Registries Stakeholder Group Statement

Issue: **Competition, Consumer Trust and Consumer Choice Review Team (CCTRT) Draft Report of Recommendations for New gTLDs**.

Date statement submitted: **19 May, 2017**

Reference URL: https://www.icann.org/public-comments/cct-rt-draft-report-2017-03-07-en

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I. Introduction

The unprecedented size and scope of namespace expansion resulting from the New Generic Top-Level Domain (gTLD) Program makes review of *any* of its components a significant and challenging undertaking. The RySG commends and thanks the CCTRT for its hard work and dedication to fulfilling a key element of the Affirmation of Commitments (AoC) by conducting this review.

II. Overarching Comments

The review team's draft report is comprehensive and well covers the areas necessary to effectively measuring the impact of and levels of trust in new gTLDs. While the RySG concurs with many of the RT's recommendations, we find and recommend areas for improvement. Those will be further detailed below.

We offer the following overarching comments as context to our detailed input:

- **"Must" And Deference to the GNSO.** The use of "must" language (p.9 in particular, and otherwise throughout the document) is problematic. These are recommendations of a review team for the Board and the community to consider, not policy directives to the GNSO or ICANN Board. Thus, they are not (yet) bound by community agreement or implementation timelines. To maintain this positioning of language is to demonstrate — in the instance of many prerequisite recommendations — top-down policymaking. This challenges the multi-stakeholder model and, thus, this language should be softened accordingly.

This is especially the case when the entire review has to do with the impact of new gTLDs on the marketplace — new gTLDs being administered by contracted registries. (In that vein, it is extraordinary that the CCTRT included only one gTLD registry representative.) These recommendations therefore should be treated as such — as recommendations by a group of hardworking individuals. While the work is significant and appreciated, and obviously will be heavily relied upon, it is the broader community, through the GNSO, that will make final policy determinations. The CCT recommendations should not be viewed as requirements or mandatory prerequisites to a certain policy that the community currently is considering. The language of "must" and "prerequisite[1]" should be changed accordingly.

- **Costs**. While the recommendations, as noted, are comprehensive, they almost uniformly do not discuss the burdens or costs of implementation. It accordingly is very difficult to submit a fully informed comment without a detailed understanding of the resulting financial and operational impact of the recommendations. As documented, the recommendations look to advance benefits to multiple interests while placing a <u>very</u> heavy financial and resource burden on ICANN, registrars and registries. Inclusion of at least cursory estimates with a fair distribution of costs to those who would stand to benefit would greatly improve the final report, as would an honest assessment of whether costs exceed benefits.

- **Statements of benefit**. Along with costs, recommendations in many places are lacking a clear statement of benefit to those impacted or to the broader community. It's clear that many of the recommendations seek additional study, but what isn't clear is the answer to the "to what precise end?" question, even in the rationale. The report would be vastly improved by stating the costs and benefits to the community of all the recommendations.

III. Specific Comments on the Executive Summary

- On p.4 of the draft report, the RT states:
  Consequently, the CCTRT recommends that ICANN enhance its capabilities to gather and analyze data, including that used by the ICANN Contractual Compliance department, prior to further expanding the gTLD program. We also identify certain policy issues that the community should resolve prior to the further expansion of the gTLD space. Finally, we recommend a number of specific research projects that should be completed prior to a future CCTRT, and in many cases, even sooner.

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[1] Regarding "prerequisite" classifications: The RySG respectfully asks the CCTRT to prioritize cost and resource estimates and statements of benefit for each recommendation so classified. This request does not necessarily imply RySG agreement with such classifications.

RySG Comment:

Were these recommendations to go forward, they should be carried out with exceptional care and diligence[2]—particularly ICANN's gathering, protection, and use/provisioning of data. Such an enterprise would place, in some instances, critical and extremely sensitive data in ICANN's hands (see further comment below).

- Competition and Choice - The RT notes (p.5) that:
  The structure of the domain name industry itself provides a partial explanation for the potential for sustained competition.

RySG Comment:

We applaud the inclusion of this concept in the report. We believe it's important to highlight areas where there has been or are areas of latitude for innovation. It's useful to the community to point this out.

- Application and Evaluation - The RT says on p.8 the following:
  (…) the CCTRT work was hampered by insufficient data on pricing of domain names, including wholesale, retail and secondary market prices.
  and
  To the extent possible relevant data should be made available in nondisruptive and non confidential form to researchers both within and outside the ICANN community.

RySG Comment:

The RySG, as a matter of policy, is not opposed to data collection that can lead to improved technical coordination of the DNS, fact-based policy development, or other laudable outcomes. We believe the community should have a detailed and realistic discussion about the advisability of collecting pricing data—as has been pointed out previously, this is sensitive and sometimes oft-changing data; further, ICANN is not a pricing authority and there could develop a temptation in the community to ignore that fact and use pricing data in an attempt to influence or regulate pricing.

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[2] Already, concerns have been raised about ICANN's Open Data Initiative (https://www.icann.org/news/blog/icann-kicks-off-open-data-initiative-pilot).

IV.   Comments on the Recommendations

Chapter V. Data-Driven Analysis:

Recommendations for Additional Data Collection and Analysis

Recommendation 1. **Formalize and promote ongoing data collection.**		
Rationale/related findings: The lack of data has handicapped attempts both internally and externally to evaluate market trends and the success of policy recommendations. **Details:** ICANN should establish a formal initiative, perhaps including a dedicated data scientist, to facilitate quantitative analysis, by staff, contractors and the community, of the domain name market and, where possible, the outcomes of policy implementation. This department should be directed and empowered to identify and either collect or acquire datasets relevant to the objectives set out in strategic plans, and analysis and recommendations coming from review teams and working groups. **Success Measures:** The availability of relevant data for use by the ICANN organization, contractors and the ICANN community for its work in continuous improvement of ICANN operations.	**To** ICANN organization	**Priority level** High
RySG comment: This, according to the RT's rationale, is an extremely wide-ranging recommendation—it advocates for data collection regarding multiple market sectors, the impact of safeguards, compliance information, and other material. While we are in favor of reasonable levels of market intelligence that can more precisely inform policymaking (corollary: we support data-based reports on the outcomes of policy implementation), there are 23 pages of rationale supporting this recommendation. The community would be well served to carefully review this practically open-ended request and consider each category judiciously. In fact, it may be wise to separate the categories detailed in the rationale into separate recommendations in order to better address each.		

Chapter VI. Introduction to the Competition and Consumer Choice Analysis

Recommendation 2: Collect wholesale pricing for legacy gTLDs.		
Rationale/related findings: The lack of wholesale data will continue to frustrate future CCT Review Teams' efforts to analyze competition between new and legacy gTLDs in the domain marketplace. **Details:** ICANN or an outside contractor should acquire wholesale price information from both legacy and new gTLD registries on a regular basis and provide necessary assurances that the data would be treated on a confidential basis. The data could then be used for analytic purposes by the ICANN organization and by others that execute non-disclosure agreements. This may require amendment to the Base Registry Agreement for legacy gTLDs. **Success Measures:** The availability of relevant data for use by the ICANN organization, contractors and the ICANN community for its work in evaluating competition in the DNS space.	**To** ICANN organization	**Priority level** Low
RySG comment: In its current form, this recommendation is not supportable: · Price information generally is business sensitive. · "Necessary assurances" is ill defined and, should this recommendation be considered, would need to be presented in detail to registries and registrars, with their extensive input on handling of data. · "Confidential basis" does not specify who would have access to data. · "Analytic purposes" also would need to be much more clearly defined, and a statement of eventual outcome elucidated. · Non-disclosure agreements are helpful, but it isn't clear who would arbitrate access to the data, and to what extent.		

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Recommendation 3: Collect transactional pricing for the gTLD marketplace.		
Rationale/related findings: The lack of transactional data will continue to frustrate future CCT Review Teams' efforts to analyze competition between registries in the domain marketplace. **Details**: ICANN or an outside contractor should attempt to acquire at least some samples of wholesale price information from registries on a regular basis and provide necessary assurances that the data would be treated on a confidential basis. The data could then be used for analytic purposes by the ICANN organization and by others that execute non-disclosure agreements. **Success Measures:** The availability of relevant data for use by the ICANN organization, contractors and the ICANN community for its work in evaluating competition in the DNS space.	**To** ICANN organization	**Priority level** Medium
RySG comment: For many of the reasons cited in our reply to recommendation 2, this recommendation cannot be supported. "Analytic purposes" does not remotely suggest a well-considered benefit to ICANN, registries or the community, particularly given ICANN's lack of remit over pricing.		

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Recommendation 4: Collect retail pricing for the domain marketplace.		
Rationale/related findings: The lack of retail data will continue to frustrate future CCT Review Teams' efforts to analyze competition between registries and TLDs in the domain marketplace. **Details**: ICANN does not currently make use of retail price data that can be obtained directly from public sources such as https://tld-list.com/ and https://namestat.org. We recommend that ICANN develop the capability to analyze these data on an ongoing basis. Alternatively, an amendment to the Registrar Accreditation Agreement would ensure the availability of this data with all due diligence to protect competitive information. **Success Measures:** The availability of relevant data for use by the ICANN organization, contractors and the ICANN community for its work in evaluating competition in the DNS space.	**To** ICANN organization	**Priority level** Low
RySG comment: Registries don't purport to speak for registrars; however, we're confident we share a concern that not only should ICANN not involve itself with pricing studies, using parties' contracts with ICANN as a mechanism to force its production is terribly inappropriate. Contracts are not levers for mandatory revelation of sensitive data.		

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Recommendation 5: **Collect parking data.**		
Rationale/related findings: The high incidence of parked domains suggests an impact on the competitive landscape, but insufficient data frustrates e orts to analyze this impact. **Details**: ICANN should regularly track the proportion of TLDs that are parked with sufficient granularity to identify trends on a regional and global basis. **Success Measures:** The availability of relevant data for use by the ICANN organization, contractors and the ICANN community for its work in evaluating competition in the DNS space.	**To** ICANN organization	**Priority level** High
RySG comment: The RySG obviously is in favor of increasing usage. However, while this data could be useful, it's unclear how, in the end, it would be put to use by the ICANN organization or the community.		

Chapter VI. Introduction to the Competition and Consumer Choice Analysis

Recommendation 6: **Collect secondary market data.**		
Rationale/related findings: The presence of price caps in certain TLDs frustrates e orts to comprehensively analysis competitive effects. The true market price may very well be above the caps. Accordingly, the secondary market is the best place to see price movement. **Details**: ICANN should engage with the secondary market community to better understand pricing trends. **Success Measures:** The availability of relevant data for use by the ICANN organization, contractors and the ICANN community for its work in evaluating competition in the DNS space.	**To** ICANN organization	**Priority level** Prerequisite
RySG comment: The RySG repeats its concern over any ICANN interest in pricing. The secondary market is once removed from the primary market and is even further outside ICANN's remit. In addition, except for publicly reported transactions, it likely would be very difficult to convince parties to private transactions to divulge sales prices. What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?		

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Recommendation 7: Collect TLD sales at a country-by-country level.		
Rationale/related findings: The lack of country-level data will continue to frustrate future CCT Review Teams' efforts to analyze competition between registries and TLDs in the domain marketplace. In particular, the lack of country-specific data frustrates efforts to understand the competition between gTLDs and ccTLDs. **Details**: Some of this data is collected by third parties such as CENTR, so it is possible that ICANN can arrange to acquire the data. **Success Measures:** The availability of relevant data for use by the ICANN organization, contractors and the ICANN community for its work in evaluating competition in the DNS space.	**To** ICANN organization	**Priority level** Low
RySG comment: Before any work of this nature is undertaken, it is essential that a statement of benefit is clearly articulated and that the costs of undertaking the work are well defined and measured against the statement of benefit. In addition, it needs to be clearly articulated how this level of granularity aids the study of competition.		

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Recommendation 8:		
Create, support and/or partner with mechanisms and entities involved with the collection of TLD sales data at the country-by country level.		
Rationale/related findings: The lack of country-level data will continue to frustrate future CCT Review Teams' efforts to analyze competition between registries and TLDs in the domain marketplace. ccTLD data, which is useful in understanding the overall TLD marketplace, is particularly hard to come by. **Details:** Some regional organizations such as CENTR, AFTLD and APTLD are already engaged in data collection and statistical research initiatives. ICANN should strive to partner with these organizations and explore ways in which it can enhance the capacities of these organizations so that their output is geared to ICANN's data requirements. ICANN should also seek to promote the ability of these disparate organizations to coordinate their e orts in areas such as standardization of research and methodology, so that their data is comparable. The regional initiatives that ICANN has already undertaken, such as the LAC and MEA DNS Marketplace studies, should be undertaken at regular periods, as they too provide invaluable country-level and regional data. **Success Measures:** The availability of relevant data for use by the ICANN organization, contractors and the ICANN community for its work in evaluating competition in the DNS space.	**To** ICANN organization	**Priority level** Prerequisite

RySG comment:

Before any work of this nature is undertaken, it is essential that a statement of benefit is clearly articulated and that the costs of undertaking the work are well defined and measured against the statement of benefit

The RySG is concerned that such an undertaking may be expensive in terms of financial and/or other ICANN resources and that resource allocation in this area may impact on critical policy or other ICANN priorities.

ICANN serving as a coordinator of research, standardizing methodology, and directing resources toward organizations *already* involved in such research may be practical and beneficial.

However, without a clear statement of benefit, method and cost, it is not sufficiently well justified (making it unclear why this is labelled as prerequisite).

Our question is therefore: What is the perceived benefit of this recommendation, what would the method and cost be to undertake it, and would the benefit exceed the cost?

Chapter VII. Consumer Choice

Recommendation 9: Conduct periodic surveys of registrants.		
Rationale/related findings: The inability to determine registrant motivations and behavior frustrates efforts to study competition and choice in the TLD marketplace. **Details:** The survey should be designed and continuously improved to collect registrant trends. Some initial thoughts on potential questions is in Appendix F: Possible Questions for a Future Consumer Survey. **Success Measures:** The availability of relevant data for use by the ICANN organization, contractors and the ICANN community for its work in evaluating competition in the DNS space.	**To** ICANN organization	**Priority level** Prerequisite
RySG comment: What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?		

Chapter VII. Consumer Choice

Recommendation 10:		
The ICANN community should consider whether the costs related to defensive registration for the small number of brands registering a large number of domains can be reduced.		
Rationale/related findings: We found that while most trademarks were either not registered in new gTLDs or in only a handful of new gTLDs, a small number of trademarks were responsible for a large number of registrations across many new gTLDs and were likely bearing most of the cost of registrations. This bimodal distribution suggests that RPMs tailored to certain of these trademarks may be appropriate.	**To** Subsequent Procedures Policy Development Process (PDP) Working Group and/or Rights Protection Mechanisms (RPM) PDP Working Group	**Priority level** Prerequisite
RySG comment: What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?		

Chapter VII. Consumer Choice

Recommendation 11: The next consumer end-user and registrant surveys to be carried out should include questions to solicit additional information on the benefits of the expanded number, availability and specificity of new gTLDs. In particular, for any future consumer end-user surveys, a relative weighting of the positive contributions to consumer choice with respect to geographic name gTLDs, specific sector gTLDs and Internationalized Domain Name (IDN) gTLDs should help determine whether there is a clear preference by consumers for di erent types of gTLDs and whether there are regional di erences or similarities in their preferences. The next consumer end-user survey should also include further questions about whether confusion has been created for consumers in expanding the number and type of gTLDs, how they navigate to websites and if the nature and manner of search has an impact on confusion (positive, negative or indifferent). For registrants, it will be important to gather further data on the geographic distribution of gTLD registrants and the services provided to them by registrars, particularly in different regions, including languages offered for service interactions and locations beyond the primary o ices. The next CCT review would then be able to assess in more detail these aspects, by which time there should be more data and a longer history of experience with the new gTLDs, and in particular with those in languages other than English and those using non-Latin scripts.

Rationale/related findings	To	Priority level
The absence of data related to consumer confusion means that it is difficult to determine whether consumer confusion arises as a result of the sheer number and variety of TLDs available or whether the benefits of increased consumer choice may have been o set by any possible increase in confusion. The next CCT Review should have this data available before the start of the review to ensure that nothing has been missed and that if any possible constraints or confusions exist, they can be addressed in the future.	Next CCT Review and ICANN organization	Low

RySG comment: This recommendation seems to address a situation that is well into the future—there appears to be little need to task future review teams today with methods of work when that work will take place years from now. Further, the stated objective of this recommendation—to measure whether or not "confusion" exists due to the sheer number and variety of TLDs available—doesn't seem to comport with the direction of the recommended studies. Those refer instead to regional differences, navigation, geographic distribution and the like. If this disparity is unintentional, the rationale should be better harmonized with the recommendations. Further context again regarding outcomes is necessary in order to consider support of this recommendation.

Chapter VIII. Consumer Trust

Recommendation 13:		
Conduct a study to identify (1) which new gTLDs have been visited most; (2) the reasons users identify to explain why visited certain new gTLDs more than others; (3) what factors matter most to users in determining which gTLDs to visit and (4) how users' behaviors indicate to what extent they trust new gTLDs		
Rationale/related findings: The Nielsen studies indicate the relationship between trust of a gTLD and several other factors, including familiarity, reputation and security. However, further information is needed on why and to what extent the public trusts new gTLDs. In particular, in addition to repeating surveys that gather the respondents' subjective views about trustworthiness, ICANN, relevant stakeholders and future Review Teams should assess what objective information can be gathered and measured that relates to trustworthiness. A further study could provide useful information for future gTLD applicants.	**To** ICANN organization and future CCT Review Teams	**Priority level** Prerequisite
<u>RySG comment</u>: The RT's rationale states that the findings of such a study could help measure the extent of trust the public places in new gTLDs, and that such a study could provide useful information for future gTLD applicants. The RySG agrees. We do not agree, however, that this should be a prerequisite to future rounds. Application decisions are not necessarily based on such data. What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?		

Recommendation 14:		
Create incentives to encourage gTLD registries to meet user expectations regarding: (1) the relationship of content of a gTLD to its name; (2) restrictions as to who can register a domain name in certain gTLDs based upon implied messages of trust conveyed by the name of its gTLDs (particularly in sensitive or regulated industries) and (3) the safety and security of users' personal and sensitive information (including health and financial information).		
Rationale/related findings: The Nielsen surveys indicate that the public expects restrictions on who can purchase domain names, expects that such restrictions will be enforced and is concerned about the security of their personal and sensitive information.	**To** New gTLD Subsequent Procedures PDP Working Group	**Priority level** Prerequisite (incentives could be implemented as part of application process)

RySG comment:

The nature of incentives isn't stated and therefor cannot yet be considered for support. Further, we do not support (1) and (2) as requirements—this in effect could be a form of content restriction, something the community, appropriately, is foursquare opposed to. (The Nielsen study may not have provided granularity to assess, for example, the possibility of a carpet cleaning service using the term Rug.Doctor, a perfectly legitimate use of the gTLD.) Creativity, without violating law, is a long-held hallmark of Internet naming and content and should not attempt to be curtailed. We recommend the removal of (1) and (2)

The RySG supports (3).

As a prerequisite, what is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?

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Recommendation 15: ICANN should repeat selected parts of global surveys (for consumer end-user and registrant surveys, in addition to necessary baseline and questions – repeat 700, 800, 900, and 1100 series survey questions and questions 775, 1000, 1036, 1050, 155 and 1060) to look for an increase in familiarity with new gTLDs, visitation of new gTLDs and perceived trustworthiness of new gTLDs.		
Rationale/related findings: Future review teams can compare these results to prior data to assess whether there has been an increase in familiarity with and trust of new gTLDs.	**To** ICANN organization	**Priority level** Prerequisite
RySG comment: What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?		

Chapter IX. Safeguards

Recommendation 17:
ICANN should gather data to assess whether a significant percentage of WHOIS-related complaints applicable to new gTLDs relate to the accuracy of the identity of the registrant, and whether there are differences in behavior between new and legacy gTLDs. This data should include analysis of WHOIS accuracy complaints received by ICANN Contractual Compliance to identify the subject matter of the complaints (e.g., complaints about syntax, operability or identity) and compare the number of complaints about WHOIS syntax, operability or identity between legacy gTLDs and new gTLDs. ICANN should also identify other potential data sources of WHOIS complaints (registrars, registries, ISPs, etc.) and attempt to obtain anonymized data from these sources. **Recommendation 18:** Once gathered (see Recommendation 17), this data regarding WHOIS accuracy should be considered by the upcoming WHOIS Review Team to determine whether additional steps are needed to improve WHOIS accuracy, particularly whether to proceed with the identity phase of the Accuracy Reporting System (ARS) project. Future CCT Reviews may also consider making use of this data if a dierential in behavior is identified between legacy and new gTLDs.

Rationale/related findings: WHOIS-related complaints are the largest category of complaints received by ICANN Contractual Compliance for registrars. However, it is unclear what aspect of WHOIS accuracy forms the basis of these complaints, or if the introduction of new gTLDs has had any eect on the accuracy of WHOIS data. Phase 1 of ICANN's ARS project analyzes the syntactic accuracy of WHOIS contact information and Phase 2 assesses the operability of the contact data in the WHOIS record. But there is currently no plan to proceed with Phase 3 of the ARS project, identity validation (is the contacted individual responsible for the domain?).	**To** ICANN organization to gather required data, and to provide data to relevant review teams to consider the results and if warranted, to assess feasibility and desirability of moving to identity validation phase of WHOIS ARS project.	**Priority level** Medium

RySG comment: Information that may be useful to tie in while examining these cases and how new gTLDs approach WHOIS accuracy is how this research may overlap with or relate to GDPR and privacy laws. In addition to analyzing the data to see what types of complaints are most common and how that affects the community as a whole, it will likely be helpful to also include what information can and should be collected (particularly in relation to new privacy laws) to provide a broader context for recommendations that come from this research.

Chapter IX. Safeguards

Recommendation 23:		
Include more detailed information on the subject matter of complaints in ICANN publicly available compliance reports. Specifically, more precise data on the subject matter of complaints, particularly (1) what type of law violation is being complained of and (2) an indication of whether complaints relate to the protection of sensitive health or financial information, would assist future Review Teams in their assessment of these safeguards. Note: A general recommendation for further transparency regarding the subject matter of complaints received by ICANN Contractual Compliance is set forth in Chapter V. Data-Driven Analysis: Recommendations for Additional Data Collection and Analysis.		
Recommendation 24: Initiate discussions with relevant stakeholders to determine what constitutes reasonable and appropriate security measures commensurate with the offering of services that involve the gathering of sensitive health and financial information. Such a discussion could include identifying what falls within the categories of "sensitive health and financial information" and what metrics could be used to measure compliance with this safeguard.		
Rationale/related findings: The lack of publicly available information about whether ICANN Contractual Compliance has received complaints related to the implemented Category 1 safeguards, and lack of a common framework to define sensitive information and identify what constitutes "reasonable and appropriate security measures" make it di icult to assess what impact this safeguard has had on mitigating risks to the public.	**To** ICANN organization	**Priority level** High
<u>RySG comment</u>: Recommendation 23 is supportable; however, it could be refined to incorporate the help of contracted parties regarding an appropriate methodology, as ICANN's public complaint mechanisms are subject to overuse or abuse. The RT did not provide rationale for this recommendation; providing one would be helpful.		

Chapter IX. Safeguards

Recommendation 33:
Collect data comparing subjective and objective trustworthiness of new gTLDs with restrictions on registration, to new gTLDs with few or no restrictions.

Recommendation 34:
Repeat and refine the DNS Abuse Study to determine whether the presence of additional registration restrictions correlate to a decrease in abuse in new gTLDs, and as compared to new gTLDs that lack registration restrictions, and as compared to legacy gTLDs.

Recommendation 35:
Collect data on costs and benefits of implementing various registration restrictions, including the impact on compliance costs and costs for registries, registrars and registrants. One source of this data might be existing gTLDs (for example, for verification and validation restrictions, we could look to those new gTLDs that have voluntarily included verification and validation requirements to get a sense of the costs involved).

Recommendation 36:
Gather public comments on the impact of new gTLD registration restrictions on competition to include whether restrictions have created undue preferences.

Rationale/related findings: The Nielsen surveys indicated a positive relationship between registration restrictions and trustworthiness of a domain. However, in addition to benefits, registration restrictions may also impact competition. More information is needed to assess whether this safeguard has met its intended goal in a manner that balances the benefits to the public in terms of trustworthiness and competition.	**To** ICANN organization, PDP Working Group, and future CCT Review Teams	**Priority level** High

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RySG comment:

Recommendation 33 is troubling, for several reasons:

- The RT provides no rationale for this recommendation. It is therefore unclear what it's reasoning is regarding necessity and the designated high priority level. Without a known desired outcome for use of the data, the recommendation cannot be supported.

- Subjectivity, in general, is not helpful in formulating potential future policy. Everyone has a subjective opinion, and quarters of the community are known for importing, or attempting to import, subjectivity into policymaking without supporting facts or data.

- The comparison—or the question that prompts it—very likely presumes that respondents (whomever they are—the recommendation

doesn't specify) will believe that registration restrictions make a gTLD "safer" than those with no restrictions. This apparently already is borne out in previous survey results. There is a danger of resulting community bias—either as it applies to the gTLDs from the 2012 round or future rounds—that gTLDs with restrictions are somehow preferable as a business model, and therefore restrictions could be imposed where, in reality, none are warranted.

We suggest removing recommendation 33.

Recommendation 34:
We recommend the reverse, mainly for the same reasons as our reply to (33) above. Rather than viewing rates of abuse through the lens of who may be permitted to register a name, it would be more informative (and healthier for the community) to look at rates and types of abuse in all gTLDs (including legacies) and identify a solution. Again, the suggested structure of the recommended study makes presumptions that could end in imbalanced perceptions.

Chapter IX. Safeguards

Recommendation 38: Future gTLD applicants should state the goals of each of their voluntary PICs.		
Rationale/related findings: The intended purpose is not discernable for many voluntary PICs, making it difficult to evaluate effectiveness.	**To** ICANN organization and Subsequent Procedures PDP Working Group	**Priority level** Prerequisite
<u>RySG comment:</u> What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?		

Chapter IX. Safeguards

Recommendation 39:		
All voluntary PICs should be submitted during the application process such that there is su icient opportunity for Governmental Advisory Committee (GAC) review and time to meet the deadlines for community and Limited Public Interest objections.		
Rationale/related findings: At present, there is no mechanism in place to ensure that voluntary public interest commitments do not negatively impact the public interest prior to going into e ect. Therefore, it is important for voluntary PICs to be made available to the community during the public comment period of the application process.	**To** Subsequent Procedures PDP Working Group	**Priority level** Prerequisite
RySG comment: This is a worthy goal, but latitude must be maintained following the application process for potential registries to add to voluntary PICs. It's not reasonable to assume every situation addressable by a voluntary PIC can be foreseen, as registries can attest from the 2012 round. What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?		

Chapter IX. Safeguards

Recommendation 41:		
A full review of the URS should be carried out and consideration be given to how it should interoperate with the UDRP. However, given the PDP Review of All Rights Protection Mechanisms in All gTLDs, which is currently ongoing, such a review needs to take on board that report when published and indeed may not be necessary if that report is substantial in its findings and if the report fully considers potential modifications.		

Rationale/related findings: The uptake in use of the URS appears to be below expectations, so it would be useful to understand the reasons for this and whether the URS is considered an e ective mechanism to prevent abuse. It is also important for all gTLDs to have a level playing field. The PDP Review of All Rights Protection Mechanisms in All gTLDs is due to consider the URS during spring or early summer 2017 with a final report scheduled for January 2018. It would seem to be diluting resources to create a separate review of the URS without the clarity of the PDP Review of All Rights Protection Mechanisms in All gTLDs.	**To** RPM PDP Working Group	**Priority level** Prerequisite
Details: The evolution over time will provide a more precise picture of costs as they evolve and track the e ectiveness of RPMs generally in the Domain Name System. Success Measures: The results of such Impact Studies would provide significantly more data to the relevant working groups currently looking into RPMs and the TMCH as well as future ones, thereby benefitting the community as a whole. Recommendations would then also be able to evolve appropriately in future CCT Review Teams.		
Details: A review of the URS should cover potential modifications inter alia (1) whether there should be a transfer option with the URS rather than only suspension; (2) whether two full systems should continue to operate (namely UDPR and URS in parallel) considering their relative merits, (3) the potential applicability of the URS to all gTLDs and (4) whether the availability of di erent mechanisms applicable in di erent gTLDs may be a source of confusion to consumers and rights holders.		
Success Measures: Based on the findings, a clear overview of the suitability of the URS and whether it is functioning effectively in the way originally intended.		

RySG comment:
What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?

Chapter IX. Safeguards

Recommendation 42:		
A review of the Trademark Clearinghouse (TMCH) and its scope should be carried out to provides us with su icient data to make recommendations and allow an e ective policy review.		

	To	**Priority level**
Rationale/related findings: It seems likely that a full review of the TMCH is necessary. The e ectiveness of the TMCH appears to be in question. The dra report of Trademark Clearinghouse Independent Review of 25 July 2016 has not been able to make definitive conclusions due to data limitations. We need to await the final report of that Independent Review to finalize our recommendations. It is hoped that the INTA Impact Study will also provide useful data in that respect. Indeed the PDP Review of All Rights Protection Mechanisms in All gTLDs, which is running in parallel to this CCT Review Team, will contribute to this consideration with its report due January 2018. That Working Group's report needs to be considered to set the scope of any review and potential modifications. **Details:** There appears to be considerable discussion and comment on whether the TMCH should be expanded beyond applying to only identical matches and if it should be extended to include "mark+keyword" or common typographical errors of the mark in question. If an extension is considered valuable, then the basis of such extension needs to be clear. **Success Measures:** The availability of adequate data to make recommendations and allow an e ective policy review of the TMCH.	RPM PDP Working Group	Prerequisite

RySG comment:

We agree with a review of the TMCH—it was lauded as a system that would be put to extensive use by rights holders, but that is far from the actual case.

What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?

Chapter IX. Safeguards - Additional Input

- At p.75 of this section, the RT writes:
  To the extent possible, the CCTRT has sought to measure the effectiveness of the technical safeguards developed for the New gTLD Program in mitigating various forms of DNS abuse. As part of this process, the CCTRT has commissioned a comprehensive DNS abuse study to analyze levels of abuse in legacy and new gTLDs, which will produce a baseline dataset for further analysis. This data will inform insights into the potential factors associated with correlations between abuse rates and corresponding TLDs. The study will focus on rates of spam, phishing, malware distribution, and botnet command and control in the global gTLD DNS since 1 January 2014, including legacy and new gTLDs.

RySG comment:
Unfortunately, the RT doesn't indicate it will also document what gTLD registries and registrars already do to combat these types of abuse. This would provide a much clearer picture of the true nature of abuse levels. We encourage the RT to do so, provided it can in a cost-effective manner.

- At p.85, under the "Safeguards for Highly Regulated Strings" subhead, the RT notes:
  Specifically, registry operators were obligated to establish relationships with the relevant regulatory and industry bodies to mitigate risks of illegal activity. Moreover, the standard contracts needed to include provisions that would require registrants to have a single point of contact for complaint reporting and contact information for relevant regulatory bodies.

  Regarding the requirement to establish relationships with the relevant regulatory/industry bodies, implementation of this provision appears to be satisfied by the mere issuing of an invitation to have a relationship. This implementation may reflect the practical challenges involved with mandating a relationship with a third party organization. In terms of effectiveness, more information is needed on registry efforts to comply with this safeguard.

RySG comment:
The RT is correct—there are extensive practical challenges to mandating a relationship at all, much less a productive one, with a third party. The RT should keep in mind as well that not every jurisdiction even has a relevant regulatory or industry body for a given gTLD.

Chapter X. Application and Evaluation Process of the New gTLD Program

Recommendation 43: **Set objectives for applications from the Global South**		
Rationale/related findings: Applications were few, but there was no concerted effort to encourage them. **Details:** The Subsequent Procedures Working Group needs to establish clear measurable goals for the Global South in terms of number of applications and even number of delegated strings. This e ort should include a definition of the "Global South." **Success Measures:** Increased participation by the Global South as demonstrated by increased applications and delegations	**To** New gTLD Subsequent Procedures Working Group	**Priority level** Prerequisite - objectives must be set
RySG comment: What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?		

Chapter X. Application and Evaluation Process of the New gTLD Program

Recommendation 44: **Expand and improve outreach into the Global South**		
Rationale/related findings: Low understanding of New gTLD Program in the Global South **Details:** Outreach to the Global South requires a more comprehensive program of conference participation, thought leader engagement and traditional media. This outreach should include cost projections and, potential business models. Furthermore, it is recommended that the outreach program begin significantly earlier to facilitate internal decision-making by potential applicants. The outreach team should compile a list of likely candidates, starting with the work of AMGlobal, and ensure these candidates are part of the outreach e ort. **Success Measures:** Ideally, success would be measured in appreciable growth in applications from the Global South. In the absence of such growth, ICANN should survey entities in the Global South again to determine the sources of the difficulties that continue to be faced by potential applicants.	**To** ICANN organization	**Priority level** Prerequisite
<u>RySG comment</u>: What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?		

Chapter X. Application and Evaluation Process of the New gTLD Program

Recommendation 45: **Coordinate the pro bono assistance program.**		
Rationale/related findings: Despite the registration of both volunteers and applicants, there is no evidence of interaction. **Details:** Ideally, the pro bono assistance program would be coordinated by the ICANN organization to ensure that communication is successful between volunteers and applicants. **Success Measures:** Both volunteers and applicants should be surveyed by the ICANN organization on the success of the interaction between them so that future reforms can be based on better information.	**To** ICANN organization	**Priority level** Prerequisite
RySG comment: What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?		

Chapter X. Application and Evaluation Process of the New gTLD Program

Recommendation 46: **Revisit the Applicant Financial Support Program.**		
Rationale/related findings: Only three applicants applied for support. **Details:** The total cost of applying for a new gTLD string far exceeds the $185K application fee. Beyond efforts to reduce the application fee for all applicants, efforts should be made to further reduce the overall cost of application, including additional subsidies and dedicated support for underserved communities. **Success Measures:** Greater participation in the applicant support program.	**To** New gTLD Subsequent Procedures Working Group	**Priority level** Prerequisite
RySG comment: What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?		

Chapter X. Application and Evaluation Process of the New gTLD Program

Recommendation 47:		
As required by the October 2016 Bylaws, GAC consensus advice to the Board regarding gTLDs should also be clearly enunciated, actionable and accompanied by a rationale, permitting the Board to determine how to apply that advice. ICANN should provide a template to the GAC for advice related to specific TLDs, in order to provide a structure that includes all of these elements. In addition to providing a template, the Applicant Guidebook (AGB) should clarify the process and timelines by which GAC advice is expected for individual TLDs.		
Rationale/related findings: The early warnings provided by GAC members helped applicants to improve delegated gTLDs by ensuring that public policy or public interest concerns were addressed, and should continue to be an element of any future expansion of the gTLD space. Applicants could withdraw their applications if they determined that the response or action required to respond to GAC early warning advice was either too costly or too complex and to do so in a timely manner that would permit them to recover 80% of the application cost. Where general GAC advice was provided by means of communiqués to the ICANN Board, it was sometimes not as easy to apply to the direct cases.[404] Applying for a gTLD is a complex and time-consuming process and the initial AGB was amended even a er the call for applications had closed. Given the recommendations to attempt to increase representation from applicants from the Global South, it would be appropriate to ensure that the clearest possible information and results from the last round were made available.	**To** Subsequent Procedures PDP Working Group, GAC, ICANN organization	**Priority level** Prerequisite
RySG comment: What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?		

Chapter X. Application and Evaluation Process of the New gTLD Program

Recommendation 48:		
A thorough review of the procedures and objectives for community- based applications should be carried out and improvements made to address and correct the concerns raised before a new gTLD application process is launched. Revisions or adjustments should be clearly reflected in an updated version of the 2012 AGB.		
Rationale/related findings: Given the assessment carried out by the Ombudsman's Own Motion Report, the results of community-based objections, the Council of Europe report on the human rights perspective of those applications, and the interest raised by the ICANN community regarding the relative lack of success of community-based applications (an area where the ICANN community had intended to provide a special entry for communities to gTLDs of particular interest and use for them), it could be expected that there would be a higher rate of success for community-based applications.	**To** Subsequent Procedures PDP Working Group	**Priority level** Prerequisite
RySG comment: What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?		

Chapter X. Application and Evaluation Process of the New gTLD Program

Recommendation 49:

The Subsequent Procedures PDP should consider adopting new policies to avoid the potential for inconsistent results in string confusion objections.
In particular, the PDP should consider the following possibilities:

1) **Determining through the initial string similarity review process that singular and plural versions of the same gTLD string should not be delegated**
2) **Avoiding disparities in similar disputes by ensuring that all similar cases of plural versus singular strings are examined by the same expert panelist**

3) **Introducing a post dispute resolution panel review mechanism**

Rationale/related findings: From a review of the outcome of singular and plural cases, it would appear that discrepancies in outcomes arose because the Dispute Resolution Service Provider (DRSP) process allowed for different expert panelists to examine individual cases, although they were based on similar situations. This meant that different expert panelists could come to di erent conclusions in cases that otherwise might have been considered to have similar characteristics. ICANN Program Implementation Review 2016 found that there was no recourse a er the decision taken by an expert panel. Given that there appear to be inconsistencies in the outcomes of di erent dispute resolution panels, it would be useful to ensure a review mechanism. There appear to be inconsistencies in the outcomes of di erent dispute resolution panels regarding singular and plural versions of the same word, which a priori (and according to the GAC advice of 2013) should be avoided in order to avoid confusing consumers. **Success Measures:** No string confusion objections are filed for cases of singular and plural versions of the same string. Or, should singular and plural versions be allowed, objection panels evaluate all such cases with a consistent approach such that all single or plural disputes are resolved in the same manner.	**To** Subsequent Procedures PDP Working Group	**Priority level** Prerequisite

<u>RySG comment</u>:

What is the perceived benefit of this recommendation, what would the cost be to carry it out, and would the benefit exceed the cost?

Appendix E: Participation Summary

RySG comment:
Appendix E (p.138) helpfully provides a summary of participation of CCTRT members.

We reiterate here the bizarre situation whereby only one gTLD registry was permitted participation in a review of the gTLD program. There was relative over-representation by other interests and—it must be pointed out—only one of four "independent experts" managed to attend at least half the meetings (one attended only two).

We strongly advocate the inclusion of additional contracted parties in future reviews, for the constructive benefit of the community and gTLD expansion.