1 Deliberations of the Working Group

This Section provides an overview of the deliberations of the WG. The points outlined below are meant to provide the reader with relevant background information on the WG's deliberations and processes, and should not be read as either final recommendations or as representing the entirety of the deliberations of the WG. The WG will not finalize its recommendations to the GNSO Council until it has conducted a thorough review of the comments received during the public comment period on this Initial Report and taken consensus calls as appropriate for the Final Report.

1.1 Initial Fact-Finding and Research

Per its Charter, the WG was tasked to review a list of topics and questions, as part of its work to develop policy recommendations and implementation guidance relating to New gTLD Subsequent Procedures. These topics and questions were derived in large part from the prior work done by the community via the Non-PDP Discussion Group on New gTLD Subsequent Procedures and by staff within the Final Issue Report.

The WG grouped all its Charter questions / topics into five (5) groupings, starting its deliberations as a single group and concentrating on a collection of so-called, "overarching issues." In August of 2016, the WG established four (4) Work Tracks, each of which concentrated on a collection of questions / topics contained in the WG's charter.

Each Work Track focused on a specific set of topics:

- **Work Track 1** addressed issues related to **overall process, support, and outreach**: Competition, Consumer Trust and Consumer Choice; Applicant Guidebook; Clarity of Application Process; Accreditation Programs (e.g., RSP Pre-Approval); Systems; Application Fees; Variable Fees; Communications; Application Queuing; Application Submission Period; and Support for Applicants From Developing Countries.
- **Work Track 2** addressed **legal and regulatory** issues: Reserved Names; Base Registry Agreement; Registrant Protections; Contractual Compliance; Registrar Non-Discrimination and Registry/Registrar Standardization; TLD Rollout; Second-Level Rights Protection Mechanisms; Global Public Interest; IGO/INGO Protections; and Closed Generics.
- **Work Track 3** addressed issues related to **string contention, objections, and disputes**: New gTLD Applicant Freedom of Expression; String Similarity; Objections; Accountability Mechanisms; and Community Applications.
- **Work Track 4** addressed **Internationalized Domain Names and technical and operational issues**: Internationalized Domain Names; Universal Acceptance; Security and Stability; Applicant Reviews: Technical/Operational, Financial, and Registry Services; Registry System Testing; and Name Collisions.

The Working Group later established a fifth Work Track focused on geographic names at the top-level. Because Work Track 5 is on a different timeline than the other Work Tracks, this group will produce a separate Initial Report.

In an effort to help readers understand how all of these topics can be considered holistically in the context of the New gTLD Program, the Charter questions / topics will be arranged and discussed in an order and in groupings that map generally to the chronological proceedings from the 2012 round of the New gTLD Program.

New gTLD Program		
Overarching Issues		
1.2.1	Continuing Subsequent Procedures	Overarching Issues
1.2.2	Predictability	Overarching Issues
1.2.1	*Community Engagement*	Overarching Issues
1.2.2	*Clarity of Application Process*	Work Track 1
1.2.3	Applications Assessed in Rounds	Overarching Issues
1.2.4	Different TLD Types	Overarching Issues
1.2.5	Applications Submission Limits	Overarching Issues
1.2.6	Accreditation Programs (e.g., RSP Pre-Approval)	Work Track 1
Foundational Issues		
1.3.1	Competition, Consumer Choice and Consumer Trust	Work Track 1
1.3.2	Global Public Interest	Work Track 2

1.3.3	Applicant Freedom of Expression	Work Track 3
1.3.4	Universal Acceptance	Work Track 4
Pre-Launch Activities		
1.4.1	Applicant Guidebook	Work Track 1
1.4.2	Communications	Work Track 1
1.4.3	Systems	Work Track 1
Application Submission		
1.5.1	Application Fees	Work Track 1
1.5.2	Variable Fees	Work Track 1
1.5.3	Application Submission Period	Work Track 1
1.5.4	Applicant Support	Work Track 1
1.5.5	Terms & Conditions	Work Track 2
Application Processing		
1.6.1	Application Queuing	Work Track 1
Application Evaluation/Criteria		
1.7.1	Reserved Names	Work Track 2
1.7.1.1	*IGO/INGO Protections*	*Work Track 2*
1.7.1.2	*Geographic Names*	*Work Track 5*
1.7.2	Registrant Protections	Work Track 2

1.7.3	Closed Generics	Work Track 2
1.7.4	String Similarity	Work Track 3
1.7.5	IDNs	Work Track 4
1.7.6	Security and Stability	Work Track 4
1.7.7	Applicant Reviews: Technical/Operational, Financial and Registry Services	Work Track 4
1.7.8	Name Collisions	Work Track 4
Dispute Proceedings		
1.8.1	Objections	Work Track 3
1.8.2	Accountability Mechanisms	Work Track 3
String Contention Resolution		
1.9.1	Community Applications	Work Track 3
Contracting		
1.10.1	Base Registry Agreement	Work Track 2
1.10.2	Registrar Non-Discrimination / Registry/Registrar Standardization	Work Track 2
Pre-Delegation		
1.11.1	Registry System Testing	Work Track 4
Post-Delegation		
1.12.1	TLD Rollout	Work Track 2

1.12.2	Second-level Rights Protection Mechanisms	Work Track 2
1.12.3	Contractual Compliance	Work Track 2

In drafting this report, there are a set of documents that are relevant and continually referenced in numerous sections. In an effort to avoid having an overwhelming number of footnotes, some of those key documents are listed here:

- GNSO's Final Report on the Introduction of New Generic Top-Level Domains (herein referenced as the 2007 Final Report)[1]
- Applicant Guidebook (AGB)[2]
- ICANN Global Domains Division Program Implementation Review Report (PIRR)[3]
- Community Comment 1 (CC1)[4]
- Community Comment 2 (CC2)[5]
- Registry Agreement[6]
- ICANN Bylaws[7]

1.2 Deliberations and Recommendations: Overarching Issues

The following Charter questions were grouped into the Overarching Issues section, as the WG believed these topics to have a broad and far-ranging impact on the overall PDP. The WG's initial conclusions can be found in Section 2 – Preliminary Recommendations.

Overarching Issues		
1.2.1	Continuing Subsequent Procedures	Overarching Issues
1.2.2.1	Predictability	Overarching Issues

[1] See 2007 Final Report here: https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm
[2] See the June 2012 version of the AGB here: https://newgtlds.icann.org/en/applicants/agb
[3] See revised and final PIRR here: https://www.icann.org/en/system/files/files/program-review-29jan16-en.pdf
[4] See Community Comment 1 here: https://community.icann.org/x/3B6OAw
[5] See Community Comment 2 here: https://community.icann.org/x/Gq7DAw
[6] https://www.icann.org/resources/pages/registries/registries-agreements-en
[7] https://www.icann.org/resources/pages/governance/bylaws-en

1.2.2.2	*Community Engagement*	Overarching Issues
1.2.2.3	*Clarity of Application Process*	Work Track 1
1.2.3	Applications Assessed in Rounds	Overarching Issues
1.2.4	Different TLD Types	Overarching Issues
1.2.5	Applications Submission Limits	Overarching Issues
1.2.6	Accreditation Programs (e.g., RSP Pre-Approval)	Work Track 1

1.2.1 Continuing Subsequent Procedures

a. What is the relevant policy and/or implementation guidance (if any)?

The *Final Report on Introduction of New Generic Top-Level Domains*[8] *(Final Report) Principle A states "*New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way." Although it did not contain a specific recommendation stating that there must be additional rounds for the introduction of new gTLDs, the Final Report does state that the process leading up to the development of the Final Report was designed to produce a "...systemised and ongoing mechanism for applicants to propose new top-level domains." This has subsequently been interpreted by the GNSO as policy support for the introduction of additional new gTLDs after the 2012 Round of New gTLDs. .

b. How was it implemented in the 2012 round of the New gTLD Program?

The Applicant Guidebook captured the overarching concept as policy in section 1.1.6 stating both (a) "ICANN's goal is to launch subsequent gTLD application rounds as quickly as possible," and (b) " It is the policy of ICANN that there be subsequent application rounds, and that a systemized manner of applying for gTLDs be developed in the long term."[9]

c. What are the preliminary recommendations and/or implementation guidelines?

[8] See Final Report here: http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm
[9] See New gTLD Applicant Guidebook, Section 1.1.6.

The Working Group recommends no changes to the existing policy calling for subsequent application rounds introduced in an ongoing, orderly, timely and predictable manner.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

- The 2007 Final Report noted that success metrics would be developed around the New gTLD Program. What are some specific metrics that the program should be measured against?

f. Deliberations

Although there are some in the WG and the wider community that believe no additional new gTLDs are needed and remain skeptical of the public benefit of ongoing gTLD proliferation, the Working Group received no comments during Community Comment Period 1 (CC1) taking the position that there should be no further introduction of new gTLDs. This included noteably input from GNSO Stakeholder Groups, the Governmental Advisory Committee as well as the At Large Advisory Committee. Some expressed the belief that more information is needed to determine the benefit/harm caused to Internet users by further gTLD expansion. However, the WG has not agreed upon a set of arguments or data points that would suggest that the existing policy should be overwritten, or in other words, to cease the provision of new gTLDs in the future. In fact, to do so was seen as anti-competitive by many in the WG, as well as in comments received from CC1. There is at a minimum, anecdotal evidence of demand for additional new gTLDs from future applicants.

The WG looks forward to the Final Report of the Competition, Consumer Trust & Consumer Choice Review Team (CCT-RT) which is tasked with analyzing the effects of the New gTLD Program on competition, diversity, innovation, trust, etc. In line with the CCT-RT's Initial Report, the WG believes that identifying success metrics may be of benefit, though it has not yet reached any conclusions on specific success metrics. There is general agreement that additional gTLDs have enhanced diversity in the pool of registry operators and the TLDs available, but there is some desire (particularly from the GAC) to develop a framework, or at least a definition, of what "diversity" means in the context of New gTLDs in order to determine whether "diversity" has in fact been enhanced.

The WG acknowledges that it may be too early to get a complete understanding of the benefits and/or negative effects from the 2012 round, but it has not found a compelling reason to alter the existing policy (i.e., a continuing mechanism for new gTLDs).

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

- Final Report of the CCT-RT

1.2.2 Predictability

a. What is the relevant policy and/or implementation guidance (if any)?

Final Report Principle A states that "New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way."

Recommendation 1 states, "ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process." Recommendation 9: "There must be a clear and pre-published application process using objective and measurable criteria."

b. How was it implemented in the 2012 round of the New gTLD Program?

The Applicant Guidebook was intended to serve as the roadmap for applicants, observers to the program, and the ICANN Organization to operationalize and execute the program. That said, one of the most common complaints by new gTLD Applicants and ICANN Community members was that there were a number changes to the New gTLD Program and additional evaluation guideline documents created after the finalization of the Applicant Guidebook that led overall to a process that was was far from predictable. Such changes included for example, changes to the New gTLD Registry Agreement, the addition of Public Interest Commitments, changes to the application prioritization process, changes implemented as a result of GAC Advice, changes to pre-delegation testing mechanisms, changes to launch mechanisms as result of name collision studies, and the creation of additional Community Priority Evaluation (CPE) guidelines prepared by the CPE provider to name a few.

c. What are the preliminary recommendations and/or implementation guidelines?

Currently, as a result of consensus recommendations made by the GNSO, the ICANN Board endorsed the GNSO's Policy and Implementation Recommendations, including those related to the Consensus Policy Implementation Framework (CPIF)[10] for governing the implementation phase of GNSO policies. If issues arise during this phase, the GNSO could seek to utilize the GNSO Expedited Policy Development Process or the GNSO Guidance Process, as defined in the ICANN Bylaws. However, there is support in the Working Group for a recommendation that the New gTLD Program, once launched (i.e., after the Implementation Review Team), should be

[10] For additional detail about policy implementation, please see the Consensus Policy Implementation Framework (CPIF) here: https://www.icann.org/en/system/files/files/gdd-consensus-policy-implementation-framework-31may15-en.pdf

subject to a new **Predictability Framework,** to address issues that arise regarding the introduction of new gTLDs.

Among other recommendations, the Working Group believes that as part of the Predictability Framework, a Standing Implementation Review Team (IRT) should be constituted after the publication of the Applicant Guidebook to consider changes in the implementation, execution and/or operations of the new gTLD program after its launch, and the introduction of any further evaluation guidelines not available to applicants when applications were submitted. The Predictability Framework is intended to provide guidance to the Standing IRT in how issues should be resolved, which could include recommending that the GNSO Council initiate GNSO processes provided by the ICANN Bylaws.

See section (d) for the proposed framework.

d. What are the options under consideration, along with the associated benefits / drawbacks?

Predictability Framework

Problem Statement

Applicants and other parties interested in the New gTLD Program expected a level of predictability and stability within the program **after launch** that many felt was not adequately met. How can predictability for all interested parties be enhanced?

Anticipated Outcome

While the community is endeavoring to establish policy recommendations that result in as predictable, systematized and stable a program as possible, it acknowledges that it is not possible to identify and solve all problems prior to the launch[11] of the next or any subsequent process for the introduction of additional new gTLDs. Accordingly, the New gTLD Subsequent Procedures PDP WG is seeking to establish a framework by which, even in the event of changes that are deemed necessary by the community, the mechanisms by which theses issues will be resolved are predictable, transparent and as fair as possible to new gTLD Applicants and the Internet community.

The Working Group specifically acknowledges that the implementation of all policies recommended through this policy development process as well as others impacting the new gTLD Program, are *governed by the Consensus Policy Implementation Framework (CPIF)[12],*

[11] A description for "launch" can be found in the first paragraph under the *Details of the Predictability Framework* section, *Phase 3 - Operations / Administration of the New gTLD Program*

[12] For additional detail about policy implementation, please see the Consensus Policy Implementation Framework (CPIF) here: https://www.icann.org/en/system/files/files/gdd-consensus-policy-implementation-framework-31may15-en.pdf

which contains measures and guidance to resolve situations where implementation is determined, or perceived, to not match policy recommendations. This additional predictability framework is intended to complement the CPIF, not replace it, and is targeted at addressing issues that arise after program launch (i.e., implementation is considered complete).

Details of the Predictability Framework

In general, policy development within the GNSO utilizes two phases 1) policy development, and 2) policy implementation. However, with respect to the New gTLD Program, given the historical need to address unforeseen circumstances or other implementation ambiguities, the WG is proposing the addition of a third element, as part of a Predictability Framework: namely 3) operations of the New gTLD Program. *This third element of the Predictability Framework (Phase 3 below) is only intended to be utilized for the phase related to operations and execution of the New gTLD Program and is NOT intended to apply to any other policy development process unless explicitly stated therein.*

Phase 1 - Policy Development Process

Policy development related to New gTLDs will take place within a GNSO chartered policy development process (i.e., New gTLD Subsequent Procedures). The PDP is governed by the GNSO Working Group Guidelines, Policy Development Process Manual, and its applicable Charter. To the extent there are unforeseen issues (e.g., new policy issue not covered by the existing WG Charter), there are existing mechanisms to resolve (e.g., GNSO Council votes to amend charter).

Phase 2 - Policy Implementation

Policy implementation takes place under the auspices of the Consensus Policy Implementation Framework (CPIF). To the extent there are unforeseen issues or if implementation is inconsistent with the intent of policy recommendations, there are existing mechanisms to resolve these issues (e.g., the Implementation Review Team (IRT) may consult with the GNSO Council). Again, this Predictability Framework is not relevant to this phase.

Phase 3 - Operations / Administration of the New gTLD Program (i.e., Program "Launch")

This third phase is only being recommended for the New gTLD Program. The Working Group acknowledges that there is likely to be an IRT for Subsequent Procedures (as noted in Phase 2 above), but there may still be additional unforeseen questions related to the operations of the New gTLD Program even after the IRT has completed its work. For the implementation of Consensus Policy, this phase can be considered analogous to the time after the policy effective date. For the purposes of the New gTLD Program, the effective date may better be considered as the date of program/Applicant Guidebook adoption by the ICANN Board or the opening of the application window.

There are several types of changes that may be required after the New gTLD Program re-launches. Below, we attempt to draw distinctions in the type of changes and the mechanisms

proposed to handle those changes. These distinctions are intended to balance the need to allow for disposition of issues that arise with proper community consultation when warranted versus allowing the ICANN Organization on its own to to effectively manage the program in a reasonable and efficient manner. For example, in terms of impact to applicants and the wider community, the need for new contractual requirements may be vastly different than ICANN needing additional resources to complete an assigned task set forth in the Applicant Guidebook.

Note, while this framework often discusses the change as if it has already been determined, it is also intended to be utilized in the circumstance where an issue arises and potential solutions/changes have not yet been proposed by ICANN or the wider community.

Changes to ICANN Organization internal operations

- Minor Process Update
    - Definition: A change to ICANN's internal processes that does not have a material impact on applicants or other community members. This usually involves no changes to the Applicant Guidebook, but may involve the way in which the ICANN Organization or its third party contractors meet their obligations under the Applicant Guidebook.
    - Examples:
        - A change in the internal process workflow for contracting or pre-delegation testing;
        - Changing back-end accounting systems;
        - The ICANN Organization selecting or changing subcontractor to perform assigned tasks under the Applicant Guidebook.
    - Expected Mitigation Strategy: None needed.

- Revised Processes/Procedures
    - Definition: A change to ICANN's internal processes that have a material effect on applicants or other community members.
    - Examples:
        - A change in internal Service Level Agreements related to contracting or pre-delegation testing that adjusts the overall timeline;
        - Changes made to the workflow for handling change requests (e.g., a procedural change rather than a change in the scope of allowable change requests).
        - Minor delays caused by unforeseen circumstances.
    - Expected Mitigation Strategy: Communicate changes to affected parties before they've been deployed.

- New Processes/Procedures
    - Definition: A new process created that will have a material effect on applicants or other community members.
    - Examples:

        - A new public comment platform is developed.
        - A new process is created to submit objections.
        - A new procedural mechanism to determine the order in which applications are evaluated (eg., changing from Digital Archery to Randomization)
    - Expected Mitigation Strategy: Because the process is new, collaboration with the community (e.g., standing IRT, or similar) is likely needed. Staff will work with the community to develop the solution. Once changes are agreed, communicate changes to affected parties before they've been deployed.

Fundamental, Possibly Policy-level Changes

- Revisions
    - Definition: A potential needed change to implementation that may materially differ from the original intent of the policy and could be considered creation of new policy.
    - Examples: Development of an application ordering mechanism (e.g., digital archery).
    - Expected Mitigation Strategy: Collaboration with the community (e.g., standing IRT, or similar) is essential. Staff will collaborate with the community to consider the issue and agree upon the mechanism by which the solution will be developed. Options could include:
        - The standing IRT may recommend that the change is not significant and that the proposed change is consistent with existing recommendation(s).
        - The standing IRT may recommend that additional consideration is needed. For instance, a request could be sent to the GNSO Council to consider invoking the GNSO Input Process (GIP) or GNSO Guidance Process (GGP).
            - Under extraordinary circumstances, the New gTLD Program could be halted for a communicated amount of time.
- New
    - Definition: A new mechanism, that may be considered to be within the remit of policy development.
    - Examples: Development of a new rights protection mechanism (e.g., URS). The development of a new contract specification (e.g., public interest commitments).
    - Expected Mitigation Strategy: Collaboration with the community (e.g., IRT, or similar) is essential. Staff will collaborate with the community to consider the issue and agree upon the mechanism by which the solution will be developed. Options could include:
        - The standing IRT may recommend that the change does not rise to the level of policy development (e.g., an implementation detail) and/or that the proposed change is consistent with existing recommendation(s).

- The standing IRT may recommend that additional consideration is needed. For instance, a request could be sent to the GNSO Council to consider invoking the GNSO Input Process (GIP), GNSO Guidance Process (GGP), or the **GNSO Expedited PDP Process (EPDP)**.
    - Under extraordinary circumstances, the New gTLD Program could be halted for a communicated amount of time.

Role of Standing Implementation Review Team (IRT) & GNSO policy change process in change control

The Working Group believes that a Standing Implementation Review Team should be constituted after the publication of the Applicant Guidebook to consider changes in the implementation.

The standing IRT can, for example, review any potential change before it is made to determine which of the categories delineated above are relevant to the change. It is also the group that can raise any issues of policy-implementation conflict to the GNSO Council for further discussion and possible uses of, e.g., the Expedited PDP or the GNSO Guidance Process.

Type of change	Standing IRT involved	Notes
Operational - minor	no	
Operational - Revision	yes	It is a standing IRT task to determine when an otherwise operational change has a possible policy implication
Operational - New process	yes	It is a standing IRT task to determine when an otherwise operational change has a possible policy implication
Fundamental / possible policy impact - Revision	yes	
Fundamental / possible policy impact - New	yes	

Role of public comments in the change process

Which categories of change discussed above require a public comment for approval?

Type of change	Require Public Comment?	Notes
Operational- minor	no	
Operational - Revision	no	
Operational - New process	no	
Fundamental / possible policy impact - Revision	Yes, if policy impact indicated	Standing IRT to review proposed change and notify council in case of possible policy impact
Fundamental / possible policy impact - New	Yes	Standing IRT to notify GNSO council of proposed change with report on policy impact, if any, of the change.

e. What specific questions are the PDP WG seeking feedback on?

- Does the concept of a Predictability Framework make sense to address issues raised post-launch?
- How should launch be defined? Ideas considered by the WG include Board adoption of the new Applicant Guidebook or the first day in which applications are accepted.
- A component of the Predictability Framework includes the identification or criteria to determine whether an issue can be handled through existing mechanisms or whether it can/should be handled by a Standing IRT. What are potential criteria that can be applied to help distinguish between types of issues and resolution mechanism?
- Do you have thoughts on the open questions/details related to the Standing IRT panel discussed in section (f) below? Is there a different structure, process, or body (possibly already existing) that might help provide needed predictability in addressing issues raised post-launch?
- How do you see the proposed Predictability Framework interacting with the existing GNSO procedures known as the GNSO Input Process, GNSO Guidance Process, and GNSO Expedited PDP?

f. Deliberations

The Working Group discussed a number of examples where predictability was lacking in the 2012 round. Some examples include the development of implementation elements in the Applicant Guidebook where there was no existing policy recommendations, the changes to the base registry agreement after the launch of the program, the difficulty and confusion with Continued Operations Instrument (COI), the Public Interest Commitments (PICs), name collisions, the introduction on additional CPE guidelines after community applications were submitted, and numerous other examples. The WG acknowledges that some level of uncertainty is unavoidable, even with the absolute best planning and thinking done in advance.

It is with that acknowledgement that the WG generally agreed that establishing a framework, **which allows for the disposition of post program launch issues in a predictable manner**, might be the best way to provide some level of certainty.

Firstly, the WG acknowledges that there are a number of elements that have since been established that will help promote predictability, but also to mitigate disruption from issues that were unaccounted for and must be resolved after program launch. These include:

- Liaisons between the GNSO and other groups, as well as efforts to encourage early engagement and information sharing.
- New GNSO mechanisms that allow the GNSO to provide guidance or initiate an expedited policy development process, even after Final Report adoption by the ICANN Board.
- An open and inclusive policy development process.

However, there is agreement that these mechanisms are potentially insufficient and do not necessarily target the post-launch period. In addition, some remain untested. However, there is some appreciation these new mechanisms are part of the solution, with the new GNSO mechanisms themselves being incorporated into the WG's draft Predictability Framework.

Again, the WG recognizes that while predictability was not sufficient, in hindsight, it was not a surprise, given that the 2012 round was the first of its kind at that level of scale. The WG accepts that some level of uncertainty will exist in the future and as such, discussed how to at least provide predictability in the mechanism by which issues are addressed by the ICANN Organization and the community, where appropriate.

In setting out to develop the draft Predictability Framework, the WG considered what factors should be predictable (e.g., outcomes, timeframes, input from the community, etc.), expectations for what could cause change and the scope of an acceptable level of change, and how fundamental changes are dealt with. This discussion served as the basis for the draft Predictability Framework, which is above in section (d). The framework attempts to look at issues both in terms of the nature of the issue, but also who it impacts and the level of impact. The severity of the issue essentially drives the mitigation activity, with ascending levels of involvement from the community.

The other noteworthy component of the Predictability Framework that bears mentioning is the potential establishment of a new structure - the Standing Implementation Review Team (IRT). This Standing IRT, which is something that the WG sees exclusively as an element of the New gTLD Program, is only to be established after the regular IRT completes its work (i.e., at the time of program launch). The high-level role of the Standing IRT is to help triage issues to determine what mechanisms should be utilized to address the issue. However, the WG acknowledges that if this new mechanism is to be established, a number of details will need to be agreed upon, such as:

- Composition of the Standing IRT
    - Number of members
    - Appointment of members
- Length of term of Standing IRT members
- Role of the Standing IRT member (representative vs independent judgement)
- Conflicts of interest procedures

- Confidentiality obligations
- ICANN Staff role and level of participation
- Decision-making process
- Determining levels of support for proposed solutions (the WG notes that the Registry Agreement provides mechanisms to assess support from impacted parties)
- Appointment of outside experts
- Public consultations
- Transparency, accountability
- Duty of the ICANN Organization to follow recommendations of the Standing IRT

Finally, the WG put forth a collection of "use cases" to test the Predictability Framework. These included the ones below.

- ICANN Org changing from custom application interface to Salesforce.com
- Change from digital archery to priority draw
- Identification of name collision issue and introduction of subsequent mitigation framework
- Substantive changes to the base registry agreement (e,g., additional specifications, public interest commitments, etc.)

Some in the WG felt that that recommendations of the Policy and Implementation Working Group already provided mechanisms to resolve issues that arise after the program has launched. Indeed, the Predictability Framework seeks to place these new GNSO mechanisms in context, providing scenarios where they may be needed; the framework is not intended to supplant these mechanisms in any way. Discussions on these "use cases" and particularly around the Standing IRT made it readily apparent that a number of details were are needed. The WG hopes that public comment and additional discussion will help provide that detail.

See section (d) for the proposed framework.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

The existing GNSO Operating Procedures contain procedures designed to address issues arising and changes needed after the policy development phase has concluded. The Predictability Framework integrates these GNSO processes into its procedures:

- Annex III: GNSO Input Process Manual[13]
- Annex IV: Expedited GNSO Policy Development Process Manual[14]
- Annex V: GNSO Guidance Process Manual[15]

[13] See GNSO Input Process here: https://gnso.icann.org/en/council/annex-3-input-process-manual-30jan18-en.pdf
[14] See Expedited GNSO PDP here: https://gnso.icann.org/en/council/annex-4-epdp-manual-30jan18-en.pdf

1.2.2.1 Community Engagement

a. What is the relevant policy and/or implementation guidance (if any)?

No relevant policy or implementation guidance for this topic.

b. How was it implemented in the 2012 round of the New gTLD Program?

The Working Group looked at this topic from the perspective of the impact that community engagement during the developmental stages (e.g., policy development and implementation), or the lack thereof, may have on the program once it launches. As such, this topic is not necessarily one of implementation during the 2012 round.

c. What are the preliminary recommendations and/or implementation guidelines?

None being considered at this time.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

None proposed at this time.

f. Deliberations

The community will seek to develop clear, implementable recommendations in order to result in a program where there is minimal ambiguity or change needed. An integral part of that effort is to ensure that the process is well supported by community engagement, early and often, in order to develop recommendations that have broad community support.

There are multiple mechanisms that support community engagement, all of which have been leveraged by the New gTLD Subsequent Procedures PDP WG, although some of these mechanisms are not specific to this PDP effort. These mechanisms include:

[15] See Guidance Process here: https://gnso.icann.org/en/council/annex-5-ggp-manual-30jan18-en.pdf

- As mandated by the GNSO PDP Manual, outreach to the Supporting Organizations (SOs), Advisory Committees (ACs), Stakeholder Groups (SGs), and Constituencies (Cs) to seek input.
- Utilizing liaisons between community organizations (e.g., between the GNSO and the GAC) and between other GNSO PDP WGs and related efforts (e.g., Competition, Consumer Choice & Consumer Trust Review Team).
- Supporting early engagement with the Governmental Advisory Committee (GAC).
- Providing newsletters to keep the community informed of the efforts of the PDP WG.
- Holding community-focused sessions at ICANN meetings to encourage wider input on key topics within the Working Group's Charter.

In regards to the last point, the leadership of the WG and its Work Tracks have sought to directly engage with the ALAC and the GAC on topics of particular interest, such as Applicant Support and community-based applications. This outreach is seen as beneficial, both because it allows for these communities to be informed, but to also solicit input from voices that may not be able to actively participate in the PDP process.

The WG has also solicited community feedback via via targeted requests. The WG sought feedback on its overarching issues in June of 2016 via Community Comment 1[16] and its remaining charter topics in March of 2017 via Community Comment 2[17] [18].

The WG appreciates that new mechanisms exist to engage with the community and as noted, has actively made use of them. However, it does not anticipate the need to develop recommendations specific to New gTLDs on this subject.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

1.2.2.2 Clarity of Application Process

a. What is the relevant policy and/or implementation guidance (if any)?

Recommendation 1: "ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD

[16] See Community Comment 1 here: https://community.icann.org/x/3B6OAw
[17] See public comment proceeding for Community Comment 2 here: https://www.icann.org/public-comments/cc2-new-gtld-subsequent-procedures-2017-03-22-en
[18] See Community Comment 2 additional detail here: https://community.icann.org/x/Gq7DAw

registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process."

Recommendation 9 states, "There must be a clear and pre-published application process using objective and measurable criteria."

Implementation Guideline A: "The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains."

b. How was it implemented in the 2012 round of the New gTLD Program?

The AGB, through the implementation of the GNSO New gTLD policy, sought to provide the clarity and certainty as called for in the recommendations. The themes of predictability and the AGB are explained in further detail in sections 4.2.2 on Predictability and 4.2.5 in the Applicant Guidebook, respectively.

c. What are the preliminary recommendations and/or implementation guidelines?

When substantive/disruptive changes to the Applicant Guidebook or application processing are necessary and made through the Predictability Framework discussed above, there should be a mechanism that allows impacted applicants the opportunity to either (a) request an appropriate refund or (b) be tracked into a parallel process that deals with the discrete issues directly without impacting the rest of the program.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

1. To what extent is the ICANN organization designed to scale to accommodate application volume?

f. Deliberations

Work Track (WT) 1 was responsible for considering this topic, though it is now being included in the context of the other topics related to predictability in the program. The WT identified a number of specific challenges that detracted from the clarity of the application process and in some cases, suggested elements to mitigate that lack of clarity. Some of those issues and mitigations are below, though in some cases, the topics are within the remit of other topics:

- Seek to ensure that the Applicant Guidebook,associated processes (e.g., application submission, application comment, objections, etc.), and evaluation processes and

policies (including and supporting materials used by evaluators) are finalized before application period opens.

- The Applicant Guidebook did not anticipate implementation challenges well and resulted in delayed timelines. Implementation processes from 2012 should be consolidated and made easily accessible via an Applicant Guidebook type mechanism or other medium which is easily searchable and easily printed.
- To the extent changes to the Application Guidebook and/or application process are needed, the frequency and impact should be minimized. For changes made to the program after applications are submitted, there must be a mechanism that allows impacted applicants the chance to either request an appropriate refund or be tracked into a parallel process that deals with the issues directly without impacting the rest of the program.
- Enable multiple applications in one account and streamline answer submissions
    - Create a mechanism for an applicant or Registry Service Provider to answer questions once as opposed to answering the same question for every application it supports. Or in other words, provide a means to propagate an identical response over multiple applications being supported.
- Without revealing any specific flaw or applicant, seek to provide more transparency around the clarifying questions and responses.
- Gather a list of clarifying questions for publication to allow applicants to understand the types of questions they could receive. Allow for the ability, within the online application, to create and assign new users to address particular questions, while recording all changes for tracking purposes.
- A lack of invoices was a particular challenge for applicants to be able to navigate the financial approval processes within their respective organizations.
- Application Prioritization was viewed as largely irrelevant and could be improved - it may be beneficial to have ICANN looking at ways they could improve efficiencies.
- The process to obtain a Continued Operations Instrument (COI) was particularly challenging and confusing for applicants and the ICANN Organization alike.

As noted, many of these topics are specific to other topics (e.g., the overall Predictability topic, Applicant Guidebook, Systems, Applicant Reviews, Application Fees, Application Queuing, etc.). However, they demonstrate specific cases where the application process was unclear or unpredictable.

The WT generally agreed that the Applicant Guidebook, along with all of the associated processes and policies (including the Registry Agreement and other supporting documentation) must be finalized before the application period commences. Any changes to the Applicant Guidebook or application process should be minimized and to the extent changes are needed, be subject to resolution via the Predictability Framework in section [1.2.2]. However, when substantive/disruptive changes are necessary, there should be a mechanism that allows impacted applicants the chance to either request an appropriate refund or be tracked into a parallel process that deals with the discrete issues directly without impacting the rest of the program. The Work Track did not come to agreement on what an “appropriate refund” means in this context, though some have suggested that may include a full refund.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

1.2.3 Applications Assessed in Rounds (Application Submission Periods)

a. What is the relevant policy and/or implementation guidance (if any)?

Recommendation 13: "Applications must initially be assessed in rounds until the scale of demand is clear."

b. How was it implemented in the 2012 round of the New gTLD Program?

The New gTLD Program was operated with a fixed application submission period after which no additional applications were accepted.

c. What are the preliminary recommendations and/or implementation guidelines?

The Working Group recommends that the next introduction of new gTLDs shall be in the form of a "round." With respect to subsequent introductions of the new gTLDs, although the Working Group does not have any consensus on a specific proposal, it does generally believe that it should be known prior to the launch of the next round either (a) the date in which the next introduction of new gTLDs will take place or (b) the specific set of criteria and/or events that must occur prior to the opening up of the subsequent process. For the purposes of providing an example, prior to the launch of the next round of new gTLDs, ICANN could state something like, "The subsequent introduction of new gTLDs after this round will occur on January 1, 2023 or nine months following the date in which 50% of the applications from the last round have completed Initial Evaluation."

d. What are the options under consideration, along with the associated benefits / drawbacks?

1. Conduct one additional "round" followed by an undefined review period to determine how future applications for new gTLDs should be accepted.

2. Conduct two or three additional application "rounds" separated by predictable periods for the purpose of major "course corrections", to determine the permanent process for the acceptance of new gTLDs in the future. For illustration purposes only, this could include commencing an application window in Q1 of Year 1, a second application window in Q1 of Year 2, and a final application window in Q1 of Year 3 followed by a lengthy gap to determine the permanent process moving forward after Year 3.

3. Conduct all future new gTLD procedures in "rounds" separated by predictable periods for the purpose of course corrections indefinitely. Policy Development Processes would then be required to make substantial, policy-driven changes to the program and would

then only apply to the opening of the application round following the date in which the PDP recommendations were adopted by the ICANN Board.

4. Conduct one additional "round" followed by the permanent opening up of a First-come, First-served process of new gTLD applications.

5. Commence two or three additional application "rounds" separated by predictable periods for the purpose of major course corrections, followed shortly thereafter by the permanent opening up of a First-come, First-served process of accepting new gTLD applications.

6. Immediately commence a permanent First-come, First-served process of accepting new gTLD Applications.

Although the WG has not achieved consensus on moving forward with any of these models, it did generally support not moving forward right away with Model 6 because of the long gap between the end of the 2012 New gTLD round and the start of the next application window (a gap that is so far nearly six years). During this gap, it is believed that there is or will likely be pent up demand for new gTLD applications in the next application window. Moving right to a First-come, First served model, even if that is the one ultimately supported by the community, would likely put a strain on the application system, give a preference to "insiders" and to those that happen to get their applications in first.

In addition, most Working Group members were also not comfortable with Option 1 where the next round would be followed by an undetermined period of review as was the case after the 2012 round. More than six years have already passed since applications were submitted and we are still not in a position to definitively announce with certainty when the next round will occur.

Aside from not moving immediately to Model 6 above, the benefits and drawbacks of each of the models is discussed below. The WG seeks public comment on any of the models identified above to select a model moving forward. The model ultimately recommended by the Working Group may be one of the above approaches, a hybrid approach, or even a new approach presented during the public comment period.

1. Model 1: Conduct one additional "round" followed by an undefined review period to determine how future applications for new gTLDs should be accepted.

Model 1 essentially represents the most conservative approach to the introduction of new gTLDs and is most similar to the current environment. Although there may be an implied commitment to introduce additional new gTLDs after this next round, as stated by the Intellectual Property Constituency in response to CC1, it believes that this may "have the potential to create false

demand as they can create fear that a future round may not come promptly in the future (such fear is duly based on the actual history of ICANN's various new gTLD efforts.)"[19]

Pros	Cons
Conservative approach that allows for course correction if necessary.	Does not provide as much predictability to potential applicants about when they will be able to apply (e.g., takes longer to get to a steady state).
Familiar process that allows for a gradual change to a new process.	May create artificial scarcity and artificial demand.
Provides a structured method for managing potential pent up demand.	Increases time to market for TLDs.
Allows potential "outsider" applicants time to familiarize themselves with the program requirements and benefits and prepare application materials.	Time barriers are artificial.
May provide simpler and potentially fairer structure for managing and resolving potential contention.	Rounds are not an optimal process for solving competing interests. Auctions resolve them, as do intellectual property rules.
Rounds "tee up" the applications for auctions better than a continuously open application window.	With rounds, when more than one applicant applies for a particular string, other interested parties may be uncertain of how to respond without knowing which applicant will prevail and may end up wasting resources objecting or tracking an application that was unlikely to prevail in the contention process. Rounds cause the need for auctions by artificially creating contentions.
Global rules and board actions can address all new applicants prior to a round. So rounds allow for consistency in rules.	
Rounds allow for subsequent reviews and a cycle of improvement.	

19 https://community.icann.org/pages/viewpage.action?pageId=59645660&preview=/59645660/63155733/CC1%20Review%20Tool%20SubPro%20PDP%20WG%2022%20Dec%202016.xlsx.

2. Model 2: Conduct two or three additional application "rounds" separated by predictable periods for the purpose of major "course corrections", to determine the permanent process for the acceptance of new gTLDs in the future.

The Pros for Model 2 are relatively aligned with Model 1, although it mitigates several timing-related Cons identified for Model 1.

3. Model 3: Conduct all future new gTLD procedures in "rounds" separated by predictable periods for the purpose of course corrections indefinitely. Policy Development Processes would then be required to make substantial, policy-driven changes to the program and would then only apply to the opening of the application round following the date in which the PDP recommendations were adopted by the ICANN Board.

The WG has talked about this model, but by a different name, Steady State of Rounds. In terms of mechanics, it has talked about annual/ biannual windows, or something similar (e.g., three months of application acceptance, remaining nine months devoted to completing evaluation, objections, contention resolution, etc., and then repeating on a regular cycle. These time frames are for illustrative purposes and would be derived from operational realities).

Pros	Cons
Provides a regular, predictable opportunity for applicants to apply for new gTLDs.	Applicants who have a business case and wish to apply for a New gTLD immediately will have to wait for the next cycle.
Provides a regular, predictable opportunity to review applications and provide objections.	The concept of rounds is artificial and unresponsive to market demand.
Potentially puts less strain on ICANN systems compared to a first come, first served model.	Rounds/windows may face unanticipated delays, even if the intention is to have a regular cycle.
Batching encourages innovation by leveling the playing field.	Rounds/windows result in contention, which is considered as a negative outcome by some.
Could relieve pent up demand to some degree.	Dampens first mover advantage and makes developing a unique idea more expensive.
	Would make it more difficult to course correct if any major problems are identified.
	Could initially have an operational and/or financial impact on ICANN by requiring the organization to scale in response to demand.

4. Model 4: Conduct one additional "round" followed by the permanent opening up of a First-come, First-served process of new gTLD applications.

By conducting an additional "round," some of the Pros are maintained (e.g., conservative approach, allows for course correction, allows for outsiders to the program to have more time to prepare, etc.) but allows the program to set a course and transition to one of the steady states discussed by the WG. However, transitioning to this steady state based on an arbitrary number of rounds (only one in this proposed option), may increase risk than basing the transition on "scale of demand," as indicated in the GNSO's 2007 recommendations.

First-come, First-served:

Pros	Cons
Offers the greatest degree of flexibility to first-mover applicants.	May advantage ICANN insiders and disadvantage applicants that are less aware of New gTLDs.
Responsive to applicants as their business needs develop and change.	May disadvantage certain applicants that need time to prepare applications, such as community applicants seeking to build community support.
Does not create artificial pent-up demand some have associated with the rounds model.	Makes it more difficult to monitor applications and raise objections as applications may be submitted at any time. A string may sometimes be only one possible combination of meanings which may have significance to a certain people or community.
Potentially reduces complex and resource intensive contention resolution processes.	May cause a strain on ICANN systems.
Potentially reduces or eliminates "land rush" mentality and behavior among applicants applying for TLDs.	May result in hastily prepared applications.
Creates incentives to develop creative new ideas for applicants that may not be able to win at auction against applicants with more financial means	May reduce competition in the marketplace, as rounds allow multiple applicants to compete through contention resolution processes. TLDs are too valuable and unique to rely on FCFS allocation.
	May encourage speculation in underdeveloped TLDs.
	May result in a form of TLD warehousing by certain parties.

5. Model 5: Commence two or three additional application "rounds" separated by predictable periods for the purpose of major course corrections, followed shortly thereafter by the permanent opening up of a First-come, First-served process of accepting new gTLD applications.

Model 5 is quite similar to Model 4, though it can be considered more conservative, as it allows for a longer period to continue with a model similar to the current implementation of rounds.

6. Model 6: Immediately commence a permanent First-come, First-served process of accepting new gTLD Applications.

Model 6 would be an immediate and significant departure from the current implementation of rounds. Pros and cons of First-come, First-served are listed under Model 4.

e. What specific questions are the PDP WG seeking feedback on?

1. Of the models described above, which model do you believe should be employed, if any? Please explain.
2. For the model you have selected, what are some mechanisms that can be employed to mitigate any of the listed (or unlisted) downsides.
3. Is there a way to assess the demand for new gTLDs to help us determine whether the subsequent new gTLD process should be a "round" or a "First-come First-served process? (eg.do we introduce an Expressions of Interest process?)
4. If we were to have a process where a date certain were announced for the next subsequent procedure, what would be the threshold for the community to override that date certain (i.e., Is a different process needed if the number of applications exceeds a certain threshold in a given period of time?)

f. Deliberations

In 2008, when the GNSO recommended that "Applications be initially assessed in rounds until the scale of demand is clear," there were several assumptions that were made. First, it was assumed that a first round would be commenced within a year of the GNSO's recommendations, a second round would follow shortly after, and potentially other rounds after that.

What became clear, however, during the implementation of the GNSO policy recommendations, was that a number of issues needed to be resolved even prior to the commencement of what

became the 2012 Round. During the four-year implementation discussions, extensive time was spent on tackling a number of complex issues including applicant support, community priority evaluations, registry-registrar separation / vertical integration, objection procedures, rights protection mechanisms, public comment periods, GAC early warnings and the role of GAC advice, etc. In addition, in 2009, ICANN and the Department of Commerce agreed to an extension of their then-Memorandum of Understanding called the Affirmation of Commitments, which among other things called on ICANN to:

> *"ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation. If and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN will organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion".*

The Affirmation of Commitments also called for ongoing reviews every few years to ensure that the introduction of new gTLDs was promoting competition, consumer protection, choice and trust. The requirement to conduct these reviews was integrated into the ICANN Bylaws in 2009 as part of the transition of the IANA functions.

In addition, as part of its acceptance of moving forward with 2012 Round, the Governmental Advisory Committee called upon ICANN to review the effects of the new gTLD Program on the operations of the root zone system after the first application round. While recognizing that it is the policy of ICANN that there be subsequent application rounds, and that a systemized manner of applying for gTLDs be developed in the long term, ICANN committed to "defer the delegations in a second application round until it is determined that the delegations resulting from the first round did not jeopardize root zone system security or stability."

ICANN also stated in the 2012 Applicant Guidebook that its goal was to launch subsequent gTLD application rounds as quickly as possible and that the "exact timing will be based on experiences gained and changes required after this round is completed. The goal is for the next application round to begin within one year of the close of the application submission period for the initial round."

Given the number of applications that were received in the 2012 round of the New gTLD Program, the delay of a number of the evaluation and objection processes, the receipt of GAC Advice, and a host of other reasons, reviews of the 2012 Round did not commence in earnest until 2015/2016 and are still underway. Despite the final Applicant Guidebook calling for the next round to commence in June 2013 (one year after the extended deadline for close of the application submission period), as of the writing of this report, we are still not yet in a position to announce the date of the opening of the next round.

This report does not aim to lay blame on anyone for the extensive delay of subsequent application windows. However, there is concern that introducing new gTLDs through a series of application submission periods, separated by a series of reviews and revisions to policies and implementation, has likely had a negative impact on the new gTLD program, such as affecting demand and decision-making, introducing substantial delays, and causing latency to market.

Though the Subsequent Procedures Working Group is still waiting for the CCT-RT Final Report on the impacts of the 2012 New gTLD Round on Consumer Choice, Competition, and Trust, there appears to be agreement within the WG and from the comments received by the WG from Community Comment 1 that no changes be made to the initial recommendation that there should be an ongoing mechanism for the introduction of additional new gTLDs.

In addition, the current thinking of the WG is that:

- There must be clarity and predictability about how and when applications can be applied for in the future;
- There must not be indefinite gaps between the processing of applications to the acceptance of additional new gTLD applications;
- The choice of application submission methodology must address the potential impact on other areas of the program (e.g., objections, string contention, etc.);
- The application submission mechanism(s) should not negatively impact the stability, security, resilience and quality of the new gTLD program; and,
- The application submission mechanism(s) should not negatively impact operational effectiveness and the fiscal feasibility of ICANN or the new gTLD program.

The WG considered a number of different models on how new gTLD applications could be processed moving forward. Please see section (d) above to review the options and their respective pros/cons.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

- The CCT-RT Final Report will serve as a future input to this topic, that should arrive prior to the conclusion of this PDP WG.
- Root-zone scaling (as also discussed in section [1.7.6] on Security and Stability)

1.2.4 Different TLD Types

a. What is the relevant policy and/or implementation guidance (if any)?

No relevant policy or implementation guidance.

b. How was it implemented in the 2012 round of the New gTLD Program?

The program, at the time of launch, recognized only a certain number of categories of gTLDs. While some were formally categorized as a particular type (i.e., standard vs. community-based gTLDs) in the Applicant Guidebook, the Applicant Guidebook and/or the Base Registry Agreement implicitly contained additional TLD types either by adding additional evaluation criteria (as was the case for geographic names) or by having different contractual provisions apply (Governmental Applicants). Subsequent to the launch of the program, and after extensive community work, a .Brand TLD type of registry was created and memorialized in Specification 13 of the Registry Agreement.

c. What are the preliminary recommendations and/or implementation guidelines?

We recommend that each of the categories recognized by the 2012 Applicant Guidebook, both explicitly and implicitly, continue to be recognized on a going forward basis. These include standard TLDs, Community-based TLDs, TLDs for which a Governmental Entity serves as the Registry Operator, and Geographic TLDs. In addition, the Working Group also recognizes that Specification 13 .Brand TLDs should also be formally established as a category. The ramifications of being designated a specific category are addressed throughout this Initial Report as applicable.

NOTE: As noted in the Preamble, this Initial Report addresses the issues reviewed and analyzed by the Overall Working Group as well as Work Tracks 1 through 4. Other than recognizing that Geographic TLDs should continue to remain a category of TLDs, many of the other aspects regarding the implications of being categorized as a separate type of TLD are being addressed in a separate Work Track 5. Preliminary recommendations of that Working Group will be contained in a separate Initial Report to be published later this year.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

- The WG did not reach agreement on adding any additional categories of gTLDs. What would be the benefit of adding a further category/further categories? Should additional categories of TLDs be established. Why or why not?
- To the extent that you believe additional categories should be created, how would applications for those TLDs be differently from a standard TLD throughout the

application process, evaluation process, string contention process, contracting, post-delegation, etc.

- If you have recommended additional categories of TLDs, what would be the eligibility requirements for those categories, how would those be enforced and what would be the ramifications of a TLD that qualified for a newly created category failing to continue to meet those qualifications?

f. Deliberations

Categories were considered in the original policy development process in 2007, but were deemed to be too challenging to identify, differentiate, and implement. Accordingly, there were no existing policy recommendations in regards to categories of gTLDs.

The 2012 round of the New gTLD Program provides real world examples of possible categories, such as the standard and community-based applications in the Applicant Guidebook, but also the development of the .Brand category. The development of the .Brand category and the corresponding Specification 13 to the Registry Agreement, provides evidence that different requirements may be necessary based on the usage and purpose of TLDs. However, it also serves as evidence of the difficulty in establishing TLD categories and the associated procedural and contractual differences.

The WG notes that categorization or differentiation of gTLDs will likely impact other one or more aspects of the New gTLD Program (e.g., application requirements, evaluation, base Registry Agreement, post-delegation activities, etc.). As such, the creation of new categories should not be taken lightly and must account for any differences through the entirety of the application, evaluation and delegation processes.The WG stressed that the development of a TLD category, or lack thereof, should not be seen as a validation or dismissal of the genuine differences that may exist in types of strings and/or registry business plan. Nor is the failure to designate a new TLD category intended to limit new business models that are expected to emerge. Rather than looking at the impact that a TLD type may have on the process, the WG considered that it may be useful to look in the opposite direction; **in what circumstances might it require that the eligibility requirements, the evaluation process or standards, the registry agreement, or other factors be different?**

The WG began its deliberations by considering the pros and cons of establishing additional categories beyond the ones coming from the 2012 round.

Pros	Cons
Some TLDs have very different operating models. Category-based approach may better accommodate these and may allow applicants to more easily, effectively, and economically pursue their mission.	It is time consuming to develop policy using an approach with many categories.
Lack of categories creates a complicated	It is complex and challenging to implement

patchwork of exemptions and other manipulations to get around unnecessary limitations. Categories may provide more precision and structure for applicants.	categories cleanly: complex and difficult application and evaluation process; expensive, complicated contractual compliance environment.
Implementation can be improved in the future procedures, building on lessons learned from previous rounds (for example, with CPE).	Categories from the 2012 round were problematic. Variances in CPE results (community) and the difficulty with .AFRICA (geographic) demonstrate problems.
There is a public interest benefit to leveraging categories and evaluation panels to pick the most appropriate registry provider, rather than resolving through auction.	Avoiding categories and creating a fair flexible alternative model using an exemption process to certain contractual conditions allows adaptation to new business models.
Could allow for different application processes for different categories (for example, first come first serve for brands and rounds for other applications or a fast-track for certain types).	Reducing requirements for some applicants may disadvantage other applicants.
De facto categories already exist through different contract types. It is better to make these distinctions explicit.	Categories may be subject to gaming, for example a .Brand could permit others to use the TLD or a non-profit could be set up for the purposes of winning priority.
May promote diversity in the TLD space by granting priority to certain types of applicants.	In the case of contention, by prioritizing certain types of applicants over "first movers", creativity may be discouraged.
Could support a differentiated cost structure, which some community members favor.	

After considering the pros and cons of the designation of new gTLDs into categories, the WG turned its attention to considering what types of categories may be needed. The potential categories identified were:

- Open registries (Standard) - 2012 category
- Community registry - 2012 category
- Geographic - not a category from 2012 per se, as all applications went through the Geographic Names evaluation, but names determined to be geographic had different requirements.
- Brand (Specification 13) - established subsequent to the 2012 program launch
- Intergovernmental Organizations (IGO)
- Non Governmental Organization (INGO)
- Validated registry - Restricted Registries with qualification criteria that must be verified
- Not-for-profit or non-profit gTLDs
- Highly regulated / Sensitive TLDs
- Exclusive Use Registries? (Keyword Registry limited to one registrant & affiliates)
- Closed Generics
- Open TLD with minor domain charter registration challenges - eg: .name and .biz (Note: perhaps this could be rephrased as Open TLD with targeted audience (e.g., .name, .biz,

etc.)
- Governmental Organization Applicants
- Applicant support applicants

As can be seen from the list, a number of the potential categories were determined to be specific to the string type and others were about the type of applicant. The WG was asked to provide their specific reasoning for why these potential categories may require some differentiated treatment. It then sought to identify the possible attributes of the types identified, to try and determine if there were any commonalities between them[20]. The WG also realized that the types may not be mutually exclusive.

Responses to Community Comment 1 provided varying levels of support for (a) having categories and (b) the types of categories. There was a good degree of support that the list of potential categories provided a solid basis for discussions, but no case was made specifically for the establishment of any of the additional categories. There was some support for application windows being open to only specific categories (e.g., Brands), though it was noted that this may promote manipulation by potential applicants who will be incentivized to fit their TLD applications into any categories for which preferences are given. There was concern with the lengthy list of different categories listed in the CC1 questionnaire, with some noting that different legal forms may not warrant a distinct category of TLDs. It was also noted that a TLD may fall into multiple categories.

Ultimately, the WG also had difficulty in establishing the case for developing additional categories. However, there is generally support for maintaining the existing categories in the AGB from the 2012 round, including .Brands as an additional category.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

- Work Track 5 on geographic names at the top-level

1.2.5 Application Submission Limits

a. What is the relevant policy and/or implementation guidance (if any)?

No existing policy recommendations.

b. How was it implemented in the 2012 round of the New gTLD Program?

[20] See TLD Types attributes worksheet here: https://docs.google.com/spreadsheets/d/1mA_hTUhLhJSsfcmoQwREtUqxykZ5KfJffzJAAhEvNlA/edit#gid=1954862108

No limits were placed on the number of applications in total or from any particular entity.

c. What are the preliminary recommendations and/or implementation guidelines?

Although some members of Working Group supported the notion of putting limits into place, ultimately it concluded that there were no effective, fair and/or feasible mechanisms to enforce such limits. It therefore concluded that no limits should be imposed on either the number of applications in total or the number of applications from any particular entity.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

None being proposed at this time.

f. Deliberations

The WG considered limits both on the overall number of applications as well as from a single entity. Deliberations focused on the pros and cons of placing limits and despite some positive impacts that could be realized, the WG identified far more cons and perhaps more importantly, came to the general agreement that implementing and enforcing any such limits was likely to be extremely challenging.

Limiting the overall number of applications

The pros and cons identified by WG members include:

Pros	Cons
Assuming subsequent procedures takes place via rounds, the evaluation process and path to delegation may be quicker.	Any limit seems anticompetitive and seem like it could stifle competition.
May reduce the number of applicants competing for a scarce resource, which might allow applicants from underserved regions to better compete.	Limits in the number of applications, or time to apply may favor those who are closely following the process, as opposed to others who may require outreach.
May help to reduce application fees due to the reduced number of applications and the	Can be gamed / may not be able to enforced.

associated volume in processing costs, along with potential fewer number of applications in contention.	

Limiting applications from a single entity

The pros and cons identified include:

Pros	Cons
Reducing the volume of applications may allow other applications to move through the review process more quickly.	Can be gamed, e.g., one can create several applicants/shelf companies to get around the limits.
Not allowing unlimited applications to an individual organization/per applicant potentially avoids monopolies.	Any limit seems anticompetitive and seems like it could stifle competition.
Reduced volume may decrease the amount of resources used in the application review process and help keep application fees down.	Adds complexity and uncertainty to the process.
May reduce the number of applicants competing for a scarce resource, which might allow applicants from underserved regions to better compete.	More cost effective to apply for multiple applications - may increase costs for applicants
	Multiple applications generally creates economies of scale for the eventual registry operators. Limits may impede economies of scale.

In summarizing the pros and cons, while the WG believes that limiting the number of applications that an entity can submit could allow for a more even playing field, possibly allowing for a wider allocation of a scarce resource, the WG also believes that limiting the number of applications in total or from an entity may be considered anti-competitive. The WG also notes that applying an application limit from an entity is likely to be extremely difficult to implement and enforce. Applying any sort of limit may also have unforeseen consequences.

In seeking community input via Community Comment 1, the sentiment of respondents was generally in line with the WG's preliminary conclusions.

While there is general agreement within the WG that implementing limits of any sort is difficult to implement, the WG has not sought to assess whether there is general agreement on the value of establishing limits, though there certainly are some members of the WG that would support a limit on applications from an entity. The WG reviewed statistics on the 10 applicants (or family of applicants) that submitted the most applications in 2012 and did not draw any conclusions that impacted its outcomes.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

1.2.6 Accreditation Programs (Registry Service Provider Pre-Approval)

a. What is the relevant policy and/or implementation guidance (if any)?

Increasing competition within the registry service provider marketplace was identified in the introduction of new TLDs in the 2007 Final Report.

Principle C states, "The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition, the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service provider diversity."

b. How was it implemented in the 2012 round of the New gTLD Program?

Applicants were free to provide their own registry services or to rely on a Registry Service Provider (RSP). In the 2012 New gTLD Round, a substantial number of applicants either employed the use of an existing back-end provider or entered into arrangements with newly created back-end registry service providers to both provide the responses to the technical requirements questions defined in the AGB and subsequently perform the technical operations of the registry.

Subcontracting registry services to a third party back-end service provider (RSP) was not new to the 2012 round. In 2003, Public Interest Registry subcontracted all technical operations to Afilias, the then-registry operator and RSP for the .info TLD. In 2005, the .travel TLD was subcontracted out to Neustar, the Registry Operator and RSP for the .biz TLD, .mobi and .asia to Afilias, .tel to CORE and .jobs to VeriSign.

Thus, it was anticipated that the 2012 New gTLD Program would not only result in existing RSPs providing services to Registry Operators, but also that new RSPs would emerge globally

and thereby likely increase competition within the back end registry services market. New RSPs to the New gTLD space, include, but are not limited to, Nominet, Rightside, AusRegistry International, CentralNic, AFNIC, CNNIC, ISC, GMO Registry, KSRegistry, JPRS, ZA Central Registry and others joined existing RSPs, such as Neustar, Afilias, Verisign and CORE. In total, there were approximately 30 RSPs that provided back end registry services for multiple TLDs. The top five RSPs accounted for over 70% of the 2012 New gTLD Applications.

c. What are the preliminary recommendations and/or implementation guidelines?

1. The Work Track recommends using the term Pre-Approval as opposed to "Accreditation." To a number of Work Track members, the term "accreditation" implies having a contract in place with ICANN and other items for which there is no agreement within the Work Track. "Pre-Approval" on the other hand does not have those same implications, but merely connotes applying the same standards, evaluation criteria and testing mechanisms (if any) at a point in time which is earlier than going through the standard process.
2. The Work Track generally agrees that there should be a Registry Service Provider (RSP) pre-approval process, which must be in place at least three (3) months prior to the opening of the application period.
3. The RSP pre-approval process shall have technical requirements equal to the Technical and Operational Capabilities evaluation (as established in section [1.7.7] on Applicant Reviews: Technical/Operational, Financial and Registry Services), but will also consider the RSP's overall breadth of registry operator support.
4. The RSP Pre-Approval process should be a voluntary program and the existence of the process will not preclude an applicant from providing its own registry services or providing registry services to other New gTLD Registry Operators.
5. The RSP Pre-Approval process should be funded by those seeking Pre-Approval on a cost-recovery basis.

d. What are the options under consideration, along with the associated benefits / drawbacks?

Please see section (f) on Deliberations.

e. What specific questions are the PDP WG seeking feedback on?

1. Should the Pre-Approval process take into consideration the number and type of TLDs that an RSP intends to support? Why or why not?
2. If so, how would the process take that into consideration? What if the number of applications submitted during the TLD application round exceed the number of TLDs for which the RSP indicated it could support?
3. Should RSPs that are Pre-approved be required to be periodically reassessed? If so, how would such a process work and how often should such a reassessment be conducted.

4. If RSPs that go through the Pre-Approval process are required to go through a reassessment process, should RSPs/applicants that do not take part in the Pre-Approval Program (e.g., providing registry services for its own registry or other registries) also be required to go through the reassessment process? Do you feel it will lead to inconsistent treatment of RSPs otherwise?
5. Existing RSPs: Should existing RSPs be automatically deemed "Pre-Approved"? Why or why not? If not automatically Pre-Approved, should existing RSPs have a different process when seeking to become Pre-Approved? If so, what would the different process be? Are there any exceptions to the above? For example, should a history of failing to meet certain Service Levels be considered when seeking Pre-Approval? Please explain.
6. What is the appropriate amount of time to allow for the submission of an application in order for the new RSP to be reviewed, so it can be added to the list of the approved registrars? What is an appropriate amount of time for that review to conclude?

f. Deliberations

The New gTLD Program evaluation process was designed to review each new gTLD application on a stand-alone basis. It was not designed to evaluate RSPs, despite the fact that, in many cases, it was the same RSP providing the exact same services to multiple TLD applications. For example, the fact that the Registry Operator Donuts submitted several hundred new gTLD applications using the same RSP (Demand Media - which subsequently became Rightside), Google submitted 101 applications using itself as an RSP, or Neustar supported over 350 TLD applications did not mean that the technical services from each would be evaluated only once or in a holistic fashion. In fact, the same services for the same RSPs were evaluated for each and every TLD application, in some cases resulting in different technical scores despite providing the exact same services. Thus, the process did not take advantage of efficiencies gained from applicants' use of a pool of back-end service providers, either from an applicant's perspective or operationally from ICANN's perspective.

The concept of a pre-approval program was discussed in a Discussion Group (DG) set up by the Registries Stakeholder Group (RySG) and it received significant support from within the DG, which cited a number of issues and reasons for its usefulness. The RySG sent a summary document[21] [22]to the Working Group/Work Track for its consideration, which discussed an RSP accreditation program more fully than is likely within scope for this PDP to consider (e.g., gTLD migration post-delegation).

The Work Track saw several reasons for developing a RSP pre-approval process, mainly focused on the potential gains in efficiency, security and stability, and consistency in evaluations.

[21] See summary document here: https://community.icann.org/download/attachments/74587868/RySG%20RSP%20DG%20Summary%20Document%209%20February%202018.pdf?version=1&modificationDate=1518189401434&api=v2

[22] See overview of work undertaken by the Discussion Group here: https://community.icann.org/download/attachments/74587868/Letter%20from%20RySG%20RSP%20DG%20to%20SubPro%20WG%20Jan%202018.pdf?version=1&modificationDate=1516726492176&api=v2

As noted above, since applications were treated individually, ICANN evaluators presumably evaluated responses individually for each application, leading to unnecessary work (and related costs) and possibly even increasing the likelihood of errors or inconsistencies. Making the process simpler and more streamlined is expected to reduce application costs through a pre-approval process, without compromising the goals of the program, such as diversity, competition, and security of the DNS.

There are several principles and recommendations that identify the importance of ensuring the stability and security of the DNS when expanding the DNS, including, including Principle D, Principle E, and Recommendation 7 of the 2007 Final Report. The WG noted that it is possible that there is a security and stability benefit to having known RSPs that have met certain agreed-upon requirements and are intimately familiar with providing registry services. There is potentially also a benefit from looking at RSPs more holistically, getting a better understanding of the breadth of support across registry operators. As listed in the Final Issue Report, the Work Track kept the following non-exhaustive set of questions in mind in considering this topic:

1. Is a pre-approval program for RSPs desirable?
2. If yes, what would the criteria be for a pre-approval program? How would scalability of the RSP be measured across an unknown number of registries?
3. How would the program be funded?
4. What party would operate the program, pre-approve RSPs and monitor the capacity of pre-approved RSPs to meet technical requirements that can change over time and manage any change in circumstances experienced by pre-approved RSPs?
5. How would the overall application process be changed? Would questions change? Would costs be different?
6. Would the creation of a simpler, and potentially cheaper path to approval, create unintended consequences?
7. Besides RSPs, are there other areas of the program that might benefit from an accreditation program for service providers (eg. escrow providers, DNS providers, EBERO etc.)?

The Work Track considered whether the repetitive, resource intensive technical evaluation and pre-delegation testing was an interpretation of the rules in the Application Guidebook. In other words, if change is needed, is it in regards to the rules (e.g., policy recommendations / Applicant Guidebook) or a matter that can be resolved through different means? The Work Track reserved judgement on this question while it considered a number of factors and came to some general agreements on high-level elements of an RSP pre-approval program, if indeed one is needed.

After considerable discussion, the WT has determined that an “accreditation” program, per se, is not desirable, as the word accreditation implies a formal relationship between two parties. Much of the input from Community Comment 2 was consistent with that perspective, with most responses opposed to requiring an agreement between the RSP and ICANN. However, for the most part, the Work Track believes the new gTLD application process would benefit from a Registry Service Provider (RSP) Pre-Approval Program designed to limit redundant validation of RSP systems, specifically around Pre-Delegation Testing. Ultimately, efficiency in evaluation and pre-delegation must be improved. Additionally, efficiency in submission of the technical requirements (i.e. the answers to the technical section of the application) must also be improved. There were however, concerns raised during calls and in Community Comment 2 that

an RSP program could result in a race to the bottom, where RSPs simply meet the baseline technical requirements.

Notwithstanding agreement for a grandfathering clause, all pathways of the RSP system should require full testing, and testing must be consistent, objective and to the extent possible, predictable. Redundant repeat testing should be eliminated or limited as much as reasonably possible. The provider must be able to operate the registry in accordance with the technical requirements (for example, meet standards in Extensible Provisioning Protocol (EPP) extensions, file formats, billing transactions, and Domain Transaction Type Name - see section [1.7.7] on Applicant Reviews: Technical/Operational, Financial and Registry Services), and also guarantee resiliency and stability. Therefore, to ensure stability and resiliency, the criteria should test and establish capacity in excess of the RSP's routine activities. The criteria could include multiples of capacity to resist DDoS attacks and the capability to address the latest threat matrices. As these requirements might change over time, the providers would need to provide periodic evidence that they are up to date. The specific technical requirements will be consistent with those set forth in section [1.7.7] on Applicant Reviews: Technical/Operational, Financial and Registry Services.

Any RSP Program should be designed in a way that does not increase ICANN's liability, and costs associated with the evaluation and testing of an RSP should be borne by the RSP as opposed to the Applicant, where the Applicant and the RSP are not the same entity.

Pre-approval of RSPs should be done in a way that takes into account the capacity of the RSP, the type of TLDs supported and services provided, and Applicants must have access to a list of Registry Service Providers and a list of functional areas for which they have been pre-approved through the RSP Program.

Applicants must not be required to select a "pre-approved" RSP, but may be able to either propose providing their own registry services or selection of a new RSP. A new RSP must be evaluated prior to the ultimate selection of the Applicant to manage one or more specific TLDs.

It is also noted that 1) there is general agreement that RSPs should not have a contract with ICANN, and 2) there is general agreement for periodic reassessment of RSPs. However, the type of test(s) and associated cost still need to be determined. These should not be used to create artificial financial barriers to the grandfathering process for RSPs, such that grandfathering is a factor.

Regarding timing, while most Work Track members support the launch of such a program as soon as practical prior to the next application window, at the very least a three (3) month lead should be provided.

A clear RSP application processing timeline for approval should be created and it should always be followed. This will ensure predictability.

The technical requirements and any additional elements for the next round should be consistent and commensurate with those imposed by any RSP pre-approval program.

While there was a good level of general agreement on the high-level elements above, there are still a number of aspects that require discussion and have not yet reached any general agreement within the Work Track.

The Program Implementation Review Report[23] prepared by ICANN's Global Domains Division recommended consideration of whether a RSP program might help streamline the process, especially in regards to Pre-Delegation Testing.

Grandfathering clauses: If an RSP has shown experience and has a proven record of meeting Service Level Agreements (SLAs) (e.g., based on a percentage of uptime) they could be given the presumption that they are capable of providing the service for future applicants and would not need to go undergo initial testing. Criteria for "grandfathering" should take into account instances where an EBERO event was planned for and not the result of failures on the part of the RSP. If there are new requirements in the next wave, "grandfathered" RSPs would still have to meet any additional requirements.

Pre-Delegation Testing on the RSP should take into account the overall capacity of the RSP relative to all of the TLDs supported by the RSP. One method identified in consideration of this issue is to include monitoring beyond SLA monitoring. There are some members in the Work Track that question whether existing RSPs should be exempt, considering that even experienced RSPs have missed SLAs. There is some agreement that "grandfathered" RSPs should not be exempt from ongoing re-approval requirements. The Working Group/Work Track requested and received information from ICANN's Technical Services team about instances where a registry operator reached the emergency thresholds described in specification 10 of the Registry Agreement. Full data can be found on the Wiki[24], but in summary, there were 33 cases where a service of a TLD reach an emergency threshold.

The WT discussed process controls for "grandfathered" RSPs, those some of the controls may be beneficial to impose on all RSPs. In addition to demonstrating adequate past performance, the RSP could be required to implement:

- internal process controls that monitor operations can in some instances help indicate whether processes are degrading *before* SLAs are breached.
- a rapid response mechanism in order to respond to new threats that are identified by reliable sources (where the RSPs could agree upon those sources and establish communications with them).

These provisions would demonstrate that RSPs have measures in place to ensure ongoing competent performance.

The rationale for adding the above process control is to emphasize that ensuring future performance is equally as important as demonstrating past performance. For example, alerts could be implemented to detect deteriorating performance before SLAs are breached. The current plan to monitor TLDs against SLAs will detect failures only after SLAs are broken (i.e., once there has been a failure already) and RSPs can potentially avoid this scenario by putting their own process controls in place.

Transfer Process: One additional benefit outside of the new gTLD program of creating an RSP Pre-Approval Program may be that the process could also be used when an existing Registry Operator seeks to switch from one RSP to another. Though this is not the purpose of creating an RSP Program, further work should be performed by the ICANN community to determine the

[23] See Section 5.2 of the report here: https://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf

[24] See relevant data request on the Wiki page here: https://community.icann.org/x/KT2AAw

applicability of a Pre-Approval Program to the Transfer process and its potential impacts, in particular on registrars.

The Work Track did undertake some limited discussions on the topic of RSP transfers post-delegation, though it is not intending to make any recommendations on the topic, as there is a general sentiment that the topic is out of scope for the PDP WG.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

- Coordination with the Registries Stakeholder Group's RSP Discussion Group

1.3 Deliberations and Recommendations: Foundational Issues

Foundational Issues		
1.3.1	Competition, Consumer Trust and Consumer Choice	Work Track 1
1.3.2	Global Public Interest	Work Track 2
1.3.3	Applicant Freedom of Expression	Work Track 3
1.3.4	Universal Acceptance	Work Track 4

1.3.1 Competition, Consumer Trust and Consumer Choice

a. What is the relevant policy and/or implementation guidance (if any)?

Principle C: "The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity."

b. How was it implemented in the 2012 round of the New gTLD Program?

The New gTLD Program as a whole was intended to "foster diversity, encourage competition, and enhance the utility of the DNS.[25]"

c. What are the preliminary recommendations and/or implementation guidelines?

None being considered at this time.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

None being proposed at this time.

f. Deliberations

Work Track 1 has not yet considered this topic as it awaits the Final Report of the Competition, Consumer Trust & Consumer Choice Review Team. Once received, the Work Track/Working Group will consider the recommendations and the broader report, to determine if changes might be needed as it relates to competition, consumer trust and consumer choice.

h. Are there other activities in the community that may serve as a dependency or future input to this topic?

- Final Report of the Competition, Consumer Trust & Consumer Choice Review Team (CCT-RT)

1.3.2 Global Public Interest

a. What is the relevant policy and/or implementation guidance (if any)?

Recommendation 6: "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally accepted and internationally recognized principles of law. Examples of such limitations that are internationally recognized include, but are not limited to, restrictions defined in the Paris Convention for the Protection of Industrial Property (in particular restrictions on the use of some strings as trademarks), and the Universal Declaration of Human Rights (in particular, limitations to freedom of speech rights)."

[25] See Preamble in the 2012 Applicant Guidebook here: https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf

The Global Public Interest is also referenced in ICANN's Core Values under Article 1 Section 1.2 (b)(ii): "Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multi stakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent."[27]

b. How was it implemented in the 2012 round of the New gTLD Program?

Public Interest Commitments were not anticipated by the 2007 recommendations or the 2012 Applicant Guidebook. In October 2012, the Governmental Advisory Committee (GAC) provided advice to the ICANN Board of Directors of ICANN that it should come up with a mechanism such that statements of commitment and objectives in the application could to be transformed into binding contractual commitments, subject to compliance oversight by ICANN.[28]. In response to the GAC, the New gTLD Program Committee of the Board proposed a new Specification 11 to the Base Registry Agreement to transform application statements into binding contractual commitments, as well as to give applicants the opportunity to voluntarily submit to heightened public interest commitments.More specifically Specification 11:

- required operators of new gTLDs to use only registrars that are party to the 2013 Registrar Accreditation Agreement.
- allowed registry operators to commit to certain statements made in the application, as well as to specify additional voluntary public interest commitments that became binding contractual obligations that could be enforced by ICANN.
- included additional obligations that were mandatory for all registry operators:
    - the ban on Closed Generics (See Section [1.7.3] of this Report),
    - including language in its Registry-Registrar Agreements with respect to the protection against domain name abuse,
    - ensuring Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, and
    - ensuring Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies .[30]

In addition, in 2014, the ICANN Board's New gTLD Program Committee adopted[31] an implementation framework for GAC Category 1 Safeguard Advice[32], which required safeguards

[27] https://www.icann.org/resources/pages/governance/bylaws-en
[28] See GAC 45 Toronto Communique: https://gacweb.icann.org/download/attachments/28278854/FINAL_Toronto_Communique_20121017.pdf?version=1&modificationDate=1351781805000&api=v2
[30] For discussion regarding Specification 11, Section 3 d, please see the section of this report on Closed Generics.
[31] https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en

to be added as Public Interest Commitments to Specification 11 of the Registry Agreement for certain categories of strings:

- Regulated Sectors/Open Entry Requirements in Multiple Jurisdictions
- Highly Regulated Sectors/Closed Entry Requirements in Multiple Jurisdictions
- Special Safeguards Required

c. What are the preliminary recommendations and/or implementation guidelines?

- Work Track 2 discussed the concept of Public Interest Commitments, how they were added after the 2012 New gTLD Round Commenced, its effectiveness in addressing concerns expressed by the GAC during the Early Warning Process, and as a mechanism to allow Applicants to respond to issues brought up by the community after an application has been submitted. To this end:
    - Mandatory PICs: The Work Track is considering a recommendation to codify the current implementation of mandatory PICs as policy recommendations.[33] In addition, such mandatory PICs should be revisited to reflect the ongoing discussions between the GAC Public Safety Working Group and Registries as appropriate.
    - Voluntary PICs: The Work Track recommends continuing the concept of Voluntary Public Interest Commitments and asking Applicants to state any voluntary PICs in their application. In addition, the Work Track supports the ability of applicants to commit to additional voluntary PICs in response to public comments, GAC Early Warnings and/or GAC Advice. The Work Track acknowledges that changes to voluntary PICs may result in changing the nature of the application except where expressly otherwise prohibited in the Applicant Guidebook and that this needs further discussion.
- At the time a Voluntary PIC is made, the Applicant must set forth whether such PIC is limited in time, duration and/or scope such that the PIC can adequately be reviewed by ICANN, an existing objector (if applicable) and/or the GAC (if the voluntary PIC was in response to a GAC Early Warning or GAC Advice).
- To the extent that a Voluntary PIC is accepted, such PIC must be reflected in the Applicant's Registry Agreement. A process to change PICs should be established to allow for changes to that PIC to be made but only after being subject to public comment by the ICANN community. To the extent that the PIC was made in response to an objection, GAC Early Warning and/or GAC Advice, any proposed material changes to that PIC must take into account comments made by the applicable objector and/or the applicable GAC member(s) that issued the Early Warning, or in the case of GAC Advice, the GAC itself.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

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[32] https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf

[33] See Specification 11, Section 1 and 3 a-d of the Registry Agreement.

- Does the community believe that there are additional Public Interest Commitments that should be mandatory for all Registry Operators to implement? If so, please specify these commitments in detail?
- Should there be any exemptions and/or waivers granted to Registry Operators of any of the mandatory Public Interest Commitments? Please explain.
- For any voluntary PICs submitted either in response to GAC Early Warnings, Public Comments, or any other concerns expressed by the Community, is the inclusion of those PICs the appropriate way to address those issues? If not, what mechanism do you propose?
- To what extent should the inclusion of voluntary PICs after an application has been submitted be allowed, even if such inclusion results in a change to the nature of the original application?
- If a voluntary PIC does change the nature of an application, to what extent (if any) should there be a reopening of public comments periods, objection periods, etc. offered to the community to address those changes?
- The Work Track seeks to solicit input in regards to comments raised by the Verified TLD Consortium and National Association of Boards of Pharmacy that recommended a registry should be required to operate as a verified TLD if it 1) is linked to regulated or professional sectors; 2) is likely to invoke a level of implied trust from consumers; or 3) has implications for consumer safety and well-being.[34] In order to fully consider the impact and nature of this recommendation, the WG is asking the following questions:

    - How would such a registry be recognized to be in line with these three criteria and who would make such a judgement?
    - What types of conditions should be placed upon a registry if it is required to operate as a verified TLD?

f. Deliberations

In early discussions, the Work Track reviewed the ICANN Board suggestion[35] that additional policy work may be appropriate on the topic of the Global Public Interest and considered other relevant documentation, including ALAC statements on related topics[36] and GAC Advice on New gTLD Safeguards.[37] The Work Track sought input through Community Comment 2 (CC2) on whether PICs served their intended purpose, and whether there are alternate mechanisms that could be employed to serve the public interest.

The Work Track requested and received input from the ICANN Organization on complaints filed

[34] See CC2 comments in response to question 2.9.1.
[35] See ICANN Board resolution on Planning for Future gTLD Application Rounds - Annex A (17 November 2014): https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf
[36] https://docs.google.com/spreadsheets/d/1BoDtmXT5GYpeuk5UoSKCQ3MVWldSbh4X86mbCMR4JhA/edit#gid=305222389
[37] https://gacweb.icann.org/display/GACADV/New+gTLD+Safeguards

with ICANN Contractual Compliance about registry operators' Public Interest Commitments.[39] In reviewing the information provided, the Work Track did not identify any specific issues to address.

The Work Track discussed whether Public Interest Commitments are sufficient to protect the public interest and appropriate for use in subsequent procedures. Work Track members noted that it is important to have a mechanism that ensures that applicants follow through on their commitments. The preliminary conclusion is that PICs serve this purpose and allow commitments to be included in the contract and become binding. Several CC2 comments further supported that PICs have served their purpose and that no other mechanism is needed in this regard.

The Work Track also noted, however, that some concerns were raised regarding PICs. For example, the Work Track considered a CC2 comment from ALAC raising issues including "the lack of public oversight, the temporary and arbitrary nature of the 'optional' PICs, and an unsure and adversarial enforcement process that created significant obstacles for reporting of breaches." The Work Track welcomes proposals for specific improvements to address concerns with the mechanism.

Voluntary PICs

While acknowledging that the mechanism of voluntary PICs may not be perfect, the Work Track generally supported giving applicants the option to designate voluntary PICs in subsequent procedures. The Work Track discussed possible measures that could make voluntary PICs more flexible and allow them to better support both applicants and parties raising concern about an application. Recommendations stemming from these discussions emerged relatively recently, but initial discussions appear to support extending them to the broader community for comment.

Work Track members discussed the timing of submission for voluntary PICs and generally supported the idea that applicants should have more than one opportunity in the process to state those PICs. The Work Track noted that whenever possible, applicants should state voluntary PICs in the application itself. It was also discussed that voluntary PICs can be a valuable means to address concerns raised in public comments, GAC Early Warnings, and/or GAC Advice. Some Work Track supported allowing applicants to commit to additional voluntary PICs or modify those PICs stated in the application in response to community or GAC input.

Work Track members also discussed whether voluntary PICs may be limited in time, duration and/or scope. Some Work Track members stated that registries should not be allowed to commit to PICs and then simply withdraw them later at their own discretion. Some support was expressed for allowing limitations to PICs, provided that the applicant states any conditions when the PIC is made, in order to provide a level of transparency and accountability around any future changes.

The Work Track discussed amending voluntary PICs and there was, in early discussions, some

[39] See questions and responses here: https://community.icann.org/download/attachments/58735937/New%20gTLD%20Subsequent%20Procedures%20Request%20for%20Data%20%28PIC%29.docx?version=1&modificationDate=1502819042000&api=v2

support for the idea that a rigorous, carefully vetted, and publicly visible process would be needed if such changes are allowed. One suggestion is that once incorporated into the Registry Agreement, a PIC may not change without community comment first taking place. If a voluntary PIC was made in response to an objection, GAC Early Warning or GAC Advice, any proposed changes must take into account comments by the relevant party or parties. The Work Track welcomes feedback on these proposals or suggestions for alternate proposals.

Mandatory PICs

There was some support expressed for the idea that mandatory PICs served the public interest and should be maintained in subsequent procedures. The current mandatory PICs are not reflected in policy and the Work Track is considering a recommendation to codify the implementation of mandatory PICs from the 2012 round[42] as a policy recommendation. The Work Track notes that the GAC Public Safety Working Group and Registries Stakeholder Group are conducting ongoing discussions on this issue, and future work should be coordinated with these efforts.

Highly Sensitive Strings/ Strings in Highly Regulated Industries

The Work Track discussed highly sensitive strings and strings corresponding to highly regulated industries and noted divergent views on this issue:

- The GAC has provided Advice[43] supporting stronger safeguards for certain types of strings. In its CC2 comments, the GAC specifically referenced the following Advice:
    - Category 1 Safeguards (Beijing Communique 2013)[45]
    - PIC Dispute Resolution – Modify the dispute resolution process to ensure that non-compliance for PIC strings is effectively and promptly addressed (Los Angeles Communique 2014)[46]
    - Reconsider the [Board's] determination not to require the verification and validation of credentials of registrants for the Category 1 new gTLDs or to conduct periodic post-registration checks to ensure that Registrants continue to possess valid credentials. (Los Angeles Communique 2014)[47]
    - Amend the PIC specification requirement for Category 2 new gTLDs to include a non-discriminatory requirement to provide registrants an avenue to seek redress. (Los Angeles Communique 2014)[48]
    - NGPC to publicly recognise the commitments of some Registries and applicants to voluntarily adopt GAC advice regarding the verification and validation of credentials as best practice. (Singapore Communique 2015)[49]

[42] See Specification 11, Section 1 and 3 a-d of the Registry Agreement.
[43] https://gacweb.icann.org/display/GACADV/New+gTLD+Safeguards
[45] https://gacweb.icann.org/download/attachments/28278854/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1367607354000&api=v2
[46] https://gacweb.icann.org/download/attachments/28278854/Los%20Angeles_GAC%20Communique_Final.pdf?version=1&modificationDate=1414680955000&api=v2
[47] Ibid
[48] Ibid
[49] https://gacweb.icann.org/download/attachments/28278854/GAC_SINGAPORE52_COMMUNIQUE_FINAL2.pdf?version=1&modificationDate=1436284274000&api=v2

    - Reconsider the PICDRP and develop a 'fast track' process for regulatory authorities, government agencies and law enforcement to work with ICANN contract compliance to effectively respond to issues involving serious risks of harm to the public. (Singapore Communique 2015)[50]
- In CC2 comments, the Verified TLD Consortium and National Association of Boards of Pharmacy recommended that a registry should be required to operate as a verified TLD if it 1. is linked to regulated or professional sectors; 2. is likely to invoke a level of implied trust from consumers; or 3. has implications for consumer safety and wellbeing. This perspective was reiterated, elaborated on, and discussed in the Work Track. In support of this position, a concern was raised that if an applicant sets up a TLD that does not require registrant verification (for example .chemist) that is similar to a verified TLD (such as .pharmacy), the situation may cause consumer confusion. There was no agreement in support of these recommendations at the time, however the Work Track will solicit input on how such a TLD should be recognized.
- Some Work Track members have stated that in the absence of data demonstrating that PICs associated with GAC Category 1 Safeguard Advice have effectively prevented potential abusive behavior, such mandatory PICs may not be appropriate.
- Other Work Track members have recommended maintaining the existing provisions as they are, emphasizing the importance of predictability for applicants.

The Work Track has not agreed at this time on any additional conditions to impose on applicants other than those already required of applicable registries during the 2012 round.

The Work Track acknowledges the work of the CCT-RT on the issue of sensitive strings and will engage in future discussions to provide feedback on Recommendation 14.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

- CCT-RT Final Report
- Global Public Interest Framework under ICANN's Strategic Plan
- GAC Public Safety Working Group and Registries Stakeholder Group discussion on mandatory PICs[53]

1.3.3 Applicant Freedom of Expression

a. What is the relevant policy and/or implementation guidance (if any)?

Principle G: "The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law."

[50] Ibid

[53] On June 14, 2017, this group released "A Framework for the Registry Operator to Respond to Security Threats for public comment. The staff report on those comments can be found at: https://www.icann.org/en/system/files/files/report-comments-draft-framework-registry-respond-security-threats-11sep17-en.pdf

Recommendation 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 Industrial Property (in particular trademark rights), the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (in particular freedom of speech rights)."

b. How was it implemented in the 2012 round of the New gTLD Program?

Specific guidance regarding the implementation of Principle G and Recommendation 3 was not included in the Applicant Guidebook. As a result, it was up to evaluators and dispute resolution providers to interpret these provisions.

That said, some guidance regarding the implementation of Principle G was contained in the GNSO's final New gTLD Policy report, which stated, "an applicant would be bound by the laws of the country where they are located and an applicant may be bound by another country that has jurisdiction over them."

It is also worth noting that Module 3 of the Applicant Guidebook, which discussed Recommendation 3 (protecting the legal rights of others), dealt only with the legal rights related to trademarks, but not with other legal rights, such as freedom of expression.

c. What are the preliminary recommendations and/or implementation guidelines?

Work Track 3 discussed the protection of an Applicant's Freedom of Expression rights and how to ensure that evaluators and dispute resolution service providers (DSRPs)[58] performed their roles in such a manner so as to protect these fundamental rights. The Work Track generally believes that the implementation guidelines should be clarified to ensure that dispute resolution service providers and evaluators are aware that freedom of expression rights are to be considered throughout the evaluation and any applicable objection processes as well as any Requests for Reconsideration and/or Independent Review Panel proceedings.[59] To do this, each policy principle should not be evaluated in isolation from the other policy principles, but rather should involve a balancing of legitimate interests where approved policy goals are not completely congruent or otherwise seem in conflict. Applicant freedom of expression is an important policy goal in the new gTLD process and should be fully implemented in accordance with the applicant's freedom of expression rights that exist under law.

d. What are the options under consideration, along with the associated benefits / drawbacks?

[58] Note that "dispute resolution service provider (DRSP)" was the term used in the 2012 Applicant Guidebook for panels that adjudicate objections proceedings.

[59] For additional discussion of the Reconsideration Process and the Independent Review Process, please see section 1.8.2 "Accountability Mechanisms".

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

- What specific advice or other guidance should dispute resolution service providers that adjudicate objections proceedings and other evaluators be given to ensure that the policy principle of protecting applicant freedom of expression can be effectively implemented in the overall program?
- When considering Legal Rights Objections, what are some concrete guidelines that can be provided to dispute resolution service providers to consider "fair use", "parody", and other forms of Freedom of Expression" rights in its evaluation as to whether an applied for string infringes on the legal rights of others?
- In the evaluation of a string, what criteria can ICANN and/or its evaluators apply to ensure that the refusal of the delegation of a particular string will not infringe an Applicant's Freedom of Expression rights?

f. Deliberations

The Work Track discussed that the final 2007 New gTLD Policy was a tapestry that consisted of many different policy goals and recommendations, which sometimes can conflict with each other and pull in seemingly different directions. The Work Track noted that evaluators were tasked with weighing the different policy values, goals, and recommendations, and finding an appropriate balance between competing legitimate interests in their evaluations. In addressing this topic, the Work Track considered the extent to which the policy goal of protecting applicant's freedom of expression rights was impacted by other processes, such as the treatment of GAC Advice, Community evaluations, and processes related to Reserved Names.

The Work Track discussed that freedom of expression rights, as with any legal right, are not absolute, but must be balanced with other legal rights when they come into conflict, and through that weighing process the law creates a coherent framework that accounts for discrepancies between individual policy goals left alone in the abstract. Some noted that other New gTLD Policy principles are no different in that a balancing must occur between conflicting legitimate rights for an appropriate outcome to be reached.

Work Track members noted that the lack of specific implementation guidance provided with respect to the policy principle of protecting freedom of expression, in contrast to very specific "modules" and rules provided for evaluators to follow when addressing other policy goals (such as protection for "Communities", trademarks, the treatment of GAC Advice, etc.) has left a gap in the implementation of protection for applicant freedom of expression rights. This left evaluators to follow the only "rules" provided, which are tailored for these other processes, and which are not designed to take into account the policy goal of protection for free expression. As a result, there was a discrepancy between the approved policy goal of protecting freedom of expression and the evaluation process that was ultimately implemented.

While there was some support expressed for more clearly including the policy goal of respecting freedom of expression into the implementation framework for the New gTLD Policy, the Work Track has not agreed on specific implementation guidance in this regard.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

- CCWG Accountability Work Stream 2 - SubGroup on Human Rights

1.3.4 Universal Acceptance

a. What is the relevant policy and/or implementation guidance (if any)?

Principle B: "Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root."

b. How was it implemented in the 2012 round of the New gTLD Program?

- By requiring applicants to answer Question 16 ("*Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.*")
- By including clause 1.2 of the Registry Agreement ("***1.2 Technical Feasibility of String**. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and web hosts and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.*")

c. What are the preliminary recommendations and/or implementation guidelines?

Amended Principle B:

- Some new generic top-level domains should be internationalised domain names (IDNs), although applicants should be made aware of universal acceptance challenges in ASCII and IDN TLDs and given access to all applicable information about Universal Acceptance currently maintained on ICANN's Universal Acceptance Initiative page, through the Universal Acceptance Steering Group, as well as future efforts.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

1. The Work Track is not proposing any additional work beyond that being done by the Universal Acceptance Initiative and the Universal Acceptance Steering Group. Do you believe any additional work needs to be undertaken by the community?

f. Deliberations

The Work Track acknowledges that Universal Acceptance is a challenge for registries in New gTLDs, but is declining to create additional requirements. To that end, the Work Track supports the work of the Universal Acceptance Steering Group (UASG)[61] towards a future where "Internet applications and systems must treat all TLDs in a consistent manner, including new gTLDs and internationalized TLDs." The WG recognizes that this work will be ongoing and therefore believes that future applicants should be made aware of the potential challenges they may face.

While Universal Acceptance is not limited to IDNs, it is a particular challenge for those types of TLDs. In recognition of those current difficulties, and that IDNs have already been approved for availability in the root, there is general agreement to amend current Principle B.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

- Work of the UASG

1.4 Deliberations and Recommendations: Pre-Launch Activities

Pre-Launch Activities		
1.4.1	Applicant Guidebook	Work Track 1
1.4.2	Communications	Work Track 1
1.4.3	Systems	Work Track 1

[61] See the work of the Universal Acceptance Steering Group here: https://uasg.tech

1.4.1 Applicant Guidebook

a. What is the relevant policy and/or implementation guidance (if any)?

There is no specific recommendation about an Applicant Guidebook, though the 2007 Final Report notes that there will be a "Request for Proposals" (RFP): "This policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains. The Request for Proposals (RFP) for the first round will included scheduling information for the subsequent rounds to occur within one year.[62]"

b. How was it implemented in the 2012 round of the New gTLD Program?

The "Request for Proposals (RFP)" became the Applicant Guidebook, which was effectively the implementation of the 2007 GNSO recommendations on new gTLDs. The Applicant Guidebook served as the roadmap for applicants, a guide for staff developing operational practices and procedures, and a source of program information for other interested parties.

The Applicant Guidebook was developed through an iterative process that took into account public comments, explanatory memoranda and other sources of feedback collected over the course of three years and nine versions.

c. What are the preliminary recommendations and/or implementation guidelines?

1. The Work Track generally agreed that an Applicant Guidebook ("AGB") of some form should continue to be utilized in future waves of applications. The Work Track generally agreed, however, that the Applicant Guidebook should be made more user friendly.
2. The Work Track generally agreed on a number of specific, implementation-oriented changes to enhance the user experience of the Applicant Guidebook as described below.
3. In order to enhance accessibility for ease of understanding, especially for non-native English speakers and those that are less familiar with the ICANN environment, the Work Track believes that the AGB should:
    - Be less focused on historical context and to the extent it is included, concentrate this content in appendices if possible.
    - Be less about policy, with a stronger focus on the application process.
    - Be focused on serving as a practical user guide that applicants can utilize in applying for a TLD. For instance, step-by-step instructions, possibly by type of application with a 'choose your own adventure' methodology.
    - Have an improved Table of Contents, include an index and in the online version contain links to appropriate sections, definitions, etc.
    - The online version could have sections that apply specifically to the type of application being applied for with the ability to only print those related sections
    - In conjunction with the above, the online version should allow for advanced indexing of an omnibus text. A core set of standard provisions may be applicable

[62] See 2007 GNSO Final Report Preamble to the discussion of the Terms of Reference.

to everyone, but additional provisions may only be applicable to some. If the text is tagged and searchable, users could more easily locate the parts of the text that are relevant to them.

- Any Agreements/Terms of Use for systems access (including those required to be "clicked-through" should be finalized in advance and included in the Applicant Guidebook with the goal of minimizing obstacles and/or legal burdens on applicants (see Systems in section 1.4.3)[63].

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

None being proposed at this time.

f. Deliberations

In considering the topic of the Applicant Guidebook, there was early agreement that some form of an Applicant Guidebook made sense for subsequent procedures. However, many in the Work Track felt that the Applicant Guidebook could be made more user friendly. A theme that arose was that to the extent possible, the Applicant Guidebook should be more audience-driven. As currently drafted, the Applicant Guidebook serves as a single comprehensive guide for all users, though it is divided into six modules.

Some Work Track members felt that the module concept made sense and that it could be expanded upon to serve as part of the solution to make the Applicant Guidebook more audience-driven. For instance, parts of the Applicant Guidebook could be dedicated to Registry Service Providers, to Escrow Providers, to various attributes of the application (e.g., community-based, geographic), as well as for aspects relevant to parties interested in the program (e.g., rights protection mechanisms, objections, GAC Advice, etc.). Essentially, modules allow the Applicant Guidebook to be scalable and that format should be continued. There was general agreement within the Work Track that there should not be multiple versions of the Applicant Guidebook. This sentiment was particularly strong in Community Comment 2, where many felt that a single Applicant Guidebook made sense. Developing multiple versions of the Applicant Guidebook was seen to be more likely to cause confusion and create inconsistency between versions.

[63] This refers to terms and conditions that must be executed in addition to the Applicant Terms and Conditions and the ICANN Registry Agreement. For example, in the 2012 Round, Applicants or Registry Operators were required to accept additional terms and conditions to access the applicant submission portal, the Trademark Clearinghouse system, the customer support portal, etc.,

The Work Track widely agreed that the Applicant Guidebook should be made more easily searchable (e.g., make it available online or in addition to a PDF). There was support for a more comprehensive table of contents and an index. There was wide agreement that the Applicant Guidebook should continue to be made available in multiple languages.

As noted, the discussions focused on making the Applicant Guidebook more user friendly. To that end, there was support to make it more of a step-by-step, user guide oriented experience.

Finally, the Work Track recognizes that there is work ongoing in the full working group and other work tracks that may have an impact on any final recommendations on the Applicant Guidebook. For instance, the creation of a Registry Service Provider (RSP) program or additional application types could be impactful.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

This section is more focused on the structure of the AGB and how it can be made more usable. The Work Track notes that while there may be external efforts that may ultimately affect the drafting of the AGB during implementation (SSAC's work on name collisions, the PDPs on rights protection mechanisms and IGOs, etc.), it is not anticipated that these efforts would alter the structure of the AGB itself.

1.4.2 Communications

a. What is the relevant policy and/or implementation guidance (if any)?

Implementation Guideline C: "ICANN will provide frequent communications with applicants and the public including comment forums which will be used to inform evaluation panels."
Implementation Guideline E: "The application submission date will be at least four (4) months after the issue of the Request for Proposal and ICANN will promote the opening of the application round."Implementation Guideline M: "ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way that no longer requires all participants in the conversation to be able to read and write English."
Implementation Guideline O: "ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations."

b. How was it implemented in the 2012 round of the New gTLD Program?

Communications efforts were implemented through three primary program elements:

- The New gTLDs Communications Plan,[68] which was authorized by the ICANN Board[69] to serve as the basis for ICANN's global outreach and education activities for the program.
- The Customer Portal, which facilitated communication between applicants and the ICANN Organization. ICANN also employed methods such as webinars, roadshows, and sessions at ICANN meetings to support dialogue between the community and ICANN.
- The Application Comments Forum, which was used to collect public comments.

Implementation Guideline E was interpreted to mean that the application submission period would open at least four months after ICANN approved the Applicant Guidebook (AGB), allowing ICANN to promote the program and applicants to become familiar with the AGB. The final Applicant Guidebook was released in November 2011.

c. What are the preliminary recommendations and/or implementation guidelines?

The Work Track does not envision developing additional policy recommendations with respect to "Communications", but it has generally agreed on a number of specific implementation guidelines to improve the reach, timeliness, and accessibility of the communications strategy for the New gTLD Program. These include:

Program Information, Education and Outreach:

- The Work Track believes that for the next round of new gTLDs there should continue to be a minimum of four (4) months from the time in which the final Applicant Guidebook is released and the time until which applications would be finally due.
- There should be a sufficient period of time available prior to the opening of the Application Submission Period to allow for outreach efforts related to Applicant Support and other program elements and execution of the Communication Plan ("Communications Period").
    - The Communications Period for the next round of new gTLDs should be at least six (6) months.
    - In the event that following the next round of new gTLDs, application opportunities are organized as a series of application windows, the Communications Period may be shortened to three (3) months.
- Publish all program information on the main icann.org website (as opposed to https://newgtlds.icann.org), along with other related ICANN information and links to improve usability and accessibility.
- Leverage Global Stakeholder Engagement staff to facilitate interaction between regional ICANN Organization teams and potential applicants from these regions.
- For additional recommendations on outreach related to Applicant Support, see section 1.5.4.

Communications with Applicants:

- Provide a robust online knowledge base of program information that is easy to search and navigate, updated in a timely manner, and focused on issues with wide-reaching

[68] https://archive.icann.org/en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf
[69] https://www.icann.org/resources/board-material/resolutions-2011-06-20-en

impact. Offer an opt-in notification service that allows applicants to receive updates about the program and their application in real or near real time.
- Display and provide updates in a timely manner on expected response times on the website, so that applicants know when they can expect to receive a reply, as well as information about how applicants can escalate inquiries that remain unresolved.
- Facilitate communication between applicants and the ICANN Organization by offering real-time customer support using a telephone 'help line,' online chat functionality, and other online communication tools.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

- Do you have any suggestions of criteria or metrics for determining success for any aspects of the New gTLD communications strategy?
- The communications period prior to the 2012 Round of New GTLDs was approximately six months. Was this period optimal, too long or too short? Please explain.
- If ICANN were to launch new application windows in regular, predictable windows, would a communications period prior to the launch of each window be necessary? If so, would each communications period need to be the same length? Or if the application windows are truly predictable, could those communication periods be shorter for the subsequent windows?

f. Deliberations

There was early agreement in the Work Track that there are opportunities for improvement in the way the ICANN Organization communicates with applicants and shares information about the program more broadly. The Work Track noted that in the 2012 round, while there were some metrics available[70] related to communications efforts, the New gTLD Communications Plan did not define "success," so it is difficult to evaluate if related initiatives within this plan accomplished program goals. There are a number of information sources available to support development of recommendations for subsequent rounds. The Work Track drew on the Program Implementation Review Report, observations from community members with first-hand experience in the 2012 round, and input received through CC2 to develop implementation guidance.

One issue that Work Track members raised, and CC2 comments reinforced, is that predictability for applicants is essential. In particular, there was support for the idea that there must be sufficient time allotted prior to the opening of the Application Submission Period for ICANN to perform outreach related to Applicant Support and other program elements and execute its Communications Plan ("Communications Period"). Further, applicants must have sufficient time to review the finalized Applicant Guidebook and other materials related to the program before

[70] See Section 8.4 for the Program Implementation Review Report.

the next application window opens. Some Work Track members felt that in the context of events related to the 2012 round, there was not enough time between the publication of the Applicant Guidebook and the opening of the application window.

The Work Track considered that the next application opportunity is likely to be in the form of a round. Work Track members tended to support a Communications Period of at least six (6) months for the next round. Some Work Track members noted that if additional application opportunities are organized as a series of application windows, the Communications Period could be shorter for subsequent windows. Work Track members tended to support continuing to provide a minimum of four (4) months between the time in which the final Applicant Guidebook is released and the opening of next application window.

The Work Track discussed extensively ways to improve communications between applicants to the New gTLD Program and the ICANN Organization. The Work Track agreed that communications need to be comprehensive, timely, and easily accessible to all applicants.

The Work Track discussed having an online resource that provides program information, updates, and answers to questions. A knowledge base was available in the 2012 round, but the Work Track felt that it was difficult to navigate and not sufficiently comprehensive. The Work Track also discussed that it could have been updated more quickly to reflect new information and developments. The Work Track agreed that in subsequent procedures, there should be an online knowledge database that is up-to-date, complete and searchable.

Members of the Work Track who were involved in the 2012 round, expressed their experience in having t to visit ICANN websites and portals to read updates about their application and the program, and in some cases needed to visit multiple sites to find the information they were seeking. The Work Track agreed that having one single site for the New gTLD Program where all program information would be available on a single website along with other ICANN information to improve accessibility and usability. This is consistent with recommendations in the Program Implementation Review Report.

The Work Track determined that it would be helpful to offer opt-in push notifications to ensure that applicants receive timely updates on new program developments, processes, and procedures, including information relevant to their own applications along with any related information that should be dispersed equally amongst all applicants to avoid any type of unfair advantage.

The Work Track agreed that is would be helpful for applicants to have easily accessible channels for reaching real-time customer support in subsequent rounds. Work Track members suggested that customer support should be available by phone, online chat, and possibly through additional means to ensure that applicants can quickly resolve inquiries. The prioritization of cases and system issues should also be considered.

Noting that the topic of Predictability is also addressed as a distinct issue area within this Working Group, the Work Track agreed that it is important for applicants to have predictability in their communications with the ICANN Organization. The Work Track suggested that the ICANN Organization display information about expected response times to inquiries as well as information about how applicants may escalate issues that remain unresolved.

In addition to considering communications with applicants, the Work Track discussed communications efforts related to outreach about the New gTLD Program. The Work Track

agreed with the Program Implementation Review Report, which assessed[72] that the Global Stakeholder Engagement (GSE) Team may be a valuable resource for promoting regional awareness about the New gTLD Program. Additionally, GSE staff may be particularly well positioned to provide outreach in underserved regions to increase awareness about the New gTLD Program including the Applicant Support Program. For recommendations regarding the Applicant Support Program, see 1.5.4.

The Work Track agreed that is important for any future Communications Plan to have a clear definition of success related to the communication elements, as well as metrics to support evaluation of their effectiveness. While the Work Track is not proposing how to define success at this time, members encourage further work on this issue.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified by the Work Track at this time.

1.4.3 Systems

a. What is the relevant policy and/or implementation guidance (if any)?

Implementation Guidance O: ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations.

Other than the above, there s no guidance specifically related to technical systems in the 2007 Final Report.

b. How was it implemented in the 2012 round of the New gTLD Program?

The ICANN Organization developed and deployed applicant-facing systems to facilitate application submission and communications between ICANN operational staff and applicants. The two primary systems were:

- TLD Application System (TAS) - used by applicants to submit applications and receive results of evaluation procedures, such as Financial Capability, Technical/Operational Capability, Registry Services, and overall Initial Evaluation Results.
- Customer Portal - used by applicants to submit questions and receive responses from the ICANN Organization, issue clarifying questions, respond to GAC Advice, submit documentation during the contracting phase, etc.

Additional solutions developed to support the program included Digital Archery[73], Centralized Zone Data Service[74], and the Application Comments Forum.[75]

[72] See Section 8.4 of the Program Implementation Review Report.
[73] For additional information about Digital Archery, please see section 1.6.1 on Application Queuing.
[74] See https://czds.icann.org/en.

c. What are the preliminary recommendations and/or implementation guidelines?

The Work Track is considering proposing the following high-level implementation guidelines:

- The ICANN Organization should ensure that enough time is provided for development and testing before any system is deployed.
- Systems should undergo extensive, robust Quality Assurance (QA), User Interface (UI) and Penetration testing to ensure that they are stable and secure, and that data is properly protected and kept confidential where appropriate.
- Applicant-facing systems should be usable and integrated, ideally with a single login.
- Once a system is in use, the ICANN organization should be transparent about any system changes that impact applicants or the application process. In the event of any security breach, ICANN should immediately notify all impacted parties.
- The ICANN Organization should offer prospective system end-users with the opportunity to beta-test systems while ensuring no unfair advantages are created for individuals who test the tools. It may accomplish this by setting up a Operational Test and Evaluation environment.
- As stated in Section 1.4.1 above, "Any Agreements/Terms of Use for systems access (including those required to be "clicked-through") should be finalized in advance and included in the Applicant Guidebook with the goal of minimizing obstacles and/or legal burdens on applicants.

The Work Track provided additional specific implementation guidance regarding technical systems:

- Applicants should be able to enter non-ASCII characters in certain fields.
- Applicants should be able to access live (real time) support using tools such as a phone helpline or online chat to address technical system issues.
- A single applicant should be able to submit and access multiple applications without duplicative data entry and multiple logins.
- Applicants should be able to receive automated confirmation emails from the systems.
- Applicants should be able to receive automated application fee related invoices.
- Applicants should be able to view changes that have been made to an application in the application system.
- Applicants should be able to upload application documents in the application system.
- Applicants should be able to update information/documentation in multiple fields without having to copy and paste information into the relevant fields.
- Applicants should be able to specify additional contacts to receive communication about the application and/or access the application and be able to specify different levels of access for these additional points of contact. The systems should provide means for portfolio applicants to provide answers to questions and then have them disseminated across all applications being supported.
- The systems should provide clearly defined contacts within the ICANN Organization for particular types of questions.

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[75] Subsequent to the the application process, the ICANN Organization changed platforms for live registry operators that included additional functionality including customer support, submission of Registry Services Evaluation Process requests, etc.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

None being proposed at this time.

f. Deliberations

In its discussions, the Work Track carefully considered the tools used in the 2012 round and feedback about these systems received through Work Track discussions and CC2 comments. The Work Track also reviewed the Program Implementation Review Report as an additional input to discussions. The Work Track understands that different systems are likely to be used in subsequent procedures but sees value in drawing on "lessons learned" from the tools used in the 2012 round to make recommendations for the development and deployment of future systems.

High-level discussions focused on concerns about usability, security, and stability of systems used for the 2012 New gTLD application process. With respect to user experience, the Work Track identified several challenges. To access TAS, users first had to log into the Citrix ZenApp layer, which provided a browser agnostic environment, and then had to log into TAS itself. Users reported a number of usability problems with this system. One significant issue was that users had to manage multiple logins for different systems that were not integrated resulting in a fragmented user experience. Work Track members also considered usability challenges with the knowledge base in the Customer Service Portal, while noting that improvements in user experience were made over the course of the round.

Security was another issue discussed by the Work Track. Work Track members recalled that less than 24 hours before the 2012 application window closed, the TAS was taken offline due to a security issue.[77] It was discovered that some users could view the file names and user names of other users in some scenarios.[78] It took over a month to investigate and resolve the issue causing the application deadline to be extended for over 45 days.[79] Work Track members agreed that systems handling applicant information should be tested extensively to ensure that these tools will keep user data safe and private.

The Work Track considered the fact that there were seven months between the completion of the Applicant Guidebook and the opening of the 2012 application window, and noted that this relatively short time frame combined with the fact that development of the systems did not start prior to the approval of the Applicant Guidebook, may have been factors in the challenges experienced with systems developed during this period.

[77] https://newgtlds.icann.org/en/announcements-and-media/announcement-12apr12-en
[78] http://newgtlds.icann.org/en/applicants/tas/interruption-faqs
[79] https://newgtlds.icann.org/en/announcements-and-media/announcement-21may12-en

The Work Track agreed that in subsequent procedures, the ICANN Organization must leave sufficient time for system development and testing, including robust usability and security testing. Systems should be effectively integrated to promote a better user experience. The Program Implementation Review Report similarly recommended that in subsequent procedures, application development timelines should leave time to allow for best practices in systems development. The Work Track is not stating that there needs to be more time in between the approval of the final Applicant Guidebook and the start of the application window, but rather that development and testing begin prior to the absolute finalization of all elements of the new gTLD Program.

The Work Track further supported the idea that it might be useful to allow prospective users to beta test applications before the systems are fully deployed to identify usability issues. Some Work Track members suggested that the ICANN Organization in 2012 believed that such testing could give some applicants an unfair advantage by providing an early preview of tools to be used in the application process. Work Track members agreed that any beta-testing program should not unfairly advantage individual applicants. Recommendations about a beta testing program were also included in the Program Implementation Review Report.

The Work Track discussed additional, specific pain points experienced by users in the 2012 round. For example, Work Track members noted that applicants were not able to receive invoices related to applications fees required to for financial processing within their respective organizations. The specific application guidance provided on application functionality reflects discussions about specific issues experienced by Work Track members and other community members using the TAS and the Customer Portal.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

1.5 Deliberations and Recommendations: Application Submission

Application Submission		
1.5.1	Application Fees	Work Track 1
1.5.2	Variable Fees	Work Track 1

1.5.3	Application Submission Period	Work Track 1
1.5.4	Applicant Support	Work Track 1
1.5.5	Terms & Conditions	Work Track 2

1.5.1 Application Fees

a. What is the relevant policy and/or implementation guidance (if any)?

Implementation Guideline B: "Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants."

b. How was it implemented in the 2012 round of the New gTLD Program?

The application fee in the 2012 round was based on analysis and estimates, with the intention that the program would be fully self-funding (costs should be essentially equivalent to application fees collected and existing ICANN activities regarding technical coordination of names, numbers and other identifiers should not cross-subsidize the program).[82] There were three elements used to estimate the costs prior to the 2012 New gTLD round: (1) cost for developing the new gTLD process (historical costs, related to setup and development activities), (2) readily identifiable costs of evaluating and processing an application, and (3) the more uncertain/difficult to estimate elements of the application and delegation process.[83]

c. What are the preliminary recommendations and/or implementation guidelines?

1. The Work Track is considering proposing that the New gTLD Program continue to be self-funding where existing ICANN activities are not used to cross-subsidize the new gTLD application, evaluation, pre-delegation and delegation processes.
2. In addition, the Work Track generally believes that the application fee amount should continue to be based on the "revenue neutral" principal, though the accuracy should be improved to the greatest extent possible. Although the 2012 New gTLD Applicant Guidebook remained silent on what should happen with any excess fees obtained through the application process, the Work Track is leaning towards recommending that absent the use of an Application Fee Floor (described in 3 below) excess fees should be

[82] https://archive.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf
[83] Ibid at p. 6.

refunded back to applicants.[84] If a deficit arises, the Work Track considered several options (see deliberations below), but there seemed to be support for ICANN recovering an the majority of funds in future TLD application windows.

3. The Work Track also is considering proposing that if in the event that the estimated application fee, based on the "revenue neutral" principal, falls below a predetermined threshold amount (i.e., the Application Fee Floor), the actual application fee will be set at that higher Application Fee Floor instead. The purpose of an Application Fee Floor, as more fully discussed below, would be to deter speculation, warehousing of TLDs, and mitigating against the use of TLDs for abusive or malicious purposes[85], that could more easily proliferate with a low application fee amount.
4. The Application Fee Floor is a predetermined value that is the minimum Application Fee. By definition, a Application Fee Floor will not meet the revenue neutral principle as the floor amount will be greater than the application fees creating an excess. In the event that an Application Fee Floor is used to determine the Application Fee excess fees received by ICANN if the Application Fee Floor is invoked should be used to benefit the following categories:

    - Support general outreach and awareness for the New gTLD Program (e.g., Universal Awareness and Universal Acceptance initiatives)
    - Support the gTLD long-term program needs such as system upgrades, fixed assets, etc.
    - Application Support Program
    - Top-up any shortfall in the segregated fund as described below.

5. To help alleviate the burden of an overall shortfall, a separate segregated fund should be set up that can be used to absorb any shortfalls and topped-up in a later round. The amount of the contingency should be a predetermined value that is reviewed periodically to ensure its adequacy.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

- To the extent that warehousing/squatting of TLDs has taken place and may occur in the future, what other restrictions/methodologies, beyond pricing, might prevent such behavior?

[84] A distinction needs to be made between excess fees generated by application fees ("Applicant Fees") and any fees received by ICANN as a result of string contention ("Auction Fees"). This section only deals with the former and not with any fees received by ICANN as a result of string contention.
[85] The behaviors listed are considered undesirable by some, as they signify applying for a TLD for reasons other than utilizing it.

- What happens if the revenue-cost neutral amount results in a refund that is greater than the Application Fee Floor value? Should it be only the difference between the cost floor and the amount refunded? Should there be any minimum dollar value for this to come into effect? i.e. the amount of the refund is a small amount, and if so, should this excess be distributed differently, i.e. Universal Awareness, Applicant Support, other?
- What are the considerations/implications if we move to continuous rounds, in this case limited to how it relates to ensuring the program is run in a revenue neutral manner?
- Are there policy, economic, or other principles or factors that might help guide the establishment of the floor amount?
- Under the circumstance where the application fee is set at the floor amount, do you have additional suggestions or strategy on the disbursement of excess funds?
- Are we acknowledging and accepting of ICANN being a so-called "registry of registries" (i.e., does the community envision ICANN approving a few thousand / hundreds of thousands / millions of gTLDs to be added to the root. Should there be a cap?)
- Is there a way in which the application fee can be structured such that it can encourage competition and innovation?
- How do we address the timely disbursement of excess funds? Can this happen prior to the "end" of the evaluation process for all applications? If yes, please explain. If not, what is the length of time applicants should expect a refund after the evaluation process is complete?

f. Deliberations

In considering the application fee from the 2012 round of the New gTLD Program and its level of accuracy, the Work Track noted that there is a sizable outstanding amount still unspent from the that round (nearly $100 million as of the writing of this report[86]). The Work Track noted that the round has yet to conclude, but believes that there will remain a sizable amount left, even after any contingency related expenses are incurred (e.g., a substantially higher amount of historical costs were recovered, since 1930 applications were received as opposed to the 500 applications used in costing analysis done to establish the fee amount). As such, the Work Track has concerns about what appears to be a substantial mismatch of funds collected versus actual expended, recognizing that the excess funds are at least in part driven by a much larger number of applications than anticipated - which has a distinct impact in the recouping of historical costs (i.e.,development costs).

There is also some level of anxiousness about how any excess funds are utilized once the round concludes as there is no plan in place other than to collaborate with the community.

Revenue Neutral:

During the course of deliberations, there was mostly agreement that the program should continue to operate in a revenue neutral manner or in other words, to not run at a deficit or generate excess revenue. That said, there were some in the Work Track that advocated for a high application fee floor, in excess of cost recovery, in recognition that a TLD is a valuable and scarce resource. Though that position was not widely held, these Work Track members maintained that a high application fee floor (perhaps equalling the application fee amount in the 2012 round or higher, assuming those amounts are indeed higher than estimates base aon

[86] See Draft FY19 Operating Plan and Budget here: https://www.icann.org/en/system/files/files/proposed-opplan-budget-intro-highlights-fy19-19jan18-en.pdf

revenue neutrality) was the right approach as a matter of fairness to those that applied for TLDs in 2012. Those that disagreed with setting such a high artificial application fee floor countered that 2012 applicants were given a "first mover advantage" which included the ability to operate a TLD for a number of years before the next new gTLD application window. Community Comment 2 was largely supportive of continuing with the revenue neutral approach, which is to mean that there would be no policy change in this regard.

Although some in the Work Track wanted to discuss a specific application fee amount, there were a number of reasons why ultimately exact fees were not discussed. First, the Work Track recognizes that additional analysis would be needed to establish a new estimated cost. Second, there was a recognition that the costs could not reasonably be estimated until there are at a minimum final recommendation from this Working Group. Thirdly, documentation related to the process used in setting the 2012 Application Fee were unavailable. In this regard, the Work Track anticipates that the ICANN Organization will need to perform a new cost estimate once the full parameters of the program are known based on recommendations from the community.

One other challenge, and in some sense a dependency, in developing a cost estimate is understanding the mechanism by which applications will be accepted in the future (e.g., rounds, ongoing and regular application periods, first come first served, etc.). In particular, the Work Track noted that it may not be fair to have the one round of applicants pay all historical costs related to development costs when several rounds may benefit from their implementation and use.

A specific proposal was put forth that still adheres to the principle of revenue neutrality, but in a way that embraces the fact that costing estimates are going to be imprecise, especially given the fact that the number of applications will be an unknown. This proposal stated that the fee should continue to be the $185,000, in fairness to the 2012 applicants. However, any excess amount collected would be refunded to applicants, perhaps up to a certain limit (e.g., $50,000 or some other amount) and in the case of successful applicants, allowed to be put towards its annual fees. Funds collected in excess of that predetermined limit could be put towards Universal Acceptance, Universal Awareness, and/or efforts to support applications from underserved regions. There was a fair amount of support for a model like this, with the exception of maintaining the $185,000 application fee.

Application Fee Floor:

The Work Track noted that there might be a case where a revenue neutral approach results in a fee that is "too low," which could result in an excessive amount of applications (e.g., making warehousing, squatting, or otherwise potentially frivolous applications much easier to submit), reduce the sense of responsibility and value in managing a distinct and unique piece of the Internet, and diminish the seriousness of the commitment to owning a TLD. As such, the Work Track suggested that an application fee floor amount (i.e., a minimum price that may in fact be higher than a cost recovery amount) may be needed, though it was concerned that keeping fees higher would result in a barrier to entry for certain demographics (e.g., underserved regions).

The Work Track is generally supportive of the principle of an application fee floor, but was unable to establish a specific amount or the parameters for establishing the amount. Some ideas considered were to choose an arbitrary amount, an arbitrary percentage of the prior round application fee, or request that economic analysis be done. The Work Track also discussed when the application fee floor amount should be revisited, with some support that it should take place after each round (such that future application windows occur in rounds).

The concept of a fee floor may be also connected to the long-term goals of the program, especially around preserving the importance and sense of commitment it expects of registry operators. However, if a more laissez-faire approach is expected, then the need for a floor is diminished. Again, the Work Track largely agreed that an application fee floor makes sense.

The Work Track also had concern and discussed extensively the excess funds that would result from a floor being higher than the actual costs. In this circumstance, where the program would not be operated in a revenue neutral manner, it was discussed that excess funds could be used in a different manner (e.g., less focused on refunding to applicants and distributed based on agreed upon uses as discussed in the Excess/Shortage of funds).

Excess/Shortage of Funds:

Unless there is a mechanism to determine how many applications there will be before the round begins, there is a distinct likelihood that there will be an excess (as it appears there will be for the 2012 round) or possibly a shortage of funds to support the program. Some considerations considered for excess funds include:

- Support general outreach and awareness for the New gTLD Program (e.g., Universal Awareness and Universal Acceptance initiatives)
- Credit ongoing ICANN fees for successful applicants
- ICANN Compliance to ensure Registry and Registrar fees do not rise due to the increased volume of TLDs and related resources to ensure compliance to service agreements
- Support the gTLD program needs such as system upgrades, fixed assets, etc.
- Absorb the excess funds into ICANN's general operating budgets
- Refund excess fees to applicants
- Contribute to charitable cause

The Work Track discussed these options, though it did not expect that all excess funds would go to a single destination. It also did not assign a priority level to this non-exhaustive list. Some options for disbursement include:

- Disburse based on a priority sequence and maximum amounts i.e. P1: $X; P2: $Y; P3: $Z
- Percentage of excess: Excess distributed using a percentage assigned to the various options.
- Combination: Amount up to a maximum in some categories and other categories without a maximum.

Cost shortfalls were also discussed, with a short list of potential options identified:

- Increase in application fees in subsequent periods
- Pool of funds set aside for this type of scenario (this would be connected to the suggestion above for excess funds, where a reserve is established)
- Increase annual registry fees (or other generation of revenue external to the program)
- Obtain a "loan" from general ICANN Organization funds

Costing Methodology:

As noted, the Work Track believes that the outstanding amount of funds collected and still unspent from 2012 is evidence that the estimates were materially incorrect. It discussed ways in which the accuracy might be improved, although no agreements were reached. Some ideas and concepts that were discussed include:

- 75 steps were taken prior to the 2012 round to determine the estimated costs and likelihood of evaluation outcomes (e.g., percentage that pass or fail Initial Evaluation, percentage that require Extended Evaluation, etc.). While the Work Track was unable to attain the document that reflected these steps and any related insight, it still asked itself if there is better method to increase precision of estimates.
- Performing a Risk Analysis of the factors used in determining the fees.
- Considering the implications of the volume of applications and and in particular, how they may potentially impact variable costs

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

There are a number of factors that may influence the costing analysis, including the finalization of the Applicant Guidebook, which will incorporate the final recommendation of this Working Group as well as potentially the final recommendation of the Rights Protection Mechanisms PDP, the IGO/INGO PDP, the final recommendations of Work Track 5, any additional recommendations stemming from new name collision studies, and implementation of the recommendations of the CCT-RT. At this stage, the Work Track does not believe that these elements would influence the more principle-based preliminary recommendations in section (c) above.

1.5.2 Variable Fees[87]

a. What is the relevant policy and/or implementation guidance (if any)?

Implementation Guideline B: "Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants."
Implementation Guideline N: "ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed."

b. How was it implemented in the 2012 round of the New gTLD Program?

[87] This section deals with the issue of whether the fees for certain classes of TLD applications should be more or less expensive than other categories of TLD applications. It also addresses whether there should be discounts on the filing of multiple applications by the same applicant.

All applicants were responsible for the same $185,000 USD fee, with two exceptions: applicants eligible for the year 2000 proof of concept credit and applicants approved through the Applicant Support Program.

Beyond the base fee, there were additional costs only when applicable. These include objections, registry services extended evaluation, and Community Priority Evaluation (CPE).

c. What are the preliminary recommendations and/or implementation guidelines?

Though Work Track 1 discussed a number of different possible alternative approaches, there was no agreement on any alternatives to the 2012; namely that all applications should incur the same base application fee amount regardless of the type of application or the number of applications that the same applicant submits.[88] This would not preclude the possibility of additional fees in certain circumstances, as was the case in the 2012 round of the program (e.g., objections, Registry Service Evaluation Process, etc.).

d. What are the options under consideration, along with the associated benefits / drawbacks?

Different application fees for different types of applications is only warranted if the cost incurred for processing those different types is significant (for discussion purposes, 20% was used).

Fees imposed for changing the type of application should be higher than applying for the desired TLD type originally (for discussion purposes, the applicant must pay 125% of the difference between the different application types in terms of fees plus any other related processing fees.)

e. What specific questions are the PDP WG seeking feedback on?

1. If the number of applications exceed capacity limits and projected processing costs (assuming these are limiting factors) should there be an option to increase capacity and costs to meet service expectations. If so, how should capacity vs. increased costs and/or limits be set? What is an acceptable increase and how would the actual percentage be determined?
2. Should there be any exception to the rule that all Applicants pay the same Application Fee regardless of the type of Application? What exceptions? Why or Why not?
3. If different types of applications results in different costs, what value (e.g., amount, percentage, other) would justify having different fees? How could we seek to prevent gaming of the different costs?
4. If fees are imposed for changing the type of application, again what is an acceptable percentage and how should the percentage be determined?

[88] It should be noted that although some applicants may receive applicant support in the form of reductions of their application fees, those are not considered “Variable Fees” for the purpose of this Initial Report.

f. Deliberations

While variable fees is a separate topic from the application fee, much of the discussions took place during and in the context of discussions around the application fee more holistically. It was also identified and acknowledged early on that outcomes for this topic may depend on discussions related to the topic of TLD types. There is also a linkage to other topics, such as Applicant Support and the Registry Services Provider Program, which can create additional fee variability.

The Work Track made an assumption that certain applications were more intensive to evaluate than others. For instance, while each application was evaluated on its own merits, if there are dozens of applications that are essentially identical, there is very likely to be an opportunity for economies of scale. Or, in some cases, the applicant provided its own registry services while others contracted with a Registry Services Provider, with the RSP likely providing very similar services to other clients. This perceived variability in application processing and the implication that the cost incurred is therefore variable served as the basis for discussions on this topic. While the Work Track sought actual costs from the ICANN Organization, the Work Track understands that costs were not tracked at an application by application level, making it difficult to determine if there is substantial variance in costs incurred for different application types and/or evaluation paths.

As has been discussed in other topics (e.g., TLD types), creating different paths to application approval can lead to to unintended consequences as applicants try to fit their application into the criteria to gain some advantageous treatment. For this reason, as well as simplicity, many in the Work Track and comments in Community Comment 2 preferred that the fee be the same for all applicants. However, some noted that perhaps variable pricing might be warranted in the event the difference in costs exceeds a certain threshold (e.g., greater than 20%). Others noted a specific instance where variable fees might make sense, highlighting the case of exclusive use TLDs, where for instance, registrant protection mechanisms like data escrow and EBERO require less scrutiny and related costs.

The Work Track discussed whether or not it is it fair for applications that are less resource-intensive to evaluate to potentially subsidize costs to evaluate applications requiring more resources. As the Work Track grappled with this question, it contemplated the concept of variable fees occurring in certain circumstances. Assuming there continues to be different categories of applications (e.g., community-based, other), a ‘One Fee Fits All’ system is justified if the difference in costs by type of application are minimal (e.g., less than 20%). However, if the difference is greater than a specific percentage or specific dollar amount, then perhaps allowing for a variable fee might be more equitable.

In considering a system where applicants pay the application fee relative to the costs incurred for their particular application, a number of factors would need to be considered in developing estimates. For instance, the evaluation elements, the cost and time to complete those elements, and the different risks associated with different TLDs types could all be factors in establishing variable fee amounts. The Work Track was unable to review the 75 steps used to establish the application fee amount as the related documents were unavailable, so any related insight was not discussed.

As noted, many comments from CC2 were not supportive of different types of application fees and believed it may be a path to ‘game’ the system. Some Work Track members noted that

compliance costs associated with ensuring the activities match the type of application may increase. The Work Track considered some methods to mitigate potential 'gaming' and suggested that imposing fees for applying for a cheaper/faster application type and/or changing type after delegation might make sense.

Lastly, the Work Track discussed volume discounts for applicants who submit multiple applications and the sentiment from both the Work Track and CC2 was overwhelmingly against the concept.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

1.5.3 Deliberations and Recommendations: Applications Submission Period

a. What is the relevant policy and/or implementation guidance (if any)?

No relevant policy or implementation guidance for this topic.

b. How was it implemented in the 2012 round of the New gTLD Program?

A three (3) month application period was specified in the AGB, as detailed in Section 1.1.1. The Application Period was interpreted to mean the point at which TLD applicants were able to enter the application system to the end of the time period in which applications would be accepted.[89]

c. What are the preliminary recommendations and/or implementation guidelines?

- For the next round of new TLD applications, Applicants should have a minimum of three (3) months from the time in which the Application Systems open until the time in which Applications would become due ("Application Submission Period").

This recommendation would apply if the next application opportunity is structured as a round. Please see sub-sections (d) and (f) for discussion about potential subsequent application opportunities.

d. What are the options under consideration, along with the associated benefits / drawbacks?

[89] The Application Period for the 2012 Round commenced on 12 January 2012 and was set to end on 12 April 2012. A technical glitch caused the application system to be temporarily suspended on 12 April 2012. The system was subsequently reopened on 22 May 2012 and remained open until 30 May 2012.

- Under the topic “Communications” (see 1.4.2.), the Work Track has recommended that the Communications Period for the next round of new gTLDs should be at least six (6) months. One possible recommendation is that no more than two (2) months of the Communications Period for the next round of new gTLDs should overlap with the Application Submissions Period, leaving at least one (1) month after the closing of the Communications Period and before the closing of the Applications Submission Period.
- In the event that following the next round of new gTLDs, application opportunities are organized as a series of application windows:
    - Steps related to application processing and delegation should be able to occur in parallel with the opening of subsequent application windows.
    - The Applications Submission Period may be shortened to two (2) months.

e. What specific questions are the PDP WG seeking feedback on?

- For the next Round, is having the Applicant Submission Period set at three (3) months sufficient?
- Is the concept of a fixed period of time for accepting applications the right approach? Why or why not? Does this help facilitate a predictable schedule for submission and objections/comments?

f. Deliberations

The Work Track noted that this topic is closely connected to the overarching issue “Applications Assessed in Rounds,” which addresses the structure of application windows and application processing periods for subsequent procedures, including whether there should be rounds, a continuous open application period, or a hybrid model of the two. The Work Track noted that the topic “Application Submission Period” is narrow in scope and specifically addresses the length of the application submission period itself. Therefore, it is difficult to come to conclusions on this topic until discussions on rounds are completed.

While there were different views expressed about how application windows should be structured in subsequent procedures, the Work Track agreed, and CC2 comments reinforced, that predictability for applicants is essential. The Work Track discussed that applicants would have a greater amount of predictability if a steady state of application opportunities could be reached, for example an annual application window followed by a period to complete application evaluation. In such a scenario, the Work Track generally agreed that a three-month application window would give applicants sufficient time to submit application materials. If the remaining nine months were devoted to completing application evaluation, applicants would have plenty of time between windows to prepare for the following application opportunity.

The Work Track considered a proposal that following the initial round, subsequent application submission windows could be shorter, perhaps 60 days in length. The Work Track would like feedback on this proposal.

Several CC2 comments suggested that ICANN should provide a clear schedule, in advance, notifying potential applicants of future application windows. Commenters suggested that the structure of future applications windows should be determined and communicated as early as possible to ensure predictability for applicants.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

1.5.4 Applicant Support

a. What is the relevant policy and/or implementation guidance (if any)?

Implementation Guideline B: "Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants."
Implementation Guideline N: "ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed."

b. How was it implemented in the 2012 round of the New gTLD Program?

The Applicant Support Program (ASP) was a community-driven initiative developed to promote access to the New gTLD Program. It assisted potential new gTLD applicants seeking both financial and non-financial support via the following mechanisms:

- Financial assistance in the form of new gTLD evaluation fee reduction;
- Pro bono services;
- Establishment of a funding mechanism for the program.

The financial assistance component of the ASP allowed applicants that could meet the established criteria threshold to pay a reduced evaluation fee of USD $47,000 instead of the full evaluation fee of $185,000. ICANN agreed to set aside USD $2,000,000 to seed the initial ASP.[90]

In order to qualify for the fee reduction, applicants were required to demonstrate financial need, provide a public interest benefit, and possess the necessary management and financial capabilities.[91] In addition, in the event that an Applicant applied for assistance under the ASP but was found to not qualify for the program, it was required to withdraw the application from

[90] Cite ICANN Resolution.
[91] For more information see the New gTLD Applicant Support page at: https://newgtlds.icann.org/en/applicants/candidate-support.

consideration. Thus, there was no opportunity if an Applicant failed to qualify for the program, to then attempt to raise the remainder of the funds to keep its application in current round of the Program. A five member Support Application Review Panel (SARP) was needed to perform evaluations. The panel was appointed by ICANN in 2011 and was intended to be representative of the ICANN Community.

c. What are the preliminary recommendations and/or implementation guidelines?

Work Track 1 members are generally of the view that:

1. In the 2012 round, although anyone could apply, Applicants that operated in a developing economy were given priority in the ASP[92]. The Work Track generally agreed that applicant support should continue to be open to applicants regardless of their location so long as they meet the other criteria.
2. Geographic outreach areas should not only target the Global South[93], but also consider the "middle applicant" which are struggling regions that are further along in their development compared to underserved or underdeveloped regions.
3. Applicants who do not meet the requirements of the ASP should be provided with a limited period of time (that does not unreasonably delay the program) to pay the additional application fee amount and transfer to the relevant application process associated with their application.
4. ICANN should improve the awareness of the ASP by engaging with other ICANN communities and other suitable partners that include, but not limited to, focus on technology and communication industries, especially in underserved regions, while improving awareness through extensive promotional activities.
5. ICANN should employ a multifaceted approach based on pre-application support, including longer lead times to create awareness, encouraging participation of insightful experts who understand relevant regional issues and potential ramifications on the related business plans, along with the tools and expertise on how to evaluate the business case, such as developing a market for a TLD.
6. Support should continue to extend beyond simply financial. ICANN's approach should include mentorship on the management, operational and technical aspects of running a registry such as existing registries/registrars within the region to develop in-house expertise to help ensure a viable business for the long-term.
7. Additionally, financial support should go beyond the application fee, such as including application writing fees, related attorney fees, and ICANN Registry-Level Fees.
8. ICANN should evaluate additional funding partners, including through multilateral and bilateral organizations, to help support the ASP.
9. ICANN should consider whether additional funding is required for the next round opening of the Applicant Support Program.

[92] See https://archive.icann.org/en/topics/new-gtlds/draft-applicant-support-criteria-10dec11-en.pdf.
[93] While there does not seem to be an internationally agreed definition for the term Global South, see here: https://en.wikipedia.org/wiki/Global_South

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

- The Work Track generally agreed that that the ASP should be open to applicants regardless of their location (see recommendations 1 and 2 above). How will eligibility criteria need to be adjusted to accommodate that expansion of the program?
- Metrics: What does success look like? Is it the sheer number of applications and/or those approved? Or a comparison of the number that considered applying vs. the number that actually completed the application process (e.g., developed its business plan, established financial sustainability, secured its sources of funds, ensured accuracy of information?)
    - What are realistic expectations for the ASP, where there may be critical domain name industry infrastructure absent or where operating a registry may simply not be a priority for the potential applicants?
- If there are more applicants than funds, what evaluation criteria should be used to determine how to disperse the funds: by region, number of points earned in the evaluation process, type of application, communities represented, other?
- Other elements
    - Did the ASP provide the right tools to potential program participants? If not, what was missing?
    - How can we best ensure the availability of local consulting resources?
    - How can we improve the learning curve – what ideas are there beyond mentorship?
    - How do we penalize applicants who may try to game the system?
    - Are there any considerations related to string contention resolution and auctions to take into account?
    - Should there be a dedicated round for applicants from Developing Countries?
- What should the source of funding be for the ASP? Should those fund be considered an extra component of the Application Fee? Should ICANN use a portion of any excess fees it generates through this next round of new gTLDs to fund subsequent Application Support Periods?
- Are there any particular locales or groups that should be the focus of outreach for the ASP (e.g., indigenous tribes on various continents)?

f. Deliberations

The Work Track considered several sources, including the Final Issue Report,[94] the report by AM Global Consulting "New gTLDs and the Global South: Understanding Limited Global South Demand in the Most Recent new gTLD Round and Options Going Forward," CC2 responses,

[94]https://gnso.icann.org/sites/default/files/file/field-file-attach/2016-12/subsequent-procedures-final-issue-04dec15-en.pdf

the Final Report of the Joint SO/AC New gTLD Applicant Support Working Group,[95] and the Competition, Consumer Trust, and Consumer Choice Review Team (CCT-RT) Draft Report.[96]

With respect to the CC2 responses, the Work Track noted that some said there was a need for additional support for IDNs, including more technical resources, if the applicants also met the other ASP criteria. Others suggested that the ASP always was intended to include IDN support. On the concept of the "middle applicant" (i.e., struggling regions that are further along in their development compared to underserved or underdeveloped regions), respondents noted the need to identify areas to target and that while it could afford greater access to the ASP, it could also increase costs, depending on how this expanded category was defined. Others disagreed that such an expansion was consistent with the original aims of the program.

Several CC2 respondents had suggestions for how to improve the program, which the Work Track considered in its deliberations and recommendations. These include bringing down applications costs and simplifying the process, providing more concise documentation, better publicity and education, offering support in other parts of the ecosystem via Registry Operator or registrar programs, and seeking partners with relevant global reach. Others suggested additional information should be collected via research and studies. In addition, some respondents said ICANN should be focused on adjusting eligibility criteria, making sure applicants can meet the criteria, and improving mentorship and capacity building. The Work Track noted that respondents pointed to the need to look at the lessons learned from the Joint Applicant Support (JAS) program in the last round. Several respondents noted that in addition to an applicant being able to demonstrate that there is a business case for the TLD, applicants should also demonstrate that there is an actual market that the TLD will serve and that the infrastructure and people with the knowledge and the skills to operate the TLD in perpetuity are accessible.

In addition to the CC2 responses, the Work Track discussed perceived shortcomings from the 2012 round, including a condensed timeline from ASP Program launch to New gTLD Program launch, limited outreach, limited scope of assistance offered (from both a financial and logistical perspective), limited groundwork laid in advance, and lack of clarity around application and evaluation criteria.

The Work Track discussed the need to obtain information and/or data to better understand why usage was limited, which can be used in the development of any future solutions.

Concerning the dissemination of information regarding applicant support to end users, potential applicants felt they didn't have complete or the right kind of information. It has been noted that there was no outreach for the New gTLD Program in developing countries in general, not just for ASP. The Work Track discussion included identifying the following opportunities:

- The need for diversified outreach, such as through in-person events, webinars, and sector-specific conferences, possibly with the support of regional staff from the Global Stakeholder Engagement team;
- The use of traditional media and online press; and
- That communications must be frequent and simple to understand.

[95] https://community.icann.org/download/attachments/22970578/Final_Report_JASWG+%28Sept+2011%29_Seth+created_Submitted.pdf

[96] https://www.icann.org/en/system/files/files/cct-rt-draft-report-07mar17-en.pdf

The Work Track considered what areas needed to be addressed first and that there is a lack of clarity concerning applicant support needs and priorities. For example, the Work Track noted the need for balance between the support requirements for communities or geographic areas to apply for a gTLD, and whether they have enough potential registrants who would be interested in a gTLD. Specifically, do communities or geographic areas need to develop demand from users before they consider applying for a gTLD? Or is the goal of applicant support to first develop the gTLD and then develop the user demand? Do potential applicants in underserved regions have a compelling enough business reason to run a TLD?

In addition, the Work Track noted that applicants may lack experience in seeking support and evaluations should be conducted with that understanding.

The Work Track suggested that a business case must be made to 1) internal management; 2) the public; 3) and gTLD potential applicants. This could include providing possible business models that may be emulated along with case studies.

In addition, the Work Track suggested that ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.[97]

The Work Track recommended that applicant support should be open to applicants regardless of their location. Disadvantaged communities exist within wealthy countries and should not be excluded due to their location. However, eligibility criteria will need to be adjusted to accommodate any change in scope of the program. The Work Track has not yet reached agreement on specific changes in that regard.

The Work Track notes that the penalty from the 2012 round, where failure in the evaluation meant exclusion for the relevant application, seemed overly harsh. Recognizing that some elements may be needed to prevent abuse of the program, there is some support for allowing applicants who do not qualify the opportunity to raise the additional funds and transfer to the standard application process.

In 2012, the ASP fee was $47,000 which is ~ 25% of $185,000 application fee. The Work Track considered that if fee reduction applies in the future, whether there should be a minimum application fee to applicants who are awarded support.

The Work Track deliberated and reached agreement on recommendations relating to implementation guidance in the areas of promotion, outreach, reduced application fees, and assistance in general, as follows.

Improving Promotional Efforts

The Work Track agreed on the need to improve outreach for the New gTLD program in general and the ASP in Developing Countries. It suggested that such outreach could include engaging

[97] As of June 2017: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of the Congo, Djibouti, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Lao People's Democratic Republic, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan Sudan ,Timor-Leste, Togo, Tuvalu, Uganda, United Republic of Tanzania, Vanuatu, Yemen, and Zambia.

with ccNSO/GAC Members/ALAC on how to create awareness and education in relevant regions. Suggestions for outreach activities included:

- Expanding training and awareness opportunities; Encourage inclusion of the Applicant Support program in all promotional activities related to the new TLD Program.
- Being present in potential markets. This is still a new field in many countries and it takes time/presence to gain traction and build awareness.
- Finding suitable partners with the relevant global reach to improve outreach efforts to the appropriate audiences (Internet societies chapters, global university networks or aid organizations) who focus on technology and communications in underserved markets.
- Implementing training programs for developing locally situated registries/registrars.
- Leveraging regional Global Stakeholder Engagement staff to support outreach and education efforts.

In order to help determine the success of the ASP, the Work Track noted that it could be useful to develop success metrics that would go beyond simply collecting data on the number of TLDs. Specifically, the Work Track suggested:

- Collecting data on the number of registrants of domain names registered in "regional" TLDs (e.g., TLDs focusing mainly on a local, limited market), keeping in mind that there are other barriers for registrants in developing countries to access domain names, such as inability to access online payment services, and a lack of local registrars. Therefore, the Work Track noted that volume may not indicate interest or disinterest.
- Identifying the number of domain names registered in "regional" new gTLDs and comparing against the number of Internet users in such regions; and then comparing with same numbers for Internet users and "regional" new gTLDs in developed regions such Europe and North America.

Utilizing Partnerships to Maximize Outreach

The Work Track noted that while partnerships may have uses in promoting outreach, they should focus on companies from the region, rather than outsiders (such as from North American and Europe). In particular, the Work Track suggested that ICANN should

- Partner with organizations in potential regions before taking actions on its own.
- Leverage developmental entities, agencies and incubators.
- Leverage initiatives funded by multilateral agencies.
- Leverage work of USAG to promote Universal Acceptance.

Support Beyond Reduced Application Fees

The Work Track agreed that there should be support, beyond reduced application fees, for aspects of the program such as objections, string contention resolution, post-delegation operations, and other operational expenses (backend technology, data escrow, marketing and sales). This support could be offered to potential applicants who are considering whether to apply and could include providing:

- Support during the entire application process; including facilitating introductions and engagement with Registry Service Providers willing to support discounted services for ASP participants.
- Mentorship opportunities, including knowledgeable technical mentors.
- Tools to evaluate the viability of business ideas with potential ASP applicants.

Understand Obstacles & Provide Assistance Accordingly

Applicants needing support may not have the technical ability to run a registry, and while the Work Track noted that competency rules should not be relaxed, support might include capacity building, similar to ICANN's training in DNSSEC deployment, to build competency in the region. In addition, the Work Track noted that support could include guidance concerning the aspects of running a registry service, including costs, such as:

- Application/processing and relevant consultants
- Attorney's fees
- Ongoing registry maintenance

In addition, the Work Track agreed that support could include advice on how to develop a TLD and how to develop a particular market for a TLD. For example, the Work Track suggested that TLDs linked to identity may have a higher chance of not competing with others and thus may have a higher likelihood of succeeding in a community or region. Questions the Work Track considered included what are the biggest issues in a region and how can a TLD help overcome the obstacles. For example, the Work Track noted that where basic infrastructure and reliable access continues to be a challenge, the ICANN community may have to accept that the existing availability of TLDs (ccTLDs and existing gTLDs) may be sufficient in certain regions. Instead, resources may be more effectively utilized in critical local Internet infrastructure. However, the Work Track noted that polling resources may help. For example, a shared backend operator at a regional level might be used by many applicants seeking support.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

1.5.5 Terms & Conditions

a. What is the relevant policy and/or implementation guidance (if any)?

No relevant policy or implementation guidance for this topic

b. How was it implemented in the 2012 round of the New gTLD Program?

All applicants that submitted an application through the online interface were required to agree to a set of "clickwrap"[98] terms and conditions. Those terms and conditions in the online system mirrored what was made available in Module 6 of the Applicant Guidebook.

c. What are the preliminary recommendations and/or implementation guidelines?

[98] A clickwrap agreement is a type of contract that is widely used with software licenses and online transactions in which a user must agree to terms and conditions prior to using the product or service.

Work Track 2 believes that there should continue to be a Terms and Conditions document separate and apart from the Registry Agreement. Although the majority of the Terms and Conditions contained in the 2012 round were generally acceptable, the Work Track is considering proposing the following changes.

- Section 3 of the 2012 Terms and Conditions states that ICANN may deny any new TLD application for any reason at its sole discretion. It also allows ICANN to reject any application based on applicable law. The Work Track believes:
    - Unless required under specific law or ICANN Bylaws, ICANN should only be permitted to reject an application if done so in accordance with the Terms and Conditions of the Applicant Guidebook.
    - In the event an application is rejected, the ICANN Organization should be required to cite the reason in accordance with the Applicant Guidebook, or if applicable, the specific law and/or ICANN Bylaw for not allowing an application to proceed.

- Section 6 currently gives ICANN a broad disclaimer of representations and warranties, but also contains a covenant by the Applicant that it will not sue ICANN for any breach of the Terms and Conditions by ICANN. In general the Work Track was not comfortable with the breadth of this covenant to not sue and Work Track members disagreed with the covenant not to suee as a concept. However, if the covenant not to sue ICANN is maintained, there **must** be a challenge/appeal mechanism established above and beyond the general accountability provisions in the ICANN Bylaws, that allows for substantive review of the decision. This mechanism should look into whether ICANN (or its designees/contractors) acted inconsistently (or failed to act consistently) with the Applicant Guidebook (see section [1.8.2] for further detail).

- Section 14 allows ICANN to make reasonable updates to the Applicant Guidebook at its discretion. The Work Track generally agrees that to the extent that substantive changes are made to the Applicant Guidebook or program processes, applicants should be allowed some type of recourse, including if applicable, the right to withdraw its application from ICANN consideration in exchange for a refund. A framework for ICANN to make transparent changes to the Applicant Guidebook as well as available recourse to change applications or withdraw for applicants should be laid out.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

1. Are there any other changes that should be made to the Applicant Terms and Conditions that balances ICANN's need to minimize its liability as a non-profit organization with an Applicant's right to a fair, equitable and transparent application process.
2. Under what circumstances (including those arising relative to the sections referenced above) should an applicant be entitled a full refund?
3. Some in the Work Track have noted that even if a limited challenge/appeals process is established (see preliminary recommendation 2 above), they believe the covenant to not sue ICANN Organization (i.e., Section 6 of the Terms and Conditions) should be removed. Others have noted the importance of the covenant not to sue, based on ICANN Organization's non-profit status. Do you believe that the covenant not to sue should should be removed whether or not an appeal process as proposed in 1.8.2 is instituted in the next round? Why or why not?

f. Deliberations

The topic of the Applicant Guidebook terms and conditions was not initially identified in the Final Issue Report. However, the topic was raised early on by Work Track members as needing review. The Work Track has reviewed the terms and conditions[99] in their entirety and identified areas where changes may be needed. The terms and conditions has a total of 14 sections, however, after discussion the Work Track believes that only sections 3, 6, and 14 may require changes. The deliberations below are focused individually on each of those 3 sections, though they should be considered collectively when determining what recommendations may be needed.

Section 3:

> *Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.*

The origins/affirmation of this language, at least in part, can be traced to a special meeting of the ICANN Board of Directors on 25 September 2010 in Trondheim, Norway. The Board resolved to provide guidance on the Role of the Board, stating that, "The Board approves the inclusion of a broad waiver and limitation of liability in the application terms and conditions."[100]

From discussions held in the Work Track and from Community Comment 2 comments, there appears to be general agreement that the language in the provision should be revised to make it clear that ICANN cannot unilaterally reject an application without an appropriate reason and in accordance with the Applicant Guidebook.

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[99] Ibid.

[100] See Board minutes here: See Board minutes here: https://www.icann.org/resources/board-material/minutes-2010-09-25-en

Some recommended referencing documents that should be read in conjunction with the section, such as applicable sections of the ICANN Bylaws and sections of the Applicant Guidebook on eligibility and evaluation criteria and processes. In the event an application is rejected, the ICANN Organization should be required to cite the reason, specific law, ICANN Bylaw, and/or policy for not allowing an application to proceed. In Community Comment 2, the Registries Stakeholder Group provided specific proposed adjustments, "ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law, policy, or eligibility and evaluation requirements outlined in sections 1.2, 2.1-2, and 3.2.1 in the Applicant Guidebook."

However, the Work Track has not agreed to specific wording to revise this section, though it notes that that level of specificity may not be needed at this phase of the PDP.

Section 6:

> *Applicant releases ICANN from any claims by applicant related to ICANN's review, applicant's withdrawal, or ICANN's decision of application. Applicant agrees not to challenge ICANN in court in regards to any final decision made by ICANN in regards to the application.*

Many in the Work Track recognized the challenges of allowing ICANN, a non-profit, to be subject to unlimited litigation. However, some felt that a covenant to exclude fraud or gross negligence may be appropriate. Channeling discussions from Work Track 3 on challenge mechanisms [see section 1.8.2], some felt that the presence of covenant not to sue ICANN would be much more palatable if challenge/appeals mechanisms were established for the program. Specific language considered by the group stated that, "ICANN must build into the new gTLD Program appeals mechanisms to include the ability for applicants to challenge the decisions of the ICANN staff, the ICANN Board, and/or any entities delegated decision making authority over the assignment, contracting and delegation of new gTLDs. Such appeals mechanism must include the ability to review those decisions on the merits and not only with respect to whether ICANN violated the Bylaws. Only with such an appeals process performed by an independent entity could ICANN then include a covenant not to sue in the Applicant Terms and Conditions. However, the covenant not to sue shall not apply to cases alleging fraud, negligence or wilful misconduct." Some members of the work track maintain their opposition to the covenant not to sue ICANN even if an appeals mechanism is adopted.

The majority of comments from Community Comments 2 also supported the creation of a challenge/appeal mechanism if the covenant not to sue ICANN is maintained. The specifics of the challenge/appeal mechanism will take place within the deliberations related to section [1.8.2] on Accountability Mechanisms.

Section 14:

> *Applicant understands ICANN reserves right to make updates/changes to applicant guidebook and application process and that applicant will be subject to such changes. If such changes are made after application has been submitted and present material hardship to applicant, ICANN will work to accommodate applicant.*

The Work Track felt that the uncertainty introduced from allowing changes to the Applicant Guidebook and program processes put applicants in a poor position, where they have relied upon a certain set of rules only to have the distinct possibility that they may change after

application submission. The Work Track emphasized the importance of predictability within the program, and some felt that ICANN's ability to make changes to the Applicant Guidebook and program processes should be limited as much as possible. The Work Track noted the connection to the broader Predictability topic (see section 1.2.2 on Predictability) and the likely applicability and usefulness of the Predictability Framework discussed there - any resulting changes from section 1.2.2 should be reflected in this section of the report. There was recognition in the Work Track that indeed, some change and uncertainty is inevitable, and but that perhaps setting thresholds for allowing change might make sense.

The Work Track also noted that, to the extent that substantive changes are needed, applicants should be allowed to some type of recourse. For instance, applicants could be allowed to make changes to their application in order to react to the changes made to the AGB, or if particularly impactful changes are made, then refunds may make sense.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

1.6 Deliberations and Recommendations: Application Processing

Application Processing		
1.6.1	Application Queuing	Work Track 1

1.6.1 Application Queuing

a. What is the relevant policy and/or implementation guidance (if any)?

Implementation Guideline D: "A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary. Applications will be time and date stamped on receipt."

b. How was it implemented in the 2012 round of the New gTLD Program?

While the 2007 Final Report recommended processing applications on a first-come first-served basis, Section 1.1.2.5 of the Applicant Guidebook specified that if more than 500 applications were received, a secondary timestamp mechanism would be used to establish batches for evaluation and subsequent application processing steps. ICANN initially intended to use a system it called "digital archery" to provide the timestamp. It developed this unique "skills-based"

mechanism[101] to avoid as best as possible a randomization process that could be classified as a lottery or sweepstakes.[102] After glitches in the system were discovered that produced inconsistent results, ICANN adopted a "Drawing" process that randomized the applications to determine the priority of evaluating the applications.[103]

For the Drawing process, ICANN obtained a license from the State of California so that the mechanism would be conducted in accordance with California law. Applicants had the option to pay $100 per application to receive a ticket for inclusion in the prioritization draw, which determined the order in which applications received their Initial Evaluation results (although the order was used for other processing steps as well). IDN strings were prioritized before other applications and all applications associated with a ticket were prioritized before those without. The randomized draw took place in four parts:

- Drawing 1: IDN applications for which a ticket had been purchased
- Drawing 2: Non-IDN applications for which a ticket had been purchased
- Drawing 3: IDN applications for which a ticket had NOT been purchased
- Drawing 4: Non-IDN applications for which a ticket had NOT been purchased

c. What are the preliminary recommendations and/or implementation guidelines?

The Work Track notes that the full Working Group must make recommendations about the structure of subsequent application windows before any recommendations can be finalized on this topic (see Applications Assessed in Rounds - section 1.2.3). The Work Track notes, however, that the first application window in subsequent procedures is likely to be structured in the form of a round. If this is the case, the following preliminary draft recommendations apply for the prioritization of applications.

- ICANN should not attempt to create a "skills-based" system like "digital archery" to determine the processing order of applications.
- ICANN should apply again for an appropriate license to conduct drawings to randomize the order of processing applications.
- If ICANN is able to secure such a license, applications should be prioritized for Initial Evaluation using a prioritization draw method similar to the method ultimately adopted in the 2012 round. Namely:

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[101] See https://www.icann.org/resources/board-material/resolutions-2012-03-28-en for a description of the "digital archery" system.

[102] In 2001, ICANN and NeuLevel were sued in Los Angeles, California by several applicants for .BIZ domain names claiming that the Defendants were running an illegal lottery. In that case, NeuLevel initially proposed randomizing applications for second level domain names within .BIZ to determine the ultimate registrants for those names. NeuLevel charged applicants for .BIZ domain names an application fee of $2.00 per application. After an injunction was granted temporarily halting the launch of .BIZ, NeuLevel changed the application process to a first-come, first-served process and settled the case with the plaintiffs. See https://www.icann.org/resources/pages/smiley-v-icann-2012-02-25-en.

[103] See http://newgtlds.icann.org/en/applicants/batching/drawing-prioritization-10oct12-en.pdf for the Drawing Process.

    - Applicants who wish to have their application prioritized may choose to buy a ticket to participate in the "draw".
    - Applicants who choose not to buy a ticket will participate in a later draw to be held after the prioritized applicants.
    - Assignment of a priority number is for the processing of the application and does not necessarily reflect when the TLD will be delegated.
- Unlike the 2012 round, the Work Track is considering the following proposals:
    - If an applicant has more than one application, they may choose which of their applications to assign to each priority number received within their portfolio of applications.
    - To the extent that it is consistent with applicable law to do so, ICANN should include in the application amount the cost of participating in the drawing or otherwise assign a prioritization number during the application process without the need for a distinctly separate event.
- All Applications submitted in the next round (regardless whether delegated or not) must have priority over applications submitted in any subsequent rounds/application windows even if the evaluation periods overlap.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

- If there is a first-come, first-served process used after the next application window, how could ICANN implement such a process?
- In subsequent procedures, should IDNs and/or other types of strings receive priority in processing? Is there evidence that prioritization of IDN applications met stated goals in the 2012 round (served the public interest and increased DNS diversity, accessibility and participation)?[104]
- If ICANN is unable to obtain a license to randomize the processing order of applications, what are some other mechanisms that ICANN could adopt to process applications (other than through a first-come, first-served process)?
- Some members have suggested that the processing of certain types of applications should be prioritized over others. Some have argued that .brands should be given priority, while others have claimed that community-based applications or those from the Global South should be prioritized. Do you believe that certain types of applications should be prioritized for processing? Please explain.

[104] According to the paper produced by the ICANN Organization "Use of a Drawing for Prioritizing New gTLD Applications" "Advance release of IDNs promotes DNS diversity, makes the Internet more accessible, increases avenues of participation and serves the public interest." See https://www.icann.org/resources/pages/drawing-prioritization-2012-10-10-en.

f. Deliberations

In early conversations on application queuing, the Work Track reviewed potential dependencies within the PDP that may impact deliberations on the topic. Key among these is the structure of application windows for subsequent procedures. If the full Working Group recommends, for example, that ICANN accept applications on a continuous basis, the needs regarding application queuing might be very different than a model of application rounds.

Keeping in mind that there are still open questions that may need to be revisited following publication of the Initial Report and review of public comments, the Work Track discussed several questions and concerns related to application queuing and developed some preliminary recommendations to revisit as other recommendations in the PDP are finalized.

The Work Track reviewed the challenges associated with implementation of application queuing in the 2012 round, including the unsuccessful deployment of digital archery, as well as the draw system subsequently adopted. The Work Track recalled concerns that the secondary time-stamp process outlined in the Applicant Guidebook was not created before the opening of the application window. One clear point of agreement is that if application queuing is implemented in subsequent procedures, the method should be developed and operationalized prior to the launch of the application window. Having the opportunity to do so was seen to afford the opportunity to explore improving the process by which prioritization draw numbers are assigned. Establishing the method in advance will also provide predictability and consistency for applicants and help to ensure that the necessary systems are implemented beforehand. CC2 comments supported these points.

Work Track members considered the pros and cons of the randomized draw presented in the Issue Report, agreeing that the benefits of fairness and predictability in the application process outweigh potential operational inefficiencies that accompany this method.

The Work Track largely agreed with potential drawbacks identified in the Issue Report associated with processing applications on a first-come, first-served basis:

- Applicants rushing to complete applications, possibly forsaking quality
- Favoring applicants most familiar with the process and requirements
- Favoring applicants who are located close to ICANN's servers
- Creating the possibility of a self-inflicted distributed denial of service attack as applicants rush to click the submit button

Taking into account comments received through CC2, the Work Track determined that if a system of rounds or multiple application windows is used in the future, it generally supports continuing to use the draw method adopted in the 2012 round. The Work Track noted that this recommendation may require additional research by the ICANN Organization's Legal

Department to ensure compliance with applicable laws. The Work Track made clear that given the problems experienced in the 2012 round, digital archery should not be used in the future.

The Work Track generally supported the practice adopted in 2012 of providing applicants the option of purchasing a ticket to receive priority in the prioritization draw. As was the case in the 2012 round, applications included in this draw would be processed before other applications. The Work Track believes that there may be an opportunity to streamline the process by which prioritization draw numbers are assigned and suggests that ICANN Legal, in determining compliance, explore ways to do so.

The Work Track discussed a proposal by the RySG that applicants should be able to choose which of their applications to prioritize in the queuing process,[106] allowing them to assign particular applications to specific drawing numbers that they have received for their portfolio of applications. Work Track members felt that this was a reasonable proposal that allowed greater flexibility to applicants with multiple applications.

The Work Track discussed whether specific types of applications should be prioritized in subsequent procedures. There was no agreement about whether IDNs should continue to receive priority or how they would receive priority over all other types of applications. CC2 comments suggested additional categories for prioritization, for example the ALAC proposed that Community applications and applications seeking Applicant Support should receive priority.[107] Work Track members further considered whether priority should be given to applications from the Global South, but some members raised concerns about gaming. The Work Track reviewed a proposal from the Brand Registry Group to group applications by common characteristics while establishing priority numbers, in order to increase processing efficiency, using .Brands as an example. The Work Track did not come to a conclusion on these suggestions.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

1.7 Deliberations and Recommendations: Application Evaluation/Criteria

[106] See RySG response to CC2 question 1.7.1.
[107] See ALAC response to CC2 question 1.7.2.

Application Evaluation/Criteria		
1.7.1	Reserved Names	Work Track 2
1.7.1.2	*IGO/INGO Protections*	*Work Track 2*
1.7.1.3	*Geographic Names*	*Work Track 5*
1.7.2	Registrant Protections	Work Track 2
1.7.3	Closed Generics	Work Track 2
1.7.4	String Similarity	Work Track 3
1.7.5	IDNs	Work Track 4
1.7.6	Security and Stability	Work Track 4
1.7.7	Applicant Reviews: Technical/Operational and Financial	Work Track 4
1.7.8	Name Collisions	Work Track 4

1.7.1 Reserved Names[108]

a. What is the relevant policy and/or implementation guidance (if any)?

Recommendation 5: "Strings must not be a Reserved Word."
Recommendation 2: "Strings must not be confusingly similar to an existing top-level domain."

b. How was it implemented in the 2012 round of the New gTLD Program?

There are two types of "Reserved Names" in the New gTLD Program. Strings may either be "reserved" at the top level and/or strings can be "reserved" at the second level. The Applicant

[108] This Initial Report contains recommendations and deliberations regarding all second-level domain name reservations (including geographic names at the second level), and for all top-level strings except those pertaining to Geographic Strings at the top level. Geographic Strings at the top-level are still being discussed by Work Track 5 for which a separate Initial Report shall be published by the Working Group in the months to come.

Guidebook primarily dealt with reservations at the top level, while the Base Registry Agreement (included as Module 5 of the Applicant Guidebook) contained an appendix (Specification 5[109]). There was a list of top-level reserved names in the following sections of the Applicant Guidebook: (i) 2.2.1.2.1 of the AGB, the (ii) technical string requirements in section 2.2.1.3.2 on string composition for ASCII and IDN strings, and (iii) Geographic Names requirements in section 2.2.1.4.2 of the AGB.

With respect to the Schedule of Reserved Names (at the second level), Specification 5 has been amended several times over the last five years. ICANN subsequently amended Specification 5 with an Authorizations to release all Digit/Digit, Letter/Digit, and Digit/Letter Two-Character ASCII Labels as well almost all Letter/Letter ASCII at the second level.

c. What are the preliminary recommendations and/or implementation guidelines?

There is general agreement that only incremental changes are needed to both (1) the reserved names list and related provisions at the top level in the Applicant Guidebook and (2) second level reservations in the Base Registry Agreement. The Work Track has generally agreed on the changes below.

- Reservation at the top level: Keep all existing reservations, but add:
    - The names for Public Technical Identifiers (i.e., PTI, PUBLICTECHNICALIDENTIFIERS, PUBLICTECHNICALIDENTIFIER).
    - Special-Use Domain Names through the procedure described in IETF RFC 6761[110].

- Reservations at the second level: Keep all existing reservations, but update Schedule 5 to include the measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes adopted by the ICANN Board on 8 November 2016[111].

The Work Track is also considering a proposal to remove the reservation of two-character strings at the top level that consist of one ASCII letter and one number (eg., .O2 or .3M), but acknowledges that technical considerations may need to be taken into account on whether to lift the reservation requirements for those strings. In addition, some have expressed concern over two characters consisting of a number and an ASCII letter where the number closely resembles a letter (eg., a “zero” looking like the letter “O” or the letter “L” in lowercase looking like the number “one”).[112]

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[109] See https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html, Specification 5.

[110] See the list of special use domains here: https://www.iana.org/assignments/special-use-domain-names/special-use-domain-names.xhtml

[111] See Board Resolution here: https://features.icann.org/two-character-domain-names-new-gtld-namespace

[112] For example, “.no” the ccTLD for Norway looking like “n0” using the number “zero” or “.nl” for the ccTLD of the Netherlands looking like “.n1” using the number “one.”

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

- The Base Registry Agreement allows Registry Operators to voluntarily reserve (and activate) up to 100 strings at the second level which the Registry deems necessary for the operation or the promotion of the TLD Should this amount of names be increased or decreased? Please explain. Are there any circumstances in which exceptions to limits should be approved? Please explain.
- If there are no technical obstacles to the use of 2 character strings at the top level consisting of one letter and one digit (or digits more generally), should the reservation of those strings be removed? Why or why not? Do you believe that any additional analysis is needed to ensure that these types of strings will not harm security and stability? Please explain.
- In addition to the reservation of up to 100 domains at the second level, Registry Operators were allowed to reserve an unlimited amount of second level domain names and release those names at their discretion provided that they released those names through ICANN-Accredited Registrars.
    - Should there be any limit to the number of names reserved by a Registry Operator? Why or why Not?
    - Should the answer to the above question be dependent on the type of TLD for which the names are reserved (eg., .brand TLD, Geographic TLD, Community-based TLD and/or Open)? Please explain.
    - During the 2012 Round, there was no requirement to implement a Sunrise process for second-level domain names removed from a Reserved Names list and released by a Registry Operator if the release occurred after the general Sunrise period for the TLD. Should there be a requirement to implement a Sunrise for names released from the Reserved Names List regardless of when those names are released? Please explain.
- Some in the community object to the Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes, adopted by the ICANN Board on 8 November 2016. Is additional work needed in this regard?

f. Deliberations

The Work Track began its consideration of Reserved Names by examining the recommendations of the Reserved Names Working Group[113] (RN-WG) and comparing those recommendations against what was implemented in the Applicant Guidebook. In doing so, the Work Track sought to identify inconsistencies which may need correction via updated policy

[113] See Final Report here: https://gnso.icann.org/en/issues/new-gtlds/final-report-rn-wg-23may07.htm

recommendations, instances where reservation may no longer be needed, as well as cases where additional terms may require reservation. The Work Track went through these resources methodically and carefully.

Top-Level:

The Work Track reviewed the list of Reserved Names defined in section 2.2.1.2.1 of the Applicant Guidebook. The Work Track went through the categories identified in the 2007 Final Report one by one and came to agreement that a number of the reserved name categories needed no changes. However, several areas were subject to discussion and input from Community Comment 2 (CC2).

- ICANN / IANA Names: There was general agreement to maintain the existing names as reserved in the Applicant Guidebook, though some CC2 comments suggested that the list should be reviewed and limited to names where a stability or security risk exists. Others suggested that the names could actually be put to use. In the end, the Work Track generally agreed to leave as is, with the exception to add names related to Public Technical Identifiers. There was also broad support to reserve Special Use Domain Names as determined by the procedure in RFC 6761, noting that additions to this category are anticipated to be rather exceptional in nature.
- Single Letters: There was some support to allow single letter ASCII TLDs, but no agreement was reached. The original recommendation notes that, “If sufficient research at a later date demonstrates that the technical issues and concerns are addressed, the topic of releasing reservation status can be reconsidered.” To that extent however, no additional research was conducted to determine if indeed, those technical issues have been removed. For single character IDNs, the topic was referred to Work Track 4, which was assigned the IDNs topic more broadly.
- Single Letter, Single Digit Combinations: The Work Track noted that the recommendations allowed for this type of TLD, though it was disallowed in the Applicant Guidebook, as were any TLDs that contained digits. There was some support for allowing this type of TLD, in the absence of technical issues, though no agreement was reached.
- Nic/Whois/www: There was some support to include the RDS and/or RDDS acronyms, though no agreement was reached.
- Geographical/Geopolitical: The Work Track deferred discussion of this topic to Work Track 5.
- Controversial Names: The Work Track noted that as recommended, there was no list of reserved names for this category, and it was addressed instead via the Limited Public Interest objection procedure. No agreement was reached here, though a linkage to Work Track 3’s deliberations on objections was identified.

There was some sentiment within the Work track that reservations at the top-level should be limited to strings that may pose a security and stability risk.

Second-Level

The Work Track went through the categories identified in the 2007 Final Report one by one and came to agreement that a number of the reserved name categories needed no changes. However, there were a limited number of areas that were subject to discussion and input from CC2.

- Any combination of Two Letters, Digits: The Work Track discussed this area and generally agreed that the recommendation language should be made consistent with the current situation[114]. Specifically, the measures to avoid confusion of letter/letter two-character ASCII labels with corresponding country codes could be captured in future agreements.
- Voluntary Reservation of 100 Names: Regarding language in the Specification 5, Provision 3.2 of the Registry Agreement, which allows the Registry Operator to reserve and use up to 100 names at the second level for the operation and/or promotion of the TLD, there were several CC2 comments; they noted that while the limit of 100 names was reasonable for open TLDs, it posed challenges for geographic TLDs, where in some cases the supporting government required the reservation/allocation of large numbers of names to the government. CC2 comments also noted that the limit might not make sense for closed .Brand TLDs. The Work Track did not reach agreement on these areas and welcomes input from the community.
- Voluntary Reservations of Additional Names: The Work discussed the provisions in Specification 5 of the Registry Agreement, which allow the Registry Operator to reserve an unlimited number of other domain names that may only be released through an ICANN-Accredited Registrar for registration by third parties. There was also a substantial number of CC2 comments on this area, several of which noted that in reserving names, a Registry Operator could release names after the Claims Period, bypassing several rights protection mechanisms, with the exception of Claims Services via the Trademark Clearing House. No agreements were reached on this area.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

The outputs from Work Track 5 may result in additional reservations.

1.7.1.1 IGO/INGO Protections

a. What is the relevant policy and/or implementation guidance (if any)?

No relevant policy or implementation guidance on this topic.

b. How was it implemented in the 2012 round of the New gTLD Program?

Temporary protections were put into place for International Red Cross and Red Cross Movement, International Olympic Committee (IOC), International Governmental Organizations (IGOs), and International Non-Governmental Organizations (INGOs), affecting both the top-level (in the Applicant Guidebook) and second-level (via Specification 5).

c. What are the preliminary recommendations and/or implementation guidelines?

[114] See Board Resolution here: https://www.icann.org/en/system/files/files/revised-measures-ltr-ltr-two-char-ascii-labels-country-codes-08nov16-en.pdf

None being considered at this time..

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

None being proposed at this time.

f. Deliberations

The Work Track refrained from discussing this topic as it is the subject of ongoing policy development in the *PDP for Protection of IGO and INGO Identifiers in All gTLDs* and the *PDP on Curative Rights Protections for IGO/INGOs*. No issues have since been identified that are not already being considered by these two PDPs and as such, the Work Track does not anticipate that any substantive deliberations will be needed for this topic.

The policy recommendations of the PDP for Protection of IGO and INGO Identifiers in All gTLDs that were determined to not be inconsistent with GAC Advice were adopted by the ICANN Board and have been implemented as the Protection of IGO and INGO Identifiers in All gTLDs Policy[115]. The Work Track notes that this policy will impact the drafting of the Applicant Guidebook, as protections stemming from that policy will need to be integrated into the top-level reserved names list.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

See Deliberations Section above.

1.7.1.2 Geographic Names at the Top-Level

The Working Group has established Work Track 5 to consider this singular topic. Work Track 5 will publish its own Initial Report, separate from this one.

1.7.2 Registrant Protections

[115] See policy here: https://www.icann.org/resources/pages/igo-ingo-protection-policy-2018-01-16-en.

a. What is the relevant policy and/or implementation guidance (if any)?

Principle D: "A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet."

b. How was it implemented in the 2012 round of the New gTLD Program?

In a United States Congressional Hearing on December 14, 2011 before the Committee on Energy and Commerce of the United States House of Representatives, on behalf of ICANN, Kurt Pritz described the numerous protections afforded to the Internet Community from the launch of the new gTLD Program.[116] These included (i) the maintenance of a Continued Operations Instrument (COI) sufficient to fund basic registry operations for a period of three years in the case of business failure and (ii) the maintenance of continuity and transition plans, including registry failover testing.

The attachment to Module 2 of the Applicant Guidebook specifically incorporated these protections and describes the ways in which application evaluation criteria and scoring seek to protect registrants.

The New gTLD application included questions about protections against registry failure, including registry continuity, registry transition, and failover testing.

ICANN holds contracts with Emergency Back-end Registry Operators (EBERO) that can be temporarily activated to provide five critical registry functions[118] in the event of a TLD registry operator failure.

Specification 6 of the Base Registry Agreement addresses Registry Interoperability and Continuity Specifications. Specification 8 addresses the Continued Operations Instrument (COI), which is invoked if it is necessary to pay for an EBERO. COI requirements were specified in Question 50 of the application and supplemented by Continued Operations Instrument Guidelines.[119] Specification 10 provides Registry Performance Specifications, which are utilized in determining if an EBERO event is needed.

In addition to the above Registrant Protections, ICANN also conducted background checks on all applying entities, individuals, and organizations including officers and directors of the applying entity, as well as shareholders with significant interest in the entity. Background

[116] See https://www.gpo.gov/fdsys/pkg/CHRG-112hhrg75155/pdf/CHRG-112hhrg75155.pdf,p. 45-46.
[118] The five critical registry functions are: (i) DNS resolution, (ii)DNSSEC properly signed zone (if DNSSEC is offered by the registry), (iii) Shared Registration System (SRS), usually by means of the Extensible Provisioning Protocol (EPP), (iv) Registration Data Directory Services (RDDS), e.g., WHOIS provided over both port 43 and through a web based service, and (v) Registry Data Escrow. See https://www.icann.org/resources/pages/transition-processes-2013-04-22-en.
[119] https://www.icann.org/news/announcement-3-2011-12-23-en

screenings included checks on general business diligence, criminal history, and history of cybersquatting. Section 2.1 of the Applicant Guidebook provides information about background screening.

Finally, Registry Operators are required to implement Thick WHOIS, escrow their data with an approved third party data escrow provider, maintain a single point of contact to handle abuse complaints, and participate in ICANN's centralized zone file data access service.

c. What are the preliminary recommendations and/or implementation guidelines?

- Maintain the existing EBERO mechanism including triggers for an EBERO event and the critical registry functions that EBEROs provide as well as each of the other protections identified above.
- Single registrant TLDs (including those under Specification 13) should be exempt from EBERO requirements.
- Continue to allow publicly traded companies to be exempt from background screening requirements as they undergo extensive similar screenings, and extend the exemption to officers, directors, material shareholders, etc of these companies.
- Improve the background screening process to be more accommodating, meaningful, and flexible for different regions of the world, for example entities in jurisdictions that do not provide readily available information.[120]

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

- The Deliberations section below discusses several alternate methods to fund the EBERO program. Please provide any feedback you have on the proposed methods and/or any other methods to fund EBERO in subsequent procedures?
- Should specific types of TLDs be exempt from certain registrants protections? If yes, which ones should be exempt? Should exemptions extent to TLDs under Specification 9, which have a single registrant? TLDs under Specification 13, for which registrants are limited to the registry operator, affiliates, and trademark licensees? If you believe exemptions should apply, under what conditions and why? If not, why not?
- ICANN's Program Implementation Review Report stated that it may be helpful to consider adjusting background screening requirements to allow for meaningful review in different circumstances. Examples cited include newly formed entities and companies in jurisdictions that do not provide readily available information. Please provide feedback on ICANN's suggestion along with any suggestions to make applicant background screenings more relevant and meaningful.
- Should publicly traded companies be exempt from background screening requirements?

[120] The Program Implementation Review Report contained a similiar recommendation; "Consider whether the background screening procedures and criteria could be adjusted to account for a meaningful review in a variety of cases (e.g., newly formed entities, publicly traded companies, companies in jurisdictions that do not provide readily available information."

If so, should the officers, directors, and material shareholders of the companies also be exempt? Should affiliates of publicly traded companies be exempt?

- The Work Track is considering a proposal to include additional questions (see directly below) to support the background screening process. Should these be added? Why or why not?:
    - Have you had a contract with ICANN terminated or are being terminated for compliance issues?
    - Have you or your company been part of an entity found in breach of contract with ICANN?

f. Deliberations

The Work Track discussed several aspects of registrant protections in detail. It considered the Emergency Back End Registry Operator (EBERO) mechanism, including the Continued Operations Instrument (COI), and as well as triggers for activating an EBERO event. In addition, the Work Track reviewed procedures and requirements that applied in the 2012 round for background screenings conducted on applying entities, individuals, and organizations listed in Questions 9-11 of the application.

The Work Track noted that several CC2 comments pointed to areas where certain registrant protections may not be necessary in subsequent procedures. These comments stated that certain registrant protection measures appear unnecessary and irrelevant if there are no third-party registrants to protect, namely in the case of closed registries. Comments specifically pointed to .Brands as candidates for exemption from EBERO, COI, and possibly data escrow requirements. Other CC2 comments supported maintaining the current protections.

EBERO

The Work Track reviewed the five critical registry functions: (1) DNS resolution for registered domain names; (2) operation of the Shared Registration System; (3) provision of Whois service; (4) registry data escrow deposits; and (5) maintenance of a properly signed zone in accordance with DNSSEC requirements. Section 6 of Specification 10 of the Registry Agreement provides emergency thresholds for the critical registry functions. Reaching any one of these thresholds could trigger an EBERO event. The Work Track considered whether these critical functions remain appropriate and are not recommending any changes at this time. Work Track members generally supported continuing to use the EBERO model for instances of technical failure by the back-end provider.

The Work Track submitted a series of questions to the ICANN Organization about the number of times emergency thresholds had been reached. The ICANN Organization responded that thresholds had been reached 27 times. According to the response, “In each of these 27 cases, ICANN technical teams were already working with the registry before the threshold was reached. In many of the cases, the TLD had no registrations. In the cases in which there were registrations, ICANN considered the EBERO option. However, ICANN determined that it would

have less of a security and stability impact to assist the RSP through resolution rather than activating an EBERO event."[122] Since the Work Track received this response, ICANN activated an EBERO for the first time.[123] The Work Track notes that details about this case may be useful for further discussions regarding EBERO.

In CC2 comments the RySG made a proposal regarding a process for the situation where the registry operator does not also serve a technical back-end function and where the back-end is still functional, but the registry operator is failing financially. In such situations, the RySG suggested that it would make sense to leave the customers on the existing back-end throughout the registry operator transition process. Under the current process for circumstances where the registry operator is in breach of the Registry Agreement, the registry service provider is a separate entity, and the breach was not related to a technical failure, it is up to the successor registry operator to decide if the back-end remains in place.[124] The proposal was also raised and supported by a Work Track member in Work Track discussions. Work Track members noted that there are some outstanding questions regarding this proposal, for example how the back-end would be financially compensated. Work Track members noted that this would not obviate the need for a program to exist for circumstances where both the registry operator also serves the back-end function. No conclusions were reached on this proposal and the Work Track encourages input for further consideration.

RSPs as Emergency Back-End Registry Operators?

Work Track 2 addressed the topic of Registrant Protections in general. Most elements of the Registrant Protections section of this report reflect discussions in Work Track 2. Work Track 1, however, considered one specific issue related to Registrant Protections that is included in this section. Work Track 1 discussed whether, in addition to providing traditional technical services, Registry Service Providers (RSPs) joining the RSP Pre-Approval Program[125] will also provide Emergency Backend Registry Operator (EBERO) services for their Registry Operators.

Some aspects of this potential service include:

- Registry Operators using an RSP Program participant will not be required to furnish a Continued Operations Instrument.
- RSP Program members could provide this service to all Registry Operators as part of their service offering. One possibility is that this service could be provided at no additional charge, i.e. the costs are included in the standard RSP pricing model.
- Vertically integrated RSPs (i.e. RSPs that are also Registry Operators) will need to have a independent, non-related, third-party to provide EBERO services in the event that the RSP-Registry operator fails.

In developing this proposal, Work Track 1 recalled challenges from the 2012 round and the Continued Operations Instrument (COI) requirement to ensure the availability of funds to

[122] http://mm.icann.org/pipermail/gnso-newgtld-wg-wt2/2017-February/000078.html
[123] https://www.icann.org/news/announcement-2017-12-08-en
[124] https://archive.icann.org/en/topics/new-gtlds/registry-transition-processes-clean-30may11-en.pdf
[125] For additional information about the Registry Service Provider Program, please see section 1.2.6 of this report.

perform critical registry functions in the case of an EBERO event. Work Track 1 discussed the lengthy issues of the COI with a nearly universal agreement that an alternate should be found. Work Track 2 also discussed the COI in general, as well as possible alternatives. Please see the following subsection ("Continued Operations Instrument") for additional information about these alternatives.

With the RSP market developing the way it has, with relatively few RSPs serving nearly all the Registry Operators, Work Track 1 noted that there is the opportunity for the RSPs to pool the risk and furnish EBERO services for all their clients at a relatively low cost. By participating in the Program, RSPs have demonstrated the capacity to easily provide EBERO services for a random failure. Work Track 1 members pointed out that, if there is a failure, the RSP workload would actually decrease as the EBERO provides only five registry functions and, generally, the RSP would provide a Registry Operator with more functionality than required of the EBERO.

Whether the EBERO Service "insurance"[126] should be provided to all RSP clients is a complex issue and merits more discussion.

Work Track 1 assessed that this bundling of services model may lead to less risk, improved affordability, and increased reliability. One policy reason for requiring all Registry Operators who also serve as an RSP to join in the EBERO service is that greater numbers create a greater shared risk pool, making the risk more stable and the program more affordable and reliable.

- Lower RSP cost: If every RSP customer participates in the EBERO program it could lower the RSPs cost per Registry Operator for maintaining the program.
- Keep it simple and stable: If RSPs charge an additional fee for the EBERO service, Registry Operators will forum shop, creating a complex ecosystem where Registry Operators are moving between EBERO providers and RSPs. This will create compliance tasks for ICANN - with increased ICANN costs for RSPs. If every Registry Operator is automatically signed on with their RSP for EBERO services, compliance oversight is minimized.
- Disadvantages to smaller players: In a market where vertically integrated RSPs can serve themselves without transfer cost and can offer lower pricing to larger Registry Operators, small Registry Operators might find themselves with a high EBERO fee or retaining the COI. The EBERO is likely more important for smaller entities and consideration of a pricing structure should not put them at a disadvantage.

Finally, this system should perform well as there is no "single point of failure." If the Registry Operator fails, the RSP EBERO takes over. If the RSP fails, the Registry Operators will engage with another RSP. One issue arises where the RSP is vertically integrated, i.e., operating one or more Registries where a simultaneous RSP / Registry Operator could fail. In this circumstance, the RSPs might contract with another RSP or allow the ICANN EBERO to provide the service.

Continued Operations Instrument

As discussed above, the Continued Operations Instrument (COI) is the mechanism by which ICANN ensures that the necessary funds will be available to pay for the performance of critical

[126] While the term "insurance" was used by some Work Track members in Work Track discussion, other Work Track members noted that this term may have specific legal implications and an alternative word, such as "protection" might be more appropriate to use in future discussions.

registry functions in the case of an EBERO event. In question 50 of the New gTLD application, applicants provided a cost estimate for funding critical registry functions on an annual basis in case of registry failure. The applicants needed to provide evidence that they would be able to fund the performance of critical registry functions with either an irrevocable standby Letter of Credit (LOC) or an irrevocable cash escrow account. Evaluation criteria for question 50 included a series of requirements for the COI.

The Program Implementation Review Report noted a high number of of Clarifying Questions were issued for question 50, indicating that many COIs did not meet the requirements or that additional action was needed to correct an issue. A significant barrier for many applicants was that the Letter of Credit needed to name “ICANN or its designee” as the beneficiary. Many banks viewed the term "designee" as problematic because they needed to perform checks on the beneficiary, and they cannot do that for an unnamed beneficiary. According the the report, 82% of applications received a CQ on question 50. Noting that many applicants had difficulty meeting the requirements associated with the COI and nearly all needed to make amendments to their COI, the report suggested exploring alternate funding mechanisms to address TLD failure.

Responses to CC2, input from Work Track 2 members, and a review of discussions at ICANN45[129] on this topic largely echoed the concerns raised in the Program Implementation Review Report regarding the COI, with many in Work Track 2 considering the mechanism cumbersome and unreasonable. Work Track 2 considered the following proposals as alternatives to the COI:

- A pooled insurance model, where each party pays to create a fund that covers the percentage chance of failure
- ICANN funds EBERO and temporarily maintains an abandon registry out of its regular revenue stream
- Seek proposals from EBEROs (past or future) to see if there is a fixed annual fee that could be paid for the year to cover any eventuality
- Require that each applicant make a deposit as a guarantee of performance subject to charges for any breach or costs incurred by ICANN

Work Track 2 welcomes feedback on potential alternatives to the COI.

Some Work Track 2 members were not convinced that the COI should be eliminated but suggested that the requirements should be modified so that applicants face fewer obstacles in meeting them. Work Track members noted that if the COI is retained, it may be helpful to review the associated cost measurements. Some suggestions were also put forward for improving the LOC if it is determined that this mechanism will remain in place for subsequent procedures. In its response to CC2, the RySG suggested the following:

[129] http://archive.icann.org/en/meetings/toronto2012/bitcache/Transcript_%20New%20gTLD%20Update%20for%20Applicants-vid=42847&disposition=attachment&op=download.pdf

- Calculate the size of LOCs by establishing “steps” based on a percentage level—a 10% change in estimated and LOC-funded Domains Under Management.
- Review LOCs annually.
- Language requirements for the LOC should be commercially reasonable and provided to applicants in advance.
- Provide a means to more easily incorporate additional TLDs into an LOC.[130]

Work Track 2 reviewed these suggestions but did not come to agreement on them.

Background Screening

Work Track 2 discussed whether existing screening measures on applying entities, individuals, and organizations listed in Questions 9-11 of the application effectively met the goals of conducting due diligence. The Work Track agreed that it is important to conduct background checks as part of the Initial Evaluation of applications but recognized that data might be necessary to do further substantive analysis of the effectiveness of such screenings.

The Work Track considered that in the 2012 round, applying entities that were traded on top-25 exchanges were deemed to have passed general business diligence and criminal history screening. Work Track members expressed support for this continuing to be the case in the future. In the 2012 round, individuals associated with applying entities that were traded on top-25 exchanges, such as officers and directors of these companies, were not considered to be exempt.[131] Some Work Track members expressed support for extending exemptions to individuals associated with applying entities traded on top-25 exchanges.

The Program Implementation Review Report stated that some applicants were reluctant to provide personal information about individuals associated with publicly-listed companies. Several CC2 comments supported this position, as did a number of Work Track members.

Work Track members further reviewed the suggestion in the Program Implementation Review Report that it may be helpful to consider adjusting background screening requirements to allow for meaningful review in different circumstances. Examples cited include newly formed entities and companies in jurisdictions that do not provide readily available information. Work Track members expressed support for exploring alternative procedures and mechanisms to address these circumstances.

In CC2, the Work Track requested feedback on whether background screening should be performed during Initial Evaluation or at the time of contract execution. CC2 comments generally supported conducting background checks during Initial Evaluation, and again as necessary and appropriate to address any changes in the application.

The Work Track considered a proposal to include additional questions to support the

[130] See RySG response to CC2 question 2.3.2.
[131] See page 59 of the Program Implementation Review Report.

background screening process:

- Have you had a contract with ICANN terminated or are being terminated for compliance issues?
- Have you or your company been part of an entity found in breach of contract with ICANN?

The Work Track did not reach agreement in support of recommending these additional questions.

One Work Track member expressed concern about the criteria related to cybersquatting and referenced a particular case where, in this individual's view, the background screening was not applied. The Work Track member noted that UDRPs are usually against entities and not individuals, so a principal in a company that is subject to cybersquatting cases may still pass a background screening in the application process. From this perspective, if the anti-cybersquatting criteria remain in the next version of the AGB, additional measures should be put into place to ensure that individuals tied to cybersquatting are effectively identified. Work Track members noted the concern but raised that it is a challenge to measure the prevalence of related issues absent data in this area.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

1.7.3 Closed Generics (also known as Exclusive Generics)

a. What is the relevant policy and/or implementation guidance (if any)?

Following the publication of the gTLD applications in June 2012, concerns were brought to ICANN's attention regarding some applications for strings which are labelled as "Closed Generic." Though there is no uniform definition of a Closed or Exclusive Generic, Specification 11 of the Base Registry Agreement indirectly defines this as a TLD that imposes eligibility criteria for registering names in the TLD which corresponds to a "Generic String" that limits registrations exclusively to a single person or entity and/or that person's or entity's "Affiliates" (as defined in Section 2.9(c) of the Base Registry Agreement). "Generic String" means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.[133]

[133] See Specification 11, Section 3(d) of the Registry Agreement. While it does not provide a precise definition, it may also be useful consider the New gTLD Program Commitee resolution on GAC Category 2 Safeguard Advice - Exclusive Generic TLDs and language used in connection to the term "closed generics": https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a.

The 2007 Final Report did not address this topic.

b. How was it implemented in the 2012 round of the New gTLD Program?

The Applicant Guidebook did not provide guidance related to this issue.

The Base Registry Agreement envisioned having Exclusive Registries where all of the registrations in the TLD are registered to the Registry Operator and/or its Affiliates. In fact, Specification 9 included language that specifically allowed Exclusive Registries to be exempt from the Registry Operator Code of Conduct:

> *Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.*[134]

Although the Base Registry Agreement contemplated Exclusive Use or Closed Registries, after the launch of the 2012 round, GAC members submitted Early Warnings during the public comment period for applications, raising concern that Exclusive Use or Closed TLDs matching a generic term (as opposed to their own brand) should not be allowed. In these comments they expressed that using a generic string in an exclusive manner created an unfair advantage and was contrary to the public interest. In the Beijing Communique the GAC provided Advice that "For strings representing generic terms, exclusive registry access should serve a public interest goal."[135]

The ICANN Board initiated[136] a public comment period[137] on the topic of Closed Generics, and a staff report was produced.[138] The GNSO Council sent a letter to the Board in response to the public comment period providing its perspective on the issue.[139] At the same time, ICANN solicited responses from 186 applicants for the strings identified by the GAC as being potentially

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[134] See Specification 9, Section 6 of the Registry Agreement.
[135] https://gacweb.icann.org/display/GACADV/2013-04-11-Safeguards-Categories-2
[136] https://features.icann.org/closed-generic-top-level-domains
[137] https://www.icann.org/resources/pages/closed-generic-2013-02-05-en
[138] https://www.icann.org/en/system/files/files/report-comments-closed-generic-08jul13-en.pdf
[139] While the GNSO Council was not in a position to provide formal policy guidance with the short notice available, it stated that "although the GNSO did not explicitly consider the issue of 'closed generic' TLDs as part of the new gTLD PDP, we recall that the issue of restricting new gTLDs was, in general, considered and discussed. At that time, it was the view within the GNSO that it should not be the responsibility of ICANN to restrict the use of gTLDs in any manner, but instead to let new gTLD applicants propose various models; open or closed, generic or not." See https://gnso.icann.org/sites/default/files/filefield_36921/robinson-to-crocker-chalaby-07mar13-en.pdf

Closed Generic TLDs, asking whether they planned to operate the applied-for TLDs as exclusive access registries (defined as a registry restricted to a single person or entity and/or that person's or entity's "Affiliates" (as defined in Section 2.9c of the Registry Agreement)). Of the 186 applicants, all but five of them agreed to either withdraw their applications or to change their TLDs to being “open”. In a resolution passed on 21 June 2015[140] the Board determined that remaining applicants from the 2012 round who had applied for non-contested strings and were seeking to operate Closed Generic TLDs would have the following options:

- *submit a change request to no longer be an exclusive generic TLD, and sign the current form of the New gTLD Registry Agreement;*
- *maintain their plan to operate an exclusive generic TLD. As a result, their application will be deferred to the next round of the New gTLD Program, subject to rules developed for the next round, to allow time for the GNSO to develop policy advice concerning exclusive generic TLDs; or*
- *withdraw their application for a refund consistent with the refund schedule in the Applicant Guidebook.*[141]

In effect, through this resolution, the ICANN Board banned Exclusive Generic / Closed Generic TLDs in the 2012 Round. The Board further requested that the GNSO consider this topic in future policy development work for subsequent procedures.[142]

A revision to the Registry Agreement included restrictions on Closed Generics under Specification 11 Public Interest Commitment 3(d).

c. What are the preliminary recommendations and/or implementation guidelines?

The subject of Closed Generics has proved to be one of the most controversial issues tackled by Work Track 2 with strong arguments made by both those in favor of allowing Closed Generics in subsequent rounds and those opposing Closed Generics and in favor of keeping the current ban. Because this PDP was charged not only by the GNSO Council to analyze the impact of Closed Generics and consider future policy, a number of options emerged as potential paths forward with respect to Closed Generics, though the Work Track was not able to settle on any one of them. These options are presented in (d) below.

d. What are the options under consideration, along with the associated benefits / drawbacks?

1. **No Closed Generics:** Formalize GNSO policy making it consistent with the existing Base Registry Agreement that Closed Generics should not be allowed.

[140] https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a
[141] Ibid
[142] Ibid

2. **Closed Generics with Public Interest Application:** As stated above, GAC Advice to the ICANN Board was not that all Closed Generics should be banned, but rather that they should be allowed if they serve a public interest goal. Thus, this option would allow Closed Generics but require that applicants demonstrate that the Closed Generic serves a public interest goal in the application. This would require the applicant to reveal details about the goals of the registry. Under this option, the Work Track discussed the potential of an Objections process similar to that of community-based objections challenging whether an application served a public interest goal. The Work Track recognized how difficult it would be to define the criteria against which such an application would be evaluated.
3. **Closed Generics with Code of Conduct:** This option would allow Closed Generics but require the applicant to commit to a code of conduct that addresses the concerns expressed by those not in favor of Closed Generics. This would not necessarily require the applicant to reveal details about the goals of the registry, but it would commit the applicant to comply with the Code of Conduct which could include annual self-audits. It also would establish an objections process for Closed Generics that is modelled on community objections.
4. **Allow Closed Generics:** This option would allow Closed Generics with no additional conditions but establish an objections process for Closed Generics that is modelled on community objections.

The Work Track notes that there may be additional options that are not included in this list and welcomes suggested alternatives.

e. What specific questions are the PDP WG seeking feedback on?

- What are the benefits and drawbacks of the above outlined options?
- The Work Track noted that it may be difficult to develop criteria to evaluate whether an application is in the public interest. For options 2 and 3 above, it may be more feasible to evaluate if an application does not serve the public interest. How could it be evaluated that a Closed Generic application does not serve the public interest? Please explain.
- For option 3 above, how should a Code of Conduct for Closed Generics serving the public interest be implemented? The Work Track sees that adding this to the existing Code of Conduct may not make the most sense since the current Code of Conduct deals only with issues surrounding affiliated registries and registrars as opposed to public interest commitments. The Work Track also believes that this could be in a separate Specification if Closed Generics are seen as a separate TLD category. Would it be better to modify the current Code of Conduct or have a separate Code of Conduct for Closed Generics? Please explain.

f. Deliberations

Deliberations Overview:

The Work Track reviewed the history of Closed Generics and considered how the term “Closed

Generic" should be defined. For the purposes of discussion in this Work Track, a "Closed Generic" TLD refers to a TLD representing a string that is a generic name or term[143] under which domains are registered and usable exclusively by the registry operator or its affiliates. These TLDs operate in contrast to TLDs that have an "open" registration model or a restricted third-party registration model.

A significant task of the Work Track was to analyze the alleged harms and merits associated with allowing Closed Generics that were raised in the 2013 public comment period[144] and in subsequent discussions. In addition, the Work Track invited guest speakers with experience in the topic to discuss pros and cons associated with allowing Closed Generics. The Work Track reviewed responses to Community Comment 2 (CC2), noting that there was no single theme in the responses. While the Work Track has not reached any form of consensus on this issue, it has developed a set of possible options for further input.

The Work Track developed a "pros and cons" list leveraging input from CC2, public comment responses from 2013,[145] and additional materials shared by Work Track members.[146]

Key arguments supporting Closed Generics:

- promotes business model innovation and competition
- provides greater choice for registry operators
- supports free expression
- avoids problematic circumstances in which ICANN regulates business models, competition, and word classification

Key arguments opposing Closed Generics:

- harms competition
- harms choice of potential registrants
- favors large industry players
- confuses end users
- hinders expression by giving some players exclusive use of generic terms at the top-level

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[143] A "generic string" is currently defined in the Registry Agreement under Specification 11.3.d as "a string consisting of a word or term that denominates or describes a general class of goods, services, group, organization or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others."

[144] https://www.icann.org/en/system/files/files/report-comments-closed-generic-08jul13-en.pdf

[145] Ibid

[146] See for example: https://forum.icann.org/lists/comments-closed-generic-05feb13/msg00174.html; https://www.internetnews.me/2013/02/23/5-reasons-why-closed-generic-new-gtlds-should-be-opposed/; https://www.icann.org/en/system/files/correspondence/neylon-et-al-to-chehade-et-al-24sep12-en.pdf; http://www.thehindu.com/opinion/op-ed/beauty-lies-in-the-domain-of-the-highest-bidder/article3929612.ece; https://iccwbo.org/publication/exp_499_icann_116_expert-determination/.

Pros: Closed Generics should be allowed	Cons: Closed Generics should be restricted
New types of TLDs could be a source of business model innovation. Innovation can lead to greater competition and new services that are beneficial to the public and promote consumer choice. ICANN is not a regulator and should not attempt to regulate issues related to competition and business models. There are no objective criteria for determining what constitutes a generic word. ICANN should not attempt to classify words for regulatory purposes. (concern related to Freedom of Expression). It is not possible to have universally applicable definitions for the term “generic” across languages. Therefore it is unclear how ICANN could apply policies around generic terms in a way that is fair and consistent. The purpose of expanding the DNS is to increase utility. Dictating the way TLDs can be used undermines this goal. Generic words are already in use by specific brands/companies at the second level (food.com, books.com, etc). There is little practical difference between using these terms at the first level and second level. There is little difference between Closed Generics and other TLDs already in play -- such as some community applications and brands that correspond to generic strings. There is no automatic link between owning a	Generic words are a form of public space. It is not in the public interest to have these strings under the control of a single entity. Closed Generics harm competition - if a single player in a market has exclusive access to an industry-related generic TLD string, this player has an unfair advantage. Closed Generics favor large industry players, tipping the scales in favor of those who already dominate the market and potentially limiting consumer choice. Closed Generics reduce the number of options available to registrants. Closed Generics undermine the goals of the trademark system, which forbids individuals from gaining exclusive property rights in generic names of products and an unfair competitive advantage in the marketplace. Different business models for TLDs may confuse consumers. Closed Generics may mislead consumers: If closed, generic TLDs are approved, consumers may mistakenly believe that they are using a gTLD that allows for competition, when in reality the gTLD is closed and the apparently competitive products are being offered by a single entity. While generic strings are in use by specific brands and companies at the second level, the top level is different. The impact is greater. A new gTLD requires ICANN approval and substantial resources, both for the application and for the operation of the gTLD. Search engines are likely to give

domain name and dominating a market signified by that string (see amazon.com and books.com, which is owned by Barnes & Noble). Regulation of Closed Generics limits free expression by imposing collective obligations and top-down regulations on domain owners. New gTLDs are valuable economic assets. ICANN policies should assure that these assets are allocated to their most highly valued uses. Closed Generics for brand owners may safeguard certain spaces from abuse and allows brands to save on defensive registrations under that TLD. In support of allowing Closed Generics on a case by case basis: Closed Generics can serve the public interest. ICANN should allow specific Closed Generics to operate if it can be established that they serve the public interest.	priority to pages associated with a gTLD that appears to be dedicated to content related to the search terms and more likely to be controlled by an established, relevant institution. The stakes are higher regarding ICANN delegation of a gTLD, and the public interest concerns must weigh more heavily than they do for individual domain names. Delegation of closed gTLDs may violate ICANN's Bylaws, the New gTLD Registry Operator Code of Conduct, and the New gTLD Registry Agreement. The exemption that permits closed gTLDs was intended for brand TLDs, not generic words that are common industry terms. ICANN's core values include promoting competition in the registration of domain names. For non-Latin character sets in languages such as Chinese and Japanese, Closed Generics will place entire cultural identities at risk. There will be loss of opportunity for people and businesses in that native language to express, pursue and flourish in TLD namespaces designed for them.

Work Track members agreed that one of the challenges in this debate is that there is no clear agreed upon set of goals with respect to Closed Generics. In pursuing the public interest, different participants in the discussion seek to maximize benefits and minimize harms to different parties. For example, when discussing consumer choice, the "consumer" could be the applicant, the registrant, or the end user. The Work Track considered which of these populations policy should seek to protect in serving the public interest. Work Track members did not agree to a single answer to this question.

Some Work Track members felt that analysis of harms should focus on harms to end users as opposed to harms to competitors, stating that ICANN should not be in a position to address competition law. In addition, they argued that competition law only addresses actual harms to competition, not anticipated harms. One proposed solution is to allow Closed Generics and handle any concerns about specific applications through objection procedures that focus on identifying harm to end users. The objections process for Closed Generics could be modeled on

the community objections model from the 2012 round. Other Work Track members felt that potentials harms to competitors should not be ignored in such a process.

The Work Track considered a summary of Community and Limited Public Interest objections filed against Closed Generic applications.[147] Using this document as a reference, the Work Track discussed that it might be possible to identify a path forward for developing a test to evaluate material detriment for objections related to Closed Generics.

Another proposed path forward was that the the burden could be placed on the applicant for a dictionary term to demonstrate that exclusive use would be in the public interest, and/or commit to a Code of Conduct. The Work Track welcomes input on the potential benefits and drawbacks of these proposals.

Work Track members stated that regardless of the outcome of discussions on Closed Generics, it is essential that the path forward is agreed upon and clearly documented prior to the launch of subsequent procedures. Work Track members noted that for the 2012 round, applications were submitted with the assumption that Closed Generics would be allowed, as no prohibition was contained in the Applicant Guidebook. However, the community discussions regarding Closed Generics took place after applications had been submitted, leaving applicants waiting to hear if their applications would be able to move forward. For future application windows, applicants must have a clear, common understanding of any rules and restrictions that will apply to their applications related to this issue.

The Work Track noted that if an objections procedure is established for Closed Generics, a procedure for post-delegation dispute resolution should be required as well. Studying existing post-delegation dispute resolution procedures may be useful in developing a new post-delegation procedure.

The Work Track further noted that a code of conduct for Closed Generics would require that the registry adhere to to the public interest. The Work Track may ook at the existing specification language forbidding Closed Generics and provide recommendations for how this would serve to allow for Closed Generics that serve the public interest.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

The Work Track is not aware of any dependencies at this time.

1.7.4 String Similarity Evaluations

a. What is the relevant policy and/or implementation guidance (if any)?

[147]https://docs.google.com/spreadsheets/d/1kua4x0sLOXy5ZStMkzqG3oYnbkzbxCNMMIGCFURKJO4/edit?usp=sharing

Recommendation 2: “Strings must not be confusingly similar to an existing top-level domain.”

b. How was it implemented in the 2012 round of the New gTLD Program?

Module 2 of the 2012 AGB describes string similarity reviews. More specifically, AGB Section 2.2.1.1.2 extends the GNSO Recommendation and applies it not only to existing top-level domains, but also to reserved strings and for the purpose of grouping applications into contention sets such that no two strings are delegated if they meet this confusingly similar standard.

Section 2.2.1.2 defined “similar” as meaning “strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.” The visual similarity check that occurs during Initial Evaluation is intended to augment the objection and dispute resolution process (see section 1.8.1) that addresses all types of similarity. This similarity review will be conducted by an independent String Similarity Panel.

In implementation, ICANN commissioned the development of an algorithmic tool called “SWORD” which was intended to supported assessments of string similarity.

c. What are the preliminary recommendations and/or implementation guidelines?

Work Track 3 recommends adding detailed guidance on the standard of confusing similarity as it applies to singular and plural versions of the same word, noting that this was an area where there was insufficient clarity in the 2012 round. Specifically, the Work Track recommends:

- Prohibiting plurals and singulars of the same word within the same language/script in order to reduce the risk of consumer confusion. For example, the TLDs .CAR and .CARS could not both be delegated because they would be considered confusingly similar. .
- Expanding the scope of the String Similarity Review to encompass singulars/plurals of TLDs on a per-language basis. If there is an application for the singular version of a word and an application for a plural version of the same word in the same language during the same application window, these applications would be be placed in a contention set, because they are confusingly similar. An application for a single/plural variation of an existing TLD would not be permitted.
    - Applications should not be automatically disqualified because of a single letter difference with an existing TLD. For example, .NEW and .NEWS should both be allowed, because they are not singular and plural versions of the same word.
- Using a dictionary to determine the singular and plural version of the string for the specific language.

In addition, the Work Track recommends liminating use of the SWORD Tool in subsequent procedures.

The Work Track also recommends that it should not be possible to apply for a string that is still being processed from a previous application opportunity.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

- Are Community Priority Evaluation and auctions of last resort appropriate methods of resolving contention in subsequent procedures? Please explain.
- Do you think rules should be established to disincentivize "gaming" or abuse of private auctions? Why or why not? If you support such rules, do you have suggestions about how these rules should be structured or implemented?
- Should synonyms (for example .DOCTOR and .PHYSICIAN) be included in the String Similarity Review? Why or why not? Do you think the String Similarity Review standard should be different when a string or synonym is associated with a highly-regulated sector or is a verified TLD? Please explain.

f. Deliberations

The Work Track focused on addressing the following questions on this topic:

- Were the mechanisms from the 2012 round effective in preventing consumer confusion, resolving contention, and providing consistent results?
    - Was the the guidance on the standard of confusing similarity sufficiently detailed to ensure that results of the evaluation consistently met the goals of the review?
    - Were there other specific issues related to implementation of the string similarity review in the 2012 round?

The Work Track identified several areas where additional work could reduce the risk of consumer confusion, improve predictability of the process, and increase the consistency of String Similarity Review outcomes.

<u>Singulars and Plurals</u>

The GAC,[148] the ALAC,[149] and the Final Issue Report on New gTLD Subsequent Procedures[150] had previously raised that existing guidance does not address the issue of singulars and plurals of the same word and that additional guidelines may be needed. Many of the CC2 comments on this topic supported further work on singulars/plurals. Work Track members also expressed that

[148] https://gacweb.icann.org/display/GACADV/2013-04-11-PluralStrings
[149] https://atlarge.icann.org/advice_statements/7151
[150] See section 4.4.2 of the Final Issue Report on New gTLD Subsequent Procedures.

new guidelines could improve clarity and consistency of application processing and provided greater predictability for applicants.

In line with a proposal submitted by the Registries Stakeholder Group,[151] the Work Track agreed that singulars and plurals in the same language should not be allowed under the standard of confusing similarity. While some community members expressed a desire to include foreign language equivalents in the singular and plural aspect of string similarity evaluation, others raised concern that this might serve as a disadvantage to IDNs. There was no agreement in the Work Track to include different languages in the same contention set or evaluation result set. Therefore, recommendations from the Work Track only apply to singular/plural combinations on a per language basis.

SWORD

The Work Track discussed concerns that there was insufficient correlation between the results of the SWORD Tool and the outcomes of the String Similarity Review, indicating that that tool, as implemented, may not have been a helpful resource for evaluators and applicants. Several CC2 comments supported eliminating the SWORD Tool. Some Work Track members suggested that the algorithm could be revised and improved for subsequent procedures.

In the absence of specific information about the future potential of the tool, the Work Track did not ultimately have confidence in the utility of SWORD Tool to provide consistent and predictable results. Therefore the Work Track agreed that SWORD should be eliminated.

Process Timing

Work Track members and community comments raised concerns related to the relative timing of string similarity reviews and the deadline for filing String Confusion Objections in the 2012 round. In the first New gTLD application period, the results of the string similarity review were released two weeks before the deadline to file String Confusion Objections. There was little time to consider the results of the String Similarity Review, determine if one wanted to file a String Confusion Objection, and then prepare the materials for that objection. Work Track members supported the goal of ensuring that appropriate timetables are set for subsequent procedures to allow for all procedures and mechanisms to be exercised fully.

Additional issues discussed by the Work Track:

Contention Resolution

The Work Track discussed whether Community Priority Evaluation and auctions of last resort continue to be appropriate methods of resolving contention going forward. CC2 comments generally supported the idea that existing contention resolution mechanisms are sufficient. While some Work Track members questioned whether auctions of last resort are in the public interest, no alternatives were proposed.

[151] See https://docs.google.com/document/d/13mNrOUrO2_KPa1xUXJ7Glxx_Ps5Aaczes2jEz8E-zeY/edit

Private Auctions
There were concerns raised in community comments that private auctions lead to speculative applications. Work Track members noted that while rules could be established to disincentivize gaming or abuse of private auctions it would be unlikely to eliminate this practice and would be difficult to manage. Therefore, no recommendations were put forward.

Synonyms in String Similarity Review
Some community members support including synonyms (for example .DOCTOR and .PHYSICIAN) in the String Similarity Review. They expressed that this could be particularly important when the strings are associated with a highly-regulated sector and one of the strings is a verified TLD. There was no agreement in the Work Track in support of this proposal.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

1.7.5 Internationalized Domain Names (IDNs)

a. What is the relevant policy and/or implementation guidance (if any)?

Principle B: "Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root."

b. How was it implemented in the 2012 round of the New gTLD Program?

The Applicant Guidebook provides exhaustive requirements in *Part II, Requirements for Internationalized Domain Names.*

In brief, IDN TLDs of 2 or more Unicode characters were allowed, provided IDNA requirements were met.

The Applicant Guidebook allowed applicants to identify variant IDN TLDs, though they were not allowed to be delegated until a variant management solution is developed and implemented.

c. What are the preliminary recommendations and/or implementation guidelines?

- General agreement that IDNs should continue to be an integral part of the program going forward (as indicated in Principle B of the original Final Report on New gTLDs).

- General agreement that compliance with Root Zone Label Generation Rules (RZ-LGR, RZ-LGR-2, and any future RZ-LGR rules sets) should be required for the generation of IDN TLDs and valid variants labels.
- General agreement that 1-Unicode character gTLDs may be allowed for script/language combinations where a character is an ideograph (or ideogram) and do not introduce confusion risks that rise above commonplace similarities, consistent with SSAC and Joint ccNSO-GNSO IDN Workgroup (JIG) reports. [Please see relevant question in section (f) below].
- Implementation Guidance: General agreement that to the extent possible, compliance with IDNA2008 (RFCs 5890-5895) or its successor(s) and applicable Root Zone Label Generation Rules (RZ-LGR, RZ-LGR-2, and any future RZ-LGR rules sets) be automated for future applicants.
- Implementation Guidance: General agreement that if an applicant is compliant with IDNA2008 (RFCs 5890-5895) or its successor(s) and applicable LGRs for the scripts it intends to support, Pre-Delegation Testing should be unnecessary for the relevant scripts.

The Work Track discussed variants[152] of IDN TLDs and is aware that the community will be tasked with establishing a harmonized framework (i.e., in gTLDs and ccTLDs) for the allocation of IDN variant TLDs of IDN TLDs. There is general agreement on the following:

- IDN gTLDs deemed to be variants of already existing or applied for TLDs will be allowed provided: (1) they have the same registry operator implementing, by force of written agreement, a policy of cross-Variant TLD bundling and (2) The applicable RZ-LGR is already available at the time of application submission.

d. What are the options under consideration, along with the associated benefits / drawbacks?

- Question two (2) below regarding "bundling" asks whether the unification of implementation policies with respect to how variants are handled in gTLDs are matters for this PDP to consider or whether those matters should be handled through an Implementation Review Team or by each individual Registry Operator.

e. What specific questions are the PDP WG seeking feedback on?

1. For the recommendation regarding 1-Unicode character gTLDs above, can the more general "ideograph (or ideogram)" be made more precise and predictable by identifying the specific scripts where the recommendation would apply? Please see script names in ISO 15924.

[152] An IDN Variant is a very specific condition defined in IDN RFCs, Guidelines and LGRs that only exists in some scripts and languages, like Traditional Chinese and Simplified Chinese, and should not be confused with translations or transliterations of strings.

2. Should the policy of bundling second-level domains across variant TLDs be unified for all future new gTLDs or could it be TLD-specific? If unified, should it be prescribed in the WG final report or chosen at implementation? If TLD-specific, could it be any policy that adequately protects registrants or would it need to be chosen from a menu of possible bundling implementations ? Currently known bundling strategies[153] include PIR's .ong/.ngo, Chinese Domain Name Consortium guidance and Latin-script supporting ccTLDs such as .br and .ca.
3. Are there any known specific scripts that would require manual validation or invalidation of a proposed IDN TLD?
4. For IDN Variant TLDs, how should the Work Track take into account the Board requested and yet to be developed IDN Variant Management Framework?

f. Deliberations

The Work Track initiated its discussions on the IDNs topic by inviting and receiving an update[154] on the IDN Program from Sarmad Hussain, Director of the program. This presentation provided a solid basis for future discussions on this topic.

The Work Track believes that the process for submission and validation of IDN tables was cumbersome and highly manual, though Root Zone Label Generation Rules (RZ-LGR) did not exist at the time. It is anticipated that the ongoing work of the community will streamline the submission of valid IDN strings and its IDN variants because of the availability of RZ-LGR in the future.

Some in the Work Track felt that the prohibition against single character IDN TLDs was too restrictive for certain scripts, especially those where a single character can hold the meaning of word or even a phrase. However, the Work Track acknowledges that the single character IDN restriction is reasonable in other scripts. The Work Track considered the *JIG Final Report on Single Character IDN TLDs*[155] that supported the GNSO's recommendations on single character IDNs, which states:

> *Single and two-character U-labels on the top level and second level of a domain name should not be restricted in general. At the top level, requested strings should be analyzed on a case-by-case basis in the new gTLD process depending on the script and language used in order to determine whether the string should be granted for allocation in the DNS with particular caution applied to U-labels in Latin script.*

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[153] https://tools.ietf.org/html/draft-ietf-regext-bundling-registration-02 provides more definitions and descriptions of bundling strategies

[154] See relevant slides here: https://community.icann.org/download/attachments/58735965/IDN%20Program%20Update%20-WT4.pdf?version=1&modificationDate=1486620902000&api=v2

[155] See Final Report here: https://ccnso.icann.org/sites/default/files/filefield_22667/jig-final-report-single-character-idns-08mar11-en.pdf

On the Work Track's 25 May 2017 call, Patrik Fältström, then Chair of the SSAC, provided an overview of SSAC Advice related to IDNs (and also Name Collisions and Root Zone Scaling). There was discussion about coordinating with the SSAC to determine if there is any change warranted to their existing advice that currently recommends against allowing single character IDNs[156]. In deliberations on the issue of single character IDNs, the Work Track did not find any significant concerns related to the security and stability of the DNS in allowing single character IDNs in limited instances. However, the Work Track understands that determinations of validity on a case-by-base basis lacks predictability and believes that the identification of valid scripts in which single character IDNs are allowable would be beneficial.

In regards to variant TLDs, during the update from Sarmad Hussain, the Work Track discussed the ICANN Board resolution from September of 2010,[157] which stated "no variants of gTLDs will be delegated through the New gTLD Program until appropriate variant management solutions are developed." Acknowledging that ongoing work to develop an IDN variant management framework may take place, the Work Track generally agreed on preliminary recommendations. Some in the Work Track believe that IDN variants should be operated by a single registry operator, by force of written agreement. There was broad agreement that IDN variants should be determined by RZ-LGR, as the relevant RZ-LGR should be complete and available for use at the time of application submission.

As further justification for variant TLDs, some in the Work Track believe that variant TLDs would better support end-users for languages with multiple scripts (like the Chinese language that has two scripts, Simplified and Traditional) or using ASCII and Latin Script IDNs (like .example and .exämple). There was also support to require that operators of IDN variant TLDs have a policy for cross-Variant TLD bundling.

The Work Track believes that continuing to support IDNs and allowing for IDN variants to be delegated are necessary to avoid curtailing the ability of non-English populations to properly express their languages in the DNS.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

- RZ-LGR-n (where "n" means the most current version of the root zone label generation rules)
- Study on how to apply RZ-LGR-n (https://www.icann.org/news/announcement-2018-02-08-en)
- Unicode Standard
- IETF IDNA Standards
- ICANN IDNA

[156] See SSAC952 here: https://www.icann.org/en/system/files/files/sac-052-en.pdf
[157] See Board resolution here: https://www.icann.org/resources/board-material/resolutions-2010-09-25-en

1.7.6 Security and Stability

a. What is the relevant policy and/or implementation guidance (if any)?

Principle D: "A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet."

Recommendation 4: "Strings must not cause any technical instability."
Recommendation 7: "Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out."
Recommendation 18: "If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed."

b. How was it implemented in the 2012 round of the New gTLD Program?

There were several aspects of the New gTLD Program that sought to promote security and stability. During the application evaluation portion, the following reviews were relevant:

- The applied-for string was evaluated during the **DNS Stability** review, which sought to determine whether the string might cause instability in the DNS. As an element of this review, the applicant's IDN tables were evaluated, if applicable. An evaluation panel performed this review.
- The applicant's proposed registry services were reviewed during the **Registry Services Review**, in order to determine whether they might cause a possible adverse impact on security or stability. Customary registry services were defined in the Applicant Guidebook, but if the applicant proposed to provide any of them in a unique manner or it proposed additional registry services, a preliminary determination would be made as to whether they would need to be further evaluated by the Registry Services Technical Evaluation Panel (RSTEP). An evaluation panel performed the preliminary review.[158]
- The applicant's technical capabilities and operational plans for its TLD were evaluated in the **Technical/Operational Review**. The applicant provided responses to a series of questions (24-44). The questions could receive a score of 0, 1, and in some cases 2. The applicant could not receive a zero on any question and had to achieve a minimum score in order to pass. An evaluation panel performed this review.

Additionally, prior to delegation of a successful application, applicants had to pass Pre-Delegation Testing. This element will be discussed in section [1.10.1] of this report.

[158] It should be noted that just because an applicant proposed new registry services in their application, and the applicant passed technical evaluation, it did not mean that those services were deemed approved by ICANN.

One additional element on Security and Stability, but unrelated to applicant reviews, are the guidelines for root zone scaling. Based on an ICANN org paper titled "Delegation Rate Scenarios for New gTLDs"[159], ICANN predicted that it would only be able to process a maximum of 1,000 delegations per annum[160].This number served as the basis for analysis by the technical community prior to the 2012 New gTLD Round. The technical community determined that a 1,000 delegations per year would not pose a security and stability threat. It is important to note that the technical community did not seek to determine a specific maximum delegation rate on the basis of security of stability[161]. Based on this analysis, ICANN org committed to delegate no more than 1,000 gTLDs per year.

c. What are the preliminary recommendations and/or implementation guidelines?

Sections [1.7.5] on IDNs, [1.7.8] on Name Collisions, and [1.7.7] for details about Registry Services Review and Technical/Operational Review contain a number of recommendations that are relevant to Security and Stability..

In the 2012-round, some applicants ended up applying for reserved or otherwise ineligible strings, causing them to later withdraw or be rejected[162]. Towards preventing that and streamlining application processing, the Work Track suggests the following as Implementation Guidance: The application submission system should do all feasible algorithmic checking of TLDs, including against RZ-LGRs and ASCII string requirements, to better ensure that only valid ASCII and IDN TLDs can be submitted. A proposed TLD might be algorithmically found to be valid, algorithmically found to be invalid, or verifying its validity may not be possible using algorithmic checking. Only in the latter case, when a proposed TLD doesn't fit all the conditions for automatic checking, a manual review should occur to validate or invalidate the TLD.

The Work Track also considers the topic of name collisions to be relevant to security and stability. See [1.7.8] on Name Collisions for further detail.

For root zone scaling, the Work Track generally supports raising the delegation limit, but also agrees that ICANN should further develop root zone monitoring functionality and early warning systems as recommended by the SSAC, the RSSAC and the technical community.

d. What are the options under consideration, along with the associated benefits / drawbacks?

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[159] See paper here: https://archive.icann.org/en/topics/new-gtlds/anticipated-delegation-rate-model-25feb10-en.pdf

[160] The specific evaluation processing number identified was actually 924 per annum, but the number was rounded to 1,000 for practical purposes.

[161] See Impact on Root Server Operations and Provisioning Due to New gTLDs here: http://newgtlds.icann.org/en/about/historical-documentation/root-scaling-27jun12-en.pdf

[162] Like .IDN, .AND, .ARE and .EST, see http://domainincite.com/10351-google-junks-three-of-its-new-gtld-applications

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

1. To what extent will discussions about the Continuous Data-Driven Analysis of Root Stability (CDAR) report,[163] and the analysis on delegation rates, impact WG discussions on this topic? How about the input sought and received from the SSAC, RSSAC, and ICANN org discussed below in section (f), under the heading **Root Zone Scaling?**
2. The SSAC strongly discourages allowing emoji in domain names at any level and the Work Track is supportive of this position. Do you have any views on this issue?

f. Deliberations

DNS Stability:

The Work Track noted that there were some implementation related challenges resulting from the manual review process of IDN tables, which was required in the absence of Root Zone Label Generation Rules (RZ-LGR) at the time. With the substantial progress in establishing RZ-LGR, the process should be able to be streamlined. Please see section [1.7.5] on IDNs for more detailed information.

The Work Track found that the larger issue that arose after program launch was the identification of Name Collisions by the Security and Stability Advisory Committee (SSAC) as an acute issue that required mitigation prior to the delegation of any TLDs. However, it should be noted that the issue was raised in comments going back to 2009 (http://www.circleid.com/posts/20090618_most_popular_invalid_tlds_should_be_reserved/), and the issue was at some level captured in the Applicant Guidebook, where it stated, "Any new TLD registry operator may experience unanticipated queries, and some TLDs may experience a non-trivial load of unanticipated queries…," the issue of name collisions was considered inadequately addressed by the SSAC. Please see section [1.7.8] on Name Collisions for more detailed information.

Registry Services Review and **Technical/Operational Review**

Please consult sections [1.7.5] on IDNs, [1.7.8] on Name Collisions, and [1.7.7] for details about Registry Services Review and Technical/Operational Review.

Root Zone Scaling

On the Work Track's 25 May 2017 call, Patrik Fältström, then Chair of the SSAC, provided an overview of SSAC Advice related to Root Zone Scaling (and also Name Collisions and IDNs). In

[163] See Report here: https://www.icann.org/en/system/files/files/cdar-root-stability-final-08mar17-en.pdf

his presentation, he noted that the SSAC advises that the more important factor to consider, rather than a maximum number of annual delegations or in total, is managing the rate of change and ensuring that robust monitoring of the root zone is taking place.

The Work Track considered a number of the existing resources that looked at root zone scaling and noted that the studies were based against ICANN org's estimates for maximum evaluation capacity (e.g., ~1,000 gTLDs per year) and did not seek to identify a maximum number of delegations from a security and stability perspective[164].

The Work Track and wider Working Group expect that the changes to be recommended by this PDP WG will have the effect of creating efficiencies within the program, likely allowing for the evaluation capacity to increase. The Work Track also considered the scenario where a large number of applications is received (e.g., 10,000) and how long that would take to delegate all applications based on the current delegation limits (i.e., ~10 years). Based on these considerations, the Work Track reached out to the Root Server System Advisory Committee (RSSAC), Security and Stability Advisory Committee (SSAC), and ICANN org's Office of the CTO (OCTO) and Global Domains Division (GDD) to inquire whether the delegation rate limitations could be revisited[165].

Feedback from the SSAC recommended that ICANN should continue developing monitoring and early warning capabilities rather than trying to identify a threshold. The SSAC also noted that the focus should be on the rate of change in the root zone rather than the total number of delegated strings for a given calendar year. The feedback from ICANN org focused on the components (e.g., based on the outcomes of this PDP) that will impact operational capacity, as well as the need to consult with the technical community and other organizations in the delegation process (i.e., PTI and Verisign). The RSSAC feedback also focused on rate of change rather than absolute magnitude. The RSSAC strongly recommended that delegations should not increase more than about 5% per month, allowing for minor variations from time to time. The Work Track noted that additional justification for the 5% number would be welcome, as it appeared somewhat arbitrary.

Taking into consideration the feedback received, the Work Track generally supported lifting the delegation limit, but at the same time, further developing root zone monitoring functionality.

Emoji as Top Level Domains?

The Work Track only very briefly touched on emoji, when it was brought up by then SSAC Chair, Patrik Fältström. The SSAC strongly discourages the registration of any domain name that includes emoji in any of its labels. Current new gTLD Registry Agreements and Registrar Accreditation Agreements require adherence to IDNA2008, which does not allow the usage of

[164] See email from Work Track 4 co-lead Rubens Kuhl here: https://mm.icann.org/pipermail/gnso-newgtld-wg-wt4/2017-June/000099.html
[165] See letters to RSSAC, SSAC, and OCTO/GDD and their respective responses here: https://community.icann.org/x/Xz2AAw

emoji. No Work Track members expressed the desire to change this status quo for future new gTLDs.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

1.7.7 Applicant Reviews: Technical & Operational, Financial and Registry Services

A. What is the relevant policy and/or implementation guidance (if any)?

Principle D: "A set of technical criteria must be used for assessing a new gTLD registry applicant to minimize the risk of harming the operational stability, security and global interoperability of the Internet."
Principle E: "A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN's registry agreement."

Recommendation 1: "ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedures for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.
Recommendation 7: "Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out."
Recommendation 8: "Applicants must be able to demonstrate their financial and organizational operational capability."
Recommendation 9: "There must be a clear and pre-published application process using objective and measurable criteria."
Recommendation 18: "If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed."

Registry Services Evaluation Policy[166]: a Consensus Policy that governs the processes and procedures to be followed when a Registry proposed the introduction of a new Registry Service (as that term is defined in the Base Registry Agreement).

[166] See: https://www.icann.org/resources/pages/registries/rsep/policy-en.

B. How was it implemented in the 2012 round of the New gTLD Program?

The applicant reviews were implemented via a set of questions where the answers could be non-scored or 0 to 2 points. A zero in any scored question meant the application failed evaluation; questions were divided into two sections, where a minimum overall score for each section was needed. In order to achieve the minimum overall score, a score of 2 was needed for some but not all 2-point questions.

When an application was unable to achieve the minimum score for a section, clarifying questions (CQs) were sent to applicants for any questions where the maximum score was not achieved and providing opportunity for remediation.

Each application was evaluated in isolation, even though applicants may have submitted multiple, essentially identical applications. In addition, even for different applicants, many shared a common technical infrastructure, such as a Registry Service Provider (RSP) or common financial and organizational resources.

Technical and Operational: The Technical and Operational capability evaluation was one of the seven evaluation streams defined in the Applicant Guidebook (AGB), and one of three related to the applicant, as opposed to the string. The technical questions in the AGB gathered information from the applicant regarding its plans for operations so that the evaluation panel could assess whether the applicant demonstrated the technical and operational capability to run a TLD.

Questions 24 – 44 in the Applicant Guidebook (AGB) were related to Technical & Operational Capability.

- Questions #24 – 30 (a) were 'External'. The applicant responses to these questions were published in an HTML file on the New gTLD Application Status microsite page.
- Questions #30 (b) – 44 were 'Internal'. The response to these questions were assessed as part of the application evaluation, but the answers were not publicly posted.

Financial: The financial questions in the AGB gathered information from the applicant regarding its plans for operations and financial planning so that the evaluation panel could assess whether the applicant demonstrated the financial capability to run a TLD.

Questions 45 – 50 in the AGB were related to Financial Capability and were 'Internal', not publicly posted.

Registry Services Evaluation: Served to evaluate each application's proposed registry services for any possible adverse impact to the security and stability of the DNS. Applicants were required to disclose their registry services, though this did not preclude adding additional registry services after delegation via the Registry Service Evaluation Policy (RSEP).

Clarifying Questions (CQs): Per the Applicant Guidebook: "As part of the evaluation process, evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators."

Supplemental Notes on Technical/Operation and Financial Questions: Supplemental Notes were additional guidance published by ICANN to assist applicants in completing their applications. While they did not directly address CQs, these Supplemental Notes included clarifications on evaluation criteria for some questions in the application and could be used when responding to CQs. Supplemental Notes were published online through ICANN's original Customer Relations Management (CRM) tool; however, the links to these articles expired along with the license to the CRM. The ICANN org provided these resources on 17 April 2018[167], after the Work Track had already completed its preliminary deliberations. As such, the Work Track has not had an opportunity to review these additional resources and any deliberations/outcomes in this report would therefore not take them into account.

The Financial and Technical and Operational panels were Ernst & Young LLP, JAS Advisors, and KPMG LLP while the Registry Services Evaluation was conducted by Interisle Consulting Group.[168]

c. What are the preliminary recommendations and/or implementation guidelines?

The Work Track is considering recommending the following:

For all evaluations:

1. In pursuit of transparency, publish (during the procedure) any Clarifying Questions (CQ) and CQ responses for public questions to the extent possible.
2. Restrict scoring to a pass/fail scale (0-1 points only).
3. An analysis of CQs, guidance to the Applicant Guidebook, Knowledge Articles, Supplemental Notes, etc. from the 2012 Round need to be sufficiently analyzed with the goal of improving the clarity of all questions asked of applicants (and the answers expected of evaluators) such that the need for the issuance of Clarifying Questions is lessened.

For Technical and Operational Evaluation:

1. If an RSP Pre-approval program is established (as described in Section [1.2.6] of this Report), a new technical evaluation will not be required for Applicants that have either

[167] See FAQs, Knowledge Articles, Reference Materials, and Supplemental Notes here: https://community.icann.org/x/gggFBQ
[168] See evaluation panels and process documentation here: https://newgtlds.icann.org/en/program-status/evaluation-panels

selected a “pre-approved” RSP in its application submission or if it commits to only using a pre-approved RSP during the Transition to Delegation phase.
2. Consolidate the technical evaluation across applications as much as feasible, even when not using a pre-approved RSP. For example, if there are multiple applications using the same non pre-approved RSP, that RSP would only have to be evaluated once as opposed to being evaluated for each individual application.
3. For applicants that outsource technical or operational services to third parties, Applicants should specify which services are being performed by them and which are being performed by the third parties when answering questions.
4. Do not require a full IT/Operations security policy from applicants.
5. Retain the same questions (except Q30b - Security Policy).

In addition, the Work Track proposes the following draft language for consideration:

“Applicants must be able demonstrate their technical and operational capability to run a registry operation for the purpose that the applicant sets out, either by submitting it to evaluation at application time or agreeing to use a previously approved** infrastructure” ***(Could mean in the same procedure or previous procedures if an RSP program exists.)*

And

“The Technical and Operational Evaluation may be aggregated and/or consolidated to the maximum extent possible that generate process efficiencies, including instances both where multiple applications are submitted by the same applicant and multiple applications from different applicants share a common technical infrastructure.”

For Financial Evaluation:

The Work Track considered several possible models for the financial evaluation and achieved a fair level of agreement on the following criteria:

1. To the extent that it is determined that a Continued Operations Instrument will be required, it should not be part of the Financial Evaluation, but rather should only be required at the time of executing a Registry Agreement..
2. Substitute the 2012 AGB evaluation of an applicant’s proposed business models and financial strength with the following:
    a. An applicant must identify whether the financials in its application apply to all of its applications, a subset of them or a single one (where that applicant (and/or its affiliates have multiple applications).
    b. ICANN won’t provide financial models or tools, but it will define goals and publish lists of RSPs, organisations (like RySG and BRG) and consultants.
    c. The goals of a financial evaluation are for the applicant to demonstrate financial wherewithal and assure long-term survivability of the registry. Therefore the evaluation should look at whether an applicant could withstand not achieving

revenue goals, exceeding expenses, funding shortfalls or inability to manage multiple TLDs in the case of registries that are dependent upon the sale of registrations. However, there should also be a recognition that there will be proposed applications that will not be reliant on the sale of third party registrations and thus should not be subject to the same type of evaluation criteria. In other words, although the goals of the financial evaluation are to determine the financial wherewithal of an applicant to sustain the maintenance of a TLD, the criteria may be different for different types of registries. Criteria should not be established in a "one-size-fits-all" manner.

d. If any of the following conditions are met, an applicant should be allowed to self-certify that it has the financial means to support its proposed business model associated with the TLD:
    i. If the Applicant is a company traded on an applicable national public market;
    ii. If the Applicant and/or its Officers are bound by law in its jurisdiction to represent financials accurately;
    iii. If the Applicant is a current Registry Operator that is not in default on any of its financial obligations under its applicable Registry Agreements, and has not previously triggered the utilization of its Continued Operations Instrument.
e. The applicant is required to provide credible 3rd-party certification of those goals if self-certification above is not used or achievable.

3. To provide further clarity on the proposed financial evaluation model, the following are sample questions of how financials would be evaluated:
    a. Q45: "Identify whether this financial information is shared with another application(s)" (not scored).
    b. Q46: "Financial statements (audited, certified by officer with professional duty in applicant jurisdiction to represent financial information correctly or independently certified if not publicly-listed or current RO in good standing)" (0-1 scoring) (certification posted).
    c. Q47: "Declaration, certified by officer with professional duty in applicant jurisdiction to represent financial information correctly, independently certified if not publicly-listed or current RO in good standing, of financial planning meeting long-term survivability of registry considering stress conditions, such as not achieving revenue goals, exceeding expenses, funding shortfalls or spreading thin within current plus applied-for TLDs." (0-1 scoring) (publicly posted).
    d. No other financial questions.

In addition, the Work Track proposes the following draft language for consideration:

"Applicants must be able to demonstrate their financial and organizational operational capability in tandem for all currently-owned and applied-for TLDs that would become part of a single registry family[169]."

[169] A registry family is a group of registries that has the exact same operations and processes in place and are under common ownership and/or have a parent/subsidiary relationship organizational structure.

For Registry Services Evaluation:

1. Allow for a set of pre-approved services that don't require registry services evaluation as part of the new TLD application.; that set should include at least:
    a. Base contract required services (EPP, DNS publishing etc.)
    b. IDN services following IDN Guidelines
    c. BTAPPA ("Bulk Transfer After Partial Portfolio Acquisition")[170]
2. Since the content of "Registry Agreement Amendment Templates for Commonly Requested Registry Services" (https://www.icann.org/resources/pages/registry-agreement-amendment-templates-2018-01-29-en) satisfies the criteria above, referring to it instead of exahaustively enumerating the list is preferred. Applicants would inform which of the pre-approved services they want to be initially allowed in the registry agreement for that TLD.
3. The Registry Services Evaluation Process should only be used to assess services that are not pre-approved.
4. Criteria used to evaluate those non-preapproved Registry Services should be consistent with the criteria applied to existing registries that propose new Registry Services. To the extent possible, this may mean having the same personnel that currently reviews Registry Services for existing registries be the same personnel that reviews new Registry Services proposed by Applicants.
5. In order to not hinder innovation, applications proposing non-pre-approved services should not be required to pay a higher application fee, unless it is deemed as possibly creating a security or stability risk requiring an RSTEP (Registry Services Technical Evaluation Panel[171]). In addition, in order to encourage the proposal of innovative uses of TLDs, those proposing new non-approved registry services should not, to the extent possible, be unreasonably delayed in being evaluated.

In addition, the Work Track proposes the following draft language for consideration:

"Applicants will be encouraged but not required to specify additional registry services that are critical to the operation and business plan of the registry. The list of previously approved registry services (IDN Languages, GPML, BTAPPA) will included by reference in the Applicant Guidebook and Registry Agreement. If the applicant includes additional registry services, the applicant must specify whether it wants it evaluated through RSEP at evaluation time, contracting time, or after contract signing, acknowledging that exceptional processing could incur additional application fees. If the applicant has not included additional registry services, RSEP will only be available after contract signing."

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[170] It is important to note that this is NOT intended to say that evaluators should not evaluate an applicant's ability to perform these services; rather to say that these services should not be considered "additional registry services" and that those services do not cause security, stability or competition concerns.

[171] While the possible RSTEP fee was not discussed in Work Track deliberations, it was added to the Initial Report for the sake of completeness.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

- While a financial evaluation model reached general agreement, the Work Track is seeking feedback on an option with more complex evaluations that was proposed that would be specific to a scenario where there are already many commercial TLDs operating and a number of delegated but yet unlaunched ones. Please see the reasoning for this proposal on the Work Track Wiki[172] and of the model in the "Proposal - Straw Cookie-Monster"[173] section of the document.
- If it is recommended that a registry only be evaluated once despite submitting multiple applications, what are some potential drawbacks of consolidating those evaluations? How can those issues be mitigated?
- Which financial model seems preferable and why?
- Some in the Work Track have suggested that ICANN provide a list of persons or entities that could assist applicants in establishing a proposed business model. Should ICANN be allowed or even required to maintain such a list?
- The requirement to submit financial statements (especially with respect to non-public applicants that generally do not disclose financial information) was one of the main reasons applicants failed their initial evaluations in 2012. Although changes to financial evaluations are potentially being recommended, the Work Track is not suggesting changes to the requirement to submit financial statements. Are there any potential alternate ways in which an applicant's financial stability can be measured without the submission of financial statements? If so, what are they?.
- In "Financial Evaluation", subsection 2.d, an exemption for public-traded companies is suggested. The Work Track hasn't considered whether to include Affiliates in that exemption; should it be changed to also allow exemption in such cases?
- An alternative to the registry services evaluation was to not allow any services to be proposed at the time of application and instead to require all such services to be requested after contracting. What would be the pros and cons of that alternative?
- Not adding cost and time to applications that propose new services likely increases cost and processing time for those applications that do not propose any additional Registry Services. In other words, it has been argued that applications without additional services

[172] See relevant Wiki space here: https://community.icann.org/download/attachments/74587507/WT4-Christa-Financial-Evaluation%20.pdf?version=1&modificationDate=1515643713000&api=v2

[173] See models at the URL below. "Minimalist Model" was called "Straw Mushin", "Reduced Model" was called "Straw Bee", "Light-Weight Model" was called "Straw Beetle" and "Heavy-Weight Model" was called "Straw Cookie Monster" during discussions. https://community.icann.org/display/NGSPP/2018-01-11+New+gTLD+Subsequent+Procedures+PDP+Work+Track+4?preview=/74587507/77530200/WT4%20Straw%20Models.pdf

being proposed are “subsidizing” applications which do propose new services. Do you see this as an issue?

- Are there any other Registry Services that should be considered as “pre-approved”? This could include services such as protected marks lists, registry locks, and other services previously approved by ICANN for other registries that have already gone through the RSEP process (https://www.icann.org/resources/pages/rsep-2014-02-19-en). Please explain.
- There are some who took the proposed registry services language as changing the 2012 implementation of asking for disclosure of services versus disclosure being required, while others argued it does not, keeping this aspect unchanged. Do you agree with one of those interpretations of the recommendation contained in (c) above? Please explain and, to the extent possible, please provide alternative wording."

f. Deliberations

As identified by the Final Issue Report and also through the Work Track’s deliberations, a number of concerns were highlighted that need to be addressed in the 2012 applicant review processes (i.e., Financial, Technical & Operational, and Registry Services). The goal in trying to solve these issues is to streamline the evaluation process, increase fairness, and increase transparency:

1. Excessive number of Clarifying Questions (CQs) were issued, indicating a lack of clarity in the questions, contradicting Recommendation 9.
2. Lack of transparency, as neither CQs nor CQ responses were published, even for public questions.
3. Non-uniform scoring, where some questions allowed 2 and one even allowed 3, which introduced uncertainty in the scoring process.
4. All applications were evaluated independently and individually, performing evaluation steps repeatedly for applications that were essentially identical, or shared the same Registry Service Provider (RSP).
5. Lack of correlation between projections and reality due to seeing every application as stand-alone.
6. Model bias (i.e., financial template) towards registries depending on revenue of selling domains.
7. Risk of non-isonomic evaluation of registry services (mitigated by adopting similar procedures).

<u>All Evaluations</u>:

Very early in its deliberations the Work Track noted that there were an excessive number of CQs, which indicated a lack of clarity in the questions. Via a series of inquiries, the Work Track sought data from the ICANN Global Domains Division to better understand the specific issues that may have led to the high number of CQs needed. Specifically, the Work Track requested:

1. The full text of clarification questions asked and answers for questions 24, 25, 26, 27, 28, 29, 30a; and
2. Identification of applications and per-application number of clarification questions asked and number of responses for ques<ons 30b, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49.

With respect to question 2, GDD staff extracted the numbers from ICANN's Program Implementation Review Report,[174] but noted difficulties with addressing question 1.[175] After further discussions, GDD staff identified several options to try and address the request, along with timing, resource, and budget implications.[176] The Work Track agreed to proceed with Option 1 (compiling existing resources), though it made clear that this did not preclude pursuing other options. The Work Track received the full package for Option 1 on 17 April 2017, after preliminary deliberations concluded. As such, consideration of that information is not fully taken into account at this stage. The Work Track notes that the CQs and CQ responses may have a limited relevance if the financial and technical questions are altered in a substantial manner.

After reviewing input from GDD and following its deliberations, there was support within the Work Track to recommend that ICANN publish (during the procedure) any CQs and CQ responses related to publicly published application responses.

In addition, the Work Track considered a recommendation on scoring it received from ICANN in a consultation relating to Registry Services Testing (RST).[177] Specifically, ICANN noted that during the 2012 round of the New gTLD Program, most question results were binary (0 or 1), but it was possible to earn 0, 1, or 2 points on some questions. This added complexity to the evaluation process with little benefit. ICANN recommended defining the criteria such that a passing score equates to the desired amount of capability to run a registry, and removing the option for 2 points. After considering the recommendation, the Work Track agreed to restrict scoring to 0-1 points only, with no section scores, and only pass/fail questions.

There was one question in the Community Comment 2 (CC2) relating to application evaluation in general: "What suggestions do you have for improving the application evaluation process that you would like the community to consider?" In its deliberations, the Work Track considered the responses to this question, which included recommendations to:

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[174] Ibid.
[175] For the full text of the response see: https://community.icann.org/download/attachments/58735969/ICANN%20Org%20Response%20to%20WT4%20Request%20for%20Clarifying%20Questions.pdf?version=1&modificationDate=1502939102000&api=v2.
[176] For the full text of the response see: https://community.icann.org/download/attachments/58735969/ICANN%20Org%20Response%20to%20WT4%20CQ%20Data%20Request.pdf?version=1&modificationDate=1517425699000&api=v2.
[177] See full response here: https://community.icann.org/download/attachments/58735969/Response%20to%20WT4%20re%20RST%20improvements.pdf?version=2&modificationDate=1502939084000&api=v2

- Bundle applications and provide a written evaluation;
- Provide more continuity in dealing with applications with the same registry to avoid repetition;
- Provide a continuous and rigorous vetting process for applicants;
- Provide a template for the Continued Operations Instrument (COI) that includes local legal and financial requirements; and
- Streamline, finalize, and publish the Pre-Delegation Testing (PDT) procedure prior to the applications procedures.

These suggestions were taken into account when debating and formulating the Work Track's general agreements.

There were also two questions in CC2 related to the timing of the evaluations for both Financial and Technical & Operational Capability. The question asked whether the evaluation could take place just prior to contracting and the responses trended towards maintaining what occurred in 2012, or in other words, capability was evaluated during the evaluation phase (i.e., Initial/Extended Evaluation).

Technical and Operational Evaluations:

In its deliberations, the Work Track considered the questions in the Applicant Guidebook (AGB) related to Technical & Operational Capability and noted that questions #24-44 were related as follows:

- Questions #24 – 30 (a) were 'External'. The applicant responses to these questions were published in an HTML file on the New gTLD Application Status microsite page.
- Questions #30 (b) – 44 were 'Internal'. The response to these questions were assessed as part of the application evaluation, but the answers were not publicly posted.

In CC2, there were three questions relating to Technical Evaluations: "Do you believe that technical evaluation should be done per application, per cluster of similar technical infrastructure of a single applicant entity/group, or per cluster of similar infrastructure among all applicants in a procedure (e.g, consolidate as much as possible)?" and "If consolidated, should the aggregate requirements of applied-for TLDs and currently operated TLDs be taken in consideration for evaluation?"

With respect to the first question, the Work Track noted that there was agreement among respondents to seek efficiencies and consistency by clustering applications to the extent possible. These efficiencies were seen to benefit both ICANN (and its evaluators) and applicants. With respect to the second question, the Work Track noted that there was general agreement for the evaluation to take into consideration the aggregate requirements of applied-for TLDs and currently operated TLDs. After deliberating on the CC2 responses, the Work Track agreed to recommend the consolidation of the technical evaluation among applications as much as feasible, even in the absence of an RSP Pre-Approval process or when not using a pre-approved RSP. Some noted concern that evaluation consolidation may disadvantage

applications that are evaluated on a stand-alone basis. The Work Track discussed this concern, with others noting that while some applications may indeed complete their evaluation more quickly because of consolidation, contracting/delegation ordering would ultimately be determined by the processing described in section [1.6.1] on Application Queuing.

With respect to an RSP Pre-Approval process, if recommended by this PDP, the expectation is that the technical evaluation could be streamlined, with only certain elements evaluated on a per application basis.

Financial Evaluations:

In its deliberations, the Work Track considered the questions in the AGB related to Financial Capability and noted that questions #45-50 were related as follows:

> Questions #45 – 50 in the AGB were related to Financial Capability and were 'Internal', not publicly posted.

In its deliberations, the Work Track considered that it would be helpful to understand how many applications failed the financial evaluations in Initial Evaluation. The data showed that 25 applications failed financial evaluation criteria; of those 25, 3 also failed technical evaluation. Of those 3, 2 were multiple question failures (3 questions in one application, 5 questions in the other). The Work Track found that even when removing those 2 applications that had broad deficiencies (i.e., not just specific to the Financial Capability section), in Initial Evaluation:

- 18 applications failed Q45 (Financial statements);
- 3 applications (2 being open TLDs from the same applicant and 1 brand TLD), failed Q50 (Contingency planning); and
- 1 geographic TLD application failed Q48 (Funding and revenue).

In a related angle of analysis, the Work Track considered the number of CQs that were sent to applicants for the Financial questions. The statistics made available in the Program Implementation Review Report (PIRR)[178] showed that the questions related to the Financial Statements (Q45), Costs (Q47), Funding and Revenue (Q48), and especially the Continued Operations Interest (COI) (Q50) proved particularly challenging for applicants, where for instance, 82% of applications received CQs for Q50.

There was wide agreement within the Work Track, but also in the PIRR from ICANN org, that fundamental changes to the Financial Capability section should be considered. The financial evaluation process, though it did not evaluate business models, did rely upon projections from applicants, which drove consideration of funding and costs and the needs for the COI. The PIRR suggested that a third-party certification to attest to applicants' financial capability might still allow the program to meets its goals, while allowing for applicants to propose innovative

[178] Ibid.

business models. A third-party certifier might also be able to consider the application in the context of entire TLD portfolio.

In considering different ways to allow applicants to demonstrate their financial capability, the Work Track developed a number of different models. Those models are detailed below, in increasing levels of complexity.

Minimalist Model:

- **Applicants will certify** that funding for at least the critical registry services will be available, even in worst-case scenarios.
- ICANN org will provide **sample financial spreadsheets of common registry models** (Brand TLDs, current registry operators adding additional open TLD, new registry operators applying for open TLDs, etc.) for applicants to make informed decisions before making such commitment.
- ICANN org will provide before the application process an initial non-exhaustive, but believed to be complete, list of **financial documentation that will be required for contracting**.

Possible advantages of this model include streamlining the process, likely reducing the application fee, reducing application evaluation time, increasing evaluation throughput, more easily providing fairness among applicants regarding application results reveal, and decreasing how many people would have access to sensitive information.

Possible disadvantages of this model include approving an application that may not meet requirements and be able to sign a contract, not disqualifying weak applications whose only goal was to obtain money in contention set resolution, and not being useful as cross-check of technical and registry services responses.

Precedents for self-assessment in other industries exist even when dealing with sensitive customer data, like Payment Card Industry (PCI) levels 2 to 4 SAQs (Self-Assessment Questionnaires).

Reduced Model:

- **Applicants will certify** that funding for at least the critical registry services will be available, even in worst-case scenarios.
- ICANN Org will provide **sample financial spreadsheets of common registry models** (Brand TLDs, current registry operators adding additional open TLD, new registry operators applying for open TLDs, etc.) for applicants to make informed decisions before making such commitment.
- Financial documentation, or justification for not having (e.g., newly incorporated company), will **be requested as part of the application process**.

When the Minimalist Model model was presented, there were some that found the model too simple. The most mentioned item was financial statements, so the compromise model would be to ask for financial statements, though not the financial model.

Compared to the Minimalist Model, this compromise retains most of the advantages, except for having more reviewers accessing somewhat sensitive information, such as financial statements. Besides eliminating companies unwilling to provide financial statements, it would carry similar disadvantages to the Minimalist Model.

Light-Weight Model:

- **Applicant will obtain credible third-party certification of the financial model** that funding for at least the critical registry services will be available, even in worst-case scenarios.
- ICANN org will provide **sample financial spreadsheets of common registry models** (Brand TLDs, current registry operators adding additional open TLD, new registry operators applying for open TLDs, etc.) for applicants to make informed decisions with guidance from their financial advisors before making such commitment.
- Financial documentation, or justification for not having (e.g., newly incorporated company), will **be requested as part of the application process**.

The primary difference between the Reduced Model and the Light-Weight Model above is that third-party certification is needed instead of self-certification.

Heavy-Weight Model:

This model would provide a traditional perspective that balances an applicant's ability to demonstrate their financial and operational capabilities, with the flexibility to use alternative financial models to ensure the applicant can meet the registry agreement terms.

Such an approach would utilize data gathered from the first round to yield insights that can support prudent business practices amongst new TLD applicants while better protecting against the most egregious TLD failures.

Key principles supported in this proposal include: strong financial and operational business practices; accountability on the part of TLD applicants and ICANN; continuous process improvement to better support subsequent TLD rounds.

Please note that discussion of the COI has been put aside for this proposal.

<u>Applications with No Expectation of Revenues</u>
Expenditure Template: Applications with no expectation of revenues such as brands should have a simplified template that reflects direct or increased costs related to the operation of a registry.

Applications with Projected Revenues

Reduce the rigidity of the financial projections by providing applicants with alternate methods to demonstrate their financial capabilities:

A. Basic Financial Templates: Utilization of financial projection templates as per the Applicant Guidebook
B. Custom Financial Templates: Flexibility to submit their own financial model – acknowledge this could be more cumbersome to review but providing the option would be beneficial to all stakeholders. Allowing for the upload of Excel files should also be considered as it would assist in understanding the model.
C. Professional Endorsement: Endorsement from an accountant/auditor confirming the business model and resulting financial model have been evaluated and that the financial projections are aligned with the assumptions and knowledge. A sample letter outlining the expected structure and content should be provided in order to help streamline the process.

The above would provide additional flexibility in the different types of applications and evaluation methods while being receptive to innovative business models that would otherwise not fit in the standard template approach.

Stress-Test Tools

Make it easier for applicants to assess their financial projections by providing applicants with additional financial tools. Provision of an automated tool to stress-test their assumptions in a manner similar to an online mortgage calculator that utilizes registration volumes, prices etc. to evaluate the financial model. A simplified version could provide average volume of the top quartile registration volumes for the first three years in the high scenario, second quartile for the most likely scenario and third quartile for the low scenario (skipping over the fourth quartile). A more sophisticated tool could include additional data fields such as registration price per year, renewal rates and related fixed and variable costs. Furthermore, functions could be added that inform the applicant to any potential issues such as funding shortfalls with low registration volume with high expenses.

Consolidated View of Multiple Applications

Evaluate the entire applicant's risk by applying a holistic risk analysis to the portfolio of applications. This could be completed based on a high/med/low rate of success of delegating all of the applications and/or evaluating whether the sum of the parts is less than the whole i.e. is the risk lower if there are multiple TLDs.

Improved Guidance

Expand guidance by including additional areas to consider in the financial commentary, including:

- Addressing losses: Action plan if projected revenues are not met and/or expenses are exceeded.

- Addressing funding shortfalls: If the resulting financial model results in losses, demonstrating how the funding will be attained and paid-back.
- Applying checklists: Include checklists to assist applicants in the review of their application such as proposals/contracts for direct expenses (based on availability) such as back-end provider and escrow contracts/proposals.

Policy Outcomes

1. Minimize the financial risk of applicants and in turn, ICANN.
2. Ensure applicants have realistic expectations along with a better understanding of the financial obligations of owning and operating a registry.
3. Reduce the number of clarifying questions by providing suggestions on how to improve their applications based on financial results.

The approach also yields benefits to ICANN by ensuring quality applicants that meet the rigorous standards to operate a new gTLD for the long-term.

The model above that garnered the most support was the Light-Weight Model, though there was some desire to simplify and tweak some of the elements; *in seeking to do so, the Work Track developed the model available in section (c) above.*

Registry Services Evaluations:

In the event that the registry services proposed by the applicant did not raise significant stability or security issues, they primarily served as the source material for inclusion in the Registry Agreement, specifically Exhibit A. The Work Track anticipates that the list of pre-approved registry services will expand, based on the outcomes of already concluded Registry Services Evaluation Process (RSEP) instances.

The Work Track considered ways in which this might be streamlined. Some noted that with the implementation of an RSP Program, much of the technical evaluation, including registry services, would be minimized. To the extent the applicant is intending to customize either its technical implementation or the type or way in which it provides registry services, then those aspects should be reviewed individually.

Another idea the Work Track considered was to only allow the declaration of registry services through the RSEP, though only beginning at contracting time or thereafter. This proposal met resistance within the Work Track for at least a few reasons: 1) applicants may want to have assurance that their registry services are acceptable before the transition to delegation steps, 2) the community may want to provide input to proposed registry services, and 3) it may discourage innovation. The Work Track agreed that applicants should, at a minimum, be allowed to provide its registry services at application submission.

The Work Track generally agreed that improving the way in which an applicant could agree to pre-approved registry services would improve efficiency. The registry services evaluation

process should not have to individually review every applicant's registry services, especially where the applicant is only using pre-approved registry services. A Work Track member suggested that the process could be separated, where applicants proposing no new registry services would be handled in one way, but those suggesting new registry services would be handled in parallel and in an efficient manner. The thought is that by ensuring efficient review of new registry services, applicants would be encouraged to innovate, but also provide them earlier in the process. Some noted that the current process from 2012 is not too dissimilar to this suggestion (i.e., applicants may suggest new registry services at application submission and if the evaluation panel determines that they might present a stability or security risk, RSEP could be required during Extended Evaluation). There was support for continuing to allow applicants to submit new registry services at application submission, or after delegation, as is the case currently, though some sought to make the declaration of registry services at application submission compulsory. Some noted that the advantage of compulsory disclosure are public knowledge of the services at the time of application. However, this might also be a disadvantage from the applicant point of view, but may better preserve the public interest in possible objections. In addition, applicant evaluation may take longer, but evaluation would perhaps be more thorough and might give the opportunity for the community to provide comments on the proposed services.

The Work Track also discussed whether the list of pre-approved registry services needed to be explicitly determined or could be noted via reference in the AGB and/or registry agreement. It was also suggested that pre-approved services could be listed, but new services would require detailed explanation.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

C. Registry Service Provider Program
D. Rights Protection Mechanisms PDP WG
E. Competition, Consumer Choice, and Consumer Trust Review Team

1.7.8 Name Collisions

a. What is the relevant policy and/or implementation guidance (if any)?

Recommendation 4: "Strings must not cause any technical instability."

b. How was it implemented in the 2012 round of the New gTLD Program?

Although at the time of the New gTLD Program launch there were no mechanisms addressing name collisions in place, in 2010 the Security and Stability Advisory Committee (SSAC)

released SSAC 045[179], which among other things, recommended that "ICANN promote a general awareness of the potential problems that may occur when a query for a TLD string that has historically resulted in a negative response begins to resolve to a new TLD." Though these recommendations were made by the SSAC, there were no other measures taken prior to the acceptance of new gTLD applications.

However, after program launch, work was undertaken to establish a framework to handle name collisions. On 7 October 2013, the New gTLD Collision Occurrence Management[180] framework was adopted by the ICANN Board for implementation by ICANN Org. The framework was intended to address potential issues arising from name collisions, including systems disruption, SSL certificate hijacking, and alleged potential risks to human life. An extended period between contracting and delegation was established to make SSL certificate providers aware that new TLDs were going to be delegated to ensure revocation of existing SSL certs with the new TLD string as TLD in the cert, and while a final framework was being developed by advisors to ICANN, ICANN allowed some applicants to proceed to launch their TLDs provided they agree to implement a mechanism called the "Alternate Path to Delegation (APD)." This involved requiring all Registry Operators to block all second-level domains (SLDs) that incidentally appeared in a sample set of data of queries to the root zone (called the "Day in the Life of the Internet" (DITL) initiative) This required many registries to block the registration of thousands, and in some cases hundreds of thousands, of second level domains.

The final Name Collision Management Framework[181] framework was released in July 2014. This new framework allowed registries that were delegated after the release of the final framework to implement the existing APD or to introduce a wildcard in the whole zone for the first 90 days after delegation, where end-users were taken to an unintended Web page or encountered an error message. This warning mechanism, called "controlled interruption," required that system administrators be alerted that in the event they were directing queries to that newly delegated TLD, there may be an issue in their network; "controlled interruption" had to last for a period of at least 90 days and got its name from its intended design of making end-users and systems administrators aware of the problem without risking that these unintended queries to the newly existing TLDs were not inadvertently misappropriated by the registry operator or any of its registrants..

c. What are the preliminary recommendations and/or implementation guidelines?

The Work Track developed the following preliminary recommendations:

- Include a mechanism to evaluate the risk of name collisions in the TLD evaluation process as well during the transition to delegation phase.

[179] https://www.icann.org/en/system/files/files/sac-045-en.pdf
[180] See framework here: http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-07oct13-en.pdf
[181] See final framework here: https://www.icann.org/en/system/files/files/name-collision-framework-30jul14-en.pdf

- Use data-driven methodologies using trusted research-accessible data sources like Day in the Life of the Internet (DITL)[182] and Operational Research Data from Internet NAmespace Logs (ORDINAL)[183].
- Efforts should be undertaken to create a "Do Not apply" list of TLD strings that pose a substantial name collision risk whereby application for such strings would not be allowed to be submitted.
- In addition, a second list of TLDs should be created (if possible) of strings that may not pose as high of a name collision risk as the "Do Not apply" list, but for which there would be a strong presumption that a specific mitigation framework would be required.
- Allow every application, other than those on the Do Not Apply list, to file a name collision mitigation framework with their application.
- During the evaluation period, a test should be developed to evaluate the name collision risk for every applied-for string, putting them into 3 baskets: high risk, aggravated risk, and low risk. Provide clear guidance to applicants in advance for what constitutes high risk, aggravated risk, and low risk.
- High risk strings would not be allowed to proceed and would be eligible for some form of a refund.
- Aggravated risk strings would require a non-standard mitigation framework to move forward in the process; the proposed framework would be evaluated by an RSTEP panel.
- Low risk strings would start controlled interruption as soon as such finding is reached, recommended to be done by ICANN Org for a minimum period of 90 days (but likely more considering the typical timeline for evaluation, contracting and delegation).
- If controlled interruption (CI) for a specific label is found to cause disruption, ICANN Org could decide to disable CI for that label while the disruption is fixed, provided that the minimum CI period still applied to that string.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

- Is there a dependency between the findings from this WG and the Name Collisions Analysis Project (NCAP)? If there is, how should the PDP WG and NCAP Work Party collaborate in order to move forward? Or, should the PDP WG defer all name collision recommendations to NCAP?
- In the event that the NCAP work is not completed prior to the next application round, should the default be that the same name collision mitigation frameworks in place today be applied to those TLDs approved for the next round?

[182] DITL was a key element of this study on name collisions: https://www.icann.org/en/system/files/files/name-collision-02aug13-en.pdf
[183] See information regarding ORDINAL here: https://impactcybertrust.org/dataset_view?idDataset=794

- The Work Track generally agreed to keep the Controlled Interruption period at 90 days due to lack of consensus in changing it. Some evidence indicated a 60-day period would be enough. Though no evidence was provided to require a longer period, other work track members argued for a longer 120 days. What length do you suggest and why? Note that the preliminary recommendation to have ICANN Org conduct CI as early as possible would likely mitigate potential delays to applicants in launching their TLD. Are there concerns with ICANN Org being responsible for CI?
- During the first 2 years following delegation of a new gTLD string, registry operators were required to implement a readiness program ensuring that certain actions be taken within a couple of hours in the event that a collision was found which presented a substantial risk to life. The 2-year readiness for possible collisions was kept as determined in the Name Collision Management Framework, but some in the Work Track felt that the service level for 2012 was too demanding. What would be a reasonable response time?
- If ICANN were initially required to initially delegate strings to its own controlled interruption platform and then later delegate the TLD to the registry, would that unreasonably increase the changes to the root zone?
- What threat vectors for name collisions in legacy gTLDs should the WG consider, and what mitigation controls (if any) can be used to address such threats?
- Regarding the "do not apply" and "exercise care" lists, how should technical standards for these categories be established? Should experts other than those involved in NCAP be consulted?
- As applicants are preliminarily recommended above to be allowed to propose name collision mitigation plans, who should be evaluating the mitigation frameworks put forth by applicants? Should RSTEP be utilized as preliminarily recommended above or some other mechanism/entity?

f. Deliberations

As a starting point for the Work Track's deliberations, it compiled and considered a set of existing resources, such as reports from Interisle Consulting Group[184] and JAS Advisors[185]. The Work Track also reviewed several SSAC reports that focused on name collisions, including SAC045[186], SAC057[187], SAC062[188], and SAC066[189].

During its deliberations the Work Track identified the following issues:

[184] See Interisle report here: https://www.icann.org/en/system/files/files/name-collision-02aug13-en.pdf
[185] See JAS report here: https://www.icann.org/en/system/files/files/name-collision-mitigation-final-28oct15-en.pdf
[186] See SAC045 here: https://www.icann.org/en/system/files/files/sac-045-en.pdf
[187] See SAC057 here: https://www.icann.org/en/system/files/files/sac-057-en.pdf
[188] See SAC062 here: https://www.icann.org/en/system/files/files/sac-062-en.pdf
[189] See SAC066 here: https://www.icann.org/en/system/files/files/sac-066-en.pdf

- APD lists included a number of desirable terms and trademarks to be only available after the launch cycle of the TLD, interacting badly with launch programs, marketing initiatives and RPMs.
- The after-the-fact nature of establishing the framework severely impacted time-to-market of approved TLDs.
- Late start of controlled interruption added to more delays.
- The Work Track has not reached an agreement on TLDs with a higher than usual risk level (.home, .corp and .mail).
- Some TLDs contradicted the framework by having both wildcard controlled interruption and delegated domain names.
- Risks were overplayed by some actors and downplayed by others, making it harder for the ICANN Organization to choose an accepted risk level.
- Some side effects of controlled interruption for specific SLDs required disabling controlled interruption for the whole TLD.

The Work Track noted that some features were already changed during the 2012 process. For example, APD stopped being used, and the Work Track supports that change. However, the Work Track notes that time-to-market and predictability issues are still present, and suggests the need for changes. The Work Track reached out to Jeff Schmidt of JAS Advisors in May of 2017, asking:

- What general guidance for namespace collisions would you like the community to consider for the next application process, and why?
- Were there non-applied for strings that would fall into a high risk profile that would be suggested to not be allowed for the time being in subsequent new gTLD procedures ? Which ones?
- What data sources could/should be used for analyzing namespace collisions for subsequent procedures?
- Based on experience from the 2012 round, can the controlled interruption period be reduced in future procedures, if controlled interruption is suggested to be used?

Mr. Schmidt provided response[190], stating that the approach taken for Controlled Interruption seemed effective and that he would not change anything.

On legacy and 2012 gTLDs, the Work Track reached consensus on keeping the procedures for 2012-round gTLDs as they are. With respect to subsequent procedures the Work Track reached consensus on:

- Expanding 2012 Framework with categorization of low, aggravated, and high risk, on elaborating “do not apply” and “exercise care” lists;
- Keeping readiness requirement for life-threatening collisions; and

[190] See email response here: https://mm.icann.org/pipermail/gnso-newgtld-wg-wt4/2017-June/000079.html

- For low-risk strings, on starting controlled interruption as soon as possible and delegate execution to ICANN.

The Work Track notes that the following issues are still pending further deliberations and input:

- Discussions on name collisions in legacy gTLDs;
- Guidelines, or guidance to make guidelines, for categorization and list-creation, including possible applicant opinion and collision framework;
- Definition of a Service Level Agreement (SLA) for collision readiness; and
- Interaction with Board-requested SSAC guidance.

In its deliberations the Work Track reviewed the responses received from the Community Consultation 2 (CC2). Specifically, JAS Advisors and the ALAC recommended not changing the status quo. In addition, JAS Advisors suggested looking into SLD-name collisions (notifications), considering variations of 2012 problematic strings, and using Day in the Life (DITL) and ORDINAL datasets.

The SSAC, in its advice (see below), suggested creating a "do not apply" list and an "exercise care" list, to consider what to do with previously delegated TLDs, identify private namespaces, and coordinate with IETF on special-use domain names.

The International Trademark Association (INTA) suggested avoiding APD-type lists, but if these are used they should not contain trademarks.

The Registry Stakeholder Group noted the lack of predictability, but that there was no need to extend the two-year, two-hour readiness. It also suggesting reducing the controlled-interruption period to 60 days and to assess risk instead of just quantity of collisions.

Thomsen Trampedach suggested initiating the controlled interruption period sooner rather than later.

Finally, the ICANN Office of the Chief Technology Officer suggested reaching out to other technical organizations. Subsequently, the Work Track reached out to the lists for the DNS Operations, Analysis, and Research Center (*DNS-OARC*), the Regional Internet Registry for Europe (RIPE), and the Internet Engineering Task Force (IETF) to request input, although no formal input was forthcoming.

Also in it deliberations the Work Track considered input from several sources, in addition to the CC2 responses. First, it reviewed the Security and Stability Advisory Committee (SSAC) advice on Name Collisions: SAC090 -- SSAC Advisory on the Stability of the Domain Namespace (22 December 2016) and SAC94 -- SSAC Response to the Request for Advice Relating to the 2012 New gTLD Round (22 May 2017). The Work Track also met with Patrik Fältström, the Chair of the SSAC, who provided a detailed presentation on the SSAC's advice.

Second, it reviewed the report by JAS Advisors on Mitigating the Risk of DNS Namespace Collisions and posed the following questions to JAS (via the ICANN Organization):

> "What general guidance for namespace collisions would you like the community to consider for the next round, and why?"
>
> "Among the 3 strings not recommended to move forward (.home, .corp and .mail), we can classify them in two groups: ones without much dotless queries (.home and .corp) and one with prevalence of dotless queries (.mail). Considering dotless operation is forbidden in gTLDs, could you clarify why the later group presented a collision risk as well? What, if any, circumstances strings belonging to those two risk profiles could be released under?"
>
> "Were there non-applied for strings that would fall into one of those two risk profiles that would be suggested to not be allowed for the time being in subsequent new gTLD procedures? If Answered 'Yes' above, which ones shouldn't be allowed?"
>
> "What data sources could/should be used for analyzing namespace collisions for subsequent procedures?"
>
> "Based on data from the first round, can the controlled interruption period be reduced in future rounds?"
>
> "Are there any existing studies out there that examine the effectiveness of the existing mitigation strategies in place?"

Also, concerning the name collisions that have been reported, the Work Track sought high level data to help understand if the reported issues might pose a problem, even if they don't meet the high bar of imminent harm to human life. The following data elements were requested:

- Date of report to ICANN;
- Type of TLD where the collision occurred (Single-registrant, Brand, Geo, IDN, Open/Generic, Open/Niche);
- When and how reporting person detected the collision;
- Affected system (Corporate network, Mobile Application, Web Application, Other-Specify);
- Registry response (If available); and
- Outcome (to the best of ICANN's knowledge).

See the ICANN Organization's response here: https://community.icann.org/x/Yz2AAw.

In a follow-up question to the ICANN Organization, the Work Track asked, "In the cases that were listed as 'Registry not contacted' was that due to ICANN's decision that such a contact was not warranted, or was it due to reporter request for non-disclosure?" GDD Technical

Services responded: "The reason is either: 1) the ICANN organization determined that contacting the registry was not necessary given that the reporter was able to fix the issue(s) in their network relatively quickly; or 2) the reporter did not respond when asked if they approved ICANN to put them in contact with the registry."

The Work Track also reached out to ICANN Compliance concerning name collisions. Specifically, it noted that in the April-June Contractual Compliance quarterly update (https://www.icann.org/en/system/files/files/compliance-update-jun17-en.pdf) that at the end of page 3, it states: "This quarter, the ICANN Contractual Compliance team also processed referrals from ICANN Technical Services regarding controlled interruption wildcard record violations. Approximately 45 TLDs were found to have activated names (other than nic.tld) in the DNS, while controlled interruption wildcard records continued to exist in their zone file." The Work Track noted that it seemed to be a high number of TLDs that are still having issues with the 2012-round Name Collision Framework, long after delegation. It further noted that this specific data point suggests that one of the suggested modifications -- having ICANN or an ICANN contractor run the process before the TLD is delegated to the approved applicant -- would not only address the time-to-market problem seen by registries but also improve compliance with the framework as designed. Accordingly, the Work Track asked ICANN Contractual Compliance to provide additional data to help them determine what the breakdown is for RSPs amongst the 45 TLDs (while not seeking the names of RSPs or ROs, but a count per RSP). The ICANN Compliance Response can be found here: https://community.icann.org/x/Yz2AAw.

Outreach efforts were also done through the DNS-OARC (DNS Operations, Analysis, and Research Center) mailing list and OARC 28 meeting, as well as the IETF DNSOP and RIPE DNS WG mailing lists. As of the drafting of this report, no feedback from those efforts has been received.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

- NCAP (Name Collisions Analysis Project)
- IETF special TLDs initiative

1.8 Dispute Proceedings

Dispute Proceedings		
1.8.1	Objections	Work Track 3

1.8.2	Accountability Mechanisms	Work Track 3

1.8.1 Deliberations and Recommendations: Objections

a. What is the relevant policy and/or implementation guidance (if any)?

Recommendation 2: “Strings must not be confusingly similar to an existing top-level domain.”
Recommendation 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 Industrial Property (in particular trademark rights), the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (in particular freedom of speech rights).”
Recommendation 6: “Strings must not be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally accepted and internationally recognized principles of law. Examples of such limitations that are internationally recognized include, but are not limited to, restrictions defined in the Paris Convention for the Protection of Industrial Property (in particular restrictions on the use of some strings as trademarks), and the Universal Declaration of Human Rights (in particular, limitations to freedom of speech rights).”
Recommendation 12: “Dispute resolution and challenge processes must be established prior to the start of the process.”
Recommendation 20: “An application will be rejected if it is determined, based on public comments or otherwise, that there is substantial opposition to it from among significant established institutions of the economic sector, or cultural or language community, to which it is targeted or which it is intended to support.”

Implementation Guideline P (IG P, including sub-headings on process and guidelines, refers specifically to the Community Objection): “The following process, definitions and guidelines refer to Recommendation 20.

Process

Opposition must be objection based.

Determination will be made by a dispute resolution panel constituted for the purpose.

The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).

Guidelines

The task of the panel is the determination of substantial opposition.

a) substantial – in determining substantial the panel will assess the following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment

b) significant portion – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.

c) community – community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted.

d) explicitly targeting – explicitly targeting means there is a description of the intended use of the TLD in the application.

e) implicitly targeting – implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.

f) established institution – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years.

Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community.

The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

g) formal existence – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar.

h) detriment – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely."

Implementation Guideline R: "Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated."

b. How was it implemented in the 2012 round of the New gTLD Program?

In the Final Report on the Introduction of New Generic Top-Level Domains, the GNSO recommended that "Dispute resolution and challenge processes must be established prior to the start of the process." In the GAC Principles regarding New gTLDs,[192] Principle 3.3 states, "If individual GAC members or other governments express formal concerns about any issues related to new gTLDs, the ICANN Board should fully consider those concerns and clearly explain how it will address them."

In support of the guidance from the GNSO and the GAC, Module 3 of the 2012 Applicant Guidebook defines the following processes:

- Section 3.1 describes GAC Advice on New gTLDs, a process intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities. It provides that the GAC Advice must be filed by the close of the Objection-Filing Period. According to the Guidebook, GAC Advice[193] could take one of 3 forms:
    - I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.
    - II. The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.
    - III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.[194]

- Section 3.2 describes the Public Objection and Dispute Resolution Process, through which parties with standing can file formal objections with designated third-party dispute resolution providers on specific applications based on the following grounds: (i) String Confusion Objection (ii) Existing Legal Rights Objection (iii) Limited Public Interest Objection (iv) Community Objection. In order to bring these Objections, Objectors not only had to meet the substantive requirements for the applicable Objection type, but they also had to satisfy certain standing requirements to have their objections considered. A description of the substantive as well as the Standing requirements are set forth in on pages 3-5 through 3-8 of the New gTLD Applicant Guidebook.

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[192] https://archive.icann.org/en/topics/new-gtlds/gac-principles-regarding-new-gtlds-28mar07-en.pdf
[193] Provisions of the Applicant Guidebook should be read in conjunction with any applicable Bylaws requirements.
[194] See New gTLD Applicant Guidebook at p. 3-3.

As a result of a number of discussions between the ICANN Board and the GAC in 2010-2011, ICANN created a new role, the "Independent Objector" (IO). Section 3.2.5 describes the role of the Independent Objector, who is in a position to file objections when doing so serves the best interests on the public who use the global Internet. The IO was supposed to not act on behalf of any particular persons or entities, but solely in the best interests of the public who use the global Internet. The IO was to file objections against "highly objectionable" gTLD applications to which no objection has been filed and was limited to filing two types of objections: (1) Limited Public Interest Objections and (2) Community Objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections.

c. What are the preliminary recommendations and/or implementation guidelines?

The Work Track seeks input on the following preliminary recommendations:

- A transparent process for ensuring that panelists, evaluators, and independent objectors are free from conflicts of interest must be developed as a supplement to the existing Code of Conduct Guidelines for Panelists and Conflict of Interest Guidelines for Panelists.[195]
- For all types of objections, the parties to a proceeding should be given the opportunity to agree upon a single panelist or a three person panel - bearing the costs accordingly.
- ICANN must publish, for each type of objection, all supplemental rules as well as all criteria to be used by panelists for the filing of, response to, and evaluation of each objection. Such guidance for decision making by panelists must be more detailed than what was available prior to the 2012 round.
- Extension of the "quick look" mechanism, which currently applies to only the Limited Public Interest Objection, to all objection types. The "quick look" is designed to identify and eliminate frivolous and/or abusive objections.
- Provide applicants with the opportunity to amend an application or add Public Interest Commitments in response to concerns raised in an objection.

d. What are the options under consideration, along with the associated benefits / drawbacks?

The Work Track seeks community input on the following possible recommendations regarding GAC Advice and GAC Early Warnings:

- GAC Advice must include clearly articulated rationale, including the national or international law upon which it is based.
- Future GAC Advice, and Board action thereupon, for categories of gTLDs should be issued prior to the finalization of the next Applicant Guidebook. Any GAC Advice issued

[195] See Applicant Guidebook Module 2, section 2.4.3.

after the application period has begun must apply to individual strings only, based on the merits and details of the application, not on groups or classes of applications.

- Individual governments should not be allowed to use the GAC Advice mechanism absent full consensus support by the GAC. The objecting government should instead file a string objection utilizing the existing ICANN procedures (Community Objections/String Confusion Objections/Legal Rights Objections/Limited Public Interest Objections).
- The application process should define a specific time period during which GAC Early Warnings can be issued and require that the government(s) issuing such warning(s) include both a written rationale/basis and specific action requested of the applicant. The applicant should have an opportunity to engage in direct dialogue in response to such warning and amend the application during a specified time period. Another option might be the inclusion of Public Interest Commitments (PICs) to address any outstanding concerns about the application.

e. What specific questions are the PDP WG seeking feedback on?

- Role of GAC Advice
    - Some have stated that Section 3.1 of the Applicant Guidebook creates a "veto right" for the GAC to any new gTLD application or string. Is there any validity to this statement? Please explain.
    - Given the changes to the ICANN Bylaws with respect to the Board's consideration of GAC Advice[196], is it still necessary to maintain the presumption that if the GAC provides advice against a string (or an application) that such string or application should not proceed?
    - Does the presumption that a "string will not proceed" limit ICANN's ability to facilitate a solution that both accepts GAC advice but also allows for the delegation of a string if the underlying concerns that gave rise to the objection were addressed? Does that presumption unfairly prejudice other legitimate interests?

- Role of the Independent Objector
    -
    - In the 2012 round, all funding for the Independent Objector came from ICANN. Should this continue to be the case? Should there be a limit to the number of objections filed by the Independent Objector?
    - In the 2012 round, the IO was permitted to file an objection to an application where an objection had already been filed on the same ground only in extraordinary circumstances. Should this extraordinary circumstances exception remain? If so, why and what constitutes extraordinary circumstances?
    - Should the Independent Objector be limited to only filing objections based on the two grounds enumerated in the Applicant Guidebook?

[196] To better understand the changes referenced, see section 12.2(a)(x) and (xi) of the ICANN Bylaws from February 2016 and onwards versus those from 2014, specifically Article XI, section 2, 1(j) and (k).

- In the 2012 round, there was only one Independent Objector appointed by ICANN. For future rounds, should there be additional Independent Objectors appointed? If so, how would such Independent Objectors divide up their work? Should it be by various subject matter experts?

- General Questions
  - Some members of the ICANN Community believe that some objections were filed with the specific intent to delay the processing of applications for a particular string. Do you believe that this was the case? If so, please provide specific details and what you believe can be done to address this issue.
  - How can the "quick look" mechanism be improved to eliminate frivolous objections?
  - ICANN agreed to fund any objections filed by the ALAC in the 2012 round. Should this continue to be the case moving forward? Please explain. If this does continue, should any limits be placed on such funding, and if so what limits?Should ICANN continue to fund the ALAC or any party to file objections on behalf of others?
  - Should applicants have the opportunity to take remediation measures in response to objections about the application under certain circumstances? If so, under what circumstances? Should this apply to all types of objections or only certain types?
  - Who should be responsible for administering a transparent process for ensuring that panelists, evaluators, and independent objectors are free from conflicts of interest?

- Community Objections
  - In 2012, some applicants for community TLDs were also objectors to other applications by other parties for the same strings. Should the same entity be allowed to apply for a TLD as community and also file a Community Objection for the same string? If so, why? If not, why not?
  - Many WT members and commenters believe that the costs involved in filing Community Objections were unpredictable and too high. What can be done to lower the fees and make them more predictable while at the same time ensuring that the evaluations are both fair and comprehensive?
  - In the Work Track, there was a proposal to allow those filing a Community Objection to specify Public Interest Commitments (PICs) they want to apply to the string. If the objector prevails, these PICs become mandatory for any applicant that wins the contention set. What is your view of this proposal?

- String Confusion Objections
  - The RySG put forward a proposal to allow 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. Under the proposal:

        - 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 response.
    - Do you support this proposal? Why or why not? Would this approach be an effective way to reduce the risk of inconsistent outcomes?
    - Some Work Track members have proposed that there should be grounds for a String Confusion Objection if an applied-for string is an exact translation of existing string that is in a highly regulated sector, and the applied-for string would not employ the same safeguards as the existing string. Do you support this proposal? Please explain.
- Legal Rights Objections
    - Should the standard for the Legal Rights Objection remain the same as in the 2012 round?[197] Please explain.
        - A Work Track member submitted a strawman redline edit of AGB section 3.2.2.2.[198]What is your view of these proposed edits and why?

f. Deliberations

The Work Track divided discussions on objections into the following topic areas:

1. Process in General
2. Community Objections
3. String Confusion Objections
4. Legal Rights Objections
5. Limited Public Interest Objections

[197] Section 3.5.2 of the Applicant Guidebook states that ". . .a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector's registered or unregistered trademark or service mark ("mark") or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector's mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector's mark or IGO name or acronym." Please see full text of this section for details about the standard.

[198] The proposal is available here: https://community.icann.org/download/attachments/63157176/7.2.5%20Legal%20Rights%20Objection%20-%20Strawman%20Edits.pdf?version=1&modificationDate=1486402474000&api=v2.

6. The Independent Objector
7. GAC Early Warnings & GAC Advice

The following summary of deliberations is similarly organized to reflect discussions in the Work Track, including resources and options considered.

1. Process in General

The Final Issue Report provided a series of potential topics to consider with respect to Objections. The Work Track used this list as a starting point for discussions and identified several areas that required additional work.

The Work Track considered that there was concern following the 2012 round about the lack of consistency in the outcomes of objections and dispute resolutions processes. At the WT's request, staff provided a high-level analysis of reconsideration requests, which may be an indicator of dissatisfaction with objections processes or outcomes.[200] The Work Track reviewed this data and considered comments provided in CC2 but was unable to come to a definitive conclusion about the cause of perceived inconsistencies or possible methods for mitigation. The Work Track agreed, however, that clear guidance should be provided to Dispute Resolution Service Providers and panelists to support consistent decision making and outcomes.

The Work Track noted that under the topic of Accountability Mechanisms, a recommendation was put forward to establish a limited appeals mechanism available to those dissatisfied with the outcomes of objections processes and other elements of the New gTLD Program. Details about this recommendation are included under the "Accountability Mechanisms" section of this report.

Work Track members noted that the high cost of filing objections was another area of concern following the 2012 round. Some Work Track members stated that that fees should be predictable and not prohibitive, but the Work Track does not have any specific recommendations at this time regarding the fee schedule. Some suggestions for reducing costs associated with objections were included in CC2 comments, for example a suggestion from the RySG to strictly enforce page limits to reduce costs and workload associated with objections.[201] Additional suggestions from the community on cost management are welcome.

The Work Track generally agreed that, where possible, it is desirable to avoid lengthy, expensive objections processes where other measures can resolve an issue. To this end, the Work Track considered a number of mechanisms discussed throughout this section that could reduce the number of objections while still reaching a satisfactory resolution.

[200] https://community.icann.org/download/attachments/58735959/Objections%20Statistics_17Jan2017.xlsx?version=1&modificationDate=1484692493000&api=v2

[201] See RySG response to CC2 question 3.1.9.

The Work Track agreed that it could be beneficial to resolve frivolous objections before they result in significant expense for the applicant. Work Track members expressed support for having a distinct step in the objections process to evaluate an objector's standing prior to addressing the substance of an objection to reduce unnecessary expenditure of time and resources.

The Work Track also supported providing applicants with the opportunity to amend an application or add Public Interest Commitments in response to concerns raised by a potential objector. This would be an avenue for resolving issues with an application and allowing it to move forward while meeting the needs of those with concerns. The idea of permitting remediation of an application was put forward as a general proposal, but it was also discussed specifically in the context of Community Objections (please see sub-section 2. Community Objections below for additional information).

The Work Track expressed general support for ensuring that objections mechanisms are accessible to impacted parties, including governments, communities, and other groups with limited resources for this type of action. The cost of objections is one potential barrier, but time, expertise, and awareness of the opportunity file and objection may also present challenges.

The Work Track noted that that the size of panels is one factor impacting costs, but that it may not always be desirable to limit decision making to a single expert panelist. The Work Track agreed that three expert panels may be more reliable and less likely to generate concerns around inconsistent application of objection procedures or outcomes. Consistent with a proposal from the RySG,[202] the Work Track recommends allowing parties to jointly determine whether to use a one or three expert panel for all objection types. The Work Track feels that the parties are in the best position to weigh the potential tradeoffs between cost and consistency and make this decision.

2. Community Objections

In the 2012 round, a Community Objection could be filed if there was substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted. Section 3.2.2.4 of the Applicant Guidebook describes this grounds for objection. The Work Track discussed a number of issues raised in the Final Issue Report and in CC2 comments and considered several proposals related to Community Objections, which are included in this section. The Work Track has not yet agreed on recommendations on this topic.

Costs were a significant concern for all types of objections, but Work Track members and CC2 comments raised that costs associated with Community Objections was a particular issue, because communities may have limited financial resources. Several CC2 comments suggested making the cost of community objections lower and more predictable. The Work Track also

[202] See RySG response to CC2 question 3.1.2.

noted that 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" suggested lowering the costs for Community Objections.[203] The Work Track sees this as an area that deserves further attention.

One Work Track member raised the issue of training and management of panelists. The Work Track member stated that panelists must be properly trained and managed to ensure they avoid delivering decisions that are based on (or rely on) any assumptions about future contention resolution proceedings and decisions. The Work Track member referenced the Community Objection filed against .LGBT. The Work Track member stated that in this case, the panelist made a statement in his decision that assumes the gay community would be awarded a gTLD of its own (.GAY) and therefore he believed that material detriment did not exist in letting .LGBT proceed. This assumption has not yet come to fruition and therefore the material detriment has not yet been eliminated.[204]

Some Work Track members raised the concern that applicants were forced to spend money and time responding to frivolous objections that would not have passed an initial evaluation of standing. In order to prevent similar cases in the future, a proposal was made to include a distinct step early in the Community Objections process in which standing of the objector is substantiated before collecting fees from the applicant associated with the Objection.[205] Other Work Track members noted that it may be beneficial to extend the "quick look" mechanism not just to Community Objections, but to all types of Objections. Feedback is welcome on this proposal, which is included under the preliminary recommendations above.

Work Track members also discussed the process associated with Community Objections. The Work Track noted that in the 2012 round, panels had only two options for addressing Community Objections: they could allow the application to proceed or terminate the application. There was no option to consider remedies that would address the concerns raised in the objections. The RySG proposed allowing the applicant to take remediation measures in certain cases.[206] One suggestion raised in Work Track discussion was to allow the objector to specify Public Interest Commitments (PICs) they want to apply to the string. If the objector prevails, these PICs become mandatory for any applicant that wins the contention set. It was noted that this proposal would be a departure from existing process. In the 2012 round, an application would not proceed if the objector prevailed. The Work Track did not reach agreement in support of this proposal.

The Work Track considered the relationship between the Community Objection and Community Priority Evaluation (CPE) processes. Several registries expressed concern that by having the

[203] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b5a14

[204] See panel decision: https://newgtlds.icann.org/sites/default/files/drsp/25nov13/determination-1-1-868-8822-en.pdf.

[205] See dotgay LLC's response to CC2 question 3.1.9.

[206] See RySG response to CC2 question 3.1.2.

opportunity to participate in CPE and also file a Community Objection against another applicant, an entity may be able to "game" the system. They proposed that it should not be possible to participate in both a Community Objection and CPE for the same string. Other Work Track members noted that the Community Priority Evaluation and Community Objections processes serve different functions and should not be mutually exclusive. No agreement was reached on this proposal.

(3) String Confusion Objections

In the 2012 round, a String Confusion Objection (SCO) could be filed if the applied-for gTLD string was confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications. Section 3.5.2 of the Applicant Guidebook describes this grounds for objection. The String Confusion Objection is related to the String Similarity Review, described in section 1.7.4 of this report, though the scope of the respective processes is different (e.g., String Similarity Review only considers visual similarity versus the more expansive scope of the objection procedure).

Following the 2012 round, concern was raised about the perceived inconsistent outcomes of String Confusion Objections. The Work Track reviewed key developments regarding the String Confusion Objection in the 2012 round, including publication of the Proposed Review Mechanism to Address Perceived Inconsistent Expert Determinations on String Confusion Objections[207] and the NGPC resolution identifying three String Confusion Objection Expert Determinations as not being in the best interest of the New gTLD Program and the Internet community.[208]

The Work Track also considered concerns regarding cases of singular and plural versions of the same string. The Work Track reviewed relevant documentation, including the NGPC resolution, determining that no changes were needed to the existing mechanisms in the Applicant Guidebook to address potential consumer confusion resulting from allowing singular and plural versions of the same string.[209] Noting that some community members remain concerned that there is not sufficient guidance on this issue, Work Track members generally agreed that in subsequent procedures, there must be clear rules on the treatment of singulars and plurals.

The Work Track considered a proposal from the RySG for the consolidation of String Confusion Objections. The proposal seeks to reduce the risk of inconsistent outcomes by allowing an objector to file a single objection that would extend to all applications for an identical string.[210] A single panel would review all documentation associated with the objection and issue a single determination. The Work Track welcomes community input on this proposal.

[207] https://www.icann.org/public-comments/sco-framework-principles-2014-02-11-en
[208] https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b
[209] https://www.icann.org/resources/board-material/resolutions-new-gtld- 2013-06-25-en#2.d
[210] https://docs.google.com/document/d/13mNrOUrO2_KPa1xUXJ7Glxx_Ps5Aaczes2jEz8E-zeY/edit

In addition, the Work Track considered the suggestion to eliminate the use of the SWORD Tool, an algorithm used to support the String Similarity Review and String Confusion Objection Process. This suggestion was included in RySG proposal and has also been proposed and widely supported by others. The Work Track agreed that there was little correlation between the SWORD results and the actual outcomes of the String Confusion Objection Process, and therefore it should not be used in the future. Additional discussion of the SWORD Tool and a recommendation to eliminate the SWORD Tool is included in the String Similarity Review section on this report (section 1.7.4).

(4) Legal Rights Objections

In the 2012 round, a Legal Rights Objection (LRO) could be filed if the applied-for gTLD string infringed the existing legal rights of the objector. Section 3.2.2.2 of the Applicant Guidebook describes this grounds for objection.

The Work Track considered statistics on the outcomes of Legal Rights Objections filed in the 2012 round[211] and noted that applicants were overwhelmingly the prevailing party in these decisions. The Work Track further reviewed the WIPO Final Report on Legal Rights Objections[212] and The ICANN LRO: Statistics and Takeaways, produced by the the International Trademark Association.[213]

The Work Track discussed whether the standard for the LRO in the 2012 round remains appropriate for subsequent procedures.[214] While some Work Track members considered the standard appropriately high, other Work Track members thought that it was too difficult for trademark owners to prevail in Legal Rights Objection cases where the string had more than one meaning.

The Work Track considered a strawman redline edit of AGB section 3.2.2.2.[215] Some Work Track members expressed concern that the proposed edits would significantly expand the scope of the Legal Rights Objection and would constitute too significant a shift from the intent of the original policy. Other Work Track members expressed concern that "bad faith" presents a more difficult standard of proof and would represent a substantial change in policy in relation to

[211] https://community.icann.org/download/attachments/58735959/Objections%20Statistics_17Jan2017.xlsx?version=1&modificationDate=1484692493000&api=v2

[212] https://www.icann.org/en/system/files/correspondence/wilbers-to-willett-11dec13-en.pdf

[213] http://www.inta.org/Advocacy/Documents/2015/The%20ICANN%20Legal%20Rights%20Objection.pdf

[214] Section 3.5.2 of the Applicant Guidebook states that ". . .a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector's registered or unregistered trademark or service mark ("mark") or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector's mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector's mark or IGO name or acronym." Please see full text of this section for details about the standard.

[215] https://community.icann.org/download/attachments/63157176/7.2.5%20Legal%20Rights%20Objection%20-%20Strawman%20Edits.pdf?version=1&modificationDate=1486402474000&api=v2

the Legal Rights Objection process. The Work Track continues to accept feedback on the suggested revision.

(5) Limited Public Interest Objections

In the 2012 round, a Limited Public Interest (LPI) Objection could be filed if the applied-for gTLD string was contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law. Section 3.2.2.3 of the Applicant Guidebook describes this grounds for objection. As inputs to the discussion on this topic, the Work Track considered CC2 comments, the Final Report of the New gTLD Recommendation #6 Cross Community Working Group,[216] and Explanatory Memoranda on Morality and Public Order related to draft versions of the Applicant Guidebook.[217] Work Track members generally supported the idea that the existing policy recommendation and the Applicant Guidebook language remain appropriate and sufficient for subsequent procedures.

The Work Track discussions on Limited Public Interest Objections focused primarily on different perspectives about providing funding to the ALAC to file LPI Objections. In the 2012 round, financial resources were made available to the ALAC to file LPI Objections. The objective of providing this funding was to enable the ALAC to file LPI Objections on behalf of end users, because end users may not otherwise have the means to file these objections. Work Track members disagreed about whether this should continue to be the case in subsequent procedures.

Some Work Track members expressed concern that parties in the 2012 round could "lobby" ALAC to file an objection rather than filing an objection themselves. Some considered this type of advocacy a form of gaming that allowed parties to avoid costs associated with filing objections. Other Work Track members felt that it was appropriate for parties to reach out to the ALAC for assistance with filing objections on behalf of end users. While some suggested that additional mechanisms may be needed to ensure accountability in cases where the ALAC files LPI objections using ICANN funds, others stated that existing ALAC mechanisms already ensure accountability.

The Work Track discussed that the ALAC was not automatically granted standing to file LPI Objections. Some Work Track members expressed that this was a programmatic inconsistency - the ALAC should automatically have standing for the objection if it is receiving funds to file the objection. Other members disagreed with this assessment and felt that funding and standing should be considered separately.

Given diverging opinions on this topic, the Work Track is not making any recommendations at this time regarding ALAC funding to file LPI Objections or the issue of standing but welcomes input.

[216] https://gnso.icann.org/en/issues/new-gtlds/report-rec6-cwg-21sep10-en.pdf
[217] https://community.icann.org/display/NGSPP/4.4.3+Objections

(6) The Independent Objector:

In the 2012 round, the Independent Objector (IO) was instituted to file Limited Public Interest and Community Objections with the goal of serving the best interests of the public who use the global Internet. To support discussions on the IO, the Work Track considered data on the outcomes of objections filed by the Independent Objector, as well as CC2 comments, and recommendations included in the IO's final activity report.[218]

The Work Track discussed whether the Independent Objector was effective in his role during the 2012 round. Some Work Track members pointed to the number of cases in which the IO prevailed and costs associated with the IO function as evidence that the IO was not a cost-effective mechanism. Other members noted that this data may not provide the full picture, and that it may be inherently useful to have someone serve in this function to promote and protect the public interest, regardless of the costs.

Some Work Track members questioned whether the Independent Objector in the 2012 round interpreted his mandate appropriately, leading to suggestions that checks must be put into place to ensure the IO's scope of work is narrowly tailored. Others raised concerns about possible conflicts of interest,[219] in response to which members suggested mechanisms to identify and mitigate potential conflicts of interest in subsequent procedures.

Some Work Track members advocated for retaining the Independent Objector function but changing the structure. Noting that a single person may be subjective and may have a real or perceived conflict of interest related to a case, some members suggested that there should instead be a standing panel, which could mitigate subjectivity and provide greater flexibility if one individual had a conflict of interest.

Work Track members also explored alternatives to the model used in the 2012 round, for example allowing the ICANN Board to file LPI Objections or investing resources instead into ensuring that those adversely impacted by applications were informed and in a position to object. These options did not gain significant traction.

While there are different perspectives on whether the Independent Objector role is permanently warranted and there are diverging opinions on the effectiveness of the Independent Objector in the 2012 round, the Work Track generally agreed that it is not appropriate to eliminate the role of Independent Objector at this time. The New gTLD environment is still continuing to mature and awareness about ICANN operations is far from universal. Therefore, the Work Track agreed that the Independent Objector still plays an important role the application process. The Work Track believes that further consideration should be given to the criteria under which the IO may file an objection and mechanisms to ensure that the IO remains within the intended remit.

[218] https://www.independent-objector-newgtlds.org/home/final-activity-report/

[219] See for example https://newgtlds.icann.org/sites/default/files/drsp/03feb14/determination-1-1-1315-58086-en.pdf; https://www.icann.org/resources/correspondence/rosette-to-jeffrey-2013-05-17-en.

(7) GAC Early Warnings & GAC Advice:

The Work Track has preliminarily discussed GAC advice and GAC Early Warning mechanisms, noting that some applicants in the 2012 round found both mechanisms to be a significant source of uncertainty. The Work Track agreed that it is important for the GAC to have a means to provide input, and considered possible guidelines that might satisfy the intention of the GAC Advice process while supporting greater predictability for applicants.

One concern raised in the Work Track and in CC2 was that GAC advice in the 2012 round was provided for whole categories of applications, whereas the Applicant Guidebook states that advice is to be provided for applications. Work Track members noted in the 2012 round, applicants experienced uncertainty when the GAC initially issued advice on categories of strings, because they were unclear if the lists provided were exhaustive and also unsure whether those applying for strings in related industries would be impacted.

Another concern raised in the Work Track and in CC2 was that GAC advice was provided about all applications for a contention set rather than an individual application, which appears to contradict the procedures defined in the Applicant Guidebook. Work Track members stated that this practice does not take into account that different members of a contention set may be proposing different business models, which should be an important consideration in the issuance of GAC advice. In this view, GAC advice should reference relevant applications individually to improve clarity for all parties.

A Work Track member suggested that all objections from the GAC should be handled through GAC advice or standard objections procedures, and that there should not be an additional Early Warning mechanism. From this perspective, the community holds the Board to a high standard when the Board decides to approve GAC advice about a string. These checks and balances are important, and they don't apply to Early Warning objections. By channeling GAC objections through GAC advice, the community can ensure that checks and balances apply and that all interests are taken into account.

Drawing on community feedback received in CC2,[220] the Work Track has begun to consider possible recommendations that could improve predictability associated with GAC advice and GAC Early Warnings. Please see section (d) for possible recommendations for which the Work Track is seeking input.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

Outputs of the CCWG Accountability work to develop a framework of interpretation for the Human Rights clause in the Core Values[221] may impact the Limited Public Interest Objection.

[220] See responses to CC2 questions 3.1.10 and 3.1.11.
[221] Draft framework: https://www.icann.org/public-comments/foi-hr-2017-05-05-en

1.8.2 Accountability Mechanisms & Post-Delegation Dispute Resolution Procedures

a. What is the relevant policy and/or implementation guidance (if any)?

Recommendation 12: Dispute resolution and challenge processes must be established prior to the start of the process.
Implementation Guideline R: Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated.

b. How was it implemented in the 2012 round of the New gTLD Program?

During the 2012 application round, the Accountability Mechanisms[222] utilized by applicants were the Reconsideration Process, the Independent Review Process, the Ombudsman, and the Documentary Information Disclosure Policy (DIDP). These were the same mechanisms generally available to the community and not specific to the New gTLD Program. It is also worth noting that the Accountability Mechanisms used during the 2012 New gTLD Process were those that were in the ICANN Bylaws prior to the completion of the IANA transition in 2016.

The post-delegation dispute resolution procedures, consisting of the Public Interest Commitment Dispute Resolution Procedure (PICDRP), the Registration Restrictions Dispute Resolution Procedure (RRDRP), and the Trademark Post-Delegation Dispute Resolution Procedure (Trademark PDDRP), were put into place after the launch of the program[223]. The Trademark PDDRP is within the remit of the Review of All Rights Protection Mechanisms in All gTLDs PDP WG.

c. What are the preliminary recommendations and/or implementation guidelines?

The Work Track has preliminarily agreed to very high level recommendations for a limited appeals mechanism, to supplement existing accountability mechanisms available in the ICANN Bylaws. The Work Track recognizes that additional work on these is needed:

- ICANN should create a new substantive appeal mechanism specific to the new gTLD Program. Such an appeals process will not only look into whether ICANN violated the Bylaws by making (or not making) a certain decision, but will also evaluate whether the original action or action was done in accordance with the Applicant Guidebook.
- The process must be transparent and ensure that panelists, evaluators, and independent objectors are free from conflicts of interest.

[222] See Accountability Mechanisms here: https://www.icann.org/resources/pages/mechanisms-2014-03-20-en
[223] See PDDRP site here: https://www.icann.org/resources/pages/rpm-drp-2017-10-04-en

The Work Track preliminarily agreed to the following additional recommendations regarding the post-delegation dispute resolution procedures:

- The parties to a proceeding should be given the opportunity to agree upon a single panelist or a three person panel - bearing the costs accordingly.
- Clearer, more detailed, and better defined guidance on scope and adjudication process of proceedings and the role of all parties, must be available to participants and panelists prior to the initiation of any post-delegation dispute resolution procedures.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

Limited Appeal Process:

- What are the types of actions or inactions that should be subject to this new limited appeals process? Should it include both *substantive* and *procedural* appeals? Should all decisions made by ICANN, evaluators, dispute panels, etc. be subject to such an Appeals process. Please explain?
- Who should have standing to file an appeal? Does this depend on the particular action or inaction?
- What measures can be employed to ensure that frivolous appeals are not filed? What would be considered a frivolous appeal?
- If there is an Appeals process, how can we ensure that we do not have a system which allows multiple appeals?
- Who should bear the costs of an appeal? Should it be a “loser-pays” model?
- What are the possible remedies for a successful Appellant?
- Who would be the arbiter of such an appeal?
- In utilizing a limited appeal process, what should be the impact, if any, on an applicant’s ability to pursue any Accountability Mechanisms made available in the ICANN Bylaws?
- Do you have any additional input regarding the details of such a mechanism?

f. Deliberations

Accountability Mechanisms / Appeals:

As stated in the Final Issue Report on New gTLD Subsequent Procedures, the WG was asked to *“Examine whether dispute resolution and challenge processes provide adequate redress options or if additional redress options specific to the program are needed.”* In considering this issue, the Work Track considered whether the Accountability Mechanisms generally available

were adequate in resolving issues that applicants or the wider community experienced during the 2012 round of the New gTLD Program.

It was noted that as a result of the Cross Community Working Group on Enhancing ICANN Accountability, and the resulting changes to the ICANN Bylaws, the scope of the Accountability Mechanisms was increased to include the substance of issues rather than just procedure. The Work Track considered whether this change might be sufficient to allow for proper redress of issues raised in the New gTLD Program.

David McAuley, Lead for the Independent Review Process (IRP) Implementation Oversight Team joined the Work Track on a call to provide details about the IRP, including the relevant Bylaws section, the purpose of the IRP, the standards for review, what is excluded from the scope of the mechanism, and other elements. There was general agreement that while the change was welcomed and it might make the IRP more viable to new gTLD applicants, it was not in fact sufficient to serve as the sole challenge to outcomes of New gTLD Program elements like evaluations, objections, and Community Priority Evaluation (CPE). There was also support from Community Comment 2 (CC2) that the existing accountability mechanisms by themselves were insufficient.

The Work Track considered what a reasonable alternative (or supplement) might be to the Accountability Mechanisms. The discussion focused on the ability to seek redress when the process and/or outcome of String Similarity evaluation, the Limited Public Interest objection, CPE, or other program mechanisms, are considered to be deficient in some manner. Some of the issues identified were a perceived lack of panelist expertise, potential conflicts of interests for panelists, and a perceived lack of consistency in outcomes. The Work Track discussed a narrowly focused appeal mechanism as one possible way to allow for redress and asked the community for its input via CC2. Comments from CC2 were largely supportive of a limited appeals mechanism, with the Registries Stakeholder Group (RySG) providing a number of specific elements to such a mechanism. While the Work Track reviewed this and all other CC2 comments, it did not reach agreement on the details provided.

The Work Track considered whether the limited appeals mechanism should distinguish between process and substance, noting that the Accountability Mechanisms have historically focused more on process. At this point the Work Track believes that it is sensible to allow for substance to be considered in a limited appeals framework. There was also discussion about what party might make sense to perform an appeal, with some noting that simply substituting Panel A for Panel B from the same organization may not be effective. Two options that have been suggested are a panel of subject matter experts or a subset of the ICANN Board. No agreement has been reached.

The Work Track recognizes that a number of details for a limited appeals mechanism still need to be considered, such as:

- What elements of the program can be appealed (e.g., evaluation, objections, CPE, other)?

- What part of the those program elements can be challenged?
- How is a secondary review performed? Who performs it?
- Is there any chance to appeal the appeal itself?
- Is there cost associated with filing an appeal? What prevents parties from simply appealing everything that does not end up in their favor?

The Work Track very much welcomes input and assistance in filling in the details of such a mechanism.

Post-Delegation Dispute Resolution Procedures:

Two of the processes under the post-delegation dispute resolution procedures fell under the remit of this Working Group: the Public Interest Commitment Dispute Resolution Procedure (PICDRP) and the Registration Restrictions Dispute Resolution Procedure (RRDRP). The post-delegation dispute resolution procedures mechanisms in general have seen very little usage and as a result, it is difficult to assess whether they are adequate measures and how effective they are.

The Work Track invited Kiran Malancharuvil, a Policy Counselor from MarkMonitor at the time, to discuss her experience with the PICDRP, which was the first to make it to the Standing Panel stage. A number of procedural issues were uncovered, such as the uneven sharing of documents (the complainant and respondent documentation was not equally shared), the lack of clarity around the mediation plan developed by ICANN Contractual Compliance and whether it was commensurate with the violations, and lack of clarity around the composition of the Standing Panel (e.g., potential conflicts of interest). Of particular concern was the interaction between the Standing Panel and ICANN during deliberations, where it seemed that ICANN provided guidance on the scope of the PICDRP.

The Work Track also received input from two of the members of the PICDRP Standing Panel, David JA Cairns and Scott Austin. David noted that there may be a mismatch between the perception of what can be resolved via the PICDRP versus reality, which could lead to frustrations with the mechanism itself. While a Registry Operator may be engaging in objectionable behavior, the PICDRP will be ineffective if that behavior is not specified in Specification 11 of their Registry Agreement. For next steps, Scott suggested that, “It may be in the best interest of the PICDRP process and ICANN’s effective and consistent implementation of same to open a dialogue with the full list of PICDRP panelists to identify best practices or policy element clarifications to meet the goals of the process from ICANN’s perspective, and discuss whether expansion of the scope of Section 3a. to cover Registries or developing incentives for gTLD applicants to submit self-imposed PICS anticipated by Paragraph 2 of Specification 11 should be a matter of policy change and decision focus going forward.”

The Work Track has not made any decisions regarding the PICDRP. Discussions around the RRDRP were minimal, as the mechanism has not yet been used and as such, no decisions were made there either.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

- Cross Community Working Group on Enhancing ICANN Accountability Work Stream 2 (CCWG-Accountability WS2)

1.9 Deliberations and Recommendations: String Contention Resolution

String Contention Resolution		
1.9.1	Community Applications	Work Track 3

1.9.1 Community Applications

a. What is the relevant policy and/or implementation guidance (if any)?

Implementation Guideline F: "If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and; iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels."
Implementation Guideline H: "External dispute providers will give decisions on complaints."

b. How was it implemented in the 2012 round of the New gTLD Program?

Applicants when applying could designate their application as community-based, one of only two application types available in the 2012 New gTLD Program round, with the other being standard. In the absence of string contention, claims to support a particular community were simply accepted, as recommended in Implementation Guideline H. However, the community-based commitments the applicant made in their application were captured as contractual requirements in Specification 12 of the Registry Agreement, regardless of whether any string contention resolution was needed.

In the event that there were multiple applicants vying for the same or similar string, the 2007 Final Report provided guidance for resolving that string contention when a community-based applicant was involved, as suggested in Implementation Guideline F.

According to Module 4, String Contention, of the Applicant Guidebook, in 4.2 Community Priority Evaluation, if there is no self-resolution of string contention for community-based applicants of identical or confusingly similar strings, a Community Priority Evaluation (CPE) may be requested. A community priority panel appointed by ICANN reviewed community-based applications to determine whether any of them fulfills the community priority criteria. If a single community-based application is found to meet the community priority criteria, that applicant will be declared to prevail in CPE and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved via auction, limited to only the community applications that passed CPE. If no applicants passed CPE in a contention set, then contention would be resolved via self-resolution or an auction of last resort.

c. What are the preliminary recommendations and/or implementation guidelines?

The Work Track had a number of extensive discussions on the topics of string contention and "communities." In addition, it received a number of comments related to the treatment of communities during the 2012 New gTLD round in CC2.

Although the Work Track has yet to come to an agreement on any preliminary policy recommendations, based on many of the implementation related issues identified by the Work Track and wider community, it has come to some level of general agreement on the following Community Priority Evaluation (CPE) implementation guidance related suggestions:

- The CPE process must be more transparent and predictable.
- CPE evaluations should be completed in a shorter period of time.
- All evaluation procedures should be developed BEFORE the application process opens and made easily and readily available.
- The CPE process should include a process for evaluators to ask clarifying questions and where appropriate engage in a dialogue with the applicant during the CPE process.
- Less restrictive word count for communities to engage in clarifying and providing information.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

1. During its deliberations, a number of Work Track members expressed that they believed the "definition" of community, available in section 1.2.3.1 of the Applicant Guidebook, was deficient. A number of attempts were made by the Work Track to better define the term "community", but no definition could be universally agreed upon[224]. How would you define "community" for the purposes of community-based applications in the New gTLD Program? What attributes are appropriate? Do you have specific examples where demonstrable community support should or should not award priority for a string? Do you believe examples are useful in developing an understanding of the purpose and goals of any community-based application treatment?
2. Should community-based applications receive any differential treatment beyond the ability to participate in CPE, in the event of string contention?
3. Could/should alternative benefits be considered when scoring below the threshold to award the string (e.g., support in auction proceedings)?
4. What specific changes to the CPE criteria or the weight/scoring of those criteria should be considered, if the mechanism is maintained?
5. In the 2012 New gTLD Round, it was determined that community-based applications should have preference over non-community-based applications for the same string. Some have argued that this preference should continue, others have claimed that this preference is no longer needed. Should the New gTLD Program continue to incorporate the general concept of preferential treatment for "community applications" going forward? Is the concept of awarding priority for community-based applications feasible, given that winners and losers are created?
6. The Work Track also considered a report on CPE prepared by the Council of Europe,[225] which noted the need to refine the definition of community and re-assess the criteria and guidance for CPE in the AGB and CPE Guidelines. Although this paper has not been officially endorsed by the European Commission or the GAC, there are a number of recommendations in this report on community-based applications. The Work Track is seeking feedback from the community on this report and more specifically which recommendations are supported, not supported or which require further exploration.
7. Do you agree with the Council of Europe Report[226], which in summary states, "Any failure to follow a decision-making process which is fair, reasonable, transparent and proportionate endangers freedom of expression and association, and risks being discriminatory." Did the CPE process endanger freedom of expression and association? Why or why not?
8. In regards to recommendation 1 in this section above, what does, "more transparent and predictable," mean to you? For what aspects of CPE would this apply in particular?

f. Deliberations

[224] One of those attempts can be found here: https://docs.google.com/document/d/1yKuFzTgIel53nxM9tOWgoH6evMTk4wdxVreVH2m1t0o/edit#heading=h.wjdbjqxzhb4

[225] See Council of Europe report here: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b5a14

[226] Ibid

Many Work Track participants believe that the underlying values and ideas from the GNSO's implementation guidance relating to communities were sound. However, there were a number of issues identified related to the actual implementation, execution, and outcomes of the Community Priority Evaluation (CPE), which has led to some in the community questioning whether the mechanism is ultimately workable in the program. Some of those specific concerns are noted below, which the WT widely agrees require addressing before the mechanism is to be included in the future:

- Excessively high scoring threshold in the Applicant Guidebook to prevail in Community Priority Evaluation;
- Evaluation procedures for applications, which were developed only after the 2012 application window had already opened;
- Actual cost of CPE was approximately double the estimated cost;
- Lack of transparency and predictability of Community Priority Evaluation (CPE), in terms of the process, documentation, and outcomes;
- Excessive time it took to to review applications;
- Perception that the Panel misinterpreted the applications in evaluating them and/or improperly applied the CPE criteria;
- Lack of mechanism to seek redress for perceived substantive errors in the evaluation process (e.g., errors of facts, misinterpretation of information, issues with research relied upon by the CPE provider, etc.);
- Usage of a single provider, reducing the value of a secondary review (e.g., in the case of a successful Reconsideration Request);
- Potential conflicts of interest among panelists;
- Lack of clarifying questions or opportunity for dialogue in the CPE process; and,
- Concerns about the process for reviewing support/opposition letter (e.g., scope of review, party performing review).

In developing the CPE criteria contained in the AGB, the extensive community debate over the scoring criteria and threshold for success (i.e., 14 points or higher) were indicative of the challenge of balancing the desire to prioritize community-based applications without having the mechanism potentially abused. CPE was an aspect of the program that had the potential to create winners and losers. Given the high stakes, the Work Track was unsurprised by the number of issues identified and ultimately, the high number of reconsideration requests filed by parties to CPE proceedings.

The Work Track has taken note of the GAC's concerns with the implementation of CPE as well, many of which are consistent with those raised by others in the community (e.g., consistency of outcomes, transparency of process, cost, etc.), as detailed in a number of Communiqués (i.e., the GAC Communiqués from ICANN51 in Los Angeles, ICANN53 in Buenos Aires, ICANN54 in Dublin, ICANN56 in Marrakech, and ICANN58 in Copenhagen).

CPE was also the subject of a Board Resolution that asked ICANN Org "...to undertake an independent review of the process by which ICANN staff interacted with the CPE provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider.[227]" While there are many in the community and indeed, within the WT, that disagree with the findings of that independent review, the Scope 1 report concluded …"that there was no evidence that ICANN Org had any undue influence on the CPE Provider with respect to the CPE reports…[228]" The Scope 2 report concluded "...that the CPE Provider consistently applied the criteria set forth in the New gTLD Applicant Guidebook…[229]"

The Work Track also considered a report on CPE prepared by the Council of Europe,[230] which noted the need to refine the definition of community and re-assess the criteria and guidance for CPE in the AGB and CPE Guidelines. In addition, the "...report grounds its examination from a human rights angle, with particular regard to the rights to freedom of expression, freedom of association, non-discrimination and due process." The report notes that a community-based gTLD can, "...create spaces for communication, interaction, assembly and association for various societal groups or communities. As such, community TLDs facilitate freedom of opinion and expression as well as freedom of association and assembly."

At a minimum, there is the perception that CPE produced negative outcomes. Views have been expressed that both i) some applicants who were awarded "community" status in the last round, should not have been; and also that ii) some applicants who were unsuccessful in being awarded a "community" TLD in the last round, should have been given one. There is a wide variety of opinions within the Work Track on who or what should be considered a "community" for these purposes. There is general agreement that a clearer definition of the term "community" is needed, as its ambiguity has caused some concerns and misunderstandings for applicants, objectors, and evaluators.

The need for a definition of community in the New gTLD Program was supported by the New gTLD Program Committee's (NGPC) resolution in identifying areas of possible policy work[231].

The GAC has stated its position that community-based applications with demonstrable community support be given due preference (i.e., the GAC Communiqués from ICANN46 in Beijing, ICANN47 in Durban, and ICANN49 in Singapore). The PDP WG and Work Track 3 leadership have met with the GAC during multiple ICANN meetings to discuss the GAC's concerns. Specific guidance about how to improve the definition of community, as well as

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[227] See Board Resolution here: https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a

[228] See Scope 1 report here: https://www.icann.org/en/system/files/files/cpe-process-review-scope-1-communications-between-icann-cpe-provider-13dec17-en.pdf

[229] See Scope 2 report here: https://www.icann.org/en/system/files/files/cpe-process-review-scope-2-cpe-criteria-analysis-13dec17-en.pdf

[230] See Council of Europe report here: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b5a14

[231] See Annex A here: https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf

specific challenges with and improvements to the CPE criteria, have been sought and are still welcome from the GAC, or any other interested parties in the community.

As noted, there is a perception that CPE outcomes did not meet expectations. Acknowledging that the GAC has been invited to provide specific suggestions and input to improve the CPE evaluation criteria, the Work Track recognizes that this may be a worthwhile exercise for it to undertake as well. What may be useful in that regard is to look at specific evaluations where it is perceived that the outcome was incorrect and attempt to pinpoint where precisely the evaluation panel and/or evaluation criteria could be retuned or adjusted.

If the ICANN community still desires to have community-based applications receive priority over other applications for the same string, there is general agreement that a clearer definition of the term “community” is needed, though it has proven difficult in coming up with a mutually acceptable definition. In determining how to define “community” applicants, the Work Track has considered the overall purpose and goal of the “community” concept in the TLD process (i.e., what are we trying to achieve by giving certain groups preferential treatment in the TLD process?). By asking "what public interest goal are we intending to achieve?", we can begin to understand how to define “community” in a way that guides its application in the TLD process.

One suggestion is that protecting minority or disadvantaged communities' “identity” and their ability to self-identify, self-associate, and organize in the domain name system is among the goals of the “community” process. The Work Track developed a draft definition that has been discussed with the wider community, but it received minimal support.[232] As a next step towards establishing a definition, the WT will take input from the community to better understand the purpose and goal of having community-based applications in the New gTLD Program.

The Work Track notes that CPE was a mechanism to award priority in contention sets, where a community-based application was involved - it was not intended to serve as “an indication the community itself is in some way inadequate or invalid.[233]” As such, in addition to trying to refine the community definition, the PDP WG is also aware that it needs to consider the other factors related to community-based applications. For instance, it has considered the community’s connection with the chosen string and the type of community and whether that matters and should be accounted for in some form of differentiated treatment (some examples include language, cultural, commercial, non-commercial, geo-location based, etc.).

One way to think about the purpose and goal of the community-based application aspect of the program is to identify use cases where it seems that priority may make sense. The examples discussed in establishing the 2007 policy guidance for CPE were more clear-cut than the actual instances in 2012, and it is likely that future cases will also be less than obvious. Is showing

[232] See “strawbunny” here: https://docs.google.com/document/d/1yKuFzTgIel53nxM9tOWgoH6evMTk4wdxVreVH2m1t0o/edit?usp=sharing[docs.google.com

[233] Section 4.2.3 of the AGB

"demostrable community support[234]" alone enough to award a community-based application a string or do the other factors involved in the CPE review (e.g., community establishment, nexus with string, and registration policies) play an important role?

The Work Track recognizes that developing a better understanding of what is intended to be accomplished with community-based applications will be instrumental in developing a "definition" of community within the New gTLD Program.

At the suggestion of comments received from its Community Comment 2, the Work Track has also considered whether priority has to only mean that the community-based application must be awarded the TLD. For instance, independent of any CPE mechanism, communities could be exempted from certain contractual obligations. Another idea received from Community Comment 2 was that perhaps additional outcomes could be included from CPE scores. For instance, scoring 14 points or higher would still result in allocation of the TLD, but thresholds below that could award a multiplier in auction to help the community-based applicant compete in string contention resolution.

While much of the discussion focused on community-based applications and CPE, there has also been discussion around community objections. However, much of the feedback there was more generally applicable to all objections (e.g., lowering costs, appeal mechanism, etc.). Please review the section on Objections for additional detail.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

1.10 Deliberations and Recommendations: Contracting

Contracting		
1.10.1	Base Registry Agreement	Work Track 2
1.10.2	Registrar Non-Discrimination / Registry/Registrar Standardization	Work Track 2

[234] See: https://gac.icann.org/contentMigrated/icann47-gac-communique

1.10.1 Base Registry Agreement

a. What is the relevant policy and/or implementation guidance (if any)?

Recommendation 10: **"**There must be a base contract provided to applicants at the beginning of the application process"
Recommendation 14: "The initial registry agreement term must be of a commercially reasonable length."
Recommendation 15: "There must be a renewal expectancy."
Recommendation 16: "Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved."

Implementation Guideline K: "ICANN should take a consistent approach to the establishment of registry fees."
Implementation Guideline J: "The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing marketplace."

b. How was it implemented in the 2012 round of the New gTLD Program?

A single base Registry Agreement (RA) with one Annex and a number of Specifications, developed with community input over the course of numerous iterations of the Applicant Guidebook, was employed in the 2012 round. Although the base RA was applied uniformly amongst all Registry Operators, there were certain provisions in the main body of the RA that applied only to Registries owned or operated by National or Local Governments and/or International Governmental Organizations. In addition, Annex A contained clauses that were uniform amongst all Registry Operators and others that included proposed Registry Services approved during the application process.

The RA also contained two Specifications which were specific to certain registry types (Specification 12 for community-based applications and Specification 13 for .Brands. The contents of Specification 12 were tailored to each individual community-based registry based on the commitments made by the applicable Registry Operator in its gTLD Application, while Specification 13 for .Brands were uniform for all qualifying Registry Operators.

Finally, Specification 11 contained "Public Interest Commitments" (PICs). There were several types of PICs included in the RA. Mandatory PICs were those applicable to all Registry Operators and which were uniform amongst all Registries. Voluntary PICs based upon commitments made by Registry Operators in response to early warnings issued by one or more Governments were customized to the applicable representations made. With respect to certain sensitive strings, a third type of PIC was included in the applicable Registry Operator's Specification 11 in response to GAC Advice.

c. What are the preliminary recommendations and/or implementation guidelines?

The Work Track continues to support the original policy recommendations and implementation guidelines upon which the 2012 Round was based. However, a clearer, structured, and efficient method for obtaining exemptions to certain requirements of the RA, which allows ICANN to consider unique aspects of Registry Operators, TLD strings, as well as the ability to accommodate a rapidly changing marketplace is needed.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

1. If ICANN were to have a "clearer, structured, and efficient methods for obtaining exemptions to certain requirements of the RA", how can such a process be structured to consider unique aspects of Registry Operators and TLD strings, while at the same time balancing ICANN's commitment to Registry Operators that it treat each Registry Operator equitably?[235]
    a. At a high level, there was a suggestion that for exemptions or exceptions, the proposer could provide the specific problematic provisions, the underlying policy justifications for those provisions, and the reasons why the relief is not contrary to those justifications. Does this seem like a reasonable approach? Why or why not?
2. The "Public Interest Commitment (PIC) Standing Panel Evaluation Report" dated March 17, 2017[236] in the case of Adobe Systems Incorporated et al. v. Top Level Spectrum, Inc., d/b/a/ Fegistry, LLC et al., states the following:

    > Second, the Panel notes that PIC (3)(a) of Specification 11 imposes no obligation on Respondent as the Registry Operator itself to avoid fraudulent and deceptive practices. Third, the Panel finds that Respondent's Registry Operator Agreement contains no covenant by the Respondent to not engage in fraudulent and deceptive practices.[237]

    Should this Work Tack recommend that ICANN include a covenant in the RA that the Registry Operator not engage in fraudulent and deceptive practices? Please explain.

f. Deliberations

[235] See Section 3.2 of the RA which states: "ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause."
[236] See Exhibit A of https://www.icann.org/uploads/compliance_notice/attachment/911/serad-to-westerdal-16mar17.pdf.
[237] See https://www.icann.org/uploads/compliance_notice/attachment/911/serad-to-westerdal-16mar17.pdf P. 17.

The Work Track recognizes that its deliberations and outcomes may be dependent on the work in a number of different areas still under discussion. However, the Work Track believes that it can discuss high-level aspects of the RA, recognizing that decisions in other parts of the Working Group may in fact impact the precise language in the agreement instead, a step envisioned to take place during implementation. As such, the Work Track has conducted preliminary discussions on different approaches to the structure of the base RA.

Some of the Work Track's biggest concerns were not about the structure of the RA, but rather the fact that the agreement was modified after program launch. As such, the Work Track believes that the base RA should not be modified after program launch, except in exceptional cases, with substantial community input, and through a consistent procedure. In this regard, the Work Track supported the finding in the Program Implementation Review Report[238], which suggested that the community should, "Explore the feasibility of finalizing the base Registry Agreement before applications are submitted or establishing a process for updating the Registry Agreement."

Single vs. Multiple Base Registry Agreement(s):

In discussing the RA, the Work Track spent the bulk of its time on considering whether there should be a single base RA with Specifications, as is currently in place, or move to develop multiple base RAs to allow for more specific and tailored registry operating models and needs.

The arguments for a single base RA focused on predictability for applicants and end-users, fairness, especially in relation to existing Registry Operators (ROs) from the 2012 round, and efficiency for ICANN Legal and applicants in executing the agreement. The simplicity and consistency of a single agreement is also seen as more efficient for those reviewing the agreement and ICANN Contractual Compliance for enforcement purposes.

The primary arguments for different agreements focused on the need for ICANN to recognize the different business models for operating TLDs and the fact that exemptions were difficult to obtain in the 2012 round, indicating that it may be beneficial to have different versions from the outset. Some within the Work Track argued that if a base RA for certain types was simpler and with fewer provisions, that could potentially make things easier for the RO, ICANN Legal, and the general public. However, the Work Track noted there was a lack of clear and definitive boundaries around potential categories of TLDs that would make the creation of separate agreements both feasible and warranted. The issue of categories is also being discussed as an overarching issue within the Working Group. Noting the difficulties in reaching agreement on TLD categories, the Work Track acknowledged that creating an exhaustive set of specific and separate agreements in advance of the program launch, intended to support the needs of all types of applicants, was likely to be exceedingly difficult.

In reviewing Community Comment 2 (CC2), much of the feedback was supportive of continuing the single RA model with Specifications. The Registries Stakeholder Group (RySG) suggested that a single RA, where certain clauses are only applicable based on the nature of the registry is functionally the same as a suite of different RAs. However, the RySG noted that practically and operationally, a single RA is far simpler to develop, implement, and execute. Other comments noted that establishing separate RAs for different categories might actually be harmful, using

[238] See report here: https://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf

the addition and removal of Specification 13 as an example of the flexibility from a single RA with an exemptions-based model.

While there was initially a fair amount of support for separate agreements, there was eventually convergence within the Work Track and CC2 comments to maintain the single base RA with core provisions, but allow exemptions via specifications. However, the Work Track noted that the time and uncertainty in granting exemptions, as was seen in the development of Specification 13, can be protracted, uncertain, and hard won. There was wide agreement that the process to seek exemptions should be streamlined, though there was no agreement on how this might be practically accomplished and operationalized. At a high level, there was a suggestion that for exemptions or exceptions, the proposer could provide the specific problematic provisions, the underlying policy justifications for those provisions, and the reasons why the relief is not contrary to those justifications.

Other Topics:

The Work Track briefly discussed whether further restrictions might be needed in regards to sunrise periods and landrush, but acknowledged that this is a topic that the Review of All Rights Protections Mechanisms in All gTLDs would consider. From the deliberations, no specific agreements were reached. However, concerns were raised in CC2, noting that in some cases, registries were charging a higher fee for names during sunrise versus general availability. Some felt this was circumventing the intended purpose of rights protection mechanisms. Some comments asked how holders of TMCH-recorded marks might be given first refusal before the name is released from reservation. Others noted that so-called “predatory pricing” might be dealt with by implementing more explicit fraud provisions in Public Interest Commitments (PICs). To the extent there is support within the WG to do so, there may be a connection point with section [1.3.2] on the Global Public Interest, which discusses PICs. There may also be a connection to the Accountability Mechanisms & Post-Delegation Dispute Resolution Procedures, in section 1.8.2, which noted that the Public Interest Commitments Dispute Resolution Procedure (PICDRP) can only enforce what is captured in agreements, which currently does not contain explicit fraud provisions.

One other topic the Work Track discussed was whether the base RA should be available in different languages. It was noted that the RA was indeed provided in different languages, but it needed to be acknowledged that the English version of the RA would control. There was no agreement for suggested changes on this topic.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

The Work Track recognizes that individual provisions of the Registry Agreement may need to be changed to reflect the policies adopted by other relevant PDPs impacting new gTLDs, the results of the CCT-RT Final Report as well as the final recommendations of this Working Group, including those adopted with respect to Geographic Names at the Top-Level in Work Track 5.

1.10.2 Registrar Non-Discrimination & Registry/Registrar Standardization

a. What is the relevant policy and/or implementation guidance (if any)?

Recommendation 19: “Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.”

The GNSO launched a PDP on the vertical integration of Registries and Registrars for the new gTLDs in 2010 (VI-WG). The VI-WG released an Initial Report on August 18, 2010 which contained a number of proposals to address vertical integration; none of which received consensus support. ICANN recognized that although the then-current contracts with Registries and Registrars allowed Registrars to operate as registries, but disallowed registries from operating or acquiring registrars. It therefore resolved to remove the restrictions on cross ownership between registries and registrars and to create new provisions for the Base RA that protected against the misuse of data and violations of a new registry code of conduct. ICANN also retained the ability to refer any cross ownership issues to relevant competition authorities.

b. How was it implemented in the 2012 round of the New gTLD Program?

As described above, the previous restrictions against registry and registrar cross-ownership from the 2000 and 2005 New gTLD rounds were removed. In its place, ICANN included Specification 9 in the Base Registry Agreement.It contained a Registry Code of Conduct, which required registries to utilize accredited registrars and to maintain separate books and records with respect to cross-owned organization. Certain exemptions to the Code of Conduct were subsequently approved by the ICANN Board of Directors, particularly with Brand TLD Registries (in Specification 13) as well as with respect to entities that restricted their TLDs to only themselves and/or their Affiliates.

c. What are the preliminary recommendations and/or implementation guidelines?

Recommendation 19 should be revised to be made current with the current environment:

Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars, *unless an exemption to the Registry Code of Conduct is granted.*

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time..

e. What specific questions are the PDP WG seeking feedback on?

- In response to feedback from CC2, Work Track members have suggested that .Brand registries as well as any Registry Operator granted an exemption from the Code of Conduct (as set forth in Specification 9 of the Registry Agreement), should not only be able to limit the number of registrars that they have to use, but should also have the ability to receive a complete exemption from using any ICANN-Accredited Registrars at

all in the operation of their TLD by making them equally exempt from section 2.9 of the Registry Agreement. In connection with the above proposal, the Work Track is soliciting feedback on the following:
    - Should a complete exemption be available to these registries? Please explain.
    - If complete exemptions are granted, are there any obligations that should be imposed on .Brand Registries to ensure that any obligations or registrant protections normally found in Registrar Accreditation Agreements that should be included in .Brand Registry Agreements if they elect to not use any ICANN Accredited Registrars?
    - Work Track members have suggested that input from the Registrars Stakeholder Group as well as the Brand Registry Group, on this topic, would benefit further deliberations and any final recommendations. The Work Track makes note that feedback from all parties will be fully considered and contribute to further developments.
- Are there any other additional situations where exemptions to the Code of Conduct should be available?
- There are provisions in the Registrar Stakeholder Group charter[239] that some feel disfavor those who have been granted exemptions to the Code of Conduct. In the preliminary recommendation above, would it be better to phrase it as, "unless the Registry Code of Conduct does not apply" rather than, "unless an exemption to the Registry Code of Conduct is granted"?

f. Deliberations

The Work Track addressed and discussed the subject of Registrar Non-Discrimination and Registry/Registrar Standardization in detail. Under these headings the Work Track reviewed the history of how the environment switched from registry and registrar separation to the allowance of Vertical Integration (VI). The Work Track also examined the initially proposed potential benefits and harms of Vertical Integration. The Work Track reviewed the mechanisms introduced to deter abusive activity in the form of the Code of Conduct and Section 2.9 of the Registry Agreement and then explored whether those mechanisms have fulfilled their purpose or if additional mechanisms are required.

Vertical Integration:

At an early stage, the Work Track agreed that returning to an environment were registrars and registries are completely separate is impractical. However, the potential benefits and harms of VI were reviewed to determine if changes around the edges might be needed.

Potential Concerns and Benefits Anticipated Prior to VI:

Potential Concerns	**Potential Benefits**
Could hamper competition at the retail level	Allows for economies of scale (can also be seen as a concern regarding competition), which could be passed to consumers

[239] Charter here: http://icannregistrars.org/wp-content/uploads/2016/02/rrsg-charter-30may14-en-1.pdf

Could result in inequitable access to Registry Services or data	Helpful to Single User Single Registry models or other models with a limited registrant base
Could make compliance more complex	Registries could be their own distribution chain without having to depend on other entities alone to carry their names
Could make domain tasting easier	
Could impact registrant choice	

**Vertical integration is allowed, but non-discriminatory access to Registry Services must be provided to all accredited registrars party to an RRA with the relevant RO. The pros/cons below assume a limited waiver, similar to Spec 13, to the non-discriminatory access clause.*

Pros for allowing exceptions to non-discriminatory access to Registry Services	**Cons for allowing exceptions to non-discriminatory access to Registry Services**
Consistent with the limited waiver provided by Spec 13	Contrary to existing recommendation 19
Supportive of single registrant ROs	

In continuing with its deliberations, the Work Track started with a series of questions:

- Do the mitigations of harm currently in place work?
- If we did not adequately mitigate these harms, what do we need to do to change that?
- If we did not realize the benefits what do we need to do?
- Has the Registry Code of Conduct hampered the ability of registries or registrars from taking advantage of the potential benefits from the relaxed requirements?
- Does the Registry Code of Conduct need to be adjusted?
- Are the mechanisms for exemptions to the Registry Code of Conduct sufficient?

Through discussions on the above questions, the Work Track determined that it needed to request data from the ICANN Organization:

1. Has Contractual Compliance received any complaints about and related to vertically integrated entities?
    a. If so, have any been determined to have a foundation?
    b. If so, are there any statistics or other information you might be able to share?
2. In performing audits of registries and registrars, is vertical integration an element of the reviews?
3. If so, are there any statistics or other information you might be able to share?

ICANN Organization provided responses[240] and after an initial review of the input, the Work Track developed follow-up questions:

1. How many registry operators are vertically integrated?
2. Of that number, how many operate multiple TLDs?
3. How many complaints were there against Registry Operators (overall - regardless of whether due to vertical integration)?
4. Of the complaints referenced in the 1.b answer, how many Registry Operators were those 10 complaints against? (Does this include complaints dealing with 2.9 of RA?)
5. How many of those Registry Operators own more than one TLD or multiple TLDs?
6. How many of those Registry Operators were required to perform some kind of remediation regardless if they were found to be in breach or not?

ICANN Organization provided responses[241] [242] to these follow-up questions, though the Work Track has not had the opportunity to consider them in full, as they were received recently relative to the drafting of this Initial Report. *To that extent, outcomes contained in this report will not have taken this new feedback into account.*

Most comments from CC2 suggested that there are no significant issues or harms arising from VI, but encouraged ICANN to provide greater flexibility for obtaining exemptions from the Specification 9 Code of Conduct in the Registry Agreement. The Business Constituency (BC) supported exemptions where the Registry Operator can demonstrate that the term comprising the TLD string directly corresponds to a product name of the Registry Operator, though the Work Track was unclear what this meant precisely. The Work Track welcomes additional clarity from the BC on these initial comments. The Registries Stakeholder Group (RySG) identified a potential area of ambiguity, where a registry that has obtained a Code of Conduct exemption is still bound to section 2.9, which states, "Subject to the requirements of Specification 11, Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD."

Regarding the comments for CC2 Question 2.6.3, some Work Track members suggested allowing full integration for .Brand registries and any "single registrant" TLD. In essence, this proposes leaving out the registry/registrar relationship requirement and the other aspects of section 2.9 for Code of Conduct exempt TLDs. The Work Track invites comments on whether this is seen as problematic, especially from the registrar point of view.

In summary, from the deliberations, there appears to be general agreement for maintaining the Vertical Integration mechanism while allowing greater flexibility on granting Code of Conduct exemptions to registry operators that are qualified. Since there is no agreement on what additional mechanisms should be developed in order to determine the sort of exemptions that

[240] See response here: https://community.icann.org/x/RT2AAw
[241] See response from Contractual Compliance: https://community.icann.org/download/attachments/58735941/New%20gTLD%20Subsequent%20Procedures%20Request%20for%20Data%20%28vertical%20integration%29_mar18.pdf?version=1&modificationDate=1520381396000&api=v2
[242] See response from Global Domains Division: https://community.icann.org/download/attachments/58735941/Sub%20Pro%20PDP%20WT2%20VI%20GDD%203-2018.pdf?version=1&modificationDate=1521848579000&api=v2

may be granted, the Work Track welcomes input and intends to consider the topic further.

Although this group has made significant progress in the discussion of Vertical Integration, the theme of Registry/Registrar Standardization, and the issues that arose from an increase in variability of registries and their RRAs with registrars, may warrant additional Work Track consideration in the future. While there are some provisions in the RA that govern the relationship between registries and registrars, some have cautioned that ICANN should be wary of attempting to dictate terms of a contract to which ICANN is not a party.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

1.11 Deliberations and Recommendations: Pre-Delegation Testing

Pre-Delegation		
1.11.1	Registry System Testing	Work Track 4

1.11.1 Registry System Testing

a. What is the relevant policy and/or implementation guidance (if any)?

Recommendation 7: *Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.*
Recommendation 8: *Applicants must be able to demonstrate their financial and organisational operational capability.*

b. How was it implemented in the 2012 round of the New gTLD Program?

In the 2012 round, the purpose of Pre-Delegation Testing (PDT) was to verify that the applicant was able to meet certain operational criteria described in Module 2 of the Applicant Guidebook.

Stiftelsen för Internetinfrastruktur (IIS), the registry operator for the .SE ccTLD, was selected by ICANN to perform PDT on each of the registry operators for each individual TLD prior to the delegation of the TLD. This consisted of both (a), conducting some operational tests as well as (b) requiring some self-certifications from the registry operator (often through its Registry Services Provider) that it could comply with other operational requirements.

As stated above, PDT was done on a per-TLD basis for every single TLD. Thus, PDT was required for every string regardless of the number of times the Registry Operator and/or its back-end Registry Service Provider (RSP) had already been through the same set of tests previously. For example, this meant that a Registry Operator who entered into contracts with ICANN to operate 100 TLDs had to undergo the same exact test 100 times. In addition, due to resource constraints, ICANN was limited to the testing of only 20 TLDs per week. Although ICANN was able to increase their capacity to test up to 100 TLDs per week, this did result in delaying the delegation of TLD strings which may not have existed had Registry Operators been required to go through testing once for all of its strings as opposed to once for each of its strings.

In order to refine its testing procedures, Registry Service Providers were able to participate in pilot and beta programs prior to the launch of the PDT program. In addition, these were also employed when refinements were made to the PDT process mid-flight, improving the process as well as test requirements and specifications.

Though not the subject of this Working Group, we note that PDT was also used post-delegation to approve "gaining" Registry Service Providers when Registry Operators proposed transitioning the operation of its TLD(s) to a new RSP. This is one of the reasons it was renamed Registry System Testing (RST).

c. What are the preliminary recommendations and/or implementation guidelines?

- RST should be split between overall RSP matters and specific application/TLD testing.
- Remove a better part or all self-certification assessments.
- Rely on Service Level Agreement (SLA) monitoring for most if not all overall RSP testing.
- Limit Internationalized Domain Name (IDN) testing to specific TLD policies; do not perform an IDN table review in RST.
- Include additional operational tests to assess readiness for Domain Name System Security Extensions (DNSSEC) contingencies (key roll-over, zone re-signing).

Possible Language: "Applicants must be able demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out, either by submitting it to evaluation at application time or agreeing to use a previously approved* infrastructure"

* Could mean in the same procedure or previous procedures if an RSP program exists.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time..

e. What specific questions are the PDP WG seeking feedback on?

ICANN's Technical Services group provided some recommendations[243] to Work Track 4 on what it believed were improvements that could be made to improve its testing procedures to attempt to detect operational issues that its Service Level Monitoring system has uncovered with some registry service providers. Although the Work Track discussed this letter in some detail, the Work Track has not reached any consensus on whether those recommendations should be accepted. Therefore, we would like feedback from the community on whether any of the recommendations should be adopted by the Work Track in the final report. More specifically, we seek feedback on recommendation numbers 1 (PDT Operational Tests), 2 (monitoring), 3 (3rd Party Certifications), 4 (audits), 6 (Frequency of tests), 7 (Removal of testing IDN tables) and 8 (consideration of number of TLDs). Some of the other recommendations, including number 4 (RSP Pre-approval) are discussed in Section [1.2.6] of this report.

f. Deliberations

In its deliberations, the Work Track reviewed the Community Comment 2 (CC2) responses and also consulted with ICANN Technical Services. There was only one question in the CC2 that related specifically to recommendation 7, that applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out. However, there are related recommendations, community comments, and deliberations detailed above in section 1.7.7 on Applicant Reviews: Technical & Operational, Financial and Registry Services.

With respect to the CC2 question, "Do you believe that technical capability should be demonstrated at application time, or could be demonstrated at, or just before, contract-signing time? Or at both times? Please explain" respondents agreed that technical capability should be demonstrated at application time as was done in the 2012 round. However, some respondents noted that if there was a program to evaluate RSPs, then individual registry testing might not be necessary. The Work Track noted that in the 2012, round redundant analysis and testing of similar infrastructures caused delay and increased costs. The Work Track thus agreed in its suggested language (see above) that an applicant could agree to use a previously approved infrastructure (if a RSP program exists) to eliminate redundancies.

In its deliberations on RST in the 2012 round, the Work Track noted several issues:

- Lack of perceived effectiveness in preventing operational failures, since such failures happened even for approved RSPs and TLDs.
- Too broad analysis of IDN functionality.
- A redundant testing procedure, which increased time and cost spent by ICANN, applicants, and registries.

[243] See full response here: https://community.icann.org/download/attachments/58735969/Response%20to%20WT4%20re%20RST%20improvements.pdf?version=2&modificationDate=1502939084000&api=v2

With respect to the lack of perceived effectiveness in preventing operational failures, the Work Track noted that despite registries and RSPs passing PDT, there are still breaches of SLAs. Thus, the Work Track considered that there are likely some practical improvements that can be made to the operational readiness testing. To assist in its deliberations on this issue, the Work Track requested ICANN's recommendations for updating RST (i.e., Pre-Delegation Testing (PDT) and Registry Service Provider (RSP) Change Testing) based on issues or breaches seen by the SLA Monitoring (SLAM) system, as well as ICANN's recommendations generally for improving testing and technical evaluations. The Work Track agreed with the recommendation that since many of the issues seen by the SLAM system are caused by problems in operational tasks, having RSPs tested on their ability to do certain key operational tasks (e.g., key rollover, resigning TLD zone) could improve the chances of success when operating TLDs in production.

On the issue of too broad analysis of IDN functionality, the Work Track agreed with ICANN's recommendation to remove IDN table review from the PDT. ICANN noted that during the 2012 round of the New gTLD Program, PDT included IDN table review. The Work Track agreed with ICANN's recommendation that PDT only require automated testing that ensures IDN registration rules comply with stated policies and tables.

On the redundant testing procedure, the Work Track agreed with the Program Implementation Review Report[244] that some PDT aspects should be per RSP, while others should be per TLD. Specifically, the Work Track agreed that RST should be split between overall RSP matters and specific TLD testing.

Furthermore, the Work Track agreed with ICANN's recommendation that in order to remove some tests from PDT and to improve the chances of proper operation of TLDs, ICANN should be relying on ongoing monitoring of TLD operations against existing contractual requirements. Specifically, the Work Track agreed that ICANN should rely on SLA monitoring for most if not all overall RSP testing.

The Work Track did not agree to ICANN's recommendations concerning the use of 3rd-party certifications of Registry Operator (RO)/RSP infrastructure and key personnel, periodic RSP audits, and stricter penalties for repeated SLA breaches. The Work Track agreed to recommend the removal of a better part or all self-certification assessments.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

- RSP Pre-Approval Program (Discussed in Section [1.2.6])
- Evolution of ICANN SLA Monitoring[245]

[244] See Program Implementation Review Report here: https://www.icann.org/en/system/files/files/program-review-29jan16-en.pdf

[245] More information on recent developments SLA Monitoring can be found at https://www.icann.org/en/system/files/files/presentation-slam-13may17-en.pdf and https://www.icann.org/news/multimedia/2801; future ICANN meetings might present further engagement opportunities.

1.12 Deliberations and Recommendations: Post-Delegation

Post-Delegation		
1.12.1	TLD Rollout	Work Track 2
1.12.2	Second-level Rights Protection Mechanisms	Work Track 2
1.12.3	Contractual Compliance	Work Track 2

1.12.1 TLD Rollout

a. What is the relevant policy and/or implementation guidance (if any)?

Implementation Guideline I: "An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process."

b. How was it implemented in the 2012 round of the New gTLD Program?

The Applicant Guidebook specifies that applicants must complete the contracting phase nine (9) months following the date in which they are notified that their TLD(s) has completed the evaluation process - including, if necessary, the dispute resolution and string contention processes. Applicants were allowed to request an extension of this time period for up to an additional nine (9) months if it could demonstrate, to ICANN's reasonable satisfaction, that it was working diligently and in good faith toward successfully completing the steps necessary for entering into the registry agreement.[247] Applicants for what later became known as "Brand Registries" were given until nine (9) months following the date in which Specification 13 to the Registry Agreement was completed.

Section 4.3(b) of the Registry Agreement provides that, "ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD."

[247] See Module 5 of the Applicant Guidebook.

While some applications remain undelegated, this is more of a matter of remaining processing steps (e.g., string contention resolution, reconsideration requests, etc.) rather than the result of delays from either ICANN org or the applicants.

c. What are the preliminary recommendations and/or implementation guidelines?

- The ICANN Organization should be responsible for meeting specific deadlines in the contracting and delegation processes.
- The Work Track supports the time frames set forth in the Applicant Guidebook and the Base Registry Agreement; namely (i) that successful applicants continue to have nine (9) months following the date of being notified that it successfully completed the evaluation process to enter into a Registry Agreement, and (ii) that Registry Operators must complete all testing procedures for delegation of the TLD into the root zone within twelve (12) months of the Effective Date of the Registry Agreement. In addition, extensions to those time frames should continue to be available according to the same terms and conditions as they were allowed during the 2012 round.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

- One of the reasons the delegation deadline was put into place was to prevent the incidence of squatting/warehousing.[249] Is this reason still applicable and/or relevant? Are other measures needed? If so, what measures and how will these measures address the issue?
- For the 2012 round, Registry Operators were required to complete the delegation process within twelve (12) months from the Effective Date of the Agreement.[250] This was the only requirement regarding use of the TLD. Other than delegation (which includes the maintenance of a required NIC.TLD page and a WHOIS.NIC.TLD page), no other use of a TLD is required. Is the definition of use of a TLD from the 2012 round still appropriate or are adjustments needed? If so, what adjustments are necessary and why?

f. Deliberations

The Work Track discussions focused on three primary questions:

1. Is it necessary and beneficial to have deadlines for applicants related to TLD rollout?
2. Are the deadlines included in the 2012 Applicant Guidebook appropriate?

[249] See the comments of the IPC, "…does not support the warehousing of TLD strings and supports a timeframe after applicant grant by which the TLD string must be operational" here: https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-partb-01aug07.htm

[250] See section 4.3 (b) of the Registry Agreement.

3. Are any changes needed with respect to evaluating requests for extensions to the deadlines and granting those extensions?

As a foundational question, the Work Track discussed whether deadlines are needed for the contracting and delegation phases of TLD rollout. The deadlines included in the Applicant Guidebook sought to follow implementation guidance that a TLD string must be used within a fixed timeframe. Some Work Track members expressed their understanding that these measures sought, at least in part, to discourage squatting or warehousing of TLDs.[251] Work Track members noted that if the provisions seek to encourage use of the TLD, it should be clear what it means for a TLD to be used. For example, some TLDs meet use guidelines but have only delegated nic.TLD. The Work Track ultimately found it difficult to assess the effectiveness of deadlines in preventing unwanted behavior and promoting desirable practices given the lack of clarity around definitions associated with these objectives. The Work Track was also careful to avoid drawing the conclusion that only having nic.TLD registered constituted "squatting" or "warehousing."

One Work Track member commented that there are a number of New gTLDs, and .Brands in particular, that only have a nic.TLD. Other Work Track members responded that there were unique circumstances surrounding the 2012 round and each .Brand registry has different strategic and business considerations to take into account. Therefore, the Work Track should not rush to draw conclusions about the use of the TLD based solely on the fact that only the nic.TLD has been delegated.

On the question of whether the deadlines included in the 2012 AGB continue to be appropriate, Work Track members generally agreed that if deadlines are retained, the timeframes specified in the 2012 Applicant Guidebook are appropriate. Many of the CC2 comments supported this perspective, as well. No argument or evidence was provided in support of changing these deadlines.

Work Track members also agreed that is important for the ICANN Organization to set and meet deadlines for steps in the process for which the ICANN Organization is responsible. CC2 comments supported this point. The Work Track felt that by maintaining deadlines for tasks associated with contracting and delegation, the Organization can more effectively support predictability for applicants.

In the 2012 round, the ICANN Organization provided extensions to deadlines on a case-by-case basis. The Work Track reviewed data[254] provided by the ICANN Organization regarding the number of extensions requested and provided, as well the reasons for these extensions. This review did not prompt the Work Track to suggest any changes to policy or implementation. CC2 comments tended to support the view that criteria applied by ICANN in evaluating and granting those extensions were reasonable.

[251] See the comments of the IPC, "...does not support the warehousing of TLD strings and supports a timeframe after applicant grant by which the TLD string must be operational" here: https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-partb-01aug07.htm

[254] https://community.icann.org/download/attachments/58735943/Data%20Request%20-%20TLD%20Rollout.pdf?version=1&modificationDate=1507591802000&api=v2

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

1.12.2 Second-level Rights Protection Mechanisms

The topic of second-level Rights Protection Mechanisms has direct overlap with the Review of All Rights Protection Mechanisms in All gTLDs and the charters of the two respective PDPs require that the PDPs coordinate and ensure that overlapping or contradictory policy work does not take place. As a result, this PDP has not performed any substantive work on this subject other than on questions specifically referred to this PDP by RPM PDP Working Group. Those questions are dealt with elsewhere in this Initial Report.

1.12.3 Contractual Compliance

a. What is the relevant policy and/or implementation guidance (if any)?

Recommendation 17: "A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination."

b. How was it implemented in the 2012 round of the New gTLD Program?

Section 5.4.2 of the 2012 Applicant Guidebook describes the contractual compliance function. More specifically, it states: "ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations. See http://www.icann.org/en/compliance/ for more information on current contractual compliance activities."

In addition, the Base Registry Agreement grants ICANN the right to terminate the Registry Agreement for the failure to cure any fundamental and material breach of the Agreement where such breach is confirmed through an arbitration process (see Section 4.3). It also allows ICANN to seek sanctions and punitive damages against Registry Operators in such arbitration proceedings (see Section 5.2).

c. What are the preliminary recommendations and/or implementation guidelines?

The Work Track believes that the foundational elements of the Contractual Compliance program put into place by ICANN as well as the relevant provisions in the Base Registry Agreement have

satisfied the requirements set forth in Recommendation 17. That said, members of the WorkTrack believe that ICANN's Contractual Compliance department should publish more detailed data on the activities of the department and the nature of the complaints handled.

d. What are the options under consideration, along with the associated benefits / drawbacks?

None being considered at this time.

e. What specific questions are the PDP WG seeking feedback on?

1. The Work Track noted that with the exception of a generic representation and warranty in Section 1.3(a)(i) of the Registry Agreement[258], Specification 12 (for Communities) and voluntary Public Interest Commitments in Specification 11 of the Registry Agreement (if any), there were no mechanisms in place to specifically include other application statements made by Registry Operators in their applications for the TLDs. Should other statements, such as representations and/or commitments, made by Applicants be included in the Registry Operator's Agreements? If so, please explain why you think these statements should be included ? Would adherence to such statements be enforced by ICANN Contractual Compliance?

2. A concern was raised in the CC2 comment from INTA about operational practices, specifically, "arbitrary and abusive pricing for premium domains targeting trademarks; use of reserved names to circumvent Sunrise; and operating launch programs that differed materially from what was approved by ICANN." What evidence is there to support this assertion? If this was happening, what are some proposed mechanisms for addressing these issues? How will the proposed mechanisms effectively address these issues"?

f. Deliberations

The Initial Report anticipated that no policy development would be needed on this topic. The Work Track agreed with this assessment. The Work Track further expected that any new contractual requirements would be made enforceable by inclusion in the Base Registry Agreement. CC2 comments tended to support Work Track conclusions on both points.

The Work Track discussed the enforceability of representations made by applicants in the submitted application and considered the following questions:

- How much reliance can be placed on the representations made by applicants in their

[258] Section 1.3(a)(i) states that Registry Operator represents and warrants to ICANN as follows: (i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;"

submitted application?
- Were representations integrated into the signed RA enough to be enforceable?
- What was the impact of change requests?
- Should representations made by the applicant be integrated into the Registry Agreement going forward, and if so, why and how?

The Work Track considered a proposal that all applicant representations should be included in the Registry Agreement to ensure that these representations are enforceable. There was no agreement among Work Track members in support of this proposal.

In discussing CC2 comments, the Work Track noted a comment from INTA suggesting that ICANN Contractual Compliance should publish more detailed data on the activities of the department and the nature of the complaints handled. Work Track members expressed support for recommending that ICANN Contractual Compliance publish additional non-confidential data to increase transparency.

The Work Track also discussed concern raised in the CC2 comment from INTA about operational practices, specifically, "arbitrary and abusive pricing for premium domains targeting trademarks; use of reserved names to circumvent Sunrise; and operating launch programs that differed materially from what was approved by ICANN."[261] The Work Track did not have sufficient data to assess the extent to which these reported issues are documented. Members of the Work Track also raised questions about whether these issues were in scope for Contractual Compliance, or even if the topic of pricing is out of scope entirely for the PDP. To the extent the topic is in scope, it is likely more appropriate to consider in the context of the base Registry Agreement (section 1.10.1) or rights protection mechanisms. The Work Track has not reached any conclusions on this issue.

g. Are there other activities in the community that may serve as a dependency or future input to this topic?

None identified at this time.

[261] See INTA response to CC2 question 2.8.1.