CC2 Section 1: Objections

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?

Recommendations 2, 3, 6, 12 and 20;
2. Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.
3. Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.

> Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).

6. Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.

> Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).

12. Dispute resolution and challenge processes must be established prior to the start of the process.

20. An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted

INTA, Nominet, RySG, BRG, and Afilias believe that the existing recommendations **do not need to be revised**, though this does not preclude changing the implementation.

Sample excerpts:

"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

"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

"We support the identified recommendations from the 2012 round and their continued application to a future gTLD application process…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, BRG, Afilias

RySG, BRG, and Afilias suggest a **minor change to Recommendation 20**

Sample excerpts:

"…minor modifications to Recommendation 20 above to clarify what constitutes "a significant portion of the community." - RySG, BRG, Afilias

ALAC suggests **change to Recommendation 2**

Sample excerpts:

"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.

Jannik Skou, BC, RySG, BRG, and Afilias suggested that **String Confusion needs to be improved**

Sample excerpts:

"…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

"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." – BC

"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." – RySG, BRG, Afilias

"No. String confusion proved to be problematic and the potential for differing rulings on the same pairs of strings was particularly problematic." – ALAC

Jannik Skou and the ALAC suggested that **Legal Rights Objections need to be improved**

Sample excerpts:

"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…" – Jannik Skou

"A recent report looking at defensive registrations may imply that legal rights protections were not sufficient." -- ALAC

The RySG, BRG, and Afilias suggested that **Community Objections need to be improved**

Sample excerpts:

"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, BRG, Afilias

The BC suggested developing a **process to appeal decisions**

Sample excerpts:

"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 RySG, BRG, and Afilias suggested specific **procedural improvements to the objections processes**

Sample excerpts:

"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." – RySG, BRG, Afilias

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.

3.2.2 Standing to Object
Objectors must satisfy standing requirements to have their
objections considered. As part of the dispute proceedings, all objections will be reviewed by
a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP)
to determine whether the objector has standing to object. Standing requirements for the four
objection grounds are:

Objection ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round. In the case where an IDN ccTLD Fast Track request has been submitted before the public posting of gTLD applications received, and the Fast Track requestor
Legal rights	Rightsholders
Limited public interest	No limitations on who may file – however, subject to a "quick look" designed for early conclusion of frivolous
Community	Established institution associated with a clearly delineated community

The RySG, BRG, and Afilias had **concerns with the standing requirements for Recommendation 20**

Sample excerpts:

"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, BRG, Afilias

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.

BC, RySG, BRG, and Afilias pointed to **evidence of inconsistencies**.

Sample excerpts:
"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

"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. . . 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. . . 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. . .

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." – RySG, Afilias, BRG

INTA provided additional suggestions on this topic:

"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. . . 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

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.

dotgay LLC provided **evidence of gaming.**
Excerpt (note – only a small portion of this substantive comment is displayed below. WT members are encouraged to review the full comment which provides greater detail about the example.):

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 community based 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. . . 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 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." -- dotgay

dotgay LLC, RySG, and Afilias made **suggestions to reduce the likelihood of gaming**.

"We believe that some preliminary steps should be implemented to screen the source of community objections so as to ensure that organizations listed on the objections are:
1. Legitimate organizations that meet basic requirements for "standing"
2. Aware & approving of the objection – via multiple contacts at the organization, using published and legitimate contact methods for the organization
3. Actively engaged & educated on the opposition and not simply surrogates for purposes of gaming Taking these simple steps with the filing fee funds of those who filed the opposition could prevent a lot of unnecessary expense to community applicants. If additional cost to determine standing is required then a portion of the deposit could be paid by the objector to cover the costs of solidifying standing. If standing is achieved then the funds go back into their objection deposit. By weeding out frivolous and fraudulent objections that have no chance of meeting standing requirements, before ever forcing community applicants to pay a filing fee and respond, would save everyone a lot of time, energy and money. It would also serve as a line of defense against coordinated efforts aimed at financially drowning out community applicants." – dotgay LLC

"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 and Afilias

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?

Nominet and ALAC expressed that the use of an IO is warranted in future application processes.

Excerpts:

"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

"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

The BC stated that the use of an IO is not warranted in future application processes.

Excerpt:

"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

RySG, BRG, and Afilias raised concerns about the use of the IO in the 2012 round and suggested changes for future application processes.

Excerpt:

"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. . .Establish clear Conflict of Interest Procedures for the office of the Independent Objector. . . Require Independent Objector to withdraw duplicate objections." – RySG, BRG, Afilias (staff note: see full comment for recommendation details.)

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?

RySG, BRG, and Aflias recommended that parties should be able to jointly determine whether to use a 1- or 3-member panel.

Excerpt:

"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." – RySG, BRG, Afilias

3.1.8. - Is clearer guidance needed in regards to consolidation of objections? Please explain.

RySG, BRG, and Aflias provided suggested guidelines for consolidation of string confusion objections.

Excerpt:

"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." -- RySG, BRG, Aflias
- A limited appeals process (as described above) would be available to both the objectors and the respondents to handle any perceived inconsistencies." – RySG, BRG, Aflias

Dotgay LLC stated that clearer guidance is needed regarding consolidation of community objections.

Excerpt:

"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. . ." – dotgay LLC (staff note: please see full comment for discussion of objections filed against applications for .GAY and .LGBT)

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?

RySG, BRG, Afilias, vTLD Consortium, NABP, and dotgay LLC provided suggestions for managing the high cost of objections.

Sample excerpts (emphasis added):

"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. . . 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, BRG, Afilias

"The Consortium recommends that the cost of a community-based objection be reduced to avoid being an obstacle preventing communities from filing objections. . . The Consortium supports the Council of Europe report ["Applications to ICANN for Community-Based New Generic Top Level Domains (gTLDs): Opportunities and Challenges from a Human Rights Perspective"] recommendation to ICANN to "**lower the costs for Community Objection**" for legitimate industry associations and communities. . . 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, NABP

". . . 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. . . 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

"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. . . 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**. . . 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. . .

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**. . ." – dotgay LLC

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?

Nominet responded that GAC Early Warnings were helpful in identifying potential concerns with applications.

Excerpt:

"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

BC, RySG, BRG, Afilias provided suggestions for improving the Early Warning mechanism.

Sample excerpts:

"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

"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, BRG, Afilias

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?

ALAC, vTLD Consortium, NABP, Jim Prendergast, RySG, BRG, Aflias, and Valideus provided suggestions for improving GAC Advice procedures.

Sample excepts (emphasis added):

"GAC advice in relation to gTLDs **must include rationales**. . ." -- ALAC

". . . 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." – vTLD Consortium, NABP

"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

"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. . . 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

"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. . .

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, BRG, Aflias

"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

Nominet noted the complexity of this topic without providing specific additional suggestions for future improvements.