

## OPEN ITEMS TO RESOLVE IN REVISED DRAFT REPORT

### 1. TWO ALTERNATIVES FOR “(REASONABLE) BEST EFFORTS” (First appears on Pages 3-4 of PDF, phrase also appears elsewhere)

#### 1. **FIRST ALTERNATIVE:**

**Text:** Uses the term “reasonable best efforts.”

**Footnote:** The term “reasonable best efforts” means that an entity (here, ICANN) must use its best efforts, except for any efforts that would be unreasonable. For example, the entity can take into account its fiscal health and its fiduciary duties, and any other relevant facts and circumstances. In some jurisdictions, this limitation is inherent in the use and meaning of the term “best efforts” (and the use of “reasonable” here does not imply any additional limitations). However, in other jurisdictions, this may not be the case, and thus it is necessary to explicitly state the limitation for the benefit of those in such jurisdictions.

#### 2. **SECOND ALTERNATIVE:**

**Text:** Uses the term “best efforts.”

**Footnote:** The term “best efforts,” as used throughout, should be understood to be limited by “reasonableness,” meaning that an entity (here, ICANN) must use its best efforts, except for any efforts that would be unreasonable. For example, the entity can take into account its fiscal health and its fiduciary duties, and any other relevant facts and circumstances. In some jurisdictions, this limitation is inherent in the use and meaning of the firm. However, in other jurisdictions, this may not be the case, and thus it is necessary to explicitly state the limitation for the benefit of those in such jurisdictions.

### 2. REVISE “APPLICANT IS OTHERWISE QUALIFIED.” (First appears on Page 3 of PDF, phrase also appears elsewhere)

1. **FIRST ALTERNATIVE:** Change “qualified” to “acceptable.” (Based on Feb 7 call).

2. **SECOND ALTERNATIVE:** Change “applicant is otherwise qualified” to “applicant would otherwise become accredited” (if registrar applicant) or “applicant would otherwise be approved” (if registry applicant). (Based on Feb 14 call).

3. **THIRD ALTERNATIVE:** No change; retain “applicant is otherwise qualified.”

**3. RECOMMEND A METHOD OF SELECTING FROM CHOICE OF LAW MENU.** (First appears on Page 6 of PDF)

1. **FIRST ALTERNATIVE:** Revise menu proposal to (A) recommend that the party contracting with ICANN have the choice of jurisdictions from the menu, and to (B) remove all mentions that it could be negotiated with ICANN.
2. **SECOND ALTERNATIVE:** No change; retain current treatment, where Report states that the contracting party could have the choice or it could be up for negotiation with ICANN – no recommendation is made.

**4. SUMMARY OF WORK OF SUBGROUP BEFORE, DURING AND AFTER COMMENT PERIOD.**  
(Page 11 of PDF)

This additional text has been in the document in “suggest” mode without amendment or objection for over two weeks. Unless there are sufficient objections, this text should be added to the Report.

**5. REVIEW PROPOSED LANGUAGE ADDED TO OFAC GENERAL LICENSE RECOMMENDATION.**  
(Page 19 of PDF)

Based on the NCSG Comment, the following additional language has been proposed for the OFAC General License recommendation:

The utmost importance of these recommendations for ICANN to carry out its mission and facilitate the global access to DNS should be considered when implementing them. Taking into account this importance, the implementation phase should start no later than six months after approval by the ICANN Board.

The Subgroup must determine whether to accept this language as drafted, revise the language, or leave it out.

**6. REVIEW AND APPROVE STRESS TESTS.** (Page 27-29 of PDF)

These Stress Tests are from the Business Constituency’s Comment. They were added to the Report in “suggest” mode prior to the 14 February meeting. No comments or objections have been noted. Unless there are sufficient objections, these Stress Tests should be added to the Report.