GNSO Community Comment 2 (CC2) on New gTLD Subsequent Procedures Policy Development Process

To ICANN/ GNSO Working Group on New gTLD Subsequent Procedures Policy Development Process:

I thank you for the invitation to provide a comment/input to the questions addressed in the Annex A – Work Track Subjects.

For your information I am an observer to Work Track 1 and a member of the IPC.

The comments /suggestions below are made on behalf of our company, Thomsen Trampedach, and not on behalf of the gTLD clients (open/geo/brands) we work with nor on behalf of IPC.

Please find below my comments marked with yellow.

I have tried to make them as short as possible, and am of course available for additional explanation, argumentation, should there be an interest in this.

Please note that I suggest

a. introducing 5 categories for new gTLD applications ("GEOs by City", "Non-for-Profits", "Geos by Private Entities" ".Brands," and "For-Profit TLDs")
b. reducing application fee to USD 100k and that "Geos by City" and "Brands" need only to provide letter of fund commitments (no Q45-50)
c. applications can be bundled (no limits), but must be evaluated as if all TLDs are granted.

Yours sincerely

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Annex A - Work Track Subjects Work Track 1 - Overall Process, Support, and Outreach

Context: GNSO Recommendation 7 stated, "Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out." To support this policy recommendation the Applicant Guidebook contained a number of technical and operational questions (24 – 44) designed to help ICANN evaluate the ability of the applicant to operate a Top-Level Domain (TLD) registry.

Through the evaluation process, it became evident that the answers to the technical questions supplied by the applicants were prepared by a small number of Registry Service Providers (RSP) (ICANN estimated in their Program Implementation Review that 90% of the 1,930 applications received use one of 13 technical infrastructures). Despite the answers being identical, ICANN was required to evaluate each application individually. On passing the theoretical evaluation, each registry operator was required to undertake Pre-Delegation Testing (PDT), resulting in a small group of RSPs being required to repeatedly undertake the same test for each registry operation.

The working group believes that this is an area where a number of process efficiencies could be gained by providing the applicant with a number of options to respond to the technical component of the application including the ability to select from a list of pre-approved (or accredited) RSPs. This approach would also provide applicants with a level of comfort in their choice of RSP and may also enhance the security and stability of the Domain Name System (DNS) by requiring minimum standards for redundancy, capacity, monitoring, reaction time

to threats, reporting and statistical process controls. Pre-approvals could possibly enhance competition and choice in the RSP market and allow for increased diversity for new RSPs in developing areas that meet well-defined criteria to become an RSP and could allow for a more streamlined process for registries switching from one RSP to another. On the other hand, if the bar for approval was set too high, it could diminish competition and choice in the RSP market by creating approval/accreditation barriers to entry and favoring the current group of RSPs over new entrants. Some have also said that in setting minimum technical requirements, it creates a 'race to the bottom' in terms of technical capabilities.

As currently envisioned by the WG, such a program would be on a voluntary basis and would not

preclude the approval of a Registry Operator's acting as its own RSP or the approval of additional new RSPs.

1.1.1 - Benefits and risks have been identified by the WG as provided above in the Context section. What additional benefits or risks do you see in implementing such a program? Are there other considerations that need to be considered. COMMENT: As the goal of such an "accreditation of RSPs" mechanism seems to be to lower costs for applicants and to decrease the administrative burden of applying for a new gTLD, as well as to grant applicants a certainty that their application will pass the evaluation, I recommend simply to allow for applicants to request that their applications (in case they have more than one) be evaluated in one work stream (if all are with same RSPs). ICANN should grant a significant discount in application fees in such cases. In the application guidebook (or similar guidance in the next application phase) ICANN could link to a list of current RSP providers. Then the applicant would of course still risk that an RSP currently operating a new gTLD would not qualify in the next round, however the risk of a "race to the bottom" or the risk

1.1.2 - If an RSP program is established for new gTLDs, do you have any suggestions for some of the details or requirements of the program? For instance, how would the scalability of the RSP be measured across a variable numbers of registries?1.1.3 - Who should be responsible for evaluating whether an RSP meets the requirements of the program?1.1.4 - Should there be any continuing obligations for approved RSPs, such as high-level requirements for accreditation? Should the requirements be variable based on the types of TLDs the RSP intends to serve or other factors? Please explain.1.1.5 - Should there be an Agreement between an RSP and ICANN? If so, what enforcement mechanisms should be made available to ICANN in the event that such an Agreement is breached?1.1.6 - What, if any, are the potential impacts (both positive and negative) of an RSP Program on ICANN-Accredited Registrars? If there are any negative impacts, what are ways in which those impacts can be mitigated?1.1.7 - Should there be a process to reassess RSPs on a periodic basis? If so, how often should an assessment be conducted and what would the process be for a re-approval?1.1.8 - If there is an RSP Program, how far in advance should such a Program be launched prior to the opening of the next application window?1.1.9 - Should there be an RSP application "cut-off" date to allow sufficient time for an RSP seeking approval to receive approval in order for their application to be approved before the opening of an application window?1.1.10 - If there is a list of pre-approved RSPs in any RSP Program, should there be a provision granted to organizations that act as an RSP to an existing delegated TLD? If yes, how would such a provision work? If not, could ICANN use an RSP's existing performance to satisfy any of the technical requirements and/or tests used in the approval process?1.1.11 - If an RSP program is established, how should it be funded? For instance,

should registries pay into the program which will reduce related ICANN evaluation fees (and associated application fees)?

<mark>COMMENT: All these questions just illustrate in my view, why such a program (Accreditation of RSPs) create more complexity and problems than it solves. Thus again, the recommendation is that ICANN simply offers bundled application fees at lower costs and help applicants find an RSP (new RSPs could also be added to such a list). Then the free competition amongst "current" and new RSPs would determine pricing for RSP services. Generally, ICANN is expected and recommended to reduce application fees, as they must have learned from the 2012 rounds, and thus must be expected to carry out evaluation at lower costs without impacting quality of the evaluation panels.</mark>

1.2 Applicant Support (Wiki page: https://community.icann.org/x/NT2AAw)

1.2.1 - Some have suggested it could be beneficial to expand the scope of the Applicant Support (AS) program by:

1.   Broadening support to IDNs or other criteria

2.   Allowing the Applicant Support program to include the "middle applicant", defined as struggling regions that are further along in their development compared to underserved or underdeveloped regions. The "middle applicant" is intended to be an expansion and NOT intended to be at the exclusion from applicants in underserved or underdeveloped regions. The "middle applicant" provides a balance between opportunities while considering the economic

and developmental realities and priorities for potential applicants. Do you believe there is value in the above suggestions? Do you feel there are other areas in which the Applicant Support program could be extended to benefit other regions?

COMMENT: Am against a Middle Man solution (if understood correctly). Instead, ICANN should allocate funds from the profits from the 2012 round. Then "industry experts" and RSPs etc. should be able to assist applicants from such regions to apply for funding for application writing, application fees, SLA fees and Operational costs (RSPs, WHOIS Escrow, Anti Abuse Monitoring Software etc.)

1.2.2 - The Applicant Support Program for the 2012 round was mainly focused on financial support and application submission. Should funding be extended to other areas of the process or for ongoing operational costs? Are there other support mechanisms that should be explored?1.2.3 - Do you have any suggestions for improving publicity and outreach to potential applicants who would benefit from the Applicant Support program? Do you have any suggestions on how to improve the process to apply for support? COMMENT: Engage with ccNSO/GAC Members/ALAC on how to create awareness /education in such regions. Allocate funds from profit from 2012 round. Create an ICANN department/team who can (phone) answer (in multiple languages) questions related to applying for/operating new gTLDs.

1.2.4 - The WG has noted that even if the Applicant Support program is well-funded, well-communicated and comprehensively implemented, potential applicants may still choose not to apply for a gTLD. What other metrics could be used to evaluate the success of Applicant Support initiatives beyond the volume of applications? A study conducted by AMGlobal Consulting, 'New gTLDs and the Global South' determined that there was limited awareness of the New gTLD Program and the benefits in applying amongst potential applicants; Would additional metrics on future Applicant Support program(s) and its ability to raise awareness be helpful? Do you have any other metrics that would be helpful measuring the success of the program? COMMENT: Identify Number of domain names registered in "regional" new gTLDs compared with the number of internet users in such regions and then compare with same numbers in regions like Europe and North America.

1.2.5 - Do you have any other general recommendations for improving the Applicant Support program?

1.3 Clarity of Application Process (Wiki page: https://community.icann.org/x/JT2AAw)

1.3.1 - The WG noted that there were a number of changes to the gTLD program after the release of the Applicant Guidebook, including the processes for change requests, customer support, application prioritization, Registry Agreement, etc. Many applicants have stated that the changes impacted their TLD applications throughout the application process both before submission and after the applications were submitted resulting in confusion, additional work and overall dissatisfaction. For instance, the final version of the Applicant Guidebook was released in June of 2012, which was nearly half a year after the application submission period started. Another example would be the difficulty in reaching a common understanding on the requirements for procuring a Continuing Operations Instrument (COI). How should changes to the Applicant Guidebook and/or the new gTLD Program be handled in subsequent application windows?

1.4 Application Fees (Wiki page: https://community.icann.org/x/LT2AAw)

1.4.1 - The application fee of $185,000 USD for the 2012 round of the New gTLD Program was established on the principle of breaking even whereby the program's total revenues are equal to all related expenses. In addition, the fee should ensure the program is fully funded and not subsidized by any other sources of revenue. Should another mechanism be considered? For example, cost plus reasonable return, fixed plus variable, volume discounts, or other?1.4.2 - Although the 2012 round is not complete, there is currently a surplus of fees collected relative to costs incurred. As such, do you believe that the principle of breaking even was implemented effectively? Do you believe $185,000 was a reasonable fee? Is it still a reasonable fee? Should the basic structure of

the application fee (e.g., approximately one third of the fee was allocated for (i) the cost recovery of historical development costs, (ii) operations and (iii) legal and other contingencies) be reassessed or restructured? Is it too early to make this assessment? With the experience gained from the 2012 round, do you think that a break-even model can be more accurately implemented for future applications? Do you have suggestions on how to minimize any surpluses or shortfalls?

COMMENT: Break Even is the natural goal (as ICANN is non-for profit). Budget conservatively (set application fees a bit higher than what is expected to be needed) and let the WG, currently making recommendations for allocation of surplus of 2012 round, decide, how surplus of the next round would be allocated.

Application fees should be reduced (ICANN must have learned from 2012 round – across all Q1-Q50 questions) but no lower than 100k USD to avoid for a new gTLD becoming a commodity and "no risk" type of investment.

COI is not needed at all. It causes unreasonable burdens for non-US applicants and solves only very small issues. Instead a fraction of the application fees can pay for the EBERO program.

1.4.3 - Should the concept of break-even be strictly adhered to or should other aspects be considered? Some WG members have noted concerns about the responsibility required to run a registry which could be negatively impacted by a fee that is "too low." Others have noted that the fee is potentially too high and could create barriers to entry in some underserved regions. As such, should there be a cost floor (minimum) or cost ceiling (maximum) threshold that the application fee should not go below/above despite costs estimates? If so, do you have suggestions in how the cost floor and ceiling amounts should be set?

COMMENT: 100k USD

1.4.4 - If there is a price floor, how should the excess funds resulting

from floor costs less the actual costs be justified? Conversely, how would shortages be recovered if the ceiling costs are below actual costs?

COMMENTS: with 100k USD there will not costs to be covered – rather, surplus for next round outreach and compliance activities will be generated. There will always be a risk of loss and surplus. That is also the case with USD 185000. Should ICANN get unforeseen costs beyond the 100k USD per application, ICANN should be allowed to increase the SLA fees for all Legacy/round 2012/subsequent round TLDs to recover.

1.4.5 - Should the WG seek to establish more clarity in how the excess or deficiency of funds are utilized/recovered? If so, do you have any suggestions for establishing that clarity?

1.5 Variable Fees (Wiki page: https://community.icann.org/x/Oz2AAw)

1.5.1 - Should the New gTLD application fee vary depending on the type of application? For instance, open versus closed registries, multiple identical applications or other factors? The 2012 round had "one fee fits all," and there seems to be support within the WG for continuing that approach provided that the variance between the different types of applications is not significantly different - do you agree? If not, how much of a variance would be required in order to change your support for a one fee for any type of application approach?

COMMENT: Volume discount (10-20%) should be offered to applicants with multiple applications (easier to evaluate Q23-Q44).

Finance Q45-50 – should be evaluated on the basis that all applications pass. This can be complicated, so no discount offered here.

Any entity listed on a stock exchange (regardless of country), should not go through criminal background check, nor provide private address information from directors/ board members. Such entities are already being screened by local authorities.

If the application is for a spec 13 gTLD (.BRAND) the should be a reduced application fee, as evaluation of Q45-50 is irrelevant, since there is no public interest risk should a spec 13 gTLD go bankrupt and terminate its Registry Agreement. NOTE, Spec 13 gTLD should then be blocked from changing registration policy (from opening the TLD) to avoid "gaming" the system.

1.5.2 - The WG believes costing information on the different types of applications should be attained and evaluated once the different types of applications are defined. What are the implications of having different costs by type of application and how could they impact future budgeting efforts? How could they impact competition and choice?1.5.3 - Should the application fee be variable based on the volume of applications received from a single applicant? If so, how should the fee be adjusted and what are the potential impacts from doing so?

COMMENT: See comment above AND if categories are defined – I suggest these five categories.

1. Geo TLD operated and sponsored by State/Region/Province/Municipality (Lower costs as Q45-50 is irrelevant)

2. Not for Profit TLDs (substituting the "community TLDs") Annual reports to be sent to ICANN for audit – OR national authorities to approve the annual report (and sent to ICANN) to allow for continued operation of TLDs. NOTE Not for Profits should pay reduced SLA fees to ICANN AND be able to apply for financial support from surplus (like "less represented" region applicants") to promote diversity in the new gTLD space.

3. Geo TLD operated by private entity "for profit" (Still based on letter of support/non-objection).

4. Spec 13 .BRANDs TLDs (with TMs in TMCH prior to publication of next "Applicant Guidebook" and timeline for application window (at least 8 Months before the opening of the next window). Exemption of Code of Conduct TLDs (primarily, .brands with no TM in TMCH) are

also in Category 4.

5. For profit TLDs("equivalent to standard application in 2012) "For profit TLDs" can be open, nexus-based or "restricted/verification TLDs"

In case of contention: the lowest number of category is granted the TLD.

If two applicants apply for identical string in the same category, same contention set resolution process (eventually ICANN Auction) as in round 2012 should apply. NOTE applicants/operators are NOT allowed to change registration policy, once delegated. (Or maybe after a public comment period, but should be difficult to avoid "gaming" the categories to gain an advantage.

1.6 Application Submission Period (Wiki page: https://community.icann.org/x/Mz2AAw)

1.6.1 - One of the overarching questions in Community Comment 1 focused on whether applications should be accepted during defined windows of time (also known as "rounds"). If the WG determines that a system of rounds is the right approach, is three (3) months an appropriate length of time to accept applications? What considerations should be taken into account when determining the length of the application window?

COMMENT: 4 (four) months is sufficient, provided ICANN announces the opening of the application window at least 8 (eight) months in advance AND, if ICANN promises to launch a new round with current rules (or new rules if implemented) every two years! Two years gives time to resolve contention sets etc. And a two year period is not so far out in the horizon that applicants will apply out of a fear of missing out and having to wait another 7-10 years before being able to apply again.

1.6.2 - If we have a few next 'rounds' followed by a continuous

application process, how should the application submission period be handled in the lead-up rounds?

<mark>COMMENTS: Applicants in the next round (regardless whether delegated or not) have priority over additional/subsequent round applicants.</mark>

1.6.3 - Do you think the length of the submission period will impact Applicant Support and what factors do you think should be considered in determining an appropriate length of time?

<mark>COMMENT: Yes four months is sufficient if an 8 months prior announcement is made. AS LONG AS A NEW ROUND IS GUARANTEED at the latest two years later.</mark>

<mark>The proposed five categories with less burdens on COI Financing/Q45-50 for .brands and "Geos by Public Authorities" will enable applicants to submit application documents within 4 months.</mark>

<mark>An educational video by ICANN would also enable other applicants to submit applications within four months. Maybe showcase good applications (anonymized) from the 2012 round?</mark>

1.7 Application Queuing (Wiki page: https://community.icann.org/x/MT2AAw)

1.7.1 – The WG believes that the process for establishing the evaluation processing order for applications should be similar to the prioritization draw from the 2012 round. This is, in fact contrary to the first submitted first processed/evaluated guidance provided in the 2007 Final Report. Do you agree that a process similar to the prioritization draw should be used in the future? If rounds are not used, would this method still be appropriate? Would a prioritization draw, or similar method, work for a continuous application period or would it be better to base processing/evaluation on order of receipt? 1.7.2 - Should certain

subgroups of applicants/application types be prioritized over others? For instance, from the 2012 prioritization draw, IDNs were moved to the front of the queue for application processing. If you think IDNs or some other category of applications (e.g., Brands, communities, etc.) should be prioritized, do you have suggestions on how to determine the prioritization?

COMMENT: Prioritization Draw is fair and works. Priority should be given to Category 1 and 2 applications; "GEOs by public authority TLDs" and "non-for profit TLDs"

Priority should not be granted to IDNs as those can be from Europe/North America (or .Brands) And not to specific Regions (this can easily be gamed by setting up a local company).

1.8 Systems (Wiki page: https://community.icann.org/x/Kz2AAw)

1.8.1 - The WG considers this subject to be mainly implementation focused, but nevertheless, has identified areas for improvement. For instance, security and stability should be improved, more robust user testing (e.g., potential applicants) should be incorporated, systems should be better integrated, adequate time for system development should be afforded, etc. Do you have suggestions on additional areas for improvement?1.8.2 - The WG also noted that ICANN should expand its system capabilities to include the ability to send invoices to organizations who require documentation in order to process payments for any fees related to their application. Do you agree that this would be beneficial?

COMMENT: Yes, of course.

1.9 Communications (Wiki page: https://community.icann.org/x/Lz2AAw)

1.9.1 - The WG considers this subject to be mainly implementation focused, but nevertheless, has identified areas for improvement. For instance, the knowledge base could be made more timely and

searchable, applicant advisories could be better communicated (e.g., create some sort of subscription service), program information could be consolidated into a single site, ICANN's Global Stakeholder Engagement team could be leveraged to promote global awareness, etc. Do you have suggestions on additional areas for improvement?

COMMMENT: Make a video explaining what it takes and which data to provide – inform about degree of detail needed – and explain responsibility, challenges and benefits. Needless to say in as many languages as possible.

1.9.2 - Metrics to understand the level of success for communications were not established - do you have suggestions on what success looks like?

1.10 Applicant Guidebook (Wiki page: https://community.icann.org/x/Iz2AAw)1.10.1 - The Applicant Guidebook served as the roadmap for applicants, but also all other participants to

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the program. As such, there is a mixture of historical and practical information, some of which is relevant to only certain parties. Do you think it makes sense to partition the Applicant Guidebook into different audience-driven sections or by type of application?

COMMENTS: Both suggestions make perfect sense. See suggestion for categories of TLDs above

Work Track 2 - Legal, Regulatory, and Contractual Requirements

2.1 Base Registry Agreement (https://community.icann.org/x/Pz2AAw)

2.1.1 - The question of whether or not a single Registry Agreement is suitable is tied into the subject of different TLD categories. Throughout the working group's discussions, there has been support for a model similar to what is currently in place: a single Registry Agreement with exemptions that allow for TLDs with different operational models (e.g., Specification 13 for Brand TLDs or Specification 12 for Community TLDs). There is also support for different Registry Agreements for different TLD categories, centered around a common, core base set of contractual requirements. Which of these models do you think would be most effective for recognizing the different operational requirements of different TLDs? Which of these models do you think would be most efficient in terms of development, implementation, and operational execution (e.g., contracting, contractual compliance, etc.)? Do you think there are any alternative options that could effectively facilitate TLDs with different operational requirements?

COMMENT: I suggest a common core agreement and then category (see five suggested categories above) specific sections. NOTE should not be possible to change category, once delegated.(Or at least very difficult to do so).

2.1.2 - Should further restrictions pertaining to sunrise periods, landrush, or other registry activities be developed? If so, do you have suggestions on attributes of these restrictions? Should they be incorporated into the base agreement? Should there be any restrictions established on registry pricing? 2.1.3 - Should the entire application be incorporated into the signed Registry Agreement? Should portions of the application, explicitly identified, be incorporated into the signed Registry Agreement? If changes are made between applying and executing the Registry Agreement, how should this be handled? If changes are made after executing the Registry Agreement, how should this be handled? If changes like these are contemplated, how can the needs of the community to properly consider the contents of an application be weighed against an applicant's need to make either minor adjustments or fundamental changes to their registry?

2.2 Reserved Names (Wiki page:
https://community.icann.org/x/PT2AAw)

2.2.1 - Do you believe any changes are needed to the String Requirements at the top level as defined in section 2.2.1.3.2 of the Applicant Guidebook (https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf)? Please explain.2.2.2 - Do you believe any changes are needed to the list of Reserved Names at the top level as defined in section 2.2.1.2.1 of the Applicant Guidebook (https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf? Please explain.

2.2.3 - Special Use Domain NamesContext: Internet Engineering Task Force (IETF) RFC 6761 (https://tools.ietf.org/html/rfc6761) was issued after publication of the Applicant Guidebook. The RFC describes what it means to say that a domain name is reserved for special use by the IETF, when reserving such a name is appropriate, and the

procedure for doing so. It establishes an IANA registry for such domain names, and seeds it with entries for some of the already established special domain names. As a result of the RFC, ICANN must not assign Special Use Domain Names to any third-party registry.

For example, the IETF recently approved .onion as a Special Use Domain Name and IANA added .onion to use Special-Use Domain Name registry (See http://www.iana.org/assignments/special-use-domain-names/special-use-domain-names.xhtml#special -use-domain), thereby ensuring that ICANN could not delegate .onion as a gTLD in the future.

Do you think Special Use Domain Names should be added to the Applicant Guidebook section on reserved names at the top level to prevent applicants applying for such labels?2.2.4 - Specification 5 of the Registry Agreement allows the Registry Operator to reserve and use up to 100 names at the second level for the operation and/or promotion of the TLD. In addition, the Registry Operator is permitted to reserve an unlimited amount of other domain names which may only be released through an ICANN-Accredited Registrar for registration by third parties. Do you believe that any changes are needed to a Registry Operator's right to reserve domain name? If yes, what changes are needed and why? If not, why not?

COMMENT: 100 domains for promotional needs are sufficient.

There should be a cap of 5000 Domains (including IDNs) for reserved names, to avoid that registry operators de facto can decide who gets each domain name at what price by operating an unlimited reserved/premium name list. In the 2012 round we saw TLDs with more than 240.000 "reserved/Premium domain names". When entering an RA with ICANN one is primarily enhancing the name space to allow registrants to make use of this opportunity (enhanced competition, innovation, diversity), and not to be given a "portfolio of attractive domain names for sale to third parties. If a TLD is not viable without premium names profits, then do not apply.

2.3 Registrant Protections (Wiki page: https://community.icann.org/x/QT2AAw)

2.3.1 - ICANN has included the following programs to protect registrants: an Emergency Back-End Registry Operator (EBERO), Continued Operations Instrument (COI), Data Escrow requirements,

and Registry Performance Specifications in Specification 10 of the base registry agreement? Such programs are required regardless of the type of TLD. Are there any types of registries that should be exempt from such programs? If so, why? Do the above programs still serve their intended purposes? What changes, if any, might be needed to these programs if an RSP pre-approval program, discussed in section 1.1.1., were to be developed?

Comment: Am against RSP Pre-approval Program (See comments above). Generally, I see no need for COI. Let the surplus cover or increase SLA for all other TLDs if funds are needed. (See comment above)

2.3.2 - In the working group discussions, it became clear that the EBERO funding model requires review and potential modification. The current COI model is one that has proven to be difficult to implement for many registries, ICANN and even financial institutions. Are there other mechanisms of funding EBERO providers other than through Letters of Credit and/or other Continuing Operations Instruments?

COMMENT: Consider charging 5000 USD in start up SLA – and let ICANN use that money to pay EBERO providers). Then you only contribute (have costs), if delegated. The COI causes too many problems for non US Applicants (non US bank clients that is).

2.3.3 - ICANN staff, in its Program Implementation Review Report, identified a number of challenges in performing background screening, particularly because there were many different types of entities to screen (e.g., ranging from top twenty five exchanges to newly formed entities with no operating history) and because it is difficult to access information to conduct background screenings in some jurisdictions/countries. Do you think that the criteria, requirements, and/or the extent to which background screenings are carried out require any modifications? Should there be any additional criteria added to future background screenings? For example, should the previous breach by the Registry Operator, and/or any of its affiliates of a Registry Agreement or Registrar Accreditation Agreement be grounds for ICANN to reject a subsequent application for a TLD by

that same entity and/or its affiliates? Why or why not? What other modifications would you suggest? Should background screening be performed at application time or just before contract-signing time? Or at both times? Please explain.

COMMENT: Suggest that GEO TLDs (run by public authorities) and ANY applicant listed on any stock exchange do not go through criminal background checks, as public authorities already do that.

Also, remove (or do enforce) any reference to number of lost UDRPs or similar, as according to various blogs (shold be checked) large and small applicants /RSPs in the 2012 rounds were actually not qualified!

2.4 Closed Generics (Wiki page: https://community.icann.org/x/UT2AAw)

2.4.1 - In the 2012 round, the operation of a TLD where the string was considered "generic" could not be closed to only the Registry Operator and/or its Affiliates. Originating from GAC Advice on the subject, this rule was promulgated by ICANN's New gTLD Program Committee of the ICANN Board, but was never adopted as a policy by the GNSO. This rule was subject to public comment and input from the community. Should this rule be enforced for subsequent application windows? Why or why not?

COMMENT: No, it is hard, if not impossible to find a cross language definition of a generic Term. However, if applied for a closed string (as Spec 13 or exemption of code of conduct) , it should not be allowed to open later. (Change policy).

2.4.2 - Do you have suggestions on how to define "generic" in the context of new gTLDs? A "generic string" is currently defined in the Registry Agreement under Specification 11.3.d as meaning, "a string consisting of a word or term that denominates or describes a general class of goods, services, group, organization or things, as opposed to

distinguishing a specific brand of goods, services, groups, organizations or things from those of others." Are any modifications needed to the definition? If so, what changes? If the exclusion of closed generic TLDs is to be maintained, are there any circumstances in which an exemption to the rule should be granted?

2.5 Applicant Terms and Conditions

2.5.1 - The following language appears in Section 3 of the Applicant Terms and Conditions:

"Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant."

Do you believe that this paragraph gives ICANN an absolute right to reject any application for any reason including a reason that contradicts the Applicant Guidebook, or any law or policy? If yes, should such an unrestricted right appear in any modifications to the Guidebook? If no, please list the other documents that you believe should be read in conjunction with this paragraph, e.g. GNSO Policy on new gTLDs, ICANN Bylaws, other portions of the Guidebook, California implied covenant of good faith and fair dealing, etc.

Comment: ICANN should never have the right to stop processing an application, unless an application is disqualified according to rules set in the guidebook, including contention set resolution mechanisms.

2.5.2 - According to Section 6 of the Applicant Terms and Conditions, the "covenant not to sue ICANN", an applicant foregoes any right to sue ICANN once an application is submitted for any reason. Currently, an applicant can only appeal an ICANN decision through the accountability mechanisms, which have a limited ability to address the substance of the ICANN decision. If ICANN had an effective appeals process ((as asked about in Question 3.5.2 below) for an applicant to challenge the decisions of the ICANN staff , board and/or any entities delegated decision making authority over the assignment, contracting and delegation of new gTLDs, would a covenant not to sue be more acceptable? Please explain.

2.5.3 - According to Section 14 of the Applicant Terms and Conditions, ICANN has the ability to make changes to the Applicant Guidebook. One task of this Working Group is to address the issue of predictability in future rounds, including with respect to the AGB. Do you think that ICANN should be

limited in its ability to make changes to the Applicant Guidebook after an application procedure has been initiated? Please explain.2.5.4 - Do you believe that any changes are needed in the Terms & Conditions in Module 6 of the Applicant Guidebook? If so, what are those changes and what is the basis or rationale for needing to do so?

COMMENT: Yes, ICANN should be allowed to make changes – BUT applicants have to be informed about this risk VERY CLEARLY before applying.

The ICANN community may discover a need to update the requirements (new type of security threat or whatever) across all gTLDs. That said, ICANN (and the GAC) should please minimize such changes…AND new rounds should open every two years (if not every year) based on current rules/policies.

2.6 Registrar Non Discrimination & Registry / Registrar Separation (Wiki page: https://community.icann.org/x/RT2AAw)

2.6.1 - The Working Group has not yet deliberated the issues of Registrar Non-discrimination or Registry/Registrar Separation (also known as Vertical Integration). However, now that we have several years of operations of vertically integrated registries and registrars, what issues, if any, have you noticed with vertically integrated Registries?2.6.2 - Specification 13 grants an exception to the Registry Code of Conduct (i.e., Specification 9 in the Registry Agreement) and specifically from the vertical integration restrictions. In addition, Registry Operators may seek an exemption from the Code of Conduct if the TLD string is not a generic term and if it meets three (3) other specified criteria set forth in Specification 9 of the Registry Agreement. Are there any other circumstances where exemptions to the Code of Conduct should be granted?2.6.3 - Some have argued that although we allow Registries to serve as both as a registry and as a registrar, the rules contained within section 2.9 of the Registry Agreement and in the Code of Conduct prohibit the integrated registry/registrar from achieving the economic efficiencies of such integration by not allowing a registry to discriminate in favor of its own registrar. Do those arguments have merit? If yes, what can be done to address those claimed inefficiencies? If not, please explain. What safeguards might be required?

COMMENT: .BRANDs (spec 13) and any "single registrant" TLD (Exemption of Code of Conduct) should be allowed to register without using a registrar. Otherwise keep "Vertical Separation"(It is tedious for some, but still is a good reminder/regulator for non-discrimination of registrars).

2.7 TLD Rollout (Wiki page: https://community.icann.org/x/Rz2AAw)

2.7.1 The Applicant Guidebook specified timelines by which applicants had to complete the contracting (9months) and delegation (12months) steps of the process. However,this requirement only means that the contract needs to be executed and nic.TLD be delegated. Are these timeframes reasonable? Is there still a need for these requirements? Please explain.

2.8 Contractual Compliance (Wiki page: https://community.icann.org/x/Qz2AAw)

2.8.1 - Noting that the role of Contractual Compliance is to enforce the registry agreement and any changes to that role are beyond the scope of this PDP, the WG is not anticipating policy development related to this topic. The WG expects that any new contractual requirements would be made enforceable by inclusion in the base agreement. Do you agree with this approach?

2.9 Global Public Interest (Wiki page: https://community.icann.org/x/TT2AAw)

2.9.1 - The Final Issue Report suggested that in considering the public interest the WG think about concerns raised in GAC Advice on safeguards, the integration of Public Interest Commitments (PICs), and other questions around contractual commitments. Have PICs served their intended purpose? If not, what other mechanisms should be employed to serve the public interest? Please explain and provide

supporting documentation to the extent possible.

Work Track 3 - String Contention Objections and Disputes

3.1 Objections (Wiki page: https://community.icann.org/x/Vz2AAw)

3.1.1 - Do you think that the policy recommendations (Recommendations 2, 3, 6, and 20) require any modifications? If so, what would you suggest?3.1.2 - Do you believe that those recommendations (which led to the establishment of the String Confusion, Legal Rights, Limited Public Interest, and Community

Objections grounds) were implemented effectively and in the spirit of the original policy recommendations? If no, please provide examples. COMMENT: Legal Objection: Applications should be binding (including Q18), so that one can not describe intended use in the application and still win a legal rights objection case based on the argument that the domain name is not yet in use…

String confusion: in case of multiple applicants for same string, cases should be consolidated.

ALL TLDs should list the language(s) they approach. Singular and Plurals should not be allowed in those languages targeted by the TLD operator(applicant) (and this includes already delegated/applied for strings from previous rounds – "old TLDs" would have to add the languages they target. So .HOTEL would have to list all the languages they would like to "protect" from .HOTELS. (Know this is too late in this example). But for instance plural of .HOTEL in Danish is not HOTELS but "HOTELLER" and so forth. Each TLD could be allowed to define a maximum of three languages.

CPE – to be deleted – not needed if five new categories as suggested above.

O3.1.3 - Do you believe there were any issues with standing requirements as defined in the Applicant Guidebook (AGB), or as carried out by the providers? Please explain.

3.1.4 - Do you believe there is evidence of decisions made by objection dispute panels that were inconsistent with other similar objections, the original policy recommendations, and/or the AGB? Please explain.3.1.5 - Are you aware of any instances where any party or parties attempted to 'game' the Objection procedures in the 2012 round? If so, please provide examples and any evidence you may have available. 3.1.6 - Do you believe that the use of an Independent Objector (IO) is warranted in future application processes? If not, then why? If yes, then would you propose any restrictions or modifications be placed on the IO in future rounds?3.1.7 - Do you believe that parties to disputes should be able to choose between 1 and 3 member panels and should the costs of

objections reflect that choice?3.1.8. - Is clearer guidance needed in regards to consolidation of objections? Please explain.3.1.9 - Many community members have highlighted the high costs of objections. Do you believe that the costs of objections created a negative impact on their usage? If so, do you have suggestions for improving this issue? Are there issues beyond cost that might impact access, by various parties, to objections?3.1.10 - Do you feel that GAC Early Warnings were helpful in identifying potential concerns with applications? Do you have suggestions on how to mitigate concerns identified in GAC Early Warnings? 3.1.11 - What improvements and clarifications should be made to GAC Advice procedures? What mitigation mechanisms are needed to respond to GAC Advice? How can timelines be made more precise?

3.2 New gTLD Applicant Freedom of Expression (Wiki page: https://community.icann.org/x/Uz2AAw)

3.2.1 Noting that the 2007 Final Report on new gTLDs tried to balance the rights of applicants (e.g., Principle G) and rights holders (Recommendation 3), do you believe that the program was successful in doing so? If not, do you have examples of where either an applicant's freedom of expression or a person or entity's legal rights were infringed?

3.3 Community Applications and Community Priority Evaluations (Wiki page: https://community.icann.org/x/Wz2AAw)

3.3.1 - As indicated in the Implementation Guidance of the 2007 Final Report, the claim by an applicant to support a community was intended to be taken on trust unless the applied-for TLD is in contention with one or more TLDs or is the respondent in an objection. As a result, the claim to support a community was only evaluated in Community Priority Evaluation (CPE) and Community Objections. Do you believe that the implementation and delivery of CPE were consistent with the policy recommendations and implementation guidance provided by the

GNSO? If no, do you have suggested improvements to either the policy/implementation guidance or implementation?

<mark>COMMENT: These considerations support the suggestion to delete the community type application altogether.</mark>

3.3.2 There is a general sentiment amongst many in the community that the CPE process did not provide consistency and predictability in the 2012 round. Do you believe this was the case and if so, do you have examples or evidence of these issues?3.3.3 - CPE was the one instance in the New gTLD Program where there was an element of a comparative evaluation and as such, there were inherently winners and losers created. Do you believe there is a need for community priority, or a similar mechanism, in subsequent procedures? Do you believe that it can be designed in such a fashion as to produce results that are predictable, consistent, and acceptable to all parties to CPE? The GNSO policy recommendations left the issue of a method for resolving contention for community claimed names to Board and the implementation. Do you believe that a priority evaluation is the right way to handle name contention with community applicants? Should different options be explored? If so which options should be explored and why?

3.3.4 - Were the rights of communities (e.g., freedom of expression, freedom of association, freedom of religion, and principle of non-discrimination) infringed by the New gTLD Program? Please provide specific examples.3.3.5 - Besides CPE, are there other aspects of the New gTLD Program related to communities that should be considered in a more holistic fashion? For instance, in the 2012 round, the claim to support a community is largely only relevant when resolving string contention. Do you think community applications should be structured and/or evaluated differently than other applications?

3.4 String Similarity (Evaluations) (Wiki page: https://community.icann.org/x/VT2AAw)

3.4.1 - There was a perception that consistency and predictability of the string similarity evaluation needs to be improved. Do you have

examples or evidence of issues? If so, do you have suggested changes to the policy recommendations or implementation that may lead to improvement? For instance, should the standard of string confusion that the evaluation panel used be updated or refined in any way?

3.4.2 - Should the approach for string similarity in gTLDs be harmonized with the way in which they are handled in ccTLDs (ccNSO IDN ccTLD Fast Track Process is described here: https://www.icann.org/resources/pages/fast-track-2012-02-25-en)?3.4.3 - The WG and the wider community have raised concerns specifically related to singles and plurals of the same word. Do you have suggestions on how to develop guidance on singles and plurals that will

lead to predictable outcomes? Would providing for more predictability of outcomes unfairly prejudice the rights of applicants or others?3.4.4 - Do you believe that there should be some sort of mechanism to allow for a change of applied-for TLD when it is determined to be in contention with one or more other strings? If so, do you have suggestions on a workable mechanism?

3.4.5 - Do you feel that the contention resolution mechanisms from the 2012 round (i.e., CPE and last-resort auctions) met the needs of the community in a sufficient manner? Please explain.3.4.6 – Do you believe that private auctions (i.e., NOT the auctions of last resort provided by ICANN) resulted in any harm? Could they lead to speculative applications seeking to participate in a private auction in future application processes? Should they be allowed or otherwise restricted in the future?

3.5 Accountability Mechanisms (Wiki page: https://community.icann.org/x/WT2AAw)

3.5.1 – Do you believe that the existing accountability mechanisms (Request for Reconsideration, Independent Review Process, and the Ombudsman) are adequate avenues to address issues encountered in the

New gTLD Program?3.5.2 – Should there be appeal mechanisms, specific to the New gTLD Program, introduced into the program? If yes, for what areas of the program (e.g., evaluations, objections, CPE)? Do you have suggestions for high-level requirements (e.g., if the appeal should be limited to procedural and/or substantive issues, who conducts the review, who is the final arbiter, safeguards against abuse, etc.).

Work Track 4 - Internationalized Domains Names and Technical & Operations

4.1 Internationalized Domain Names (Wiki page: https://community.icann.org/x/XT2AAw)

4.1.1 - Do you agree or disagree with allowing 1-char IDN TLDs, in specific combinations of scripts and languages where a single character can mean a whole idea or a whole word (ideograms or ideographs)?

4.1.2 - Do you have any general guidance or would you like to flag an issue requiring policy work for subsequent procedures regarding IDNs?

4.1.3 - How do you envision the policy and process to allow IDN Variant TLDs to be delegated and operated? Possible options include but are not limited to bundling (allowing but requiring procedures similar to .ngo/.ong where only the same registrant can register a name across TLDs), disallowing (as it was in the 2012-round) or allowing without restrictions. Must there be a solution established prior to launching subsequent procedures?

COMMENT: GEO TLDs should be allowed to bundle TLDs with Variants AND different ways to write i.e. a city name in relevant languages. So for instance .GENEVA should also be allowed to be bundled with .GENF and .København with .COPENHAGEN. If one domain name is registered in .GENF the same registrants also registers

==.GENEVA – this would cause no consumer confusion.==

4.1.4 - Should the process of allowing 1-char IDN TLDs and IDN Variant TLDs be coordinated and/or harmonized with ccTLDs? If so, to what extent?

4.2 Universal Acceptance (UA) (Wiki page: https://community.icann.org/x/XT2AAw)

4.2.1 - Do you see any UA issue that would warrant policy development work, noting that there is extensive coordination work already being done by the Universal Acceptance Steering Group (https://uasg.tech/) ?

4.3 Application Evaluation (Wiki page: https://community.icann.org/x/YT2AAw)

4.3.1 Technical Evaluation4.3.1.1 - Do you believe that technical capability should be demonstrated at application time, or could be demonstrated at, or just before, contract-signing time? Or at both times? Please explain.

==COMMENT: Technical Capability should be demonstrated at application and part of evaluation time. (Then PDT queuing will not be needed later. Applications on same platform need only one test (unless IDNs are also included at top level).==

4.3.1.2 - Do you believe that technical evaluation should be done per application, per cluster of similar technical infrastructure of a single applicant entity/group, or per cluster of similar infrastructure among all applicants in a procedure (e.g, consolidate as much as possible)?4.3.1.2.1 - If consolidated, should the aggregate requirements of applied-for TLDs and currently operated TLDs be taken in consideration for evaluation?

==COMMENT: Only bundling within the same application round should be considered.==

4.3.2 Financial Evaluation It is generally agreed that financial stability

of a gTLD operator is necessary to ensure the security, stability, and resiliency of the Internet.4.3.2.1 - ICANN sought detailed financial information as it pertains to an applicant's proposed business model, projected revenue, and operating expenses. However, it required such information be provided

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through a static template rather than allowing applicants to provide their own financial models. Did this present any issues in the 2012 round? Please explain.4.3.2.2 –

COMMENT: Any business model at a similar degree of detail should be allowed. Business models may vary.

Can financial capability be demonstrated with less detail, in a different manner, or via a different mechanism? Are there details or levels of detail that are unnecessary?

Comment: No, one should be able to demonstrate the ability to run a business – and providing a solid realistic business plan is an important factor that should be evaluated (Unless a .brand or "public authority operated and sponsored GEO TLD).

4.3.2.3 - In the prior round, detailed business plans were provided, but not evaluated; they were however used to provide context to evaluators in scoring applicant responses. Do you believe that this information needs to be collected in order to evaluate an applicant's financial capabilities? Please explain? How should changes in business plans during the application process be handled?

Comment: Changes of business plans after submission of the application should not be evaluated (Time issues and number of competing applications can not be foreseen). But the mere ability to provide a thorough business plan is still important.

4.3.2.4 - Some have argued that for Brand TLDs that do not rely on the distribution of domains, an evaluation of the business model unnecessary. Do you agree with this assertion? Please explain.

COMMENT: Not needed as no public interests are at stake – however, .brands not allowed to change registration policy (i.e. remove restrictions), if they were given priority over a "for-profit" (Open/Restricted) TLD in a contention set.

Are there any other types of TLDs for which the collection of business models may be unnecessary? Please explain.

COMMENT:

GEO TLDs operated and sponsored by public authorities. Such TLDs will be well funded and also would prefer this project under a budget for say marketing/infrastructure – and with no need for "separated accounts."

4.3.2.5 - Do you believe that financial capability should be demonstrated at application time, or could it be demonstrated at, or just before, contract-signing time? Or at both times? Please explain.4.3.2.6 - Do you believe that financial evaluation should be done per application or per possible registry family assuming all applied-for strings are won?

COMMENT: Should be evaluated based on ability to operate/fund all TLDs applied for.

4.3.2.7 - Given the international nature of ICANN and its outreach to less developed areas, is the one size fits all approach to financial evaluation appropriate?

COMMENT: YES (Apart from .BRANDs and GEO public authority operated and sponsored TLDs) – as "registry origin" can be gamed.

4.3.3 General Questions4.3.3.1 - What suggestions do you have for improving the application evaluation process that you would like the

community to consider?

4.4 Name Collision (Wiki page: https://community.icann.org/x/Yz2AAw)

4.4.1 - What general guidance for namespace collisions would you like the community to consider for subsequent procedures, and why?4.4.2 - Were there non-applied for strings that would fall into a high risk category that you would suggest not be allowed in subsequent procedures? If yes, which ones and why? Should a Name Collision based evaluation be incorporated into the process for subsequent procedures? What data sources could/should be used for analyzing namespace collisions for subsequent procedures?

4.4.3 - Based on data from the first round, can the controlled interruption period be reduced in future rounds?4.4.4 - Should any measures be suggested or requested from TLDs that already ended or will end their emergency readiness after two years of delegation? Are any measures needed for gTLDs delegated prior to the 2012 round?

4.5 Security and Stability (Wiki page: https://community.icann.org/x/Xz2AAw)

4.5.1 Considering that, different from the 2012-round, we now have Top-Level Label Generation Rules available for most, if not all, scripts and languages, does the per-label security and stability review still makes sense?

4.5.2 Considering the already published CDAR study and comments to that study, do you have any comments regarding root zone scaling?

Additional Questions

1. The topics above, and the corresponding questions, are all related to the scope of work as determined in this WG's charter. Do you feel that all topics must be fully resolved before any subsequent new gTLD procedures can take place? If not, do you believe that there is a critical path of issues that MUST be considered and addressed? Alternatively, do you believe that there are certain challenging issues where an existing solution may be present (e.g., in the Applicant Guidebook), which can serve as an interim solution, while debate can continue in parallel with the launch of subsequent new gTLD procedures?

2. Many in the community have noted the length of time from the close of the application submission period (i.e., June of 2012) to the informal projections for the beginning of subsequent new gTLD procedures (e.g., 2020). Do you have any suggestions on how to shorten that timeline, either now in the event of future rounds or other procedures? COMMENT: New rounds EVERY Two years Based on "current" policies/Applicant Guidebooks etc. To reduce risk of feeling one "has to apply" this time.

3. Do you feel that there are additional issues or subjects that the WG should be considering?

4. Do you have any suggestions for data points, analysis, studies, etc. that might benefit the work of this PDP in any of its areas of work?