

# At-Large Workspace: Supplemental Initial Report on the New gTLD Subsequent Procedures Policy Development Process (Overarching Issues & Work Tracks 1-4)

Public Comment Close	Statement Name	Status	Assignee (s)	Call for Comments Open	Call for Comments Close	Vote Open	Vote Close	Date of Submission	Staff Contact and Email	Statement Number
21 December 2018	<a href="#">Supplemental Initial Report on the New gTLD Subsequent Procedures Policy Development Process (Overarching Issues &amp; Work Tracks 1-4)</a>	<b>ADOPTED</b> 14Y, 0N, 0A	Justine Chew	09 December 2018	20 December 2018	03 January 2019	07 January 2019	21 December 2018	Steve Chan <a href="mailto:steve.chan@icann.org">steve.chan@icann.org</a>	AL-ALAC-ST-1218-06-02-EN

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## Brief Overview

**Purpose:** This public comment proceeding is being opened in order to obtain input on the Supplemental Initial Report of the New generic Top-Level Domain (gTLD) Subsequent Procedures Policy Development Process Working Group, which is chartered to evaluate what changes or additions need to be made to existing new gTLD policy recommendations. The Working Group issued its first Initial Report, containing the output of the Working Group on the Overarching Issues as well as preliminary recommendations and questions for community feedback from Work Tracks 1-4, on 3 July 2018. This Supplemental Report contains additional issues that were deemed to warrant additional deliberations by the Working Group.

**Current Status:** This Supplemental Initial Report is being posted for public comment as supported by the Generic Names Supporting Organization (GNSO) Operating Procedures.

**Next Steps:** Following review of public comments received, the Working Group will integrate public comments received as it works towards recommendations for inclusion in its Final Report.

## Section I: Description and Explanation

The GNSO's New gTLD Subsequent Procedures Working Group (WG), which was chartered by the GNSO Council to conduct a Policy Development Process (PDP), is seeking to determine what, if any, changes may need to be made to the existing [Introduction of New Generic Top-Level Domains](#) policy recommendations from 8 August 2007 as well as the final [Applicant Guidebook](#) dated June 2012. As the original policy recommendations as adopted by the GNSO Council and ICANN Board have "been designed to produce systemized and ongoing mechanisms for applicants to propose new top-level domains", those policy recommendations remain in place for subsequent rounds of the New gTLD Program unless the GNSO Council would decide to modify those policy recommendations via a policy development process. The PDP WG created 5 Work Tracks that are responsible for considering the subjects within its charter. The PDP Working Group sought community input through two community comment periods. The Working Group issued its first Initial Report, containing the output of the Working Group on the Overarching Issues as well as preliminary recommendations and questions for community feedback from Work Tracks 1-4, on 3 July 2018. This Supplemental Report contains additional issues that were deemed to warrant additional deliberations by the Working Group. Work Track 5, focused on Geographic Names at the Top-Level, was established later than the other Work Tracks and will produce a separate Initial Report.

The objective of this Supplemental Report is to document the Working Group's deliberations on several additional topics not covered in the Initial Report and preliminary recommendations, potential options for recommendations, as well as specific questions for which the Working Group is seeking input. As was the case with the Working Group's Initial Report, this Supplemental Initial Report does not contain a "Statement of level of consensus for the recommendations presented in the Initial Report." The Co-Chairs not only believed that it was premature to measure the level of consensus of the Working Group members on recommendations contained within the Supplemental Report, but that doing so could have the unintended consequence of locking Working Group members into positions of support or opposition prior to soliciting public comment from the community on those recommendations. To form such definitive positions at this early of a stage could have the adverse effect of being less open to modifications to those positions as a result of community input.

Any language in this report that suggests that the Working Group is making a recommendation should be read as merely a rough assessment by the Working Group co-chairs.

After a comprehensive review of public comments received on this report, the Working Group will deliberate further on the preliminary recommendations contained within this Supplemental Initial Report. It is possible that as a result of the deliberations, the Working Group may seek additional public comments. The Co-Chairs will conduct a formal consensus call on all recommendations before the Working Group issues its Final Report.

## Section II: Background

In June of 2014, the GNSO Council created the New gTLD Subsequent Procedures Discussion Group, which was focused on reflecting upon the experiences gained from the 2012 New gTLD Round and identifying a recommended set of subjects that should be further analyzed in an Issue Report. At the ICANN53 meeting, the GNSO Council approved a [motion](#) to request that an Issue Report be drafted by ICANN staff, basing the report on the set of deliverables developed by the Discussion Group, to further analyze issues identified and help determine if changes or adjustments are needed for subsequent new gTLD procedures. The [Final Issue Report](#) was submitted to the GNSO Council for its consideration on 4 December 2015 and a PDP on New gTLD Subsequent Procedures was [initiated](#) on 17 December 2015. The PDP WG has been meeting on a regular basis since February 2016.

### Section III: Relevant Resources

- [Working Group Supplemental Report](#)
- Annex B – Table of Preliminary Recommendations, Options and Questions for Community Input ([PDF](#), [XLS](#))
- [Executive Summary of the New gTLD Subsequent Procedures PDP WG Supplemental Report](#)

### Section IV: Additional Information

- [Working Group Charter](#)
- [Working Group Wiki](#)
- [Project Page](#)

### Section V: Reports

## FINAL VERSION SUBMITTED (IF RATIFIED)

*The final version to be submitted, if the draft is ratified, will be placed here by upon completion of the vote.*



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## FINAL DRAFT VERSION TO BE VOTED UPON BY THE ALAC

*The final draft version to be voted upon by the ALAC will be placed here before the vote is to begin.*



AL-ALAC-ST-122...1-01-00-EN.pdf

**Draft dated 19 December** (earlier 12 December draft has been moved to the lower section)

Penholder: Justine Chew, APRALO Member

NB. Significant changes from 12 Dec draft are now marked in blue herein.

To view/comment on googledoc copy, [please click here](#).

## AT-LARGE ADVISORY COMMITTEE

### ALAC Statement to the Supplemental Report on the new gTLD Subsequent Procedures Policy Development Process (Additional Topics)

#### **Summary of the ALAC Responses**

The ALAC appreciates the opportunity to comment on the Supplemental Report on the new gTLD Subsequent Procedures Policy Development Process (Additional Topics) dated 1 November 2018 (“**Supplemental Report**”). We wish to put on record our responses, suggestions and in some cases, advocacy, to the preliminary recommendations, options and questions as posed by the GNSO New gTLD Subsequent Procedures PDP Working Group (“**WG**”) in its Supplemental Report, from the perspective of and benefit to Internet end-users at large.

#### Auctions as the Mechanism of Last Resort

**The ALAC strongly opposes the retention of the regular highest-bid auction process which was used in the 2012 round (“regular auctions”) as the mechanism of last resort for resolution of contention sets within the Program. Instead, we propose that the ICANN Community explore the introduction of a multiplier-enhanced Vickrey auction (as described in our response to Option 2.1.d.1) in place of regular auctions while strongly advocating for more guidance and resources to be put in place to help applicants get out of contention sets voluntarily, thereby avoiding going through to auctions to resolve their contention sets. Further, all such modified Vickrey auctions should be conducted by ICANN-appointed auction service providers.**

The ALAC continues to hold the belief that auctions, by design wherein the highest bid prevails, will naturally favour applicants with access to the greatest financial resources or deepest pockets and by extension, disadvantage less wealthy applicants (such as Applicant Support Program applicants). Whereas it is not always the case that the “best” applicant is the one with the most resources. [For this reason, we strongly oppose the continued use of regular auctions as the mechanism of last resort for resolution of contention sets.](#)

By this logic, an alternative contention set resolution mechanism, one based on comparative evaluation processes would strive for greater fairness along with the ability to select the “best” applicant using a pre-determined set of criteria (such as diversity, priority for community-based TLD, minority-supported applications, first-time applicants, in the public’s interest etc). In this respect, we [would](#) favour the “Request for Proposals” option, but not the “Random Draw” or the “System of Graduated Fees” options. However, the ALAC acknowledges that true success of a comparative evaluation mechanism, especially one based on value judgments, is heavily dependent on not only the availability but consistent application of clear and strict assessment and scoring processes. Based on the experience of the 2012 round applications which underwent Community Priority Evaluation (CPE), we are not confident that an alternative mechanism based on comparative evaluation processes can be established easily. If at all, its development would require extensive consultation with all stakeholder groups.

The Supplemental Report noted that more than 90% of contention sets from the 2012 round were resolved voluntarily by the competing applicants (even if the nature of some of the resolutions were not entirely transparent to the ICANN Community). This, in our opinion, left an acceptably small percentage of unresolved contention sets going to ICANN-endorsed auctions as the resolution mechanism of last resort. Assuming additional but controlled flexibility is introduced to the Program via permissible Change Requests (as contemplated in Section 2.4 of the Supplemental Report) then the ALAC is further comforted by the [increased](#) possibility that incidences of contention sets could be more desirably resolved other than by way of auctions. [For this reason, we advocate for more guidance and resources to be put in place to help applicants get out of contention sets voluntarily through such permissible Change Requests, thereby avoiding going through to auctions to resolve their contention sets.](#)

That aside, we also acknowledge that ICANN-endorsed auctions generate proceeds which could be used to further Community public interest goals or activities as contemplated by the Auction Proceeds Cross-Community Working Group.

~~Therefore, the ALAC reverts to supporting the retention of auctions to be conducted by ICANN-appointed auction service providers as a mechanism of last resort to resolve contention sets within the Program in the first instance. We also suggest that greater effort and more resources be put towards effective guidance and navigation for applicants in contention sets to voluntarily resolve the same.~~

Notwithstanding, the ALAC recognises that incidences of contention sets may not be fully eliminated through voluntary resolution and to address such remaining contention sets, we propose that the ICANN Community explore the introduction of a multiplier-enhanced Vickrey auction process (as described in our response to Option 2.1.d.1) ~~is supportive of the option to introduce the Vickrey auction~~ in place of the regular auctions, as the resolution mechanism of last resort. Although the Vickrey auction still relies on the notion of a winning highest bid, the ALAC opines that its nature of accepting placement of secret-bids will do a lot to prevent in future rounds the repeat of some of the speculative applications which were submitted in the 2012 round.

In addition, the undesirability of auctions favouring applicants with deep pockets can be tempered by adding a multiplier feature in favour of certain applicants – namely those that qualify for Applicant Support under the Application Support Program (ASP) ~~and those that prevail in Community Priority Evaluation (CPE) but subsequently enter into a contention set for their applied-for string and having failed the voluntary resolution route.~~ These applicants could have their respective secret bids automatically upgraded by a fixed capped multiplier to level the playing field for them in a Vickrey auction, as described in our response to Option 2.1.d.1, ~~against non-ASP applicants.~~ **The ALAC believes that the multiplier feature is essential so long as the ASP does not award priority to applications which qualify for Applicant Support (in the way that community applications which prevail in CPE are awarded priority which eliminates all non-community applications in a contention set as well as any other community applicants which do not prevail in CPE).**

While we acknowledge that policies regarding application for geographic names TLDs are being considered by Work Track 5, in light of the auctions mechanism being considered by Work Tracks 1-4, we would like to record our reservations on the use of auctions to resolve contention sets that involve the application for geographic names TLDs.

~~Therefore, the ALAC further suggests that the introduction of such a multiplier-enhanced Vickrey auction be explored by the ICANN Community.~~

#### Private Resolution of Contention Sets (Including Private Auctions)

**The ALAC does not support a total ban of all forms of private resolutions, but we are strongly in favour of disallowing forms of private resolutions which result in a 'losing' applicant gaining or being promised a financial benefit in return for withdrawing their application in a contention set, including and especially private auctions.**

The ALAC sees the merit of retaining Implementation Guidance F in that allowing permissible Change Requests is in principle useful for enabling voluntary resolution of contention sets. We also recognise the immense challenge in describing exhaustively what forms of private resolutions ought to be permissible and what are disallowed. Therefore, while we do not support the option for a total ban on all forms of private resolution, we are, however, strongly opposed to allowing forms of private resolutions which result in any applicant gaining or even being promised a financial benefit in return for withdrawing their application in order to resolve a contention set. This necessarily means we are strongly opposed to allowing private auctions; we believe that any auction which cannot be avoided should be one conducted by an ICANN-appointed auction service provider and using the modified Vickrey auction described in our response to Option 2.1.d.1.

It follows that the ALAC supports the option to amend the Applicant Guidebook and program Terms & Conditions to state that resolution of string contention via private resolution, where a party is paid to withdraw, is disallowed and where determined as such would lead to the application for that applied-for string not proceeding. We also support the option that the future version of the base Registry Agreement should include a provision that states that if a registry operator is shown to have taken part in a private resolution for their given string, it may result in the forfeiture of that TLD.

**The ALAC does not believe increasing application fees is an optimal way to deter applications with the intent of profiting from a private resolution because it would directly impact the ability of others, namely applicants from the Global South, those applying for Applicant Support etc.**

Having said this, the ALAC is mindful of the complications in taking the approach of allowing some forms of private resolutions but not others. Further careful consideration by the ICANN Community is needed to formalise a coherent list of criteria against which actions taken by applicants in contention sets can be assessed for permissibility. Greater effort and more resources would need to be put towards effective guidance and navigation for applicants in contention sets in voluntary private resolution attempts, including allowable Change Requests, throughout the application process. Resources would also need to be invested into monitoring and evaluating the parties' actions post-delegation. An appropriately skilled and representative panel of evaluators may be needed to conduct the assessments, especially where clarity of the list of criteria is considered insufficient.

#### Role of Application Comment

The ALAC supports the WG's preliminary recommendations 2.3.c.1 to optimize the mechanisms and system for Application Comment and 2.3.c.2 for ICANN to be more explicit in the Applicant Guidebook on how public comments are to be utilized.

In pursuit of fairness, we are supportive of the idea of limiting the comment period for CPE to run parallel to the Initial Evaluation comment period. We also think it is appropriate to allow applicants an additional but limited period of 7 days after the close of a 60-day public comment period strictly to enable applicants to respond to late comments if they so choose.

#### Change Requests

The ALAC supports the WG's preliminary recommendation 2.4.c.1 for operational improvements to the high-level, seven criteria-based change request process from the 2012 round. We also think ICANN Org must determine if re-evaluation is needed to ensure if a new JV entity that is created as part of an allowable change request still meets the requirements of the program. Similarly, ICANN Org must perform a re-evaluation of the new applied-for string in all string related evaluation elements (e.g. DNS Stability, String Contention, etc) and for the new string to be (a) subject to name collision risk assessment, (b) put out for public comment and (c) open to established Objection procedures.

The ALAC opines that the existing seven criteria as listed in the Supplemental Report (on page 27) along with name collision risk assessment serve as a strong foundation for considering change requests to applied-for strings. Any change request for a new string where name collision risk is present or if the new string is not closely related to the original string – as determined through expert /community input – or if the new string is an exact match to [or is an IDN variant of an already-applied-for string or is an IDN variant of a delegated string](#), must not be approved.

The ALAC believes that the opportunity for public comment to change requests is important because that process allows the ICANN Community to raise concerns to them or even to withdraw or acknowledge that concerns raised on the original applied-for string in contention have been mitigated through a change request, if it is so.

#### Registrar Support for New gTLDs

The ALAC declines to respond to the options and questions put forth by the WG on the topic of Registrar Support for New gTLDs.

#### Glossary

“AGB”	mean s:	The New gTLD Program Applicant Guidebook
“ALAC”	mean s:	The ICANN At-Large Advisory Committee
“At-Large”	mean s:	The ICANN At-Large Community
“ICANN Org”	mean s:	The ICANN Organization
“Supplemental Report”	mean s:	The Supplemental Report to the Initial Report of the GNSO New gTLD Subsequent Procedures Working Group dated 1 November 2018
“Program”	mean s:	The New gTLD Program
“RALO”	mean s:	ICANN Regional At-Large Organizations
“WG”	mean s:	The GNSO New gTLD Subsequent Procedures PDP Working Group

<b>PDP Working Group Preliminary Recommendation (PR) / Question (Q) / Option</b>	<b>ALAC Response</b>
<b>2.1: Auctions: Mechanism of Last Resort</b>	
<b>PR 2.1.c.1:</b> Many in the Working Group believes that ICANN auctions of last resort should remain in place within the program.	<a href="#">The ALAC strongly opposes the retention of the regular highest-bid auction process which was used in the 2012 round (“regular auctions”) as the mechanism of last resort for resolution of contention sets within the Program.</a>
<b>PR 2.1.c.2:</b> However, the Working Group considered whether there should be additional options for applicants to voluntarily resolve contention sets by mutual agreement before being forced into an ICANN auction of last resort. The Working Group focused mainly on allowing applicants to change certain elements of their applications as a potential way to resolve contention sets earlier in the process (Please see recommendations in section 2.4 of this report on Change Requests, which discuss aspects like changes to the applied-for string and forming a joint venture).	The ALAC supports this preliminary recommendation.  In our opinion – which is backed by the knowledge that only less than 10% of contention sets from the 2012 round progressed to ICANN-endorsed auctions as the resolution mechanism of last resort – the contemplated introduction of additional but controlled flexibility via permissible Change Requests (discussed under Section 2.4 of the Supplemental Report) presents even more opportunities for contention sets to be resolved other than by way of auctions.

**Option 2.1.d.1: Different Types of Auctions.** Some Working Group members proposed alternative ways to implement an auction. One such suggestion was to utilize a sealed-bid auction, or sometimes known as a Vickrey auction, where in this instance, applicants would submit their single highest bid upon application submission. If an applicant's applied-for string is in contention, the highest bidder would be placed first in the queue to have their application evaluated and if successful, would pay the second highest bid to ICANN. It was suggested that this type of auction allows for applicants to bid the precise value of the string. This could almost entirely eliminate contention sets at the beginning of the application process. Some noted concerns that evaluators, knowing the value placed on the string by an applicant, could be biased in some manner. Others noted that utilizing a different form of auction is still a mechanism that relies heavily on having deep pockets. It was also noted that this form of auction would need to consider how it handles Applicant Support and community-based applications. Finally, others raised concerns about ICANN securing this highly proprietary information and it was acknowledged that this would need to be factored into the mechanisms that support this auction style.

The ALAC favours the adoption of a modified Vickrey auction as described herein.

The ALAC is supportive of the option to introduce the Vickrey auction in place of the regular auction process, as the resolution mechanism of last resort. Although the Vickrey auction still relies on the notion of a winning highest bid, the ALAC opines that its nature of accepting placement of secret-bids will do a lot to prevent in future rounds some of the speculative applications which were seen in the 2012 round and which we anticipate will once again be attempted in future rounds.

The undesirability of auctions favouring applicants with deep pockets can also be tempered by adding a multiplier feature in favour of certain qualified applicants to assist them fare in a Vickrey auction on a more level playing field.

Specifically:-

ASP: Applicants that have qualified for support under the Applicant Support Program (ASP) but subsequently enter into a contention set for their applied-for string after having failed the voluntary resolution route could have their secret bid automatically upgraded by a fixed but capped multiplier (such as factor of 1.5) (eg. such an applicant's bid of US\$400,000 is automatically deemed as US\$600,000 when eventually 'revealed' in a Vickrey auction)

CPE: Applicants that prevail in Community Priority Evaluation (CPE) but subsequently enter into a contention set for their applied-for string after having failed the voluntary resolution route could have their secret bid automatically upgraded by a fixed but capped multiplier (such as factor of 1.25) (eg. such an applicant's bid of US\$400,000 is automatically deemed as US\$500,000 when eventually 'revealed' in a Vickrey auction)

Capped Factor: Benefit to applicants that have both qualified for Applicant Support and prevailed in CPE shall be capped at the higher factor (in our example, 1.5).

The ALAC believes that this multiplier feature is essential so long as the ASP does not award priority to applications which qualify for Applicant Support (in the way that community applications which prevail in CPE are awarded priority which eliminates all non-community applications in a contention set as well as any other community applicants which do not prevail in CPE).

**Option 2.1.d.2.1: Request for Proposals.**

Some Working Group members proposed alternatives to auctions of last resort. The Working Group discussed the possibility of having a request for proposals process that could be used to resolve contention sets. Such an approach could potentially involve third-party evaluators. One proposal was put forward to establish criteria around diversity that could be used as a basis for awarding the TLD. For example, priority could be given to applicants applying for their first TLD, applicants that are more community-focused rather than commercially-focused, and minority-supported applicants.

The ALAC favours the adoption of a modified Vickrey auction as described above over the Request for Proposals option.

Although the ALAC recognises that this Request for Proposals option is one which could suitably facilitate the selection of the "best" applicant using a pre-determined set of criteria (such as diversity, priority for community-based TLD, minority-supported applications, first-time applicants, in the public's interest etc), we acknowledge that true success of a comparative evaluation mechanism, especially one based on value judgments, is heavily dependent on not only the availability but consistent application of clear and strict assessment and scoring processes. Based on the experience of the 2012 round of applications which underwent Community Priority Evaluation (CPE), we are not confident that an alternative mechanism based on comparative evaluation processes can be established easily. If at all, its development would require extensive consultation with all stakeholder groups.

<p><b>Option 2.1.d.2.2: Random Draw.</b> Another possible alternative discussed was the use of a determinative drawing mechanism to select a “winner” in the contention set, noting that a drawing is simple, effective, and fair. A determinative drawing seems to eliminate a number of issues with resolving string contention in that it does not favor those with the most money, it does not result in losing applicants receiving a financial benefit (e.g., in the case of most private resolutions), and it could eliminate comparative evaluations. However, it was pointed out that running a determinative drawing could be encounter issues with being considered a lottery and would require proper licensing.</p>	<p>The ALAC does not support the option of Random Draw even though this mechanism completely eliminates the 3 weaknesses identified by the WG. Our position is based on the following considerations:-</p> <ul style="list-style-type: none"> <li>• The ability and opportunity to apply any form of meritorious comparative evaluation or priority, which is far more valuable in our opinion, is completely lost; and</li> <li>• Licensing requirements for ICANN to conduct properly sanctioned random draws.</li> </ul>
<p><b>Option 2.1.d.2.3: System of Graduated Fees.</b> One Working Group member suggested that a system of graduated fees could be established for each additional application submitted by an applicant, which could reduce the size of the pool of total applications and perhaps limit the number of applications that ultimately end in an auction of last resort. Another Working Group member noted that a system of graduated fees would favor larger entities with multiple applications and might also affect applicants' strategies in relation to the formation of applicant entities.</p>	<p>The ALAC also does not support the option of System of Graduated Fees as described in the Supplemental Report.</p> <p>The ALAC shares the concern raised that a system of graduated fees (i.e. increasing fees for each additional application submitted by an applicant) would favour larger entities with multiple applications and might also affect applicants' strategies in relation to the formation of applicant entities.</p>
<p><b>Q 2.1.e.1:</b> The preliminary recommendation above states that auctions of last resort should remain in place. However, some participants in the Working Group believe that auctions of last resort are inherently unfair and should be modified, restricted or modified. One of the main arguments is that auctions reward only those with the most amount of money rather than those that may best operate the TLD in the public interest. In addition, they believe that auctions discriminate against applicants in the developing world who may not have the resources to complete in an auction. Do you agree or disagree? Please provide a rationale for your response.</p>	<p>The ALAC agrees with the beliefs that auctions of last resort are inherently unfair and should be modified, restricted or modified as auctions favour applicants with the most amount of money and discriminate against applicants in the developing world who may not have the resources to complete in an auction. However, given the circumstances, we also believe a modified version of the Vickrey auction (as described in our response to Option 2.1.d.1) to be the most viable resolution mechanism of last resort.</p>
<p><b>Q 2.1.e.2:</b> Should other aspects (e.g., non-financial) be introduced to make auctions of last resort more "fair"? One mechanism that has been mentioned is to consider auction bids from an entity in the Global South as double or triple that of the same bid from an entity not from the Global South. For example, a bid of \$100 from an entity in the Global South could be comparable to a bid of \$200 from a bidder on the same string that was not from the Global South. Why or why not?</p>	<p><a href="#">Yes, the multiplier feature as described in our response to Option 2.1.d.1 on the Vickrey auction.</a></p>
<p><b>Q 2.1.e.3:</b> What, if any, other measures should the Working Group consider to enhance "fairness"?</p>	<p>None beyond what we have already introduced above with respect to the Vickrey auction.</p>
<p><b>Q 2.1.e.4:</b> Some participants in the Working Group believe that auctions of last resort should be eliminated and replaced with a comparative evaluation process. Some examples include a request for proposals (RFP) process that advantages community-based applicants, minority-supported applicants, or other factors yet to be determined or relying on a drawing. Do you believe that a comparative evaluation process, a determinative drawing, or some other mechanism could replace auctions of last resort? Why or why not?</p>	<p>The ALAC favours the adoption of a modified Vickrey auction as described above over the Request for Proposals and Random Draw options for reasons which we have already explained above.</p>
<p><b>Q 2.1.e.5:</b> Some participants noted that auctions of last resort could allow a deep-pocketed applicant to secure all strings within a given market. One potential solution raised was to place a limit on the number of auctions an applicant could participate in though others argued that limiting the number of applications would be considered anti-competitive and difficult to enforce. Do you agree that the identified issue is of concern and if so, what do believe is a potential solution?</p>	<p>Yes, the ALAC agrees that the identified issue is of concern but we do not think that placing a limit on the number of auctions an applicant could participate in is a potential solution. We think the issue is better resolved by the introduction of the multiplier- enhance Vickrey auction described under Option 2.1.d.1 above.</p>

PDP Working Group Preliminary Recommendation (PR) / Question (Q) / Option	ALAC Response
<b>2.2: Private Resolution of Contention Sets (including Private Auctions)</b>	

**Option 2.2.d.1:** A number of Working Group members expressed concern about the use of private auctions and other forms of contention resolution in subsequent rounds of new gTLD applications. More specifically, they are concerned that there will be some applicants that apply for new gTLD strings for the sole purpose of being paid to withdraw their applications in a contention set for which the applicant would receive compensation greater than the application fee. Thus, many Working Group members are opposed to the usage of private resolution mechanisms to resolve string contention in future new gTLD procedures and recommend that measures should be put into place to prevent their occurrence in the future. However, others think that private resolutions may be acceptable.

- Implementation Guidance under discussion: Should the Applicant Guidebook and program Terms & Conditions should be amended to state that resolution of string contention via private resolution, where a party is paid to withdraw, is disallowed. If so, should the future base Registry Agreement should include a provision that states that if a registry operator is shown to have taken part in a private resolution for their given string, it may result in having that TLD taken away from them?

While we still do not know enough about whether abuse in private resolutions (and in particular private auctions) had occurred during the 2012 round, the ALAC is also concerned about possible harm that the use of private auctions and other forms of private contention resolution which involve a payoff of sorts may bring in subsequent rounds of new gTLD applications.

The ALAC considers this possible harm as one which ought to be mitigated, if not removed altogether, and on this basis the ALAC supports this option to amend the Applicant Guidebook and program Terms & Conditions to state that resolution of string contention via private resolution, where a party is paid to withdraw, is disallowed. We also support the option that future base Registry Agreement should include a provision that states that if a registry operator is shown to have taken part in a private resolution for their given string, it may result in the forfeiture of that TLD.

**Option 2.2.d.2:** Several Working Group members believe that a simple "no private auction" rule could easily be circumvented with other forms of private resolutions of contention sets that amounted to compensating one or all of the other losing members of a contention set. Thus, they proposed a second option of banning all forms of private resolution of contention sets. This would mean modifying Implementation Guidance F by not allowing parties to mutually agree on how to resolve a contention set. All contention sets, by definition, would be resolved through the mechanism of last resort (described in Section 2.1. above).

While the ALAC strongly disapproves of private auctions and any other forms of private resolutions which result in a 'losing' applicant gaining or being promised a financial benefit in return for withdrawing their application, we do not favour the option of banning all forms of private resolution of contention sets and forcing all affected applicants to participate in ICANN-endorsed auctions as the only means to resolve contention sets.



**Option 2.2.d.3:** A third option a Working Group Member proposed was allowing certain types of private resolutions, but disallowing others. For example, as discussed in several sections of the Initial Report and in this Supplemental Initial Report, many Working Group members favored allowing applicants in a contention set to change their applied-for-string if that change is mutually agreed by the members of the contention set and the newly changes strings (a) were reasonably related to the original applications and (b) did not move the applicants' newly selected strings into a different contention set. Under this option, the Working Group member proposed that changes would need to be approved by ICANN. Another Working Group member noted that under this option, any proposed newly selected string that ICANN intended to approve would need to be (a) subject to name collision risk assessment, (b) put out for public comment and (c) open to established Objection procedures (note, this line of discussion is also found in section 1.4, on Change Requests). If parties are found to have engaged in non-acceptable forms of private resolution, that will result in (a) the application not being allowed to proceed - if a Registry Agreement was not signed by the time it is discovered, or (b) forfeiture of the registry (if after a Registry Agreement is signed). Some members of the Working Group, however, were not comfortable in putting ICANN in a position of approving (or disapproving) mechanisms of private resolution.

The ALAC supports this third option of allowing certain types of private resolutions but disallowing others, in particular, private auctions and other forms which result in any applicant gaining or even being promised a financial benefit in return for withdrawing their application in order to resolve a contention set.

We are supportive of the concept of allowing applicants in a contention set to change their applied-for-string if that change is mutually agreed by the members of the contention set and the newly changes strings (a) were reasonably related to the original applications and (b) did not move the applicants' newly selected strings into a different contention set. ICANN would need to approve requests for such changes with reference to the existing seven criteria listed in the Supplemental Report (page 27).

We are also strongly supportive of the concept that any proposed newly selected string that ICANN intended to approve would need to be (a) subject to name collision risk assessment, (b) put out for public comment and (c) open to established Objection procedures, and if parties are found to have engaged in non-acceptable forms of private resolution, that will result in (a) the application not being allowed to proceed - if a Registry Agreement was not signed by the time it is discovered, or (b) forfeiture of the registry (if after a Registry Agreement is signed).

**Q 2.2.e.1:** Do you believe private resolutions should be continued in the future? If so, should the funds be distributed amongst the remaining applicants within the auction or in some other method i.e. charity, ICANN, etc? If so, what methods are most appropriate?

The ALAC believes that certain types of private resolutions should be allowed to continue but not others, in particular, private auctions and other forms which result in any applicant gaining or even being promised a financial benefit in return for withdrawing their application in order to resolve a contention set.

We have already indicated our preference for the introduction of a modified Vickrey auction and we would advocate for the proceeds of such auctions, if any, to be handled in the same manner as the proceeds of auctions conducted in the 2012 round, i.e. as determined by the final outcome to the Auctions Proceed Cross-Community Working Group's recommendations.

<p><b>Q 2.2.e.2:</b> Do you believe that issues with private resolutions are, generally speaking, equally problematic across different types of TLDs? Do you believe that the type of TLDs may be a factor in determining whether private resolution should be allowed? Does the type of TLD have any impact on the options above?</p>	<p>Yes, the ALAC believes issues with private resolutions are, generally speaking, equally problematic across different types of TLDs. However, we opine that the contemplated private resolutions for different types of TLDs may need different attention, for example, for private resolution of geographic name TLDs contention sets, the involvement or input of government or public authorities and community should be prioritised in determining whether that attempt at private resolution should be allowed.</p>
<p><b>Q 2.2.e.3:</b> Do you agree with many Working Group members who believe that prohibitions in the Applicant Guidebook, Terms &amp; Conditions, and in the Registry Agreement are the best way to prevent private resolutions in the future. In other words, participation in a private resolution, including private auction, where applicants may profit from withdrawing their applications would result in a cancellation of your application (if discovered during the application process) or forfeiture of its TLD (if it is discovered after the TLD is awarded). Do you agree? Do you believe other suggested mechanisms (e.g., increasing application fees), may be more effective, or could be used in tandem?</p>	<p>The ALAC thinks it is legally necessary to provide for prohibitions in the Applicant Guidebook, Terms &amp; Conditions, and in the Registry Agreement in order to enforce the intent to prevent of selected private resolutions in the future.</p> <p>The ALAC does not believe increasing application fees is an optimal way to deter applications with the intent of profiting from a private resolution because it would directly impact the ability of others, namely applicants from the Global South, those applying for Applicant Support etc.</p>
<p><b>Q 2.2.e.4:</b> If you agree that private resolution overall is potentially problematic, do you believe that there is any practical way to prevent private resolution that allows losing applicants to receive a financial benefit? Or is the issue with private resolution one that requires a complete ban? Or is it impossible to prevent private resolutions, and they should therefore be allowed (as noted in option 2 above)? Please explain.</p>	<p>At this point, we do not know whether abuse through private resolutions actually occurred in the 2012 round, or if it did, how extensively it occurred. A study needs to be conducted to establish this.</p> <p>Notwithstanding, the ALAC does not support a total ban of all forms of private resolutions, but we are strongly in favour of disallowing forms of private resolutions which result in a 'losing' applicant gaining or being promised a financial benefit in return for withdrawing their application in a contention set, including private auctions.</p>
<p><b>Q 2.2.e.5:</b> Do you believe instead that there are practical ways to allow some forms of private resolution but disallow others, as indicated in option 3 above? What would be the acceptable or non-acceptable forms of private resolution and why? Who should determine whether parties in a contention set have or have not engaged in non-acceptable forms of private resolution and how would such a determination be established?</p>	<p>We acknowledge challenges in exhaustively defining what are acceptable or non-acceptable forms of private resolution and that there may well be a need to examine each form on a case-by-case basis by utilising a transparent mediation process.</p>
<p><b>Q 2.2.e.6:</b> Some believe that if an application fee for a TLD were high enough, it would deter applicants from applying for TLDs with the intent of profiting from a private resolution. Do you believe that increasing application fees will have that effect? Why or why not? If you agree, at what amount would application fees need to be set at to deter applicants from applying for TLDs with the intent of profiting from withdrawing their applications (e.g., rough estimate or instead, criteria by which an amount could be established)?</p>	<p>The ALAC does not believe increasing application fees is an optimal way to deter applications with the intent of profiting from a private resolution because it would directly impact the ability of others, namely applicants from the Global South, those applying for Applicant Support etc.</p>

PDP Working Group Preliminary Recommendation (PR) / Question (Q) / Option	ALAC Response
<b>2.3: Role of Application Comment</b>	
<p><b>PR 2.3.c.1:</b> The Working Group supports continuing the guidance in Implementation Guideline C, particularly around the provision of comment forums. However, the Working Group believes that the mechanism and system could be further optimized.</p>	<p>The ALAC supports these proposed optimization to the application comment system.</p>
<ul style="list-style-type: none"> <li>• <u>Implementation Guidance under consideration</u>: The system used to collect application comment should better ensure that the email and name used for an account are verified in some manner.</li> </ul>	
<ul style="list-style-type: none"> <li>• <u>Implementation Guidance</u>: The system used to collect application comment should support a filtering and/or sorting mechanism to better review a high volume of comments. The system should also allow for the inclusion of attachments.</li> </ul>	
<p><b>PR 2.3.c.2:</b> ICANN should be more explicit in the Applicant Guidebook on how public comments are to be utilized or taken into account by the relevant evaluators, panels, etc. and to what extent different types of comments will or will not impact scoring. In addition, to the extent that public comments are to be taken into account by the evaluators, panels, etc., applicants must have an opportunity to respond to those comments.</p>	<p>The ALAC supports this preliminary recommendation on the basis that:-</p> <ul style="list-style-type: none"> <li>• It provides greater clarity to the application process, identifies the need and avenues for remediation and possibly inclusion of voluntary Public Interest Commitments (PICs); and</li> <li>• Subject to timing issues, it would in principle assist in an applicant's preparations for responding to comments that could help with the remediation process.</li> </ul>
<p><b>Q 2.3.e.1:</b> The Working Group has noted that while there was a cutoff for application comments to be considered by evaluators, the cutoff for Community Priority Evaluation was far later in the process, allowing for a much longer period of time for comments to be received for this evaluation element. The longer period of time allowed was due to the timing of CPE (i.e., only after program elements like Initial Evaluation, Extended Evaluation, and objections conclude). Is this, or other factors, valid reasoning and/or fair to have the comment period for CPE extend longer than for Initial Evaluation? Do you believe it makes sense to shorten this particular application comment period, perhaps just having it run in parallel to the Initial Evaluation comment period?</p>	<p>The ALAC agrees that it was unfair for applications undergoing Community Priority Evaluation (CPE) to be subjected to a longer comment period than for Initial Evaluation and therefore thinks it is sensible to limit the comment period for CPE to run parallel to the Initial Evaluation comment period.</p>
<p><b>Q 2.3.e.2:</b> In the 2012 round, applicants were given the opportunity through Clarifying Questions to respond to comments that might impact scoring. From one perspective, this may have reduced the incentive for applicants to respond to all input received through the public forum, including comments that may be perceived as negative. Do you consider this an issue that needs to be addressed? If so, what measures do you propose in response to this problem?</p>	<p>The ALAC does not consider this an issue that needs to be addressed because we understand that applicants are free to determine for themselves whether to respond any comment and to judge the consequences of a response or non-response.</p>
<p><b>Q 2.3.e.3:</b> If there is an application comment period prior to evaluations, should applicants be given a certain amount of time to respond to the public comments prior to the consideration of those comments. For example, if there is a 60-day public comment period, should an additional time period of 7-10 days be added solely for the purpose of providing an opportunity for applicants to respond to the comments if they so choose?</p>	<p>The ALAC thinks it is appropriate to allow applicants an additional but limited period of 7 days after the close of a 60-day public comment period strictly to enable applicants to respond to late comments if they so choose. In other words, the additional 7 days is meant to allow applicants reasonable time to respond to comments that are submitted 7 days or less before the close of a 60-day public comment period.</p>

PDP Working Group Preliminary Recommendation (PR) / Question (Q) / Option	ALAC Response
<b>2.4 Change Request</b>	
<p><b>PR 2.4.c.1:</b> The Working Group believes that at a high-level, a criteria-based change request process, as was employed in 2012, continues to make sense going forward. However, the Working Group believes that some operational improvements should be made.</p>	<p>The ALAC supports the proposed operational improvements in this preliminary recommendation.</p>
<ul style="list-style-type: none"> <li>• <u>Implementation Guidance under consideration</u>: ICANN org could seek to provide guidance on both changes that will likely be approved and changes that will likely NOT be approved.</li> </ul>	

<ul style="list-style-type: none"> <li>• <u>Implementation Guidance under consideration</u>: ICANN org should also set forth the types of changes which are required to be posted for public comments and which are not.</li> </ul>	
<ul style="list-style-type: none"> <li>• <u>Implementation Guidance under consideration</u>: ICANN org should set forth in the Applicant Guidebook the types of changes that would require a re-evaluation of some or all of the application and which changes would not.</li> </ul>	
<ul style="list-style-type: none"> <li>• <u>Implementation Guidance under consideration</u>: The Working Group believes that several types of change requests that were disallowed in 2012 should be allowed in subsequent procedures under certain circumstances. The types of change requests for which some members of the Working Group believe should be allowed under limited circumstances are set out for public comment below in section (d). Please see section (e) for specific questions about these options.</li> </ul>	
<p><b>Option 2.4.d.1:</b> One of the types of changes that some members of the Working Group believe should be allowed are certain application changes intended to resolve string contention. For example, if there is string contention and each of the applicants in a contention set agree, then applicants should be allowed to 1) create joint ventures or 2) have a limited ability to select a different string, which must be closely related to the original string.</p>	<p>The ALAC are, in principle, supportive of this option.</p>
<ul style="list-style-type: none"> <li>• <u>Implementation Guidance</u>: ICANN org may determine that in the event of a joint venture, re-evaluation is needed to ensure that the new entity still meets the requirements of the program. The applicant may be responsible for additional, material costs incurred by ICANN due to re-evaluation and the application could be subject to delays.</li> </ul>	<p>The ALAC opines that ICANN org must determine if re-evaluation is needed to ensure that the new JV entity still meets the requirements of the program.</p> <p>We think that it is acceptable to subject the applicant to the burden of additional, material costs incurred by ICANN due to re-evaluation, if any, and for the application to be subject to <u>reasonable</u> delay if need be.</p>
<ul style="list-style-type: none"> <li>• <u>Implementation Guidance</u>: Some examples to consider in allowing for a new string to be selected include prepending/ appending a new element to the original string or selecting a string that is closely related to the class/sector of the original string. ICANN org must perform a re-evaluation of the new applied-for string in all string related evaluation elements (e.g., DNS Stability, String Contention, etc.) and the application for the new string would be subject to string related objections (e.g., String Confusion Objections, Legal Rights Objections, etc.). Another Working Group member noted that in allowing for a string change, the new string would need to be (a) subject to name collision risk assessment, (b) put out for public comment and (c) open to established Objection procedures. The applicant may be responsible for additional, material costs incurred by ICANN due to re-evaluation and the application could be subject to delay.</li> </ul>	<p>The ALAC agrees that ICANN org must perform a re-evaluation of the new applied-for string in all string related evaluation elements.</p> <p>We also agree that in allowing for a string change, the new string would need to be (a) subject to name collision risk assessment, (b) put out for public comment and (c) open to established Objection procedures. We think that it is acceptable to subject the applicant to the burden of additional, material costs incurred by ICANN due to re-evaluation, if any, and for the application to be subject to <u>reasonable</u> delay if need be.</p>
<p><b>Q 2.4.e.1:</b> Section (d) above outlines possible application changes that could be allowed in subsequent procedures and corresponding implementation guidance that the Working Group is considering.</p>	

<p><b>Q 2.4.e.1.1:</b> Do you agree with allowing these types of changes? Why or why not? Does the implementation guidance above seem reasonable if these changes are allowed? The implementation guidance asks that ICANN provide better clarity on what types of changes will or will not be allowed and also what changes may require re-evaluation. Do you have suggestions on how to provide more precise guidance? Would this guidance replace or complement the seven criteria (see section (b) above for reference) above?</p>	<p>Yes, the ALAC agrees that the application changes outlines in section (d) above should be allowed but strictly for string contention resolution purposes only.</p> <p>The implementation guidance sought is not only reasonable in context of the contemplated types of changes but necessary, in particular, around the need for:</p> <ul style="list-style-type: none"> <li>• Name collision risk assessment</li> <li>• Availability for public comment</li> <li>• Openness to all established Objection procedures.</li> </ul> <p>We think the existing seven criteria as listed in the Supplemental Report (on page 27) provide good guidance but we also appreciate that each change request needs to be considered on a case-by-case basis and on the merits of each request.</p>
<p><b>Q 2.4.e.1.2:</b> If these changes are allowed, what are the potential risks or possibilities for gaming these types of changes? How can those risks be mitigated?</p>	<p><u>Risk and mitigation</u></p> <p>As with all applications, it is incumbent on interested parts of the ICANN Community to monitor, identify and raise concerns to any change request. This is why we advocate for the need for:</p> <ul style="list-style-type: none"> <li>• Name collision risk assessment</li> <li>• Availability for public comment</li> <li>• Openness to all established Objection procedures.</li> </ul> <p>These implementation guidance mechanisms are important for ensuring reasonable assessment and opportunities to raise concerns and/or to file objections.</p> <p><u>Gaming</u></p> <p>Unless applicants colluded beforehand, it is difficult to envisage how these types of change requests are gamed.</p>
<p><b>Q 2.4.e.1.3:</b> For the limited ability to change the applied-for string, what do you believe should be the criteria in considering such requests? Are there examples of where a change of an applied-for string should NOT be approved?</p>	<p>The ALAC opines that the existing seven criteria as listed in the Supplemental Report (on page 27) along with name collision risk assessment serve as a strong foundation for considering change requests to applied-for strings.</p> <p>Any change request for a new string where name collision risk is present or if the new string is not closely related to the original string – as determined through expert /community input – or if the new string is an exact match to <a href="#">or is an IDN variant of an already-applied-for string</a> or <a href="#">is an IDN variant of a delegated string</a>, must not be approved.</p>
<p><b>Q 2.4.e.2:</b> What role should public comment play in determining if a change request should be granted?</p>	<p>The ALAC believes that the opportunity for public comment is important because that process allows the ICANN Community to raise concerns to change requests or even to withdraw or acknowledge that concerns raised on the original applied-for string in contention have been mitigated through a change request, if so.</p>

**Q 2.4.e.3:** Reflecting on the seven criteria utilized for considering change requests in 2012 (see section (b) above for reference), do you have specific changes that you would suggest being made to those criteria for usage in the future?

We do not think major changes are needed to the mentioned seven criteria. However, the ALAC opines that:-

- Criteria "1: Explanation: Is a reasonable explanation provided?" may be supplemented by a letter of support from an interested stakeholder outside of the applicant.
- Criteria "7: Timing – interference with evaluation process" should carry the least weight.

PDP Working Group Preliminary Recommendation (PR) / Question (Q) / Option	AL AC Re sp on se
<b>2.5: Registrar Support for New gTLDs</b>	
<b>Option 2.5.d.1:</b> The following proposals have been discussed by the Working Group as options which can be pursued if there is support from the community to do so. Many of them require substantial resources by ICANN. No cost benefit analysis on these options have been performed and the Working Group is seeking input from the community on these proposals.	No co mm ent offe red.
<b>Option 2.5.d.1.1:</b> ICANN org could select a "last-resort" wholesale registrar that would provide resellers with the ability to sell TLDs that lacked market interest and/or have their target markets in regions or verticals lacking ICANN-Accredited registrars. In order to not burden ICANN org or the selected registrar with making initial deposits for TLDs, only registries allowing Post Payment terms would be eligible for this resource.	No co mm ent offe red.
<b>Option 2.5.d.1.2:</b> ICANN org could provide a "clearinghouse" for payments between the registries and registrars that operate in different currencies.	No co mm ent offe red.
<b>Option 2.5.d.1.3:</b> In order to assist smaller registries during their launch period, ICANN could allow an increase to the number of names that can be registered without the use of an ICANN-Accredited Registrar. Expanding the number of names while at the same time allowing these names to be registered for purposes other than the promotion or operation of the TLD could allow these smaller registries to "get off the ground" and gain the momentum needed to become attractive enough for ICANN Accredited Registrars to carry.	No co mm ent offe red.
<b>Option 2.5.d.1.4:</b> The Applicant Guidebook could note that there may be some benefit to potential applicants in communicating with ICANN accredited registrars before submitting an application, so that they fully understand potential market and technical integration issues that might be encountered.	No co mm ent offe red.
<b>Option 2.5.d.1.5:</b> Some members of the Working Group also proposed that the Registry contract should bundle the capacity of becoming an Accredited Registrar.	No co mm ent offe red.
<b>Q 2.5.e.1:</b> Please comment on each of the proposal set forth above. What are the pros and cons of those proposals? Should any or all of them be adopted? Why or why not?	No co mm ent.
<b>Q 2.5.e.2:</b> Are there any other proposals that could assist TLD Registries that have difficulty attracting ICANN Accredited Registrars?	No co mm ent.
<b>Q 2.5.e.3:</b> Should ICANN even get involved in assisting Registries or is this outside the scope of ICANN's mission, bylaws, or mandate? Please explain.	No co mm ent.
<b>Q 2.5.e.4:</b> The Working Group has not yet found a way to identify whether a TLD with low market performance has low performance due to lack of demand or lack of sales channels. How could the underlying issues be identified?	No co mm ent.
<b>Q 2.5.e.5:</b> Does ICANN forcing registrars to carry TLDs or designating registrars as "registrars of last resort" pose challenges to compliance oversight of these entities? Should registrars be liable for compliance actions for TLDs for which they did not want to carry but were forced to? By handpicking a few selected registrars as "last resort" does this create the possibility for compliance to go easy on them because ICANN needs them to play a specific role in the marketplace?	No co mm ent.

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## DRAFT SUBMITTED FOR DISCUSSION

*The first draft submitted will be placed here before the call for comments begins. The Draft should be preceded by the name of the person submitting the draft and the date/time. If, during the discussion, the draft is revised, the older version(S) should be left in place and the new version along with a header line identifying the drafter and date/time should be placed above the older version(s), separated by a Horizontal Rule (available + Insert More Content control).*

### **Revised Draft dated 12 December 2018**



02. Redline DRA...- 12Dec2018.pdf

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### **Draft dated 9 December 2018**

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