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
1.2.2.2	*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[1] (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

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[1] See Final Report here: http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

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."[2]

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

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 notably 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.

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[2] See New gTLD Applicant Guidebook, Section 1.1.6.

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

Commented [1]: Recommended by Jamie Baxter

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)[3] 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 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

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[3] 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

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[4] 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)[5], 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).

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[4] 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*
[5] 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

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

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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[6]
- Annex IV: Expedited GNSO Policy Development Process Manual[7]
- Annex V: GNSO Guidance Process Manual[8]

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?

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[6] See GNSO Input Process here: https://gnso.icann.org/en/council/annex-3-input-process-manual-30jan18-en.pdf
[7] See Expedited GNSO PDP here: https://gnso.icann.org/en/council/annex-4-epdp-manual-30jan18-en.pdf
[8] See Guidance Process here: https://gnso.icann.org/en/council/annex-5-ggp-manual-30jan18-en.pdf

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:

- 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[9] and its remaining charter topics in March of 2017 via Community Comment 2[10] [11].

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

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 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.)"[12]

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

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[12]
https://community.icann.org/pages/viewpage.action?pageId=59645660&preview=/59645660/63155733/CC1%20Review%20Tool%20SubPro%20PDP%20WG%2022%20Dec%202016.xlsx.

	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.	

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	Rounds/windows may face unanticipated

compared to a first come, first served model.	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. <u>Model 4:</u> 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. <u>Model 5:</u> 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. <u>Model 6:</u> 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,

Deleted: WG generally believes

> ● 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 patchwork of exemptions and other manipulations to get around unnecessary limitations. Categories may provide more precision and structure for applicants.	It is complex and challenging to implement 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[13]. 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.

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[13] See TLD Types attributes worksheet here:
https://docs.google.com/spreadsheets/d/1mA_hTUhLhJSsfcmoQwREtUgxykZ5KfJffzJAAhEvNlA/edit#gid=1954862108

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?*

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 associated volume in processing costs, along with potential fewer number of applications in contention.	Can be gamed / may not be able to enforced.

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?

Commented [21]: Added based on 30 April meeting.

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?

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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[14] [15]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.

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?

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[14] 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
[15] 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

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[16] 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[17], but in summary, there were 33 cases where a service of a TLD reach an emergency threshold.

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[16] See Section 5.2 of the report here: https://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf
[17] See relevant data request on the Wiki page here: https://community.icann.org/x/KT2AAw

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 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