Community Comment 2

Public Comment Review Tool

2.1 Base Registry Agreement			
#	**Comment**	**Contributor**	**WG Response**
2.1.1 - The question of whether or not a single Registry Agreement is suitable is tied into the subject of different TLD categories. Throughout the working group's discussions, there has been support for a model similar to what is currently in place: a single Registry Agreement with exemptions that allow for TLDs with different operational models (e.g., Specification 13 for Brand TLDs or Specification 12 for Community TLDs). There is also support for different Registry Agreements for different TLD categories, centered around a common, core base set of contractual requirements. Which of these models do you think would be most effective for recognizing the different operational requirements of different TLDs? Which of these models do you think would be most efficient in terms of development, implementation, and operational execution (e.g., contracting, contractual compliance, etc.)? Do you think there are any alternative options that could effectively facilitate TLDs with different operational requirements?			
1	I suggest a common core agreement and then category (see five suggested categories above) specific sections. NOTE should not be possible to change category, once delegated. (Or at least very difficult to do so).	Jannik Skou	
2	Recommendations on this topic are largely contingent on policy discussion on whether there will be different TLD categories. In either event, to promote consistency and transparency, INTA advocates for a single base RA available in a single language (with approved translations available to ensure that the RA is accessible to all applicants). Having different RAs increases the risk of having different interpretations for similar provisions, or create potential roadblocks for developing new models for registry operation. A single base RA provides flexibility for applicants to modify their applications as their business models change. Although it is likely beneficial to .Brand TLD applicants to have a tailored RA specific to this preexisting category of TLD, there are, equally, benefits to addressing brand-specific provisions by means of Specification 13, so long as changes to Specification 13 cannot be thrust upon or blocked by non-.brand members of the community. This would allow the .Brand TLD operator the flexibility (should it so choose) to open up their TLD to third party registrants outside of the INTA Submission Page 4 limitations of Specification 13, by agreeing to remove that Specification from their contract without having to sign a completely new agreement.	INTA	
3	Stick with the current contractual model please. It is not clear what would be gained by changing the format, and anyway it is the substantive content of the base agreement and operational schedules which should be the focus here.	Nominet	
4	We would support a single uniform Registry Agreement (RA), so long as the RA contained certain addendums that may be entered into by specialized Registry Operators, e.g., .Brands, and Community TLDs. Under such a framework, different operational models would still be taken into account, while the single RA would facilitate efficiency in development, implementation, and compliance. A single RA would also make it easier for a particular Registry Operator or a TLD to move between categories as business needs evolved.	BC	
5	If the goal of the new gTLD program is to increase competition among registry providers, then forcing everyone into a standard contract runs counter to those goals. Even with the identified specification variances, there is a limit to what registries can achieve with the current contracts. ICANN argued in the 2012 round that managing multiple implementations of a contract would be burdensome. I disagree. ICANN has matured into a $100+ million per year organization. Contractual compliance is one of the bedrocks of the trust people place in the organization. If they need more resources to allow for multiple contracts, then a review of the existing allocations of resources should be under taken.	Jim Prendergast	

6	In its current form, the base RA is skewed towards traditional models and does not adequately reflect the new models introduced in the 2012 round. This can be a barrier for new entrants that operate distinctly different models. Where there is a significant difference between registry models and where these different models are a sizeable proportion of registry operators, the BRG recommends customised RAs to better reflect those models and their distinct nature. In this respect, the BRG favours a customised Registry Agreement (RA) for dotBrands, to reflect the distinct differences against a traditional open and commercial registry. A significant proportion of New gTLDs were dotBrands and we anticipate continued interest in future application windows. In the absence of a customised RA for dotBrands or other distinct and sizeable models, the BRG recommends the base agreement is stripped down to provide core provisions that are applicable to all, with the relevant specifications that define the model and variant provisions applicable to that model. The contracting parties associated with each defined model would be the parties responsible for negotiating and voting any changes to the related specification, while all registry operating under the RA would be responsible to negotiate and vote for any changes to the core base agreement.	BRG	
7	There shouldn't be any "Brand gTLDs"—see my answer above regarding "brand gTLDs." Likewise there would be no need for a specification 12 for "Community gTLDs" since any qualified entity (community or otherwise) meeting the financial and other qualifications, could submit their bid (which consists of the highest maximum wholesale fees to be charged (per domain name) to operate the gTLD during the 10 year period of the RA. [There is also support for different Registry Agreements for different TLD categories] NO!, [...centered around a common, core base set of contractual requirements. Which of these models do you think would be most effective for recognizing the different operational requirements of different TLDs?] 1 Base Registry Agreement for ALL new gTLDs. [Which of these models do you think would be most efficient in terms of development, implementation, and operational execution (e.g., contracting, contractual compliance, etc.)?] 1 Base Registry Agreement for ALL new gTLDs. [Do you think there are any alternative options that could effectively facilitate TLDs with different operational requirements?] 1 Base Registry Agreement for ALL new gTLDs.	John Poole	
8	ICANN should have a single base registry agreement. This will ensure all registry operators are held to the requisite business and technical standards to maintain security and stability across the Internet.	Afilias	
9	There has been much discussion on the Base Registry Agreement and possible provisions within four different classifications of TLD types. The question is whether there should be separate Base Agreements for different TLD Types, or one Base Agreement, for which different TLD types may request exemptions for certain non-relevant contractual obligations. The RrSG does not wish to comment on the mechanics of how this should be contractually dealt with by ICANN. However, regardless of the mechanism ICANN chooses, the process must be 100% clear and defined within the Application Guidebook or equivalent. There should not be any new "on the fly" exemptions made or new TLD types classified, once the applicant window is closed.	RrSG	
10	The notion of a single Registry Agreement that contains certain clauses that may or may not be triggered based on the applicant or the nature of the TLD, versus a suite of Registry Agreements is, in reality, the same concept. That is to say that in both models certain provisions will only ever apply to certain Registry Operators or TLDs, and the core provisions of the Registry Agreement remain the same. As such neither model should be more or less effective in recognising the different operational requirements of different TLDs. With regard to efficiency in development, implementation, and operational execution, a single Registry Agreement is the most practical. Some factors considered include: time required to develop each of Registry Agreements for each of the categories; the ability of an Registry Operator or a TLD to move between categories; the complexity of an amendment process such as that being undertaken at present where there are multiple Registry Agreements; administrative burden for ICANN and Registry Operators; predictability for ICANN, Registry Operators and the internet using public. Further, strict categorisation and inflexible agreements may, in practice, stifle competition and innovation.	RySG	
11	Support a single registry agreement to ensure, as far as possible, consistency of terms across all categories of TLDs.	ALAC	

12	Categories become more relevant if there are different application criteria, obligations, or contractual provisions applied accordingly. Whilst we do not support multiple categories with different criteria, due to the complexity and lack of flexibility to develop and evolve business models that would likely result, the 2012 round did clearly establish a category of Brand TLDs, which we support. A number of Brands would have benefited from an application process and contractual provisions which better acknowledged the different drivers and priorities of a Brand TLD. Specification 13 goes some of the way here, but additional Brand-specific provisions or even a Brand-specific contract would be beneficial. An entirely separate contract for Brand TLDs requires careful consideration, however, as it has the potential to reduce the flexibility of registries. For example, if a registry operator did wish in the future to allocate names more widely, outside the limitations imposed by Specification 13, it is a simple matter to remove the Specification from the contract. With a separate Brand contract the registry operator would need to enter into a replacement contract with ICANN. The same benefits and tailoring for Brand TLD might also satisfactorily be delivered by using the specification model.	Valideus	
13	We believe that a single base agreement applicable to all with specifications serving as additional contractual requirements that are required for specific registries category types would be the ideal model.	NCSG	
2.1.2 - Should further restrictions pertaining to sunrise periods, landrush, or other registry activities be developed? If so, do you have suggestions on attributes of these restrictions? Should they be incorporated into the base agreement? Should there be any restrictions established on registry pricing?			

1	INTA supports additional modifications to the RA be implemented to comply with ICANN's duty to protect the existing legal rights of others. The GNSO made several recommendations in the 2007 Final Report that cover these topics, including that "[s]trings must not infringe the existing legal rights of others" (Recommendation 3) and that "[d]ispute resolution and challenge processes must be established prior to the start of the process" (Recommendation 12). There have been numerous issues identified by INTA and its members which are fundamental to these recommendations. Many of these appear to fall within the remit of the PDP to Review all Rights Protection Mechanisms (RPMs) in all gTLDs, such as whether the RPMs have met their goal in minimizing the cost and burden on brand owners; whether trademark protections should be extended to "mark +"; and whether a globally protected marks list should be introduced. Other issues appear either to fall within the remit of the Subsequent Procedures PDP, or there is a lack of clarity over which PDP should deal with them. These include: a) Premium Names and Sunrise Pricing INTA has long expressed its concern to ICANN about registry operators who are circumventing trademark Sunrise protection through "premium" names programs. In many cases, "premium" names are self-selected by registries and incorporate well-known trademarks, including arbitrary and fanciful marks. It is important to note that INTA's concerns do not extend to permissible speech issues, including protectable trademarks that may also have another common meaning. Premium names lists, however, frequently have the effect of removing trademark names from the Sunrise registration period in spite of the fact that, under the RPM Requirements, such launch programs are not supposed to "contribute to consumer confusion or the infringement of intellectual property rights." This can occur either because the high pricing puts them out of reach of the trademark owner and/or because premium names may be reserved by the registry for later release after the Sunrise period has ended. As a related point, even where trademarked terms are not placed onto premium lists, many registry operators share significantly higher prices for a Sunrise registration than would be charged for the same domain name during general availability. While registry operators may argue that this is necessary in order for them to recover the cost of connecting to the Trademark Clearinghouse (TMCH), the cost of Sunrise names appears to be significantly higher than a mere cost-recovery. INTA understands that ICANN does not actively regulate domain name pricing, but contends that the registry practice of creating "premium" names and charging excessive pricing for such names, and of charging substantially higher prices for Sunrise names generally than in GA, runs contrary to the intent and acts as an effective circumvention of the RPMs. The Sunrise period was created with the intention to protect, rather than to exploit, brand owners. It is important that consideration is given to how premium names schemes and Sunrises can be operated without undermining the RPMs and discriminating against brand owners. b) Reserved Names Many INTA members have reported that their trademarks have been withheld from registration by new gTLD registry operators, thereby being unavailable during the Sunrise period. Please see our further comments below. In addition, ICANN has the authority to request lists of reserved domain names but has refused to request and share such lists, which would allow brand-owners to police improper reservation of names. c) Legal Rights Objection (LRO) Process The LRO process currently set forth in the Applicant Guidebook is defective as it is based upon claims of infringement (which require use and it is not immediately clear how one can use a TLD they have not yet been awarded), rather than upon claims of bad faith application for a TLD and therefore does not meet the standard set forth under Policy Recommendation 3. INTA understands that there is a proposal being considered by the Subsequent Procedures Working Group and urges ICANN to seriously consider any improvements proposed by that working group. See 3.1.4. below for further comments on this issue.	INTA	
2	We do not feel that any further restrictions are necessary, and also that there shouldn't be any ICANN restrictions on registry pricing.	Nominet	
3	No. Particularly for dotBrands where this is irrelevant.	BRG	

4	[Should further restrictions pertaining to sunrise periods, landrush, or other registry activities be developed?] YES. [If so, do you have suggestions on attributes of these restrictions?] YES—no warehousing, no gTLD registry operator can operate a registrar, no gTLD registry operator or any of its "affiliates" can purchase through registrars more than a total of 1000 domain names under the new gTLD for the first 12 months of general availability, and there can be no "premium pricing"—the same fee for each domain name in the gTLD. [Should they be incorporated into the base agreement?] YES. [Should there be any restrictions established on registry pricing?] Yes. See my previous answers.	John Poole	
5	No.	Afilias	
6	The restrictions in relation to sunrise periods, landrush, and related activities are sufficient for the TLDs currently being delegated and will be sufficient for future TLDs. Specific launch plans, dates, and terms and conditions should continue not to be included into the Registry Agreements. Any restrictions on registry pricing in addition to that which is already contained within current Registry Agreement may stifle competition and innovation.	RySG	
7	Whilst a number of factors have impacted the cost to brand owners, feedback from Com Laude's clients, and supported by the INTA Impact Study, has highlighted certain pricing practices of some new gTLD registries as being a particular concern, namely the issues of Sunrise pricing and the treatment of Premium and Reserved names. Many trademark holders have reported being offered names during the Sunrise at prices significantly higher than those for general availability, often prohibitively so. This is exacerbated where terms corresponding to the trademark, including examples where the trademark is a coined word, have been designated by some registries as Premium names, attracting even higher prices. We recognize that the matter of pricing raises difficult issues, and that all registries should not be constrained by overstrict rules to follow the same business and pricing models. Nevertheless, there is a point at which pricing ceases to be a legitimate business model in a competitive market and undermines the RPMs. This is particularly so, given the finding from the INTA Impact Study, that there is no substitutability of names in practice for brand owners because of their defensive nature. Another area of concern raised by Com Laude's brand clients is the scope that registry operators appear to have under the RPMS requirements to reserve an unlimited number of names, including names which may be recorded in the TMCH, until after the sunrise has finished. On later release from reservation these names are subject to a trademark claims process but not to the sunrise. This again has the capacity to undermine the intentions of the RPMs. We would welcome consideration by the working group of how holders of TMCH-recorded marks might be given first refusal where the name is released from reservation. All of these issues have scope for overlap with the work of the RPMs PDP, and thus communication and liaison between the two PDPs is required.	Valideus	
2.1.3 - Should the entire application be incorporated into the signed Registry Agreement? Should portions of the application, explicitly identified, be incorporated into the signed Registry Agreement? If changes are made between applying and executing the Registry Agreement, how should this be handled? If changes are made after executing the Registry Agreement, how should this be handled? If changes like these are contemplated, how can the needs of the community to properly consider the contents of an application be weighed against an applicant's need to make either minor adjustments or fundamental changes to their registry?			
1	Application should be part of the RA (under SPEC 11). Restriction on Sunrise – a maximum fee (General Availability plus a max fixed amount: 300 USD) should be requested.	Jannik Skou	
2	The current registry agreement includes warranties to the effect that the application to ICANN was true and correct in all material respects and that would seem to be sufficient. This assumes that the public portions of the application disclose sufficient details as to the proposed use to enable whether legal rights objections etc should be filed. Post contract, ICANN already operates change control procedures.	Nominet	
3	Applicants should be more transparent regarding planned pricing of domain names. We believe the current restrictions are working well to protect registrants and Internet users. Regulations pertaining to pricing are generally outside of the scope of ICANN's remit. However, we are concerned about "predatory pricing" schemes by a couple of Registry Operators that have charged significantly higher fees for trademarked terms during Sunrise. Such practices could be potentially dealt with in the future through more explicit fraud provisions in PICs as well as regulations preventing use of TMCH data for purposes other than intended.	BC	
4	No, the application should not be incorporated into the agreement.	BRG	

5	[Should the entire application be incorporated into the signed Registry Agreement?] Yes as necessary. [Should portions of the application, explicitly identified, be incorporated into the signed Registry Agreement?] Yes as necessary. [If changes are made after executing the Registry Agreement, how should this be handled? What kind of changes?] It depends. [If changes like these are contemplated, how can the needs of the community to properly consider the contents of an application be weighed against an applicant's need to make either minor adjustments or fundamental changes to their registry?] One Base Registry Agreement. Changes requested by a registry operator, unless agreed to as a "universal" change in the Base Registry Agreement, would require ICANN to give notice, and allow any other registry operator to offer to take over the gTLD and continue operating the gTLD registry on the original terms. If no other operator was interested, changes would either be approved or denied by the ICANN Board in the global public interest, and if the registry operator did not accept the Board's decision, the registry operator's operation of the gTLD would terminate at ICANN's earliest convenience.	John Poole	
6	The application should not be incorporated into the Registry Agreement. ICANN should continue with the current model of utilizing a base Agreement.	Afilias	
7	The entire application should not be incorporated into the signed registry agreement (neither should the applicant guidebook). Registries must retain reasonable latitude and flexibility to adapt and innovate. Overburdening a contract with hundreds of terms is a poor way to conduct business and invites interminable wish lists of regulation. The voluntary PIC model has worked fairly well (though in the 2012 round it was rushed) and a similar procedure is more likely to bear fruit: an applicant could add voluntary PICs in its application, then have a period to add more in response to any GAC/community issues.	RySG	
8	Agree all relevant aspects of application should be incorporated into the Registry Agreement. This would ensure that what a proposed Registry Operator has undertaken to do is part of the agreement. Any changes should be the subject of notice with an opportunity for public comment.	ALAC	

Community Comment 2

Public Comment Review Tool

2.2 Reserved Names			
#	**Comment**	**Contributor**	**WG Response**
2.2.1 - Do you believe any changes are needed to the String Requirements at the top level as defined in section 2.2.1.3.2 of the Applicant Guidebook (https://newgtlds.icann.org/en/applicants/agb/guidebookfull-04jun12-en.pdf)? Please explain.			
1	NO – With GEO TLDs granted priority over other applications this is not needed.	Jannik Skou	
2	ICANN's 2009 policy recommendations on reserved names appear to have envisaged that combinations of letters and numbers, such as single letter-single number combinations e.g., .3F, .A1, would be permitted as TLDs, however the final version of the AGB requires that ASCII label TLDs must consist entirely of letters. A number of brands consist of combinations of numbers and letters, and INTA would support permitting such combinations as gTLDs unless there is a technical reason to prevent this.	INTA	
3	String Requirements – see response to 3.4, below, concerning string similarity.	GAC	
4	Section 2.2.1.3.2, Part III, paragraph 3.1, first sentence: "Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters." -- This definition should have been much more stringent. There is no attempt to describe what "generic" really means. It is only used as a contrast to country code – everything that is not 2-letter ASCII is defined as generic. Both semantically and legally this is not correct. -- There is been an attempt in the Registry Agreement Specification 11.3.d to define a "generic string" as a string consisting of a word or term that denominates or describes a general glass of goods, services, organizations or things, as opposed to a specific brand of goods, services, groups organizations or things from those of others. -- This is a definition that makes sense. However, it has not been followed up in practice. Brands are definitively not "generic terms". Neither are geographical names in most cases; at least not names of countries. Among the words that have been accepted as gTLDs there are many that are specific, given names that legally would not have been characterized as generic. -- This should be looked into in the next round. As there has been suggestions on establishing categories in the next round, this might solve the discrepancy by making the rules somewhat different for the different categories. It is important that the protection for 2-letter ASCII codes remains also in new rounds, ref. 2.2.1.3.2, Part III, paragraph 3.1, second sentence: "Two- character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard." -- Neither practically nor politically it would be a good idea to change this rule. The reliance of this policy is consistent with RFC 1591, on a standard established and maintained independently of and external to ICANN and widely adopted in contexts outside of the DNS.	NORID	
5	No changes required as far as we are aware.	Nominet	

6	Yes, the requirements should be reviewed generally. More specifically, dotBrand applicants that coincide with geographic terms but are not representing themselves as the geographic place will be unnecessarily impacted with the current restrictions to geographic terms, including those associated with 3 character names or abbreviations. These future applicants need business certainty. They need a set of rules which they can follow, knowing that if they do so there will not be an unexpected objection, and it is not reasonable that they should be required to enter into a one-sider negotiation with one or multiple governments over the use of their own brand. The BRG does not support any restrictions to the use of geographic terms at the top level for applicants that hold a matching trademark, whereby the use of the TLD is to identify the brand and not to represent the geographic term, and where there is no conflict with national or international law. The rationale supporting the BRG's position is based primarily on the following: - A trademark-branded top level domain (dotBrand) enables a trusted space, protecting consumers from many of the problems that exist across open registries. - Many terms have more than one meaning/use – context is key. - Some branded terms may also have a geographically-related context. There is no justification for a geographical-related use at the top level taking priority over a brand-related use. - There is no evidence to suggest that the use of a geographic term at the top level by a trademark owner creates any risk or confusion to users. Indeed, by creating a trusted Brand TLD space, where registrants are limited to the brand owner and closely related parties vetted by the brand owner, the context of the use makes such confusion extremely unlikely. - There is no sovereign or other ownership right of governments in country or territory names, including ISO 3166-1 codes: -- There is no legal basis for government veto power on allocation of these codes as gTLDs. -- Restrictions to use geographic terms at the top level should, therefore, be minimal. -- Restrictions must be clear, with reference to defined lists, providing predictability. -- Two-character restrictions are already applied at the top level, due to a longstanding practice, for country codes corresponding to the ISO-3166. These are premium online real estate are reserved for or used by the applicable country/government. - Protective measures still remain - vetting and objection processes through the application process as well as post-delegation objections. Contractual obligations and applicable national/international laws also remain in force.	BRG	
7	Possibly based on "collisions" and Universal Acceptance issues in order to protect Registrants from Domain Names that ICANN knows or has reason to believe will fail to work as expected on the internet. ICANN failed to act as a responsible steward of the global DNS in the 2012 round and cannot shirk its responsibity to the global internet community by relying on "feasibility testing" by registry operator applicants.	John Poole	
8	No.	Afilias	
9	Yes, the requirements should be reviewed. If the applied for string is not a security or stability risk, it should be permitted. For example, a single IDN character, a single letter, or a mix of letters and numbers are not allowed now. Preventing the allocation of mixed letters and numbers stifles innovation. (Note that the Joint ccNSO-GNSO IDN Working Group (JIG) has made recommendations that this section be revised to allow for single-character IDN gTLD labels. See the JIG Final Report at http://gnso.icann.org/drafts/jig-final-report-30mar11-en.pdf. Implementation models for these recommendations are being developed for community discussion.)	RySG	
10	We have not sought any changes.	ALAC	
11	ICANN's 2009 policy recommendations on reserved appears to anticipate that letter/number combinations, including single letter-single number combinations, would be permitted as TLDs, however the final version of the Applicant Guidebook requires that ASCII label TLDs must consist entirely of letters. A number of brands consist of combinations of numbers and letters. We would support permitting letter/number combinations as gTLDs unless there is a technical reason to prevent this.	Valideus	
2.2.2 - Do you believe any changes are needed to the list of Reserved Names at the top level as defined in section 2.2.1.2.1 of the Applicant Guidebook (https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf? Please explain.			

1	INTA does not propose any amendments to the list of Reserved Names as defined in section 2.2.1.2.1 AGB. CC2 does not ask any questions specifically regarding the reservation of geographic names, presumably because a separate stream of work is underway relating to the use of geographic names at the top level, including the webinars of 25 April 2017 and the cross community sessions scheduled for the ICANN meeting in Johannesburg. For the avoidance of doubt, INTA refers to its position as expressed during the 25 April webinars and summarized on the slides submitted in support.	INTA	
2	Regional organizations such as Centr (https://www.centr.org/) should be protected at the same level as GNSO and CCNSO. Otherwise, the list is fine.	NORID	
3	Whilst the AGB does not explain the policy basis for reserving these strings and it does seem rather self-serving for ICANN to reserve the string “ICANN” it is probably best to leave the list unchanged rather than reopen that debate.	Nominet	
4	There should be further definition of restricted names. As the BC comments on the CCWG-Country and Territory Names Interim Report stated, “the BC supports the use of full country and territory names as new gTLDs, including removing any moratorium on the ability to apply for such names generally and not requiring any form of governmental pre-approval or non-objection.” *Footnote: BC Comment, page 3, at http://www.bizconst.org/assets/docs/positionsstatements/2017/2017_04april_21%20bc%20comment%20on%20using%20names%20of%20countries%20and%20 territories%20as%20tlds.pdf*	BC	
5	Yes, the Reserved Names list should be reviewed. Names should only be reserved where stability or security risks exist.	BRG	
6	Yes, changes are needed. [Please explain.] Trademark blocks, etc.	John Poole	
7	Afilias supports the recommendations of SAC090 “SSAC Advisory on the Stability of the Domain Namespace”.	Afilias	
8	Yes, the list should be reviewed. Labels should be reserved only where there are stability or security risks. Several of those reserved labels could be delegated and put to productive use. For example, .ICANN could be put to use by ICANN, thereby raising the visibility of the new gTLD program. ICANN should make technical/linguistic check of all Reserved Names lists (the current list of Reserved names contains at least 4 errors, known to ICANN (related to local Red Cross bodies, 1 is cross script, and is a technical error, and another 3 related to the incorrectly inserted line break, as result of this, Cyrillic equivalent for ‘society ’ is reserved in situation where Red Cross has no rights for it).	RySG	
9	We have not sought any changes.	ALAC	
2.2.3 - Special Use Domain Names. Context: Internet Engineering Task Force (IETF) RFC 6761 (https://tools.ietf.org/html/rfc6761) was issued after publication of the Applicant Guidebook. The RFC describes what it means to say that a domain name is reserved for special use by the IETF, when reserving such a name is appropriate, and the procedure for doing so. It establishes an IANA registry for such domain names, and seeds it with entries for some of the already established special domain names. As a result of the RFC, ICANN must not assign Special Use Domain Names to any third-party registry. For example, the IETF recently approved .onion as a Special Use Domain Name and IANA added .onion to use Special-Use Domain Name registry (See http://www.iana.org/assignments/special-use-domainnames/special-use-domain-names.xhtml#special-use-domain), thereby ensuring that ICANN could not delegate . onion as a gTLD in the future. Do you think Special Use Domain Names should be added to the Applicant Guidebook section on reserved names at the top level to prevent applicants applying for such labels?			

	See SAC045: Invalid Top Level Domain Queries at the Root Level of the Domain Name System (15 November 2010 with corrections) at: https://www.icann.org/en/groups/ssac/documents/sac-045-en.pdf Board Advice Status: CLOSED See Board Advice Status Report and Definitions at: https://www.icann.org/en/system/files/files/board-advice-status-report-pdf-30apr17-en.pdf and https://features.icann.org/board-advice Recommendation (2): The SSAC recommends that ICANN consider the following in the context of the new gTLD program. • Prohibit the delegation of certain TLD strings. RFC 2606, "Reserved Top Level Domain Names," currently prohibits a list of strings, including test, example, invalid, and localhost. ICANN should coordinate with the community to identify a more complete set of principles than the amount of traffic observed at the root as invalid queries as the basis for prohibiting the delegation of additional strings to those already identified in RFC 2606. • Alert the applicant during the string evaluation process about the pre-existence of invalid TLD queries to the applicant's string. ICANN should coordinate with the community to identify a threshold of traffic observed at the root as the basis for such notification. Define circumstances where a previously delegated string may be re-used, or prohibit the practice. See SAC062: SSAC Advisory Concerning the Mitigation of Name Collision Risk (07 November 2013) at: https://www.icann.org/en/groups/ssac/documents/sac-062-en.pdf Board Advice Status: OPEN – UNDER REVIEW, See Board Advice Status, Report and Definitions at: https://www.icann.org/en/system/files/files/board-advice-status-report-pdf-30apr17-en.pdf and https://features.icann.org/board-advice Recommendation 1: ICANN should work with the wider Internet community, including at least the IAB and the IETF, to identify (1) what strings are appropriate to reserve for private namespace use and (2) what type of private namespace use is appropriate (i.e., at the TLD level only or at any additional lower level). 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 Board Advice Status: OPEN – UNDER REVIEW See Board Advice Status Report and Definitions at: https://www.icann.org/en/system/files/files/board-advice-status-report-pdf-30apr17-en.pdf and https://features.icann.org/board-advice Recommendation 1: The SSAC recommends that the ICANN Board of Directors take appropriate steps to establish definitive and unambiguous criteria for determining whether or not a syntactically valid domain name label could be a top-level domain name in the global DNS. Recommendation 2: The SSAC recommends that the scope of the work presented in Recommendation 1 include at least the following issues and questions: 1) In the Applicant Guidebook for the most recent round of new generic Top Level Domain (gTLD) applications, ICANN cited or created several lists of strings that could not be applied-for new gTLD names, such as the "reserved names" listed in Section 2.2.1.2.1, the "ineligible strings" listed in Section 2.2.1.2.3, the two-character ISO 3166 codes proscribed by reference in Section 2.2.1.3.2 Part III, and the geographic names proscribed by reference in Section 2.2.1.4. More recently, the IETF has placed a small number of potential gTLD strings into a Special-Use Domain Names Registry. As described in RFC 6761, a string that is placed into this registry is expected to be processed in a defined "special" way that is different from the normal process of DNS resolution. Should ICANN formalize in policy the status of the names on these lists? If so: i) How should ICANN respond to changes that other parties may make to lists that are recognized by ICANN but are outside the scope of ICANN's direct influence? ii) How should ICANN respond to a change in a recognized list that occurs during a round of new gTLD applications? 2) The IETF is an example of a group outside of ICANN that maintains a list of "special use" names. What should ICANN's response be to groups outside of ICANN that assert standing for their list of special names? 3) Some names that are not on any formal list are regularly presented to the global DNS for resolution as TLDs. These so-called "private use" names are independently selected by individuals and organizations that intend for them to be resolved only within a defined private context. As such they are harmlessly discarded by the global DNS—until they collide with a delegated use of the same name as a new ICANN-recognized gTLD. Should ICANN formalize in policy the status of "private use" names? If so:		

2	Yes, if IETF has justified the need for this, we support it. We do not think IETF would have asked for this without a very good reason.	NORID	
3	That seems like a good idea. Otherwise it is not clear to prospective applicants which strings are blocked for technical policy reasons (LOCAL, TEST etc).	Nominet	
4	Yes.	John Poole	
5	Yes, for the purpose of predictability these strings should be added to the guidebook, however, the IETF should rarely assign Special Use Domain Names and, when it does, avoid assigning SUDNs that also correspond to brands.	BRG	
6	Afilias supports the recommendations of SAC090 “SSAC Advisory on the Stability of the Domain Namespace”.	Afilias	
7	Yes. If ICANN knows a label won't be delegated, it should not be possible to apply for that label. Similarly, if a name is not reserved, it shouldn’t be added to the list after ICANN receives and processes applications absent a material change in circumstances. We further believe that ICANN could better prevent applicants from applying for reserved names by upgrading the application system such that it would automatically kick back applications for any names prohibited under specific provisions of the Applicant Guidebook. During the 2012 Round Applicants encountered inconsistencies in ICANN’s handling of reserved names. While some reserved names (e.g. strings that were identical to an existing TLD or an IANA reserved name) would be automatically rejected by the application systems, other applications that were altogether banned per 2.2.1.4.1 of the Applicant Guidebook were accepted by the application systems; further, no comprehensive list of these terms was provided requiring duplicative parallel review by applicants.	RySG	
8	Yes. This is to prevent applicants from applying for reserved names.	ALAC	
2.2.4 - Specification 5 of the Registry Agreement allows the Registry Operator to reserve and use up to 100 names at the second level for the operation and/or promotion of the TLD. In addition, the Registry Operator is permitted to reserve an unlimited amount of other domain names which may only be released through an ICANN-Accredited Registrar for registration by third parties. Do you believe that any changes are needed to a Registry Operator’s right to reserve domain name? If yes, what changes are needed and why? If not, why not?			
1	100 domains for promotional needs are sufficient. There should be a cap of 5000 Domains (including IDNs) for reserved names, to avoid that registry operators de facto can decide who gets each domain name at what price by operating an unlimited reserved/premium name list. In the 2012 round we saw TLDs with more than 240.000 “reserved/Premium domain names”. When entering an RA with ICANN one is primarily enhancing the name space to allow registrants to make use of this opportunity (enhanced competition, innovation, diversity), and not to be given a “portfolio of attractive domain names for sale to third parties. If a TLD is not viable without premium names profits, then do not apply.	Jannik Skou	
2	As drafted, the RPMs Provisions provide that if reserved names are released while the Sunrise is ongoing, they will be subject to the Sunrise; whereas if reserved names are released after the Sunrise has finished the names will be subject to a period of Trademark Claims, but not to a Sunrise. It is possible, therefore, for the reservation of unlimited numbers of domain names to be used as a means of circumventing the Sunrise, without such a registry being considered to have acted in breach of their RPM obligations. INTA considers that all names should be subject to Sunrise, and where names are released after the end of the initial Sunrise period there should be a means to give brand owners with matching marks recorded in the TMCH an opportunity to register the name first, by means of a second Sunrise or other comparable process such as a right of first refusal.	INTA	
3	For open TLDs it seems reasonable to allow the Registry Operator to reserve up to 100 names at the second level, but that limit seems artificial and meaningless in the context of a closed .BRAND new gTLD. We would agree that Registry Operators should be able to reserve domains without limit depending on the nature and use of the new gTLD.	Nominet	
4	No changes required, based on the experience of 2012 round.	BRG	
5	[Do you believe that any changes are needed to a Registry Operator’s right to reserve domain name?] Yes. [If yes, what changes are needed and why?] Registry operators have abused these provisions—NO reservations should be allowed except 100 names. See my answers above about other limitations on registry operators.	John Poole	
6	Changes are not required.	Afilias	

7	For most applicants the 100 names allocated appeared to work effectively in allowing registries to establish initial operations and marketing. Issues appeared to be primarily confined to Geographic TLDs, many of which were required to or chose to reserve/allocate large numbers of registrations to the associated government. The working group may choose to consider the specific experience of geographic TLDs and how it interacts with the 100-name limit as well as other provisions of the QLP.	RySG	
8	We do not expect Spec 5 to change as it seems to be sufficient as is.	ALAC	
9	See response to 2.1.2 above	Valideus	

Community Comment 2

Public Comment Review Tool

2.3 Registrant Protections			
#	**Comment**	**Contributor**	**WG Response**
2.3.1 - ICANN has included the following programs to protect registrants: an Emergency Back-End Registry Operator (EBERO), Continued Operations Instrument (COI), Data Escrow requirements, and Registry Performance Specifications in Specification 10 of the base registry agreement? Such programs are required regardless of the type of TLD. Are there any types of registries that should be exempt from such programs? If so, why? Do the above programs still serve their intended purposes? What changes, if any, might be needed to these programs if an RSP pre-approval program, discussed in section 1.1.1., were to be developed?			
1	Am against RSP Pre-approval Program (See comments above). Generally, I see no need for COI. Let the surplus cover or increase SLA for all other TLDs if funds are needed. (See comment above)	Jannik Skou	
2	Brand TLDs should be exempt from the requirements for an EBERO, COI or Data Escrow. As soon as the brand TLD is unable to meet its commitments it is only harming a single registrant and therefore itself. The true purpose of all these measures is to protect an end-user of a domain in the case of the registry business failing to operate. When the only end-user is the RO as well, these measures do not protect anyone.	Demys	
3	Registrant protection is a proper objective, but these programs appear to have been drawn up on the basis of all new gTLDs being an open registration model. It seems total overkill for a closed .BRAND new gTLD to have such failsafe protections built in as mandatory. Arguably many if not all of them should cease to apply to certain categories of new gTLDs – why the need for RDDS and EPP service availability SLAs for a closed .BRAND new gTLD for example? Similarly the consequences of failure of a closed .BRAND new gTLD are much less serious than a situation where third party registrants have in good faith paid for and used new gTLDs with the expectation that they will continue to operate for the foreseeable future. Where there are no 'retail' domain registrants EBERO/ COI/ Escrow are all unnecessary and not appropriate in our view.	Nominet	
4	The entire EBERO concept need to be re-examined. It is an ICANN created artificial safety net that ensures no registry ever fails. That is not how markets work. ICANN is supposed to be ensuring competition in the registry space. By not allowing registries to fail, they are preventing full competition from happening.	Jim Prendergast	
5	The registrant protection mechanisms were conceived on the basis of applicants replicating traditional models of selling and distributing domains to third parties. With the introduction of different models, whereby the registry operator (and its affiliates and TM Licensees) is the sole registrant, these safeguards are meaningless. In effect, they are having to safeguard themselves, which is an unnecessary and unreasonable burden, which should not be required in future.	BRG	
6	[Are there any types of registries that should be exempt from such programs?] NO! [What changes, if any, might be needed to these programs if an RSP pre-approval program, discussed in section 1.1.1., were to be developed?] Registrant Protections are PATHETIC need to be greatly expanded—this is one of the BIG failings of ICANN and the 2012 Round.	John Poole	
7	Insofar as the EBERO is able to support the largest TLDs by registration and usage, e.g., WHOIS, DNS, SRS interactions, the EBERO model should be sufficient as defined. However, streamlining is possible when a Registry Operator is different from the Registry Service Provider. To ensure stability, limit any service interruption, and/or remove transition burden to registrars, ICANN should provide the current RSP the opportunity to continue managing the TLD and become the Registry Operator (e.g., sign the base registry agreement for the specific TLD[s].)	Afilias	

8	The intent behind the registrant protection mechanisms mentioned in this question is important -- registrants should not be at risk of losing their domain names due to registry failure. Unfortunately, the mechanisms to address that intent are inefficient and cumbersome. The EBERO concept makes sense and should be maintained if a Registry Operator serves a technical back-end function in addition to being the RO. In a case of a RO with a different technical back-end, however, it may not. Considering ICANN requirements, transitioning back-ends is a cumbersome process. In the case where the technology is working fine, but the registry operator is failing financially, it would make more sense to leave the customers on the existing back-end instead of transitioning them to an EBERO and then again to a new Registry Operator and back-end. The COI, which is the EBERO funding mechanism, is entirely inefficient, complicated and over-kill. Instead of insurance, where each party pays a certain amount to create a fund that would more than cover the percentage chance of failure, the COI requires each and every registry to fully fund the risk 100%. So ICANN has access to many tens of millions of dollars in COIs to fund EBEROs and there hasn't been one instance of an EBERO being utilized in three years. It would be like an insurer seeking to collect 100% of the replacement cost from every home in a desert in case there is a flood. Instead, ICANN should put a few million dollars aside in a fund to cover the cost of transferring a registrants to an EBERO should it ever be necessary and scrap the entire COI concept. Regardless, closed TLDs, for which the registry is also the registrant should be exempt from EBERO and COI. The protection provided to registrants by EBERO is consistency—in the event a registry goes out of business, the registrant will not lose their domain names. This is not necessary for a closed (and particularly brand) TLD as the registrant is the registry. Similarly, the COI's intent is to fund the EBERO in the event it is needed; where a registry/registrant of a closed TLD goes out of business, or decides to fold its registry business for any reason, the registry has, necessarily, already taken into account its own interests. In the event where a pre-approval process is developed, whether or not the registry is a closed registry should be taken into account when making the decision to implement EBERO and COI requirements against that registry. The Escrow requirements and the Performance Specifications in Specification 10 seem fine.	RySG	
9	Current protections should remain. On possible development of an RSP program, while the ALAC does not see any benefits from the further expansion of new gTLDs into the domain system, benefits could be achieved by the proposed programme to develop and enhance the technical and knowledge capacity of RSPs, especially for underdeveloped economies.	ALAC	
10	As indicated, these provisions are intended to provide protection for third party registrants. Where a Brand TLD qualifies for specification 13, or for registries which have been granted an exemption to the specification 9 code of conduct, the classes of registrant are narrowly defined and limited to the registry operator, or for specification 13 registries, to affiliates and trade mark licensees - in other words to group companies and third parties who have a direct contractual relationship with the registry. Consequently, these registrant protection provisions seem excessive and unnecessary. It is possible, of course, that a specification 13 registry operator might have a number of affiliates and trademark licensees, but this possibility does not necessitate all specification 13 registries being subject to these obligations. Consideration could be given to a threshold level of registrants after which the Brand registry would be require de to put these registrant protections in place.	Valideus	
2.3.2 - In the working group discussions, it became clear that the EBERO funding model requires review and potential modification. The current COI model is one that has proven to be difficult to implement for many registries, ICANN and even financial institutions. Are there other mechanisms of funding EBERO providers other than through Letters of Credit and/or other Continuing Operations Instruments?			
1	Consider charging 5000 USD in start up SLA – and let ICANN use that money to pay EBERO providers). Then you only contribute (have costs), if delegated. The COI causes too many problems for non US Applicants (non US bank clients that is).	Jannik Skou	
2	We agree that COI was a complex and expensive hurdle for round 1 applicants. There must be a better solution. We suggest that ICANN does away with COI completely. The costs of maintaining a hot standby EREBO could be met by ICANN charging a small surcharge on a per domain basis for new gTLD registries which require EBERO services by virtue of operating an open registry for 'retail' domain registrants. Effectively a collective insurance scheme paid for only by the domain registrants who need this protection. Over time a contingency fund for EBERO could be built up by ICANN – perhaps seeded by the surplus proceeds from round 1. Ultimately this will be much more efficient and therefore cheaper for all concerned (well apart from the financial institutions who provide COI services!).	Nominet	

3	See 2.3.1 – EBERO is not applicable to dotBrand registries.	BRG	
4	As I already answered previously, each bidder for a new gTLD would be required to deposit $1,000,000. If the bidder was awarded rights to operate the new gTLD for a 10 year term, ICANN would hold the $1,000,000 as a guarantee of performance subject to charges for any breach or costs incurred by ICANN during the term of the RA. At the end of the term the balance of the $1,000,000 would be refunded or applied against the deposit required if the registry operator wanted to bid again to operate the gTLD.	John Poole	
5	As mentioned above, we think that the COI model should be tossed out in favor of something more efficient and common-sensical. Alternatives to a COI would be a fund, which would be funded by application fees. Similarly, an EBERO and COI should not be necessary if a third party back-end agreed to maintain registrants on its platform for a certain time period as a commercial matter. Perhaps a certificate from a back-end provider of this requirement would be sufficient to avoid the EBERO requirement and its funding. Should ICANN choose to maintain a COI requirement, Letters of Credit (LOCs) are the simplest and most effective means of accomplishing the EBERO funding requirement. In the future, when the industry becomes more mature, it might be the case that registries could instead hold a certain amount of capital earmarked for EBERO; at this point, however, that is likely a precipitous idea and LOCs ought to be continued. With that in mind, we encourage ICANN to be more understanding of business realities when calculating the size of LOCs. Currently, the “steps” are very low (a 500 DUM change in either direction is cause for an adjustment); steps that are too high, of course, are also inappropriate, especially for smaller registries. We suggest a percentage level—a 10% change in estimated DUMs (not a 10% change in historic DUMs but in estimated and LOC-funded DUMs). We also suggest an annual review. Similarly, the language requested by ICANN for LOCs was untenable for most banks. ICANN should consider more commercially reasonable language, and ensure that this is provided to applicants in advance, to avoid the issues registries experienced during the 2012 round in endeavoring to secure LOCs. For larger registries, especially portfolio registries, there must be a means of more easily incorporating additional TLDs into an LOC (and contra-wise, removing them in the event of a sale). Because of how the application LOCs were structured, this is currently a very messy process. And, again, the size of the LOC should be predicated upon a percentage change in DUMs over the registries entire portfolio rather than a discrete number. We recommend an annual review of the LOCs, at which point, the registry will indicate to ICANN what its anticipated DUMs are for the coming year and adjust the LOC to that level. If the new DUM level is met, ICANN can reach out to the registry to adjust their LOC but the registry has leeway of up to 10% of their anticipated DUM. Similarly, if it becomes clear to the registry that the anticipated DUM level will not be met, they can reduce their LOC. In either case, at the annual review, the registry will, again, make a determination about what anticipated DUMs will be for the coming year and fund the LOC at that level. (For a portfolio registry, this will include all TLDs; for a single-TLD registry, it will be only for one TLD.)	RySG	
2.3.3 - ICANN staff, in its Program Implementation Review Report, identified a number of challenges in performing background screening, particularly because there were many different types of entities to screen (e.g., ranging from top twenty five exchanges to newly formed entities with no operating history) and because it is difficult to access information to conduct background screenings in some jurisdictions/countries. Do you think that the criteria, requirements, and/or the extent to which background screenings are carried out require any modifications? Should there be any additional criteria added to future background screenings? For example, should the previous breach by the Registry Operator, and/or any of its affiliates of a Registry Agreement or Registrar Accreditation Agreement be grounds for ICANN to reject a subsequent application for a TLD by that same entity and/or its affiliates? Why or why not? What other modifications would you suggest? Should background screening be performed at application time or just before contract-signing time? Or at both times? Please explain.			
1	Suggest that GEO TLDs (run by public authorities) and ANY applicant listed on any stock exchange do not go through criminal background checks, as public authorities already do that. Also, remove (or do enforce) any reference to number of lost UDRPs or similar, as according to various blogs (shold be checked) large and small applicants /RSPs in the 2012 rounds were actually not qualified!	Jannik Skou	

2	Some due diligence to check that in addition to the technical capabilities an applicant is fit and proper to operate a new gTLD is correct in our view. Unfortunately this does provide some challenges when trying to cover all types of applicant worldwide. We don't see any easy solution to that. Clearly an applicant who previously ran a failed new gTLD should be scrutinised particularly carefully. But in general each application and new gTLD contract should be considered as discrete transactions, and we don't think that performance in one area (such as breach of SLAs where there may be specific one-off reasons for failure) should in principle be relevant in considering an application for another unconnected new gTLD.	Nominet	
3	The background check requirements imposed were not appropriate for all the different types of applicants. In particular, the procedures and criteria should be improved for dotBrands which on the whole were publicly-listed companies. It was unreasonable for ICANN to demand personal address and DOB information for these publicly-listed companies and it took a great deal of time and effort to persuade ICANN to relax the original demands. For these entities, it should be sufficient to list the same amount of detail for company directors as appears on corporate websites and company registration offices. A default of the registered office address or that of the Company Secretary should be provided for all directors. In respect of the timing of any due diligence that is required, this should be performed at an early stage of the application process, as the findings may disqualify applicants, stopping the entire process from having to be performed. However, if the application process is lengthy, ICANN may need to repeat some vetting processes prior to signing the RA, as circumstances and personnel may have experienced changes during the process period.	BRG	
4	[Do you think that the criteria, requirements, and/or the extent to which background screenings are carried out require any modifications?] No, other than make much stricter. [Should there be any additional criteria added to future background screenings?] Yes. [For example, should the previous breach by the Registry Operator, and/or any of its affiliates of a Registry Agreement or Registrar Accreditation Agreement be grounds for ICANN to reject a subsequent application for a TLD by that same entity and/or its affiliates? Why or why not?] Of course. [Should background screening be performed at application time or just before contract-signing time? Or at both times? Please explain.] Unless new facts emerge or more than 2 years have passed since the applicant last qualified, why screen twice?	John Poole	
5	We support ICANN efforts that address the importance of business and technical continuity as they acknowledge the requisite long-term commitment to a TLD. This question raises two important methods ICANN can use to make a determination of this commitment: (1) performing background checks on applicants, and (2) extrapolating fitness from current performance. Background screening provides important visibility into the entity applying for a TLD. Identifying actors and agents involved in an application should be the primary objective of ICANN. Legal entities should have cleared identified individuals in management positions, the very people with whom ICANN will interact and hold accountable. These are the parties ICANN should evaluate, both from a cursory legal screening as well as other criteria relevant to ICANN's mission of maintaining a secure and stable Internet and promoting competition. This explicitly demands that ICANN be made aware of any changes in management or ownership structure throughout the application review process; changes would be a trigger for additional screening. In short, the party ICANN enters into a Registry Agreement should be the original screened applicant or an entity subsequently screened after an official notification of change in management or ownership. History also provides relevant fitness information for ICANN. With decades of experience, actors and agents are known to ICANN, as is documented performance history of registry operators. As noted in our response to 1.1.3 and 1.1.7, ICANN Compliance should be integrated into the application review process as they are acutely aware of past and current performance. Further, they provide a vital human check and context. While a breach is an important consideration, it can not be looked at in isolation; the Compliance team will help provide substantive understanding of the level of gravity of a breach and how it should factor into an evaluation. Relative to the application process, ICANN should consider looking at severity levels for breaches that strongly weigh performance of core functions of DNS, registration services, and RDDS as indicators of future performance.	Afilias	

6	The current criteria for background screenings are appropriate and were developed with the intent to protect registrants. Despite the challenges of performing the background screenings on some of the people and companies involved in the application, they should continue in substantially the same form. Currently, previous adjudications of cybersquatting would bar a person or company from participating in a TLD application. This makes sense because of the risk of a "cybersquatting TLD". However, breach of an RA or RRA may happen for a number of reasons and should not be grounds, de facto, for disqualification. Background screening should be performed at the time of application (and upon changes to an application) as well as at any time that the information changes post-contracting. This allows for consistency of result and guards against a disqualified person or company gaining control of a TLD after-the-fact.	RySG	
7	The ALAC does not have suggested changes. On timing for screening, the ALAC believes that it should be both at the time of application (to immediately weed out unsuitable applicants) and at time of contract signing (to ensure there have not been material changes in the application).	ALAC	
8	As stated in the Application Guidebook: “Applying entities that are publicly traded corporations listed and in good standing on any of the world’s largest 25 stock exchanges (as listed by the World Federation of Exchanges) will be deemed to have passed the general business diligence and criminal history screening.” In subsequent procedures, new gTLD applicants which satisfy this criteria should not be required to provide detailed information relating to the entity, its officers, directors, and major shareholders if this will not be subject to background screening. As the Applicant Guidebook correctly notes, entities listed on these exchanges are subject to rules which already “meet or exceed the screening ICANN will perform”. As an additional point of review, consideration should be given to whether such a listed entity should be subject to the same level of information disclosure as is required for private entities (relating to its subsidiary’s officers and directors), if it chooses to apply for a new gTLD through one of its subsidiary companies. Furthermore, there may be other classes of applicant which are not listed corporations, as described above, where there will nonetheless also have been adequate screening that would meet or exceed the screening that ICANN would perform. An example would be a quasi-public body where the senior officers are effectively public appointments. Anyone who has been found liable for cybersquatting, and registrants who have lost more than two Uniform Dispute Resolution Policy (UDRP) cases, should not be allowed to participate as an officer of a registry.	Valideus	

Community Comment 2

Public Comment Review Tool

2.4 Closed Generics			
#	**Comment**	**Contributor**	**WG Response**
1	Please see GAC submission to Public Comments on CCT-RT Draft Report. The GAC advised in its Beijing Communiqure (April 2013) that for strings representing generic terms, exclusive registry access should serve a public interest goal. The GAC identified a nonexhaustive list of strings that it considered to be generic terms, where the applicant was proposing to provide exclusive registry access. The GAC's advice is based on principles of promoting competition and consumer protection.	GAC	
2.4.1 - In the 2012 round, the operation of a TLD where the string was considered "generic" could not be closed to only the Registry Operator and/or its Affiliates. Originating from GAC Advice on the subject, this rule was promulgated by ICANN's New gTLD Program Committee of the ICANN Board, but was never adopted as a policy by the GNSO. This rule was subject to public comment and input from the community. Should this rule be enforced for subsequent application windows? Why or why not?			
1	No, it is hard, if not impossible to find a cross language definition of a generic Term. However, if applied for a closed string (as Spec 13 or exemption of code of conduct) , it should not be allowed to open later. (Change policy).	Jannik Skou	
2	INTA's focus is the protection of brand of owners. The current definition of a generic string, as defined in Specification 11.3.d of the Registry Agreement, namely, "a string consisting of a word or term that denominates or describes a general class of goods, services, group, organization or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others," is overly broad and potentially captures brand owners and captures TLDs that would not be used for a purpose that would otherwise be considered descriptive. Specifically, certain strings including words or terms that denominate a general class of goods or services, when used in association with unrelated goods or services, would potentially qualify as non-generic terms or . BRANDS under Specification 13 Paragraph 5.1 of the Registry Agreement. For example, the term "Internet" in association with a global computer network is generic, but in association with "food" is a strong trademark. Therefore, the current rule not permitting "closed generics," as currently drafted, potentially harms brand owners, even though some protections exist for brand owners. Ostensibly, it is too difficult, if not impossible, to determine what is "generic" and terms and words over time may acquire distinctiveness or lose it. Thus, INTA's position is that ICANN should not be deciding what a generic string is and what it is not, and an applicant's request to purchase and operate a closed generic, subject to string contentions, should be outside the purview of ICANN.	INTA	
3	-- We suppose you here mean "true" generic, such words as boat, car, book etc. Cf. our comments above under 2.2.1 -- These words should in our opinion not be allowed to be closed for use only of the Registry Operator and/or its Affiliates. The reasoning behind this view is that these words would never have been accepted as a brand and received trademark protection. No-one should be the only one to be allowed to use a true generic word. -- However, the Registry Operator should be allowed to allow second level registrations under this gTLD under certain conditions, set by them. More like the sponsored TLDs from earlier times. To be able to have a second level domain under .museum, you had to prove that you really were a museum etc.	NORID	
4	This is a very complex area. However if the same rule against closed generics is retained, which on balance we would recommend, then it should be adopted as formal policy and included in the AGB.	Nominet	

5	There should not be a blanket rule prohibiting closed or restricted business models for TLD strings comprised of “generic” terms, especially given the ambiguities in how such terms are defined. Allowing registry operators to experiment with a variety of business models facilitates innovation and competition, and can result in well-understood communities that benefit users. There is precedent for such a registry model with legacy gTLDs such as .mil, .edu, and .gov, which are all comprised of abbreviated dictionary terms and yet are restricted to specific entities or purposes as a means of developing user trust. Certain proposed “generic” TLDs may still present legal or public policy issues that are worth addressing, but such concerns may be dealt with on a case-by-case basis and through existing community-developed mechanisms such as the four objection procedures (string confusion, legal rights, community, public interest) which are designed to protect consumers, brands, and the general public. Conversely, a “one-size-fits-all” prohibition unnecessarily stifles opportunity and creativity, and protects a regime designed around a status quo business model that is solely intended to earn revenues from the sale of individual domain names.	BC	
6	While the process that developed the prohibition on closed generics was messy and open to improvement, the result is the appropriate one. There is a ban on closed generics for the 2012 round and that should be extended to future rounds or allocation methods.	Jim Prendergast	
7	The BRG does not believe that applications for closed generics should be prevented in future application rounds.	BRG	
8	[Should this rule be enforced for subsequent application windows?] Yes. [Why or why not?] I’ve already answered this above, in regard to RFC 1591, gTLDs, and “brand gTLDs.”	John Poole	
9	The prohibition on “closed generics” should be lifted. As a matter of course, the program should not be focused on content and use, only creating opportunity. ICANN should support as many broad ideas as possible; only this approach will create an environment that fosters innovation.	Afilias	
10	**Preserve openness in a future gTLD application round.** Much of the discussion around future gTLD application processes has revolved around whether the application processes should be restricted to certain application or application types. We believe that an unrestricted process has better potential to unlock innovation, competition, and enhanced utility of the DNS and maximize the benefits associated with a future application process. Further, we believe that the Working Group should consider whether waiving the broad prohibition on “closed generics” that was introduced late in the 2012 Program would support these goals. We continue to believe that even for strings consisting of commonly utilized terms, a more structured and managed registry model may have the potential to provide a secure and innovative namespace, and can result in a well-understood community that benefits users.	Google	
11	No, there should be no rule against closed generics in future application windows. The RySG urges the PDP WG to consider who the rule against “closed generics” was intended to protect. We suggest the four objection procedures (string confusion, legal rights, community, public interest) provide adequate protections for consumers, brands, and the public. gTLDs are not required to “index” the internet and, indeed, do not appear to be serving an indexing function. There are no security or stability concerns that should force ICANN to intercede. “Closed generics” present exciting opportunities for current and future registry operators to use domain names in new and exciting ways, subject to current protections such as UDRP. Prohibiting closed generics effectively prevents a registry operator from using the DNS in innovative and experimental ways, which can only be done when the TLD is not required to offer 3P registrations. If we force ROs to simply sell domain names to the public only for a "classic" use or speculation of domain names, we are stifling the ability of companies to create and to expand the use of the DNS. In addition, we are creating a protectionist-like rubric around a status quo to the benefit only of those who follow the same classic model.	RySG	
12	Yes, permitting closed generics could impact both consumer choice and consumer confusion.	ALAC	
2.4.2 - Do you have suggestions on how to define “generic” in the context of new gTLDs? A “generic string” is currently defined in the Registry Agreement under Specification 11.3.d as meaning, “a string consisting of a word or term that denominates or describes a general class of goods, services, group, organization or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.” Are any modifications needed to the definition? If so, what changes? If the exclusion of closed generic TLDs is to be maintained, are there any circumstances in which an exemption to the rule should be granted?			

1	Should ICANN maintain the rule against closed generics, either by amending the definition of a closed string or maintaining the existing definition, an exception should be made to those applicants who do not qualify as .BRANDS under Specification 13 Paragraph 5.1, but can provide evidence adequate to prove that an applied-for string has been used as a source identifier and has acquired distinctiveness indicating the origin of the goods, services, groups, or organization of things. Such proof may include evidence of the brand owner's method of using the string as a source identifier, supplemented by evidence of the effectiveness of such use to cause the purchasing public to identify the string with the source of the goods, services, groups, or organization of things.	INTA	
2	-- This above definition makes sense. It separates true generic names from specific names. However, it has not been followed up in practice. Brands are definitively not "generic terms". Neither are geographical names in most cases; at least not names of countries. Among the words that have been accepted as gTLDs there are many that are specific, given names that legally would not have been characterized as generic. -- When discussing if "closed generics" should be allowed you have to separate true-generics from pseudo-generics. True-generics should not be allowed to be closed, but to be free to set certain conditions under which registrants are allowed to register at second level. -- Please also see our comments under 2.2.1	NORID	
3	We would be content with this definition, and on balance we agree with the ban on closed generics for the foreseeable future.	Nominet	
4	If we eliminate the blanket prohibition against "closed generics," defining the term "generic" may not be unnecessary. To the extent that "generic string" is a term still in use, the present definition is workable.	BC	
5	[Do you have suggestions on how to define "generic" in the context of new gTLDs] Yes. [Are any modifications needed to the definition? If so, what changes?] Yes there are changes that should be made dealing with collisions, Universal Acceptance isses, trademarks and service marks, perhaps others. [If the exclusion of closed generic TLDs is to be maintained, are there any circumstances in which an exemption to the rule should be granted?] No.	John Poole	
6	The need to create a definition is obviated by eliminating the prohibition.	Afilias	
7	If the PDP WG reconsiders the purpose of the rule against "closed generics," defining such words as "generic" becomes unnecessary. If the PDP decides to retain the rule against closed generics, then the definition appears adequate.	RySG	
8	No, the definition is clear and the ban should be maintained.	ALAC	

Community Comment 2

Public Comment Review Tool

2.5 Applicant Terms and Conditions			
#	**Comment**	**Contributor**	**WG Response**
1	With regard to the Applicant Guidebook and predictability, please see GAC comments above in response to Question 1.3.	GAC	
2.5.1 - The following language appears in Section 3 of the Applicant Terms and Conditions: "Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant." Do you believe that this paragraph gives ICANN an absolute right to reject any application for any reason including a reason that contradicts the Applicant Guidebook, or any law or policy? If yes, should such an unrestricted right appear in any modifications to the Guidebook? If no, please list the other documents that you believe should be read in conjunction with this paragraph, e.g. GNSO Policy on new gTLDs, ICANN Bylaws, other portions of the Guidebook, California implied covenant of good faith and fair dealing, etc.			
1	ICANN should never have the right to stop processing an application, unless an application is disqualified according to rules set in the guidebook, including contention set resolution mechanisms.	Jannik Skou	
2	It is not the role of the PDP WG to interpret existing contractual provisions, including the existing Applicant Terms and Conditions – where there is a disagreement as to the effect of these Terms and Conditions that would be the role of the court or appropriate arbitral forum. However, INTA does not consider that it would be appropriate for ICANN to claim the right to reject any future application without reason, or for a reason which conflicts with the AGB, law or policy. To do so would be inconsistent with ICANN's Bylaws obligations, including section 1.2(a)(v) the commitment to apply policies consistently and neutrally; section 2.3, non-discriminatory treatment; and section 3.1, the obligations of openness and transparency. Since this matter is being debated within the PDP and some might interpret Section 3 of the Terms and Conditions as giving ICANN an absolute right to reject, INTA would suggest that the provision warrants redrafting to make it absolutely clear that ICANN cannot unilaterally reject an application for reasons other than as specifically set out in the AGB.	INTA	
3	-- In our view this gives ICANN extensive rights. However, ICANN offers a resource at their discretion and enters into a private contract with the applicant and they should be free to set conditions. However, ICANN should make the Applicant Terms and Conditions as predictable as possible. -- The expression "applicable law or policy" could with advantage be extended to be more exhaustively presented. If ICANN finds it politically difficult to go forward with an application, for instance after immense resistance from the GAC, they should be able to choose not going into this kind of problems that could lead to delays and political difficulties. We should never forget that there is still forces wanting to destroy the multistakeholder model.	NORID	
4	The BRG concurs with the RySG comments: In other areas of the Applicant Guidebook, there are clear definitions of why an application may be declined. This paragraph in Module 6 would benefit from either a rewording to further specify why an application would be declined or from referencing related materials in other portions of the guidebook, such as section 1.2.1 on eligibility and sections 2.1 and 2.2, which describe the evaluation and review process. Alternative language could be "ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law, policy, or eligibility and evaluation requirements outlined in sections 1.2, 2.1-2, and 3.2.1 in the Applicant Guidebook. ICANN's Bylaws prohibit it from discriminating against parties. Therefore, if ICANN rejects an application, it should only do so for good cause and not treat similarly situated parties differently.	BRG	
5	[Do you believe that this paragraph gives ICANN an absolute right to reject any application for any reason including a reason that contradicts the Applicant Guidebook, or any law or policy?] Yes. [If yes, should such an unrestricted right appear in any modifications to the Guidebook?] Yes.	John Poole	
6	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	

7	In other areas of the Applicant Guidebook, there are clear definitions of why an application may be declined. This paragraph in Module 6 would benefit from either a rewording to further specify why an application would be declined or from referencing related materials in other portions of the guidebook, such as section 1.2.1 on eligibility and sections 2.1 and 2.2, which describe the evaluation and review process. Alternative language could be "ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law, policy, or eligibility and evaluation requirements outlined in sections 1.2, 2.1-2, and 3.2.1 in the Applicant Guidebook. ICANN's Bylaws prohibit it from discriminating against parties. Therefore, if ICANN rejects an application, it should only do so for good cause and not treat similarly situated parties differently.	RySG	
8	Yes, ICANN should have that right, and it should be clearly spelled out in the Applicant Guidebook and in an ICANN policy.	ALAC	
2.5.2 - According to Section 6 of the Applicant Terms and Conditions, the "covenant not to sue ICANN", an applicant foregoes any right to sue ICANN once an application is submitted for any reason. Currently, an applicant can only appeal an ICANN decision through the accountability mechanisms, which have a limited ability to address the substance of the ICANN decision. If ICANN had an effective appeals process ((as asked about in Question 3.5.2 below) for an applicant to challenge the decisions of the ICANN staff , board and/or any entities delegated decision making authority over the assignment, contracting and delegation of new gTLDs, would a covenant not to sue be more acceptable? Please explain.			
1	INTA believes that an appeals process would be beneficial. In the previous round it was decided not to allow appeals from most decisions. However, in practice this has resulted in extensive use of time consuming and complex requests for reconsideration and independent reviews. In order to allow fair recourse for applicants, independent appeals processes should be identified prior to future releases of new gTLDs, with clear criteria for appeal identified.	INTA	
2	-- Yes, the covenant not to sue would be more acceptable it there was an effective appeals process. As it is now, the registrant is rather without legal protection if feeling that the decision taken by ICANN is really wrong and not based on what is listed in the Applicant Terms and Conditions -- To establish this appeals process/mechanism could be a prerequisite for receiving new applications.	NORID	
3	In practical terms, it is totally understandable to ensure that ICANN does not get inundated with litigation. However a better mechanism to require ICANN to review operational decisions in respect of new gTLD applications which may be totally unreasonable or irrational would be useful.	Nominet	
4	The BRG concurs with the RySG comments: Yes, ICANN should introduce an appeals process for rejected applications for long-term scalability, as is also suggested in section 3.1.4 of this document. Over time, as more and more new gTLD applications are introduced, the likelihood that an applicant will wish to appeal a rejection grows based simply on the number of applications received. To prevent unnecessary complications in the future, and to provide applicants with fair recourse, an appeals process should be specified and defined before the next round of applications. Similarly, for applicants who do appeal an ICANN decision and attempt to do so via legal means, having an appeals process in place means preventing any exceptional cases that would take time and resources from ICANN. With such a setup, it would be much more acceptable to include such a covenant not to sue.	BRG	
5	More acceptable for whom? For contracted parties or the global internet community—SORRY, the global internet community, who ICANN is SUPPOSED to be representing, trumps the self-centered and selfish special interests of registry operators.	John Poole	
6	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
7	Yes, ICANN should introduce an appeals process for rejected applications for long-term scalability, as is also suggested in section 3.1.4 of this document. Over time, as more and more new gTLD applications are introduced, the likelihood that an applicant will wish to appeal a rejection grows based simply on the number of applications received. To prevent unnecessary complications in the future, and to provide applicants with fair recourse, an appeals process should be specified and defined before the next round of applications. Similarly, for applicants who do appeal an ICANN decision and attempt to do so via legal means, having an appeals process in place means preventing any exceptional cases that would take time and resources from ICANN. With such a setup, it would be much more acceptable to include such a covenant not to sue.	RySG	

8	The ALAC suggests that if appeals are allowed, they should only be allowed when decision is based on an error of fact that ICANN has available at the time.	ALAC	
2.5.3 - According to Section 14 of the Applicant Terms and Conditions, ICANN has the ability to make changes to the Applicant Guidebook. One task of this Working Group is to address the issue of predictability in future rounds, including with respect to the AGB. Do you think that ICANN should be limited in its ability to make changes to the Applicant Guidebook after an application procedure has been initiated? Please explain.			
1	There is a need for predictability for all concerned. It should be an aim of this PDP WG to endeavor to surface likely issues and address them wherever possible, so as to minimize the prospect of late changes to the AGB. To the extent that change is unavoidable, applicants should be permitted to make corresponding changes to their application to address them without penalty, and be granted the time to do so, even if this means extending the application window. Applicants should also be permitted to withdraw their applications, with full refund, if the changes INTA Submission Page 8 are such that it is no longer attractive to them to proceed with their application, and this should be a decision for the applicant alone, i.e., not at ICANN's discretion.	INTA	
2	-- First and foremost, we would hope that fewer changes will be required to be made in the AGB in subsequent rounds. We all know how many years it took to reach a compromise in the first round. It is of fundamental importance that there is a certainty in the process and that all parties know what they can plan for. -- However, we think that ICANN should not receive applications until the AGB has been accepted by all stakeholder groups. To change unilaterally after that will make the predictability very poor. -- However, this depends on whether the result for next round will be "one window opened and then closed and nothing more" or "several windows one after another". In the last instance, there might be necessary to correct possible flaws between the "windows". -- In these instances, ICANN should seek consensus from the stakeholder groups before opening up the next window, and be very careful to make announcements on the changes.	NORID	
3	We would hope that many fewer changes will be required to be made to the AGB in subsequent rounds. It's fundamentally important that there is certainty in the process.	Nominet	
4	ICANN's ability to change the AGB should be very limited. The GNSO community should be asked to clarify its policy recommendations for any implementation decision regarding that policy.	BC	
5	Absolutely – ICANN should be limited. ICANN's insistence on a unilateral right to amend the contract is a prime example of ICANN imposing its will against the wishes of the community. Going forward, any post application procedure changes should be made in concert with the community.	Jim Prendergast	
6	The response to the 2012 round introduced complexities that had not been anticipated or issues had been left open. Whilst lessons learnt can be applied to future policies and processes, there is the likelihood that different issues will arise in the future. Therefore, changes should be allowed but the processes should be sufficiently robust to capture, analyse and process the issues effectively. Any changes to the guidebook after applications have been received, should be limited, and also be subject to suitable reviews and objection processes.	BRG	
7	NO. TLDs are not private property.	John Poole	
8	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
9	Yes. Certain hanges should be allowed, but ICANN should offer a time period in which applicants may prepare for, or object to, any changes to the guidebook. For example, ICANN shouldn't be permitted to change the application fee after it accepts applications. Any legitimate changes must have good cause and ICANN should provide reasonable warning to all new gTLD applicants before any changes in the guidebook take effect to allow applicants a level of predictability, while also giving ICANN the ability to modify and adapt as needed without making the process overly rigid. Applicants should also be given a reasonable opportunity to amend a pending application if the change is made after the application is submitted that is material to the application. Application amendments should be limited to addressing the AG change and the time frame in which amendments may be made should take into account time for applicant to first object to the AG changes.	RySG	
10	The ALAC agrees that after the application procedure has been initiated, Guidebook should not be changed.	ALAC	

11	Business applicants require greater certainty and consistency. Many of the new gTLD applicants who are not from the traditional ICANN community have found it inconceivable that ICANN should repeatedly change fundamental terms of the Applicant Guidebook after the process has commenced, seemingly without there being any ground for objection or sanction, when applicants have invested significant time and financial resources on their applications. Two such examples would be the issue of closed generics and the three terms identified as not to be delegated due to name collision. These issues should have been properly considered and addressed in advance, not half-way through the process. Whilst one might assume that Round 1 will now have flushed everything out, it is important that where issues have been identified as contentious there is a firm decision made on how to address this. This should serve to keep the risk of future mid-stream changes to a minimum. Since issues may always arise which were unanticipated, it is pragmatic to allow for the possibility of change after the application procedure has been initiated, but this must be kept to a minimum. Applicants affected by such changes must also be given adequate time to consider the impact on them and, if they choose, to withdraw without penalty. If necessary, an application window should be extended to allow for such review.	Valideus	
2.5.4 - Do you believe that any changes are needed in the Terms & Conditions in Module 6 of the Applicant Guidebook? If so, what are those changes and what is the basis or rationale for needing to do so?			
1	Yes, ICANN should be allowed to make changes – BUT applicants have to be informed about this risk VERY CLEARLY before applying. The ICANN community may discover a need to update the requirements (new type of security threat or whatever) across all gTLDs. That said, ICANN (and the GAC) should please minimize such changes…AND new rounds should open every two years (if not every year) based on current rules/policies.	Jannik Skou	
2	No these are probably good enough.	Nominet	
3	The BRG concurs with the RySG comments: Yes. A summary from the above: - Modify the language in section 6.3 to reference related eligibility and evaluation criteria (i.e. sections 1.2, 2.1-2, and 3.2.1 of the Applicant Guidebook) to further clarify when and why an application may be declined. - Maintain the covenant not to sue only if an appeals process is drafted and defined within the guidebook. - Specify a timeframe for proposed changes/updates to the Guidebook to provide applicants with adequate warning.	BRG	
4	No.	John Poole	
5	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
6	Yes. A summary from the above: - Modify the language in section 6.3 to reference related eligibility and evaluation criteria (i.e. sections 1.2, 2.1-2, and 3.2.1 of the Applicant Guidebook) to further clarify when and why an application may be declined. - Maintain the covenant not to sue only if an appeals process is drafted and defined within the guidebook. - Specify a timeframe for proposed changes/updates to the Guidebook to provide applicants with adequate warning.	RySG	

Community Comment 2

Public Comment Review Tool

2.6 Registrar Non-Discrimination and Registry/Registrar Separation			
#	**Comment**	**Contributor**	**WG Response**
1	**Review whether requirements regarding registry-registrar relationships are fit for the current marketplace.** Pre-existing requirements for registry-registrar relationships may not be fully tailored for today's domain name marketplace. One example is the concept of closed TLDs that emerged from the 2012 Round. In the context of a closed TLD the justifications for registry-registrar non-discrimination requirements do not clearly apply given that the registry, as sole registrant, will ultimately have discretion to select its registrar regardless of whether multiple registrars have been onboarded onto the platform. While the change made through the introduction of Specification 13, wherein qualified .brand TLDs could select one to three "preferred registrars," aim to address these issues, it may only be a partial solution. The Working Group should consider whether to permit closed TLDs to self-allocate all domain names given that those domains will be self-registered, not sold. In any case, carve outs granted to .brands should be extended to TLDs that qualify for an exemption to the Registry Operator Code of Conduct since these TLDs also have a single registrant. Likewise, while registry and registrar separation restrictions were developed to promote competition in the marketplace, they may impede new entrants to the marketplace from competing effectively with legacy players. Google takes the requirements associated with cross-ownership of a registry and registrar seriously and, accordingly, has experienced inefficiencies and additional cost on account of some of the separation requirements. These restrictions would likely have harsher effects on smaller businesses trying to enter the domain name marketplace.	Google	
2.6.1 - The Working Group has not yet deliberated the issues of Registrar Non-discrimination or Registry/Registrar Separation (also known as Vertical Integration). However, now that we have several years of operations of vertically integrated registries and registrars, what issues, if any, have you noticed with vertically integrated Registries?			
1	We did not have any issues with vertical integration.	Nominet	
2	No issues identified.	BRG	
3	No comment.	Afiilias	
4	With the New gTLD Program the Registry Stakeholder Group membership has expanded with the entry of new registry operators. These include some who may not have been previously active in ICANN policy development, such as brand owners, and others who previously participated in a different capacity, including registrars who now also operate registry businesses. Given the diversity of members within the RySG, there is not one single view on the question of vertical integration of registries and registrars. Some RySG members favour vertical integration and would support removal of the restrictions on operation of those vertically-integrated businesses. Other RySG members favour the retention of those restrictions. We are not aware of any specific disadvantages or issues arising out of the operation of vertically integrated registries and registrars, however see the response to 2.6.3 below.	RySG	
2.6.2 - Specification 13 grants an exception to the Registry Code of Conduct (i.e., Specification 9 in the Registry Agreement) and specifically from the vertical integration restrictions. In addition, Registry Operators may seek an exemption from the Code of Conduct if the TLD string is not a generic term and if it meets three (3) other specified criteria set forth in Specification 9 of the Registry Agreement. Are there any other circumstances where exemptions to the Code of Conduct should be granted?			
1	We cannot immediately think of any other circumstances where exemptions should be granted.	Nominet	
2	The BC would support granting an exemption to the Code of Conduct in a situation where the Registry Operator can demonstrate that the term comprising the TLD string directly corresponds to a product name of the Registry Operator. The Registry Operator should additionally be able to affirm that all uses of the TLD will be in connection with such product, that all domain name registrations in the TLD will be registered to Registry Operator for its exclusive use, and application of the Registry Operator Code of Conduct to the TLD is not necessary to protect the public interest.	BC	

3	The BRG concurs with the RySG comments: The RySG does support the existing exceptions to the Code of Conduct provided for under Specification 13 and under Specification 9 paragraph 6. We have not identified any other specific circumstances where an exemption to the Code of Conduct should be granted. On the assumption that the Code of Conduct is retained, however, the RySG would support greater flexibility for registry operators wishing to seek an exemption. It would be reasonable for a registry operator who is able to demonstrate that the application of the Code of Conduct to its TLD is not necessary to protect the public interest, in other circumstances to those set out in Spec 9 para 6, to be granted such an exemption. The RySG would also like to highlight that the existing process of obtaining an exemption to the Code of Conduct results in some ambiguity under the Registry Agreement, since the registry operator is still bound by section 2.9: “Subject to the requirements of Specification 11, Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD”. Since, under the current model, all exemptions must be for single-registrant models wherein the registry (as registrant) may still chose its registrar, we do not believe this language should apply to Specification 9 exempt TLDs, regardless of whether they additionally qualify for Specification 13.	BRG	
4	We see no other areas for Code of Conduct exemptions.	Afilias	
5	The RySG does support the existing exceptions to the Code of Conduct provided for under Specification 13 and under Specification 9 paragraph 6. We have not identified any other specific circumstances where an exemption to the Code of Conduct should be granted. On the assumption that the Code of Conduct is retained, however, the RySG would support greater flexibility for registry operators wishing to seek an exemption. It would be reasonable for a registry operator who is able to demonstrate that the application of the Code of Conduct to its TLD is not necessary to protect the public interest, in other circumstances to those set out in Spec 9 para 6, to be granted such an exemption. The RySG would also like to highlight that the existing process of obtaining an exemption to the Code of Conduct results in some ambiguity under the Registry Agreement, since the registry operator is still bound by section 2.9:“Subject to the requirements of Specification 11, Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD”. Since, under the current model, all exemptions must be for single-registrant models wherein the registry (as registrant) may still chose its registrar, we do not believe this language should apply to Specification 9 exempt TLDs, regardless of whether they additionally qualify for Specification 13.	RySG	
6	We support these exemptions, and the response of the RySG.	Valideus	
2.6.3 - Some have argued that although we allow Registries to serve as both as a registry and as a registrar, the rules contained within section 2.9 of the Registry Agreement and in the Code of Conduct prohibit the integrated registry/registrar from achieving the economic efficiencies of such integration by not allowing a registry to discriminate in favor of its own registrar. Do those arguments have merit? If yes, what can be done to address those claimed inefficiencies? If not, please explain. What safeguards might be required?			
1	.BRANDs (spec 13) and any “single registrant” TLD (Exemption of Code of Conduct) should be allowed to register without using a registrar. Otherwise keep “Vertical Separation”(It is tedious for some, but still is a good reminder/regulator for non-discrimination of registrars).	Jannik Skou	

2	Many brand owners will choose to work with one or two specialist corporate registrars, with whom they have a close contractual relationship, to action new domain registrations, acquisitions, and generally manage their domains portfolio. Even where this is not the case, perhaps in the case of smaller or less sophisticated brand owners or those with fairly small portfolios, best practice would tend to be to keep domain name holdings with a single registrar to ensure the efficient management of the portfolio, minimize the risk of missing renewal dates, and ensure that names are held through a trusted third party. Whether brand owners wish to register names defensively or for live use, therefore, dispensing with the obligations on registries to allow equal, nondiscriminatory access by all registrars would present a potential risk to brand owners of being unable to acquire names through their trusted registrar. INTA does not therefore support dispensing with the code of conduct requirements altogether. Nevertheless, not all registry business models in future are likely to follow the ".com model" of an open registry, selling domains to all-comers without restriction, and so there may be justification for permitting registries to seek an exemption to the Specification 9 code of conduct on a case by case basis, even in circumstances not currently covered by section 6 of Specification 9, where this would not serve to unfairly discriminate against brand owners.	INTA	
3	New gTLD .BRAND registries where there are no non-group customers exist should be allowed full integration. We make no comment on open TLD vertical integration.	Nominet	
4	The BRG concurs with the RySG comments: The PDP should carefully review the underlying reasons for separation. With the proliferation of new gTLDs, and plenty of competition in the industry, competition for consumers should be viewed across new gTLDs, rather than within them. With so many new TLD operators in the space, the PDP should examine whether there remains any consumer protection benefit to limiting registry-direct sales. While the operational models of some registry operators will certainly benefit from using registrars (and where this is the case there may remain benefits for the consumer in ensuring equal treatment amongst those registrars), this requirement may be actually hindering innovation and the development of new services for other registry operators, thereby reducing the benefit for consumers. This has recently been highlighted by Francesco Cetraro, former head of registry operations at .CLOUD, in his "exit notes" published on LinkedIn. "The ICANN model is traditionally based on the assumption that a Registry will sell its product exclusively through a channel of accredited Registrars, who in turn (one way or another) are all selling fundamentally the same set of hosting products and web-focused services. Whilst originally this system did contribute to the development of the Internet by providing consumer choice and driving down the prices, it has also become the "golden standard" to which everything has to conform if it wants a chance at "making it" commercially. When even those few that tried to do something different eventually end up quietly coming back to the herd with their head down, it isn't really that hard to understand why everybody decided to "play it safe". The result was 1000+ new extensions that all do pretty much the same thing: point to a website. If anything, this perfectly defines the antithesis of innovation..." https://www.linkedin.com/pulse/exit-music-notes-new-tld-round-from-former-ntld-manager-cetraro	BRG	
5	Registry operators should not be allowed to operate registrars. There's already been abuse. Registrars can, and should be, a check on Registry operator malfeasance. Vertical integration negates that, and there are many other reasons vertical integration should be disallowed.	John Poole	
6	No comment.	Afilias	

7	The PDP should carefully review the underlying reasons for separation. With so many new TLD operators in the space, the PDP should examine whether there remains any consumer protection benefit to limiting registry-direct sales. While the operational models of some registry operators will certainly benefit from using registrars (and where this is the case there may remain benefits for the consumer in ensuring equal treatment amongst those registrars), this requirement may be actually hindering innovation and the development of new services for other registry operators, thereby reducing the benefit for consumers. This has recently been highlighted by Francesco Cetraro, former head of registry operations at .CLOUD, in his “exit notes” published on LinkedIn. “The ICANN model is traditionally based on the assumption that a Registry will sell its product exclusively through a channel of accredited Registrars, who in turn (one way or another) are all selling fundamentally the same set of hosting products and web-focused services. Whilst originally this system did contribute to the development of the Internet by providing consumer choice and driving down the prices, it has also become the "golden standard" to which everything has to conform if it wants a chance at "making it" commercially. When even those few that tried to do something different eventually end up quietly coming back to the herd with their head down, it isn’t really that hard to understand why everybody decided to "play it safe". The result was 1000+ new extensions that all do pretty much the same thing: point to a website. If anything, this perfectly defines the antithesis of innovation...” https://www.linkedin.com/pulse/exit-music-notes-new-tld-round-from-former-ntld-manager-cetraro	RySG	
8	The ALAC supports the retention of non-discrimination rule even if causes inefficiencies.	ALAC	

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2.7 TLD Rollout			
#	**Comment**	**Contributor**	**WG Response**
2.7.1 The Applicant Guidebook specified timelines by which applicants had to complete the contracting (9 months) and delegation (12 months) steps of the process. However, this requirement only means that the contract needs to be executed and nic.TLD be delegated. Are these timeframes reasonable? Is there still a need for these requirements? Please explain.			
1	These are good time frames – will provide clarity for next round applicants on which TLDs are still available. In addition once evaluated TLD applicants should be GUARANTEED contract/delegation (in other words contention set /clarifying questions etc.) within a certain time frame (say 1.5 years, otherwise an option to withdraw and get full application fee back).	Jannik Skou	
2	Yes these are reasonable. We would also agree that there should be some longstop date by which contract execution and first delegation are to take place.	Nominet	
3	Applicants and ICANN both need to adhere to the specified timelines. During the last application round, ICANN often took weeks and even months to respond or send acknowledgement of applications and inquiries. When they did respond, applicants were provided with a very short “response due date” otherwise the issue would be closed. This resulted in a very one-sided process.	BC	
4	The BRG concurs with the RySG comments: Yes, we believe that these requirements are reasonable to avoid speculative applications. We further believe that the extensions provided and the criteria applied by ICANN in evaluating/granting those extensions have been reasonable and continued to serve the intended purpose.	BRG	
5	[Are these timeframes reasonable?] Yes. [Is there still a need for these requirements?] Yes. [Please explain.] ALL gTLDs are supposed to be for the benefit of registrants and the global internet community, not registry operators (I know that comes as a surprise to the GNSO, the GDD (Global Domains Division), and others within ICANN. A registry operator that fails to timely operate the registry should be terminated.	John Poole	
6	These timeframes provide an adequate window for completing those tasks. However, the requirement to begin escrowing data for only a nic.TLD site seems premature.	Afilias	
7	Yes, we believe that these requirements are reasonable to avoid speculative applications. We further believe that the extensions provided and the criteria applied by ICANN in evaluating/granting those extensions have been reasonable and continued to serve the intended purpose.	RySG	

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2.8 Contractual Compliance			
#	**Comment**	**Contributor**	**WG Response**
2.8.1 - Noting that the role of Contractual Compliance is to enforce the registry agreement and any changes to that role are beyond the scope of this PDP, the WG is not anticipating policy development related to this topic. The WG expects that any new contractual requirements would be made enforceable by inclusion in the base agreement. Do you agree with this approach?			
1	YES. Furthermore, SPEC 13 TLDs/exemption of code of conduct TLDs with only NIC.brand (one domain name registered) should not have to go through annual audit of compliance with Spec 13. ICANN should be able to check for them selves that the TM is still in the TMCH and also to check if the brand is now in the primary business of domain names.	Jannik Skou	
2	INTA agrees that any new contractual requirements should be enforceable in the base RA. However, INTA and its members, have long called for greater transparency from Contractual Compliance with both the need for more granular and meaningful data on the activities of the department and the nature of the complaints dealt with; and better communication with complainants about the steps taken in response to complaints reported to the department. There have been a number of troubling operational practices engaged in by registry operators during the first new gTLD round. These practices include arbitrary and abusive pricing for premium domains targeting trademarks; use of reserved names to circumvent Sunrise; and operating launch programs that differed materially from what was approved by ICANN. These troubling practices seem to violate the spirit, if not the letter, of various contractual obligations in the RA, and must be addressed by the PDP-WG in order that they are clearly and specifically prohibited in subsequent procedures.	INTA	
3	Yes.	Nominet	
4	The BRG concurs with the RySG comments: Yes, the RySG is of the view that any compliance related requirements are be made enforceable by inclusion in the Registry Agreement and for registries established during subsequent procedures an updated base agreement would be advisable.	BRG	
5	It depends. So far ICANN contractual compliance has been a “joke” as far as registrants are concerned.	John Poole	
6	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
7	Yes, the RySG is of the view that any compliance related requirements are be made enforceable by inclusion in the Registry Agreement and for registries established during subsequent procedures an updated base agreement would be advisable.	RySG	
8	The ALAC agrees with the approach.	ALAC	

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2.9 Global Public Interest			
#	**Comment**	**Contributor**	**WG Response**
2.9.1 - The Final Issue Report suggested that in considering the public interest the WG think about concerns raised in GAC Advice on safeguards, the integration of Public Interest Commitments (PICs), and other questions around contractual commitments. Have PICs served their intended purpose? If not, what other mechanisms should be employed to serve the public interest? Please explain and provide supporting documentation to the extent possible.			
1	The application should be part of the contract, AND it should not be allowed to change from one of the five suggested categories to another. (Unless going through public comment and a similar evaluation as when applying for a domain – AND maybe original other applicants for the same string should have the right to apply/compete for that TLD). All to avoid "gaming" the category-based application systems as suggested. As to safeguards: There should be no set of mandatory safeguards (regardless whether a "regulated sector" TLD or not – which sectors are not regulated). Instead ICANN should invest in consumer education on how to detect and avoid fraud.) Bank fraud and other types of fraud can be just as serious under .com or a ccTLDs as under .bank or .finance for instance. If GAC/ICANN decides to keep safeguards, these should NOT be allowed to be added AFTER the announcement of the opening of the application window – and the requirement to enter into agreements with sector industries should be deleted (this is hard to find /define in all cases – and gTLDs can be international).	Jannik Skou	
2	NABP believes that the public interest would best be served by ensuring that new generic top-level domains (gTLDs) relating to health and medicine are operated responsibly with regard to patient safety. At a time when research conducted by NABP and others shows that 96% of websites selling prescription drugs online do so illegally – many of them selling unapproved, substandard, and counterfeit medicine – voluntary commitments may not go far enough. It is crucial that registries within the health and medical marketplace have mandatory policies in place to screen online drug sellers and other health practitioner websites for proper credentials. Furthermore, NABP agrees with the position of the vTLD Consortium that subsequent procedures for new gTLDs should require the registry to operate as a verified TLD if it: 1. is linked to regulated or professional sectors; 2. is likely to invoke a level of implied trust from consumers; or 3. has implications for consumer safety and wellbeing. Verified TLDs contribute to improved consumer protection through registrant verification prior to domain name use and through ongoing monitoring of the domain space for compliance with registry standards.	NABP	
3	Please see GAC submission to Public Comments on CCT-RT Draft Report. The following GAC advice is still current: Category 1 Safeguards (Beijing Communique 2013) PIC Dispute Resolution – Modify the dispute resolution process to ensure that non-compliance for PIC strings is effectively and promptly addressed (Los Angeles Communique 2014) Reconsider the [Board's] determination not to require the verification and validation of credentials of registrants for the Category 1 new gTLDs or to conduct periodic post-registration checks to ensure that Registrants continue to possess valid credentials. (Los Angeles Communique 2014) Amend the PIC specification requirement for Category 2 new gTLDs to include a non-discriminatory requirement to provide registrants an avenue to seek redress. (Los Angeles Communique 2014) NGPC to publicly recognise the commitments of some Registries and applicants to voluntarily adopt GAC advice regarding the verification and validation of credentials as best practice. (Singapore Communique 2015) Reconsider the PICDRP and develop a 'fast track' process for regulatory authorities, government agencies and law enforcement to work with ICANN contract compliance to effectively respond to issues involving serious risks of harm to the public. (Singapore Communique 2015)	GAC	

4	The Consortium believes that subsequent procedures for new gTLDs should require the registry to operate as a vTLD if it: 1. is linked to regulated or professional sectors; 2. is likely to invoke a level of implied trust from consumers; or 3. has implications for consumer safety and wellbeing. Verified TLDs contribute to improved consumer protection through registrant verification prior to domain name use and through ongoing monitoring of the domain space for compliance with registry standards.	vTLD Consortium	
5	The BRG concurs with the RySG comments: PICs have well served their purpose, though the process by which voluntary PICs were solicited and submitted was clumsy, mistimed and rushed. While PICs have satisfactorily addressed public interest concerns and may have been a reasonable vehicle for registries to individually address matters of concern raised by the community, in future rounds, it would be far more advisable to avoid such last-minute histrionics and to draw a bright line of finality once those matters are considered and concluded by the full community (including the GAC), thereby reducing the risk that an individual application (or group of applications) will be held in limbo for an extended period.. This will improve predictability, avoid delays and otherwise maintain an orderly process. At present, the RySG recommends no further mechanisms vs. PICs (except to allow proposed PICs by registries in the application, followed by an ability to add further PICs following the GAC Early Warning round); we note there are significant process improvements in place today vs. 2013 (e.g., the GAC has a clearly defined role in GNSO policy development, the GNSO has well sorted the "policy vs. implementation" question with new processes, etc.). As the WG put it, "identifying and mitigating every circumstance is a nearly impossible task." The RySG agrees but advises that the learnings from the current round will very well inform the formation of the next and those learnings, along with better definitions of community roles and processes, should be expected to provide finality and predictability prior to the opening of a new round.	BRG	
6	Additional mechanisms are needed, and due consideration of concerns raised in GAC advice and elsewhere need to addressed and incorporated as appropriate in the registry agreements, terms and conditions, and elsewhere as appropriate.	John Poole	
7	The PICs have served their intended purpose and no other mechanisms are required.	Afilias	
8	PICs have well served their purpose, though the process by which voluntary PICs were solicited and submitted was clumsy, mistimed and rushed. While PICs have satisfactorily addressed public interest concerns and may have been a reasonable vehicle for registries to individually address matters of concern raised by the community, in future rounds, it would be far more advisable to draw a bright line of finality once those matters are considered and concluded by the full community (including the GAC), thereby reducing the risk that an individual application (or group of applications) will be held in limbo for an extended period. This will improve predictability, avoid delays and otherwise maintain an orderly process. At present, the RySG recommends no further mechanisms vs. PICs (except to allow proposed PICs by registries in the application, followed by an ability to add further PICs following the GAC Early Warning round); we note there are significant process improvements in place today vs. 2013 (e.g., the GAC has a clearly defined role in GNSO policy development, the GNSO has well sorted the "policy vs. implementation" question with new processes, etc.). As the WG put it, "identifying and mitigating every circumstance is a nearly impossible task." The RySG agrees but advises that the learnings from the current round will very well inform the formation of the next and those learnings, along with better definitions of community roles and processes, should be expected to provide finality and predictability prior to the opening of a new round.	RySG	
9	The CCT-RT Draft Report which is supported by the ALAC makes it clear that a significant amount of further information is necessary before it is possible to say that the introduction of new gTLD has increased either consumer trust or consumer choice. The ALAC, therefore, reinforces the CCT-RT Report's pre-requisite recommendation for more and better data before it is possible to state that the objectives of the program have achieved. At this point, therefore, the ALAC does not support any new round of new gTLDs. Reputation and familiarity, as proxies for trust, have facilitated greater public trust in the legacy gTLDs than new gTLDs. However, one factor that could contribute to trust was that certain restrictions be placed on who can become a registrant and on how the new name is used. ALAC statement: AL-ALAC-ST-1114-02-00-EN produced on 19 November 2014, provided an expansive ALAC comment on the Public Interest Commitment. "Greatest amongst those concerns are the lack of public oversight, the temporary and arbitrary nature of the 'optional' PICs, and an unsure and adversarial enforcement process that created significant obstacles for reporting of breaches."	ALAC	