Draft Comments on Competition, Consumer Trust, and Consumer Choice Review Team (CCT-RT) Recommendations - New gTLD Subsequent Procedures Policy Development Process (PDP) Working Group (WG)

The New gTLD Subsequent Procedures Policy Development Process Working Group has received and reviewed the recommendations in the CCT-RT's Draft Report, with a particular focus on recommendations targeting this PDP and PDP Working Groups in general. The Working Group thanks members of the CCT-RT for taking the time to discuss and clarify these recommendations on two occasions - first in a discussion with the Working Group Co-Chairs at ICANN58 and subsequently on the 10 April 2017 call of the full Working Group. Taking into account information exchanged in the discussions so far, the Working Group is taking advantage of the public comment period for the CCT-RT Draft Report to submit additional clarifying questions and comments for the CCT-RT to consider as it finalizes its recommendations. The Working Group looks forward to continuing dialogue on the implementation of these recommendations.

High-Level Feedback

It would be helpful for the CCT-RT to clarify how strictly it expects the PDP WG to interpret and adhere to the language of the recommendations. Does the CCT-RT view the obligation as more limited -- that the PDP must consider the recommendation but may end up with an outcome that is diverging from, and possibly different or conflicting with, CCT-RT recommendations? What may provide additional clarity is to incorporate detail into the report about procedural elements, such as ICANN Board consideration of these recommendations and expectations for implementation steps.

Regardless, it would be helpful to have clear definitions for terminology used in the document. Specific examples are included in comments about individual recommendations below. In general, it would be useful to clearly define and consistently use terms like "should", "must", "may" throughout the document.

Many of the recommendations in the CCT-RT draft report target multiple parties. For example, recommendations 33-36 are directed to "ICANN organization, PDP WG, and future CCT Review Teams." In instances where recommendations have more than one target, it would be helpful to clarify which parts of each recommendation are directed at each party. To the extent that all targeted parties are expected to implement all parts of the recommendation, it would be helpful to provide additional details about this, as well.

In particular, members of the CCT-RT explained that high priority items target an 18-month timeframe. Recommendations 33 through 36 have been assigned a high priority level. If data collection directives are targeted at the ICANN organization, it may not be feasible from a timing perspective for the ICANN organization to complete data collection and share with the WG for analysis and action before the WG concludes.

This high-level feedback reiterates points raised informally through dialogue between the CCT-RT and the PDP WG. The WG appreciates the informal feedback received from the CCT-RT that the Review Team will consider word usage and look into making recommendations more precise, where appropriate.

Recommendation 10

To: New gTLD Subsequent Procedures PDP WG and/or Rights Protection Mechanisms PDP WG

Recommendation: The ICANN community should consider whether the costs related to defensive registration for the small number of brands registering a large number of domains can be reduced.

Prerequisite or Priority Level: Prerequisite

Comments: The New gTLD Subsequent Procedures PDP WG and the Rights Protection Mechanisms PDP WG are continuing to deliberate on the appropriate target for recommendation 10. To help facilitate the process of determining which WG should consider this recommendation, it would be helpful to clarify the meaning of "costs related to defensive registration." What costs specifically are included in this term and for whom? For example, are we talking about the wholesale registry fees to registrars, the retail rates of registrars, or costs/fees imposed by the Trademark Clearinghouse?

The WG would also like to understand why this recommendation specifically refers to a "small number of brands registering a large number of domains." How does reference to this particular group fit into the analysis conducted by the CCT-RT and related conclusions?

Recommendation 14

To: New gTLD Subsequent Procedures PDP WG

Recommendation: Create incentives to encourage gTLD registries to meet user expectations regarding (1) the relationship of content of a gTLD to its name; (2) restrictions as to who can register a domain name in certain gTLDs based upon implied messages of trust conveyed by the name of its gTLDs (particularly in sensitive or regulated industries); and (3) the safety and security of users' personal and sensitive information (including health and financial information).

Prerequisite or Priority Level: Prerequisite (incentives could be implemented as part of the application process)

Comments: On the 10 April WG call, members of the CCT-RT provided additional context for this recommendation. According to the CCT-RT members, research findings indicate that end users expect to see a relationship between TLDs and the meaning of the string and/or usage of associated domains. It

seems that the spirit of this recommendation is to create incentives to encourage that correlation, so as to promote user trust.

This clarification provides helpful background information. The WG would appreciate if, in addition, the CCT-RT could more precisely define the term "user expectations" in the context of this recommendation. Further, it would be useful to have additional details about the rationale for encouraging "content" (e.g., is it both the meaning of the string as well as the content of the domain, or one or the other?) to match the TLD's understood purpose. Finally, it would be helpful if the CCT-RT would clarify how the reference to "relationship of content of a gTLD to its name" is consistent with Section 1.1 of the ICANN Bylaws.

Recommendation 33

To: ICANN organization, PDP WG, and future CCT Review Teams

Recommendation: Collect data comparing subjective and objective trustworthiness of new gTLDs with restrictions on registration, to new gTLDs with few or no restrictions.

Prerequisite or Priority Level: High

Comments: As discussed in the High-Level Feedback, it would be helpful to understand which parts of this recommendation are aimed at each target audience, as this will impact feasibility from an implementation perspective.

With respect to trustworthiness, the CCT-RT report refers to the Nielsen studies, and notes that the CCT-RT explored the idea of using trustworthiness as a proxy for "consumer trust." Is it possible to provide a more targeted definition of trustworthiness for the purposes of this recommendation? A specific definition will support appropriate data collection and analysis.

Recommendation 34

To: ICANN organization, PDP WG, and future CCT Review Teams

Recommendation: Repeat and refine DNS Abuse Study to determine whether the presence of additional registration restrictions correlate to a decrease in abuse in new gTLDs, and as compared to new gTLDs that lack registration restrictions, and as compared to legacy TLDs.

Prerequisite or Priority Level: High

Comments: As discussed in the High-Level Feedback, it would be helpful to understand which parts of this recommendation are aimed at each target audience, as this will impact feasibility from an implementation perspective.

Recommendation 35

To: ICANN organization, PDP WG, and future CCT Review Teams

Recommendation: Collect data on costs and benefits of implementing various registration restrictions, including the impact on compliance costs and costs for registries, registrars and registrants. One source of this data might be existing gTLDs (for example, for verification and validation restrictions, we could look to those new gTLDs that have voluntarily included verification and validation requirements to get a sense of the costs involved).

Prerequisite or Priority Level: High

Comments: As discussed in the High-Level Feedback, it would be helpful to understand which parts of this recommendation are aimed at each target audience, as this will impact feasibility from an implementation perspective.

Recommendation 36

To: ICANN organization, PDP WG, and future CCT Review Teams

Recommendation: Gather public comments on the impact of new gTLD registration restrictions on competition to include whether restrictions have created undue preferences.

Prerequisite or Priority Level: High

Comments: The WG has several questions about scope and timing for this recommendation. It is unclear how this recommendation fits within the scope of the New gTLD Subsequent Procedure PDP WG or any other PDP as written. If this recommendation targets the New gTLD Subsequent Procedure PDP WG, it is unclear when the CCT-RT recommends that the PDP WG gather public comments. The WG's first Community Comment period has closed and the second Community Comment period is already underway. Is the expectation that the PDP WG collect input on this issue as part of the public comment period for the Initial Report or at a different point in time?

In addition, it would be helpful to have greater clarity about the definition of "undue preferences" in this context. It would also be useful to understand how the CCT-RT anticipates those "undue preferences" impact competition.

Recommendation 38

To: ICANN organization and New gTLD Subsequent Procedures PDP WG

Recommendation: Future gTLD applicants should state the goals of each of their voluntary PICs. The intended purpose is not discernible for many voluntary PICs, making it difficult to evaluate effectiveness.

Prerequisite or Priority Level: Prerequisite

Comments: This recommendation is understood and appropriately assigned to the New gTLD Subsequent Procedures PDP WG. To the extent that PICs are a part of subsequent procedures, the WG would be able to incorporate this recommendation into the relevant discussions.

Recommendation 39

To: New gTLD Subsequent Procedures PDP WG

Recommendation: All voluntary PICs should be submitted during the application process such that there is sufficient opportunity for Governmental Advisory Committee (GAC) review and time to meet the deadlines for community and limited public interest objections.

Prerequisite or Priority Level: Prerequisite

Comments: This recommendation is appropriately assigned to the New gTLD Subsequent Procedures PDP WG. In informal comments, the WG requested clarification about whether this recommendation would prevent the inclusion of voluntary PICs after application submission. On the 10 April WG call, members of the CCT-RT clarified that the intent of the recommendation is to ensure that in the next round, enough time is provided for all members of the community to consider PICs while contemplating any other actions. The WG appreciates any additional clarification on this point that the CCT-RT is able to provide.

In addition, this recommendation also presumes that PICs will be applicable for applications for gTLDs on a going forward basis. The Working Group is still in discussions on the concept of PICs and their applicability for subsequent procedures. Rather than using terminology from the initial round when making future recommendation, perhaps the CCT-RT could consider rewording this recommendation such that it has applicability moving forward regardless of what terminology is used. For example, this recommendation can be reworded as, "All voluntary commitments made by an applicant should be submitted during the application process such that there is sufficient opportunity for community review and time to meet the deadlines for community and limited public interest objections.

The Working Group is considering whether commitments can be modified at the time of applications or as a result of GAC advice. How would this fit with the CCT-RT recommendations?

Recommendation 43

To: New gTLD Subsequent Procedures PDP WG

Recommendation: Set objectives for applications from the Global South. The Subsequent Procedures Working Group needs to establish clear measurable goals for the Global South in terms of number of applications and even number of delegated strings. This effort should include a definition of the "Global South."

Prerequisite or Priority Level: Prerequisite – objectives must be set.

Comments: This recommendation is appropriately assigned to the New gTLD Subsequent Procedures PDP WG and discussion on this topic is already underway within Work Track 1. On the 10 April WG call, members of the CCT-RT clarified that the intent of this recommendation is not to target developing economies as a whole but to support applications by businesses in developing economies.

It would be helpful if the CCT-RT could clarify how rigidly this recommendation should be interpreted. Does the CCT-RT want the PDP WG to focus exclusively on goals for number of applications and number of delegated strings or could objectives for the Global South extend to other measures, as well?

In addition, the CCT-RT requests that the Working Group define the term "Global South." It would be helpful if the CCT-RT could provide its own working definition of the "Global South" in coming up with this recommendation.

Recommendation 46

To: New gTLD Subsequent Procedures PDP WG

Recommendation: Revisit the Applicant Financial Support Program. The total cost of applying for a new gTLD string far exceeds the $185K application fee. Beyond efforts to reduce the application fee for all applicants, efforts should be made to further reduce the overall cost of application, including additional subsidies and dedicated support for underserved communities.

Prerequisite or Priority Level: Prerequisite

Comments: This recommendation is appropriately assigned to the New gTLD Subsequent Procedures PDP WG and discussion on this topic is already underway within Work Track 1.

The WG notes that two different terms are used some recommendations: "underserved communities" and "Global South." Is the CCT-RT using these terms interchangeably or does it consider them distinct? Additional clarification on terminology would be helpful.

It would be useful for the CCT-RT to clarify if this recommendation pertains only to the costs of applying for a new gTLD, additional post application fees such as objection-related fees, or also applies to operating costs.

Recommendation 47

To: New gTLD Subsequent Procedures PDP WG, GAC, ICANN organization

Recommendation: As required by the October 2016 Bylaws, GAC consensus advice to the Board regarding gTLDs should also be clearly enunciated, actionable, and accompanied by a rationale, permitting the Board to determine how to apply that advice. ICANN should provide a template to the GAC for advice related to specific TLDs, in order to provide a structure that includes all of these elements. In addition to providing a template, the Applicant Guidebook (AGB) should clarify the process and timelines by which GAC advice is expected for specific TLDs.

Prerequisite or Priority Level: Prerequisite

Comments: This recommendation is appropriately assigned to the New gTLD Subsequent Procedures PDP WG.

On the 10 April WG call, members of the CCT-RT clarified that the part of this recommendation targeting the PDP is to include clear guidelines in the Applicant Guidebook regarding submission of GAC Advice. The WG welcomes any additional information the CCT-RT would like to provide about the scope of the recommendation as it applies to the PDP WG.

Recommendation 48

To: New gTLD Subsequent Procedures PDP WG

Recommendation: A thorough review of the procedures and objectives for community-based applications should be carried out and improvements made to address and correct the concerns raised before a new gTLD application process is launched. Revisions or adjustments should be clearly reflected in an updated version of the 2012 AGB.

Prerequisite or Priority Level: Prerequisite

Comments: This recommendation is appropriately assigned to the New gTLD Subsequent Procedures PDP WG. The topic is currently being considered within Work Track 3 of the PDP WG.

Recommendation 49

To: New gTLD Subsequent Procedures PDP WG

Recommendation: The Subsequent Procedures PDP should consider adopting new policies to avoid the potential for inconsistent results in string confusion objections. In particular, the PDP should consider the following possibilities:

1. Determining through the initial string similarity review process that singular and plural versions of the same gTLD string should not be delegated;
2. Avoiding disparities in similar disputes by ensuring that all similar cases of plural versus singular strings are examined by the same expert panelist;
3. Introducing a post dispute resolution panel review mechanism.

Prerequisite or Priority Level: Prerequisite

Comments: This recommendation is appropriately assigned to the New gTLD Subsequent Procedures PDP WG. The topic is currently being considered within Work Track 3 of the PDP WG.

Recommendation 50

To: New gTLD Subsequent Procedures PDP WG

Recommendation: A thorough review of the results of dispute resolutions on all objections should be carried out prior to the next CCT review.

Prerequisite or Priority Level: Low

Comments: This recommendation has a priority level assignment "low," indicating that it must be implemented prior to the start of the next CCT Review. The New gTLD Subsequent Procedures PDP WG may have completed its work at the point when this recommendation should be implemented. Therefore, this recommendation may need to be directed at a different party. The WG appreciates any additional information the CCT-RT can provide about the intended timeframe of this recommendation.