TO: ICANN New gTLD Subsequent Procedures PDP Working Group

FROM: Verified Top-Level Domains Consortium

DATE: May 22, 2017

RE: Comments in Response to GNSO Community Comment 2

The Verified Top-Level Domains (vTLD) Consortium (the "Consortium") commends the good work that the New gTLD Subsequent Procedures Policy Development Process (PDP) Working Group has put into compiling GNSO Community Comment 2 (CC2) and appreciates the opportunity to comment on these questions.

The Consortium is an informal, voluntary association of registry operators and third-party providers with a shared commitment to, 1. building trust online and supporting global public safety; 2. proactive verification and monitoring processes; and 3. policy issues that impact consumer protection online. As described on the Consortium's website, a vTLD requires verification of eligibility prior to use, adherence to standards, autonomy to take back a name, and ongoing verification. The Consortium ratified its charter on May 27, 2016.

Question 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.*

The Consortium believes that subsequent procedures for new gTLDs should require the registry to operate as a vTLD if it: 1. is linked to regulated or professional sectors; 2. is likely to invoke a level of implied trust from consumers; or 3. has implications for consumer safety and wellbeing. Verified TLDs contribute to improved consumer protection through registrant verification prior to domain name use and through ongoing monitoring of the domain space for compliance with registry standards.

<u>Question 3.1.9</u>

> *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?*

The Consortium recommends that the cost of a community-based objection be reduced to avoid being an obstacle preventing communities from filing objections. According to the recent Council of Europe report, "[Applications to ICANN for Community-Based New Generic Top Level Domains (gTLDs): Opportunities and Challenges from a Human Rights Perspective](),") the cost to file a community-based objection during the 2012 round amounted to "hundreds of thousands of dollars for a single objection." The amount was even higher if the objector opted for a three-person panel of evaluators. This expense is prohibitive – especially for legitimate long-standing nonprofit communities. As stated in the Council of Europe report: "non-profits were severely limited in filing objections due to the excessive costs." The Consortium supports the Council of Europe report recommendation to ICANN to "lower the costs for Community Objection" for legitimate industry associations and communities.

Further complicating the matter is that the cost to file a community-based objection was not clear because it was based on variables including the time the evaluators took to consider the matter. Nor is an approximate cost disclosed in the Applicant Guidebook. The Consortium supports to Council of Europe report recommendation to ICANN to "provide clarity on the expected costs for Community Objection." It should be possible to at least provide guidance on approximate costs based on an assessment of experiences of the 2012 round.

Rules pertaining to the objector's standing contributed to the cost of a community-based objection being prohibitive. Established institutions associated with a clearly-defined community could file a community-based objection only as an individual organization, not jointly with other organizations in the same community. If the objector's goal is to prove substantial opposition from a significant portion of the community, it seems logical for ICANN to allow an objection to be filed jointly by organizations within the community. For this reason, the Consortium supports the Council of Europe report recommendation to ICANN to "assess whether it is desirable and feasible to open up the possibility to collectively file a Community Objection."

Question 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?*

The Consortium believes there was a lack of clarity and predictability with the issuance of GAC Advice that should be avoided in subsequent rounds. Introducing additional requirements in the form of GAC Advice for certain applicants midway through the evaluation process was highly disruptive and caused considerable delays and a great deal of uncertainty as to what the next steps would be and when they would take place.

To prevent delays and ambiguities in the application evaluation process, GAC Advice and the ICANN's Board's resulting decisions should be determined prior to the launch of New gTLD subsequent procedures. While this cannot necessarily be done for individual potential gTLD strings, it should be possible to do so for particular categories where there may be sensitivity. Understandably issues may arise that cannot be predicted, but, regarding policy decisions for gTLDs, particularly those in sensitive and highly regulated industries, for example, these discussions can be conducted in advance, and outcomes should be firmly established and publicized prior to new applications being accepted.

Question 3.3.3

> *CPE [Community Priority Evaluation] 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?*

The Consortium believes that priority evaluations are appropriate to address name contention with community applicants. Contention resolution between a community-based applicant and a standard applicant should be a practical decision; all else being equal, the needs of many outweigh the needs of one. In other words, a community applicant is more likely to serve as a public good than a standard applicant. That said, however, the parameters of a *community* and

the public good it serves need to be more clearly defined to support consistency in implementation. With these factors in mind, the Consortium supports the Council of Europe report recommendation to ICANN to "Provide clarity on the public interest values community TLDs are intended to serve. . . These public interest values should include: the protection of vulnerable groups or minorities; pluralism, diversity and inclusion; and consumer or internet user protection."

Question 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?*

The Consortium believes that community applications should be evaluated somewhat differently than other applications. Demonstrating that registrants are bona fide members of the community which the operator claims to support through registration policies requiring verification would increase trust in that space.

Question 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?*

It is the opinion of the Consortium that the singular and plural forms of the same word, in the same language, should not be permitted to be approved in subsequent procedures for new gTLDs to avoid confusion resulting from such similar strings. Applications for singular/plural variations of the same string should be placed in a contention set, and applications for single/plural variations of an existing string should not be accepted.

The Consortium recommends, at a minimum, that ICANN define the term "confusingly similar." It is difficult to understand how singular and plural strings are not confusingly similar. In addition, the Consortium encourages learning from the experiences of the 2012 round relating to providing clarity and predictability with regards to dispute and contention sets. Allowing plural or singular versions of strings in the next round that have already been delegated would severely reduce the value of the existing gTLDs, erode the trust of consumers, and may expose ICANN to litigation.