SPIRT participants, and the value the group is expected to bring.
   c. The call for SPIRT volunteers should at a minimum be sent to all members of the PDP working group and IRT that were responsible for

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[382] https://www.icann.org/resources/pages/governance/bylaws-en/#article11 at 11.1
[383] https://www.icann.org/resources/pages/governance/bylaws-en/#article11 at 11.2

developing the policy and implementation recommendations. The call for volunteers may need to reach beyond the working group members to ensure broad participation by parties directly impacted by the implementation and parties with specialized expertise needed for implementation. In some cases, additional outreach at the start or at a later stage of the SPIRT may be necessary to ensure that appropriate expertise is available and that directly affected parties are involved in the SPIRT.

    d. To the extent feasible and applicable, composition of the IRT should be balanced among stakeholder groups. In addition to the usual ICANN stakeholders, the IRT should also contain prospective applicants for new gTLDs and others knowledgeable and experienced in the various new gTLD processes and procedures.

2. Composition of the SPIRT

    a. The SPIRT should at a minimum, at the time it is initiated, include at least one participant from the original PDP WG and PDP Implementation Review Team who can provide insight into the original reasoning behind consensus policy recommendations and implementation decisions.

    b. The GNSO Council is expected to designate a GNSO Council liaison to the SPIRT to ensure a direct link to the GNSO Council if/when needed. Advisory Committees may, but shall not be required to, appoint a liaison to the SPIRT.

    c. The SPIRT should be open to all interested parties, but may not necessarily be representative of the ICANN community, as actual participation may depend on interest and relevance of the new gTLD Process. Membership criteria should identify knowledge, experience, responsibilities to their respective organization, rules of engagement, a Statement of Participation, etc.

    d. Length of Term[384]

       • Members shall serve a two-year term with the option to renew for up to two additional two-year terms (i.e., a maximum of six (6) consecutive years). A member who has served three consecutive terms must remain out of office for one full term prior to serving any subsequent term as a SPIRT member. Additionally, the intention is to stagger member terms to provide for continuity and knowledge retention.

       • To facilitate this, at least half of the inaugural SPIRT members will join for an initial term of three years. Subsequent terms will be for two years.

    e. The Statement of Participation should include all of the usual elements of a GNSO Statement of Interest plus additional information the GNSO Council may see fit, including but not limited to, whether the participant is (or will be) employed by, under contract with, has a financial interest in,

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[384] Term limits may only be appropriate and applicable if participation is limited in some manner.

or providing consulting, financial, legal or other services to, any new gTLD applicant, objector, or commenter. The Statement of Participation is not intended to exclude any person/entity from participating, but rather to provide complete information about the participant to the community. All Statements of Participation shall be made public.

   f. The SPIRT may determine that additional subject matter expertise, beyond members, is needed to inform discussions on matters that fall within the remit of the SPIRT. If there are budget implications related to the participation of such external resources, funding should be confirmed in advance with the appropriate ICANN Staff organization.

3. SPIRIT Role
   a. The SPIRT shall serve as the body responsible for reviewing potential issues related to the New gTLD Program, to conduct analysis utilizing the Framework, and to recommend the process/mechanism that should be followed to address the issue (i.e., utilize the Predictability Framework). The GNSO Council shall be responsible for oversight of the SPIRT and may review all recommendations of the SPIRT in accordance with the procedures outlined in the GNSO Operating Procedures and Annexes thereto.
   b. Who can raise an issue to the SPIRT?
      • Issues forwarded to the SPIRT should be subject to thoughtful analysis and have an impact beyond a single applicant. As such, issues can only be forwarded by:
         • ICANN Board;
         • ICANN org; or
         • The GNSO Council
      • For avoidance of doubt, the SPIRT cannot refer an issue to itself.
      • Rationale: Although any SO/AC may raise issues regarding the New gTLD Program, the issues must be vetted through one of the above entities in order to be taken up by the SPIRT. The reason that other SOs or ACs may not request that an issue be taken up by the SPIRT directly is because:
         (a) the SPIRT is under GNSO supervision,
         (b) we want to avoid lobbying efforts to have the SPIRT take up issues, and
         (c) nothing herein is intended to serve as a substitute for, or replacement of, the mechanisms set forth in the ICANN Bylaws for providing advice to the ICANN Board. Rather, the creation of the SPIRT is intended as an additional tool for the ICANN organization, Board and GNSO to address issues that arise after the approval of the Applicant Guidebook.
   c. How can each of these Groups forward an issue to the SPIRT?

- ICANN Board: By letter from the Chair of the ICANN Board or applicable New gTLD Board Committee;
- ICANN Org: By letter from the ICANN CEO and/or his/her designee;
- GNSO Council: By letter from the Chair of the GNSO Council or his/her designee.
- Every item referred to the SPIRT should contain an expected turnaround time in the referral request. This will also allow for certain items to be handled in an expedient fashion when required and others to have a longer time where speed may not be needed.

d. Who receives the Advice / Guidance issued by the SPIRT?

- In general, all advice/guidance issued by the SPIRT should be delivered to the entity that forwarded the issue under Section 1 above.
- Where an issue was forwarded under Section 1 by a party other than the GNSO Council (i.e., ICANN Board or ICANN org), the GNSO Council should be provided with a draft of the advice/guidance prior to such advice/guidance being delivered to the party that forwarded the issue.
- Role of GNSO Council where issue was forwarded by a party other than the Council. Upon being provided with a copy of the draft advice/guidance, the GNSO Council shall within no greater than 60 days, unless a 30-day extension is requested by the Council:
  - Approve the delivery of the draft advice/guidance to the party that initially forwarded the issue;
  - Raise issues/concerns regarding the advice/guidance for the SPIRT to address prior to delivering the advice/guidance to the party that initially forwarded the issue; or
  - Elect to remove the advice/guidance from the SPIRT process in favor of implementing one of its own policy processes under the GNSO Operating Procedures (e.g., PDP, ePDP, GNSO Input, etc.) for additional consideration. In this case, the GNSO Council shall communicate its decision and rationale to the party that initially forwarded the issue.
- Role of GNSO Council where it was the party raising the issue.
  - Where the GNSO Council originally forwarded the issue to the SPIRT, it should employ processes and procedures to consider SPIRT recommendations as expeditiously as possible, and seek to make a decision in no more than two (2) GNSO Council meetings from receipt of SPIRT advice/recommendations.
  - The GNSO Council shall inform the SPIRT of its decision, providing rationale and proposed next steps.

2. ICANN Staff Interaction with the SPIRT
   a. The SPIRT will provide guidance and/or validation to ICANN org as well as make recommendations to the GNSO Council. Therefore, ICANN org will play a supporting role.

        b. ICANN will provide staff liaisons from ICANN org GDD, legal, and policy support.

3. SPIRT Operating Principles
   a. There is a presumption that the SPIRT will operate with full transparency, with at a minimum a publicly archived mailing list and recording of all SPIRT calls. In the extraordinary event that the SPIRT should require confidentiality, the SPIRT is normally encouraged to conduct its meeting(s) in accordance with the Chatham House Rule as the preferred option, and if necessary, additional rules and procedures may be developed by the SPIRT in coordination with ICANN staff.
   b. SPIRT Leadership: A Chair will be selected by the SPIRT from amongst its members as early as practicable. The SPIRT should select up to two Vice-Chairs, taking into account the diversity of the ICANN community (e.g., avoid all leadership positions coming from the same geographic region or SO/AC/SG/C, avoid extensive overlap of skillset, etc.)
   c. SPIRT Decision-making
      • The SPIRT is intended to serve as an advisory body to provide guidance to ICANN org, the ICANN Board and the ICANN community. Such advice and/or guidance shall not be binding on any party and does not replace any other method of providing advice or guidance under the Bylaws.
      • The Chair of the SPIRT, in consultation with any Vice-Chairs, will assess the level of consensus within the SPIRT, using standard decision-making methodology as outlined in section 3.6 of the GNSO Working Group Guidelines.
      • The SPIRT shall strive towards achieving Consensus on all advice and/or recommendations from the SPIRT. Even if Consensus is not reached, the SPIRT can provide input on any particular issue received, as long as the level of Consensus/support within the SPIRT is reported using the standard decision-making methodology outlined in section 3.6 of the GNSO Working Group Guidelines.
      • Any SPIRT member that believes that his/her contributions are being systematically ignored or discounted or wants to appeal a decision of the SPIRT or GDD Staff should first discuss the circumstances with the GNSO Council liaison to the SPIRT. In the event that the matter cannot be resolved satisfactorily, the SPIRT member should request an opportunity to discuss the situation with the Chair of the GNSO Council or their designated representative. In addition, a SPIRT member always has the option to involve the ombudsman (see https://www.icann.org/resources/pages/accountability/ombudsmanen for further details).
      • SPIRT deliberations should not be used as a tool to reopen a previously explored policy issue only because a constituency or stakeholder group was not satisfied with the outcome of a previously

held process on the same policy issue, unless the circumstances have changed and/or new information is available.

d. Conflicts of Interest

- SPIRT members must complete a Statement of Participation, which should be kept current and is subject to periodic review. As noted, the Statement of Participation may have questions specific to serving on the SPIRT.

- The ICANN Bylaws make clear that it must apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment; which would require transparent fairness in its dispute resolution processes. Members of the SPIRT should accordingly disclose in their Statements of Participation (Chapter 6 of the GNSO Operating Procedures on Statements of Interest is relevant[385]) any financial interests and, possibly, incentives as they pertain to a specific complaint or issue under review. The term "Conflict of Interest" will not pertain to the actions of SPIRT members, but that does not imply that there may not be circumstances whereby a member might feel the need to abstain from a SPIRT decision. At no time should any single application be singled out for disparate treatment from other applications that are similarly situated.

- SPIRT members shall follow ICANN's Expected Standards of Behavior as outlined in the ICANN Accountability and Transparency Framework.

- To support transparency, SPIRT members shall disclose on a regular and ongoing basis if an issue being addressed by the SPIRT involves an application of which a SPIRT member has a direct interest, including as applicant, and/or through their firm, company or client. Disclosures shall take place at the beginning of every SPIRT meeting and will be captured on the recording of the meeting.

- When appropriate, the member of the SPIRT may recuse himself/herself, but required disclosure of a direct involvement in an application with an issue before the SPIRT does not, in and of itself, require recusal.

e. Role of Public Comment

- Recommendations related to operational issues will normally not be subject to public comment unless agreed to by Consensus within the SPIRT.

- Recommendations that are directed towards the GNSO Council will normally not be subject to any additional public comment beyond what is normally envisioned by relevant operating procedures (e.g., if a PDP is required, then those rules prevail). However, in rare instances, a public comment period may be conducted prior to delivering

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[385] Of note, this section of the GNSO Operating Procedures requires that, "At the beginning of each meeting the Chair of the GNSO Group shall ask all Relevant Parties whether they have updates to their Statements of Interest."

recommendations to the GNSO Council if agreed to by Consensus within the SPIRT.

f. Code of Conduct

- Members of the SPIRT will be subject to a code of conduct stating that they may not take action that is designed to discriminate against any entity/applicant or group of entities/applicants.

Annex F – Topic 34: Limited Challenge/Appeal Mechanism

The following table provides guidance about the details of the limited **challenge mechanism for evaluation procedures**. Please see Topic 32: Limited Challenge/Appeal Mechanism for additional context.

Process	Outcome that might warrant challenge	Potential affected parties	Parties with standing	Arbiter of challenge	Likely results of a successful challenge	Who bears cost?
Background Screening	Failure – disqualification for application from program	- Applicant	- Applicant	Existing evaluator entity – different ultimate decision maker(s) within the entity	Reinstatement of application	Applicant
Background Screening	No issues found in background screening	- Applicant - Members of the contention set, if applicable	- Member(s) of the contention set, if applicable	Existing evaluator entity – different ultimate decision maker(s) within the entity	Disqualification from program	Member(s) of the contention set
String Similarity	Found to be similar to existing TLD, Reserved Names, 2-char IDNs against one-char (any) and 2-char (ASCII) –	- Applicant - Existing TLD Operator	- Applicant - Existing TLD Operator (No standing, but can file objection)	Existing evaluator entity – different ultimate decision maker(s) within the entity	Reinstatement of application	Applicant

Process	Outcome that might warrant challenge	Potential affected parties	Parties with standing	Arbiter of challenge	Likely results of a successful challenge	Who bears cost?
	disqualification for application from program					
String Similarity	Found to be similar to another applied-for TLD – inclusion in a contention set	- Applicant - Other applicants in contention set	- Applicant - Other applicants in contention set	Existing evaluator entity – different ultimate decision maker(s) within the entity	Removal of string from contention set	Filing Party
String Similarity	Found NOT to be similar to an existing TLD, Reserved Names, 2-Char IDNs....	- Applicant - Existing TLD Operator	- May not be appealed; Existing TLD can always file an objection	N/A	N/A	N/A
String Similarity	Found NOT to be similar to another applied-for-TLD	- Applicant - Other applicants in contention set	- May not be appealed; Other applicants can file objection	N/A	N/A	N/A
DNS Stability	Failure – disqualification for application from program	Applicant	Applicant	Existing evaluator entity – different ultimate decision maker(s) within the entity	Reinstatement of application	Applicant

Process	Outcome that might warrant challenge	Potential affected parties	Parties with standing	Arbiter of challenge	Likely results of a successful challenge	Who bears cost?
Geographic Names	Designation as a geographic name as prescribed in the AGB	Applicant	Applicant	Existing evaluator entity – different ultimate decision maker(s) within the entity	Reversal of designation as a geographic name	Applicant
Geographic Names	String is NOT designated as a geographic name as prescribed in the AGB	- Applicant - Relevant government or public authority	- Applicant - Relevant government or public authority	Existing evaluator entity – different ultimate decision maker(s) within the entity	Designation as a geographic string	Applicant/Relevant government or public authority
Geographic Names	Definition of "relevant governments" disputed or other deficiency in documentation	- Applicant - Relevant government or public authority	- Applicant - Relevant government or public authority	Existing evaluator entity – different ultimate decision maker(s) within the entity	Change in definition or reversal of deficiency	Applicant/Relevant government or public authority
Technical & Operations	Failure – disqualification for application from program	Applicant	Applicant	Existing evaluator entity – different ultimate decision maker(s) within the entity	Reinstatement of application	Applicant
Financial	Failure – disqualification for application	Applicant	Applicant	Existing evaluator entity – different ultimate decision	Reinstatement of application	Applicant

Process	Outcome that might warrant challenge	Potential affected parties	Parties with standing	Arbiter of challenge	Likely results of a successful challenge	Who bears cost?
	from program			maker(s) within the entity		
Registry Services	Assignment to extended review by RSTEP and RSTEP disapproves new service	Applicant	Applicant	New panel with different RSTEP panelists selected from the standing roster	New Service allowed to be included in New TLD Agreement	Applicant
Community Priority Evaluation	Applicant prevails in CPE – community-based applicant receives priority	Members of the contention set	Member(s) of the contention set	Existing evaluator entity – different ultimate decision maker(s) within the entity	Decision reversed – community-based application does NOT receive priority	Member(s) of the contention set
Community Priority Evaluation	Applicant does not prevail in CPE – community-based applicant must resolve contention through other mechanisms	Applicant	Applicant	Existing evaluator entity – different ultimate decision maker(s) within the entity	Decision reversed – community-based application DOES receive priority	Applicant
Applicant Support	Applicant is determined to not meet the criteria –	Applicant	Applicant	Existing evaluator entity – different ultimate decision	Decision reversed – applicant receives funding	Applicant

Process	Outcome that might warrant challenge	Potential affected parties	Parties with standing	Arbiter of challenge	Likely results of a successful challenge	Who bears cost?
	(in 2012, applicant had no recourse. Preliminarily, this WG is considering allowing the applicant to proceed at the normal application amount.)			maker(s) within the entity	support	
RSP Pre-Evaluation	Failure – unable to be designated as pre-evaluated	RSP	RSP	Existing evaluator entity – different ultimate decision maker(s) within the entity	Successful designation as pre-evaluated	RSP

The following table provides guidance about the details of the limited **appeal mechanism for formal objections decisions**. Please see Topic 32: Limited Challenge/Appeal Mechanism for additional context.

Process	Potential appellant	Standing?	What is being appealed?	Arbiter of appeal?	Likely results of successful appeal?	Who bears costs?	Notes
String Confusion	Applicant	Yes	A determination that there is string confusion with an existing TLD	Existing Provider; Different Panelist(s)	Application is reinstated	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal
String Confusion	Applicant	Yes	A determination that there is string confusion with another application	Existing Provider; Different Panelist(s)	Application removed from contention set	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal
String Confusion	Existing TLD Objector	Yes	A determination that there is not confusion with an existing TLD	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal
String Confusion	Another Applicant Objector	Yes	A determination that there is not confusion with another application	Existing Provider; Different Panelist(s)	Application is placed into Objector's contention set	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal

Process	Potential appellant	Standing?	What is being appealed?	Arbiter of appeal?	Likely results of successful appeal?	Who bears costs?	Notes
Legal Rights Objection	Applicant	Yes	A determination that the applied for string infringes the legal rights of the Legal Rights Objector	Existing Provider; Different Panelist(s)	Application is reinstated	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal
Legal Rights Objection	Legal Rights Objector	Yes	A determination that the applied for string does not infringe the legal rights of the Legal Rights Objector	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal
Limited Public Interest Objection	Applicant	Yes	A determination that the applied for string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.	Existing Provider; Different Panelist(s)	Application is reinstated	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal

Process	Potential appellant	Standing?	What is being appealed?	Arbiter of appeal?	Likely results of successful appeal?	Who bears costs?	Notes
Limited Public Interest Objection	3rd Party Objector	Yes	A determination that the applied for string is not contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal
Limited Public Interest Objection	Independent Objector	Yes	A determination that the applied for string is not contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter (The IO must pay for an unsuccessful appeal out of its budget)	15 days to signal intent of appeal, then 15 more days to pay and file appeal

Process	Potential appellant	Standing?	What is being appealed?	Arbiter of appeal?	Likely results of successful appeal?	Who bears costs?	Notes
Limited Public Interest Objection	ALAC	Yes	A determination that the applied for string is not contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter (The ALAC must pay for an unsuccessful appeal out of its budget)	15 days to signal intent of appeal, then 15 more days to pay and file appeal
Community Objection	Applicant	Yes	There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted	Existing Provider; Different Panelist(s)	Application is reinstated	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	15 days to signal intent of appeal, then 15 more days to pay and file appeal
Community Objection	Community Objector	Yes	A determination eithar that: (a) the Objector does not	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees	15 days to signal intent of appeal, then 15 more days

Process	Potential appellant	Standing?	What is being appealed?	Arbiter of appeal?	Likely results of successful appeal?	Who bears costs?	Notes
			have standing and/or (b) there is not substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted			charged by the third-party arbiter	to pay and file appeal
Community Objection	Independent Objector	Yes	There is not substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter (The IO must pay for an unsuccessful appeal out of its budget)	15 days to signal intent of appeal, then 15 more days to pay and file appeal
Community Objection	ALAC	Yes	A determination either that: (a) the ALAC does not	Existing Provider; Different Panelist(s)	Application does not proceed	Non-prevailing party bears the cost of the proceeding fees	15 days to signal intent of appeal, then 15 more days

Process	Potential appellant	Standing?	What is being appealed?	Arbiter of appeal?	Likely results of successful appeal?	Who bears costs?	Notes
			have standing and/or (b) there is not substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted			charged by the third-party arbiter (The ALAC must pay for an unsuccessful appeal out of its budget)	to pay and file appeal
Conflict of Interest of Panelists	Applicant or Objector	Yes	One or more panelist(s) has an actual conflict of interest which could influence the outcome of the objection	To be determined by the IRT	Panelist(s) removed and replaced	Non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter	Must be filed within 15 days from notice of the appointment of the Panelist(s); stops objection from proceeding until outcome of appeal

Annex G – Request for SG/C Statements & Input from SO/ACs

Stakeholder Group / Constituency / Input Template
New gTLD Subsequent Procedures Policy Development Process Working Group

Request for Historical Record of Statements and Advice
This request was sent to all SG/Cs and SO/ACs.

Dear [SO/AC/SG/C Chair]

We write as the Co-Chairs of the GNSO's New gTLD Subsequent Procedures Working Group (WG), which was chartered by the GNSO Council to conduct a Policy Development Process (PDP) to determine what, if any changes may need to be made to the existing *Introduction of New Generic Top-Level Domains* policy recommendations from 8 August 2007[386]. As the original policy recommendations as adopted by the GNSO Council and ICANN Board have "been designed to produce systemized and ongoing mechanisms for applicants to propose new top-level domains", those policy recommendations remain in place for subsequent rounds of the New gTLD Program unless the GNSO Council would decide to modify those policy recommendations via a policy development process.

As policy development and policy implementation related to New gTLDs has already occurred related to the 2012 New gTLD round, this WG is seeking to ensure that a historical catalog of Advice or Statements is available for consideration during its deliberations on the number of subjects identified in its charter[387]. Having existing Advice or Statements from all of the Supporting Organizations, Advisory Committees, Stakeholder Groups, and Constituencies available when reviewing each subject will help the WG to understand historical context, identify arguments that have already been made, consider risks that have already been identified, among other benefits. As such, this WG is seeking your assistance in building this catalog. The WG hopes to collect the following elements for each piece of Advice/Statement[388]:

- Date submitted/published
- Link to Advice/Statement
- Subject matter of Advice/Statement

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[386] http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm
[387] http://gnso.icann.org/en/issues/new-gtlds/subsequent-procedures-charter-21jan16-en.pdf
[388] The PDP WG has developed a preliminary document in Google Docs for capturing Advice/Statements, which can be viewed here:
https://docs.google.com/spreadsheets/d/1G1H9OaX9KL5vzxa3b6hbVziwgAx3CHNnISOdNb7TLh0/edit#gid=100953076

- Form of Advice/Statement
- Brief Summary of Advice/Statement
- Date of Board action (if applicable)
- Board action (if applicable)
- Implementation in 2012 round (if applicable)
- Notes for future New gTLDs (e.g., whether or not existing Advice/Statements still apply)

Thank you for the [SO/AC/SG/C] consideration of this request. We look forward to any comments and any input that you and the organization you Chair are able to provide to our WG. If possible, please forward your comments and input to us by [deadline] so that we may fully consider it in our further deliberations.

Best regards,

Avri Doria, Jeff Neuman, and Stephen Coates, (WG Co-Chairs)

Request for Input: Community Comment 1
This request was sent to all SG/Cs and SO/ACs.

Dear [SO/AC/SG/C Chair Name]

We write to you as the Co-Chairs of the GNSO's New gTLD Subsequent Procedures Working Group (WG), which was chartered by the GNSO Council to conduct a Policy Development Process (PDP) to determine what, if any changes may need to be made to the existing *Introduction of New Generic Top-Level Domains* policy recommendations from 8 August 2007[389]. As the original policy recommendations as adopted by the GNSO Council and ICANN Board have "been designed to produce systemized and ongoing mechanisms for applicants to propose new top-level domains", those policy recommendations remain in place for subsequent rounds of the New gTLD Program unless the GNSO Council would decide to modify those policy recommendations via a policy development process. We are now writing to seek your input on several overarching questions as part of the Group's first Community Comment process.

4. Background on the New gTLD Subsequent Procedures PDP WG

In June of 2014, the GNSO Council created the New gTLD Subsequent Procedures Discussion Group, which was focused on reflecting upon the experiences gained from the 2012 New gTLD round and identifying a recommended set of subjects that should be further analyzed in an Issue Report. At the ICANN53 meeting, The GNSO

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[389] http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

Council approved a motion to request that a Preliminary Issue Report be drafted by ICANN staff, basing the report on the set of deliverables developed by the Discussion Group, to further analyze issues identified and help determine if changes or adjustments are needed for subsequent new gTLD procedures. ICANN staff completed the Preliminary Issue Report on New gTLD Subsequent Procedures, which was published for public comment on 31 August 2015, with the comment period closing on 30 October 2015. ICANN staff reviewed public comments received and adjusted the Issue Report accordingly. The Final Issue Report, along with the summary and analysis of public comment received, were submitted to the GNSO Council for its consideration on 4 December 2015 and a PDP on New gTLD Subsequent Procedures was initiated on 17 December 2015. The GNSO Council adopted the PDP WG charter during its 21 January 2016 meeting, with a call for volunteers issued on 27 January 2016.

The PDP WG held its first meeting on 22 February 2016 and is currently meeting on a weekly basis. While the PDP WG has only begun its deliberations relatively recently, it has preliminarily considered a set of 6 subjects that it considers high level and foundational in nature. The review of these subjects are expected to serve as a dependency in considering the remaining 32 subjects, as well as perhaps other areas of focus that are identified during the life of the PDP WG. The GNSO's PDP Manual mandates that each PDP WG reach out at an early stage to all GNSO Stakeholder Groups and Constituencies to seek their input, and encourages WGs to seek input from ICANN's Supporting Organizations and Advisory Committees as well. We are now writing to update you on our activities to date, and to provide your group with an opportunity to assist the PDP WG with its assigned task, in respect of the following questions and issues that stem from our Charter and the initial deliberations of the WG. The PDP WG anticipates that it will provide additional updates and solicit input from the community again in the future, as the work progresses, and to address the other subjects identified in the WG charter.

5. Community Comment Request: Survey on 6 relevant subjects

The six subjects that the PDP WG is considering at this stage are listed below. A brief description of each subject and specific questions on which the PDP WG seeks your input are included as Annex A. Your input is critical in allowing these subjects to be considered fully and to achieve a thoughtful outcome, which could be new policy recommendations, amendment of existing policy recommendations, or more simply, implementation guidance to be considered in the future. We would like your group's responses to the specific questions in Annex A as well as any other information that your group thinks is relevant to these subjects. The six subjects are:

1. Additional new gTLDs in the future.
2. Categorization or differentiation of gTLDs (for example brand, geographical, or supported/community) in ongoing new gTLD mechanisms.
3. Future new gTLDs assessed in "rounds."

4. Predictability should be maintained or enhanced without sacrificing flexibility. In the event changes must be introduced into the new gTLD Application process, the disruptive effect to all parties should be minimized.
5. Community engagement in new gTLD application processes.
6. Limiting applications in total and/or per entity during an application window.

6. Coordination with other efforts

Finally, the PDP WG is aware of other efforts related to New gTLDs that are underway within the community, particularly the Competition, Consumer Trust & Consumer Choice Review Team (CCT-RT); the PDP WG understands that coordination with other community efforts is needed to promote comprehensive solutions and outcomes. In addition to the CCT-RT, the PDP WG has identified the following initiatives that may have an influence on the outcomes of this WG.

● PDP on gTLD Registration Data Services
● PDP IGO-INGO Access to Curative Rights Protection Mechanisms
● Non-PDP CWG on the Use of Country and Territory Names as TLDs
● PDP Review of All Rights Protection Mechanisms in All gTLDs
● CCT-RT and the associated New gTLD Program Reviews
● The Governmental Advisory Committee (GAC) working groups on the topics of: a) public safety, b) underserved regions, and c) geographic names.
● Security and Stability Advisory Committee (SSAC) reviews of guidance provided regarding the New gTLD Program and determining if new recommendations are needed.
● Other efforts in other Supporting Organizations, Advisory Committees, Stakeholder Groups, or Constituencies?

We ask that you consider and clarify the extent to which the above-identified efforts, or any additional efforts within the community, should be considered by this PDP WG during its deliberations.

This is the first of at least two Community Comment requests we will be submitting. Once the input from this Community Comment is processed and work begins on the remaining 32 subjects, additional Community Request(s) will be made.

Thank you for the [SO/AC/SG/C name] consideration of this request. We look forward to any comments and any input that you and the organization you Chair are able to provide to our WG. If possible, please forward your comments and input to us by Monday, 25 July 2016 so that we may fully consider it in our further deliberations.

Best regards,

Avri Doria, Jeff Neuman, and Stephen Coates, (WG Co-Chairs)

Request for Input: Community Comment 2

This request was sent to all SG/Cs and SO/ACs.

Dear [SO/AC/SG/C Chair]

We write to you as the Co-Chairs of the GNSO's New gTLD Subsequent Procedures
Working Group (WG), which was chartered by the GNSO Council to conduct a Policy
Development Process (PDP) to determine what, if any changes may need to be made to
the existing *Introduction of New Generic Top Level Domains* policy recommendations
from 8 August 2007 as well as the final Applicant Guidebook dated June 2012. As the
original policy recommendations as adopted by the GNSO Council and ICANN Board
have "been designed to produce systemized and ongoing mechanisms for applicants to
propose new top-level domains", those policy recommendations remain in place for
subsequent rounds of the New gTLD Program unless the GNSO Council would decide to
modify those policy recommendations via a policy development process. We are now
writing to seek your input on several questions as part of the Group's second Community
Comment process.

Background on the New gTLD Subsequent Procedures PDP WG

In June of 2014, the GNSO Council created the New gTLD Subsequent Procedures
Discussion Group, which was focused on reflecting upon the experiences gained from the
2012 New gTLD round and identifying a recommended set of subjects that should be
further analyzed in an Issue Report. At the ICANN53 meeting, the GNSO Council
approved a motion to request that an Issue Report be drafted by ICANN staff, basing the
report on the set of deliverables developed by the Discussion Group, to further analyze
issues identified and help determine if changes or adjustments are needed for subsequent
new gTLD procedures. The Final Issue Report was submitted to the GNSO Council for
its consideration on 4 December 2015 and a PDP on New gTLD Subsequent Procedures
was initiated on 17 December 2015.

The PDP WG has been meeting on a regular basis since February 2016. The PDP WG
began its deliberations by preliminarily considering a set of 6 subjects that it considers
high level and foundational in nature (which the PDP WG called overarching issues). As
the GNSO's PDP Manual mandates that each PDP WG reach out at an early stage to all
GNSO Stakeholder Groups and Constituencies to seek their input, and encourages WGs
to seek input from ICANN's Supporting Organizations and Advisory Committees as
well, the PDP WG sent a request to the community (i.e., Community Comment 1) on 9
June 2016. The PDP WG appreciates input provided by the community, which it has

considered and will integrate into the outcomes and deliverables related to the 6 overarching issues.

The PDP WG has created a set of 4 subteam Work Tracks (WTs) that are addressing the remaining subjects within its Charter. This communication, Community Comment 2 (CC2), is in relation to these subjects now under consideration. We are now writing to solicit feedback on certain questions and issues that stem from our Charter and the initial deliberations of the Work Tracks.

The PDP WG is aware of other efforts related to New gTLDs that are underway within the community that we are coordinating with to answer a number of other questions related to the New gTLD Program. The PDP WG has identified the following initiatives that may have an influence on the outcomes of this WG.

- Competition, Consumer Trust & Consumer Choice Review Team (CCT-RT)
- PDP on Next-Generation gTLD Registration Directory Services
- PDP on IGO-INGO Access to Curative Rights Protection Mechanisms
- Non-PDP CWG on the Use of Country and Territory Names as TLDs
- PDP Review of All Rights Protection Mechanisms in All gTLDs
- CCT-RT and the associated New gTLD Program Reviews
- The Governmental Advisory Committee (GAC) working groups on the topics of: a) public safety, b) underserved regions, and c) geographic names.
- Security and Stability Advisory Committee (SSAC) reviews of guidance provided regarding the New gTLD Program and determinations of whether new recommendations are needed.

In some circumstances, the PDP WG has not begun work, nor is it specifically seeking input at this juncture on several of the topics being considered by the groups above.

Community Comment Request: Survey on the subjects under consideration by the 4 WTs

The subjects that the PDP WG's four WTs are considering at this stage are listed below. Each subject and specific questions on which the PDP WG seeks your input are included as Annex A. Your input is critical in enabling these subjects to be considered fully and achieving a thoughtful outcome, which could include new policy recommendations, amendments to existing policy recommendations, or implementation guidance to be considered in the future. ***The PDP WG recognizes that this survey is extensive and understands that respondents may want to only provide answers to certain questions that relate to its own particular interests or concerns.*** The subjects, as identified in this WG's charter, are:

Work Track/Section	Subject

1.1	Registry Services Provider Accreditation Programs
1.2	Applicant Support
1.3	Clarity of Application Process
1.4	Application Fees
1.5	Variable Fees
1.6	Application Queuing
1.7	Application Submission Period
1.8	Systems
1.9	Communications
1.10	Applicant Guidebook
2.1	Base Registry Agreement
2.2	2nd Level Rights Protection Mechanisms
2.3	Reserved Names
2.4	Registrant Protections
2.5	IGO / NGO Protections
2.6	Closed Generics
2.7	Applicant Terms and Conditions
2.9	Registrar Non-Discrimination & Registry / Registrar Separation
2.10	Registry / Registrar Standardization
2.11	TLD Rollout
2.12	Contractual Compliance
2.13	Global Public Interest
3.1	Objections
3.2	New gTLD Applicant Freedom of Expression
3.3	Community Applications and Community Priority Evaluations)\
3.4	String Similarity (Evaluations)
3.5	Accountability Mechanisms
4.1	Internationalized Domain Names
4.2	Universal Acceptance
4.3	Applicant Reviews
4.4	Name Collisions
4.5	Security and Stability

We look forward to any comments and any input that you and the organization you Chair are able to provide to our WG. If possible, please forward your comments and input to us by May 1, 2017 so that we may fully consider it in our further deliberations.

Best regards,
Avri Doria and Jeff Neuman (WG Co-Chairs)

Annex H – References to GAC, SSAC, RSSAC, and CCT-RT Inputs

Resource	Report Topics Referencing Resource
ICANN37 – GAC Nairobi Communiqué	Topic 4: Different TLD Types; Topic 15: Application Fees
ICANN46 – GAC Beijing Communiqué	Topic 24: String Similarity Evaluations; Topic 9: Registry Voluntary Commitments / Public Interest Commitments; Topic 8: Closed Generics; Topic 34: Community Applications
ICANN47 – GAC Durban Communiqué	Topic 4: Different TLD Types; Topic 34: Community Applications
ICANN49 – GAC Singapore Communiqué	Topic 34: Community Applications
ICANN 51 – GAC Los Angeles Communiqué	Topic 34: Community Applications; Topic 9: Registry Voluntary Commitments / Public Interest Commitments
ICANN52 – GAC Singapore Communiqué	Topic 9: Registry Voluntary Commitments / Public Interest Commitments
ICANN53 – GAC Buenos Aires Communiqué	Topic 34: Community Applications
ICANN54 – GAC Dublin Communiqué	Topic 34: Community Applications
ICANN56 – GAC Helsinki Communiqué	Topic 1: Continuing Subsequent Procedures
ICANN57 GAC Hyderabad Communiqué	Topic 1: Continuing Subsequent Procedures
ICANN66 – GAC Montreal Communiqué	Topic 1: Continuing Subsequent Procedures

Resource	Report Topics Referencing Resource
ICANN67 – GAC Communiqué	Topic 30: GAC Consensus Advice and GAC Early Warning; Topic 34: Community Applications; Topic 9: Registry Voluntary Commitments / Public Interest Commitments; Topic 17: Applicant Support; Topic 23: Closed Generics
ICANN68 – GAC Communiqué	Topic 1: Continuing Subsequent Procedures; Topic 2: Predictability; Topic 23: Closed Generics; Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets
GAC Principles Regarding New gTLDs	Topic 21: Reserved Names; Topic 4: Different TLD Types
SAC052	Topic 25: IDNs
SAC090	Topic 21: Reserved Names; Topic 29: Name Collisions
SAC095	Topic 26: Security and Stability
SAC100	Topic 26: Security and Stability
SAC113	Topic 21: Reserved Names
RSSAC031	Topic 26: Security and Stability
CCT-RT Rec 12	Topic 9: Registry Voluntary Commitments / Public Interest Commitments
CCT-RT Rec 14	Topic 9: Registry Voluntary Commitments / Public Interest Commitments
CCT-RT Rec 15	Topic 9: Registry Voluntary Commitments / Public Interest Commitments

Resource	Report Topics Referencing Resource
CCT-RT Rec 16	Topic 9: Registry Voluntary Commitments / Public Interest Commitments
CCT-RT Rec 23	Topic 9: Registry Voluntary Commitments / Public Interest Commitments
CCT-RT Rec 25	Topic 9: Registry Voluntary Commitments / Public Interest Commitments
CCT-RT Rec 29	Topic 17: Applicant Support
CCT-RT Rec 30	Topic 17: Applicant Support
CCT-RT Rec 31	Topic 17: Applicant Support
CCT-RT Rec 32	Topic 17: Applicant Support
CCT-RT Rec 33	Topic 30: GAC Consensus Advice and GAC Early Warning
CCT-RT Rec 34	Topic 34: Community Applications
CCT-RT Rec 35	Topic 24: String Similarity Evaluations; Topic 32: Limited Challenge/Appeal Mechanism; Topic 31: Objections

Annex I – Minority Statements

Minority Statement on Recommendation 35

Executive summary

As drafted, the recommendations allow for private resolutions of contention sets including private auctions. While not opposed to private resolution, we are opposed to the use of private auctions as a contention resolution option due to the risk to ICANN, the harm to single TLD applicants and the potential for gaming of the new gTLD program for profit. The recommendations in the final report are a mix of overly complex disclosures and attestations that needlessly complicate the program to allow for private auctions. And they will not work. The only way to prevent a repeat of the activity from the 2012 round is to ban private auctions.

Basis for Objection

The recommendations as written are a good faith effort by leadership to try and craft a compromise solution that addresses the concerns of a wide variety of interests. Despite several comments from the community opposing private auctions, a small but vocal group in with Working Group (WG) protested the ban on private auctions that was in a previous leadership proposal. To mitigate the concerns expressed about private auctions, a series of Bona Fide requirements were developed, and a sealed bid auction was proposed for ICANN Auctions of Last Resort. Some additional disclosure requirements were also included.

The phrase "It's a good deal when everyone is a little unhappy" comes to mind but in this case, it is not about being happy or unhappy, it is about developing sound policy recommendations and this proposal fails that test.

The inclusion of private auctions poses institutional risks to ICANN. Knowing that the process will repeat itself and tens of millions of dollars will change hands outside of ICANN oversight, despite ICANN being responsible for the execution of this program, will only open ICANN up to external criticism that it is not exercising appropriate oversight. As we saw with the proposed .ORG transaction, when money and ICANN are in play, the spotlight will shine brightly on ICANN. That will continue going forward.

In correspondence dated September 2018[1] and December 2018[2] and the ICANN Board asked the Working Group to address two concerns. 1) applications submitted for the sole purpose of receiving a payout for losing private auctions. 2) gaming for the purposes of financing other applications.

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[1] https://www.icann.org/en/system/files/correspondence/chalaby-to-langdon-orr-neuman-26sep18-en.pdf

[2] https://www.icann.org/en/system/files/correspondence/chalaby-to-langdon-orr-neuman-18dec18-en.pdf

The Final Report attempts to address these concerns through "Bona Fide Commitments." Despite great effort and even greater complexity, these commitments are unenforceable and open to gaming and do not effectively stop the practices identified by the Board. Comments[3] from the community point out the problem with such a solution.

- Article 19 - "We welcome the work of the Working Group on this topic, but object to Recommendation 35.2, which facilitates private resolution through private auctions. We believe that private resolution of contention sets would limit transparency and scrutiny of the management of the DNS. The standard that applicants submit "...bona fide ("good faith") intentions..." is too vague to ensure that all applicants regulate their conduct in a precise manner. We thus recommend that private resolutions be disallowed, so that every contention has a chance for public input from all interested parties. "

- Business Constituency - "While applicants should transparently declare whether they intend to operate the registry, or whether they anticipate selling some of their pending applications to others (as the BC previously commented), the BC cautions against the proposed criteria against which "bona fide" intentions may be measured (e.g., the applicant "loses" 50% of private auctions it enters into). Such criteria call for subjective interpretation and could be gamed themselves by others with an interest in the contended-for string or an interest in an auction loss windfall (by attempting to influence those interpreting applicant intentions). It is conceivable that an applicant with a number of auction losses simply doesn't possess the resources necessary to compete financially for the string, and did not anticipate the auction scenario at application time. Subjective interpretations in circumstances such as these tend to detract from, rather than contribute to, predictability.

- ALAC – "The ALAC remains concerned about efforts to "game" the application process, in part, through the use of private auctions. We disagree with the SubPro WG recommendation to allow them and believe that attempts to determine "good faith" will ultimately be little more than window dressing." "While we think that the concept of a bona fide intention is noble, we do not believe it is feasible to adopt because challenges with the level of subjectiveness involved in each of the identified factors are just too difficult to overcome, and will likely render the concept not worthwhile to implement, especially if no penalties apply to any party found to have shown a lack of bona fide intent."

- Swiss Government OFCOM - "While we acknowledges that, in an attempt to reduce potential gaming, the PDP WG recommendations include the need for applications

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[3]
https://docs.google.com/spreadsheets/d/1kmZRLAsW6wlTyQ8LA3KhOQzU1UABL9zCPWw39Yc9lB8/edit#gid=1091535370

to be submitted with a "bona fide" intention to operate a TLD, we recommend further discussion on how this intention will be ensured and implemented and notes that punitive measures for non compliance or submission of a bona fide intention are not identified. We express concerns on whether the bona fide intention and Contention Resolution Transparency Requirements sufficiently answer the ICANN Board concerns relative to the permission of private resolutions (including auctions) as a mechanism to resolve string contention.

- GAC - "While the GAC acknowledges that, in an attempt to reduce potential gaming, the PDP WG recommendation 35.3 includes the need for applications to be submitted with a "bona fide" intention to operate a TLD, the GAC recommends further discussion on how this intention will be ensured and implemented, and notes that punitive measures for non compliance or submission of a "bona fide" intention are not sufficiently defined. The GAC expresses concerns on whether the "bona fide" intention and Contention Resolution Transparency Requirements sufficiently answer the ICANN Board concerns relative to the permission of private resolutions (including auctions) as a mechanism to resolve string contention.

- Christa Taylor (individual) – "While Bona Fide intent has the best of intentions, it's unlikely to solve the real issue."

The method prescribed by the WG to address the concerns with private auctions simply will not work.

Another area where this recommendation fails is in its lack of responsiveness to pointed questions from the ICANN Board[4] submitted as part of their response to the Final report. Specific to Auctions the Board asks:

> "The Board encourages the PDP WG to provide a rationale why the resolution of contention sets should not be conducted in a way such that any net proceeds would benefit the global Internet community rather than other competing applicants."

> "The Board notes that if "private" resolutions will be allowed or encouraged in subsequent procedures, the PDP WG is requested to provide a rationale for why these private processes should only partially be brought into the program rather than be kept outside of the program or be brought into the program.

Despite one proponent of private auctions suggesting the "ICANN Board of putting its thumb on the scale[5]" by providing input and feedback, most members of the Working Group found the input from the Board valuable. Unfortunately, the Final Report as submitted to the Council does not address either of these questions (there is an effort

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[4] https://www.icann.org/en/system/files/correspondence/botterman-to-langdon-orr-neuman-30sep20-en.pdf
[5] http://www.circleid.com/posts/20200612-thumb-on-the-scales/

underway for a small group to respond to the Board on all their questions, but it has not begun, and it is unclear if it will be included in the Final Report of the Working Group when that is voted on by the GNSO Council).

The first time the community saw the Final Recommendations on Auctions was when the Final report was published for comment on August 20, 2020. They not only provided feedback on the ineffectiveness of the Bona Fide requirements, but they clearly opposed private auctions going froward[6].

- Non-Commercial Stakeholder Group - "…we support the move to set aside private actions." "Private auctions should simply be banned, and other solutions such as Vickrey auctions and "sealed bid, second price auctions" through the ICANN-run auction process should be adopted for the fairness and integrity of the auction process."
- Business Constituency - "As we said in 2018, the BC recommends that private auctions be eliminated."
- At-Large Advisory Committee – "The ALAC remains concerned about efforts to "game" the application process, in part, through the use of private auctions." "The ALAC implore the working group to revisit the prohibition of private auctions and implement a true Vickrey auction solution."
- GAC - Regarding Auctions of Last resort, the GAC reaffirms its view that they should not be used in contentions between commercial and non-commercial applications, and reiterates that private auctions should be strongly disincentivized."

Unfortunately, when it came time to consider these comments they were classified by leaderships as "Discussed/considered" and summarily dismissed.

If this proposal does move forward, the IRT and the ICANN Board should consider the following changes:

- Private auctions should be prohibited, and contention sets should be settled by an ICANN Auction of Last Resort as conducted in the 2012 round. There should be a period for contention resolution without auctions and if successful, appropriate disclosures regarding the resolution should be made to ICANN. This eliminates the complexity inherent in this proposal and places ICANN in the proper oversight position.
- If ICANN or the IRT deems that private auctions will be allowed, they should be overseen by ICANN, not by a private provider and a web of NDAs. Lack of information really hampered this working group. Coincidentally, the only

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https://docs.google.com/spreadsheets/d/1kmZRLAsW6wlTyQ8LA3KhOQzU1UABL9zCPWw39Yc9lB8/edit#gid=1091535370

auction provider who agreed to speak with the group suggested the ICANN Auction of Last resort implemented using the Vickrey method as the best method for settling contention sets.

If either of these processes had been in place for the 2012 round, this working group and the larger community would have had the data it needed to do a proper assessment of what worked and what did not. In addition, having ICANN oversee both processes will ensure integrity and transparency, and allows ICANN to appropriately exercise its authority over the delegation of new gTLDs.

ICANN cannot have a repeat of 2012 practices.

As many have pointed out during our deliberations, we could not have known in 2012 about the cottage industry of private auctions that would blossom with so many contention sets. We could not have anticipated that the largest new gTLD applicant/operator would bring their own auction provider to the table to settle these contention sets. We could have not known that tens of millions (if not more) would change hands during these auctions. We do not know the true extent of the private auction activity in 2012 because these transactions were cloaked in NDAs which even prevented auction providers from assisting the WG with its assessment of the 2012 round.

But having seen what happened last round, we do know that unless ICANN prohibits this behavior, it will repeat itself. And we will see a repeat of headlines like this.

Amazon sold rights to .box gTLD for $3 million[7]

Donuts spends $50 million on new gTLD auctions[8]

Minds + Machines pockets $1.68 from three more auction losses[9]

Minds + Machines nets $8.4 million from auctions, .Cloud and .Book settled[10]

Minds + Machines Gets Another $4.4 Million From Losing New gTLD Auctions[11]

TLDH raises $5 million from gTLD auctions[12]

Six private new gTLD auctions raise $9m[13]

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[7] http://domainincite.com/26007-amazon-sold-rights-to-box-gtld-for-3-million
[8] http://domainincite.com/16882-donuts-spends-50-million-on-new-gtld-auctions
[9] https://domainnamewire.com/2015/03/06/minds-machines-tld-losses/
[10] https://domainnamewire.com/2014/11/10/minds-machines-auctions-cloud/
[11] https://onlinedomain.com/2014/12/03/domain-extensions/new-gtlds/minds-machines-gets-another-4-4-million-from-losing-new-gtld-auctions/
[12] http://domainincite.com/14876-tldh-raises-5-million-from-gtld-auctions
[13] http://domainincite.com/13323-six-private-new-gtld-auctions-raise-9m

Donuts buys out rival .place gTLD applicant[14]

Second private auction nets $1.2m per gTLD[15]

Respectfully submitted on January 18, 2021

Alan Greenberg

Christopher Wilkinson

Elaine Pruis

George Sadowsky

Jessica Hooper

Jim Prendergast

Jorge Cancio (in a personal capacity)

Kathryn Kleiman

[14] http://domainincite.com/16317-donuts-buys-out-rival-place-gtld-applicant
[15] http://domainincite.com/14182-second-private-auction-nets-1-2m-per-gtld

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AT-LARGE ADVISORY COMMITTEE
ALAC Statement to the Subsequent Procedures PDP Final Report

The At-Large Advisory Committee (ALAC), on behalf of the At-Large Community, offers its congratulations to the GNSO Subsequent Procedures Policy Development Process Working Group ("WG") on the completion and delivery of its Final Report of 22 December 2020 ("WG Final Report"), and wishes to extend its gratitude for the all the work undertaken by members of the Subsequent Procedures PDP Working ("WG Members") since 2016.

It is heartening to note that after close to 5 years of policy development work, the WG Members were successful in arriving at consensus on many recommendations and implementation guidance which are expected to steer implementation of Subsequent Procedures for an improved New gTLD Program. However, we are equally disappointed that the WG Members were unable to do the same for what we believe to be several key aspects of Subsequent Procedures.

On this basis, we are pleased to indicate our support for or have no objections to the recommendations and implementation guidance contained in the WG Final Report <u>unless otherwise stated or qualified as set out below</u>, noting however that the ALAC is not expressing any opinion on the WG's recommendations or implementation guidance in respect of the topics of 6. RSP Pre-Evaluation, 10. Applicant Freedom of Expression, 16. Application Submission Period, 18. Terms and Conditions, 37. Registrar Non-Discrimination, 38. Registrar Support for New gTLDs and 39. Registry System Testing.

(1) DNS Abuse Mitigation

In respect of Recommendation 9.15, the ALAC maintains its position that new policy on DNS abuse mitigation must be put in place prior to the initiation of a new round of New gTLDs. While we agree in principle that the topic of DNS abuse should be dealt with in a comprehensive and holistic manner, and which addresses both existing/legacy TLDs and the new gTLDs to be delegated in the new/subsequent rounds, we disagree with the practice of pushing it off to another forum/PDP/etc.

We have seen periodic changes to the Base Registry Agreement through singular party-ICANN Org contract negotiations that incorporate incremental obligations as well as an incremental level of permissions which in general are beneficial to both sides, if not to everyone. We opine that these incremental obligations and permissions in the Base Registry Agreement for the operation of new gTLDs have been instrumental in inspiring registry operators of legacy TLDs to also adopt and take on similar (if not all) such obligations and/or permissions during negotiations for their Registry Agreement renewal.

Therefore, we opine that in declining to make any recommendations on DNS abuse mitigation for subsequent procedures, the WG is foregoing a valuable opportunity to incentivize existing registry operators in voluntarily adopting desirable changes to their Registry Agreements (including any provisions that affect their registrars) in order to bring about ultimate beneficial consequences to individual end-users.

The ALAC is also wary of a need for ICANN to not only gain more data, but the correct data, to be collected by registries and registrars in order to monitor and detect changes in not only the level of the DNS abuse but the types of DNS abuse (i.e. a changing DNS abuse landscape) and that the obligation to collect such data may evolve in scope and/or breadth over time. In this respect we should be exploiting every opportunity to introduce desirable changes in contracted parties' obligations to do with DNS abuse mitigation.

(2) Enforceability of Public Interest Commitments (PICs) and Registry Voluntary Commitments (RVCs)

This comment applies to Affirmation 9.3, Recommendations 9.1, 9.4, 9.8, and Implementation Guidance 9.5, 9.6 and 9.7 (in respect of PICs), as well as Recommendations 9.9, 9.10, 9.11 and 9.12 (in respect of RVCs).

The ICANN Board has expressed concern that ICANN may end up enforcing contractual provisions that lie outside its remit. While the ALAC appreciates the need to minimize ICANN regulation that falls outside its remit, it should go without saying that all provisions in contract with ICANN must be enforced by ICANN Contract Compliance. Any provision ICANN does not intend to enforce should be removed from the contract.

The significance of PICs and RVCs, in particular, is that they are often added to the contract to address public interest concerns, whether expressed by the GAC, ALAC or SSAC. Absent enforcement of such provisions, these "commitments" are merely window dressing. Whatever the mechanism, contracted parties need a mechanism to make commitments to which they will be held. Such commitments should be expressed as explicitly and clearly as possible with ICANN Contract Compliance and ICANN Legal reviewing each of these provisions for enforceability, prior to any contract finalization for approval by the ICANN Board. If ICANN Contract Compliance or ICANN Legal finds any provision of a contract to be unenforceable, that provision needs to be rewritten for greater clarity and specificity to facilitate its enforceability.

The ALAC acknowledges that parties contracting with ICANN may rely on available or pre-arranged dispute resolution mechanisms should they wish to dispute the enforceability of a PIC or RVC provision in their contract, and that use of such mechanisms may result in a determination or ruling that a provision is indeed unenforceable by ICANN. In the event that such a determination or ruling of unenforceability (on whatever grounds) is served on ICANN, the ICANN Board must take action to remedy such unenforceability in 2 ways: (1) where feasible, to preserve the original intention of a PIC or RVC which led to that provision in the first place, and (2) if that provision that has been rendered unenforceable matches or is similar to provisions in other contracts, to enter into negotiations with relevant contracted parties to preserve that the original intention of such a provision in an agreeable manner.

(3) Closed Generics

With reference to No Agreement 23.1 and the absence of consensus policy recommendations by the WG on how to address Closed Generics – recommendations which the ICANN Board had asked for – the ALAC believes that ICANN Org has to suspend any processing or acceptance of any applications for Closed Generics until such time the GNSO provides consensus policy recommendations on how to address applications for Closed Generics which serve a global public interest. This is consistent with GAC advice to the ICANN Board, "*For strings representing generic terms, exclusive registry access should serve a public interest goal*" as contained in its ICANN46 Beijing Communique.

The ALAC strongly agrees that any future policy work on Closed Generics should involve experts in the areas of competition law, public policy, and economics and that it be performed by those in the community that are not associated with any past, present, or expectations of future work in connection with new gTLD applications or objections to new gTLD applications, because the absence such independence would prevent future work from producing an outcome different to the one which resulted from the WG.

(4) Applicant Support

While the ALAC does not object to the WG's recommendations for the Applicant Support Program (ASP), we do have grave concerns over omissions in the WG's recommendations.

The ALAC opines that all ICANN initiatives, and the ASP is no exception, require continuous evaluation, refinement and improvement. The only practical way to accomplish this is by setting measurable goals for each program. Evaluation of the ASP, by the Competition, Consumer Choice and Consumer Trust Review Team (CCTRT), after the 2012 round, judged it to be a failure because there were few candidates and no mentoring took place. The WG has made some recommendations to improve the program but absent specific goals for these efforts, there is no basis to judge their success. For example, a goal could be to have a minimum number of successful candidates for support that, in fact, delegate a new string. Another objective could be indigenous ownership of a certain percentage of new strings. While the actual details of the program might be considered "implementation," the objectives for the program are certainly a question of policy.

Despite availability of resources such as the 2011 Final Report of Joint Applicant Support WG, and the 2012 implementation of the ASP, the ALAC is extremely concerned that the insufficiency of fresh policy guidance by the WG on the ASP will impact the implementation work of a Dedicated IRT and the community's ability to influence necessary action by ICANN Org.

Our concern stems from the lack of guidance (or even direction) to address a risk of gaming, assessment of wilful gaming and penalties to deter the gaming, and development of the Bid Credit for Applicant Support qualifiers to support their participation in any auction (where this contention set resolution mechanism of last resort were to apply). In the case of ICANN Org, Recommendation 17.1 merely provides for ICANN Org to (yet again) facilitate the pro bono assistance program, while Implementation Guidance 17.14 does not compel ICANN Org to secure a larger ASP fund to meaningfully support a reasonable number of ASP qualifiers in the next round.

In light of this wide scope of work remitted to it, assurances for community participation in or input to this Dedicated IRT becomes more essential. In this respect, we would call for a priority for ALAC membership in the Dedicated IRT given that the ALAC was co-charterer of the Joint SO/AC Working Group on New gTLD Applicant Support (JAS WG).

(5) Auctions and Private Resolution of Contention Sets

The ALAC maintains its strong opposition to private auctions being allowed in Recommendations 35.2 and 35.5. We remain concerned about attempts to "game" the application process through use of private auction and share the ICANN Board's concerns on the consequences of shuffling of funds between private auctions. The ability for a loser to apply proceeds from one private auction to fund their other private auctions only really benefits incumbent registry operators or multiple-string applicants and clearly disadvantages single-TLD/niche applicants. We believe there should be a ban on private auctions, and that by mandating ICANN only auctions, the proceeds of ICANN auction can be directed for uses in public interest, as was determined through the CCWG on Auction Proceeds.

Recommendation 35.3 implies that use of a bona fide intent affirmation is limited to applicants who participate in auctions or private resolution mechanisms. If at all, this affirmation should apply to all applications, not just those that fall into contention sets. In any case, the factors for establishing a lack of bona fide intent are too subjective, and without deterrence through penalty, are ultimately just a mere attempt at "window dressing".

We also oppose the use of a second-price, sealed bid auction per Recommendation 35.4. In our opinion, this second-price, sealed bid auction compromise, while superior to status quo, remains inferior to the Vickrey auction solution in deterring speculative applications.

In respect of Recommendation 35.5, (apart from opposing private auctions) we do not agree with the protections for disclosing applicants under the Contention Resolution Transparency Requirements framework. We believe that full transparency of terms of any private resolution is absolutely necessary to gain data for program evaluation. All terms ought to be disclosed to ICANN Org but some may be subject to a non-disclosure commitment by ICANN Org where necessary, in order for all data to be captured to inform future policy work (through aggregate, anonymized data).

(6) Community Priority Evaluation (CPE)

The ALAC applauds the acceptance of many of the At-Large suggestions to reform and improve the CPE process, evaluation criteria procedures and guidelines through the inclusion in the WG Final Report of Affirmation with Modification 34.1, Recommendations 34.12, 34.13, 34.16, 34.17, 34.18, 34.19, 34.21, and Implementation Guidance 34.2, 34.3. 34.4, 34.5, 34.6, 34.7, 34.8, 34.9, 34.10, 34.11, 34.14, 34.15, 34.20 and 34.22. However, we believe that two of the Implementation Guidance still fall short in some respects.

Implementation Guidance 34.4 fails to address an unreasonable impediment to proving both "awareness and recognition of the community members" for CPE Criterion 1-A. While allowance has been made in respect of "recognition" to compel consideration the views of the relevant community-related experts, especially in cases where recognition of the community is not measurable, no similar allowance has been made in respect of measuring "awareness" where such measurement could also be prevented or impaired.

Implementation Guidance 34.12 falls short by not also stipulating that the shortlisting and selection of CPE provider(s) by ICANN Org be subject to community input as a proactive measure for the community to help ICANN Org select the most suitable CPE Provider for subsequent procedures.

(7) Geographic Names at the Top Level

While the ALAC are in general supportive of the WG's Work Track 5 recommendations (particularly to adopt the 2012 AGB implementation relating to Geographic Name at the Top Level as new consensus policy), we remain concerned over the insufficient support within the community for the need to respect and take into consideration the voice of stakeholders beyond the ones who regularly participate in ICANN PDPs to future applications for strings matching many names with geographical meaning.

In particular, the ALAC reiterates its call for stronger preventive protection of Non-Capital City Names strings by requiring letters of support/non-objection irrespective of applicant's declared use of the TLD, where the non-capital city meets specified criteria (eg. has 100k inhabitants, hosts an international airport per IATA list). Such preventive protection should also extend to such criteria-meeting non-capital city names, in ASCII, native script, in current and historical forms (eg. Kolkata/Calcutta).

The ALAC also reiterates its call for ICANN Org to provide a Notification Tool exclusively to participating GAC Members to inform them of any applications for strings matching names with geographical meaning submitted under specific conditions for matching.

Further, we are disappointed to note the lack of community-wide support for the provision by ICANN Org of an opt-in update system for interested parties to automatically keep them informed on application(s) for specified string(s).

(8) ALAC Standing in Community Objection

The ALAC reiterates its grave concern to the real possibility of being effectively excluded from filing Community Objections on the ground of a 'lack of standing' to file such objections. The ALAC strongly believes that any Community Objection that it files in future should be determined on the merits of the objection and not be subjected to procedural dismissal for 'lack of standing'.

The ALAC filed Community Objections in the 2012 application round against two applications for the <dot>HEALTH TLD. While the Dispute Resolution panellist who heard and determined those objections did not explicitly dismiss them for a lack of standing, the 2012 Applicant Guidebook (the 2012 AGB) contains confusingly contradictory provision which could render any Community Objection filed by the ALAC in future to be dismissed for lack of standing.

On the one hand, section 3.2.2 'Standing to Object' of the 2012 AGB provides that an established institution associated with a clearly delineated community has standing to object. On the other hand, section 3.2.2.4 provides that an established institution associated with a clearly delineated community is eligible to file a community objection but must still prove two elements to qualify for standing for a community objection. Thus, these two sections arguably conflict with each other when applied to the ALAC.

It is incomprehensible that the ALAC, while on the one hand, funded by ICANN Org to file objections, should have its Community Objections, which would be derived through a bottom-up participative process, be dismissed on the ground of a 'lack of standing' to file such objections. Having any of its Community Objections be dismissed on a 'lack of standing' would clearly not only constitute a waste of resources but a procedural impediment to the ALAC carrying out the task of voicing concerns through filing Community Objections. To enable any Community Objection that the ALAC files in future to be determined on the merits of the objection, the ALAC strongly recommends being given automatic standing to file Community Objections to avoid any risk of being procedurally dismissed for 'lack of standing'.

Submitted by:
Justine Chew
Member, Subsequent Procedures PDP WG
At-Large liaison for Subsequent Procedures

Final Report on the new gTLD
Subsequent Procedures PDP

Christopher Wilkinson, in his personal capacity
18 January 2021

DISSENTING

<<The Corporation shall operate in a manner consistent with these Articles and its Bylaws for the benefit of the Internet community as a whole, ...through open and transparent processes that enable competition and open entry in Internet-related markets. ......>>

Thus the Articles of Incorporation of ICANN mandate, among other benefits, enabling 'competition' and 'open entry'. In submitting this dissenting opinion, I express my disappointment and concern that this PDP has failed in fulfilling these fundamental objectives, and this in several respects.

First, it will be recalled that when ICANN was initiated in 1998, a large part of its initial tasks was to implement the structural separation of NSI's Registry/Registrar businesses and organize the creation and delegation of additional Top Level Domains. Accordingly, enabling competition and open entry has been in the original DNA of the ICANN organisation and community. The PDP missed out on several opportunities to fulfill these basic objectives.

Secondly, the ICANN community has developed out of all recognition during the past twoenty years, most notably through the 2016 Transition from US NTIA oversight and the creation of the multi-stakeholder empowered community. The structure and membership of the PDP did not reflect these underlying developments. On the contrary, in terms of the subject matter, I found that an early decision had been taken by GNSO to maintain – as a default – the 2012 AGB, which in its turn had been substantially influenced by a 2007 G_NSO 'policy'. Both of which manifested significant shortcomings. Thus, regrettably, the scope for correcting and improving on those antecedents was seriously limited by the composition of the PDP membership itself, deriving in large measure from their longstanding GNSO membership and desire to maintain the *status quo* to their advantage.

Thirdly, the responsibility for promoting 'open entry' has not been appropriately fulfilled. Although it is quite normal for the policies, practices and experience of incumbent operators to influence regulatory processes, it is also incumbent on the governing authority, in this case ICANN, to implement effective safeguards in facilitating competition and open access. In general, it is inappropriate for the terms and conditions for new entrants to be determined by incumbent operators. But that is largely what happened in this PDP, and ICANN did not take tangible steps to create a more balanced situation. For which several options might have been considered, but would doubtless not found favour among the majority membership of the PDP.

Fourthly, several aspects of the 2012 AGB which have been maintained unchanged have had serious anti-competitive effects. Notably policies permitting vertical integration between Registrars and Registries, and accepting applications for portfolios of TLDs. These have resulted in the emergence of a few very large Registry+Registrar complexes and growing concentration in the DNS markets aggravated by mergers and acquisitions among incumbent operators.

* * *

These shortcomings have been known for some time, and it is regrettable that this PDP has proved to have been unwilling to do anything about them. Indeed, it would appear that the business model, of at least some of the PDP members actually depends on maintaining the present situation,

From this perspective I refrain from agreeing or disagreeing to the many specific Recommendations in the PDP's report. I consider that the above over-arching issues should be resolved first. Furthermore, whatever ICANN decides to do about the next round, the present PDP Report should not be used again until the problems relating to 'competition and open entry' have been resolved.

N.B. I am submitting a separate Dissenting Opinion concerning Geographical Names (Annex H).

Final Report on the new gTLD Subsequent Procedures PDP
Geographical Names (Annex H)

Christopher Wilkinson, *DISSENTING*
Personal Capacity, 18 January 2021

Work Track Five (WT5) was initiated some time after the rest of the PDP had already set up four other Work Tracks. This meant in practice that although WT5 was to deal exclusively with Geographical Names at the Top Level, several conditions affecting geo-names were dealt with elsewhere, and were not open for discussion in WT5. Furthermore there was an underlying assumption that geographical names could be assimilated with Generic Top Level Domains (gTLDs) and that consequently could be treated on the same basis as existing and prospective TLDs. This assumption has proved to be false.

Geographical names are not Generic. They are mostly unique, specific to certain locations, languages, scripts and communities. Those that refer to more than one location (often arising from colonial history and migration) may require special treatment but they are not the general rule. Many geographical names do not refer to cities but to other geographical features. The 2012 AGB provided protection for country names and capital cities , linked to the ISO 3166 standard (which also provides the basis for the ccTLDs.) However, ISO 3166 is quite patchy below the National level, and many well known islands and regions are not recognised. Thus the PDP Report affords a little extra protection to non -capital city names and not much else. Furthermore, there are no rules as to the use of geographical names. If an applicant intends to use a geo-name for non-geographical purposes, that can be done, even without informing the authorities in the place concerned.

The idea that geographical names are Generic and are free for the taking, world-wide, is quite unsustainable, and will give rise to disputes with governments and local authorities that will tarnish ICANN's name.

All geographical names should benefit from preventive protection, prior notification and agreement with the communities and local authorities concerned. We should ensure that these names remain available to be used in the future by the communities and their authorities in the places concerned. The DNS is still at the beginning of the Internet in many parts of the world. We should absolutely ensure that when geographical names are required for their real purpose, that they are still available. Unfortunately,the PDP goes in entirely the opposite direction. If we look beyond the WT5 report (Annex H) to see the consequences of decisions taken by the other Work Tracks (1-4) we find – in a worst case scenario – that has nevertheless been advocated by some members of WT5, to the effect that:

– there is no restriction on the jurisdiction of the Registry, so a community could discover that their domain name is legally out of their reach. (we have been there before with hi-jacked ccTLDs, which took years to restore to their owners);

– if the geo-TLD is to be used for non-geographical purposes (e.g. a .brand), there is no obligation on the applicant to reach agreement with the local authorities, unless the proposed GAC prior notification works particularly well. Recal that prior notification constitutes no formal or legal consequences whatsoever, on the part of the applicant.

– There are no limits on the number of TLDs that a single Registry organization can apply for. Indeed, it has become clear that a few large Registry+Registrar conglomerates have access to internal and external sources of funds to finance 'portfolios' of names, including, eventually, geo-names.

– There is also the resolution of contention sets. The intense interest in the PDP about auctions suggests that certain applicants do indeed anticipate competing financially for their applications for TLDs. In the case of geo-names, this is likely to put the interested national or local authorities in a very awkward position, probably being unable to finance a competing bid to retain their TLD for geographical use.

Taken together, these political and financial risks, already enshrined in the PDP Report, could create a perfect storm for the interests of local authorities and communities planning to use the DNS for their domestic purposes, today or in the future. The ICANN Board should not base its policy regarding geographical TLDs on the WT5 Report (Annex H) because it fails to protect the rights and interests of the communities and localities most concerned.

Minority Report of Dotzon GmbH regarding the „New gTLD Subsequent Procedures PDP Working Group" final report recommendations

Dotzon GmbH appreciates the work done by the New gTLD Subsequent Procedures PDP Working Group. While we are generally satisfied with the outcomes, we would like to provide our view about the treatment of geographic names.

Recommendation 8.1

We understand that in „application evaluators" the geographic names panel is meant to be included. To achieve a transparent process, we strongly recommend providing the community with the measures against which the geographic names panel is going to evaluate applied-for strings.

Topic 21.1: Geographic Names at the Top-level

Designation about declared use of TLD and treatment of non-capital city names

Applications for strings that match a non-capital city name should require support/non-objection by the relevant government, independent of the declaration of the intended use. Since registrars promote TLDs to customers without the consent of the registry, thus being able to market a geographic meaning of a TLD, declarations by applicants are obsolete.

The requirement of a letter of support/non objection should apply to a category of certain non-capital city names. The category could be based on a concluding and well-defined "city names list". Potentially, the list provided by the UN could be used:

https://unstats.un.org/unsd/demographicsocial/products/dyb/documents/dyb2017/table08.pdf."

Contention Sets including geoTLDs

We recommend amending Module 4 of the Applicant Guidebook with the following: "In case there is contention for a string where one application designated the TLD for geographic purposes, priority should be given to the applicant who will use the TLD for geographic purposes if the applicant for the geoTLD is based in a country/or the TLD is targeted to where national law gives precedent to city and/or regional names.

Statement about ICANNs mandate to act in the Global Public Interest

We applaud the ICANN Board initiative to analyze whether its activities meet the Global Public Interest. We are of the opinion that further efforts are necessary and required to balance ICANNs activities between public and private interests.

Statement about ICANN Articles of Incorporation and Bylaws

We would like to remind that ICANN is bound by its Articles of Incorporation and Bylaws to respect relevant principles of international law and **applicable local law** (emphasis added). As names of cities and regions are public and community resources, and national and/or local law governs their use in many countries, they require an appropriate treatment. To improve the application process from 2012, we urge ICANN to respect national legislations when it comes to geographic names and their protection.

Subsequent Procedures PDP Working Group Minority Statement:
Topic 9: Registry Voluntary Commitments / Private Public Interest Commitments

The *Final Report on the new gTLD Subsequent Procedures Policy Development Process* (Final Report) fails to fully address questions and concerns raised during the public comment period, including from the ICANN Board, on the draft Final Report. The recommendations of the GNSO New gTLD Subsequent Procedures Working Group (SubPro WG) for private Public Interest Commitments (private PICs) (now renamed Registry Voluntary Commitments/RVCs) lack critical clarification in addressing community and Working Group concerns that the RVCs for new gTLD registry applicants *"should only be permitted if they fall within the scope and mission of ICANN as set out in the New Bylaws." (Rationale for Recommendation 9.9, Final Report)*

In its letter of 30 September 2020, Maarten Botterman, Chair of the ICANN Board raised important questions about RVCs/private PICs and ICANN limitations under its 2016 Bylaws. Specifically, the ICANN Board letter stated:

> *"The language of the Bylaws [ICANN's new 2016 Bylaws], however, could preclude ICANN from entering into future registry agreements (that materially differ from the 2012 round version currently in force) that include PICs that reach outside of ICANN's technical mission as stated in the Bylaws."*

and continued:

> *"The language of the Bylaws specifically limits ICANN's negotiating and contacting power to PICs that are 'in service of its Mission.' "*

The ICANN Board letter added:

> *"The Board is concerned, therefore, that the current Bylaws language would create issues for ICANN to enter and enforce any content-related issue regarding PICs or Registry Voluntary Commitments."*[1]

Unfortunately, these questions went unreviewed, unresearched and unresolved by the SubPro WG, including in its Final Report. Accordingly, we respectfully submit that these questions must go before the ICANN Board or another GNSO PDP to provide the guidance and clarity that ICANN, future new gTLD applicants, and the ICANN Community deserve and need in order to understand the scope and limits of voluntary commitments that new gTLD applicant registries may write into their base registry agreements with ICANN.

Background
When 2012 new gTLD applicants faced challenges by GAC Early Warnings and GAC Consensus Advice, private PICs were created as a mechanism by which applicants could make concessions and agreements and embody their voluntary committments in their contracts with ICANN.

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[1] Letter from Maarten Botterman, Chair, ICANN Board of Directors, to Cheryl Langdon-Orr and Jeff Neuman, Co-Chairs of SubPro WG, https://www.icann.org/en/system/files/correspondence/botterman-to-langdon-orr-neuman-30sep20-en.pdf

The vast majority of these GAC requests in the 2012 new gTLD round involved limiting the classes of potential registrants in highly sensitive strings, and expanding registrants to include competitors previously excluded from "Closed Generic" applications.[2]

The SubPro WG recommendation to allow RVCs in response to Early Warnings and GAC Advice is now embodied in *Topic 30: GAC Consensus Advice and GAC Early Warning* of the Final Report in Recommendation 30.7:

> *"**Recommendation 30.7**: Applicants must be allowed to change their applications, including the addition or modification of Registry Voluntary Commitments (RVCs, formerly voluntary PICs), to address GAC Early Warnings and/or GAC Consensus Advice. Relevant GAC members are strongly encouraged to make themselves available during a specified period of time for direct dialogue with applicants impacted by GAC Early Warnings or GAC Consensus Advice to determine if a mutually acceptable solution can be found."*

Recommendation 30.7 explicitly addresses situations in which an applicant is adding or modifying RVCs specifically in response to GAC requests. This is far different from allowing any new gTLD applicant to insert provisions they choose into the base registry agreement. Proposed recommendations 9.9 and 9.10 offer none of the clear limitations and guidance that the ICANN Board seeks in its September 20th letter cited above. Broadly, Recommendations 9.9 and 9.10 set out:

> *Recommendation 9.9: ICANN must allow applicants to submit Registry Voluntary Commitments (RVCs)(previously called voluntary PICs) in subsequent rounds in their applications or to respond to public comments, objections, whether formal or informal, GAC Early Warnings, and/or GAC Consensus 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 under topic 20: Application Changes Requests, including, but not limited to, public comment in accordance with ICANN's standard procedures and timeframes.*

> *Recommendation 9.10: RVCs must continue to be included in the applicant's Registry Agreement.*

> > *Implementation Guidance 9.11: The Public Interest Commitment Dispute Resolution Process (PICDRP) and associated processes should be updated to equally apply to RVCs.*

Strangely, the Final Report *Rationale for Recommendation 9.9*, suggests that the SubPro WG intended for clearer limits on what provisions new gTLD applicants might insert into their contracts:

> *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***

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[2] See GAC Advice, ICANN46 Beijing Communique, https://gac.icann.org/contentMigrated/icann46-beijing-communique

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.* …" [emphasis added]

The Rationale goes on to say that the WG understands these concerns but believes that the recommended approach "addresses the key concerns raised." However, as written, **Recommendations 9.9 and 9.10 fail to provide the clear and explicit steps for ICANN Legal and ICANN Org to review the proposed Registry Voluntary Commitments and reject those that would cause ICANN to operate outside its scope and mission as set out in the 2016 Bylaws, Section I: Mission, Commitments and Core Values.[3]** Such failure deems the rationale provided false, or misleading at best.

The WG has left such limits and procedures for the GNSO or Board to add, including those that would keep such privately-crafted new contract provisions within the scope and mission of ICANN, and what ICANN can legitimately enforce.

We note the danger of not including such limitations. Without restrictions, a possible future .militia applicant might write RVCs which promise to take down domain names of Black Lives Matter organizations and Holocaust remembrance groups. Similarly, a possible future .spaceindustry gTLD might commit itself to taking down the domain names of competitors to space industry businesses that the registry might own.

Content and competition are clearly areas outside the scope and mission of ICANN under its 2016 Bylaws, yet there is no clear path provided by the Final Report for ICANN to remove RVCs/private PICs that new gTLD applicants might try to place into their registry agreements – and we need a clear path for ICANN Legal, ICANN Org and the ICANN Board to reject such provisions as outside of ICANN's mission and scope, commitments and core values.

Legitimate Concerns Raised by the ICANN Board Letter, Shared by ICANN Community Members, Yet Unanswered in the Final Report
Concerns raised via public comment by the ICANN Board that the Final Report RVC/private PIC recommendations could *"create issues for ICANN to enter and enforce any content-related issue regarding PICs or Registry Voluntary Commitments (RVCs)",* and that adopting these recommendations could cause parties to the registry contract to be in violation of the ICANN Bylaws, **are valid and need to be explored and abated before these recommendations are adopted as ICANN policy**.

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[3] BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS | A California Nonprofit Public-Benefit Corporation, https://www.icann.org/resources/pages/governance/bylaws-en

We note that the Final Report indicates "*The Working Group will respond to the ICANN Board's specific concerns under separate cover.*" This work has yet to be started at the writing of this statement. Fulsome analysis and conversation on the concerns raised by the Board could produce new ideas or potential solutions which should be considered before the policy is formalized. As Elaine Pruis wrote to the SubPro WG on January 8, in her email of "non-support": "The application of PICDRP and associated processes to RVCs introduces profound changes to the balance of rights and obligations in the registry agreement."

Topic 9: RVCs/Private PICs should be given the full attention it deserves considering the profound impact it could have on the base registry agreement. The PDP 3.0 guidelines suggest targeted PDPs with narrow scope for such matters. The issues raised in this Minority Statement could be addressed by a tightly focused group of contract experts in order to create a policy that does not put ICANN's integrity at risk.

As discussed above, questions remain about the scope of Recommendations 9.9 and 9.10 and what they allow applicants to put into their RVCs, as RVCs in response to GAC Early Warnings and GAC Advice are already addressed by Recommendation 30.7. Also, RVCs used to settle Objections such as Community Objections are now handled by Recommendation 31.16.

Absent clear limitations, Recommendations 9.9 and 9.10 could be read (dangerously) as continuing the course of undermining ICANN processes, policies and Bylaws started in 2013 and 2014. We fear such a reading, and such use of RVCs by future applicants, will undermine ICANN's integrity and independence.

We note that concerns about RVCs and objections to Topic 9, and specifically draft Recommendations 9.9 and 9.10, were raised by George Sadowsky, longtime ICANN Board member. Mr. Sadowsky wrote to the SubPro WG about his opposition to Recommendations 9.9 and 9.10 and also his sense of the WG's missing "consensus":

> "*I do not think these recommendations have consensus without absolute clarity and determination that PICs and RVCs must not and will not violate the scope and mission of ICANN.*"

> "*I share the current Board members worries, and the dilemma that ICANN will be asked to enforce things outside its scope and mission, which it cannot do (directly or through a third party). The Board members who have contributed their views on this are right; we cannot allow this to happen.*"

> "*I do not think these recommendations have consensus to move forward - under any definition of consensus that I know. This certainly would not pass the carefully considered consensus evaluation of RFC 7282, which is in my opinion one of the most careful and considerate studies of the factors that are relevant and important in assessing a degree of consensus.*"

We respectfully submit that there is a clear need for research, discussion, review and clarity to Recommendations 9.9 and 9.10.

A Serious Process Failure

The Subsequent Procedures PDP WG leadership did not provide adequate time to deliberate the ramifications of the new 2016 ICANN Bylaws as raised by the Board questions posed during the Draft Final Report public comment period and its letter of September 20th on the proposed recommendations. The following text shows the SubPro WG process breakdown - this text deeply impacts parties to a registry contract, yet it premiered in the Final Report only *after the public comment period on the Draft Final Report* closed. Accordingly, it was not subject to review by anyone outside of the WG and therefore should not be considered part of a consensus recommendation.

> *Topic 9: Registry Voluntary Commitments/Public Interest Commitments*
> *c. New issues raised in deliberations since publication of the Initial Report, if applicable:*
> *"... In response to the Draft Final Report, the ICANN Board commented that it was concerned that the current ICANN Bylaws language (which differs from that which existed during the 2012 New gTLD round) could "create issues for ICANN to enter and enforce any content-related issue regarding PICs or Registry Voluntary Commitments (RVCs)." It then asked the Working Group whether it had "considered this specific language in ICANN's Bylaws as part of its recommendations or implementation guidance on the continued use of PICs or the future use of RVCs? Can the PDP WG provide guidance on how to utilize PICs and RVCs without the need for ICANN to assess and pass judgment on content?"[4]*
>
> *During subsequent Working Group discussions, the Working Group decided not to alter its recommendations with respect to the PICs or RVCs. The Working Group will respond to the ICANN Board's specific concerns under separate cover. In short:*
> > a) *To the extent that existing PICs are used as PICs (or RVCs) in subsequent rounds, these are specifically "grandfathered" into the current Bylaws mission.*
> > b) *The Working Group also agreed that to the extent that RVCs or PICs address eligibility rules for the registration and/or renewal of domain names, these would not involve the need for ICANN to assess and pass judgement on content (as set forth in the Bylaws).*
> > c) *To the extent that some registries will want to make voluntary commitments in response to public comments, Government Early Warnings, GAC Advice, etc., it is understood by the Working Group that having these commitments reflected in Registry Agreements even if they fall outside of ICANN's core mission is consistent with the Bylaws where neither ICANN itself nor any third party under ICANN's control is required to pass judgment on 'content'. In such cases, it is understood that using an independent third party as an arbiter to determine whether there has been a violation of the commitment would be consistent with ICANN's mission even if ICANN were ultimately required to rely on that third party decision to enforce a pre-arranged contractual remedy, which could include sanctions and/or termination of the Registry Agreement.*
>
> *"In short, the PDP Working Group stands by its recommendations and implementation guidance which envisage the use of PICs / RVCs to resolve issues that arise through the public comments, objections, Government Early Warnings, GAC Advice or other concerns expressed by the community. The commitments must be enforceable through contracts entered into between registry operators and ICANN. The Working Group therefore urges the IRT to work with ICANN*

org to implement the recommendations and implementation guidance set forth herein in a manner consistent with ICANN's current Bylaws."

The WG did not have sufficient time to explore this issue fully or develop a consensus solution. Comprehensive and substantial solutions may be possible, such as an accountability mechanism that is not directly included in the registry contract. The recommendations, as written, are unenforceable, unpredictable, undesirable, and untenable. We respectfully submit that the GNSO Council and the ICANN Board will not be able to accept them as written.

We note that the following statement, in section c) above, has neither been tested, nor reviewed by impartial legal experts, as suggested by the chosen language "it is understood", and suggests that ICANN can delegate to others that which it cannot decide itself*:*

> *"In such cases, it is understood that using an independent third party as an arbiter to determine whether there has been a violation of the commitment would be consistent with ICANN's mission even if ICANN were ultimately required to rely on that third party decision to enforce a pre-arranged contractual remedy, which could include sanctions and/or termination of the Registry Agreement."*

How can ICANN delegate decisions to others which are clearly outside its authority, scope and mission? Speculating about legal obligations makes for bad policy. Outsourcing ICANN's responsibility to enforce contracts does not abdicate ICANN of the responsibilities in the contract. Conclusions to the contrary, as set in the text of the Final Report, were not sent to the Community for any form of public comment and should not be considered part of a consensus recommendation.

We submit this minority statement to draw attention to the substantial risks introduced to ICANN and contracted parties by these immature recommendations – especially 9.9 and 9.10. We urge the ICANN Board and GNSO Council to review them closely. With the appropriate next steps, and pertinent clarifications and limitations, we can fulfill the goals of the SubPro WG *and* operate within the scope and mission of ICANN. Together we can protect ICANN's integrity and independence by following its 2016 Bylaws and the legitimate limits of ICANN's mission.

Respectfully submitted,
Elaine Pruis, Senior Director Naming Operations & Policy, Verisign
Jessica Hooper, Senior Manager, Project Management, Verisign
Kathryn Kleiman, Professor, Glushko-Samuelson Intellectual Property Law Clinic,
   American University Washington College of Law
George Sadowsky, former ICANN Board Member, 2009-2018
Jim Prendergast, President, The Galway Strategy Group

TO:	New gTLD Subsequent Procedures PDP Working Group Leadership
FROM:	Gertrude "Gg" Levine, Digital Health Manager, on behalf of National Association of Boards of Pharmacy
DATE:	15 January 2021
RE:	Minority Statement

National Association of Boards of Pharmacy appreciates the work done by the New gTLD Subsequent Procedures PDP Working Group and supports all the recommendations in its final report. However, we have concerns with Recommendations 9.1 and 9.3. To be clear, we do not oppose the recommendations; rather, we believe that as written they represent a scant minimum standard of conduct by responsible registry operators. These recommendations should go further to ensure that registry operators support the security and stability of the DNS. This includes supporting public safety and establishing trust in gTLDs. Actionable public Interest Commitments (PICs) are critical to establishing trust in gTLDs, as they set out expectations for responsible registry operator conduct.

Recommendation 9.1

We support Recommendation 9.1 as it recommends that Specification 11 3(a)-(d) of the current Base Registry Agreement continues to be included in the Base Registry Agreement as a minimum standard. However, we are concerned that the current language of Specification 11 3(a) does not adequately support the goal of preserving and enhancing the security and stability of the DNS. A critical aspect of ensuring the security and stability of the DNS is establishing trust in gTLDs. Specification 11 3(a), however, falls short of that goal in that it only mandates that registries include in their Registry-Registrar Agreements specific language. It does not require contractual enforcement of the safeguards described in that language.

Some uses of domain names, such as those described in Specification 11 3(a), can directly undermine the security and stability of the DNS, for example distributing malware, abusively operating botnets, phishing, and engaging in fraudulent or deceptive practices, counterfeiting, or other activity contrary to applicable law. Registry operators must operate responsibly by ensuring that their registrars require that their registrants do not use their domain names to undermine the security and stability of the DNS. The language in the Base Registry Agreement needs to reflect this obligation and expectation of responsible registry conduct.

Recommendation 9.3

We support the inclusion and formal adoption of Category 1 Safeguards as policy for future rounds of new gTLDs. We believe Category 1 Safeguards play an important role in applying protections to strings related to highly sensitive or regulated industries in two ways. First, they establish trust in those strings associated with the industry by maintaining existing regulatory obligations online in the relevant gTLD space(s). Second, by applying relevant regulatory obligations for registrants, the registry operator

supports and furthers the public safety goals envisioned by the regulation. However, the concern with lack of enforceability we set out above also applies to the language used in Registry Agreements to include Category 1 Safeguards. As with Specification 11 3(a), Specification 11 3(e)-(g), (i), (j), and (l) only require Registry Operators to include specific language in their Registry-Registrar Agreements.

Moving forward, we believe that future implementation of these policy recommendations should include language in the Base Registry Agreement that more clearly articulates the expectations of responsible registry operators. Such expectations should set out actionable commitments that support public safety and trust in gTLDs, which ultimately strengthen the security and stability of the DNS.

Annex J – Work Track 5 Final Report on Geographic Names at the Top Level

ICANN|GNSO
Generic Names Supporting Organization

Work Track 5 Final Report to the New gTLD Subsequent Procedures Policy Development Process Working Group

Table of Contents

Introduction

This report serves as the final product of work completed by Work Track 5, a sub team of the New gTLD Subsequent Procedures Policy Development Process (PDP) Working Group (WG). Work Track 5 focuses exclusively on the subject of geographic names at the top level.[390] The Work Track has completed deliberations and is submitting the recommendations contained in this report to the full Working Group in accordance with the Work Track's Terms of Reference.[391]

Work Track 5 began its deliberations in November 2017 and published a Supplemental Initial Report[392] for public comment[393] on 5 December 2018. The Work Track produced the Work Track 5 Final Report following its review and consideration of public comments on the Supplemental Initial Report.[394] The full Working Group will consider this report and hold a consensus call before publishing recommendations in the Working Group's Final Report.

A key premise of Work Track 5's deliberations was that unless there was agreement in the Work Track to recommend a change from the 2012 implementation, the Work Track would recommend maintaining the rules included in the 2012 Applicant Guidebook and bringing policy up-to-date to reflect this implementation. Therefore, the first two sections of this report, sections (A) and (B), summarize the existing GNSO policy and 2012 implementation. Section (C) contains Work Track 5's recommendations to the full Working Group. Section (D) provides the Work Track's rationale for these recommendations. Section (E) summarizes key points of deliberation that were new in the Work Track since publication of the Supplemental Initial Report.

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[390] Additional information about Work Track 5 is available on the Working Group's wiki: https://community.icann.org/x/YASbAw. The list of Work Track 5 members is available at: https://community.icann.org/x/UplEB.

[391] https://community.icann.org/display/NGSPP/Terms+of+Reference

[392]https://gnso.icann.org/en/issues/new-gtlds/subsequent-procedures-geo-names-supp-initial-05dec18-en.pdf

[393] https://www.icann.org/public-comments/geo-names-wt5-initial-2018-12-05-en

[394] The following documents were used to support the review of public comments on the Supplemental Initial Report:
https://docs.google.com/spreadsheets/d/1WKSC_pPBviCnbHxW171ZIp4CzuhQXRCV1NR2ruagrxs/edit?usp=sharing and
https://docs.google.com/document/d/1rsyxCEBd6ax3Rb_w1kms_E9n29XL1_lw3Yp9XQ4TeCY/edit#

(A) What is the relevant existing policy and/or implementation guidance (if any) from the 2007 Final Report - Introduction of New Generic Top-Level Domains[395]?

Recommendation 5: Strings must not be a reserved word.
Recommendation 20: An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.

In the Final Report - Introduction of New Generic Top-Level Domains,[396] the discussion of Recommendation 5 references language in the Reserved Names Working Group Final Report.[397] The relevant text of Reserved Names Working Group Final Report states:

> *There should be no geographical reserved names (i.e., no exclusionary list, no presumptive right of registration, no separate administrative procedure, etc.). The proposed challenge mechanisms currently being proposed in the draft new gTLD process would allow national or local governments to initiate a challenge, therefore no additional protection mechanisms are needed. Potential applicants for a new TLD need to represent that the use of the proposed string is not in violation of the national laws in which the applicant is incorporated.*
>
> *However, new TLD applicants interested in applying for a TLD that incorporates a country, territory, or place name should be advised of the GAC Principles, and the advisory role vested to it under the ICANN Bylaws. Additionally, a summary overview of the obstacles encountered by previous applicants involving similar TLDs should be provided to allow an applicant to make an informed decision. Potential applicants should also be advised that the failure of the GAC, or an individual GAC member, to file a challenge during the TLD application process, does not constitute a waiver of the authority vested to the GAC under the ICANN Bylaws.*

The Reserved Names Working Group Final Report further states:

> *We recommend that the current practice of allowing two letter names at the top level, only for ccTLDs, remains at this time. Examples include .AU, .DE, .UK.*

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[395] https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm
[396] https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm
[397] https://gnso.icann.org/en/issues/new-gtlds/final-report-rn-wg-23may07.htm

(B) How was it implemented in the 2012 round of the New gTLD Program?

The first two versions of the Applicant Guidebook (AGB) required that strings must consist of three (3) or more visually distinct characters and that a meaningful representation of a country or territory name on the ISO 3166-1 standard must be accompanied by a letter of support or non-objection from the relevant government or public authority.

The ICANN Board, at the urging of the Country Code Supporting Organization (ccNSO) and Governmental Advisory Committee (GAC), directed staff to exclude country and territory names from delegation in version four of the Applicant Guidebook. Other geographic names, listed in section 2.2.1.4.2 of the Applicant Guidebook (see below), required a letter of support or non-objection, though for non-capital city names, the need for the letter was dependent upon intended usage of the string.

This implementation, described more fully directly below, was substantially different from the GNSO's policy recommendations.[398]

In the final version of the 2012 Applicant Guidebook, Section 2.2.1.3.2 String Requirements, Part III, 3.1 states, **"**Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard."

According to Section 2.2.1.4.1 Treatment of Country or Territory Names,[399] the following strings are considered country and territory names and were not available in the 2012 application round:

i. "an alpha-3 code listed in the ISO 3166-1 standard."
ii. "a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language."
iii. "a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language."

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[398] For an overview of the background on Geographic Names in the New gTLD Program, see: https://community.icann.org/display/NGSPP/2017-04-25+Geographic+Names+Webinars?preview=/64077479/64083928/Geo%20Names%20Webinar%20Background%20Paper.pdf

[399] The description of AGB section 2.2.1.4.1 offers a summary of the applicable rules but does not directly quote the text of 2.2.1.4.1 in full. Text excerpted from the AGB is included in quotation marks. Please see the Applicant Guidebook pages 2-16 and 2-17 for full text.

iv. "a short- or long-form name association with a code that has been designated as "exceptionally reserved" by the ISO 3166 Maintenance Agency."

v. "a separable component of a country name designated on the "Separable Country Names List," or is a translation of a name appearing on the list, in any language."

vi. "a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or removal of grammatical articles like "the." A transposition is considered a change in the sequence of the long or short–form name, for example, "RepublicCzech" or "IslandsCayman.""

vii. "a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization."

Section 2.2.1.4.2 Geographic Names Requiring Government Support states[400] that applications for the following strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

1. "An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard."

2. "An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

   City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.

   An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:

   (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and

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[400] The description of AGB section 2.2.1.4.2 offers a summary of the applicable rules but does not directly quote the text of 2.2.1.4.2 in full. Text excerpted from the AGB is included in quotation marks. Please see the Applicant Guidebook pages 2-17 through 2-19 for full text.

(b) The applied-for string is a city name as listed on official city documents."[401]

3. "An application for any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard."

4. "An application for a string listed as a UNESCO region[402] or appearing on the "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" list.[403] In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region. Where the 60% rule is applied, and there are common regions on both lists, the regional composition contained in the "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" takes precedence."

The GAC has produced the following documents addressing the use of geographic names at the top level:

- GAC Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains (2005), paragraphs 4.1.1. , 4.1.2. and 8.3.
- GAC Principles Regarding New gTLDs (2007), sections 1.2 , 2.1 ,2.2, 2.3, 2.4 , 2.7 and 2.8.
- GAC Nairobi Communiqué (2010): Application of 2007 Principles.
- GAC Beijing Communiqué (2013): GAC Objections to Specific Applications.
- GAC Durban Communiqué (2013): Future application of 2007 Principles.
- GAC Helsinki Communiqué (2016): 3-letter codes.

This list is non-exhaustive. Additional resources and documents on this topic from the GAC and other sources can be found on the Work Track 5 wiki page.

In the 2012 round of the New gTLD Program, there were 66 applications that self-identified as geographic names pursuant to Section 2.2.1.4.3 of the Applicant Guidebook.[404] The Geographic Names Panel determined that 6 of these 66 did not fall

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[401] City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.
[402] See http://www.unesco.org/new/en/unesco/worldwide/
[403] See http://unstats.un.org/unsd/methods/m49/m49regin.htm
[404] See https://gtldresult.icann.org/applicationstatus/viewstatus

within the criteria for a geographic name as defined in Section 2.2.1.4 of the Applicant Guidebook (VEGAS, ZULU, RYUKYU, SCOT, IST, FRL). The Geographic Names Panel identified 3 applications that did not self-identify as geographic names but the applied-for string fell within the criteria for geographic names, requiring relevant support or non-objections (TATA, BAR, TUI). Of the 63 that fell within the Applicant Guidebook criteria for a geographic name, 56 had acceptable supporting documentation of support or non-objection from the relevant applicable governmental authority, and of those, 54 have been delegated.

In addition, there were 18 strings which were the subject of one or more GAC Early Warnings that mentioned concerns related to the geographic nature of the string (ROMA, AFRICA, SWISS, PERSIANGULF, PATAGONIA, CAPITAL, CITY, TOWN, VIN, YUN, 广州 [GUANGZHOU], SHANGRILA, 香格里拉 [SHANGRILA], 深圳 [SHENZHEN], ZULU, AMAZON, DELTA, INDIANS).[405] Of these, ROMA, AFRICA, 广州 [GUANGZHOU], and 深圳 [SHENZHEN] were considered by the Geographic Names Panel to fall within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4. Additional information about the outcomes for these applications and related documentation can be found on ICANN's New gTLD Current Application Status Page.[406]

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[405] https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings
[406] See https://gtldresult.icann.org/applicationstatus/viewstatus

(C) What recommendations and/or implementation guidelines does Work Track 5 submit to the full Working Group for consideration?

1. Consistent with Section 2.2.1.3.2 String Requirements, Part III, 3.1 of the 2012 Applicant Guidebook, continue to reserve all two-character[407] letter-letter ASCII combinations at the top level for existing and future country codes.[408]

   This recommendation is consistent with the GNSO policy contained in the Introduction of New Generic Top-Level Domains policy recommendations from 8 August 2007.

2. Maintain provisions included in the 2012 Application Guidebook section 2.2.1.4.1 Treatment of Country and Territory Names,[409] with the following clarification regarding section 2.2.1.4.1.vi:

   Permutations and transpositions of the following strings are reserved and unavailable for delegation:

   - long-form name listed in the ISO 3166-1 standard.
   - short-form name listed in the ISO 3166-1 standard.
   - short- or long-form name association with a code that has been designated as "exceptionally reserved" by the ISO 3166 Maintenance Agency.
   - separable component of a country name designated on the "Separable Country Names List."

   Strings resulting from permutations and transpositions of alpha-3 codes listed in the ISO 3166-1 standard are available for delegation, unless the strings resulting from permutations and transpositions are themselves on that list.

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[407] The term "character" refers to either a single letter (for example "a") or a single digit (for example "1").
[408] Note that Section 2.2.1.3.2 String Requirements, Part III, 3.1 of the 2012 Applicant Guidebook addresses all 2-character strings. It states, "Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard." Work Track 5's recommendation specifically addresses letter-letter combinations, a subset of the strings that this provision addresses, because Work Track considers only letter-letter combinations to be within WT5's scope (geographic names at the top level).
[409] See page 3 of this report for a summary of the rules contained in section 2.2.1.4.1.

The 2012 Applicant Guidebook provisions contained in section 2.2.1.4.1 are inconsistent with the GNSO policy recommendations contained in the Introduction of New Generic Top Level Domains from 8 August 2007. This recommendation would make the policy consistent with the 2012 Applicant Guidebook, and therefore represents a change to the existing policy recommendation.

3. Maintain provisions included in the 2012 Application Guidebook section 2.2.1.4.2 Geographic Names Requiring Government Support,[410] with the following update regarding section 2.2.1.4.2.4:

> The "Composition of macro geographical (continental) regions, geographical subregions, and selected economic and other groupings" list is more appropriately called the "Standard country or area codes for statistical use (M49)." The current link for this resource is https://unstats.un.org/unsd/methodology/m49.[411]

The 2012 Applicant Guidebook provisions contained in section 2.2.1.4.2 are inconsistent with the GNSO policy recommendations contained in the Introduction of New Generic Top Level Domains from 8 August 2007. This recommendation would make the policy consistent with the 2012 Applicant Guidebook, and therefore represents a change to the existing policy recommendation.

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[410] See page 3 of this report for a summary of the rules contained in section 2.2.1.4.2.
[411] This information has been confirmed by the Statistical Services Branch of the UN Statistics Division.

(D) What is the rationale for recommendations and/or implementation guidelines?

The New gTLD Subsequent Procedures Working Group is tasked to determine what, if any changes may need to be made to the existing policy recommendations from 8 August 2007. Work Track 5 focused specifically on making recommendations in this regard with respect to geographic names at the top level. On the topic of geographic names, there were significant differences between the 2007 policy and the 2012 implementation, and therefore a key objective of this group's work was to ensure that policy and implementation are aligned for subsequent procedures. In submitting recommendations that bring the policy up-to-date with the program implementation, the Work Track is achieving this important goal.

Work Track 5 acknowledges that some view the 2012 Applicant Guidebook itself a compromise solution, which raises challenges in reaching agreement on changes to the 2012 implementation. The different perspectives on this issue are documented in the Supplemental Initial Report and will not be repeated in this report. The Work Track considered different rationales for moving away from the 2012 implementation, and many proposals for changes to the 2012 rules, some of which increased restrictions/protections and others that decreased restrictions/protections compared to the 2012 AGB. While some members sought to include more categories of terms in the Applicant Guidebook, other members indicated that their acceptance of the 2012 "status quo" in the 2012 Applicant Guidebook would be contingent on no additional categories of terms receiving protection. Ultimately, the group did not achieve a unified position on the proposals considered or the rationales supporting those proposals.

After extensive discussion, the Work Track was unable to agree to recommendations that depart from the 2012 implementation, which it has considered the baseline throughout deliberations. Therefore, it recommends updating the GNSO policy to be consistent with the 2012 Applicant Guidebook and largely maintaining the Applicant Guidebook provisions for subsequent procedures. This brings GNSO policy in line with implementation, which the Work Track considers a significant achievement given the diversity of perspectives on this issue and the challenges in finding compromise that is acceptable to all parties.

Work Track 5 brought together those with a strong interest in geographic names at the top level, including members of the GAC, ccNSO, ALAC, and GNSO, in an inclusive process that provided all participants with an opportunity to contribute. Work Track 5 also sought to ensure that the community's work related to geographic names, specific to gTLDs, took place in a single forum, to avoid conflicting or contradictory efforts and outcomes that have taken place in the past. The Work Track successfully met these goals, and in addition to producing the recommendations included in this report,

documented the different positions, concerns, and ideas that community members hold on these issues. Public comment on the Supplemental Initial Report serves as an additional resource reflecting perspectives on the broader ICANN community. These materials may serve as a valuable tool for any future discussions that may take place regarding the treatment of geographic names at the top level in subsequent procedures.

(E) New issues raised in deliberations since publication of the Initial Report.

Review of Public Comments

Following publication of the Supplemental Initial Report, deliberations within Work Track 5 focused on consideration of the 42 public comments received and discussion of additional issues and proposals raised through that review process. The review of public comments took place in two phases. First, the Work Track read through the comments to categorize the feedback received and ensure that it was understood by the Work Track.[412] Second, the Work Track completed a substantive review of comments, considering what changes, if any, needed to be made to the preliminary recommendations included in the Supplemental Initial Report.[413]

In reviewing public comments, the Work Track observed that perspectives expressed by commenters largely reflected the positions held within the Work Track itself. With respect to the preliminary recommendations, comments generally fell into three categories:

1. Those that were generally supportive of the continuation of the 2012 implementation and therefore the preliminary recommendations. In some cases, respondents supported recommending new rules, requirements, and provisions in addition to those which were included in the 2012 implementation.
2. Those that were generally supportive of the continuation of the 2012 implementation, with the exception of the intended use provision assigned to non-capital city names. These respondents wanted the support/non-objection requirement to be extended, so that it is always required in the case of applications for strings that match a non-capital city name.
3. Those that had concerns about the basis for preventative protections afforded governments, but nonetheless were willing to support the continuation of the 2012 implementation, viewing it as a reflection of the compromise reached through the multistakeholder model. Those in this category did not believe that preventative protections should be extended beyond the existing categories from 2012.

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[412] The public comment review document used to support this analysis is available at: https://docs.google.com/spreadsheets/d/1WKSC_pPBviCnbHxW171ZIp4CzuhQXRCV1NR2ruagrxs/edit?usp=sharing

[413] The substantive review was supported by a public comment summary document, available at: https://docs.google.com/document/d/1rsyxCEBd6ax3Rb_w1kms_E9n29XL1_lw3Yp9XQ4TeCY/edit#

In addition, there were some commenters that opposed preventative protections and believed that curative measures (e.g., objections, contractual requirements, etc.) are more appropriate, given their understanding of the international law as it relates to governments' rights in relation to geographic names.

The preliminary recommendations included in the Supplemental Initial Report fell into two distinct categories, reflecting the two categories of terms included in the 2012 Applicant Guidebook. Recommendations 2-9 addressed terms that are considered reserved and unavailable to any party. Recommendations 10-13 addressed applications that require support/non-objection from the relevant government or public authority (with non-capital names only requiring that approval when the gTLD is intended to be used in association with the geographic meaning).

For preliminary recommendations 2-9, there were a number of public comments that expressed support for, or at least a willingness to accept the recommendations, generally on the basis of the three themes above. The Work Track therefore concluded that no substantial changes were needed to the preliminary recommendations in this category. Recommendations 2-9 from the Supplemental Initial Report have carried over to the recommendations in this document as a single consolidated recommendation 2.

For preliminary recommendations 10-13, the views submitted through public comment reflected the diversity of perspectives expressed within Work Track 5 throughout its deliberations. For instance, a number of comments suggested that for the categories of terms where a letter of support/non-objection from the relevant government or public authority is always needed, regardless of usage, the recommendation should be changed so that support/non-objection is only required if the applicant intends to use the string in the context of its geographic meaning. One of the arguments in that regard was that preventative protections are inconsistent with the level of rights provided to governments to geographic names under international law. Conversely, there were comments from those that wished to eliminate the intended use provision for non-capital city names and instead require support/non-objection in all circumstances in the case of applications for strings that match a non-capital city name. One of the arguments in that regard cited the singular nature of a TLD (i.e., there is only a single TLD for any string) and that the intended use provision creates disincentives for applicants to seek support/non-objection (e.g., simply claiming that the intended use will not be associated with the non-capital city name could bypass the requirement). Noting that the treatment of non-capital city names was a topic that drew significant interest from commenters and continued to be an area of interest for many Work Track members, the Work Track flagged this topic for additional discussion. The results of that discussion are summarized below in section 3 of this report. Ultimately, the Work Track came to the conclusion that there was no agreement to change the rules outlined in recommendations 10-13. These preliminary recommendations have carried over to the recommendations in this document as a single consolidated recommendation 3.

The Initial Report included 38 proposals that Work Track members put forward, either individually or in groups. These proposals were not endorsed by the Work Track as a whole, but were nonetheless documented in the Supplemental Initial Report for further consideration and comment by the community.

The proposals generally fell into three high-level categories:
- Proposals addressing terms already included in the 2012 Applicant Guidebook: these proposals suggested changing the scope of protections/restrictions compared to the 2012 Applicant Guidebook, adjusting the way these terms are defined, and/or altering the circumstances under which rules would apply for these terms.
- Proposals related to additional categories of terms not included in the 2012 Applicant Guidebook: these proposals suggested adding provisions to the Applicant Guidebook addressing and/or creating rules for additional types of terms not included in the 2012 Applicant Guidebook.
- Proposals focused on implementation: these proposals sought to adjust various elements of New gTLD Program implementation as they relate to geographic names at the top level.

The Work Track carefully reviewed feedback received on these proposals and found that there was no unified theme in the public comments regarding these proposals, and therefore no clear indication that any of the proposals should be incorporated into the recommendations. At the same time, some Work Track members used existing proposals in the Supplemental Initial Report as a starting point for drafting additional proposals for the Work Track to consider, taking into account public comments received. These new proposals are discussed in further detail below.

Areas of Additional Deliberation

Following the review of public comments, the Work Track focused discussion on five areas where members felt that additional deliberation was needed to determine if preliminary recommendations should be revised or new recommendations should be drafted.

1. **Languages/Translations**

Prior to the publication of the Supplemental Initial Report, the Work Track discussed the following rules included in the 2012 Applicant Guidebook:

- A string is considered unavailable if it is a translation **in any language** of the following categories of country and territory names: long-form name listed in the ISO 3166-1 standard; short-form name listed in the ISO 3166-1 standard;

separable component of a country name designated on the "Separable Country Names List."

- Applicants are required to obtain letters of support or non-objection from the relevant governments or public authorities for an application for any string that is a representation, **in any language**, of the capital city name of any country or territory listed in the ISO 3166-1 standard.

The Supplemental Initial Report summarized the pros and cons that the Work Track identified in relation to the "in any language" standard, as well as a number of alternatives to this standard that were proposed by members of the Work Track. See section f.2.2.1.2 on pages 46-48 and section f.2.3.1 on pages 56-58 of the Supplemental Initial Report for additional information. The Work Track asked the community for input on this issue in the Supplemental Initial Report and received a mix of feedback from respondents, some of whom supported narrowing the standard to a set of defined languages and others who supported maintaining the rules implemented in 2012. Following review of the public comments, some Work Track members continued to hold the position that "the any language" standard was too broad and impractical to implement, as well as for applicants to duly take into consideration, and submitted additional proposals for Work Track discussion, while others held that in the absence of evidence that there was a problem in the 2012 round, the existing standard should remain in place.

A new proposal was put forward that sought to combine some of the elements of previous alternatives discussed. The proposal suggested changing the "in any language" standard to "UN and official languages." For those countries that do not have official languages, "de-facto" official languages would be used in place of official languages. It was noted that a list of such languages would need to be identified. It was also suggested as part of this proposal that curative mechanisms could be leveraged as an additional source of protection for translations of country and territory names and capital city names.

While some members felt that this proposal appropriately limited the applicable provisions to a finite list of languages that were relevant internationally and at the national level, others disagreed. Some members felt that the proposal was too limited and did not sufficiently serve the interests of smaller language communities, noting that language is a sensitive issue and an important way in which groups of people identify themselves.

There were two possible additions on the proposal that were put forward by Work Track members. The first proposed addition suggested including "relevant national, regional and community languages" along with "UN, official languages, and de-facto official languages." The Work Track considered that one possible way of defining relevant national, regional and community languages is by identifying languages spoken by a certain percentage of people in the country, territory, or capital city, although a specific

percentage was not proposed in the discussion. Some members felt that governments should be able to decide for their country which languages would be included under this provision. Other members felt this was impractical, and raised the concern that if some governments failed to provide input, the list would be incomplete.

Those supporting the addition of "relevant national, regional and community languages" indicated that it appropriately addresses translations of names in languages spoken by minority communities. From this perspective, there are countries where many languages are spoken that are not official or de-facto official languages, and this addition would take into consideration translations in those languages. From another perspective, this addition is too broad and not well defined, and therefore would create uncertainty for applicants and other parties.

A second proposed addition to the proposal suggested requiring a letter of support or non-objection in the case of capital city names, where there is transposition of accented and diacritic characters in Latin-based scripts to their ASCII equivalent. As an example, sao-tome would be protected as a DNS-Label of São Tomé alongside the IDN version of the name (xn--so-tom-3ta7c). One Work Track member suggested a further adjustment, proposing reservation of versions of country and territory names where there is transposition of accented and diacritic characters in Latin-based scripts. For example, Österreich and Osterreich would both be covered.

Those in favor of the transposition proposal indicated that it would add protection for an important set of strings that are associated with capital city names and country and territory names. Other members asked if the issue of accented and diacritic characters was actually a matter of translation, questioned why policy should be limited to addressing accented and diacritic characters only to the categories of names identified in the proposal (as opposed to a broader set of strings), and questioned if it might be better to address the underlying concerns through curative measures. One member suggested that if the group wanted to set rules for the treatment of specific types of characters, it may be appropriate to draw on the Trademark Clearinghouse's rules for how certain characters are treated for the purposes of an "exact match"[414] rather than establishing a new set of rules.

The Work Track was ultimately unable to come to agreement on any of the proposals submitted, and therefore the recommendations in this report suggest maintaining the "in any language" standard from the 2012 Applicant Guidebook.

2. Categories of Terms Not Included in the 2012 Applicant Guidebook

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[414] See section 6.1.5: https://newgtlds.icann.org/en/applicants/agb/trademark-clearinghouse-04jun12-en.pdf

In the review of public comments, the Work Track revisited the issue of whether additional categories of terms not included in the 2012 Applicant Guidebook should be subject to special rules or procedures going forward. The different perspectives on this issue are documented in section f.2.4 of the Supplemental Initial Report on pages 72-78. The Supplemental Initial Report included a question on this topic for community input on page 23 (see question e11). The Work Track noted that there was no unified theme in the public comments that pointed to a clear path forward on this topic, although many of the comments echoed themes that had previously been raised during deliberations within the Work Track. The Work Track reviewed some of these positions and ideas as it worked to reach closure on the topic.

The Work Track co-leaders encouraged the Work Track to consider what specific, and ideally finite, list of additional geographic terms should be protected, including the basis for protections and the proposed protection mechanisms. This suggestion was based on the fact that previous discussions were broad and ambiguous, which could lead to confusion and uncertainty for applicants and the parties seeking to protect geographic terms. On this basis, a new proposal was put forward that would require applicants for certain strings to contact the relevant public authorities to put them on notice that the application was being submitted.[415] Affected strings would include (a) Exact matches of

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[415] Full text of proposal:

> "Proposal. Applications of strings regarding terms beyond the 2012 AGB rules with geographic meaning shall be subject to an obligation of the applicant to contact the relevant public authorities, in order to put them on notice.
>
> Affected Strings. (a) Exact matches of adjectival forms of country names (as set out in the ISO 3166-1 list), in the official language(s) of the country in question. The adjectival forms of country names shall be found on the World Bank Country Names and Adjectives list (World Bank List). (b) Other terms with geographic meaning, as notified by GAC Members states or other UN Member states to the ICANN Organization within a deadline of 12 months following the adoption of this proposal. In such notifications the interested countries must provide the source in national law for considering the relevant term as especially protected; The list of notified terms shall be made publicly available by ICANN Org.
>
> Contact details of interested countries. Interested countries must provide relevant contact details to ICANN at least three (3) months in advance of the opening of each application window.
>
> Obligation to contact interested countries. Applicants for such a term will then be under an obligation to contact the relevant country. Said obligation to contact must be fulfilled, at the latest, in the period between applications closing and reveal day, but an applicant may choose to notify earlier than this. Said obligation to put on notice the relevant country may be performed in an automatized fashion by ICANN Org, if the applicant so wishes.

adjectival forms of country names (as set out in the ISO 3166-1 list), in the official language(s) of the country in question and (b) Other terms with geographic meaning, as notified by GAC Members states or other UN Member states to the ICANN Organization. The country would need to provide the source in national law for considering the relevant term as especially protected. ICANN would publish the list of terms covered in part (b) of the proposal.

Those supporting the proposal raised the following points:
- Geographic names have implications for governments and for people's identities. Those interests should be taken into account early in the process.
- The proposal would help communities be "on notice" about an application where they would otherwise not be aware. It could reduce future conflicts by increasing visibility, bringing parties to the table earlier, and therefore improving predictability for all parties.
- The list of terms would be relatively modest and limited to those terms covered by national law.
- There would be no chilling effect on applications because there would be no obligations for applicants beyond contacting applicable governments.
- Without new measures to address the different interests in these strings, the same conflicts that arose in 2012 will come up again.

Those opposing the proposal raised the following points:
- This proposal would negatively impact transparency and predictability of the application process.
- The phrase "term with geographic meaning" is overly broad and open ended.
- The existence of a list of "terms with geographic meaning" would have a chilling effect on applications for strings on the list.
- It is unclear what governments would do after being contacted, which could further chill applications.
- This proposal does not take into account the intended use of the string. It ignores the context of the proposed TLD and whether it will or will not create an association with a place.

No further legal effect. There is no further obligation whatsoever arising from this provision and it may not be construed as requiring a letter of non-objection from the relevant public authority. Nothing in this section may be construed against an applicant or ICANN Org as an admission that the applicant or ICANN Org believes that the Affected String is geographical in nature, is protected under law, or that the relevant government has any particular right to take action against an application for the TLD consisting of the Affected String."

A second proposal was put forward for an "Early Reveal Process."[416] Under this proposal, ICANN would reveal to relevant governments if an applicant had applied for an exact match of an adjectival form of a country name (as set out in the ISO 3166-1 list) in the official language(s) of the country in question.

Those who put forward the proposal stated that while they did not favor adding rules for additional types of terms, they could accept this limited proposal as a compromise, contingent on the fact that other members would end the discussion on rules for additional categories of terms and would agree to no longer pursue additional rules.

There were different perspectives expressed on the proposal:
- Some members felt that the proposal was an acceptable starting point, but believed that additional rules should be in place.

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[416] Full text of the proposal:

"Proposal. There should be an Early Reveal Process, which is an opportunity for national governments to receive early notification about particular applications so that they can take whatever steps they wish to take.

Affected Strings. Exact matches of adjectival forms of country names (as set out in the ISO 3166-1 list), in the official language(s) of the country in question, shall be subject to the Early Reveal Process described below. The adjectival forms of country names shall be found on the World Bank Country Names and Adjectives list (World Bank List).

Purpose. The purpose of the Early Reveal Process is to provide early notice to relevant national governments regarding new gTLD applications for exact matches to adjectival forms of country names found on the World Bank List.

Notification by National Governments. Interested national governments must provide relevant contact details to ICANN at least three (3) months in advance of the opening of each application window.

Notification to National Governments. As soon as possible after, but never before, the close of each application window, but no later than 1 month after the close, ICANN Org should reveal relevant applied-for terms and applicant contact information to those national governments who provided contact information.

Notice by ICANN. ICANN Org will provide notice of the Affected Strings to National Governments who timely submit their contact information. There is no obligation for applicants arising from this Early Reveal Process to seek a letter of consent/non-objection from the relevant public authority.

No Legal Effect. Nothing in this section may be construed against an applicant or ICANN Org as an admission that the applicant or ICANN Org believes that the Affected String is geographical in nature, is protected under law, or that the relevant government has any particular right to take action against an application for the TLD consisting of the Affected String."

- Some members wanted the Work Track 5 recommendations to the full Working Group to include rules for additional categories of terms in some form and viewed this proposal as a possible "least common denominator" that could be acceptable to the group.
- Some members expressed that they generally did not believe rules for additional categories of terms should be included in the recommendations, but they could accept this proposal if no additional rules were pursued.
- Some members opposed the proposal stating that they could not accept new rules for any additional categories of terms, noting in particular that there was no clear justification for recommending this specific set of provisions for this specific category of terms. Some of the members who opposed the proposal additionally noted that while the proposal impacts a relatively modest number of strings, it could become a new baseline for additional provisions and therefore become a "slippery slope" towards expanding rules related to geographic names.

Ultimately, after reviewing the deliberations on this topic and examining all inputs to the discussion, the Work Track co-leaders determined that there was not sufficient support from the Work Track to include this proposal in the recommendations to the full Working Group.

A third proposal discussed by the group would require a letter of support/non-objection from the relevant regional or autonomic authority for an autonomous area/region of a country. It was noted that while there is not a single authoritative list of such regions, it could be possible to create a list from existing resources available.[417] Work Track members noted that this is a very complex topic as some regions are disputed. By including rules for these terms in the Applicant Guidebook, ICANN would be taking sides among potentially conflicting parties. The Work Track decided not to move forward with this proposal, but noted that it highlights some of the challenges of expanding the set of terms included in the Applicant Guidebook that are defined as geographic.

3. Non-Capital City Names

In the review of public comments, the Work Track revisited the issue of whether there should be changes to rules contained in the 2012 Applicant Guidebook for city names that are not capital city names. As shorthand, the Work Track refers to these terms as "non-capital city" names. The different perspectives on this issue are documented in section f.2.3.2 of the Supplemental Initial Report on pages 59-69. The Supplemental

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[417] Two resources were mentioned as a starting point for discussion: "The World's Modern Autonomy Systems" at http://webfolder.eurac.edu/EURAC/Publications/Institutes/autonomies/MinRig/Autonomies%20Benedikter%2009%20klein.pdf and the "List of Autonomous Areas by Country" found at https://en.wikipedia.org/wiki/List_of_autonomous_areas_by_country

Initial Report included a question on this topic for community input on page 22-23 (question e9). The Work Track noted that there was no unified theme in the public comments that pointed to a clear path forward on this topic, although many of the comments echoed themes that had previously been raised during deliberations within the Work Track. The Work Track reviewed some of these positions and ideas as it worked to reach closure on the topic.

The Work Track considered two new proposals put forward by Work Track members. One proposal sought to amend Applicant Guidebook section 2.2.1.4.2, part 2(a) by specifying: "For the avoidance of doubt, if an applicant declares in their application that they will 1. operate the TLD exclusively as a dotBrand; and 2. not use the TLD primarily for purposes associated with a city sharing the same name, then this is not a use of the TLD for "purposes associated with the city name."[418] " The Work Track member who put forward the proposal indicated that the purpose was not to make a substantive change to the rules contained in the 2012 Applicant Guidebook, but to provide greater clarity and certainty for potential applicants by elaborating a specific circumstance where support/non-objection requirements would not be applicable.

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[418] Full text of the proposal: "Amend the text in AGB 2.2.1.4.2, part 2 on non-capital city names by adding the bracketed text (note that bracketed text in italics was suggested by a second Work Track member as an addition to the proposal but not supported by all).

> 2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.
>
> City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. [However, applicants may find it useful to review the 2017 UN Demographic Yearbook Table 8 to find a list of city names with more than 100,000 inhabitants as a reference point https://unstats.un.org/unsd/demographic-social/products/dyb/documents/dyb2017/table08.pdf]. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.
>
> An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:
> (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name. [For the avoidance of doubt, if an applicant declares in their application that they will 1. operate the TLD exclusively as a dotBrand; and 2. not use the TLD primarily for purposes associated with a city sharing the same name, then this is not a use of the TLD for "purposes associated with the city name"; and,]
> (b) The applied-for string is a city name as listed on official city documents [*or set out in national legislation designating the place as a city*]."

Those who opposed the proposal questioned why it would be appropriate to specifically add provisions addressing one type of string that would not be impacted by the requirements Applicant Guidebook section 2.2.1.4.2, part 2. The author of the proposal indicated that the proposal targets instances where an applicant is applying for a .brand and does not know about a non-capital city that happens to match the name of the brand. Some Work Track members felt that brand owners should easily be able to conduct research to see if there is a city with the same name as the brand. Others disagreed, stating that it may not always be a simple task.

From one perspective, this proposal could carve out an exemption for .brands that is not appropriate. The author of the proposal refuted the suggestion that the proposed text would create such an exemption. Another concern raised was that this provision would not give applicants clear guidance and may cause uncertainty.

A second proposal also suggested a revision to the text of Applicant Guidebook section 2.2.1.4.2, part 2.[419] In the 2012 Applicant Guidebook, a letter of support or non-objection was required if it is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name and the applied-for string is a city name as listed on official city documents. Under the proposal, a letter would also be required if it is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name and it is a non-capital city name listed in http://unstats.un.org/unsd/demographic/products/dyb/dyb2015/Table08.xls.

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[419] Full text of the proposal: "Amend the text in AGB 2.2.1.4.2, part 2 on non-capital city names by adding the bracketed text (note that bracketed text in italics was suggested by a second Work Track member as an addition to the proposal but not supported by all).

> 2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.
>
> City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. [However, established lists can be used as objective references in the evaluation process.]
>
> An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:
>
> (a)   It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name, [and]
> (b)   [i.] The applied-for string is a city name as listed on official city documents, [or ii. The applied-for string is a (non-capital) city name as [*defined pursuant to applicable national legislation or as*] listed in http://unstats.un.org/unsd/demographic/products/dyb/dyb2015/Table08.xls.]"

The Work Track member who put forward this proposal indicated that the proposal would provide greater certainty by giving clearer guidance to applicants. By having a limited and finite list of names to review, applicants would have a better point of reference in the Applicant Guidebook. One member flagged that some countries include in their national legislation how a city is defined, and the process should defer to that definition. Some members raised concerns that the list provided in this proposal is not exclusive to city names and does not distinguish which localities are cities, urban agglomerations, municipalities or another type of locality. From this perspective, the UN Demographic Yearbook is not intended to provide a comprehensive list of all cities. Rather, it is part of a publication setting out global statistics. Therefore, there are limitations on how the information in the publication can be used. For example, the localities listed are not necessarily the actual name of the locality. Where the names are not in the Roman alphabet, they have been "romanized".

The Work Track did not reach any agreement on whether to pursue these proposals further given the different perspectives expressed. The proposals are therefore not included in the Work Track's recommendations to the full Working Group.

4. Resolution of Contention Sets Involving Geographic Names

In the 2012 application round, the method of last resort for resolving contention between two or more applications was an auction. The full Working Group is addressing auctions of last resort between two or more strings that are not geographic names. During deliberations, some Work Track members suggested that it might be appropriate to change rules for string contention resolution for contention sets where at least one application is for a geographic name. This is a topic that was not previously discussed in the Work Track.

Relevant rules in the 2012 Applicant Guidebook are included in section 2.2.1.4.2, but in brief:
- If there is more than one application for a string representing a certain geographic name, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants.
- If a contention set is composed of multiple applications with documentation of support from the same government or public authority, the set will proceed to auction when requested by the government or public authority providing the documentation.
- If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the set will proceed to auction.

One proposal was submitted on this topic. It suggested updating Module 4 of the Applicant Guidebook with the following: "In case there is contention for a string where

one application designated the TLD for geographic purposes, preference should be given to the applicant who will use the TLD for geographic purposes if the applicant for the geoTLD is based in a country/or the TLD is targeted to where national law gives precedent to city and/or regional names. In case a community applicant is part of the contention set, and it did not pass the Community Priority Evaluation (CPE), the geoTLD will be granted priority in the contention set. If the community applicant passes the CPE, it will be granted priority in the contention set."[420] The proposal also suggested updating the text of section 2.2.1.4.4 to indicate that string contention resolution between an application for a string representing a geographic name and applications for identical strings that have not been identified as geographical names should take place through the rules described in Module 4.

Those in favor of the proposal stated that it would update provisions to reflect national law in certain countries, such as Switzerland and Germany, that provide additional rights regarding the use of city names. From this perspective, the proposal seeks to reflect national law and does not create any new rights. Those opposing the proposal indicated that there was no clear basis for giving geographic names preference in string contention resolution. Some Work Track members raised the concern that national laws do not apply beyond a country's borders and therefore do not provide sufficient justification for giving certain applicants priority rights in the ICANN context. From one perspective, the proposal essentially creates the equivalent of a community-based priority without the security of a community evaluation.

Noting that there was no agreement within the Work Track with respect to this proposal, the Work Track did not put forward any recommendations to change the rules regarding string contention resolution.

5. Implementation Improvements

The Work Track 5 supplemental Initial Report included a series of proposals put forward by Work Track members that did not seek to change the underlying rules in the 2012 Applicant Guidebook, but instead attempted to address issues that arose in implementation. See pages 38 and 39 of the supplemental Initial Report for details of these proposals.

Some of these proposals were revisited in additional deliberations, although none of the proposal were ultimately included in the final recommendations. One new proposal was put forward by a Work Track member regarding the letter of support or non-objection

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[420] The following example was provided to illustrate the implications of this proposal. If a US-based company Bagel Inc. and Switzerland-based City of Lausanne both apply for .lausanne, the city of Lausanne has priority. If a US-based company Bagel Inc. and Switzerland-based Lausanne Pharmaceuticals both apply for .lausanne, Lausanne Pharmaceuticals has priority. If Bagel Inc. and Lausanne Pharmaceuticals are not based in Switzerland, there is no priority granted for either application.

required for applications covered under AGB section 2.2.1.4.2. The proposal suggested that letters of support or non-objection must be dated no earlier than a specific date prior to the opening of an application window. For example, the letter supporting an application must be signed no more than 3 months before the relevant application window opens. The rationale provided asserts that the absence of such a requirement favors insiders and puts newcomers to the new gTLD space at a disadvantage.

Conclusion

Work Track 5 appreciates the opportunity to provide input to the full Working Group on the topic of geographic names at the top level. The Work Track 5 co-leaders remain available to answer any questions about the recommendations or rationale provided in the report and look forward to the full Working Group's consideration of this topic.