

### 4.3.2 Base registry agreement

- 4.3.2.1 Explanation of Subject

The 2007 Final Report recommended that a base registry agreement be developed in support of the implementation of the policy recommendations. The base agreement would be available to potential applicants at least four months prior to the opening of the New gTLD Program application submittal period, allowing applicants to better understand contractual requirements and make a more informed decision about applying and designing their business plan. There were several recommendations that were applicable to the base agreement.

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 renewal expectancy.*

Implementation Guideline J

*The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place.*

The base agreement was available in Module 5 of the very first draft version of the AGB and onwards to the final version AGB, and was therefore available for community refinement throughout the entire process. The base agreement was intended to be the starting point for all registries for signing the Registry Agreement, but it did not preclude applicants from negotiating specific changes with ICANN.

Although the program, the AGB, and by extension the base agreement, were approved by the ICANN Board in June 2011<sup>1</sup>, a number of subsequent changes to the base agreement were needed. On 11 January 2012, ICANN published a revised AGB that included minor revisions to clarify some existing provisions of the base agreement<sup>2</sup>, which was the version of the base agreement made available prior to the launch of the New gTLD Program.

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<sup>1</sup> June 2011 AGB: <https://archive.icann.org/en/topics/new-gtlds/rfp-clean-30may11-en.pdf>

<sup>2</sup> June 2012 AGB: <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v9>

Although intended to be the final form of the base agreement, it was revised multiple times as additional program elements were worked on in the community and required integration into the base agreement.

The June 2012 version of the base agreement had a minor correction to a reference in Specification 3 of the base agreement.

The July 2013 version integrated Public Interest Commitments (PICs) and the New gTLD registry operator requirement to use registrars that were a party to the 2013 RAA via Specification 11<sup>3</sup>.

The October 2013 version integrated protections for Intergovernmental Organizations (IGOs), the International Olympic Committee, and the International Red Cross and Red Crescent within Specification 5, as well as integrating a “Name Collision Occurrence Management” section within Specification 6<sup>4</sup>.

The January 2014 version, which is the current form of the base agreement, inserted URLs in the sections below, where placeholders had previously existed<sup>5</sup>:

- Section 2.19 (RRDRP)
- Section 1 of Specification 7 (Trademark Clearinghouse Requirements)
- Section 2(a) of Specification 7 (PPDRP and RRDRP)
- Section 2(b) of Specification 7 (URS)
- Section 2 of Specification 11 (PICDRP)

In February of 2014, the NGPC adopted an implementation framework to address GAC Category 1 Safeguard Advice related to “consumer protection, sensitive strings, and regulated markets”<sup>6</sup>, which required standardized safeguards to be added to Specification 11 as PICs.

In March of 2014, the NGPC passed a resolution approving Specification 13 for .Brand TLDs<sup>7</sup>.

- *4.3.2.2 Questions and Concerns Related to Subject*

The DG members identified specific concerns, but few seemed to apply directly to the existing 2007 Final Report guidance and the implementation of those recommendations. The concerns of

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<sup>3</sup> July 2013 version of the base agreement: <https://www.icann.org/resources/pages/base-agreement-2013-02-05-en>

<sup>4</sup> October 2013 version of the base agreement: <https://newgtlds.icann.org/en/applicants/agb/agreement-approved-16oct13-en.pdf>

<sup>5</sup> January 2014 version of the base agreement: <http://newgtlds.icann.org/en/applicants/agb/agreement-approved-09jan14-en.pdf>

<sup>6</sup> ICANN Board resolution adopting implementation framework regarding GAC Category 1 Safeguard Advice: <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a>

<sup>7</sup> ICANN Board resolution approving Specification 13: <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-03-26-en#1.a>

the DG were mostly focused on the fact that the base agreement went through a number of new versions after the launch of the program.

However, the DG identified a number of specific questions, many regarding the contractual requirements of registries. In addition, public comment received to the Preliminary Issue Report suggested that some elements, such as registry pricing, sunrise periods and practices, and other things have been perceived by some in the community to have **circumvent the intended goals/protections developed by the community**, especially in regards to potential registrants seeking to protect their rights in names. These topics may be appropriate to be discussed in part in the context of 4.3.7 on Second-level Rights Protection Mechanisms, but the enforcement of any new requirements that may be agreed upon would be via the base agreement/Registry Agreement. As such, a PDP-WG could consider amending existing base agreement language in accordance with defined policy goals.

Any new or amended requirements may also warrant inclusion in sections such as 4.6.2 on Applicant Reviews: Technical/Operational and Financial, where for instance, questions could be asked in the Evaluation Questions and Criteria. Ensuring consistency between questions asked, the representations made in applications, and the enforceability of those representations via signed Registry Agreements may be a topic for consideration.

- Does a single base agreement make sense for all types of registries?
- Should the base agreement be available in different languages?
- How can Specification 13, related to .Brand registries, be clarified, or otherwise improved?
- Should rules, definitions, and requirements be established around the selling and maintenance of premium names?
- Should there be rules and restrictions around registry pricing, particularly around premium names? Is it appropriate for ICANN to have a role in enforcing restrictions around pricing? Are there other approaches that can be taken to address concerns?
- Are public interest commitments (PICs), via Specification 11, sufficient to protect the interests of potentially affected parties?
- Should the rules around reservation of domain names by the registry be changed?
- Should there additional contractual obligations for highly regulated TLDs

A potential PDP-WG on New gTLD Subsequent Procedures may want to consider these questions, among others, during their deliberations. The PDP-WG may also want to suggest methods to avoid changes to the base agreement after the launch of subsequent procedures.

An additional area that may require attention from the PDP-WG is the development of requirements around different application types, as a single base agreement may be impractical for that situation.

- *4.3.2.3 Relevant Guidance*

- Recommendation 10:
- Recommendation 14:
- Recommendation 15:
- Implementation Guideline J
- Base Agreement - <https://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting>

- *4.3.2.4 Rationale for Policy Development*

The development of the base agreement appeared to be consistent with the recommendations from the 2007 Final Report. However, there are a number of elements that may require discussions within a potential PDP-WG on New gTLD Subsequent Procedures, notably around the possible development of different contractual requirements for different TLDs and suggestions on how to prevent changes to the base agreement post program launch. Consequently, policy development may be necessary.