2.10.1: Base Registry Agreement (WT2)			
#	Comment	Contributor	WG Response
2.10.1.c.1: Work Track 2 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.			
1	**The BRG supports this recommendation.** Prior to the 2012 round, dotBrand applicants were reluctant to voice their views in public, mainly for competitive reasons and due to their own corporate communication restrictions. Only after "reveal day" was it possible for some dotBrand applicants to be more vocal about the need to introduce common-sense exemptions for their distinct registry model, which differs from the commercially driven registries selling domains through the accredited registrar distribution network. Specification 13 was eventually borne post-AGB. Clear and effective procedures should be established to accommodate Specification 13-type applicants in the future. If new models emerge in the future that require different exemptions that impact consensus policies, the Expedited Policy Development Process that has since been established could be utilised, although it is hoped that this mechanism is not overly controlled by established contracted parties which are sensitive to commercial and competitive concerns. (https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000038.html)	Brand Registry Group	
2	**Notes that applicants in the 2012 round were able to request changes to the base Registry Agreement; suggestion that considerations should be given to defining clearly the criteria for which changes would be allowed:** This preliminary recommendation states "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." ICANN org notes that applicants in the 2012 round were able to request changes to the base Registry Agreement by specifying such request in the Contracting Information Request form, which is provided to applicants to complete when they are eligible to begin the contracting process. A template for requesting changes to the base Registry Agreement is also provided. Given that the development of the base Registry Agreement goes through a very extension development process with the community, including multiple public comment processes, considerations should be given to defining clearly the criteria for which changes would be allowed. (https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000037.html)	ICANN Org	
3	**Suggestion that base RA must be available at beginning of application process:** There must be a base RA in place at the beginning of the application process. Any of the hundreds of provisions in the RA could heavily impact the economic decisions made by applicants and they need certainty up front before investing millions of dollars. Given that the existing RA can be used as a starting point, the work involved should be relatively minimal. (https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000042.html)	XYZ	
4	**Neustar supports this Preliminary Recommendation.** (https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000049.html)	Neustar	

5	**Support for recommendation:** The RySG supports this recommendation. [Related CC2 Comments] [The RySG does support the existing exceptions to the Code of Conduct provided for under Specification 13 and under Specification 9 paragraph 6. We have not identified any other specific circumstances where an exemption to the Code of Conduct should be granted. On the assumption that the Code of Conduct is retained, however, the RySG would support greater flexibility for registry operators wishing to seek an exemption. It would be reasonable for a registry operator who is able to demonstrate that the application of the Code of Conduct to its TLD is not necessary to protect the public interest, in other circumstances to those set out in Spec 9 para 6, to be granted such an exemption. The RySG would also like to highlight that the existing process of obtaining an exemption to the Code of Conduct results in some ambiguity under the Registry Agreement, since the registry operator is still bound by section 2.9:"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". Since, under the current model, all exemptions must be for single- registrant models wherein the registry (as registrant) may still chose its registrar, we do not believe this language should apply to Specification 9 exempt TLDs, regardless of whether they additionally qualify for Specification 13.] (https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000052.html)	RySG	
6	**Supports single RA, with exceptions (e.g., PICs) for certain types (e.g., community, .brand):** MarkMonitor supports the nondiscriminatory treatment of all Registry Operators, with common-sense exceptions including PICs necessary for registry business models and other provisions necessary for community TLDs and .brand TLDs. (https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000059.html)	MarkMonitor	

2.10.1.e.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?

1	**SLA metrics should be equal:** At a minimum, all SLA metrics should be equal. (https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000045.html)	RrSG	
2	**Does not think the recommendation is realistic since it woudl require an applicant to know what are the underlying policy justifications for any given part of the Registry Agreement:** This would require the proposed to know what the underlying policy justifications for any given part of the Registry Agreement are. Unless ICANN is providing this in a clear concise way as part of the mechanisms for considering exemptions, it isn't realistic to expect any given applicant to know that. (https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000049.html)	Neustar	

2.10.1.e.1.1: 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?

1	**Supports, as long as review of requet takes place: Believes erring on the side of registrants and channel continues to make sense:** As long as an actual review of the request is undergone, this approach seems reasonable. Deviances from the stock RA should be negotiable prior to launch as long as the community has a review period to evaluate. Many of the constraints in the RA are to the benefit of the Registrant and the channel but can be perceived as being to the detriment of the Registry. Erring on the side of the benefit to the registrants and the industry channels needs to take precedence. (https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000045.html)	RrSG	

The Public Interest Commitment (PIC) Standing Panel Evaluation Report dated March 17, 2017 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. 2.10.1.e.2: Should this Work Track recommend that ICANN include a covenant in the RA that the registry operator not engage in fraudulent and deceptive practices? Please explain.

1	**Suppot for suggestion, in whole chain:** This would make sense to have the same requirements for the whole chain. (https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000045.html)	RrSG	

2	**Support for an additional PIC with a covenant not to engage in fraudulent and deceptive practices:** We note the conclusion of the panel in the FEEDBACK PICDRP that "Respondent's Registry Operator Agreement contains no covenant by the Respondent to not engage in fraudulent and deceptive practices". This brings ICANN and the new gTLD Program into disrepute and a suitable amendment to the contract must be adopted. Our preferred option would be that this should be addressed by means of an additional PIC, since that could be enforced by ICANN Compliance itself, but would also give recourse to an aggrieved third party via the PICDRP. ICANN Legal should address this as a matter of the utmost importance, both for any future TLD releases but also for the existing RA. (https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000048.html)	INTA	
3	**Support for an additional PIC with a covenant not to engage in fraudulent and deceptive practices:** The IPC strongly supports the imposition of a PIC to the effect that ROs must not engage in fraudulent or deceptive practices. The panel in the FEEDBACK PICDRP concluded that "Respondent's Registry Operator Agreement contains no covenant by the Respondent to not engage in fraudulent and deceptive practices". The IPC believes the decision against Fegistry was correct and was dismayed to see that ICANN could not do anything remedial to the registry that clearly acted with malice and fraudulent intent against Intellectual Property owners. This is entirely unsatisfactory and damages ICANN's reputation. A suitable amendment to the contract must be adopted for any future new gTLDs. ICANN Legal should also take steps to rectify this for existing registry operators. (https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000063.html)	IPC	