Community Comment 2

Public Comment Review Tool

3.1 Objections			
#	**Comment**	**Contributor**	**WG Response**
1	The GAC Early Warning arrangements provided applicants with the earliest possible notice of potential public policy concerns with certain applications. This served the interests of both applicants and the GAC. The GAC advised in its Toronto Communique (2012) that ICANN should bind and manage, as contractual, commitments made by applicants for new gTLDs where these commitments are in response to the GAC providing an Early Warning Advice on that application. The GAC is interested in participating in any discussions to improve the Early Warning arrangements so that the legitimate concerns of governments, applicants and the wider community are met.	GAC	
3.1.1 - Do you think that the policy recommendations (Recommendations 2, 3, 6, and 20) require any modifications? If so, what would you suggest?			
1	Recommendation 2 forms the basis for evaluating String Similarity and Recommendation 3 forms the basis for the Legal Rights Objection (LRO). While INTA does not recommend amendments to the Recommendations themselves, INTA does recommend that the AGB be amended to be more precise in the definitions of string similarity and trademark rights as they apply to the LRO. INTA also recommends that the AGB be amended to include fundamental principles of international trademark law (e.g., trademark fame or well-known status, doctrine of foreign equivalents, etc.).	INTA	
2	The recommendations look reasonable, but it will be interesting to see how in practice they are to be implemented in a way which still gives certainty to prospective applicants – reasonable people can disagree as to whether one string is confusingly similar to another, and what is a generally acceptable legal norm relating to morality and public order.	Nominet	
3	The BRG concurs with the RySG comments: We support the identified recommendations from the 2012 round and their continued application to a future gTLD application process, with minor modifications to Recommendation 20 above to clarify what constitutes “a significant portion of the community.” Further, we support the continued use of objection processes to implement these recommendations. Notwithstanding, we believe that the objection process could be generally improved through a number of procedural changes to all four categories of objection proceeding.	BRG	
4	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
5	We support the identified recommendations from the 2012 round and their continued application to a future gTLD application process, with minor modifications to Recommendation 20 above to clarify what constitutes “a significant portion of the community.” Further, we support the continued use of objection processes to implement these recommendations. Notwithstanding, we believe that the objection process could be generally improved through a number of procedural changes to all four categories of objection proceeding.	RySG	
6	The recommendation on string confusion is one that must be enhanced. Singular and plural versions of related strings proved to be problematic in the first round and must be addressed this time. Such provision should not be limited to just the addition of an S but should be more generalized as suggested in a recent Registry SG document. That being said, as discussed in relation the ccNSO Extended Process Similarity Review Panel (EPSRP) document, for strings that are inherently confusing in their own right, but for which STRONG irrevocable policies mitigating against confusion in full domain names, delegation could be considered.	ALAC	
3.1.2 - Do you believe that those recommendations (which led to the establishment of the String Confusion, Legal Rights, Limited Public Interest, and Community Objections grounds) were implemented effectively and in the spirit of the original policy recommendations? If no, please provide examples.			

1	Legal Objection: Applications should be binding (including Q18), so that one can not describe intended use in the application and still win a legal rights objection case based on the argument that the domain name is not yet in use… String confusion: in case of multiple applicants for same string, cases should be consolidated. ALL TLDs should list the language(s) they approach. Singular and Plurals should not be allowed in those languages targeted by the TLD operator(applicant) (and this includes already delegated/applied for strings from previous rounds – "old TLDs" would have to add the languages they target. So .HOTEL would have to list all the languages they would like to "protect" from .HOTELS. (Know this is too late in this example). But for instance plural of .HOTEL in Danish is not HOTELS but "HOTELLER" and so forth. Each TLD could be allowed to define a maximum of three languages. CPE – to be deleted – not needed if five new categories as suggested above.	Jannik Skou	
2	While the objection process in the first round was generally effective, one notable flaw was the inconsistency in panel decisions for string confusion objections. In order to address this flaw for the subsequent round we support the publication by ICANN of more detailed and objective criteria for determining string similarity, as well as a broader appeals mechanism for challenging any decisions that are perceived to fall outside of such criteria. Both losing Objectors and Applicants must have standing to appeal the panel's decision. The language from the 2012 round vests appellate discretion solely with "Losing Applicant[s]," creating a presumption that the rights of gTLD applicants are given more weight than the rights of objectors. Inconsistencies in panel decisions may be further prevented through greater transparency in the process, namely, through publication of any evidence considered by expert panels, arbitration providers, and ICANN staff in its evaluation of objections. Additionally, for the subsequent round, we propose that any review or appeals panels be comprised of arbitrators with specific demonstrated experience in new gTLD program objections.	BC	

	The BRG concurs with the RySG comments: We support the general approach to implement these recommendations through an objection process. However, we note several procedural issues with the implementation of the objection procedures that could be improved in a future application process. The following recommendations are intended to address some of the related procedural deficiencies encountered during the 2012 round. Strictly enforce objection page limits One of the factors contributing to the high costs of objections during the 2012 round was a failure of the the panels to curb submission of additional objection documentation. As panels are paid hourly they are incentivized to accept additional documentation even if it was not strictly necessary for the purpose of evaluating the substance of the objection. Further, in some instances, attachments were used to make and support additional arguments not made in the body of the original objection, resulting in additional work and cost to respondents. We believe that the page caps proposed are appropriate and should be more strictly enforced as part of a subsequent application procedure. To these ends, we would welcome additional language clarifying that attachments should be limited to supporting documentation and must not be used to make additional arguments not covered within the 5,000 word/20 page limit and that, following submission of the initial objection, additional documentation will only be accepted if it is specifically requested by the Objection panel. Allow parties to jointly determine whether to use a one or three-Expert panel The selection of a one or three-Expert panel raises tradeoffs related to cost and consistency. While one-Expert panels are lower cost, three expert panels may be more reliable and less likely to generate concerns around inconsistent application of objection procedures or outcomes. In light of these tradeoffs, we believe that, for all Objection types, Parties should be able to jointly determine whether to use a one or three-expert panel. In the event that the Parties fail to reach agreement the default will be to rely on a three-Expert panel. Revise string confusion objection procedures to prevent against inconsistent outcomes encountered during the 2012 round During the 2015 round, the String Confusion Objection process resulted in indirect contention situations for identical strings proposing similar use cases. For example, in one objection determination, the strings .car/.cars were determined to be confusingly similar, while in another they were determined to not be confusingly similar. This resulted in a situation where the ability or inability for the two strings to coexist depended on which party prevailed at auction. This outcome was seen as inconsistent by many in the community (both objectors and respondents) and saw late stage intervention by the ICANN board to introduce a limited appeals process. The appeals process was only made available to the applicants who were placed in contention, and not to the party filing the objection. We believe that these could be largely avoided by allowing a single String Confusion Objection to be filed against all applicants for a particular string, rather than requiring a unique objection to be filed against each application. We propose the following guidelines: • An objector could file a single objection that would extend to all applications for an identical string. • Given that an objection that encompassed several applications would still require greater work to process and review, the string confusion panel could introduce a tiered pricing structure for these sets. • Each applicant for that identical string would still prepare a response to the objection. • The same panel would review all documentation associated with the objection. • Each response would be reviewed on its own merits to determine whether it was confusingly similar. The panel would issue a single determination that identified which applications would be in contention. Any outcome that resulted in an indirect contention would be explained as part of the panel's response. A limited appeals process (as described above) would be available to both the objectors and the respondents to handle any perceived inconsistencies. Make the costs of community objections more predictable The costs associated with Community Objections were surprisingly high compared to other types of objections, and were hard to predict in advance of filing. This may have been particularly problematic for communities that chose to file objections with a low probability of success. ICANN should prioritize cost in choosing a vendor. Costs should be transparent up front to participants in objection processes with a fixed fee absent extraordinary circumstances. In some cases, applicants should be able to remediate impact identified in Community Objections In the 2012 round, community objections were "all or nothing". Even if the impact to the affected community could be corrected by the applicants, the panel had no option but to either allow the application to proceed or to terminate it. This made the standard to win an objection quite high, and also meant that some applications that probably could have been remediated were instead rejected		

4	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	

5	We support the general approach to implement these recommendations through an objection process. However, we note several procedural issues with the implementation of the objection procedures that could be improved in a future application process. The following recommendations are intended to address some of the related procedural deficiencies encountered during the 2012 round. Strictly enforce objection page limits One of the factors contributing to the high costs of objections during the 2012 round was a failure of the the panels to curb submission of additional objection documentation. As panels are paid hourly they are incentivized to accept additional documentation even if it was not strictly necessary for the purpose of evaluating the substance of the objection. Further, in some instances, attachments were used to make and support additional arguments not made in the body of the original objection, resulting in additional work and cost to respondents. We believe that the page caps proposed are appropriate and should be more strictly enforced as part of a subsequent application procedure. To these ends, we would welcome additional language clarifying that attachments should be limited to supporting documentation and must not be used to make additional arguments not covered within the 5,000 word/20 page limit and that, following submission of the initial objection, additional documentation will only be accepted if it is specifically requested by the Objection panel. Allow parties to jointly determine whether to use a one or three-Expert panel The selection of a one or three-Expert panel raises tradeoffs related to cost and consistency. While one-Expert panels are lower cost, three expert panels may be more reliable and less likely to generate concerns around inconsistent application of objection procedures or outcomes. In light of these tradeoffs, we believe that, for all Objection types, Parties should be able to jointly determine whether to use a one or three-expert panel. In the event that the Parties fail to reach agreement the default will be to rely on a three-Expert panel. Revise string confusion objection procedures to prevent against inconsistent outcomes encountered during the 2012 round During the 2015 round, the String Confusion Objection process resulted in indirect contention situations for identical strings proposing similar use cases. For example, in one objection determination, the strings .car/.cars were determined to be confusingly similar, while in another they were determined to not be confusingly similar. This resulted in a situation where the ability or inability for the two strings to coexist depended on which party prevailed at auction. This outcome was seen as inconsistent by many in the community (both objectors and respondents) and saw late stage intervention by the ICANN board to introduce a limited appeals process. The appeals process was only made available to the applicants who were placed in contention, and not to the party filing the objection. We believe that these could be largely avoided by allowing a single String Confusion Objection to be filed against all applicants for a particular string, rather than requiring a unique objection to be filed against each application. We propose the following guidelines: ● An objector could file a single objection that would extend to all applications for an identical string. ● Given that an objection that encompassed several applications would still require greater work to process and review, the string confusion panel could introduce a tiered pricing structure for these sets. ● Each applicant for that identical string would still prepare a response to the objection. ● The same panel would review all documentation associated with the objection. ● Each response would be reviewed on its own merits to determine whether it was confusingly similar. The panel would issue a single determination that identified which applications would be in contention. Any outcome that resulted in an indirect contention would be explained as part of the panel's response. A limited appeals process (as described above) would be available to both the objectors and the respondents to handle any perceived inconsistencies. Make the costs of community objections more predictable The costs associated with Community Objections were surprisingly high compared to other types of objections, and were hard to predict in advance of filing. This may have been particularly problematic for communities that chose to file objections with a low probability of success. ICANN should prioritize cost in choosing a vendor. Costs should be transparent up front to participants in objection processes with a fixed fee absent extraordinary circumstances. In some cases, applicants should be able to remediate impact identified in Community Objections In the 2012 round, community objections were "all or nothing". Even if the impact to the affected community could be corrected by the applicants, the panel had no option but to either allow the application to proceed or to terminate it. This made the standard to win an objection quite high, and also meant that some applications that probably could have been remediated were instead rejected. Allow arbitrator to identify remedies or cures that would address the detriment to the community, which could be adopted by the applicant and would form a binding portion of the eventual registry agreement.	RySG	

6	No. String confusion proved to be problematic and the potential for differing rulings on the same pairs of strings was particularly problematic. A recent report looking at defensive registrations may imply that legal rights protections were not sufficient. The entire issue of community applications and objections needs careful consideration and review.	ALAC	
3.1.3 - Do you believe there were any issues with standing requirements as defined in the Applicant Guidebook (AGB), or as carried out by the providers? Please explain.			
1	The BRG concurs with the RySG comments: We believe that there is some lack of clarity around how objection by a "significant portion of the community," as is referenced in Recommendation 20 of the GNSO principles, is defined. This could warrant further clarification. We note that ICANN and the Community Objection Provider established additional definitions and procedures regarding the standing to file a community objection. Per Module 4 of the Applicant Guidebook, standing required that the filer meet the following criteria: It is an established institution with purposes beyond the gTLD application process (evaluated based upon level of global recognition of the institution; length of time the institution has been in existence; and public historical evidence of its existence); It has an ongoing relationship with a clearly delineated community – (evaluated based upon the presence of mechanisms for participation, institutional purpose and regular activities that benefit of the associated community; and the level of formal boundaries around the community. Objectors were required to state their basis for standing, as well as grounds for objection. ICANN performed a 30-day administrative review of the objection before it proceeded to evaluation by the Dispute Resolution Provider. We believe that the administrative review process failed to weed out objections where the objection filer did not meet the conditions to establish standing to file. We believe that standing requirements were clearly established for the other application types.	BRG	
2	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
3	We believe that there is some lack of clarity around how objection by a "significant portion of the community," as is referenced in Recommendation 20 of the GNSO principles, is defined. This could warrant further clarification. We note that ICANN and the Community Objection Provider established additional definitions and procedures regarding the standing to file a community objection. Per Module 4 of the Applicant Guidebook, standing required that the filer meet the following criteria: It is an established institution with purposes beyond the gTLD application process (evaluated based upon level of global recognition of the institution; length of time the institution has been in existence; and public historical evidence of its existence); It has an ongoing relationship with a clearly delineated community – (evaluated based upon the presence of mechanisms for participation, institutional purpose and regular activities that benefit of the associated community; and the level of formal boundaries around the community. Objectors were required to state their basis for standing, as well as grounds for objection. ICANN performed a 30-day administrative review of the objection before it proceeded to evaluation by the Dispute Resolution Provider. We believe that the administrative review process failed to weed out objections where the objection filer did not meet the conditions to establish standing to file. We believe that standing requirements were clearly established for the other application types.	RySG	
4	No.	ALAC	
3.1.4 - Do you believe there is evidence of decisions made by objection dispute panels that were inconsistent with other similar objections, the original policy recommendations, and/or the AGB? Please explain.			

1	Review of the LRO decisions in the first Round showed that demonstrating bad faith before a registry launches is virtually impossible. In addition to the three factors outlined in the AGB, LRO panels consider eight non-exhaustive factors in determining whether the applied-for string meets one or more of these three grounds for sustaining the objection. In determining intent of the Applicant, the evidence is limited to (a) the use of the applied-for gTLD string or actions by Applicant at the time of the filing of the Application in relation to the applied-for gTLD string, and (b) the Application itself. For additional background, see INTA's analysis on the ICANN Legal Rights Objection here. INTA recommends additional work to add additional factors directly into the AGB that would guide Applicants and LRO panels on the concepts of bad faith, including, but not limited to history of the Applicant and the individuals behind the applicant, whether the underlying trademark rights acquired by the Applicant were filed solely with respect to supporting the business of the Application.	INTA	
2	Yes. For string confusion objections, despite conditions being effectively the same, one ICDR panel came to the conclusion that . HOTEL and .HOTELS were not confusingly similar, while another determined that .PET and .PETS were confusingly similar. There were multiple other examples of such inconsistencies, e.g., .CAR and .CARS found not similar, and .GAME and .GAMES similar. To prevent such results in future rounds, we support allowing a single String Confusion Objection to be filed against all applicants for a particular string, rather than requiring a unique objection to be filed against each application. As stated above, we would also support an appeals process with panels comprised of arbitrators with specific demonstrated experience in new gTLD program objections.	BC	

3	The BRG concurs with the RySG comments: Yes, we believe that objection processes during the 2012 saw inconsistent outcomes, where different decisions were reached despite similar fact patterns, or where panels appeared to apply different logic and standards in arriving at their decisions. Introduce appeals process for objections to address inconsistencies. The perception of inconsistent outcomes led to overreliance on existing accountability mechanisms, particularly the Reconsideration Request process, which was ill suited to address the objection related issues as Reconsideration Requests are intended to address action or inaction by ICANN staff or the ICANN Board and not determinations by a third party panel. This situation was detrimental to applicants, who were left without adequate recourse mechanisms, and the ICANN Board's Governance Committee, which was inundated by an unprecedented number of reconsideration requests that it could not process on a reasonable time frame. It also drove the creation of post-decision mechanisms which were only made available to a narrow subset of applicants who faced the most obviously inconsistent determinations. This situation was inadequate to address the larger issues identified above. Further, these opportunities were not made available to all potentially impacted applicants, nor to both sides of the objection. For example certain inconsistent string determinations resulted in the receiving applicant who was placed in contention being able to argue their case for why their application should not be placed in contention; no comparable second opportunity was provided to the complainant to argue why the correct, consistent outcome would be for all identical applications to be placed in contention. We believe a much better approach is to introduce the option of a narrow appeals process for all applicants where parties that identify either a reasonable inconsistency in outcome or a specific argument as to why the panel failed to apply the proper standard. In our response to question 3.5.2 propose below several model for a potential appeals body for consideration: Inconsistencies were most obvious in the String Confusion Objection Process, which resulted in indirect contention situations for identical strings proposing similar use cases. For example, in one objection determination, the strings .car/.cars were determined to be confusingly similar, while in another they were determined to not be confusingly similar. This resulted in a situation where the ability or inability for the two strings to coexist depended on which party prevailed at auction. This outcome was seen as inconsistent by many in the community (both objectors and respondents) and saw late stage intervention by the ICANN board to introduce a limited appeals process. The appeals process was only made available to the applicants who were placed in contention, and not to the party filing the objection. The inconsistent results process has been extended to other objection results as well (e.g. .hospital (Limited Public Interest) and .Charity) community. ICANN should strive to avoid inconsistent results for similarly situated applicants in all objections. Revise String Confusion Objection Process to Minimize Inconsistencies Our recommendations for improvements to the String Confusion Objection Procedures described in question 3.1.2 and repeated below attempt to ameliorate these inconsistent outcomes. We believe that these could be largely avoided by allowing a single String Confusion Objection to optionally be filed against all applicants for a particular string, rather than requiring a unique objection to be filed against each application. Specific recommendations for how these processes could be revised are set forth in our response to 3.1.2 .	BRG	
4	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	

5	Yes, we believe that objection processes during the 2012 saw inconsistent outcomes, where different decisions were reached despite similar fact patterns, or where panels appeared to apply different logic and standards in arriving at their decisions. Introduce appeals process for objections to address inconsistencies. The perception of inconsistent outcomes led to overreliance on existing accountability mechanisms, particularly the Reconsideration Request process, which was ill suited to address the objection related issues as Reconsideration Requests are intended to address action or inaction by ICANN staff or the ICANN Board and not determinations by a third party panel. This situation was detrimental to applicants, who were left without adequate recourse mechanisms, and the ICANN Board's Governance Committee, which was inundated by an unprecedented number of reconsideration requests that it could not process on a reasonable time frame. It also drove the creation of post-decision mechanisms which were only made available to a narrow subset of applicants who faced the most obviously inconsistent determinations. This situation was inadequate to address the larger issues identified above. Further, these opportunities were not made available to all potentially impacted applicants, nor to both sides of the objection. For example certain inconsistent string determinations resulted in the receiving applicant who was placed in contention being able to argue their case for why their application should not be placed in contention; no comparable second opportunity was provided to the complainant to argue why the correct, consistent outcome would be for all identical applications to be placed in contention. We believe a much better approach is to introduce the option of a narrow appeals process for all applicants where parties that identify either a reasonable inconsistency in outcome or a specific argument as to why the panel failed to apply the proper standard. In our response to question 3.5.2 propose below several model for a potential appeals body for consideration: Inconsistencies were most obvious in the String Confusion Objection Process, which resulted in indirect contention situations for identical strings proposing similar use cases. For example, in one objection determination, the strings .car/.cars were determined to be confusingly similar, while in another they were determined to not be confusingly similar. This resulted in a situation where the ability or inability for the two strings to coexist depended on which party prevailed at auction. This outcome was seen as inconsistent by many in the community (both objectors and respondents) and saw late stage intervention by the ICANN board to introduce a limited appeals process. The appeals process was only made available to the applicants who were placed in contention, and not to the party filing the objection. The inconsistent results process has been extended to other objection results as well (e.g. .hospital (Limited Public Interest) and .Charity) community. ICANN should strive to avoid inconsistent results for similarly situated applicants in all objections. Revise String Confusion Objection Process to Minimize Inconsistencies Our recommendations for improvements to the String Confusion Objection Procedures described in question 3.1.2 and repeated below attempt to ameliorate these inconsistent outcomes. We believe that these could be largely avoided by allowing a single String Confusion Objection to optionally be filed against all applicants for a particular string, rather than requiring a unique objection to be filed against each application. Specific recommendations for how these processes could be revised are set forth in our response to 3.1.2 .	RySG	
3.1.5 - Are you aware of any instances where any party or parties attempted to 'game' the Objection procedures in the 2012 round? If so, please provide examples and any evidence you may have available.			

	A form of gaming that attempted to take place was an effort to force a community applicant into a Community Objection when achieving “standing” for the objector was a known impossibility due to deceptive representation. The purpose for objecting appears to be related to financially burdening dotgay LLC (dotgay) and projecting fake opposition to a communitybased application for .GAY. Both community objections against dotgay came from the same network of political organizations in the USA, one claiming to represent the national organization and one from an affiliate member organization in Dallas. The contents of each objection were similar and in many cases verbatim in wording. Having two similar objections from two sources knowing of one another is in itself suspect, especially given the potential cost to each to pursue the filings. Potential impacts to dotgay included paying a non-refundable 5,000 euro administrative fee to the ICC per objection, tying up a deposit of 40,000 plus euros to respond to each objection, as well as creating the false impression that organized community opposition existed against the application. Consolidation of objections was never an ICC guarantee and dotgay is aware of weak excuses that prevented objections from being consolidated, even when near identical. For community applicants that don’t have deep pockets, this form of gaming could knock them out of the new gTLD program. This is especially true given the deposit required for each objection and the fact that all community objections happen simultaneously giving no opportunity to spread out the costs. Some may not be able to front hundreds of thousands of dollars to expose deceptive representation. This form of gaming went unchecked under the current procedures. No process existed to defend against a spurious objection without first formalizing the objection and making payment to the ICC. To submit a community objection that has no hope of achieving “standing” raises serious questions of gaming, especially given the associated costs the objector (or the party financially supporting them) would be expending on an objection known to be deficient. Example: A community objection was filed against dotgay by a person who was fraudulently claiming to represent a community organization called GoProud. By simply writing an organization name on the ICC objection form, the opposing individual fulfilled one of the basic requirements for submitting a community objection (ie. that it come from an organization). There appears to have been no effort made by the ICC to verify truth in this representation at the time of filing. What did happen however is that the ICC used the info@goproud.org email (noted on the objection) to reach back to the objector to highlight that they had exceeded word count on the objection, asking it be corrected. The objector did not respond in time, later claiming he never received the email. The objector used an AOL email account to file the objection, and in fact never used an @goproud.org email at any point in his attempt to object. Current procedures call for the objecting organization to be scrutinized for “standing,” but only when the panelist is assigned and the evaluation is underway. It is also unclear what actions are taken by the panelist to ensure legitimacy of the person objecting and their link/authority at the organization they claim to represent. The current flaw we identify is that individuals have the ability to use any unknowing organization’s name to object and likely have a good chance of at least forcing an applicant into paying a filing fee and deposit in order to respond. The problem here is that by simply listing an organization on a community objection (whether large, small, significant, insignificant, real, nefarious, legal, fraudulent, etc) it is possible to force a community applicant into responding to an objection. Some standards and criteria should be applied to protect applicants from being gamed in this manner. Fortunately in our case, the objection was rejected by the ICC because of a rule violation on word length by the objector (or the party that wrote the objection on his behalf). This initiated a series of accountability mechanisms undertaken by the objecting party that provided dotgay ample time to uncover that the GoProud organization had no knowledge their name was being used by the objector. The 5,000 euro filing fee was not paid by GoProud, nor was the individual that paid the filing fee known to the GoProud organization. Accountability mechanisms were employed by the objector in an attempt to get his objection acknowledged by the ICC. Both the ICANN Ombudsman and ICANN Board separately engaged in efforts to provide opportunity for the objection to be accepted by the ICC, despite the rule violation and despite suspicion of fraud identified by dotgay. The ICC affirmed their prior decision to reject the objection and a Reconsideration Request was filed by the objector. Requests by dotgay for someone (ICC or ICANN) to simply confirm authenticity of the objection with leadership at GoProud (via phone or email) were ignored by the ICC and by ICANN during the Reconsideration Request proceedings. Knowing if the objection was truly from GoProud could have quickly ended the ongoing fraudulent activity. In the end, all responsibility was left on the community applicant to convince GoProud leadership to submit a written statement to ICANN to end the objection and highlight that GoProud’s name was being used without their authority. Having no prior knowledge or involvement with ICANN or the objection in question, the request was quite odd for dotgay to make of GoProud and required extensive time and money to help them understand what was taking place behind their backs. This is something the ICC or ICANN could have addressed quickly through outreach, but both chose not to		

2	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
3	While we believe that there may have been some instances of gaming objections during the 2012 round, we will defer to individual comments to raise specific examples. We note one recommendation that we believe will reduce the likelihood of gaming generally with respect to the Community objection process: Communities should be limited to participating in either Objections or CPE, but not both. During the 2012 round, some entities who were involved in TLD applications took "two bites of the apple" by filing both objections and participating in CPE for the same strings. This meant that they had two opportunities to potentially defeat a competitive application. We don't believe this matches the intent of the policy or the guidebook. No individual entity should be able to participate in both an objection and CPE for the same string.	RySG	
3.1.6 - Do you believe that the use of an Independent Objector (IO) is warranted in future application processes? If not, then why? If yes, then would you propose any restrictions or modifications be placed on the IO in future rounds?			
1	Yes, or you could consider the implementation of a review process involving experienced or groups of team members. Such a quality control process is used in Nominet's Dispute Resolution Service.	Nominet	
2	The Independent Objector is not warranted in future application processes. The IO was created during implementation of the last expansion, and was not designed or approved in the GNSO policy-making process. The IO was paid from applicant fees, but did not prove beneficial to applicants. The IO was not independent, was politically or personally motivated, and did not accomplish their stated work. The IO filed 19 objections, won two decisions, at a million dollars per objection, with a success rate of 2% (https://newgtlds.icann.org/en/program-status/odr/determination). Two cases, .hospital and .charity, were also changed later.	BC	

3	The BRG concurs with the RySG comments: The Independent Objector could fill an important theoretical function in its ability to relay potential objections from third parties that would not otherwise have the financial capability to do so. However, in the 2012 Round, the behavior of the Independent Objector deviated from this function; the Independent Objector appeared to have an activist agenda, rather than hearing, filtering, and advancing concerns of third parties that would otherwise not have been able to file on their own. Further, the Independent Objector's behavior in the 2012 round raised questions of whether Conflict of Interest Procedures and other procedural guidelines were appropriately applied. We believe the following recommendations could help address issues faced related to the office of the independent objector. Require established support for objections by the Independent Objector In the 2012 Round the Independent Objector appeared to act on an independent agenda that was not supported by the public, nor by particular affected parties that would have not been able to file an objection. Further, the low success rate for objections filed by the Independent Objector raises questions of whether concerns raised by the objected-to strings were sufficiently clear-cut to warrant objection through this process, particularly given the high cost of this office to ICANN. As part of the objection filing process the Independent Objector should be required to name one or more parties that initiated or support the objection but would otherwise be unable to file, in addition to meeting all other criteria for objection (e.g. affirmation that filing the objection is in the public interest). Establish clear Conflict of Interest Procedures for the office of the Independent Objector The 2012 round witnessed potential Conflicts of Interest related to objections filed by the Independent Objector. While the conflicts were ultimately resolved, the failure to establish clear conflict of interest guidelines for the office of the Independent Objector at the outset resulted in additional delay and cost to affected parties. The lack of clear Conflict of Interest Procedures for the office of the Independent Objector in the Applicant Guidebook contradicts with the approach taken for other independent parties engaged in the application process, including application evaluators and objection evaluation panels. In light of this experience and in line with the overall goals of the program ICANN should implement a clear conflict of interest policy and associated procedures for the Independent Objector. The Conflict of Interest Guidelines used for application evaluators may be used as a model for these procedures. Require Independent Objector to withdraw duplicate objections The 2012 Applicant Guidebook provided that, absent extraordinary circumstances, the IO should not be permitted to file an objection against an application was already filed on the same ground. We strongly support the principle but do not believe it was fully adhered to by the Independent Objector, who maintained some of his objections while third party objections against the same string and on the same grounds were pending and failed to defend why this followed from extraordinary circumstances. We urge strict adherence to this principle in a future round and recommending removing the carve out for extraordinary circumstances, as we do not believe that this standard was met or defended during the 2012 Round.	BRG	
4	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	

5	The Independent Objector could fill an important theoretical function in its ability to relay potential objections from third parties that would not otherwise have the financial capability to do so. However, in the 2012 Round, the behavior of the Independent Objector deviated from this function; the Independent Objector appeared to have an activist agenda, rather than hearing, filtering, and advancing concerns of third parties that would otherwise not have been able to file on their own. Further, the Independent Objector' s behavior in the 2012 round raised questions of whether Conflict of Interest Procedures and other procedural guidelines were appropriately applied. We believe the following recommendations could help address issues faced related to the office of the independent objector. Require established support for objections by the Independent Objector In the 2012 Round the Independent Objector appeared to act on an independent agenda that was not supported by the public, nor by particular affected parties that would have not been able to file an objection. Further, the low success rate for objections filed by the Independent Objector raises questions of whether concerns raised by the objected-to strings were sufficiently clear-cut to warrant objection through this process, particularly given the high cost of this office to ICANN. As part of the objection filing process the Independent Objector should be required to name one or more parties that initiated or support the objection but would otherwise be unable to file, in addition to meeting all other criteria for objection (e.g. affirmation that filing the objection is in the public interest). Establish clear Conflict of Interest Procedures for the office of the Independent Objector The 2012 round witnessed potential Conflicts of Interest related to objections filed by the Independent Objector. While the conflicts were ultimately resolved, the failure to establish clear conflict of interest guidelines for the office of the Independent Objector at the outset resulted in additional delay and cost to affected parties. The lack of clear Conflict of Interest Procedures for the office of the Independent Objector in the Applicant Guidebook contradicts with the approach taken for other independent parties engaged in the application process, including application evaluators and objection evaluation panels. In light of this experience and in line with the overall goals of the program ICANN should implement a clear conflict of interest policy and associated procedures for the Independent Objector. The Conflict of Interest Guidelines used for application evaluators may be used as a model for these procedures. Require Independent Objector to withdraw duplicate objections The 2012 Applicant Guidebook provided that, absent extraordinary circumstances, the IO should not be permitted to file an objection against an application was already filed on the same ground. We strongly support the principle but do not believe it was fully adhered to by the Independent Objector, who maintained some of his objections while third party objections against the same string and on the same grounds were pending and failed to defend why this followed from extraordinary circumstances. We urge strict adherence to this principle in a future round and recommending removing the carve out for extraordinary circumstances, as we do not believe that this standard was met or defended during the 2012 Round.	RySG	
6	The use of an IO is still warranted. However, there were allegations of lack of objectivity in the first round and steps must be taken to ensure that the IO is beyond reproach.	ALAC	
3.1.7 - Do you believe that parties to disputes should be able to choose between 1 and 3 member panels and should the costs of objections reflect that choice?			
1	The BRG concurs with the RySG comments: As set forth in our recommendations in response to question 3.1.2 we believe that parties should be able to jointly determine whether to use a one or three-Expert panel. The selection of a one or three-Expert panel raises tradeoffs related to cost and consistency. While one-Expert panels are lower cost, three expert panels may be more reliable and less likely to generate concerns around inconsistent application of objection procedures or outcomes. In light of these tradeoffs, we believe that, for all Objection types, Parties should be able to jointly determine whether to use a one or three-expert panel. In the event that the Parties fail to reach agreement the default should be to rely on a three-Expert panel.	BRG	
2	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	

	As set forth in our recommendations in response to question 3.1.2 we believe that parties should be able to jointly determine whether to use a one or three-Expert panel. The selection of a one or three-Expert panel raises tradeoffs related to cost and consistency. While one-Expert panels are lower cost, three expert panels may be more reliable and less likely to generate concerns around inconsistent application of objection procedures or outcomes. In light of these tradeoffs, we believe that, for all Objection types, Parties should be able to jointly determine whether to use a one or three-expert panel.		
3	In the event that the Parties fail to reach agreement the default should be to rely on a three-Expert panel.	RySG	
3.1.8. - Is clearer guidance needed in regards to consolidation of objections? Please explain.			

	Yes. Clearer guidance should be given for objection consolidation. The community objection proceedings exist as the primary method for community organizations to defend against gTLD applications they deem harmful to their communities. However, objections are only offered for a cost that some communities may find challenging to afford if faced with the reality of multiple and problematic strings/applications intersecting their communities. Objection consolidation suggested a form of financial relief, but without assurances that consolidation will be effectively utilized to keep costs from becoming a barrier to engagement, the current guidance offers no value to community objectors. Before costs for community objections are established for subsequent rounds, clearer guidance is needed to encourage and clarify circumstances that generally and specifically warrant consolidation. DRSP's must agree to follow such guidance and some form of quality control standards must be established. This would not only ensure community objections remain focused on serving their intended purpose of addressing potential community harm, but it would also provide guidance and predictability to community organizations that may be extending themselves to simply engage. What should be avoided is forcing a community organization to choose between which string/application they will object to from several they find problematic simply because they cannot fund multiple objections, especially when the organization is identifying similar harm(s) in each objection submitted. This can help ensure community interest is not stripped from the community objection process simply because some communities have less wealth. Example of how poor guidance caused unnecessary financial burden: ILGA is a community organization that found potential harm in several applications for strings intersecting their defined community. The harm identified was consistent in each application. Despite ILGA using near exact wording in their objections filed against three .GAY and one .LGBT applications, the DRSP decided against consolidating the objections, forcing deposits and eventual payment of four separate objections. The current guidance merely states that "ICANN continues to strongly encourage all of the DRSPs to consolidate matters whenever practicable," yet this was not received by the DRSP as clear or predictable guidance. In addition, the AGB says the DRSP "will weight the efficiencies in time, money, effort, and consistency" when determining consolidation, despite having any quality control in place to ensure it happens. Although the DRSP sent an early signal that consolidation of ILGA's objections was being considered, the DRSP then sought comment from all parties involved. Opposition from some applicants was expressed, suggesting concern that consolidation would expose financial details of their applications to others in the consolidation set. This concern had no basis since the objections had nothing to do with the financial aspect of the applications. After first deciding .LGBT would not be consolidated with .GAY, the DRSP later decided that not even the .GAY objections would be consolidated. However, the DRSP did decide the three .GAY and one .LGBT objection would all be handled by the same panelist, despite denying consolidation. Although it seems the DRSP weighed "efficiencies in time, money, effort, and consistency" in assigning one panelist to all objections, the cost to the community organization objecting did not match the actions of the DRSP. All .GAY decisions from the panelist were extremely similar, perhaps the simple proof that consolidation was warranted and that it was unnecessary for ILGA to pay for each objection separately. A comparative analysis of the results shows that in most cases a simple swapping of the applicant name is the only variance in the panelist's decisions. .GAY Objection Results: Case No. EXP/392/ICANN/9; Case No. EXP/393/ICANN/10; Case No. EXP/394/ICANN/11 Comparative Analysis of Results (by bullet points): a. Procedure: 1-5 vary only by Applicant administrative details b. Objector's Position: 6-10 (only variance appears in #8 of one result because of an additional concern ILGA included in their objection against one of the applications) c. Applicants Position: 11-12 or 11-13 (vary based on applicant response) d. Findings: 13-31 or 14-32 are virtually verbatim for all A review of all three .GAY objection results reveals that approximately 90% or more of the bullet points contained in each result are identical. Aside from administrative uniqueness required to properly identify the applicant in each result, there was little else that made each result distinctly different from the others. Because only the objection decisions are publicly available it is difficult to provide illustrations for comparison here, however we believe ILGA would be willing to make their community objections public for further review if ICANN and the DRSP approve. Although the AGB suggested that similar objections against an application could be consolidated, it did not dismiss that similar		

2	The BRG concurs with the RySG comments: While we for most objection types consolidating objections is difficult given the ability for applicants for a single string to propose vastly different business models, we believe that for string confusion objections, a model in which objections are filed against strings (consolidating all applications for that string by default) would be preferable and would ameliorate inconsistent outcomes witnessed as part of the String Confusion Objection Process. We propose the following guidelines: • An objector could file a single objection that would extend to all applications for an identical string. • Given that an objection that encompassed several applications would still require greater work to process and review, the string confusion panel could introduce a tiered pricing structure for these sets. • Each applicant for that identical string would still prepare a response to the objection. • The same panel would review all documentation associated with the objection. • Each response would be reviewed on its own merits to determine whether it was confusingly similar. • The panel would issue a single determination that identified which applications would be in contention. Any outcome that resulted in an indirect contention would be explained as part of the panel's response. • A limited appeals process (as described above) would be available to both the objectors and the respondents to handle any perceived inconsistencies.	BRG	
3	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
4	While we for most objection types consolidating objections is difficult given the ability for applicants for a single string to propose vastly different business models, we believe that for string confusion objections, a model in which objections are filed against strings (consolidating all applications for that string by default) would be preferable and would ameliorate inconsistent outcomes witnessed as part of the String Confusion Objection Process. We propose the following guidelines: ● An objector could file a single objection that would extend to all applications for an identical string. ● Given that an objection that encompassed several applications would still require greater work to process and review, the string confusion panel could introduce a tiered pricing structure for these sets. ● Each applicant for that identical string would still prepare a response to the objection. ● The same panel would review all documentation associated with the objection. ● Each response would be reviewed on its own merits to determine whether it was confusingly similar. ● The panel would issue a single determination that identified which applications would be in contention. Any outcome that resulted in an indirect contention would be explained as part of the panel's response. ● A limited appeals process (as described above) would be available to both the objectors and the respondents to handle any perceived inconsistencies.	RySG	
3.1.9 - Many community members have highlighted the high costs of objections. Do you believe that the costs of objections created a negative impact on their usage? If so, do you have suggestions for improving this issue? Are there issues beyond cost that might impact access, by various parties, to objections?			

1	As suggested above, perhaps creating a better structure to community objections and associated costs is worth a look. As noted above, for community objections all money was collected from both parties before anyone ever sat down to examine whether “standing” of the objector was even substantiated. Without “standing” there was ultimately no need to dive into the argument of the objection and engage panelists at a higher level, because panelist findings would be a moot point without standing in the current process for upholding objections. This is especially important to note given that ICANN has told dotgay on multiple occasions that panel decisions in community objections carry no specific weight or precedent in any other contention resolution proceedings that might follow, such as CPE. Given ICANN’s view and our own experiences that followed the community objection proceedings, it seems like any community objection decision is worthless outside of the community objection process itself. If standing of the objector cannot be established then it seems there is no legitimate reason to force a panelist to even examine or rule on a community objection that lacks “standing.” Determining “standing” up front also helps prevent any hint of fake or fraudulent opposition against a community application that could be used in the media or other mediums to negatively impact perception or opinion of the community applicant, either within the community or future evaluation processes. Suggestion: Given that standing was a key element in community objections, with discernable boundaries, it is a step in the process that could likely be separated from the other criteria under its own cost structure and stage in the overall community objection process. Let the objector bear the brunt of the fees until it can be established that they are legitimate and with proper standing to object. In some cases, having a stage for determination on standing as a first step also provides the community applicant with a reasonable amount of time to try and resolve the issues rooted in the opposition being charged in the formal objection, similar to the Cooperative Engagement Process (CEP) currently used at ICANN. The current process provides little to no opportunity for community applicants to engage or react in good faith to the opposition, or properly educate the objector about the application details to avoid misunderstandings and misrepresentations contained in the objection. In our case, outreach to parties objecting to dotgay’s application was met with silence, leading us to further concerns about the authenticity of the objections. Requiring a period similar to CEP also helps weed out any fake, frivolous or fraudulent objections, and ultimately helps avoid any unnecessary costs.	dotgay LLC	

2	Costs: We believe that the cost of objections was a barrier to access and engagement. This is based on the limited number of community objections filed by gay community groups from the hundreds that expressed ongoing concern to dotgay LLC about applications they deemed harmful to the LGBTQIA population. In our journey of community engagement and building consensus with the .GAY community application, we received a tremendous amount of feedback from community organizations expressing deep concern and shock with the cost schedule. The organizations ranged from nonprofits, charitable causes and service provider groups to name a few, many making it clear they would be priced out of delivering filing fees and deposits in order to challenge applications they deemed harmful to members of the gay community. Considering that future gTLD applications have the potential to raise concerns of harm in the purview of communities that are not well resourced, community objections must not price out community organizations that are willing or obliged to speak up on behalf of their members. Not all communities have wealth and resources, so the community objection process must fully and properly consider this and address how some communities may be subject to further marginalization due to access limitations. Although there are some features to the objection proceedings that do offer aid or relief, such as the independent objector and objection consolidation, these features are worthless unless there is awareness beyond the ICANN community and clearer guidance on when and where costs can be minimized or become less of a barrier to access. Simply making the objection proceedings and related methods of relief available does not automatically fulfil the goals of addressing harm in applications, especially if access for those expected to engage continues to be unattainable because due to lack of awareness. Awareness: As a community applicant that engaged with the gay community in all reaches of the globe during application development for .GAY, we consistently found ourselves being the first to bring LGBTQIA organization awareness to the new gTLD program and ICANN's objection proceedings. Our concern is that other communities without such links to the new gTLD program will remain among the most vulnerable and the most at risk in subsequent procedures, especially if strings associated with their community are knowingly or unknowingly selected by applicants without community dialogue or full consideration of potential harm. The community objection proceedings should avoid becoming a mere dog and pony show that gives the impression that community objection is being taken seriously (for a price), and instead focus on ensuring real access for community organizations as a true instrument to mitigate harm. If only voices and concerns of wealthy community organizations are able to access, are the community objection procedures accomplishing their goals? Since access is the critical component for objecting community parties to address perceived harm in new gTLD applications, more must be done to open that access. This includes an evaluation of the costs and opportunities that could ensure concerns from community organizations are accepted and considered, regardless of the objecting organization's financial capabilities. Addressing and combating potential harm should not remain the priority.	dotgay LLC	

3	NABP recommends that the cost of a community-based objection be reduced to avoid being an obstacle preventing communities from filing objections. According to the recent Council of Europe report, "Applications to ICANN for Community-Based New Generic Top Level Domains (gTLDs): Opportunities and Challenges from a Human Rights Perspective," the cost to file a community-based objection during the 2012 round amounted to "hundreds of thousands of dollars for a single objection." The amount was even higher if the objector opted for a three person panel of evaluators. This expense is prohibitive – especially for legitimate long-standing nonprofit communities. As stated in the Council of Europe report: "non-profits were severely limited in filing objections due to the excessive costs." NABP supports to Council of Europe report recommendation to ICANN to "lower the costs for Community Objection" for legitimate industry associations and communities. Further complicating the matter is that the cost to file a community-based objection was not clear because it was based on variables including the time the evaluators took to consider the matter. Nor is an approximate cost disclosed in the Applicant Guidebook. NABP supports the Council of Europe report recommendation to ICANN to "provide clarity on the expected costs for Community Objection." It should be possible to at least provide guidance on approximate costs based on an assessment of experiences of round 1. Rules pertaining to the objector's standing contributed to the cost of a community-based objection being prohibitive. Established institutions associated with a clearly-defined community could file a community-based objection only as an individual organization, not jointly with other organizations in the same community. If the objector's goal is to prove substantial opposition from a significant portion of the community, it seems logical for ICANN to allow an objection to be filed jointly by organizations within the community. For this reason, NABP supports the Council of Europe report recommendation to ICANN to "assess whether it is desirable and feasible to open up the possibility to collectively file a Community Objection."	NABP	
4	The Consortium recommends that the cost of a community-based objection be reduced to avoid being an obstacle preventing communities from filing objections. According to the recent Council of Europe report, "Applications to ICANN for Community-Based New Generic Top Level Domains (gTLDs): Opportunities and Challenges from a Human Rights Perspective," the cost to file a community-based objection during the 2012 round amounted to "hundreds of thousands of dollars for a single objection." The amount was even higher if the objector opted for a three- person panel of evaluators. This expense is prohibitive – especially for legitimate long-standing nonprofit communities. As stated in the Council of Europe report: "non-profits were severely limited in filing objections due to the excessive costs." The Consortium supports the Council of Europe report recommendation to ICANN to "lower the costs for Community Objection" for legitimate industry associations and communities. Further complicating the matter is that the cost to file a community-based objection was not clear because it was based on variables including the time the evaluators took to consider the matter. Nor is an approximate cost disclosed in the Applicant Guidebook. The Consortium supports to Council of Europe report recommendation to ICANN to "provide clarity on the expected costs for Community Objection." It should be possible to at least provide guidance on approximate costs based on an assessment of experiences of the 2012 round. Rules pertaining to the objector's standing contributed to the cost of a community-based objection being prohibitive. Established institutions associated with a clearly-defined community could file a community-based objection only as an individual organization, not jointly with other organizations in the same community. If the objector's goal is to prove substantial opposition from a significant portion of the community, it seems logical for ICANN to allow an objection to be filed jointly by organizations within the community. For this reason, the Consortium supports the Council of Europe report recommendation to ICANN to "assess whether it is desirable and feasible to open up the possibility to collectively file a Community Objection."	vTLD Consortium	

5	The BRG concurs with the RySG comments: As noted in our response to question 3.1.2 The costs associated with Community Objections were surprisingly high compared to other types of objections, and were hard to predict in advance of filing. This may have been particularly problematic for communities that chose to file objections with a low probability of success. ICANN should prioritize cost in choosing a vendor. Costs should be transparent up front to participants in objection processes with a fixed fee absent extraordinary circumstances. We also believe that stricter enforcement of the page caps established for the objections will help to address issues related to cost. One of the factors contributing to the high costs of objections during the 2012 round was a failure of the the panels to curb submission of additional objection documentation. As panels are paid hourly they are incentivized to accept additional documentation even if it was not strictly necessary for the purpose of evaluating the substance of the objection. Further, in some instances, attachments were used to make and support additional arguments not made in the body of the original objection, resulting in additional work and cost to respondents. We believe that the page caps proposed are appropriate and should be more strictly enforced as part of a subsequent application procedure. To these ends, we would welcome additional language clarifying that attachments should be limited to supporting documentation and must not be used to make additional arguments not covered within the 5,000 word/20 page limit and that, following submission of the initial objection, additional documentation will only be accepted if it is specifically requested by the Objection panel.	BRG	
6	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
7	As noted in our response to question 3.1.2 The costs associated with Community Objections were surprisingly high compared to other types of objections, and were hard to predict in advance of filing. This may have been particularly problematic for communities that chose to file objections with a low probability of success. ICANN should prioritize cost in choosing a vendor. Costs should be transparent up front to participants in objection processes with a fixed fee absent extraordinary circumstances. We also believe that stricter enforcement of the page caps established for the objections will help to address issues related to cost. One of the factors contributing to the high costs of objections during the 2012 round was a failure of the the panels to curb submission of additional objection documentation. As panels are paid hourly they are incentivized to accept additional documentation even if it was not strictly necessary for the purpose of evaluating the substance of the objection. Further, in some instances, attachments were used to make and support additional arguments not made in the body of the original objection, resulting in additional work and cost to respondents. We believe that the page caps proposed are appropriate and should be more strictly enforced as part of a subsequent application procedure. To these ends, we would welcome additional language clarifying that attachments should be limited to supporting documentation and must not be used to make additional arguments not covered within the 5,000 word/20 page limit and that, following submission of the initial objection, additional documentation will only be accepted if it is specifically requested by the Objection panel.	RySG	
3.1.10 - Do you feel that GAC Early Warnings were helpful in identifying potential concerns with applications? Do you have suggestions on how to mitigate concerns identified in GAC Early Warnings?			
1	Yes. Whilst the GAC should not run ICANN's policy for new gTLDs, it is important that GAC input is a formal part of the application process, and dialogue between the GAC and applicants should be encouraged to help work out solutions to public policy concerns.	Nominet	
2	In the next "round", the BC would like to see clarification around the GAC objections process and timeline for filing and addressing GAC objections.	BC	

3	The BRG concurs with the RySG comments: There seemed to be some confusion and uncertainty about the implications and consequences of a GAC Early Warning. Several steps could minimize this confusion and uncertainty in the future: (i) change the name to GAC Member Early Warning (or something similar) to communicate clearly that the Early Warning has not been issued by the entire GAC, but, instead, by one or more GAC members; (ii) adopt and identify a clear timetable for action by the issuing GAC member(s) to provide certainty to applicants; (iii) require the issuing GAC member(s) to identify the national law(s) on which the Early Warning is based; (iv) have the issuing GAC member(s) designate the type of action(s) desired from the applicant; and (v) emphasize that the GAC Member Early Warnings have no precedential value.	BRG	
4	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
5	There seemed to be some confusion and uncertainty about the implications and consequences of a GAC Early Warning. Several steps could minimize this confusion and uncertainty in the future: (i) change the name to GAC Member Early Warning (or something similar) to communicate clearly that the Early Warning has not been issued by the entire GAC, but, instead, by one or more GAC members; (ii) adopt and identify a clear timetable for action by the issuing GAC member(s) to provide certainty to applicants; (iii) require the issuing GAC member(s) to identify the national law(s) on which the Early Warning is based; (iv) have the issuing GAC member(s) designate the type of action(s) desired from the applicant; and (v) emphasize that the GAC Member Early Warnings have no precedential value.	RySG	
3.1.11 - What improvements and clarifications should be made to GAC Advice procedures? What mitigation mechanisms are needed to respond to GAC Advice? How can timelines be made more precise?			
1	NABP believes there was a lack of clarity and predictability with the issuance and implementation of GAC Advice that should be avoided in subsequent procedures. Introducing additional requirements in the form of GAC Advice for certain applicants midway through the evaluation process was highly disruptive and caused considerable delays and a great deal of uncertainty as to what the next steps would be and when they would take place. To prevent delays and ambiguities in the application evaluation process, GAC Advice and the ICANN's Board's resulting policy decisions should be determined prior to the launch of New gTLD subsequent procedures. While this cannot necessarily be done in relation to individual potential TLD strings, it should be possible to do so in relation to particular categories where there may be sensitivity. Understandably issues may arise that cannot be predicted, but, with regard to policy decisions for sensitive and highly regulated strings, for example, these negotiations can be conducted in advance and should be firmly established and publicized prior to new applications being accepted. Additionally, in freezing groups of applications by category, it was apparent that the GAC had not actually read the affected applications prior to issuing its Advice. This is evidenced by the fact that the .pharmacy application already included safeguards such as those advised by the GAC. Failure of the GAC either to read the application and/or to have a process whereby misunderstandings could be clarified resulted in a substantial delay to the processing of NABP's .pharmacy application. In subsequent rounds, if last-minute application freezes should become necessary, the GAC should ensure that it understands the application(s) in question. In addition, there should be processes introduced whereby an applicant can communicate directly with the GAC member(s) having an objection to address any misunderstandings.	NABP	
2	This is a complex area. Each case where GAC advice might be invoked will be inherently contentious and the nature of the GAC advice as failsafe for expression of public policy concerns needs to be expressed in fairly board terms and so we don't have easy answers for improving this process.	Nominet	

3	The Consortium believes there was a lack of clarity and predictability with the issuance of GAC Advice that should be avoided in subsequent rounds. Introducing additional requirements in the form of GAC Advice for certain applicants midway through the evaluation process was highly disruptive and caused considerable delays and a great deal of uncertainty as to what the next steps would be and when they would take place. To prevent delays and ambiguities in the application evaluation process, GAC Advice and the ICANN's Board's resulting decisions should be determined prior to the launch of New gTLD subsequent procedures. While this cannot necessarily be done for individual potential gTLD strings, it should be possible to do so for particular categories where there may be sensitivity. Understandably issues may arise that cannot be predicted, but, regarding policy decisions for gTLDs, particularly those in sensitive and highly regulated industries, for example, these discussions can be conducted in advance, and outcomes should be firmly established and publicized prior to new applications being accepted.	vTLD Consortium	
4	One of the GNSO principles for the new gTLD program is "There must be a clear and pre-published application process using objective and measurable criteria." The issuance of GAC advice after applications were submitted threw the entire program in the air for years and arguably violated this principle. To this day, we are still dealing with the implications from this. Now that the community, including the GAC, has been through the 2012 round, we have a track record to look back upon and utilize. Nearly all the GAC advice pertained to all applications, or categories of applications. There were one offs, but the GAC really focused on broad categories. One would expect that advice still stands. For the benefit of ICANN, the community and applicants, GAC advice should be developed and issued prior to the launch of the next application period (round or otherwise). This allows applicants to have the full benefit of the GAC concerns prior to expending time, energy and resources applying for new gTLDs. Some may choose to do so in contradiction of advice and others may decide not to. It is unfair for applicants who follow the Application Guidebook, which the GAC contributed to, to file an application and suddenly find their business plans upended because of unforeseen objections from the GAC.	Jim Prendergast	

5	The BRG concurs with the RySG comments: We note several concerns that created significant uncertainty for applicants responding to GAC Advice: GAC Advice was provided against whole categories of applications. Though Advice was ultimately determined to apply to strings specifically listed in the Beijing Communique, the initial communique suggested that these lists were non-exhaustive, and could apply to applications not specifically referenced. This contradicts the procedures established in the Applicant Guidebook, which stated that Advice would be provided against applications. This created confusion for applicants whose strings may exist in related industries, but were not cited, around whether advice applied to them and whether to engage advice directly. GAC advice was provided against strings (encompassing all members of a contention set) rather than individual strings. This also contradicts the procedures defined in the applicant guidebook. Applications for a single string may propose vastly different business models with implications for the validity of parts of the GAC Advice. The expectation should be that applications will be reviewed and, if applicable, referenced individually as part of the GAC Advice, with these factors taken into account. GAC Advice was non-implementable in its initial form. This necessitated lengthy and tedious back-and-forth with the ICANN Board to reach a solution that was amenable to the GAC and technically feasible for registry operators, complicating resolution of the Advice by ICANN and registry operators and significantly drawing out the timeline to bring new gTLDs to market. Whereas the ICANN Board was prepared to accept and take steps to address the public policy concerns raised in the GAC Beijing Communiqué, the GAC insisted on playing a prolonged role in implementation and operational matters which resulted in further unreasonable delays for all concerned. GAC Advice should be provided in such a way that provides sufficient flexibility for ICANN or the relevant community to develop policy or implementation frameworks that ensure such advice is implementable. GAC Advice did not provide a rationale for why particular strings were included. The failure to justify the selection of strings referenced in the GAC communique further extended the process of accepting and implementing GAC Advice. Consistent with the recommendations of the Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability), advice provided against applications as part of a future application process should be accompanied by a rationale and demonstrate familiarity with the application in question. We further note that the community has already developed several recommendations regarding the provision of GAC advice that ameliorate some of these concerns as part of the CCWG-Accountability. The requirements for the provision of GAC advice established as part of the CCWG-Accountability must apply equally to the provision of advice as part of the application process. These recommendations included the following: That a rationale must accompany any formal advice provided to the ICANN board; That any formal advice must be made in the absence of a formal objection from any GAC member (which must be confirmed by the GAC in providing the Advice); and That the Board must not accept advice that compels it to act outside of its Bylaws, including its mission statement, its core values, and the prohibition of disparate treatment for similarly situated parties. The GAC did not allow applicants an opportunity to be heard. An applicant whose application was the subject of GAC Advice had no opportunity to be heard by the GAC before the GAC issued its GAC Advice. Indeed, the GAC Chair refused at least one applicant's request to be heard. Without an opportunity to be heard before the GAC issues Advice on its application, an applicant is denied a fundamental requirement of procedural fairness that is recognized under national and international law. Moreover, requiring that applicants have an opportunity to be heard by the GAC should minimize the likelihood that the GAC will issue Advice based on incorrect factual assertions or fundamental misunderstandings by GAC members. Of course, the opportunity to be heard must be meaningful in terms of both process (timing and length of presentation, for example) and substance (topics covered and GAC member attendance, for example).	BRG	
6	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	

7	We note several concerns that created significant uncertainty for applicants responding to GAC Advice: GAC Advice was provided against whole categories of applications. Though Advice was ultimately determined to apply to strings specifically listed in the Beijing Communique, the initial communique suggested that these lists were non-exhaustive, and could apply to applications not specifically referenced. This contradicts the procedures established in the Applicant Guidebook, which stated that Advice would be provided against applications. This created confusion for applicants whose strings may exist in related industries, but were not cited, around whether advice applied to them and whether to engage advice directly. GAC advice was provided against strings (encompassing all members of a contention set) rather than individual strings. This also contradicts the procedures defined in the applicant guidebook. Applications for a single string may propose vastly different business models with implications for the validity of parts of the GAC Advice. The expectation should be that applications will be reviewed and, if applicable, referenced individually as part of the GAC Advice, with these factors taken into account. GAC Advice was non-implementable in its initial form. This necessitated lengthy and tedious back-and-forth with the ICANN Board to reach a solution that was amenable to the GAC and technically feasible for registry operators, complicating resolution of the Advice by ICANN and registry operators and significantly drawing out the timeline to bring new gTLDs to market. Whereas the ICANN Board was prepared to accept and take steps to address the public policy concerns raised in the GAC Beijing Communiqué, the GAC insisted on playing a prolonged role in implementation and operational matters which resulted in further unreasonable delays for all concerned. GAC Advice should be provided in such a way that provides sufficient flexibility for ICANN or the relevant community to develop policy or implementation frameworks that ensure such advice is implementable. GAC Advice did not provide a rationale for why particular strings were included. The failure to justify the selection of strings referenced in the GAC communique further extended the process of accepting and implementing GAC Advice. Consistent with the recommendations of the Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability), advice provided against applications as part of a future application process should be accompanied by a rationale and demonstrate familiarity with the application in question. We further note that the community has already developed several recommendations regarding the provision of GAC advice that ameliorate some of these concerns as part of the CCWG-Accountability. The requirements for the provision of GAC advice established as part of the CCWG-Accountability must apply equally to the provision of advice as part of the application process. These recommendations included the following: That a rationale must accompany any formal advice provided to the ICANN board; That any formal advice must be made in the absence of a formal objection from any GAC member (which must be confirmed by the GAC in providing the Advice); and That the Board must not accept advice that compels it to act outside of its Bylaws, including its mission statement, its core values, and the prohibition of disparate treatment for similarly situated parties. The GAC did not allow applicants an opportunity to be heard. An applicant whose application was the subject of GAC Advice had no opportunity to be heard by the GAC before the GAC issued its GAC Advice. Indeed, the GAC Chair refused at least one applicant's request to be heard. Without an opportunity to be heard before the GAC issues Advice on its application, an applicant is denied a fundamental requirement of procedural fairness that is recognized under national and international law. Moreover, requiring that applicants have an opportunity to be heard by the GAC should minimize the likelihood that the GAC will issue Advice based on incorrect factual assertions or fundamental misunderstandings by GAC members. Of course, the opportunity to be heard must be meaningful in terms of both process (timing and length of presentation, for example) and substance (topics covered and GAC member attendance, for example).	RySG	
8	GAC advice in relation to gTLDs must include rationales. No comment on timelines offered.	ALAC	

9	The GAC's processes for filing formal advice – including objections to specific applications – and its rationale need to become more transparent and accountable. If there is to be a presumption that the Board will accept that advice, this should not be done blindly, without the Board first having reviewed, clarified, and agreed with the supporting rationale. A formal Government Objection process (currently available under the Formal Objection mechanism managed by ICANN's DRSPs) should be considered as the appropriate venue for individual GAC members to file objections to specific applications. Errors of fact made by GAC members should be open to challenge. A clearer process should be applied to the identification of regulated and safeguard TLDs. Issues of definition and scope for such categories of TLDs, as well as whether terms identified by the GAC as falling under these lists are non-exhaustive or not, cannot be repeated in a future round, let alone under the unpredictable timelines that became a feature of the first round. The determination of such lists by the GAC should be transparently reasoned and founded on clearly established guidelines for applicants. It is imperative that this area of new gTLD policy is settled in advance of subsequent procedures, dictated by existing laws related to TLD strings, rather than by who is applying for those strings. The GAC should not be used as a vehicle for applicants to gain a competitive advantage over others.	Valideus	

Community Comment 2

Public Comment Review Tool

3.2 New gTLD Applicant Freedom of Expression			
#	**Comment**	**Contributor**	**WG Response**
3.2.1 Noting that the 2007 Final Report on new gTLDs tried to balance the rights of applicants (e.g., Principle G) and rights holders (Recommendation 3), do you believe that the program was successful in doing so? If not, do you have examples of where either an applicant's freedom of expression or a person or entity's legal rights were infringed?			
1	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
2	The working group has not reached agreement on a response.	RySG	
3	The goal of balancing the rights of applicants and rights holders settled by the Final Report on new gTLDs must continue with special attention to whether the GAC's Advice, Community processes or the reserved names have impacted this goal in any way. Bearing in mind that providing an adequate consideration to the protection of Human Rights, and therefore, the right of freedom of expression, freedom of association, freedom of religion and principle of non discrimination are of utmost importance in this process.	NCSG	

Community Comment 2

Public Comment Review Tool

3.3 Community Applications and Community Priority Evaluations			
#	**Comment**	**Contributor**	**WG Response**
1	Previous GAC advice on these issues should be considered, as follows: Where a community which is impacted by a new gTLD application has expressed a collective and clear opinion, that opinion should be duly taken into account as part of the application. (Beijing Communique 2013) Take better account of community views, regardless of whether those communities have utilised the ICANN formal community process or not. (Durban Communique 2013) Examine the feasibility of implementing an appeal mechanism to the current round of gTLDs for Communities to pursue where an applicant has contested the decision of a community priority evaluation panel, resulting in rejection of the communities case. (Los Angeles Communique 2014) The GAC has recently referred to the PDP Working Group for consideration the recommendations of a report on community applications commissioned by the Council of Europe.	GAC	
2	The poor performance and management of the CPE process and related mechanisms was a major failure in the current round. The independent experts commissioned by the Council ofEurope analysed the issues and experience of applicants and has made a coherent and thorough set of recommendationsin their report presented at the Hyderabad ICANN meeting, in order to correct the systemic mistakes so that communities wishing to express themselves and assemble freely through a gTLD will be able in a future process to apply with confidence and in the knowledge that they are supported by the ICANN stakeholder community.	GAC UK	
3	Also, both the Community Community Priority Evaluation process and the Panel should be more transparent as there are often doubts regarding the Panel's decision making process and the dissatisfaction with the results by the community based applicants or the ousted ones.	NCSG	
3.3.1 - As indicated in the Implementation Guidance of the 2007 Final Report, the claim by an applicant to support a community was intended to be taken on trust unless the applied-for TLD is in contention with one or more TLDs or is the respondent in an objection. As a result, the claim to support a community was only evaluated in Community Priority Evaluation (CPE) and Community Objections. Do you believe that the implementation and delivery of CPE were consistent with the policy recommendations and implementation guidance provided by the GNSO? If no, do you have suggested improvements to either the policy/implementation guidance or implementation?			
1	These considerations support the suggestion to delete the community type application altogether.	Jannik Skou	
2	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
3	As outlined in the responses below, the RySG believes that a number of improvements could be made to the implementation of CPE. In its current formulation, CPE was difficult to achieve, with a low rate of success amongst applicants. Despite this fact, some CPE applications seemed to represent an attempt to game the system to gain an advantage over other applicants rather than representing bona fide communities. As outlined below, a community priority approach that is not “all or nothing” may help address this set of concerns, and may also make it possible for CPE to be more relevant in scenarios where contentions do not exist. Despite these concerns, we do believe that the general mechanism of providing priority in contention sets (and therefore, not evaluating an applications community status unless contention exists) is consistent with current GNSO policy and implementation guidance.	RySG	
4	No change is required IF the only benefit of being a Community TLD is in relation to objections and priority. However, the ALAC supports other advantages such as preferential pricing (both at the application and operational levels) and if that is adopted, all Community applications should be examined.	ALAC	
3.3.2 There is a general sentiment amongst many in the community that the CPE process did not provide consistency and predictability in the 2012 round. Do you believe this was the case and if so, do you have examples or evidence of these issues?			

1	Consistency: Examples that dotgay would like to share which clearly illustrate inconsistencies in CPE are contained in the Expert Opinion submitted to ICANN by Yale Law Professor William Eskridge. The report was submitted to ICANN on September 13, 2016 and is posted on the ICANN Correspondence Page. I specifically draw your attention to Section IV, A & B of the report (pages 10-25) however the entire document has great value in highlighting issues with the 2012 version of CPE. Predictability: Issues with predictability in CPE were also plentiful from the very beginning; ranging from the CPE evaluation procedures (EIU created their own CPE guidelines after applications were submitted), timeline (2-3 months for CPE turned into over 8 or more for some) and cost ($10,000 fee was inflated to well over $20,000). Each one of these issues had immeasurable impacts on community applicants that need to be corrected and solidified before subsequent rounds begin. Leaving any elements of the community applicant process incomplete or communicated clearly before accepting applications should not be acceptable given the challenges it presented in achieving reasonable predictability for applicants in the 2012 round. In retrospect, leaving so many elements of CPE to be developed while the new gTLD program was already in motion was a huge mistake and should never be repeated. If cost estimates are published in advance then ICANN should also be willing to assume some reasoned burden of those costs should they inflate beyond a reasonable amount before undertaking. Applicants should not be responsible for poorly vetted cost estimates that ICANN receives from possible vendors, without extreme reason and without transparency or community comment.	dotgay LLC	
2	Yes, we agree the CPE process lacked consistency and predictability. Some of the issues were a result of the evaluation inconsistencies, e.g., the strict or light adherence to the scoring; others because of the applications themselves and attempts to 'game' the process by applying as a community when there was no demonstrably clear community. The process must provide more clarity on the scoring criteria, stronger definition of the standard by which a community is defined, and more uniform application of this by all review panelists for all applications.	Afilias	
3	We agree that in some case, individual CPE decisions seemed to result in different scoring for apparently quite similar sets of facts. In addition, there was a lack of transparency in how CPE was evaluated. In many cases, materials evaluated were not available to the public or even to other applicants, or what factors or materials panels considered. It was also not clear what the roles for ICANN and EIU were. We therefore make the following recommendations to improve the process: ● Improved training for panelists. Objection process, legal rights process generally better. Look to those models for better training. ● Similar review/appeals process for CPE decisions as we're proposing for objections. ● Better documentation of roles and factors in the CPE evaluation process. Materials evaluated as part of the CPE process should be made public. ● There should be a formal process by which other applicants have an opportunity to comment on a CPE application and its supporting materials.	RySG	
4	Yes, that was the case. In the view of the ALAC, .kids and .gay are two such examples.	ALAC	
3.3.3 - CPE was the one instance in the New gTLD Program where there was an element of a comparative evaluation and as such, there were inherently winners and losers created. Do you believe there is a need for community priority, or a similar mechanism, in subsequent procedures? Do you believe that it can be designed in such a fashion as to produce results that are predictable, consistent, and acceptable to all parties to CPE? The GNSO policy recommendations left the issue of a method for resolving contention for community claimed names to Board and the implementation. Do you believe that a priority evaluation is the right way to handle name contention with community applicants? Should different options be explored? If so which options should be explored and why?			

1	We believe there is a need for community priority in subsequent rounds and it must be designed in such a fashion as to be more accessible to communities and produce results that are predictable, consistent, and acceptable to all parties to CPE. Included in the list of "parties to CPE" it is imperative to include the interests of community constituents represented in community applications, which appear to have been largely disregarded and ill-considered in the 2012 round. The CPE process by default decided whether the interests of community constituents supporting an application would matter in the operation of the gTLD (CPE pass) or if they would not matter at all (CPE fail). Passing CPE legitimized community interests, but failing CPE almost certainly added burden to the exact concerns many community application were designed to address if the community was unable to win at auction. To many communities, the cost of auction is in itself too burdensome and not an option. Going forward there should perhaps be a process that prevents community constituent interests from being tossed out with the bathwater following a failed CPE. Similar to the governmental interest shown in issuing advice for applicants of gTLDs associated with regulated industries (to build trust and avoid abuse), community interests being represented in community endorsed applications should receive similar attention. Example: A community applicant undertakes the effort of applying for a gTLD as a result of expressed community concerns about the future operation of a gTLD and the impact it will have on the community. With a long history of being a targeted community and left without recourse from online activities of existing TLDs, the new gTLD program provided the ideal manner in which to establish a safer online space, and ensure that a gTLD linked to the community didn't cause further detriment or marginalization. In the case of the gay community, there was a legitimate concern that .GAY domains could lead to abusive behavior and false assumption of trust online; issues at the very root of daily challenges for LGBTQIA individuals in the real world. Through community participation in the operation and policy of .GAY, more tangible guarantees put the LGBTQIA on the front line of any abuse launched on .GAY. On the other hand, having no community participation in .GAY leaves the LGBTQIA vulnerable at best and lacking empowerment (as on existing TLDs). This is especially concerning if Registry Operator interests are primarily focused on profits. Not recognizing the unique needs of a community that has engaged in the new gTLD program does not feel like it is living up to ICANN commitments of serving the public interest. Public interest must not always be measured in monetary terms, especially when it comes to people's safety and well-being. Suggestion: Whether a mechanism is put in place during CPE (or another phase of the program) public interest commitments (or perhaps better designated as "community interest commitments") should at some point receive review and evaluation. If those interests are deemed to be important or necessary for the community, then it should be a required standard of any operator of the gTLD – similar to how GAC advice rolled out on regulated industries. This would occur regardless of whether the community application prevailed. Perhaps there should also exist a responsibility of gTLD operators to uphold certain interests of the community to ensure harm or detriment through the operation of the gTLD is avoided, especially when the community has engaged in the process and expressed interest in being heard. Financial interests must be balanced with the interests of those most likely affected by the operation of the gTLD.	dotgay LLC	
2	NABP believes that priority evaluations are the right way to handle name contention with community applicants. Contention resolution between a community-based application and an individual application should be a utilitarian decision; all else being equal, the needs of many outweigh the needs of one. In other words, a community application is more likely to serve as a public good than an individual application. That said, however, the parameters of a community and the public good it serves need to be more clearly defined to support consistency in implementation. With these factors in mind, NABP supports the Council of Europe report recommendation to ICANN to "Provide clarity on the public interest values community TLDs are intended to serve. . . . These public interest values should include: the protection of vulnerable groups or minorities; pluralism, diversity and inclusion; and consumer or internet user protection."	NABP	

3	The Consortium believes that priority evaluations are appropriate to address name contention with community applicants. Contention resolution between a community-based applicant and a standard applicant should be a practical decision; all else being equal, the needs of many outweigh the needs of one. In other words, a community applicant is more likely to serve as a public good than a standard applicant. That said, however, the parameters of a community and the public good it serves need to be more clearly defined to support consistency in implementation. With these factors in mind, the Consortium supports the Council of Europe report recommendation to ICANN to "Provide clarity on the public interest values community TLDs are intended to serve. . . These public interest values should include: the protection of vulnerable groups or minorities; pluralism, diversity and inclusion; and consumer or internet user protection."	vTLD Consortium	
4	The CPE process was shown by an IRP proceeding to have been compromised. It is premature to make any assertions as to what changes need to be made prior to the completion of the investigation being undertaken by the ICANN CEO into this matter. Once the full spectrum of issues related to CPE deficiencies are known, then it would be appropriate to answer this question.	Jim Prendergast	
5	A possible way to address this is by solving for the case of how an application 'games' the system by applying as a Community. Specifically, ICANN should evaluate the process through this lense and note the areas where an applicant gets an advantage and then think through if the other applicants - including those not applying for a contention set as a community - were inherently disadvantaged. Another element to consider in this evaluation is who to provide other applicants in the contention set the chance to be considered a "community" and not automatically deemed not a community. This iterative process will help ICANN explore mechanisms that do not quickly create winners or losers via a community designation.	Afilias	
6	The RySG supports the inclusion of bona fide communities in future expansions of the gTLD space. CPE was difficult to achieve, with a low rate of success amongst applicants. Despite this fact, some CPE applications seemed to represent an attempt to game the system to gain an advantage over other applicants rather than representing bona fide communities. CPE should not be decided on an "all or nothing" basis; instead should be based on a sliding scale. For example ICANN might provide a multiplier in auction process for "grey area" applications. Applications that clearly cross the threshold still automatically prevail in the contention set. If this approach is adopted, all applications in the contention set should be considered to determine whether they also partially meet the criteria for community status.	RySG	
7	CPE is still reasonable if properly implemented and the criteria is not set purely to limit gaming.	ALAC	
3.3.4 - Were the rights of communities (e.g., freedom of expression, freedom of association, freedom of religion, and principle of non-discrimination) infringed by the New gTLD Program? Please provide specific examples.			
1	No, the rights of communities were not infringed by the New TLD Program.	BRG	
2	Not to our knowledge.	Afilias	
3	No, we do not believe that the rights of communities, including with respect to freedom of expression, freedom of association, freedom of religion, and principles of non-discrimination were infringed by the new gTLD program.	RySG	
3.3.5 - Besides CPE, are there other aspects of the New gTLD Program related to communities that should be considered in a more holistic fashion? For instance, in the 2012 round, the claim to support a community is largely only relevant when resolving string contention. Do you think community applications should be structured and/or evaluated differently than other applications?			
1	NABP believes that community applications should be evaluated somewhat differently than other applications. Applicants claiming to support a community should be required to have policies in place to verify that registrants within the gTLD are bona fide members of the community represented by the gTLD. In the case of strings relating to health and medicine, for instance, it is crucial that these registries have policies in place to screen registrants for proper credentials.	NABP	
2	The Consortium believes that community applications should be evaluated somewhat differently than other applications. Demonstrating that registrants are bona fide members of the community which the operator claims to support through registration policies requiring verification would increase trust in that space.	vTLD Consortium	
3	This issue is largely obviated by continuous application periods and modification of CPE to not immediately create winners and losers.	Afilias	

4	As discussed in 3.3.3, CPE should not be decided on an “all or nothing” basis; instead it should be based on a sliding scale. For example ICANN might provide a multiplier in auction process for “grey area” applications. Applications that clearly cross the threshold still automatically prevail in the contention set. If this approach is adopted, all applications in the contention set should be considered to determine whether they also partially meet the criteria for community status. More generally, if ICANN were to adopt an approach to allocating new gTLDs that did not involve rounds and eliminated the possibility of contentions, it may be worth considering whether any incentives could be created for applications representing bona fide communities.	RySG	
5	See response to 3.1.1.	ALAC	

Community Comment 2

Public Comment Review Tool

3.4 String Similarity			
#	**Comment**	**Contributor**	**WG Response**
1	With regard to string similarity, the GAC Chair wrote to the ccNSO Chair on 28 September 2016 stating that: The GAC thanks the EPSRP Working Group for their assessment and considerations on the overall ICANN policy for the selection of IDN ccTLD strings. The GAC fully supports some of the key points expressed by the working group, in particular: - ccTLD policy is a matter for the local internet communities to determine. - An IDN ccTLD application represents the free choice of a specific linguistic community that has full right to use its language and script in the DNS space. - Where a finding of potential confusability has been made, rather than rejecting the application, the process should allow the applicant to propose mitigation measures and to assess fully the possibility versus probability of any such confusion - Where there is a split recommendation (between upper case and lower case), the finding relating to the lower case shall prevail and the application shall go forward where probability of confusion is low - ICANN must ensure consistency in the evaluation of the IDN strings throughout the TLD space and remedy the current, different approaches that are present in the gTLD and ccTLD space. The GAC has advised the Board to apply these views, and has also advised that: Facilitation of IDN ccTLDs, through the relevant local Internet community, has always been supported by the GAC as a way of making the domian name system more inclusive and accessible. Issues of potential confusability can and should be addressed on a practical and workable basis. (Hyderabad Communique, 2016).	GAC	
3.4.1 - There was a perception that consistency and predictability of the string similarity evaluation needs to be improved. Do you have examples or evidence of issues? If so, do you have suggested changes to the policy recommendations or implementation that may lead to improvement? For instance, should the standard of string confusion that the evaluation panel used be updated or refined in any way?			
1	NABP points out that string confusion may also arise when two strings are synonyms, even if they are not forms of the same word, eg, doctor and physician. If one of those gTLDs verifies and monitors the eligibility of its registrants, imparting a level of consumer trust in the TLD, and the other gTLD does not, internet users may mistakenly assume that the latter is equally as trustworthy as the former, when it is not. Such a misunderstanding could endanger consumer safety. For this reason, NABP recommends that, where there is a verified TLD in a particular industry sector, any string matching another applied for string or an existing string (including translations thereof) in the same industry sector should have, at a minimum, the same or substantially similar restrictions as the verified TLD.	NABP	
2	INTA recommends that singular and plural versions, and foreign equivalents, of the same type of string be evaluated for string confusion, with the intent that where an applied for string is the singular/plural, or the foreign equivalent, of an existing string the application will not proceed unless the applicant is also the registry operator (or an affiliate) of the prior blocking string. Further, where there are multiple applications for the same term and/or its singular/plural these should be placed into a single contention set. INTA has concerns that allowing further singulars and plurals and foreign equivalents of the same string to coexist at the top level will expose the Internet community to potential abuse, consumer confusion, and the need for additional defensive registrations. Applicants may feel compelled to apply for additional strings, thereby unnecessarily increasing the cost for TLDs, complicating the launch process for Applicants, and crowding the root zone with largely unused or unwanted TLDs. INTA encourages that a review of the string similarity reviews be conducted. Additional time needs to be allowed for possible objections between the String Similarity Review, and the deadline to file a String Confusion Objection. In the First Round, only 2 weeks were allowed for parties to consider filing a String Confusion Objection based on the results of the String Similarity Review. INTA recommends exploring additional ways of tolling the deadline (e.g., tolling the deadline to file a String Confusion Objection by 30 days from the issuance of a decision in a String Similarity Review).	INTA	

3	(Examples are described above, in response to 3.1.4) The BC has consistently stated that the plural of a TLD term is “confusingly similar” to the singular of that term. The string similarity panels making the decisions did not apply consistent analysis and the mixed results were an embarrassing mistake in the expansion of new gTLDs. 10 The default rule should be that the singular and plural of the same term, in the same language and script, should be **presumed** to be sufficiently similar so to be placed in the same contention set. This would be a rebuttable presumption that could be appealed by applicants.	BC	
4	The BRG concurs with the RySG comments: Singular/Plural As stated in more detail in the recommendation provided in response to Section 3.4.3, the scope of the String Similarity Review should be broadened to encompass single/plurals of TLDs on a per-language basis in addition to the existing visual similarity standard. Eliminate the Sword Tool There was little correlation between the Sword Results and the actual outcomes of the String Similarity Review and String Confusion Objection Process and, thus, that the tool was more misleading to applicants than helpful. Further, it appeared that the scores produced by the Sword Tool were changed partway through the application process, resulting in further confusion to applicants. We recommend that ICANN do away with the Sword Tool that was presented to applicants as part of the 2012 Round.	BRG	
5	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
6	Singular/Plural As stated in more detail in the recommendation provided in response to Section 3.4.3, the scope of the String Similarity Review should be broadened to encompass single/plurals of TLDs on a per-language basis in addition to the existing visual similarity standard. Eliminate the Sword Tool There was little correlation between the Sword Results and the actual outcomes of the String Similarity Review and String Confusion Objection Process and, thus, that the tool was more misleading to applicants than helpful. Further, it appeared that the scores produced by the Sword Tool were changed partway through the application process, resulting in further confusion to applicants. We recommend that ICANN do away with the Sword Tool that was presented to applicants as part of the 2012 Round.	RySG	
7	As noted above, singular/plural needs to be considered and mitigation policies should be a factor as well. See response to 3.1.1.	ALAC	
8	String evaluation should be consistent and effective in avoiding confusion and loss of confidence in the DNS with the eventual delegation of strings similar to existing TLDs or reserved names. Therefore the adoption of efficient and fair resolution mechanisms is key. Last but not least, there should be longer periods for applicants to submit String Confusion Objections based on the String Similarity Review given the possibility of receiving delayed reviews caused by unique factors such as the high volume of unique strings.	NCSG	
3.4.2 - Should the approach for string similarity in gTLDs be harmonized with the way in which they are handled in ccTLDs (ccNSO IDN ccTLD Fast Track Process is described here: https://www.icann.org/resources/pages/fast-track-2012-02-25-en)?			

	See SAC060: SSAC Comment on Examining the User Experience Implications of Active Variant TLDs Report (23 July 2013) at: https://www.icann.org/en/groups/ssac/documents/sac-060-en.pdf Board Advice Status: CLOSED: 1,5,6,7,10,11,12,13,14; OPEN - IN IMPLEMENTATION 2,3,4,8,9 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 root zone must use one and only one set of Label Generation Rules (LGR). Recommendation 2: ICANN must maintain a secure, stable and objective process to resolve cases where some members of the community (e.g., an applicant for a TLD) do not agree with the result of the LGR calculations. Recommendation 3: ICANN should concentrate foremost on the rules for the root zone. Recommendation 4: ICANN should coordinate and encourage adoption of these rules at the second and higher levels as a starting point by: • Updating the IDN Implementation Guidelines and recognizing that a modified version of these rules or a review or appeals process must be required to address special cases for the first and second levels; • Maintaining and publishing a central repository of rules for second level domains (2LD) for all Top Level Domains (TLDs), encouraging TLD operators to publish their LGRs publicly in the repository maintained by ICANN; and • Conducting specific training and outreach sessions in cooperation with generic TLD (gTLD) and country code TLD (ccTLD) operators who intend to launch Internationalized Domain Name (IDN) 2LDs or IDN TLDs, with a focus on consistency of user experience. The outreach should include among others registrants, end users and application developers. Recommendation 5: Be very conservative on code points allowed in the root zone. Recommendation 6: Because the implications of removing delegations from the root zone can have significant non-local impact, new rules added to LGR must, as far as possible, be backward compatible so that new versions of the LGR do not produce incompatible results with historical (existent) activations. Recommendation 7: Should ICANN decide to implement safeguards, it should seek to distinguish two types of failure modes when a user expects a variant to work, but it is not implemented: denial of service versus misconnection. Recommendation 8: A process should be developed to activate variants from allocable variants in LGR. Recommendation 9: ICANN must ensure Emergency Back-End Registry Operator (EBERO) providers support variant TLDs, and that parity exists for variant support in all relevant systems and functions associated with new TLD components. Recommendation 10: In the current design of rights protection related to the Trademark Clearinghouse (TMCH) process there is a risk of homographic attacks. The roles of the involved parties, specifically registrars, registries and TMCH, related to matching must be made clear. Recommendation 11: When registries calculate variant sets for use in validation during registrations, such calculations must be done against all the implemented LGRs covering that script in which the label is applied for. Recommendation 12: The matching algorithm for TMCH must be improved. Recommendation 13: The TMCH must add support for IDN variant TLDs. Particularly during the TM Claims service a name registered under a TLD that has allocated variant TLDs should trigger trademark holder notifications for the registration of the name in all its allocated variant TLDs. Recommendation 14: ICANN should ensure that the number of strings that are activated is conservative. See SAC084: SSAC Comments on Guidelines for the Extended Process Similarity Review Panel for the IDN ccTLD Fast Track Process (31 August 2016) at: https://www.icann.org/en/system/files/files/sac-084-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/boardadvice Introduction: The Security and Stability Advisory Committee (SSAC) provides this brief comment on the “Proposed Guidelines for the Extended Process Similarity Review Panel (EPSRP) for the Internationalized Domain Name (IDN) country code Top Level Domain (ccTLD) Fast Track Process” and the related “Draft observations and recommendations of the country code Names Supporting Organization (ccNSO) Working Group on the EPSRP review.” The SSAC is aware of multiple issues with Internet Corporation for Assigned Names and Numbers (ICANN’s) current collection of plans for handling IDNs in the Domain Name System (DNS) tree close to the root and will address them separately. This comment focuses specifically on the EPSRP, and some very basic issues that have been exposed in a review of these proposed guidelines.		

2	Harmonisation of approach would be ideal, perhaps an opportunity to work on policy between the ccNSO and GNSO.	Nominet	
3	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
4	The RySG has not reviewed the ccTLD Fast Track Process for the purpose of this comment.	RySG	
5	Yes. See response to 3.1.1.	ALAC	
3.4.3 - The WG and the wider community have raised concerns specifically related to singles and plurals of the same word. Do you have suggestions on how to develop guidance on singles and plurals that will lead to predictable outcomes? Would providing for more predictability of outcomes unfairly prejudice the rights of applicants or others?			
1	It is the opinion of NABP that the singular and plural forms of the same word (including translations thereof) should not be allowed to coexist in the domain name system to avoid confusion resulting from such similar strings. Applications for single/plural variations of the same string should be placed in a contention set, and applications for a single/plural variation of an existing string should not be accepted. Allowing plural or singular versions of strings, in the next round, that have already been delegated would severely reduce the value of the existing TLD and erode the trust of consumers. The avoidance of such confusingly similar strings is especially important when an existing string represents a verified gTLD, such as .pharmacy, with policies in place to ensure the eligibility of registrants to buy and maintain domains within the gTLD. A plural version of the same string, eg, .pharmacies, would confuse consumers. Such confusion could be dangerous if the existing string is a verified TLD, imparting a level of consumer trust, and the new one is not. Consumers may mistakenly believe that the new string is as trustworthy as the original when it is not.	NABP	
2	Please see response in 3.4.1.	INTA	
3	It is the opinion of the Consortium that the singular and plural forms of the same word, in the same language, should not be permitted to be approved in subsequent procedures for new gTLDs to avoid confusion resulting from such similar strings. Applications for singular/plural variations of the same string should be placed in a contention set, and applications for single/plural variations of an existing string should not be accepted. The Consortium recommends, at a minimum, that ICANN define the term “confusingly similar.” It is difficult to understand how singular and plural strings are not confusingly similar. In addition, the Consortium encourages learning from the experiences of the 2012 round relating to providing clarity and predictability with regards to dispute and contention sets. Allowing plural or singular versions of strings in the next round that have already been delegated would severely reduce the value of the existing gTLDs, erode the trust of consumers, and may expose ICANN to litigation.	vTLD Consortium	
4	The BRG concurs with the RySG comments: We believe that in subsequent application procedures the string similarity process should be updated to consolidate single-plural pairs by default. The String Similarity Review played a limited role in the 2012 Round. Of the 1,400 unique applications submitted and the 232 contention sets formed, only two contention sets were identified by way of this review: .hotels and .hoteis and .unicorn and .unicom. Many applicants and community members expected the String Similarity Review to identify a broader set of contentions and weed out potential instances of user confusion, particularly with respect to applications for single and plural string pairs. This is evidenced in the fact that no applicant applied for both the single and plural variant of a particular string, as well as in the number of String Confusion Objections filed to address single and plural string pairs. The scope of the String Similarity Review should be broadened to encompass single/plurals of TLDs on a per-language basis in addition to the existing visual similarity standard. Contention sets would be formed on a per-language basis. A dictionary should be the tool used to determine the singular and/or plural version of the string for the specific language. In this expanded process, applications for single/plural variations of each string would be placed in a contention set and applications for a single/plural variations of an existing string would not be permitted. By way of example, if applications were submitted for the strings .gâteau, .gâteaux, .cake, and .cakes, then the strings .gâteau and .gâteux (French) would be placed in contention with one another, but not with the corresponding translations .cake and .cakes (English), which would comprise a separate contention set. Additional contention sets could continue to be formed through the String Confusion Objection Process.	BRG	

5	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
6	Singular and plural versions of the same domain name extension should be prohibited in the next round of the ICANN new gTLd program: they confuse end users and increase the level of threat for trademarks.	Jean Guillon	
7	**Apply a clearer standard for string similarity determinations.** We support several of the recommendations made by the RySG to bring greater clarity and rigor to the String Similarity Review Process including eliminating the SWORD tool and consolidating single-plural pairs as part of the String Similarity Review process, including the recommendations for how consolidation could occur. We continue to believe that consolidation of single-plural pairs would generally decrease the probability of user confusion. However, in the event that the Working Group adopted this approach, we would recommend that a process be introduced to review exceptions wherein the single and plurals strings were likely to evoke different meanings for users. By way of example, a hypothetical .cats TLD that was devoted to videos and other content about the household pet could potentially be differentiated from the existing .cat TLD, which is used to highlight Catalan language and culture. The process could rely upon market research on the user expectations and the likelihood of confusion to determine whether exceptions should be granted.	Google	
8	We believe that in subsequent application procedures the string similarity process should be updated to consolidate single-plural pairs by default. The String Similarity Review played a limited role in the 2012 Round. Of the 1,400 unique applications submitted and the 232 contention sets formed, only two contention sets were identified by way of this review: .hotels and .hoteis and .unicorn and .unicom. Many applicants and community members expected the String Similarity Review to identify a broader set of contentions and weed out potential instances of user confusion, particularly with respect to applications for single and plural string pairs. This is evidenced in the fact that no applicant applied for both the single and plural variant of a particular string, as well as in the number of String Confusion Objections filed to address single and plural string pairs. The scope of the String Similarity Review should be broadened to encompass single/plurals of TLDs on a per-language basis in addition to the existing visual similarity standard. Contention sets would be formed on a per-language basis. A dictionary should be the tool used to determine the singular and/or plural version of the string for the specific language. In this expanded process, applications for single/plural variations of each string would be placed in a contention set and applications for a single/plural variations of an existing string would not be permitted. By way of example, if applications were submitted for the strings .gâteau, .gâteaux, .cake, and .cakes, then the strings .gâteau and .gâteux (French) would be placed in contention with one another, but not with the corresponding translations .cake and .cakes (English), which would comprise a separate contention set. Additional contention sets could continue to be formed through the String Confusion Objection Process.	RySG	
9	See response to 3.1.1. Additional criteria could impact some applications but user confusion must be considered as a higher priority. Mitigation could lessen any negative impact on applications.	ALAC	
10	We support the proposal put forward by the RySG.	Valideus	
3.4.4 - Do you believe that there should be some sort of mechanism to allow for a change of applied-for TLD when it is determined to be in contention with one or more other strings? If so, do you have suggestions on a workable mechanism?			
1	The BRG concurs with the RySG comments: In the event ICANN accepts fees for applications of an allowable string at time of application but later restricts the string from being able to achieve delegation through no fault of the applicant, ICANN should consider a mechanism to allow the applicant to change the originally applied-for string (examples from the 2012 round include but not limited to .HOME, .MAIL and .CORP). We do not support the ability of an applicant to change the applied-for TLD simply due to the fact that it is in contention with another applicant.	BRG	
2	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	

3	**Provide options for registries that apply for strings that are subsequently determined to be ineligible at the outset of the application process.** ICANN or the Working Group should establish at the outset what happens when an applicant applies for a string that is subsequently determined to be ineligible or indefinitely blocked from delegation. These affected applicants should be presented the option of having their full application fees refunded. The failure to consider how "ineligible" strings would be handled as part of the 2012 Round has left several applicants for the .home, .mail, and .corp TLDs in limbo, with no clear path toward resolution nearly five years from the closure of the application window. [Comment may be applicable to Name Collisions or other areas]	Google	
4	In the event ICANN accepts fees for applications of an allowable string at time of application but later restricts the string from being able to achieve delegation through no fault of the applicant, ICANN should consider a mechanism to allow the applicant to change the originally applied-for string (examples from the 2012 round include but not limited to .HOME, .MAIL and .CORP). We do not support the ability of an applicant to change the applied-for TLD simply due to the fact that it is in contention with another applicant.	RySG	
5	No.	ALAC	
6	ICANN should explore the possibility of providing applicants – at an additional cost – with the option of naming an alternative string at the time of the application, which must be in a related sector to the primary applied-for string. If the primary applied-for string is in contention with another application, the applicant may elect to proceed with the alternative string. This would help to reduce cases of contention.	Valideus	
3.4.5 - Do you feel that the contention resolution mechanisms from the 2012 round (i.e., CPE and last- resort auctions) met the needs of the community in a sufficient manner? Please explain.			
1	We believe that CPE and last resort auctions are generally a reasonable approach for contention resolution.	BRG	
2	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
3	We believe that CPE and last resort auctions are generally a reasonable approach for contention resolution. As previously noted, however, we believe that CPE as a decontention process could benefit from the introduction of models that were not all or nothing. We would not support replacement of these mechanisms with a decontention process that was based upon speculative evaluation of the applications in question.	RySG	
4	Yes.	ALAC	
3.4.6 – Do you believe that private auctions (i.e., NOT the auctions of last resort provided by ICANN) resulted in any harm? Could they lead to speculative applications seeking to participate in a private auction in future application processes? Should they be allowed or otherwise restricted in the future?			
1	The business model of losing private auctions was extremely profitable for some entities. That is widely known. As a result, we can expect to see applications submitted in future procedures that attempt to replicate this behavior. The only value of private auctions may have been it ended some contention sets. That's it.	Jim Prendergast	
2	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
3	We believe that there was likely some applications that engaged in speculation as part of auction or other private settlement arrangements, and that this trend will likely continue in future rounds, particularly now that the scale of interest is better-known. However, we believe that this does not justify a prohibition on applicants arriving at private settlements and that these types of prohibitions are, generally, outside scope for the Working Group. We welcome further consideration of other mechanisms to address potential speculative applications that are more narrowly tailored and do not unduly prevent registry operators' private commercial agreements with respect to their commercial assets.	RySG	
4	Yes, private auctions could lead to speculative applications. They should not be allowed.	ALAC	

Community Comment 2

Public Comment Review Tool

3.5 Accountability Mechanisms			
#	**Comment**	**Contributor**	**WG Response**
1	The GAC has previously proposed the establishmeny of an appeal mechansism for community applications (see 3.3 above) and to challenge decisions on confusability related to applied-for IDN ccTLDs (Prague Communique 2012).	GAC	
2	Since I only support complete revision of the new gTLDs program in accordance with the 2008 recommendations of the US DOJ Antitrust Division (see my answers hereinabove, the subject of this work track would need to be completely revised and is irrelevant).	John Poole	
3	This topic is an exclusivity of the New gTLD Subsequent Procedures as the work and further recommendations of the Cross Community Working Group on Enhancing ICANN's Accountability with the revision of the accountability mechanisms should be taken into consideration on this topic.	NCSG	
3.5.1 – Do you believe that the existing accountability mechanisms (Request for Reconsideration, Independent Review Process, and the Ombudsman) are adequate avenues to address issues encountered in the New gTLD Program?			
1	Clearly no. The fact that the ICANN Board Governance Committee (BGC) has had to create a separate subcommittee to deal with reconsideration requests related to new gTLDs is Exhibit A. They are not equipped to handle these. It was also the case that IRP decisions found that the BGC violated the ICANN by laws in their handling of reconsideration requests.	Jim Prendergast	
2	The BRG concurs with the RySG comments: The perception of inconsistent outcomes in objection proceedings led to overreliance on existing accountability mechanisms, particularly the Reconsideration Request process, which was ill suited to address the objection related issues as Reconsideration Requests are intended to address action or inaction by ICANN staff or the ICANN Board and not determinations by a third party panel. This situation was detrimental to applicants, who were left without adequate recourse mechanisms, and the ICANN Board's Governance Committee, which was inundated by an unprecedented number of reconsideration requests that it could not process on a reasonable time frame. It also drove the creation of post-decision mechanisms which were only made available to a narrow subset of applicants who faced the most obviously inconsistent objection determinations. Specific to the application process we believe that a narrowly-tailored appeals process should be introduced for objection procedures, to better-address perceived inconsistent outcomes and areas where applicant believes that objection panels failed to apply the proper standard. Our recommendations for an appeals process, including a discussion of several possible approaches to the introduction of an appeals process can be found in our response to Question 3.1.2. Beyond this proposed mechanism, which is specific to the application process, we believe that this question is premature and may be beyond the WG's scope. First, some of the accountability mechanisms under discussion have changed significantly since since the 2012 round as part of the CCWG-Accountability, and others remain under discussion and may be altered as a result of Workstream 2 of the CCWG Accountability work. Second, these mechanisms go beyond the scope of the gTLD application process, and are more appropriately considered in devoted review or policy processes like the CCWG-Accountability or the Accountability and Transparency Review Process.	BRG	
3	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	

4	The perception of inconsistent outcomes in objection proceedings led to overreliance on existing accountability mechanisms, particularly the Reconsideration Request process, which was ill suited to address the objection related issues as Reconsideration Requests are intended to address action or inaction by ICANN staff or the ICANN Board and not determinations by a third party panel. This situation was detrimental to applicants, who were left without adequate recourse mechanisms, and the ICANN Board's Governance Committee, which was inundated by an unprecedented number of reconsideration requests that it could not process on a reasonable time frame. It also drove the creation of post-decision mechanisms which were only made available to a narrow subset of applicants who faced the most obviously inconsistent objection determinations. Specific to the application process we believe that a narrowly-tailored appeals process should be introduced for objection procedures, to better-address perceived inconsistent outcomes and areas where applicant believes that objection panels failed to apply the proper standard. Our recommendations for an appeals process, including a discussion of several possible approaches to the introduction of an appeals process can be found in our response to Question 3.1.2. Beyond this proposed mechanism, which is specific to the application process, we believe that this question is premature and may be beyond the WG's scope. First, some of the accountability mechanisms under discussion have changed significantly since since the 2012 round as part of the CCWG-Accountability, and others remain under discussion and may be altered as a result of Workstream 2 of the CCWG Accountability work. Second, these mechanisms go beyond the scope of the gTLD application process, and are more appropriately considered in devoted review or policy processes like the CCWG-Accountability or the Accountability and Transparency Review Process.	RySG	
5	Yes, considering the new review mechanisms implemented as a result of the ICANN Accountability measure and subject to the response to 3.5.2.	ALAC	
3.5.2 – Should there be appeal mechanisms, specific to the New gTLD Program, introduced into the program? If yes, for what areas of the program (e.g., evaluations, objections, CPE)? Do you have suggestions for high-level requirements (e.g., if the appeal should be limited to procedural and/or substantive issues, who conducts the review, who is the final arbiter, safeguards against abuse, etc.).			
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, appeals processes should be identified prior to future releases of new gTLDs, with clear criteria for appeal identified and those who made the initial decisions are not part of any appeals panel.	INTA	

	The BRG concurs with the RySG comments: Some of the objection processes for contested applications had common issues between them. The next gTLD rounds working group identified some of the problems that post-decision mechanisms, such as appeals, may help reduce or solve. • Lack of panelist training and consistency as evidenced by decisions that were decided differently, despite having substantially similar fact patterns, • Random opportunities to present new evidence or re-argue a position based on how vehemently a party insisted on the right. • No opportunity to have the merits of a case revisited – a problem where the providers didn't properly train panelists. The perception of inconsistent outcomes led to overreliance on existing accountability mechanisms, particularly the Reconsideration Request process, which was ill suited to address the objection related issues as Reconsideration Requests are intended to address action or inaction by ICANN staff or the ICANN Board and not determinations by a third party panel. This situation was detrimental to applicants, who were left without adequate recourse mechanisms, and the ICANN Board's Governance Committee, which was inundated by an unprecedented number of reconsideration requests that it could not process on a reasonable time frame. It also drove the creation of post-decision mechanisms which were only made available to a narrow subset of applicants who faced the most obviously inconsistent determinations. This situation was inadequate to address the larger issues identified above. We recommend that, in a subsequent application process, a limited appeals process be introduced for the objection procedures for parties that identify either a reasonable inconsistency in outcome or a specific argument as to why the panel failed to apply the proper standard. We propose below several models to consider for potential appeal options: • Delayed appeals: For parties that were the first few cases under a new procedure or mechanism, allow the losing party to request a delayed review by panelists who have experience deciding similar cases under the new system, to cross-check for consistency. o Pros: Ensures the first cases are not prejudiced by early learnings by the first panels. o Cons: Prevents certainty for the prevailing party. Implies objections are subject to stare decisis. • Master panel: A traditional appeals process appears to simply substitute the judgment of panelist B for that of panelist A. Instead, hand-pick "master" panelists who have demonstrated consistent, sound judgment in the first round and ensure that they are provided with high-quality briefing materials regarding any changes in the next round. These materials should be approved by the community members who work on any changes to the AG. ICANN can use application fees to pay the Master panel to read every opinion to form its knowledge base. The Master panel may be responsible for providing routine panelist training on each objection process, to be paid by application fees. The Master panel can be retained by ICANN or by one of the Providers (subject to its ability to contract with each of the chosen master panelists). Master panelists may be forbidden from hearing objections in the first instance, to reduce conflict. o Pros: Uses proven experts to try to create more consistent outcomes. Application fees fund the effort toward consistency, but parties still pay for their own cases. o Cons: No party control over master panel selection, risk of master panelists "going rogue." Provider that offers the master panel may be at odds with other providers. ICANN- run master panel may invite conspiracy theories. Master panel appointment may become "political." • ICANN Review: A panel or team within ICANN could be established to conduct independent reviews of objection outcomes and to make follow up recommendations. o Pros: The cost would be borne by applicant fees. If the process is transparent, the community may trust the experts more than panelists hired by third-party providers. o Cons: ICANN- run review process may invite conspiracy theories and the experts may not receive community trust if ICANN is not transparent about how the review process works. Without an actual appeal mechanism where facts are re-heard, the community may feel like a review does not go far enough. Similarly, ICANN may be overly conservative in this review for fear of picking winners and losers as part of the application process. • Appeals: A template exists for this in the URS, TM-PDDRP, and RRDRP. The community would need to decide if all appeals should be heard by a three member panel in order to avoid the perception that it's always just another coin flip. Using those existing procedures as guides, the community could define the appeals process it wants. Some examples include: expedited timelines to avoid dragging out an objection, a rehearing based on the already-submitted data, the use of a short list of panelists who are generally conflict-free and available (similar to the master panel), and clearly-defined fees to be prepaid. Appeals could be limited to specific issues, as determined by the community – each objection process would need to come up with the types of appeals that would be acceptable. o Pros: Eliminates concerns about ICANN having the ultimate authority, allows Providers to perpetuate a consistency amongst the		

3	Afilias concurs with the opinions of the RySG and defers to that response.	Afilias	
4	**Address inconsistencies experienced within application objection procedures through the introduction of a streamlined and balanced appeals process.** During the 2012 Round the String Confusion Objection Process resulted in numerous inconsistent outcomes. For example, despite conditions being effectively the same, one ICDR panel came to the conclusion that .HOTEL and .HOTELS were not confusingly similar, while another determined that .PET and .PETS were confusingly similar. There were multiple other examples of such inconsistencies, e.g., .CAR and .CARS found not similar (in a proceeding involving Google Registry), and .GAME and .GAMES similar. Unfortunately, even the ad hoc mechanisms created by the ICANN Board to address these discrepancies were inadequate, as they were not made available to both sides of a particular contention set, creating the presumption that the rights of gTLD applicants were given more weight than the rights of objectors. We support the recommendation made in the comments by the RySG that a more equitable approach is to introduce the option of a defined appeals process for all applicants that identify either a reasonable inconsistency in outcome or a specific argument as to why the panel failed to apply the proper standard. A narrowly-tailored appeals process with explicitly delineated grounds for appeal and a relatively high standard for overruling panel decisions, e.g., a “clear error” standard, should also alleviate stress on the Reconsideration Request process, which was infrequently used prior to the 2012 Round but became inundated by requests from applicants to review unfavorable outcomes related to the objection procedures.	Google	

	Some of the objection processes for contested applications had common issues between them. The next gTLD rounds working group identified some of the problems that post-decision mechanisms, such as appeals, may help reduce or solve. ● Lack of panelist training and consistency as evidenced by decisions that were decided differently, despite having substantially similar fact patterns, ● Random opportunities to present new evidence or re-argue a position based on how vehemently a party insisted on the right. ● No opportunity to have the merits of a case revisited – a problem where the providers didn't properly train panelists. The perception of inconsistent outcomes led to overreliance on existing accountability mechanisms, particularly the Reconsideration Request process, which was ill suited to address the objection related issues as Reconsideration Requests are intended to address action or inaction by ICANN staff or the ICANN Board and not determinations by a third party panel. This situation was detrimental to applicants, who were left without adequate recourse mechanisms, and the ICANN Board's Governance Committee, which was inundated by an unprecedented number of reconsideration requests that it could not process on a reasonable time frame. It also drove the creation of post-decision mechanisms which were only made available to a narrow subset of applicants who faced the most obviously inconsistent determinations. This situation was inadequate to address the larger issues identified above. We recommend that, in a subsequent application process, a limited appeals process be introduced for the objection procedures for parties that identify either a reasonable inconsistency in outcome or a specific argument as to why the panel failed to apply the proper standard. We propose below several models to consider for potential appeal options: ● Delayed appeals: For parties that were the first few cases under a new procedure or mechanism, allow the losing party to request a delayed review by panelists who have experience deciding similar cases under the new system, to cross-check for consistency. ○ Pros: Ensures the first cases are not prejudiced by early learnings by the first panels. ○ Cons: Prevents certainty for the prevailing party. Implies objections are subject to stare decisis. ● Master panel: A traditional appeals process appears to simply substitute the judgment of panelist B for that of panelist A. Instead, hand-pick "master" panelists who have demonstrated consistent, sound judgment in the first round and ensure that they are provided with high-quality briefing materials regarding any changes in the next round. These materials should be approved by the community members who work on any changes to the AG. ICANN can use application fees to pay the Master panel to read every opinion to form its knowledge base. The Master panel may be responsible for providing routine panelist training on each objection process, to be paid by application fees. The Master panel can be retained by ICANN or by one of the Providers (subject to its ability to contract with each of the chosen master panelists). Master panelists may be forbidden from hearing objections in the first instance, to reduce conflict. ○ Pros: Uses proven experts to try to create more consistent outcomes. Application fees fund the effort toward consistency, but parties still pay for their own cases. ○ Cons: No party control over master panel selection, risk of master panelists "going rogue." Provider that offers the master panel may be at odds with other providers. ICANN- run master panel may invite conspiracy theories. Master panel appointment may become "political." ● ICANN Review: A panel or team within ICANN could be established to conduct independent reviews of objection outcomes and to make follow up recommendations. ○ Pros: The cost would be borne by applicant fees. If the process is transparent, the community may trust the experts more than panelists hired by third-party providers. ○ Cons: ICANN- run review process may invite conspiracy theories and the experts may not receive community trust if ICANN is not transparent about how the review process works. Without an actual appeal mechanism where facts are re-heard, the community may feel like a review does not go far enough. Similarly, ICANN may be overly conservative in this review for fear of picking winners and losers as part of the application process. ● Appeals: A template exists for this in the URS, TM-PDDRP, and RRDRP. The community would need to decide if all appeals should be heard by a three member panel in order to avoid the perception that it's always just another coin flip. Using those existing procedures as guides, the community could define the appeals process it wants. Some examples include: expedited timelines to avoid dragging out an objection, a rehearing based on the already-submitted data, the use of a short list of panelists who are generally conflict-free and available (similar to the master panel), and clearly-defined fees to be prepaid. Appeals could be limited to specific issues, as determined by the community – each objection process would need to come up with the types of appeals that would be acceptable. ○ Pros: Eliminates concerns about ICANN having the ultimate authority, allows Providers to perpetuate a consistency amongst the panelist list, and provides a basis of competition between panelists (pricing, time-to-decision, quality of training and opinions). ○ Cons: Additional, possibly uncapped, expense. If Panelist training problems persist, an appeals process is still a blind shot		

6	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	