Questions:

Topic 3: Applications Assessed in Rounds

1. **Implementation Guidance 3.4**. ICANN org would like to confirm its assumption that the particular terms used [regarding application status] can potentially be changed based upon need during implementation and remain consistent with the Implementation Guidance.

   Response: Confirmed. One of the reasons these were classified as "Implementation Guidance" as opposed to a "Recommendation" by the Working Group was to give flexibility to ICANN Org in the implementation of this concept in order to best achieve the purpose behind the recommended action. Thus, regardless of what the statuses are called in subsequent rounds, the purpose of the Implementation Guidance should be achieved.

   [For Reference: 3.4 states: "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 then goes on to indicate what should happen if applications are in certain statuses - as those statuses were defined in the last round.]

2. **Recommendation 3.6.** Recommendation 3.6 appears to envision that ICANN org would open an application round, process the applications, and then open another round, while a Competition, Consumer Trust & Consumer Choice (CCT) review on the former would take place concurrently with the latter. Is this assumption correct? If so, how is this intended to interact with the Bylaws provision 4.6(d) which indicates that the CCT Review Team identifies recommendations that "must be implemented before opening subsequent rounds"?

   Response: The Working Group discussed at length the inter-relationship between all reviews (including the CCT-RT) and Subsequent Rounds. Recommendation 3.7 states: 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.

   The Working Group also placed a priority on predictability of the timing of subsequent rounds and avoiding indeterminate periods of reviews and delays. This was discussed

extensively in the Working Group Initial Report[1] in Section 2.2.3 (f). For brevity, not all of the deliberations were reproduced in the Final Report, but they remain relevant here

The Working Group therefore believed that Recommendations 3.6 and 3.7 combined were consistent with the Bylaws since any recommendations approved by the Board as a result of a CCT-RT would in fact be implemented prior to the opening up the next subsequent round after the round in which the recommendations were adopted

Notes

- Section 4.6(d) of the Bylaws includes:

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

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

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

- The above section of the Bylaws is expected to be updated by ATRT3 Recommendation 3.2, which provides that "There should be one additional and clearly scoped CCT Review. - It shall start within the two years after the first introduction of the (possible) next round of new gTLDs to the root. - It should be limited to a duration of one year. - Additionally, a framework of data collection must be in place prior to the next round of gTLDs and the availability of all data sets should be confirmed prior to the selection of the review members and must be provided within 30 days of the review being launched." This recommendation has been accepted but is not yet implemented.

Topic 9: Registry Voluntary Commitments / Public Interest Commitments

---

[1] https://gnso.icann.org/sites/default/files/file/field-file-attach/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf (Page 37 of 310)/

3. **Recommendation 9.1.** The recommendation notes that "Mandatory Public Interest Commitments (PICs) currently captured in Specification 11 3(a)-(d) of the Registry Agreement must continue to be included in Registry Agreements for gTLDs in subsequent procedures. [...] this recommendation puts existing practice into policy."

Maintaining Spec 11.3 (d) would prohibit closed generics during the immediate next round. Therefore, this recommendation seems to be in contradiction with the outcome of no-agreement that was reached by the SubPro PDP WG on Topic 23: Closed Generics.

This appears to be an oversight as the text for Topic 23 states that "Although the Working Group 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." Is this a correct assumption?

Response: Yes, this does appear to be an oversight and your assumption is correct. In reviewing the previous drafts, at one point of time there was a placeholder comment to come back to Specification 11 3(d) once we had completed the Closed Generic discussion. But at some point in the many drafts that comment got deleted and the Working Group inadvertently forgot to address..

Notes

- Registry Agreement Specification 11 3(d) specifies that: "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."
- A similar question was flagged in org's comments on the Draft Final Report: "ICANN org also notes that Specification 11 3(d) is about prohibiting the use of a TLD in a closed manner. As the PDP WG continues to discuss the issue of closed generic TLDs into the subsequent rounds, we would note that, absent changes, this Recommendation to retain

Specification 11 section 3(d) might conflict with the PDP WG's ultimate Recommendation on the topic of closed generic TLDs."

4. **Recommendation 9.15**. The recommendation noted that "the Working Group acknowledges ongoing important work in the community on the topic of DNS abuse 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 GNSO Council review of the ICANN71 GAC communique noted that "the Subsequent Procedures and RPM PDPs have addressed many of the issues raised in the CCT Review Team (CCT-RT) Final Report that were referred from the ICANN Board to the GNSO. For the DNS abuse recommendations contained within the CCT-RT Final Report, the GNSO Council is still in the process of determining whether any policy work is needed, and if so, how that work will be carried out."

Are there any further considerations from the GNSO on handling GAC advice on DNS abuse in the next round, or updates on whether such work is planned or will be carried out during the Operational Design Phase, so that this can be factored into our planning and assessment?

Response: At this point in time there are no applicable updates on this issue. It may be worth noting Resolved Clause 2 of the resolution by the GNSO adopting the SubPro Final Report which states, "Recognizing that nearly a decade has passed since the opening of the 2012 round of new gTLDs, the GNSO Council requests that the ICANN Board consider and direct the implementation of the Outputs adopted by the GNSO Council without waiting for any other proposed or ongoing policy work unspecific to New gTLD Subsequent Procedures to conclude, while acknowledging the importance of such work."

Topic 27: Applicant Reviews

5. **Implementation Guidance 27.16/27.17**. Implementation Guidance items 27.16 and 27.17 appear to be inconsistent with one another. The guidance that ICANN "should not evaluate proposed business models" is difficult to reconcile with Implementation Guidance 27.17, which states, "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." To carry out IG 27.17, which also notes for instance that "....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," there seems to be a need to identify and consider the relevant business model as part of the evaluation. Is this a possible oversight and if not, can you provide additional insight to how these two items should be read?

   Response: The Working Group did not believe this was a conflict.

   For Implementation Guidance 27.16, the Working Group was making a recommendation that ICANN not evaluate a proposed business model from a qualitative perspective. In other words, it believed that ICANN should not be making a qualitative judgement on whether the business model being proposed was likely to be successful or not, or whether an independent evaluator believed in the model being proposed.   But that did not mean that the applicant should not be required to state what its business model will be and to indicate both a "worst case possible scenario" and "likely case scenario" as they had to in the original application process.

   This information combined with the financial information provided about the entity and how it intends to fund the registry should enable evaluators to provide an evaluation as to whether the applicant would be able to withstand its worst case scenario (for Recommendation 27.17.

Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets

6. **Recommendation 35.3**. The recommendation states that applications must be submitted with bona fide intention to operate, noting that if a string is not delegated 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. Affirmation 40.2, on TLD Rollout, supports maintaining the timeframes for delegation and contracting used in the 2012 round, namely, 9 months to enter a registry agreement and entry of the TLD into the root zone within 12 months of the effective date of the registry agreement. Our assumption is that the two years is a maximum, such that extensions exceeding that time may be a factor in determining lack

of bona fide intention to operate the gTLD, and not that the delegation timeline for all applicants should be extended from one to two years. Is this assumption correct?

Response. Yes and No. Yes the working group was not proposing that the delegation timeline be changed, but it also recognized that there MAY be a good reason why a registry needs a longer period to delegate. So, it is not really a maximum in that sense, but one factor that can be considered.