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COMMENT OF THE INTELLECTUAL PROPERTY CONSTITUENCY ON THE SUPPLEMENTAL INITIAL REPORT ON THE NEW gTLD SUBSEQUENT PROCEDURES POLICY DEVELOPMENT PROCESS

21 December 2018

The GNSO Intellectual Property Constituency (IPC) appreciates the opportunity to provide comments on the Supplemental Initial Report of the New 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. See https://www.icann.org/public-comments/new-gtld-subsequent-procedures-supp-initial-2018-10-30-en.

The IPC represents the views of the intellectual property community within ICANN, and is focused on trademark, copyright, and related intellectual property rights and their effect and interaction with the DNS. The IPC's consensus views on the Supplemental Initial Report are appended, and are presented in a matrix format consistent with Appendix B (Table of Preliminary Recommendations, Options and Questions for Community Input).

Respectfully Submitted,

Intellectual Property Constituency

Topic	Text	Comment
2.1 Auctions: Mechanism of Last Resort	2.1.c.1: Many in the Working Group believes that ICANN auctions of last resort should remain in place within the program.	We support the continued use of ICANN auctions of last resort. Auctions are a widely-used method of settling competing claims to an item or resource. However, we believe that this should be in the context of greater flexibility to enable private resolution of contention sets, thereby assisting parties to try to find an alternative solution and so minimising the need to rely on ICANN auctions of last resort.
2.1 Auctions: Mechanism of Last Resort	2.1.c.2: 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).	We support additional options for voluntary resolution of contention sets, particularly allowing applicants to change certain elements of their applications. See our comments in 2.4 below.

2.1 Auctions: Mechanism of Last Resort	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.	We are open to the idea of sealed bid auctions being used as an alternative to the ascending-clock auction mechanism currently used in ICANN auctions. We would support sealed bids being submitted once a contention set was finalised and participants were known to all parties so that applicants could properly assess their willingness to pay. Although there is a potential downside to this in that the parties have not put a "value" on the string in advance, the reality is that many factors come into play in assessing that "value", certainly for a brand owner applicant and possibly for all applicants, including who the other parties are and how they have indicated they intend to use the TLD. Alternatively, we support the use of sealed bid auctions where bids are submitted at the time of application only where the bid is unsealed when there are multiple contenders for the same string and none of the contenders have obtained community priority, and urge that processes used avoid disclosure of potentially sensitive commercial information when it may not be required. The IPC supports resolving contention sets as early in the application evaluation process as practicable to avoid lengthy and expensive contention resolution processes.
2.1 Auctions: Mechanism of Last Resort	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.	We are concerned about the predictability of this mechanism. The use of criteria would provide applicants with a set of expectations and guidelines. However, diversity criteria are inherently subjective and require the making of value judgments. This means that any decision made using these criteria is open to challenges, undermining the finality of decisions. Further, not allowing an appeals mechanism would undermine the credibility of the decision-making process. Further, IPC supports the position that evaluations based on content or 'worthy' goals (such that priority given to community-focused or minority applicants over others such as Brands) abridge the principle of Applicant Freedom of Expression."

2.1 Auctions: Mechanism of Last Resort	2.1.d.2.2: Random Draw. 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.	We agree that if determinative drawing is used then proper licensing should be obtained. Given the chance nature of determinative drawings, we believe this should be a mechanism offered as an alternative to ICANN auctions if all applicants in the contention set agree. This offers a formal resolution tool that does not require applicants to have deep pockets, but does not compel risk-averse applicants to participate in a chance-based resolution mechanism.
2.1 Auctions: Mechanism of Last Resort	2.1.d.2.3: System of Graduated Fees. 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.	We do not support graduated fees. There was extensive discussion in the working group about seeking to find ways to impose application-number limits on applicants, but many were of the view that this would be impossible to define and police - applicants would set up separate companies to circumvent such limits. The same considerations would apply to graduated fees.
2.1 Auctions: Mechanism of Last Resort	2.1.e.1: 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.	We disagree with the position that auctions of last resort are inherently unfair. The 2012 application process requried applicants to establish that they were a solvent legal entity with access to resources to successfully operate a TLD. Attachment to Module 2 of the 2012 Applicant Guidebook explicitly recognised that there would be disparities in resources available to applicants, and that this would be taken into account when assessing applications (A1).

2.1 Auctions: Mechanism of Last Resort	2.1.e.2: 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?	We do not support this. This would incentivise applicants to abuse the process, ie incorporating in the Global South or using such a company as a "front" in order to gain these competitive advantages.
2.1 Auctions: Mechanism of Last Resort	2.1.e.3: What, if any, other measures should the Working Group consider to enhance "fairness"?	We encourage the Working Group to take a broad view on what constitutes 'fairness' in the TLD space. Principles of 'fairness' should not conflict with established intellectual property rights or result in outcomes that could result in consumer confusion in market places.
2.1 Auctions: Mechanism of Last Resort	2.1.e.4: 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?	Please refer to the comments in 2.1.d.2.1 for an RFP process and 2.1.d.2.2 above for our position on determinative drawings. We do not support a mechanism that relies on determining 'worthy' goals as such mechanisms risk abridging the principle of Applicant Freedom of Expression.
2.1 Auctions: Mechanism of Last Resort	2.1.e.5: 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?	We note the findings of the Competition, Consumer Trust, and Consumer Review Team in part 6 of their Final Report that there is not enough data to determine whether concentrated TLD ownership is problematic. Further, any limitations on auction participation could be circumvented through private resolution of strings, and by the concerns indemnified at 2.1.d.2.3.

2.2 Private Resolution of Contention Sets (including Private Auctions)	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?	The IPC does not support mechanisms which would curtail or prohibit the parties in a contention set from seeking to resolve the matter by negotiation. Such means of resolution are common practice in commerce. The IPC does, however, support there being additional paths by which contention can be resolved that would potentially allow both/all parties to proceed with a TLD application, rather than resolution being limited to "all or nothing". In other words, that there should be an increased scope for Change Requests, particularly to allow for string changes and joint venture, as an alternative method of resolving contention sets. The IPC believes offering a wider range of resolution options that encourage applicants to enter the TLD space would be preferable, and would reduce the scope and necessity for one applicant to seek payment from another to withdraw their application. A stronger Legal Rights Objection, would also help to reduce the risk of a Brand finding itself in a contention set with another applicant who may be financially motivated. In a more perfect new gTLD world established brand applications would take priority over identical or confusingly similar strings which would otherwise be in contention. This would leave brands in contention sets only with other established brands not invented for the purpose of obtaining payment from prior long-standing brand applicants.
2.2 Private Resolution of Contention Sets (including Private Auctions)	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).	See comments above in 2.2.d.1.

| 2.2 Private Resolution of Contention Sets (including Private Auctions) | 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. | As set out in 2.2.d.1, we support broadening the scope of Change Requests to enable the resolution of contention sets. We support the conditions that the change in string would not move the applicant into another contention set and be reasonably related to the original applied-for string. The IPC agrees that 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. |

2.2 Private Resolution of Contention Sets (including Private Auctions)	2.2.e.2: 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?	The IPC supports the continuation of parties' ability to reach a private resolution and does not necessarily agree that there were "issues", although some in the working group do believe that. However, the IPC considers that, to the extent that there may be concerns about one party applying for a particular TLD in future with a view to "losing" it for financial gain, this possibility cannot be entirely eliminated, and means to disincentivise this should not be considered in isolation. A stronger Legal Rights Objection, for example, would help to reduce the risk of a Brand finding themselves in a contention set with another applicant who may be financially motivated. Greater flexibility on change requests would also assist, as referred to at 2.2.d.1.
2.2 Private Resolution of Contention Sets (including Private Auctions)	2.2.e.3: Do you agree with many Working Group members who believe that prohibitions in the Applicant Guidebook, Terms & 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?	No, see comments above.
2.2 Private Resolution of Contention Sets (including Private Auctions)	2.2.e.4: 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.	See comments above supporting the concept of parties resolving contention privately.

2.2 Private Resolution of Contention Sets (including Private Auctions)	2.2.e.5: 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?	See comments above.
2.2 Private Resolution of Contention Sets (including Private Auctions)	2.2.e.6: 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)?	We support a cost-neutral approach to determining application fees. Introducing a higher price in an attempt to deter applicants from applying for TLDs with the intent of profiting from a private resolution places the cost on good actors, i.e. applicants wishing to enter the TLD space. Furthermore, we do not believe that it really would deter those intent on profiting by losing - this would surely be viewed as the price to participate, with a view to earning potentially higher returns. However, if a higher application fee is introduced with the intent to be a deterrent, the IPC suggests offering discounted fees to community and brand applicants, and partial refunds to applicants who have strings delegated to them. These discounts or refunds could then be used in the running of the TLD. This would incentivise private resolutions that focus on joint ventures and string changes as opposed to financial payouts.
2.3 Role of Application Comment	2.3.c.1: 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.	
	· Implementation Guidance under consideration: The system used to collect application comment should better ensure that the email and name used for an account are verified in some manner.	We support improved verification of name and email in the application comment collection system. The public comment process should be transparent and not used as a mechanism to try and 'sabotage' applications.
	· Implementation Guidance: 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.	We support a filtering and/or sorting mechanism to better review a high volume of comments. We support the system allowing for the inclusion of attachments, so evidence for comments can be provided. We suggest that a form be used for collecting public comments to limit the elements of applications that can be commented on.

2.3 Role of Application Comment	2.3.c.2: 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.	We support this recommendation. Explicitly defining the role of public comments will assist with the predictability and transparency of the evaluation process.
2.3 Role of Application Comment	2.3.e.1: 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?	We support a clearly defined comment period for all types of applications. Comment periods for all types of applications should be the same time period and run concurrently. Comment periods should only be 'extended' where there is some subsequent change to an application (see 2.4 below). it seems reasonable that where there is an 'extension' comment period as a resul;t of a change, then this should run for the same length of time as the initial comment period to ensure that third parties have adequate notice and opportunity to comment.
2.3 Role of Application Comment	2.3.e.2: 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?	We support providing an opportunity for applicants to respond to comments. We recommend that after a public comment period, the applicants are given a separate window to respond to public comments (see 2.3.e.3).

2.3 Role of Application Comment	2.3.e.3: If there is a 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?	We support an additional period at the conclusion of the public comment period for applicants to respond to the comments if they wish. This provides applicants with an opportunity to respond to all comments received and mitigates the risk of negative comments being submitted last minute to prevent the applicant from responding.
2.4 Change Requests	2.4.c.1: 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.	
	· Implementation Guidance under consideration: ICANN org could seek to provide guidance on both changes that will likely be approved and changes that will likely NOT be approved.	We support this recommendation.
	· Implementation Guidance under consideration: ICANN org should also set forth the types of changes which are required to be posted for public comments and which are not.	We support this recommendation.
	· Implementation Guidance under consideration: 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.	We support this recommendation.
	· Implementation Guidance under consideration: 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.	We support allowing for a greater range of change requests in subsequent procedures to enable the resolution of contention sets.

2.4 Change Requests	2.4.d.1: 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.	We support allowing change requests to create joint ventures where applicants are in a contention set and the joint venture will resolve the contention set. We support change requests to select a different string to resolve a contention set, where the string is closely related to the original string and the purpose stated for operating the TLD.
	· Implementation Guidance: 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.	We support re-evaluation of a new entity to ensure it meets the requirements of the program. We recommend that a pre-determined cost neutral fee be paid by the joint venture when the change request is submitted, provided that ICANN Org actually incurs additional cost. For example, if there is no new individual requiring to be background checked, then there should be no additional fee applied for this purpose. This would enhance predictability of the process and allow applicants contemplating joint ventures to resolve a contention set to consider all the costs involved.
	· Implementation Guidance: 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.	We support the re-evaluation of a new string and the same criteria applying for the new proposed string, including name collision risk assessment, public comment, and objection procedures. In particular, we believe a new string should not create a new contention set or enter into an existing contention set. As with joint venture change requests, we support a pre-determined cost neutral fee be required upon submission of a string change request.

2.4 Change Requests	2.4.e.1: Section (d) above outlines possible application changes that could be allowed in subsequent procedures and corresponding implementation guidance that the Working Group is considering.	
2.4 Change Requests	2.4.e.1.1: 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?	We support allowing change requests to enable the resolution of contention sets. This report has highlighted concerns within the community about the private resolution of contention sets and potential 'gaming' of the system to gain funds through losing private auctions. Offering applicants in contention sets the opportunity to change parts of their application, so as to enable as many applicants to remain in the New gTLD Program, could disincentivise the potential for 'gaming'.
2.4 Change Requests	2.4.e.1.2: If these changes are allowed, what are the potential risks or possibilities for gaming these types of changes? How can those risks be mitigated?	There is a risk that allowing change requests to resolve contention sets will prolong the evaluation period and result in delays in delegating TLDs. However, the risk of prolonged evaluation periods from change requests for resolving contention sets should be considered against the community concerns with private and ICANN auctions, as well as the substantial time delays injected by the auction process itself. Further, allowing change requests to resolve contention sets offers applicants a non-cash based alternative to resolving contention sets.
2.4 Change Requests	2.4.e.1.3: 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?	A change of an applied-for string should not be approved where: accepting the change would result in either expanding an existing contention set or creating a new contention set.
2.4 Change Requests	2.4.e.2: What role should public comment play in determining if a change request should be granted?	The role of public comments in the New gTLD Program should be limited to the evaluation of applications, which would include the re-evaluation of part of an application where a change request has been accepted. If public comment were part of the change request approval process, the role of the public comment would function as an approval mechanism. Public comment should be limited to the evaluation of applications.

2.4 Change Requests	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?	Yes - there should be an additional criterion: "Is the change being proposed in order to resolve contention". Criterion 6, Materiality, would also need to be downgraded in such circumstances since clearly such a change request would be material.
2.5 Registrar Support for New gTLDs	2.5.d.1.1: 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.	ICANN should encourage the creation of vertically-integrated registrars to distribute names rather than designating a registrar to allocate TLDs when a registrar cannot be found to do so.