

# PICs/RVCs Community Consultation Overview of Input Received

03 April 2024

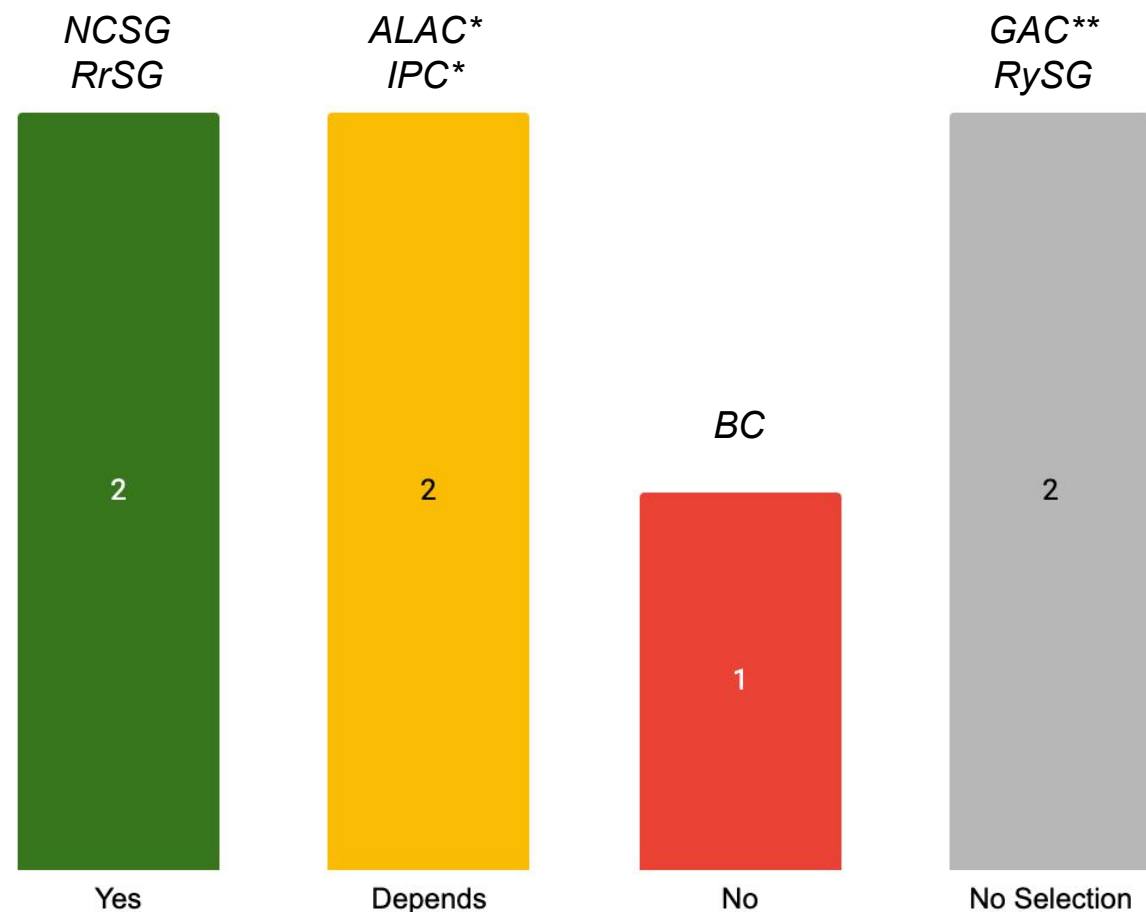
# Consultation Process Overview

- **By 2 April 2024, written input received from the following ICANN community groups:**
  - At-Large Advisory Committee (ALAC)
  - Governmental Advisory Committee (GAC)
  - Most Generic Names Supporting Organization (GNSO) constituencies and stakeholder groups:
    - BC, IPC, NCSG, RrSG, RySG
- Some groups **affirmatively declined** to participate in the consultation
  - ICANN Board extended deadline to 12 April 2024 to receive written input from these groups in the event they reconsider this request

The following slides are a staff produced overview of community input received by **2 April 2024**. For the full record of the community written input on proposed implementation framework for PICs/RVCs, please find them on this wiki page: <https://community.icann.org/x/A4B7Eq>

# Topic 1, Question 1

**Question:** *If ICANN and the applicant cannot agree on final commitment language that both ICANN and the applicant agree is enforceable under the ICANN Bylaws and as a practicable matter, **should the application be permitted to move forward without that commitment, particularly in circumstances in which an applicant has proposed a commitment as a means to resolve an objection, Governmental Advisory Committee early warning, etc?***



*\*ALAC and IPC originally selected "Yes". Based on Org review of their response to Topic 1, Question 2, it seems "depends" would most appropriately characterize their selection based on the intended meaning of the question*

*\*\*GAC submitted a statement instead of responding to each question in the Google Form*

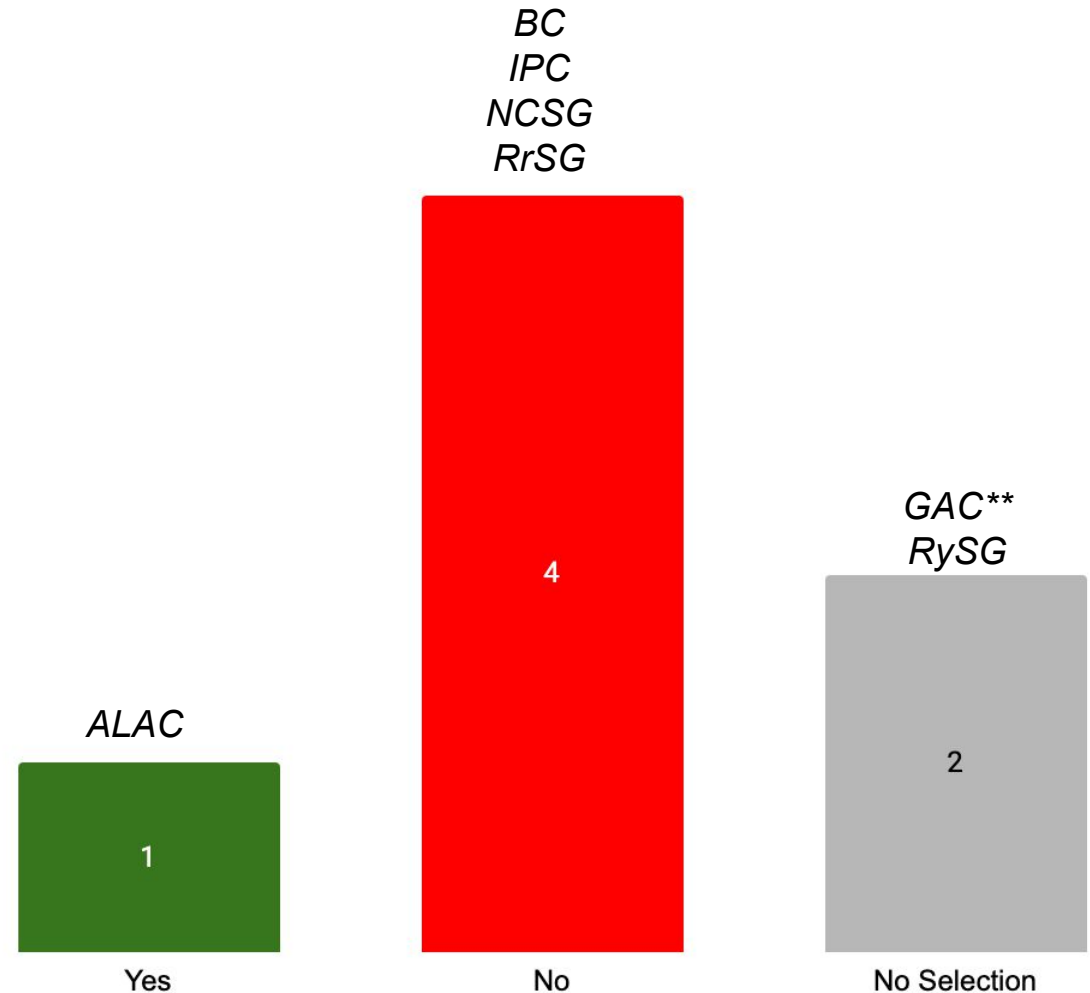
# Topic 1, Question 2 (Rationale for Q1)

## Community Comments Overview

- **Most inputs recommend that application should proceed (per usual objection/advice processes) WITHOUT agreed commitment**
  - Area for clarification: How to resolve the situation where the proposed commitments intend to address prevailed objections or GAC Advice, but ICANN/applicant disagree on language?
- **Different view: application to proceed WITH any applicant-proposed commitment, with the following community-stated reasons:**
  - Ambiguities can be resolved in court in the event of a dispute
  - ICANN should “***create bold enforcement programs even where there is not a detailed, mutually understood and sufficiently objective and measurable commitment.***”

# Topic 1, Question 3

**Question:** *Should all applicants that propose registry voluntary commitments and community gTLD commitments **be required to designate a third party to be charged with monitoring the registry operator's compliance with those commitments, regardless of whether or not the commitments relate to the contents within an applied-for gTLD?***



**\*\*GAC** submitted a statement instead of responding to each question in the Google Form

# Topic 1, Question 4 (Rationale for Q3)

## *Community Comments Overview*

- **Most commenters oppose a required third-party monitoring model for all RVCs** with the following community-stated reasons:
  - ICANN must retain control over compliance with PICs/RVCs
  - Third-party monitoring works against ICANN's governance role in the DNS
  - No policy recommendation requires third-party monitoring
  - No Bylaws provision allows third-party monitoring for content-related commitments
  - ICANN must monitor compliance for certain types of commitments, even content-related
  - Suitability of third-party monitor highly depends on the particular context of application

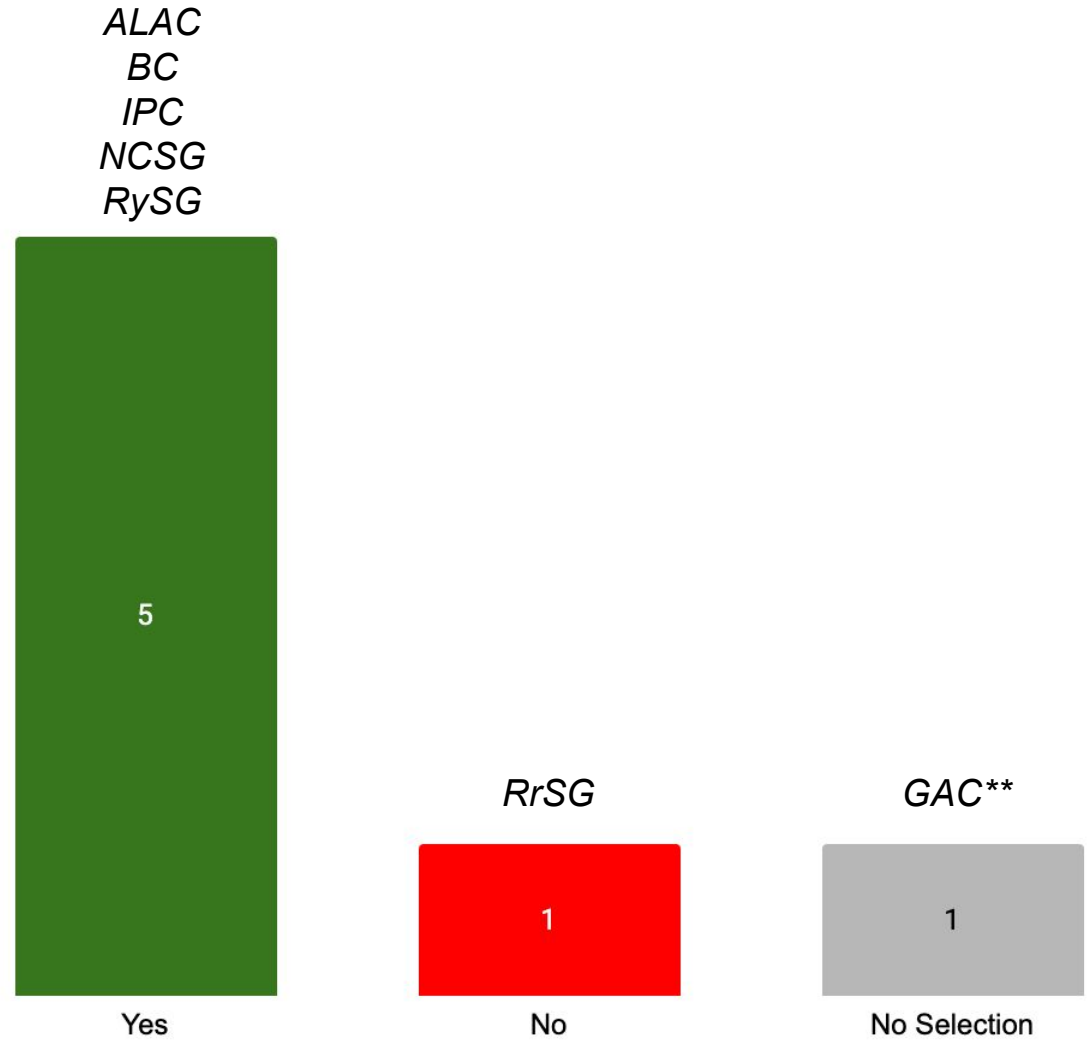
## *Community Comments Overview*

- **Some support third-party monitoring in limited circumstances** with the following community-suggested examples:
  - At registry's discretion
  - With safeguards, including standards/criteria for ICANN assessment/approval
  - ICANN to provide an approved list of third-party monitors



# Topic 1, Question 5

**Question:** Are there any changes that should be made to the **proposed implementation framework**?



**\*\*GAC** submitted a statement instead of responding to each question in the Google Form

# Topic 1, Question 6 (Rationale for Q5)

## *Community Comments Overview*

- **Divergent** community-suggested changes for the **third-party monitoring model**:
  - Third-party monitoring optional
  - Implement detailed criteria for selecting/assessing/approving third-party monitor
  - Standard requirement for ALL applicants proposing RVCs and Community TLD commitments to identify, and possibly designate, third-party monitor
  - Registries commit to implementing monitoring program; specifics not included in RA
  - Implement RA requirement comparable to **annual Specification 9 review/report** to ICANN concerning Code of Conduct compliance

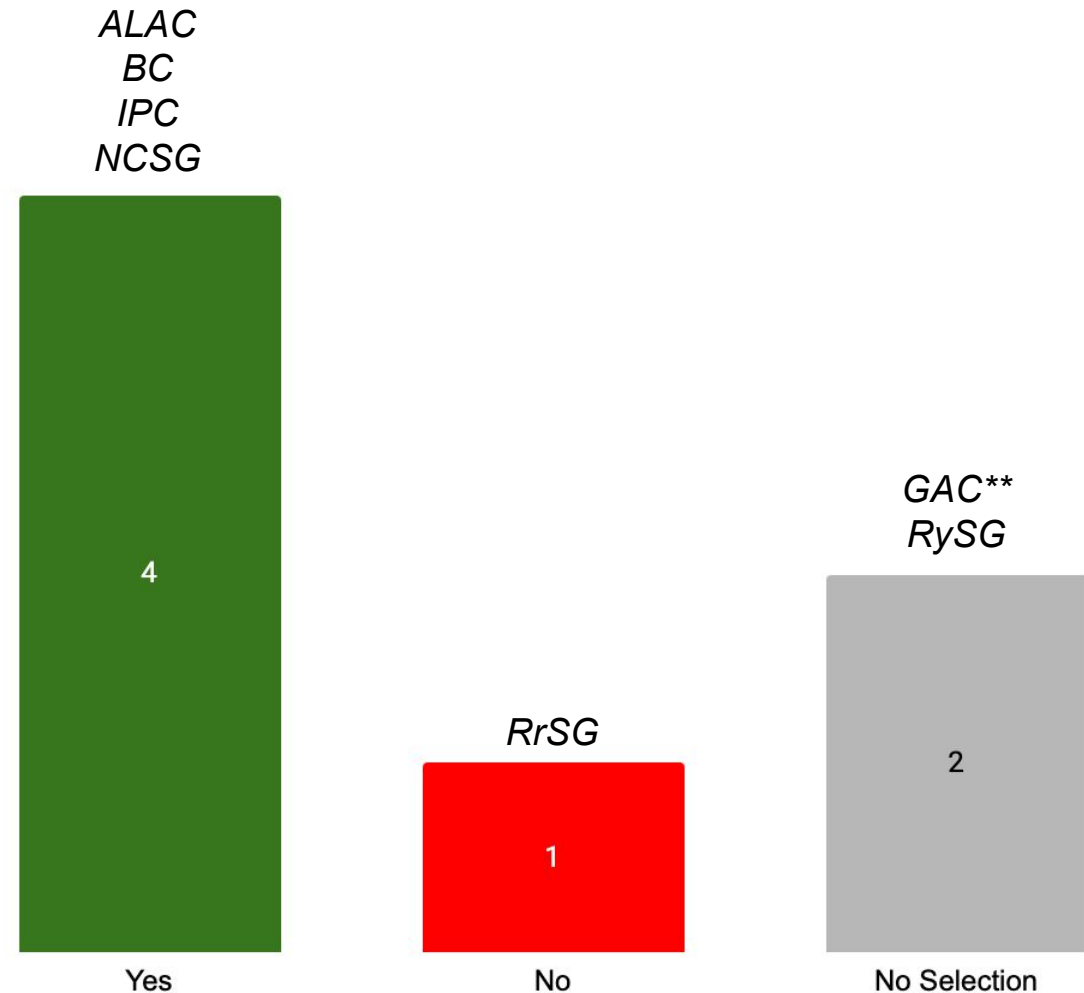
# Topic 1, Question 6 (Rationale for Q5) (Cont.)

## *Community Comments Overview*

- **Other community-suggested changes** for the proposed implementation framework:
  - Implement “**six principles for review/acceptance of PICs/RVCs**”:
    - RVCs only permitted for purpose within ICANN’s scope and mission
    - RVCs must comply with laws applicable to ICANN and registry and must be consistent with ICANN’s core values, fundamental commitments (including non-discrimination)
    - RVCs must have clear nexus to specific applied-for string
    - RVCs must not overrule/contradict GNSO consensus policy
    - All RVCs to be enforced by ICANN’s PICDRP (not registry-specified third party)
    - RVCs to be published for public comment, approved by ICANN legal, GNSO Council, and Board
  - **Disallow change to commitments in general**

# Topic 1, Question 7

**Question:** Are there any specific **improvements** that should be made to the **dispute-resolution processes** utilized in the 2012 round (the Public Interest Commitments Dispute-Resolution Procedure and the Registry Restrictions Dispute Resolution Procedure) to ensure that these processes provide an effective mechanism for the resolution of disputes concerning the relevant commitments?



**\*\*GAC** submitted a statement instead of responding to each question in the Google Form

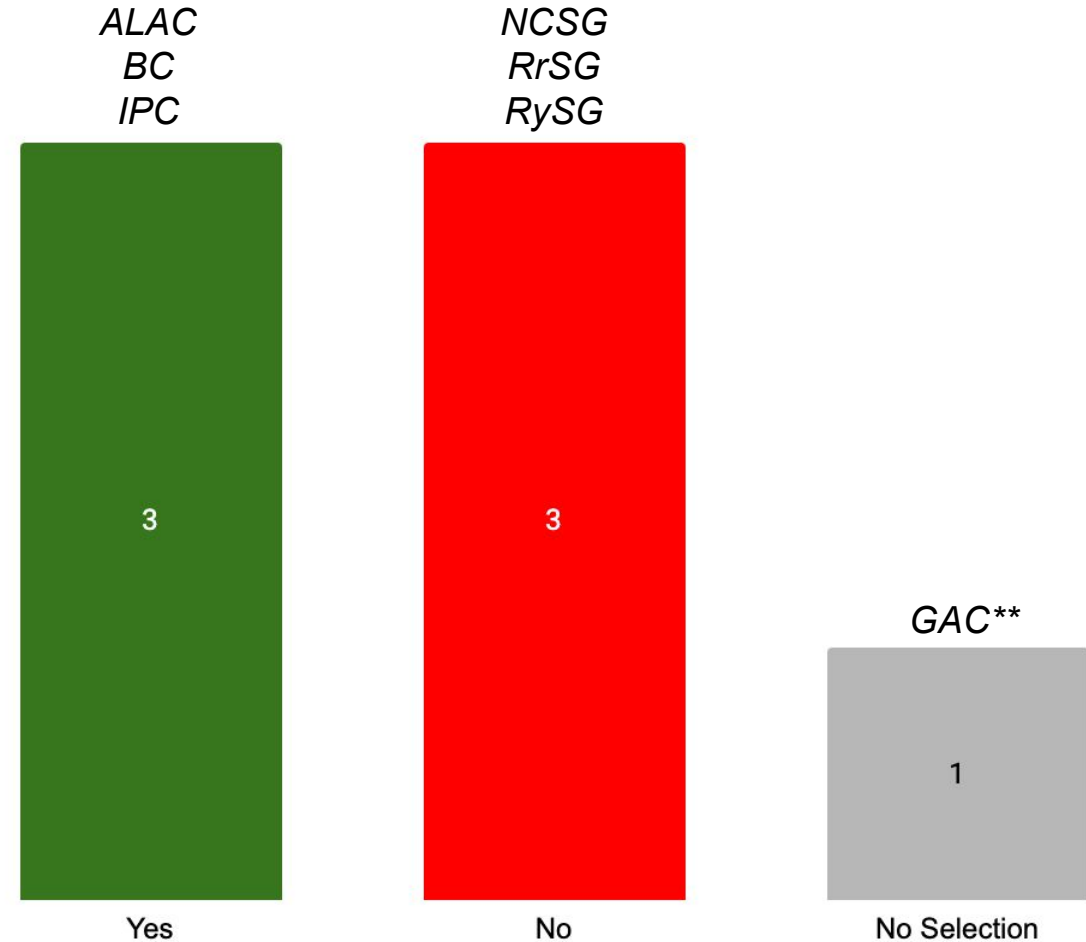
# Topic 1, Question 8 (Rationale for Q7)

## Community Comments Overview

- Community-suggested improvements for dispute-resolution mechanisms:
  - **Eliminate “measurable harm” threshold** for standing to bring complaint (likelihood of harm to complainant/third parties is adequate for standing)
  - Allow complaint be filed on the ground that **ICANN approved process to enforce a RVC** is not achieving the intended outcome
  - Add contractual provision stating that the **registry operator will not engage in fraudulent or deceptive practices** into the base RA as a PIC
  - **Impose obligations on registries** to take action and **meaningful remedial measures**
  - **Provide opportunity for input from complainant or panel** before ICANN determines whether remedy is sufficient
  - Implement RA requirement comparable to **annual Specification 9 review/report** to ICANN concerning Code of Conduct compliance
  - ICANN to provide further analysis of DPR processes and use to **facilitate separate feedback**

# Topic 2, Question 1

**Question:** Are there any **types of content restrictions** in gTLDs that **could be proposed** by new gTLD applicants that ICANN must accept for inclusion in future Registry Agreements as a matter of ICANN Consensus Policy?



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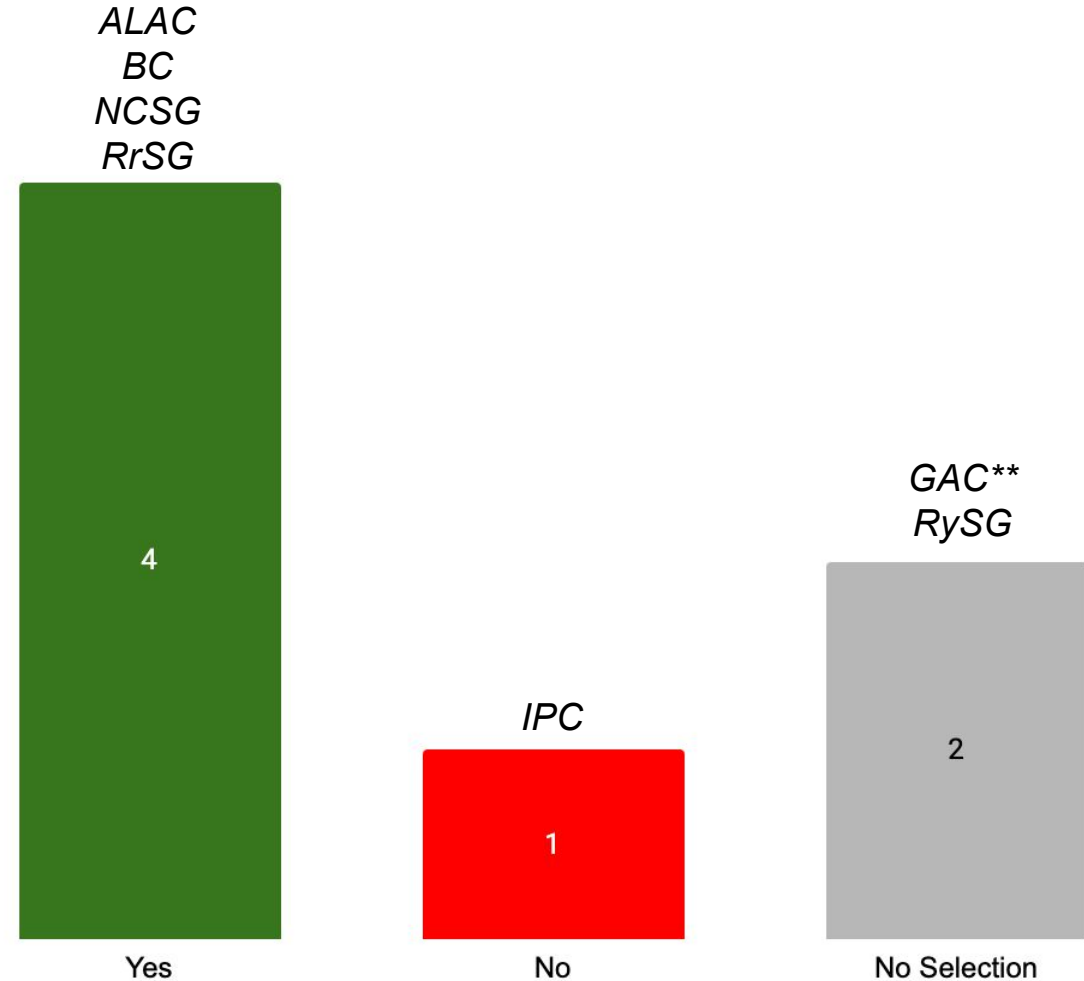
# Topic 2, Question 2 (Rationale for Q1)

## Community Comments Overview

- Community suggested types of content-related commitments that should be permitted:
  - Commitments contained in current base **Registry Agreement, Specification 11(3)(a)-(d)**
  - Restrictions addressing **Category 1 Safeguards** advice
  - Commitments addressing matters identified in **Bylaws Annexes G-1 and G-2**
  - **Community gTLD commitments** requiring third-party monitoring
  - Commitments contained in any RA in force on **1 Oct 2016** and **those do not vary materially** therefrom
  - Restrictions addressing **registrant eligibility**
  - Commitments addressing **DNS abuse**
  - Any commitments **NOT requiring ICANN to adjudicate compliance**
- A group suggested **applying international legal norms** to determine content restrictions may be warranted
- A group emphasized commitments must be **sufficiently clear to be enforceable** through **contractual obligations, consequences** for failure to meet obligations **be specified** in relevant contractual agreements

# Topic 2, Question 3

**Question:** Are there any **types of content restrictions** that ICANN should **NOT** enter into in the New gTLD Program: Next Round, considering the scope of ICANN's Mission in relation to Registry Agreements?



**\*\*GAC** submitted a statement instead of responding to each question in the Google Form



# Topic 2, Question 4 (Rationale for Q3)

## Community Comments Overview

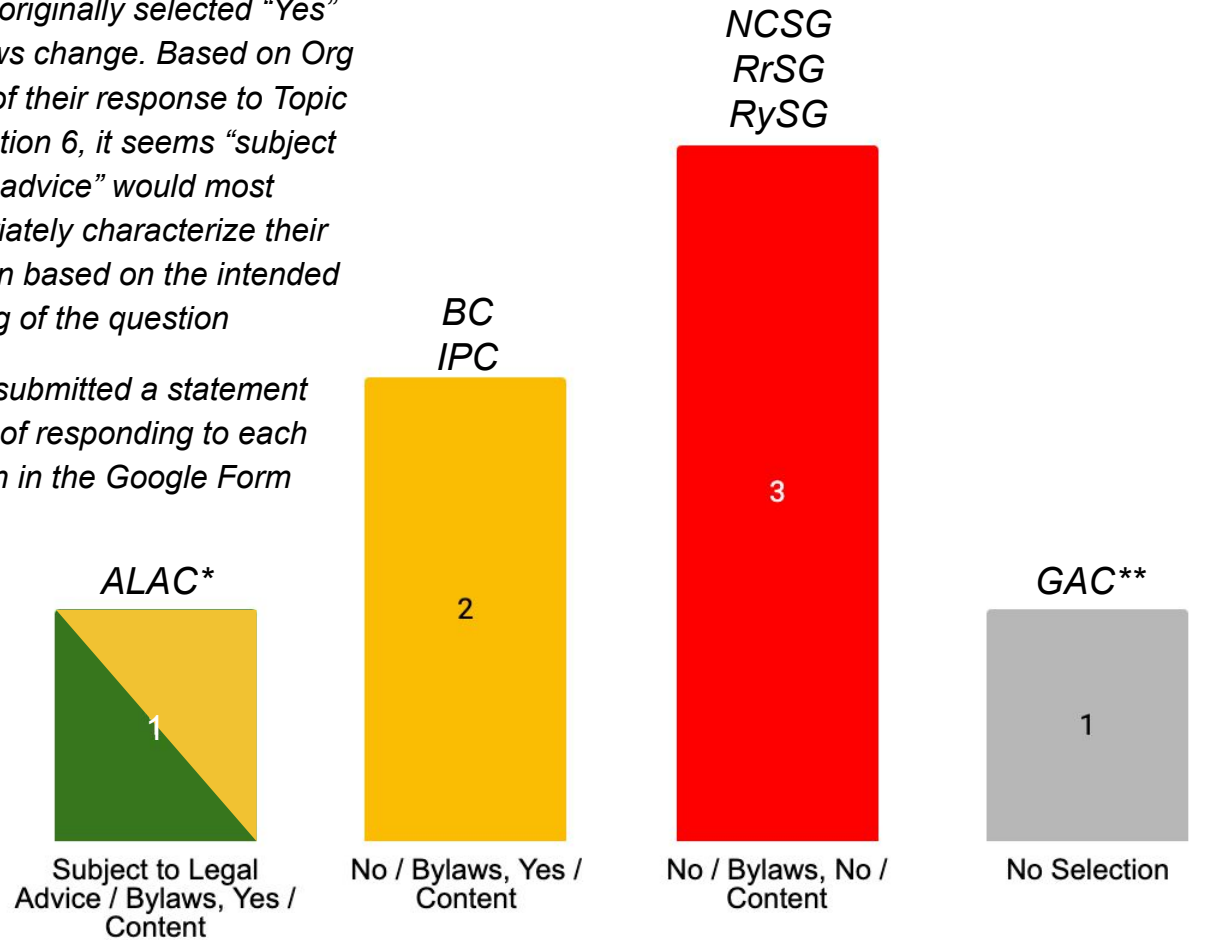
- Community suggested types of content-related commitments that **should NOT be permitted:**
  - **Any content-related commitments**, including but not limited to:
    - Copyrights
    - Political speech
    - Commercial speech
    - Professional licenses/certifications of eligible registrants
  - Any content-related commitments **requiring ICANN to adjudicate compliance**
  - Content deemed **highly objectionable and/or illegal in accordance with local law**
- A group suggested that **registries or governmental agencies should regulate content, not ICANN**

# Topic 2, Question 5

**Question:** Do you agree that ICANN must move forward with a **Fundamental Bylaws change** to clarify ICANN’s contracting remit regarding content-related commitments?

*\*ALAC originally selected “Yes” to Bylaws change. Based on Org review of their response to Topic 2, Question 6, it seems “subject to legal advice” would most appropriately characterize their selection based on the intended meaning of the question*

*\*\*GAC submitted a statement instead of responding to each question in the Google Form*



**No. ICANN should not accept any content-related registry voluntary commitments or community gTLD commitments in the New gTLD Program: Next Round, so no Bylaws amendment is required.**

**No. While ICANN must accept, agree to, enter into, and enforce content-related registry voluntary commitments and community gTLD commitments in the New gTLD Program: Next Round, no clarification to the ICANN Bylaws is required for ICANN to perform this function.**

**Subject to Legal Advice. ICANN must accept, agree to, enter into, and enforce content-related registry voluntary commitments and community gTLD commitments in the New gTLD Program: Next Round, no clarification to the ICANN Bylaws is required for ICANN to perform this function unless “ICANN obtains and accepts legal advice compelling that such action be taken by the Board”.**

# Topic 2, Question 6 (Rationale for Q5)

## Community Comments Overview

- **Divergent** community-stated reasons **opposing Bylaws change** due to their different interpretation of “content”:
  - **Bylaws excludes content from ICANN mission**; Bylaws change would provide a “slippery sloping opening for ICANN to becoming a ‘content police’”
  - **Bylaws does not prohibit content-related commitments**; accepting such commitments does not equate to ICANN regulating content
- Bylaws change is **only required if** ICANN community believe so, or ICANN accepts **legal advice** compelling such action; no sufficient elements to justify commencing a Bylaws change
  - Several groups suggested **seeking independent legal advice** on contracting and enforcement remit regarding content-related commitments
  - One group suggested **ICANN org provides a legal analysis** of key questions in this consultation
- Stance on Bylaws change is **unknown** from community groups outside of ALAC, GAC, and GNSO that have not or decided not to respond to the consultation questions