

Please find attached the comments of the Registries Stakeholder Group in response to the New gTLD Subsequent Procedures Working Group's second community consultation. The following responses were developed by a working group of members of the RySG. The responses were circulated with the full RySG, however, no vote was taken.

## Track 1

### **1.1 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? "*

We support the notion, for the purposes of providing process efficiencies for applicants and ICANN in future new gTLD rounds, that there is value in establishing a pre-approval process for Registry Service Providers (RSPs) independent of the next new gTLD application process. We do not believe that standards for providing registry services should change as part of this pre-approval process; RSPs that have been through technical evaluation and monitoring as part of the 2012 application process should be considered to meet the minimum qualification under any RSP program provided that such RSPs have not undergone an emergency transition of the registry, and continue to perform in accordance with the service levels set in the Registry Agreement. Future applicants could engage any RSP from the existing pool and would not be required to undertake any evaluation or testing by ICANN to substantiate their credentials as an RSP.

We are sensitive to the use of the term RSP Program and consider RSP Pre-Approval Process to be more appropriate. For the purposes of the remainder of our responses, RSP Program is read as Pre-Approval Process.

A key risk to deal with, or mitigate, is the potential "race to the bottom" identified in the Context. This is particularly so when the use of terms such as "program", "accreditation" or "certification" are used since such terms imply a form of guaranteed or certified performance or reliability when in fact, what is being tested, is a minimum acceptable performance. Testing identifies a minimum performance level at which satisfactory operation may occur. More strongly institutionalizing a minimum performance level in the form of an accreditation or certification could set too low a benchmark when security, stability and registry performance are best served by the market exceeding the minimum performance level. Being able to operate at a minimum level is a useful test to subject service providers to but it does not certify or guarantee that an operator will be able to continue to operate effectively regardless of domains under management or other changes in circumstance or environment. Therefore, the focus of any such pre-approval process should be for ICANN to ensure that a minimum standard for operation is set, consistent with that set for the 2012 new gTLD round, but that should not necessarily be construed or communicated in any way to be a certification or accreditation by ICANN. Rather it is a minimum satisfactory performance to operate. That way, there is neither a

barrier to competition by new entrants nor an artificially low standard benchmark of operation for the registry service providers.

ICANN is not in the business of certifying operators in the entire value chain. If it were, then consideration would have to extend to certification of registrar resellers, DNS providers and others. ICANN could readily improve efficiency by improving operations and not repeat testing registry service providers for exactly the same function across multiple registry operators. Such an approach likely would be far more fruitful than introducing a new form of contracted party via certification or accreditation.

*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? "*

We reiterate our comments from 1.1.1 above regarding the term RSP Program.

It would be beneficial to review the process used by ICANN to test or establish the technical capability of applicants<sup>1</sup> in the 2012 round of new gTLDs. For example, were the technical questions and the answers a good indicator of the technical capabilities of the applicant? Was the pre-delegation testing (PDT) undertaken valuable in testing/examining the actual technical capability of the applicant? If not, what improvements or enhancements could be made to either the technical questions or the PDT to more accurately assess technical competency to run a registry?

Given that, to our knowledge, no applicant, and by extension no RSP was deemed to fail the evaluation of the technical aspect of the application including PDT; and that since the delegation of more than 1000 TLDs has not seen an emergency transition, it is reasonable to conclude that the design of the technical component of the application is adequate and as such is a good starting point for an RSP Pre-Approval Process . The ability of an RSP to scale across a number of TLDs or domains under management is difficult to assess in any Pre-Approval Process. We note that this not currently done for the RSPs supporting the 2012 round of new gTLDs and nor is there any data or evidence, after a number of years of operation, to suggest that the ability of an RSP to scale is problematic. The RySG is actively engaged in discussions with GDD staff on this issue and we recommend that the PDP WG defer to the work of this group.

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<sup>1</sup> The technical questions contained in the 2012 application were completed and submitted to ICANN by the applicant; however, in many cases the technical questions were completed by RSPs on behalf of the applicant and the RSP was subject to PDT.

*1.1.3 "Who should be responsible for evaluating whether an RSP meets the requirements of the program? "*

ICANN used independent evaluators during the 2012 round to assess the answers provided to the technical questions and engaged an independent contractor to conduct the PDT. There is nothing to suggest that this needs to change.

*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.*

Meeting rigorous SLAs are a continuing obligation of all RSPs. We do not agree with making the technical security and stability requirements variable based on the types of TLDs. For more, see our response to 1.1.2

*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?*

An agreement suggests a legal relationship between ICANN and the RSPs, which we believe has the potential to create another 'contracted party' category in the ICANN construct that may result in some unintended consequences. The existing RSPs have a contractual relationship with the registry operator and are responsible to the respective registry operators for meeting certain SLAs contained in the Registry Agreement. We acknowledge that this creates some challenges associated with enabling direct communication between ICANN and the RSP on technical matters.

We believe that the RSPs as contracted service providers to the registry operator (RO) (the ICANN contracted party) and the RO itself should determine how and when the RSP may communicate with ICANN. For example, one mechanism could be for the RO to supply a standard form written permission for ICANN to have direct contact with the RSP for certain specified matters that could be limited on a per-TLD basis, and to be included on all ICANN-RSP communications. This approach would provide for a formalization of the relationship between ICANN and the RSP without undermining the primary contractual relationship between ICANN and the registry operator.

We also note that by virtue of the 2012 new gTLD program, ICANN has the ability to activate an Emergency Back-End Registry Operator (EBERO) in the event that ICANN considers a registry operator is at risk of failing to sustain any of the five critical registry functions, namely:

- DNS resolution for registered domain names
- Operation of Shared Registration System
- Operation of Registration Data Directory Services (e.g., Whois)
- Registry data escrow deposits

- Maintenance of a properly signed zone in accordance with DNSSEC requirements

ICANN is yet to activate EBERO, but we note that it does serve as a viable and readily available option available to ICANN in the event that a registry operator is at risk of failure

*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?*

The RySG is unaware of any documented potential impacts of a Pre-Approval Process on ICANN Accredited Registrars

*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?*

See our response to 1.1.2

*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?*

As much time as possible; however, we do not consider it appropriate to specify an arbitrary period of time that could become a constraint to opening any future application windows. For clarity, under no circumstances should this be a pre-requisite to the opening 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?*

The RySG does not believe that a “cut-off” is warranted

*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?*

See our response to 1.1.1

*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)?*

An option is that prospective RSPs could be charged a fee for to be evaluated under the program.

## **1.2 Applicant Support**

*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?"*

On numerous occasions, Registries have identified a limited set of issues likely to require a policy change and should be critical enough to be considered prerequisites for future applications. The approach would promote the timely introduction of new gTLDs, while supporting critical process improvements that benefit applicants and the community alike. Support for applications from underserved regions was one of the three issues identified.

Registries support continuation of the Applicant Support Program (ASP) in the next round of gTLDs to the benefit of applicants and the community. Unfortunately, use of the ASP in the 2012 round was very limited. Based upon the findings of the discussion group it seems that primary hurdles to use of the ASP were awareness, timing, and education. Further, it was particularly burdensome for applicants from underserved and middle-served regions to provide required financial documents for a continuing operations instrument (COI). Reconsidering ASP requirements to account for this may be beneficial. Registries support improved outreach and publication of the ASP and the resources it provides. Registries feel that an ASP with well-defined criteria, clear engagement processes, and increased awareness has the potential to serve the full community of potential applicants.

Registries believe that the focus on support for underserved underdeveloped regions is a priority. Registries would support the eligibility of IDNs if those applicants also meet the other criteria for the ASP and do not believe IDNs would require a specific or special category of support. While, the proposal of a "middle applicant" category could afford greater access to the ASP, it could also increase costs of the program. Registries would be curious as to how this expanded category would be defined, the specifics of the proposal's implications such as overall cost and anticipated number of potential recipients.

Registries feel that an ASP with well-defined criteria and increased awareness has the potential to serve the full community of potential applicants.

*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?*

Applicant support should focus on the application process and assisting those who want to apply to submit and see their applications through the process. Continuing operational costs are outside the application period and outside the bounds of the ASP. ICANN could, however, facilitate introductions and engagement with RSPs that are willing to support discounted services for ASP participants.

*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?*

As noted in the report, in the 2012 round the ASP was rushed and not well publicized so those that may have benefited from the ASP may have been unable to take part due to time constraints or a lack of knowledge about ICANN and gTLDs in general. As noted above Registries support improved outreach and publication of the Applicant Support program to overcome the lack of awareness about the program and the resources it can provide. Registries would encourage ICANN to build relationships and share information about future new gTLD releases in a timely manner with business associations, such as national and regional Chambers of Commerce, in order that they can disseminate this to their members to raise awareness.

*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?*

In addition to the number of applications, the number of successful applications (delegation) that come through the ASP could indicate that the support provided was robust enough for the applicant to prepare and provide what is needed as a gTLD Registry.

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

Not a general recommendation for improving the ASP, but a general comment about setting expectations. The applicant must be able to demonstrate that there is a business case for the TLD, and if the intent is to raise revenue that there is an actual market that the TLD will serve

and that the infrastructure and people with the knowledge and the skills to operate the TLD in perpetuity are accessible.

### **1.3 Clarity of the Application Process**

*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?*

The Applicant Guidebook did not adequately anticipate many implementation challenges that arose during the 2012 round, which resulted in ICANN staff needing to develop processes and procedures after the Guidebook was published. This often resulted in processes that were different than what was anticipated in the Guidebook and, in nearly every instance, created delays to the timelines of each phase that followed the application submission period. The regular stream of new procedures and the delays they caused made it impossible for applicants to have any predictability about the process to eventually delegate their gTLDs and created the need to constantly monitor ICANN's activities for new developments that would materially impact their operations.

For future gTLD application procedures, any implementation processes that will be carried over from the 2012 round should be consolidated, documented, and made available to applicants, either through an Applicant Guidebook-type mechanism or another medium that is easily accessible for applicants. This medium should be easily searchable in its digital format and easily printed.

Where process and procedural changes are further required after the new Applicant Guidebook or its replacement is published, those changes should be clearly documented in a medium that is easily accessed by all applicants, and ICANN should make every effort to communicate these changes directly to applicants. Where possible, ICANN should note which portion of the Applicant Guidebook (or its replacement) is being altered, how, and on what basis (e.g. recommendation from the community, staff addressing procedural issues, etc.). Where necessary, ICANN should also make very clear the timeline on which the changes will take place, and if the changes will impact the time it takes for applications to proceed through evaluation to delegation.

Additionally, an appeal process should be instituted that will allow an applicant to appeal a process or procedure decision made by ICANN that would adversely impact the viability of the applicant's application.

## **1.4 Fees**

*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?*

The principle of cost recovery was a reasonable approach for the 2012 round and we don't see a need to change the mechanism in the future. With that said, some members of the RySG hold the position that the \$185,000 fee shouldn't change and that the question of recurring fees in excess of a cost recovery principle should be considered holistically and should follow further cost analysis, including accounting for fees during the 2012 round and whether the fees charged achieved the goal of cost recovery.

*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?*

No. It was not implemented effectively. There is approximately \$100M in excess application fees that were collected to implement the program, yet ICANN collected another \$6M in fees from applicants to establish the TMCH. To date, ICANN has refused to return any of the money to applicants; to use it to support the program; or to credit new registries in ongoing ICANN fees. In the future, the treatment of any excess application fees should be clearly articulated in the terms and conditions of any subsequent procedures.

It is difficult to identify whether the \$185K fee was reasonable absent cost analysis of whether fees collected during the 2012 round were consistent with the goal of cost recovery. We believe that these questions should be considered holistically, including accounting for whether a return of fees to 2012 applicants is warranted. . While cost recovery is an appropriate model, there are other factors that may be considered as well in determining a fee, including concepts of fairness and competition.



*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?*

While cost recovery is an appropriate model, there are other factors that may be considered as well in determining a fee, including concepts of fairness, competition, and security and stability. Fees that are too low could be detrimental to security and stability and competition between rounds and fees that are too high may be unfair barriers to entry.

*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?*

There should not be a ceiling if ICANN expects the cost to exceed application fees. A floor may be appropriate, as long as the use of any excess amounts should be clearly articulated in the terms and conditions of any subsequent procedures. Excess funds could be used to support the program; used to credit ongoing ICANN fees for applicable registries in phases; or returned to applicants in phases. ICANN should not wait to the end of the entire program to use the excess fees. They can be used responsibly over time.

*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?*

The use of any excess amounts should be clearly articulated in the terms and conditions of any subsequent procedures. Excess funds could be used to support the program; used to credit ongoing ICANN fees for applicable registries in phases; or returned to applicants in phases. ICANN should not wait to the end of the entire program to use the excess fees. They can be used responsibly over time.

## **1.5. Variable Fees**

*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?*

No. The application fee should not vary by type of application. While ICANN should consider an applicant support program, it should not be determined based on type of application, but rather on the merits of the applicant seeking support

*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?*

We do not agree that this is a fair characterization of the WG's belief. We do not support different application fees based on type of application regardless of how such types of applications are defined.

*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?*

No -- there should not be volume discounts. To do so would hinder competition by adversely affecting single (or small) portfolio applicants.

## **1.6 Submission Period**

*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?*

Allowing for subsequent procedures that contemplate a “rolling” first-come, first-served open period allows all applicants—now and future—the opportunity to apply when they want to. A continuous process will prevent bottlenecks in application processing and allow applicants to apply for a gTLD when it is right for their business, rather than when a short window allows. While we support a “rolling period,” we understand that there has to be a way to deal with contention for the same string if there is pent-up demand since the 2012 round. A hybrid approach might be considered by the Working Group (e.g. a short window followed by an immediate rolling period).

*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?*

The strategic goal for future applications should be the implementation of a continuous process on a first-come, first-served basis. However, the RySG appreciates that there may be one or two further ‘application rounds’ imposed before this goal can be realistically achieved. In this respect, the RySG recommends that a clear commitment is given to a schedule of further application rounds, with shorter timespans between each round, in line with the original target of one year (AGB section 1.1.6).

*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?*

We do not believe the submission period will impact Applicant Support as long a sufficient time is given prior to the application period for education and awareness (noted by the WG as significant issues to uptake).

**1.7.1 Queuing**

*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?"*

The 2012 gTLD application round saw an unexpectedly high number of applications, requiring identification of new methods to order application processing after most of the policies for the application process has been finalized. Along with other untimely issues, this led to delays in the ability for applicants to launch their TLDs. We expect that as part of an initial application process, pent up demand for operating a gTLD may similarly create a need for a queuing or prioritization mechanism.<sup>2</sup> To avoid the issues encountered during the 2012 round the prioritization mechanism should be established in advance of accepting applications and described in the applicant guidebook.

We recommend the simplest approach: retaining the lottery-style prioritization mechanism that was ultimately used in the 2012 round. While prioritization did not yield such significant advantages or disadvantages as anticipated, given varying applicant timelines for bringing TLDs to market and other delays in decontention processes, the lottery was lightweight and effective, and does not require change.

One minor modification to consider would be to allow applicants to choose which of their applications to prioritize within the queuing process. For example, an applicant with five applications in a particular launch window would get five lottery numbers, but could choose which of its TLDs to associate with each launch slot it was awarded within the lottery.

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<sup>2</sup> Transitioning to a continuous application process would do away with the requirement to queue applications as, eventually, allocation could transition to a first-come, first served basis. Still, we believe that an initial landrush-stype period would be required to address competing demand that may have arisen since the closure of the 2012 round.

*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?*

There is no consensus within the RySG about whether prioritization should occur and which applicant categories should be prioritized. We believe that the default position, in the event that consensus cannot be reached, should be to avoid prioritization of particular categories over others.

## **Systems**

*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?*

In addition to these previously noted implementation improvements which we support, the RySG believes that consideration should be given to policy or implementation regulations requiring transparency to the user (within the security confines of permitted access) of the data that has been entered with regard the user's application and/or registry. The purpose of which would be to allow the user to verify that any selections that have been made were properly recorded in a timely manner so as not to negatively impact the application or registry.

Further, to ease the burden on a time- and resource-intensive process that has only a limited availability window, ICANN could consider live support for use during applications (perhaps even 24/7 for the duration of a limited window) to address problems and cures. ICANN could, and should, reasonably adhere to service level agreements for response time. Also, it would be particularly helpful to make available a test environment as soon as feasible, prior to the opening of the system for live use.

*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?"*

Yes, the RySG believes that such enhanced system capabilities will help to ease the burdens of the application process.

## **Communications**

*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?*

The suggestions outlined in this question are all potential improvements to the past communication processes. ICANN should provide applicants with an option to be notified of developments related to the New gTLD Program and related processes and procedures, as well as information that is germane to their own applications. This communication could be delivered via email to the application Primary Contact or another designated contact. If an applicant opts in, it should receive an email or text alert whenever ICANN issues a communication.

The ICANN portals (first the CSC portal and later the GDD portal) provide a workable mechanism to submit questions to ICANN for specific applications confidentially. If a similar mechanism is employed in the future, ICANN should set a specific, timely deadline for responding to questions. If it cannot meet that deadline, ICANN should follow up with the applicant to inform them of when a response will be available. In addition to the portals, ICANN should also create a more general "help line" (such as a dedicated email address) for the submission of more general questions about all applications or categories of applications. ICANN should consolidate these questions and answers into a published, searchable FAQ-type page on its website that applicants and other parties can review. It should update this page on a recurring basis to ensure the timely dissemination of information.

In the event that ICANN chooses to use webinars or sessions at ICANN meetings to communicate timely information to applicants, it should publish detailed minutes of these interactions, complete with questions asked and the responses provided, along with any slides and the recordings transcripts of these interactions. While the slides and recordings are helpful, it can be very tedious to go through a recording and transcript to glean pertinent informational points. Minutes of the relevant takeaways would be much more useful for applicants and interested parties who are unable to attend these webinars and sessions in person.

Finally, ICANN should develop an easily accessible and searchable knowledge base for any new information that is released that goes beyond what is captured in the Applicant Guidebook (or its replacement) and any other informational documents published prior to the opening of subsequent application procedures. This knowledge base should be divided into topics that map onto the sections of the Applicant Guidebook (or its replacement) and any other informational documents published prior to the opening of subsequent application procedures. It should be routinely updated with any new information that is communicated through email updates to applicants, questions answered from the general "help line" and published in the FAQs, and information disseminated through webinars and sessions at ICANN meetings."

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

The RySG understands this question to refer specifically to the success of ICANN's communication plan that sought to increase global awareness of the New gTLD Program and the changes it would bring about to the global domain name system.

If there is widespread agreement that ICANN should engage in similar communications plans and awareness-building activities in the future, then the RySG believes that the ICANN organization (its staff and Board of Directors) is very ill-equipped to undertake such an effort on its own. If budget is set aside for this type of activity, ICANN should use those funds to hire an experienced communications firm with a proven track record of success in conducting global awareness-building campaigns. The engagement with such a firm should include established metrics for success against which the performance of the firm is evaluated.

**Applicant Guidebook**

*1.10 The Applicant Guidebook served as the roadmap for applicants, but also all other participants to 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?*

Future new gTLD applicants will require a guiding document that instructs them on how to prepare their applications to submit to ICANN, and how to manage their applications through the various procedures in between submitting those applications and delegating their gTLDs. This document, whether it takes the form of an Applicant Guidebook or an alternative medium, should be confined to only information that is relevant to the preparation of applications and the movement of those applications through subsequent evaluation, string contention, objection, testing, and other procedures en route to delegation. Information regarding the rationale behind certain policies or the historical context for how decisions were reached should be captured in a separate, policy-oriented document that interested parties can review as desired. However, the Applicant Guidebook (or its replacement) will be most useful if geared specifically toward applicants. Information pertinent to other kinds of participants, such as those who may wish to file objections to applications, should also be consolidated into separate, targeted documents. Readers and users of these documents will undoubtedly find shorter, more targeted materials easier to read through and make use of.

If the policy for subsequent new gTLD procedures determines that there should be separate application types, then the sections of the Applicant Guidebook (or its replacement) should make specific note when variation exists among application types, such as different requirements for answering an application question or providing materials to ICANN. The Guidebook (or its replacement) should make clear to readers that if no variation is noted, then all applications must follow the same process or standards outlined in that section.

## Track 2

### **Base Registry Agreement**

*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?*

The notion of a single Registry Agreement that contains certain clauses that may or may not be triggered based on the applicant or the nature of the TLD, versus a suite of Registry Agreements is, in reality, the same concept. That is to say that in both models certain provisions will only ever apply to certain Registry Operators or TLDs, and the core provisions of the Registry Agreement remain the same. As such neither model should be more or less effective in recognising the different operational requirements of different TLDs.

With regard to efficiency in development, implementation, and operational execution, a single Registry Agreement is the most practical. Some factors considered include: time required to develop each of Registry Agreements for each of the categories; the ability of an Registry Operator or a TLD to move between categories; the complexity of an amendment process such as that being undertaken at present where there are multiple Registry Agreements; administrative burden for ICANN and Registry Operators; predictability for ICANN, Registry Operators and the internet using public. Further, strict categorisation and inflexible agreements may, in practice, stifle competition and innovation.

*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?*

The restrictions in relation to sunrise periods, landrush, and related activities are sufficient for the TLDs currently being delegated and will be sufficient for future TLDs. Specific launch plans, dates, and terms and conditions should continue not to be included into the Registry Agreements. Any restrictions on registry pricing in addition to that which is already contained within current Registry Agreement may stifle competition and innovation.

*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?*

The entire application should not be incorporated into the signed registry agreement (neither should the applicant guidebook). Registries must retain reasonable latitude and flexibility to adapt and innovate. Overburdening a contract with hundreds of terms is a poor way to conduct business and invites interminable wish lists of regulation. The voluntary PIC model has worked fairly well (though in the 2012 round it was rushed) and a similar procedure is more likely to bear fruit: an applicant could add voluntary PICs in its application, then have a period to add more in response to any GAC/community issues.

### **Reserved Names**

*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/guidebookfull-04jun12-en.pdf>)? Please explain*

Yes, the requirements should be reviewed. If the applied for string is not a security or stability risk, it should be permitted. For example, a single IDN character, a single letter, or a mix of letters and numbers are not allowed now. Preventing the allocation of mixed letters and numbers stifles innovation. (Note that the Joint ccNSO-GNSO IDN Working Group (JIG) has made recommendations that this section be revised to allow for single-character IDN gTLD labels. See the JIG Final Report at <http://gnso.icann.org/drafts/jig-final-report-30mar11-en.pdf>. Implementation models for these recommendations are being developed for community discussion.)

*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*

Yes, the list should be reviewed. Labels should be reserved only where there are stability or security risks. Several of those reserved labels could be delegated and put to productive use. For example, .ICANN could be put to use by ICANN, thereby raising the visibility of the new gTLD program. ICANN should make technical/linguistic check of all Reserved Names lists (the current list of Reserved names contains at least 4 errors, known to ICANN (related to local Red Cross bodies, 1 is cross script, and is a technical error, and another 3 related to the incorrectly inserted line break, as result of this, Cyrillic equivalent for 'society ' is reserved in situation where Red Cross has no rights for it).



*2.2.3 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?*

Yes. If ICANN knows a label won't be delegated, it should not be possible to apply for that label.

Similarly, if a name is not reserved, it shouldn't be added to the list after ICANN receives and processes applications absent a material change in circumstances.

We further believe that ICANN could better prevent applicants from applying for reserved names by upgrading the application system such that it would automatically kick back applications for any names prohibited under specific provisions of the Applicant Guidebook.

During the 2012 Round Applicants encountered inconsistencies in ICANN's handling of reserved names. While some reserved names (e.g. strings that were identical to an existing TLD or an IANA reserved name) would be automatically rejected by the application systems, other applications that were altogether banned per 2.2.1.4.1 of the Applicant Guidebook were accepted by the application systems; further, no comprehensive list of these terms was provided requiring duplicative parallel review by applicants.

*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?*

For most applicants the 100 names allocated appeared to work effectively in allowing registries to establish initial operations and marketing. Issues appeared to be primarily confined to Geographic TLDs, many of which were required to or chose to reserve/allocate large numbers of registrations to the associated government. The working group may choose to consider the specific experience of geographic TLDs and how it interacts with the 100-name limit as well as other provisions of the QLP.

### **Registrant Protections**

*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 if an RSP pre-approval program, discussed in section 1.1.1. were to be developed?*

The intent behind the registrant protection mechanisms mentioned in this question is important -- registrants should not be at risk of losing their domain names due to registry failure. Unfortunately, the mechanisms to address that intent are inefficient and cumbersome. The

EBERO concept makes sense and should be maintained if a Registry Operator serves a technical back-end function in addition to being the RO. In a case of a RO with a different technical back-end, however, it may not. Considering ICANN requirements, transitioning back-ends is a cumbersome process. In the case where the technology is working fine, but the registry operator is failing financially, it would make more sense to leave the customers on the existing back-end instead of transitioning them to an EBERO and then again to a new Registry Operator and back-end.

The COI, which is the EBERO funding mechanism, is entirely inefficient, complicated and over-kill. Instead of insurance, where each party pays a certain amount to create a fund that would more than cover the percentage chance of failure, the COI requires each and every registry to fully fund the risk 100%. So ICANN has access to many tens of millions of dollars in COIs to fund EBEROs and there hasn't been one instance of an EBERO being utilized in three years. It would be like an insurer seeking to collect 100% of the replacement cost from every home in a desert in case there is a flood.

Instead, ICANN should put a few million dollars aside in a fund to cover the cost of transferring a registrants to an EBERO should it ever be necessary and scrap the entire COI concept.

Regardless, closed TLDs, for which the registry is also the registrant should be exempt from EBERO and COI. The protection provided to registrants by EBERO is consistency—in the event a registry goes out of business, the registrant will not lose their domain names. This is not necessary for a closed (and particularly brand) TLD as the registrant is the registry. Similarly, the COI's intent is to fund the EBERO in the event it is needed; where a registry/registrant of a closed TLD goes out of business, or decides to fold its registry business for any reason, the registry has, necessarily, already taken into account its own interests.

In the event where a pre-approval process is developed, whether or not the registry is a closed registry should be taken into account when making the decision to implement EBERO and COI requirements against that registry.

The Escrow requirements and the Performance Specifications in Specification 10 seem fine.

*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?*

As mentioned above, we think that the COI model should be tossed out in favor of something more efficient and common-sensical. Alternatives to a COI would be a fund, which would be funded by application fees. Similarly, an EBERO and COI should not be necessary if a third party back-end agreed to maintain registrants on its platform for a certain time period as a

commercial matter. Perhaps a certificate from a back-end provider of this requirement would be sufficient to avoid the EBERO requirement and its funding.

Should ICANN choose to maintain a COI requirement, Letters of Credit (LOCs) are the simplest and most effective means of accomplishing the EBERO funding requirement. In the future, when the industry becomes more mature, it might be the case that registries could instead hold a certain amount of capital earmarked for EBERO; at this point, however, that is likely a precipitous idea and LOCs ought to be continued.

With that in mind, we encourage ICANN to be more understanding of business realities when calculating the size of LOCs. Currently, the “steps” are very low (a 500 DUM change in either direction is cause for an adjustment); steps that are too high, of course, are also inappropriate, especially for smaller registries. We suggest a percentage level—a 10% change in estimated DUMs (not a 10% change in historic DUMs but in estimated and LOC-funded DUMs). We also suggest an annual review. Similarly, the language requested by ICANN for LOCs was untenable for most banks. ICANN should consider more commercially reasonable language, and ensure that this is provided to applicants in advance, to avoid the issues registries experienced during the 2012 round in endeavoring to secure LOCs.

For larger registries, especially portfolio registries, there must be a means of more easily incorporating additional TLDs into an LOC (and contra-wise, removing them in the event of a sale). Because of how the application LOCs were structured, this is currently a very messy process. And, again, the size of the LOC should be predicated upon a percentage change in DUMs over the registries entire portfolio rather than a discrete number.

We recommend an annual review of the LOCs, at which point, the registry will indicate to ICANN what its anticipated DUMs are for the coming year and adjust the LOC to that level. If the new DUM level is met, ICANN can reach out to the registry to adjust their LOC but the registry has leeway of up to 10% of their anticipated DUM. Similarly, if it becomes clear to the registry that the anticipated DUM level will not be met, they can reduce their LOC. In either case, at the annual review, the registry will, again, make a determination about what anticipated DUMs will be for the coming year and fund the LOC at that level. (For a portfolio registry, this will include all TLDs; for a single-TLD registry, it will be only for one TLD.)

*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.*

The current criteria for background screenings are appropriate and were developed with the intent to protect registrants. Despite the challenges of performing the background screenings on some of the people and companies involved in the application, they should continue in substantially the same form.

Currently, previous adjudications of cybersquatting would bar a person or company from participating in a TLD application. This makes sense because of the risk of a "cybersquatting TLD". However, breach of an RA or RRA may happen for a number of reasons and should not be grounds, de facto, for disqualification.

Background screening should be performed at the time of application (and upon changes to an application) as well as at any time that the information changes post-contracting. This allows for consistency of result and guards against a disqualified person or company gaining control of a TLD after-the-fact.

### **Closed Generics**

*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?*

No, there should be no rule against closed generics in future application windows. The RySG urges the PDP WG to consider who the rule against "closed generics" was intended to protect. We suggest the four objection procedures (string confusion, legal rights, community, public interest) provide adequate protections for consumers, brands, and the public. gTLDs are not required to "index" the internet and, indeed, do not appear to be serving an indexing function. There are no security or stability concerns that should force ICANN to intercede.

“Closed generics” present exciting opportunities for current and future registry operators to use domain names in new and exciting ways, subject to current protections such as UDRP. Prohibiting closed generics effectively prevents a registry operator from using the DNS in innovative and experimental ways, which can only be done when the TLD is not required to offer 3P registrations.

If we force ROs to simply sell domain names to the public only for a "classic" use or speculation of domain names, we are stifling the ability of companies to create and to expand the use of the DNS. In addition, we are creating a protectionist-like rubric around a status quo to the benefit only of those who follow the same classic model.

*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?*

If the PDP WG reconsiders the purpose of the rule against “closed generics,” defining such words as “generic” becomes unnecessary.

If the PDP decides to retain the rule against closed generics, then the definition appears adequate.

## **Applicant TOCs**

*2.5.1 “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.”*

In other areas of the Applicant Guidebook, there are clear definitions of why an application may be declined. This paragraph in Module 6 would benefit from either a rewording to further specify why an application would be declined or from referencing related materials in other portions of

the guidebook, such as section 1.2.1 on eligibility and sections 2.1 and 2.2, which describe the evaluation and review process.

Alternative language could be "ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law, policy, or eligibility and evaluation requirements outlined in sections 1.2, 2.1-2, and 3.2.1 in the Applicant Guidebook.

ICANN's Bylaws prohibit it from discriminating against parties. Therefore, if ICANN rejects an application, it should only do so for good cause and not treat similarly situated parties differently.

*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.*

Yes, ICANN should introduce an appeals process for rejected applications for long-term scalability, as is also suggested in section 3.1.4 of this document. Over time, as more and more new gTLD applications are introduced, the likelihood that an applicant will wish to appeal a rejection grows based simply on the number of applications received. To prevent unnecessary complications in the future, and to provide applicants with fair recourse, an appeals process should be specified and defined before the next round of applications.

Similarly, for applicants who do appeal an ICANN decision and attempt to do so via legal means, having an appeals process in place means preventing any exceptional cases that would take time and resources from ICANN. With such a setup, it would be much more acceptable to include such a covenant not to sue.

*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.*

Yes. Certain changes should be allowed, but ICANN should offer a time period in which applicants may prepare for, or object to, any changes to the guidebook. For example, ICANN shouldn't be permitted to change the application fee after it accepts applications. Any legitimate changes must have good cause and ICANN should provide reasonable warning to all new gTLD applicants before any changes in the guidebook take effect to allow applicants a level of predictability, while also giving ICANN the ability to modify and adapt as needed without making the process overly rigid. Applicants should also be given a reasonable opportunity to amend a pending application if the change is made after the application is submitted that is material to

the application. Application amendments should be limited to addressing the AG change and the time frame in which amendments may be made should take into account time for applicant to first object to the AG changes.

*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?*

Yes. A summary from the above:

- Modify the language in section 6.3 to reference related eligibility and evaluation criteria (i.e. sections 1.2, 2.1-2, and 3.2.1 of the Applicant Guidebook) to further clarify when and why an application may be declined.
- Maintain the covenant not to sue only if an appeals process is drafted and defined within the guidebook.
- Specify a timeframe for proposed changes/updates to the Guidebook to provide applicants with adequate warning.

### **Registrar Non-Discrimination**

*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?*

With the New gTLD Program the Registry Stakeholder Group membership has expanded with the entry of new registry operators. These include some who may not have been previously active in ICANN policy development, such as brand owners, and others who previously participated in a different capacity, including registrars who now also operate registry businesses. Given the diversity of members within the RySG, there is not one single view on the question of vertical integration of registries and registrars. Some RySG members favour vertical integration and would support removal of the restrictions on operation of those vertically-integrated businesses. Other RySG members favour the retention of those restrictions. We are not aware of any specific disadvantages or issues arising out of the operation of vertically integrated registries and registrars, however see the response to 2.6.3 below.

*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?*

The RySG does support the existing exceptions to the Code of Conduct provided for under Specification 13 and under Specification 9 paragraph 6.

We have not identified any other specific circumstances where an exemption to the Code of Conduct should be granted. On the assumption that the Code of Conduct is retained, however, the RySG would support greater flexibility for registry operators wishing to seek an exemption. It would be reasonable for a registry operator who is able to demonstrate that the application of the Code of Conduct to its TLD is not necessary to protect the public interest, in other circumstances to those set out in Spec 9 para 6, to be granted such an exemption.

The RySG would also like to highlight that the existing process of obtaining an exemption to the Code of Conduct results in some ambiguity under the Registry Agreement, since the registry operator is still bound by section 2.9: "Subject to the requirements of Specification 11, Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD". Since, under the current model, all exemptions must be for single-registrant models wherein the registry (as registrant) may still chose its registrar, we do not believe this language should apply to Specification 9 exempt TLDs, regardless of whether they additionally qualify for Specification 13.

*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?*

The PDP should carefully review the underlying reasons for separation. With so many new TLD operators in the space, the PDP should examine whether there remains any consumer protection benefit to limiting registry-direct sales. While the operational models of some registry operators will certainly benefit from using registrars (and where this is the case there may remain benefits for the consumer in ensuring equal treatment amongst those registrars), this requirement may be actually hindering innovation and the development of new services for other registry operators, thereby reducing the benefit for consumers.

This has recently been highlighted by Francesco Cetraro, former head of registry operations at .CLOUD, in his "exit notes" published on LinkedIn.



“The ICANN model is traditionally based on the assumption that a Registry will sell its product exclusively through a channel of accredited Registrars, who in turn (one way or another) are all selling fundamentally the same set of hosting products and web-focused services.

Whilst originally this system did contribute to the development of the Internet by providing consumer choice and driving down the prices, it has also become the "golden standard" to which everything has to conform if it wants a chance at "making it" commercially. When even those few that tried to do something different eventually end up quietly coming back to the herd with their head down, it isn't really that hard to understand why everybody decided to "play it safe". The result was 1000+ new extensions that all do pretty much the same thing: point to a website.

If anything, this perfectly defines the antithesis of innovation...”

<https://www.linkedin.com/pulse/exit-music-notes-new-tld-round-from-former-ntld-manager-cetraro>

## **TLD Rollout**

*2.7.1 The Applicant Guidebook specified timelines by which applicants had to complete the contracting (9 months) and delegation (12 months) 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.*

Yes, we believe that these requirements are reasonable to avoid speculative applications. We further believe that the extensions provided and the criteria applied by ICANN in evaluating/granting those extensions have been reasonable and continued to serve the intended purpose.

## **Contractual Compliance**

*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?*

Yes, the RySG is of the view that any compliance related requirements are be made enforceable by inclusion in the Registry Agreement and for registries established during subsequent procedures an updated base agreement would be advisable.

## **Global Public Interest**

*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.*

PICs have well served their purpose, though the process by which voluntary PICs were solicited and submitted was clumsy, mistimed and rushed.

While PICs have satisfactorily addressed public interest concerns and may have been a reasonable vehicle for registries to individually address matters of concern raised by the community, in future rounds, it would be far more advisable to draw a bright line of finality once those matters are considered and concluded by the full community (including the GAC), thereby reducing the risk that an individual application (or group of applications) will be held in limbo for an extended period.. This will improve predictability, avoid delays and otherwise maintain an orderly process.

At present, the RySG recommends no further mechanisms vs. PICs (except to allow proposed PICs by registries in the application, followed by an ability to add further PICs following the GAC Early Warning round); we note there are significant process improvements in place today vs. 2013 (e.g., the GAC has a clearly defined role in GNSO policy development, the GNSO has well sorted the "policy vs. implementation" question with new processes, etc.). As the WG put it, "identifying and mitigating every circumstance is a nearly impossible task." The RySG agrees but advises that the learnings from the current round will very well inform the formation of the next and those learnings, along with better definitions of community roles and processes, should be expected to provide finality and predictability prior to the opening of a new round.

## Track 3

### **Objections**

*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?*

We support the identified recommendations from the 2012 round and their continued application to a future gTLD application process, with minor modifications to Recommendation 20 above to clarify what constitutes "a significant portion of the community."

Further, we support the continued use of objection processes to implement these recommendations. Notwithstanding, we believe that the objection process could be generally improved through a number of procedural changes to all four categories of objection proceeding.

*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.*

We support the general approach to implement these recommendations through an objection process. However, we note several procedural issues with the implementation of the objection procedures that could be improved in a future application process. The following recommendations are intended to address some of the related procedural deficiencies encountered during the 2012 round.

### *Strictly enforce objection page limits*

One of the factors contributing to the high costs of objections during the 2012 round was a failure of the the panels to curb submission of additional objection documentation. As panels are paid hourly they are incentivized to accept additional documentation even if it was not strictly necessary for the purpose of evaluating the substance of the objection. Further, in some instances, attachments were used to make and support additional arguments not made in the body of the original objection, resulting in additional work and cost to respondents.

We believe that the page caps proposed are appropriate and should be more strictly enforced as part of a subsequent application procedure. To these ends, we would welcome additional language clarifying that attachments should be limited to supporting documentation and must not be used to make additional arguments not covered within the 5,000 word/20 page limit and that, following submission of the initial objection, additional documentation will only be accepted if it is specifically requested by the Objection panel.

### *Allow parties to jointly determine whether to use a one or three-Expert panel*

The selection of a one or three-Expert panel raises tradeoffs related to cost and consistency. While one-Expert panels are lower cost, three expert panels may be more reliable and less likely to generate concerns around inconsistent application of objection procedures or outcomes.

In light of these tradeoffs, we believe that, for all Objection types, Parties should be able to jointly determine whether to use a one or three-expert panel. In the event that the Parties fail to reach agreement the default will be to rely on a three-Expert panel.

### *Revise string confusion objection procedures to prevent against inconsistent outcomes encountered during the 2012 round*

During the 2015 round, the String Confusion Objection process resulted in indirect contention situations for identical strings proposing similar use cases. For example, in one objection determination, the strings .car/.cars were determined to be confusingly similar, while in another they were determined to not be confusingly similar. This resulted in a situation where the ability or inability for the two strings to coexist depended on which party prevailed at auction.

This outcome was seen as inconsistent by many in the community (both objectors and respondents) and saw late stage intervention by the ICANN board to introduce a limited appeals process. The appeals process was only made available to the applicants who were placed in contention, and not to the party filing the objection.

We believe that these could be largely avoided by allowing a single String Confusion Objection to be filed against all applicants for a particular string, rather than requiring a unique objection to be filed against each application. We propose the following guidelines:

- An objector could file a single objection that would extend to all applications for an identical string.
- Given that an objection that encompassed several applications would still require greater work to process and review, the string confusion panel could introduce a tiered pricing structure for these sets.
- Each applicant for that identical string would still prepare a response to the objection.
- The same panel would review all documentation associated with the objection.
- Each response would be reviewed on its own merits to determine whether it was confusingly similar.

The panel would issue a single determination that identified which applications would be in contention. Any outcome that resulted in an indirect contention would be explained as part of the panel's response.

A limited appeals process (as described above) would be available to both the objectors and the respondents to handle any perceived inconsistencies.

*Make the costs of community objections more predictable*

The costs associated with Community Objections were surprisingly high compared to other types of objections, and were hard to predict in advance of filing. This may have been particularly problematic for communities that chose to file objections with a low probability of success.

ICANN should prioritize cost in choosing a vendor. Costs should be transparent up front to participants in objection processes with a fixed fee absent extraordinary circumstances.

*In some cases, applicants should be able to remediate impact identified in Community Objections*

In the 2012 round, community objections were “all or nothing”. Even if the impact to the affected community could be corrected by the applicants, the panel had no option but to either allow the application to proceed or to terminate it. This made the standard to win an objection quite high, and also meant that some applications that probably could have been remediated were instead rejected.

*Allow arbitrator to identify remedies or cures that would address the detriment to the community, which could be adopted by the applicant and would form a binding portion of the eventual registry agreement.*

*3.1.3 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.*

We believe that there is some lack of clarity around how objection by a “significant portion of the community,” as is referenced in Recommendation 20 of the GNSO principles, is defined. This could warrant further clarification. We note that ICANN and the Community Objection Provider

established additional definitions and procedures regarding the standing to file a community objection. Per Module 4 of the Applicant Guidebook, standing required that the filer meet the following criteria:

It is an established institution with purposes beyond the gTLD application process (evaluated based upon level of global recognition of the institution; length of time the institution has been in existence; and public historical evidence of its existence);

It has an ongoing relationship with a clearly delineated community – (evaluated based upon the presence of mechanisms for participation, institutional purpose and regular activities that benefit of the associated community; and the level of formal boundaries around the community.

Objectors were required to state their basis for standing, as well as grounds for objection. ICANN performed a 30-day administrative review of the objection before it proceeded to evaluation by the Dispute Resolution Provider. We believe that the administrative review process failed to weed out objections where the objection filer did not meet the conditions to establish standing to file.

We believe that standing requirements were clearly established for the other application types.

*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.*

Yes, we believe that objection processes during the 2012 saw inconsistent outcomes, where different decisions were reached despite similar fact patterns, or where panels appeared to apply different logic and standards in arriving at their decisions.

*Introduce appeals process for objections to address inconsistencies.*

The perception of inconsistent outcomes led to overreliance on existing accountability mechanisms, particularly the Reconsideration Request process, which was ill suited to address the objection related issues as Reconsideration Requests are intended to address action or inaction by ICANN staff or the ICANN Board and not determinations by a third party panel. This situation was detrimental to applicants, who were left without adequate recourse mechanisms, and the ICANN Board's Governance Committee, which was inundated by an unprecedented number of reconsideration requests that it could not process on a reasonable time frame.

It also drove the creation of post-decision mechanisms which were only made available to a narrow subset of applicants who faced the most obviously inconsistent determinations. This situation was inadequate to address the larger issues identified above. Further, these opportunities were not made available to all potentially impacted applicants, nor to both sides of the objection. For example certain inconsistent string determinations resulted in the receiving applicant who was placed in contention being able to argue their case for why their application should not be placed in contention; no comparable second opportunity was provided to the

complainant to argue why the correct, consistent outcome would be for all identical applications to be placed in contention.

We believe a much better approach is to introduce the option of a narrow appeals process for all applicants where parties that identify either a reasonable inconsistency in outcome or a specific argument as to why the panel failed to apply the proper standard. In our response to question 3.5.2 propose below several model for a potential appeals body for consideration:

Inconsistencies were most obvious in the String Confusion Objection Process, which resulted in indirect contention situations for identical strings proposing similar use cases. For example, in one objection determination, the strings .car/.cars were determined to be confusingly similar, while in another they were determined to not be confusingly similar. This resulted in a situation where the ability or inability for the two strings to coexist depended on which party prevailed at auction.

This outcome was seen as inconsistent by many in the community (both objectors and respondents) and saw late stage intervention by the ICANN board to introduce a limited appeals process. The appeals process was only made available to the applicants who were placed in contention, and not to the party filing the objection.

The inconsistent results process has been extended to other objection results as well (e.g. .hospital (Limited Public Interest) and .Charity) community. ICANN should strive to avoid inconsistent results for similarly situated applicants in all objections.

#### *Revise String Confusion Objection Process to Minimize Inconsistencies*

Our recommendations for improvements to the String Confusion Objection Procedures described in question 3.1.2 and repeated below attempt to ameliorate these inconsistent outcomes.

We believe that these could be largely avoided by allowing a single String Confusion Objection to optionally be filed against all applicants for a particular string, rather than requiring a unique objection to be filed against each application. Specific recommendations for how these processes could be revised are set forth in our response to 3.1.2 .

*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.*

While we believe that there may have been some instances of gaming objections during the 2012 round, we will defer to individual comments to raise specific examples.

We note one recommendation that we believe will reduce the likelihood of gaming generally with respect to the Community objection process:

*Communities should be limited to participating in either Objections or CPE, but not both.*

During the 2012 round, some entities who were involved in TLD applications took "two bites of the apple" by filing both objections and participating in CPE for the same strings. This meant that they had two opportunities to potentially defeat a competitive application. We don't believe this matches the intent of the policy or the guidebook.

No individual entity should be able to participate in both an objection and CPE for the same string.

*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?*

The Independent Objector could fill an important theoretical function in its ability to relay potential objections from third parties that would not otherwise have the financial capability to do so. However, in the 2012 Round, the behavior of the Independent Objector deviated from this function; the Independent Objector appeared to have an activist agenda, rather than hearing, filtering, and advancing concerns of third parties that would otherwise not have been able to file on their own. Further, the Independent Objector's behavior in the 2012 round raised questions of whether Conflict of Interest Procedures and other procedural guidelines were appropriately applied. We believe the following recommendations could help address issues faced related to the office of the independent objector.

*Require established support for objections by the Independent Objector*

In the 2012 Round the Independent Objector appeared to act on an independent agenda that was not supported by the public, nor by particular affected parties that would have not been able to file an objection. Further, the low success rate for objections filed by the Independent Objector raises questions of whether concerns raised by the objected-to strings were sufficiently clear-cut to warrant objection through this process, particularly given the high cost of this office to ICANN.

As part of the objection filing process the Independent Objector should be required to name one or more parties that initiated or support the objection but would otherwise be unable to file, in addition to meeting all other criteria for objection (e.g. affirmation that filing the objection is in the public interest).

*Establish clear Conflict of Interest Procedures for the office of the Independent Objector*

The 2012 round witnessed potential Conflicts of Interest related to objections filed by the Independent Objector. While the conflicts were ultimately resolved, the failure to establish clear conflict of interest guidelines for the office of the Independent Objector at the outset resulted in additional delay and cost to affected parties. The lack of clear Conflict of Interest Procedures for the office of the Independent Objector in the Applicant Guidebook contradicts with the approach

taken for other independent parties engaged in the application process, including application evaluators and objection evaluation panels.

In light of this experience and in line with the overall goals of the program ICANN should implement a clear conflict of interest policy and associated procedures for the Independent Objector. The Conflict of Interest Guidelines used for application evaluators may be used as a model for these procedures.

#### *Require Independent Objector to withdraw duplicate objections*

The 2012 Applicant Guidebook provided that, absent extraordinary circumstances, the IO should not be permitted to file an objection against an application was already filed on the same ground. We strongly support the principle but do not believe it was fully adhered to by the Independent Objector, who maintained some of his objections while third party objections against the same string and on the same grounds were pending and failed to defend why this followed from extraordinary circumstances.

We urge strict adherence to this principle in a future round and recommending removing the carve out for extraordinary circumstances, as we do not believe that this standard was met or defended during the 2012 Round.

#### *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?*

As set forth in our recommendations in response to question 3.1.2 we believe that parties should be able to jointly determine whether to use a one or three-Expert panel.

The selection of a one or three-Expert panel raises tradeoffs related to cost and consistency. While one-Expert panels are lower cost, three expert panels may be more reliable and less likely to generate concerns around inconsistent application of objection procedures or outcomes. In light of these tradeoffs, we believe that, for all Objection types, Parties should be able to jointly determine whether to use a one or three-expert panel.

In the event that the Parties fail to reach agreement the default should be to rely on a three-Expert panel.

#### *3.1.8 Is clearer guidance needed in regards to consolidation of objections? Please explain.*

While we for most objection types consolidating objections is difficult given the ability for applicants for a single string to propose vastly different business models, we believe that for string confusion objections, a model in which objections are filed against strings (consolidating all applications for that string by default) would be preferable and would ameliorate inconsistent outcomes witnessed as part of the String Confusion Objection Process.



We propose the following guidelines:

- An objector could file a single objection that would extend to all applications for an identical string.
- Given that an objection that encompassed several applications would still require greater work to process and review, the string confusion panel could introduce a tiered pricing structure for these sets.
- Each applicant for that identical string would still prepare a response to the objection.
- The same panel would review all documentation associated with the objection.
- Each response would be reviewed on its own merits to determine whether it was confusingly similar.
- The panel would issue a single determination that identified which applications would be in contention. Any outcome that resulted in an indirect contention would be explained as part of the panel's response.
- A limited appeals process (as described above) would be available to both the objectors and the respondents to handle any perceived inconsistencies.

*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?*

As noted in our response to question 3.1.2 The costs associated with Community Objections were surprisingly high compared to other types of objections, and were hard to predict in advance of filing. This may have been particularly problematic for communities that chose to file objections with a low probability of success.

ICANN should prioritize cost in choosing a vendor. Costs should be transparent up front to participants in objection processes with a fixed fee absent extraordinary circumstances.

We also believe that stricter enforcement of the page caps established for the objections will help to address issues related to cost. One of the factors contributing to the high costs of objections during the 2012 round was a failure of the the panels to curb submission of additional objection documentation. As panels are paid hourly they are incentivized to accept additional documentation even if it was not strictly necessary for the purpose of evaluating the substance of the objection. Further, in some instances, attachments were used to make and support additional arguments not made in the body of the original objection, resulting in additional work and cost to respondents.

We believe that the page caps proposed are appropriate and should be more strictly enforced as part of a subsequent application procedure. To these ends, we would welcome additional language clarifying that attachments should be limited to supporting documentation and must not be used to make additional arguments not covered within the 5,000 word/20 page limit and

that, following submission of the initial objection, additional documentation will only be accepted if it is specifically requested by the Objection panel.

*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?*

There seemed to be some confusion and uncertainty about the implications and consequences of a GAC Early Warning. Several steps could minimize this confusion and uncertainty in the future: (i) change the name to GAC Member Early Warning (or something similar) to communicate clearly that the Early Warning has not been issued by the entire GAC, but, instead, by one or more GAC members; (ii) adopt and identify a clear timetable for action by the issuing GAC member(s) to provide certainty to applicants; (iii) require the issuing GAC member(s) to identify the national law(s) on which the Early Warning is based; (iv) have the issuing GAC member(s) designate the type of action(s) desired from the applicant; and (v) emphasize that the GAC Member Early Warnings have no precedential value.

*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?*

We note several concerns that created significant uncertainty for applicants responding to GAC Advice:

*GAC Advice was provided against whole categories of applications.*

Though Advice was ultimately determined to apply to strings specifically listed in the Beijing Communique, the initial communique suggested that these lists were non-exhaustive, and could apply to applications not specifically referenced. This contradicts the procedures established in the Applicant Guidebook, which stated that Advice would be provided against applications.

This created confusion for applicants whose strings may exist in related industries, but were not cited, around whether advice applied to them and whether to engage advice directly.

*GAC advice was provided against strings (encompassing all members of a contention set) rather than individual strings.*

This also contradicts the procedures defined in the applicant guidebook. Applications for a single string may propose vastly different business models with implications for the validity of parts of the GAC Advice.

The expectation should be that applications will be reviewed and, if applicable, referenced individually as part of the GAC Advice, with these factors taken into account.

*GAC Advice was non-implementable in its initial form.*

This necessitated lengthy and tedious back-and-forth with the ICANN Board to reach a solution that was amenable to the GAC and technically feasible for registry operators, complicating resolution of the Advice by ICANN and registry operators and significantly drawing out the timeline to bring new gTLDs to market.

Whereas the ICANN Board was prepared to accept and take steps to address the public policy concerns raised in the GAC Beijing Communiqué, the GAC insisted on playing a prolonged role in implementation and operational matters which resulted in further unreasonable delays for all concerned. GAC Advice should be provided in such a way that provides sufficient flexibility for ICANN or the relevant community to develop policy or implementation frameworks that ensure such advice is implementable.

*GAC Advice did not provide a rationale for why particular strings were included.*

The failure to justify the selection of strings referenced in the GAC communique further extended the process of accepting and implementing GAC Advice. Consistent with the recommendations of the Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability), advice provided against applications as part of a future application process should be accompanied by a rationale and demonstrate familiarity with the application in question.

We further note that the community has already developed several recommendations regarding the provision of GAC advice that ameliorate some of these concerns as part of the CCWG-Accountability. The requirements for the provision of GAC advice established as part of the CCWG-Accountability must apply equally to the provision of advice as part of the application process. These recommendations included the following:

*That a rationale must accompany any formal advice provided to the ICANN board;*

That any formal advice must be made in the absence of a formal objection from any GAC member (which must be confirmed by the GAC in providing the Advice); and

That the Board must not accept advice that compels it to act outside of its Bylaws, including its mission statement, its core values, and the prohibition of disparate treatment for similarly situated parties.

*The GAC did not allow applicants an opportunity to be heard.*

An applicant whose application was the subject of GAC Advice had no opportunity to be heard by the GAC before the GAC issued its GAC Advice. Indeed, the GAC Chair refused at least one applicant's request to be heard. Without an opportunity to be heard before the GAC issues Advice on its application, an applicant is denied a fundamental requirement of procedural fairness that is recognized under national and international law. Moreover, requiring that applicants have an opportunity to be heard by the GAC should minimize the likelihood that the GAC will issue Advice based on incorrect factual assertions or fundamental misunderstandings

by GAC members. Of course, the opportunity to be heard must be meaningful in terms of both process (timing and length of presentation, for example) and substance (topics covered and GAC member attendance, for example).

### ***Applicant Free Expression***

*3.2.1 Noting that the 2007 Final Report on new gTLDs tried to balance the rights of applicants (e.g., Page 13 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? (Kristina to draft)*

The working group has not reached agreement on a response.

### ***Communities & CPE***

*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?*

As outlined in the responses below, the RySG believes that a number of improvements could be made to the implementation of CPE. In its current formulation, CPE was difficult to achieve, with a low rate of success amongst applicants. Despite this fact, some CPE applications seemed to represent an attempt to game the system to gain an advantage over other applicants rather than representing bona fide communities. As outlined below, a community priority approach that is not "all or nothing" may help address this set of concerns, and may also make it possible for CPE to be more relevant in scenarios where contentions do not exist.

Despite these concerns, we do believe that the general mechanism of providing priority in contention sets (and therefore, not evaluating an applications community status unless contention exists) is consistent with current GNSO policy and implementation guidance.

*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?*

We agree that in some case, individual CPE decisions seemed to result in different scoring for apparently quite similar sets of facts. In addition, there was a lack of transparency in how CPE was evaluated. In many cases, materials evaluated were not available to the public or even to other applicants, or what factors or materials panels considered. It was also not clear what the roles for ICANN and EIU were.

We therefore make the following recommendations to improve the process:

- Improved training for panelists. Objection process, legal rights process generally better. Look to those models for better training.
- Similar review/appeals process for CPE decisions as we're proposing for objections.
- Better documentation of roles and factors in the CPE evaluation process. Materials evaluated as part of the CPE process should be made public.
- There should be a formal process by which other applicants have an opportunity to comment on a CPE application and its supporting materials.

*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?*

The RySG supports the inclusion of bona fide communities in future expansions of the gTLD space. CPE was difficult to achieve, with a low rate of success amongst applicants. Despite this fact, some CPE applications seemed to represent an attempt to game the system to gain an advantage over other applicants rather than representing bona fide communities.

CPE should not be decided on an “all or nothing” basis; instead should be based on a sliding scale. For example ICANN might provide a multiplier in auction process for “grey area” applications. Applications that clearly cross the threshold still automatically prevail in the contention set. If this approach is adopted, all applications in the contention set should be considered to determine whether they also partially meet the criteria for community status.

*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.*

No, we do not believe that the rights of communities, including with respect to freedom of expression, freedom of association, freedom of religion, and principles of non-discrimination were infringed by the new gTLD program.

*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?*

As discussed in 3.3.3, CPE should not be decided on an “all or nothing” basis; instead it should be based on a sliding scale. For example ICANN might provide a multiplier in auction process for “grey area” applications. Applications that clearly cross the threshold still automatically prevail in the contention set. If this approach is adopted, all applications in the contention set should be considered to determine whether they also partially meet the criteria for community status.

More generally, if ICANN were to adopt an approach to allocating new gTLDs that did not involve rounds and eliminated the possibility of contentions, it may be worth considering whether any incentives could be created for applications representing bona fide communities.

### **String Similarity**

*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?*

#### *Singular/Plural*

As stated in more detail in the recommendation provided in response to Section 3.4.3, the scope of the String Similarity Review should be broadened to encompass single/plurals of TLDs on a per-language basis in addition to the existing visual similarity standard.

#### *Eliminate the Sword Tool*

There was little correlation between the Sword Results and the actual outcomes of the String Similarity Review and String Confusion Objection Process and, thus, that the tool was more misleading to applicants than helpful. Further, it appeared that the scores produced by the Sword Tool were changed partway through the application process, resulting in further confusion to applicants.

We recommend that ICANN do away with the Sword Tool that was presented to applicants as part of the 2012 Round.

*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>)?*

The RySG has not reviewed the ccTLD Fast Track Process for the purpose of this comment.

*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?*

We believe that in subsequent application procedures the string similarity process should be updated to consolidate single-plural pairs by default.

The String Similarity Review played a limited role in the 2012 Round. Of the 1,400 unique applications submitted and the 232 contention sets formed, only two contention sets were identified by way of this review: .hotels and .hoteis and .unicorn and .unicom. Many applicants and community members expected the String Similarity Review to identify a broader set of contentions and weed out potential instances of user confusion, particularly with respect to applications for single and plural string pairs. This is evidenced in the fact that no applicant applied for both the single and plural variant of a particular string, as well as in the number of String Confusion Objections filed to address single and plural string pairs.

The scope of the String Similarity Review should be broadened to encompass single/plurals of TLDs on a per-language basis in addition to the existing visual similarity standard. Contention sets would be formed on a per-language basis.

A dictionary should be the tool used to determine the singular and/or plural version of the string for the specific language. In this expanded process, applications for single/plural variations of each string would be placed in a contention set and applications for a single/plural variations of an existing string would not be permitted.

By way of example, if applications were submitted for the strings .gâteau, .gâteaux, .cake, and .cakes, then the strings .gâteau and .gâteaux (French) would be placed in contention with one another, but not with the corresponding translations .cake and .cakes (English), which would comprise a separate contention set. Additional contention sets could continue to be formed through the String Confusion Objection Process.

*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?*

In the event ICANN accepts fees for applications of an allowable string at time of application but later restricts the string from being able to achieve delegation through no fault of the applicant, ICANN should consider a mechanism to allow the applicant to change the originally applied-for

string (examples from the 2012 round include but not limited to .HOME, .MAIL and .CORP). We do not support the ability of an applicant to change the applied-for TLD simply due to the fact that it is in contention with another applicant.

*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.*

We believe that CPE and last resort auctions are generally a reasonable approach for contention resolution. As previously noted, however, we believe that CPE as a decontention process could benefit from the introduction of models that were not all or nothing. We would not support replacement of these mechanisms with a decontention process that was based upon speculative evaluation of the applications in question.

*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?*

We believe that there was likely some applications that engaged in speculation as part of auction or other private settlement arrangements, and that this trend will likely continue in future rounds, particularly now that the scale of interest is better-known. However, we believe that this does not justify a prohibition on applicants arriving at private settlements and that these types of prohibitions are, generally, outside scope for the Working Group. We welcome further consideration of other mechanisms to address potential speculative applications that are more narrowly tailored and do not unduly prevent registry operators' private commercial agreements with respect to their commercial assets.

### **Accountability Mechanisms**

*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?*

The perception of inconsistent outcomes in objection proceedings led to overreliance on existing accountability mechanisms, particularly the Reconsideration Request process, which was ill suited to address the objection related issues as Reconsideration Requests are intended to address action or inaction by ICANN staff or the ICANN Board and not determinations by a third party panel. This situation was detrimental to applicants, who were left without adequate recourse mechanisms, and the ICANN Board's Governance Committee, which was inundated by an unprecedented number of reconsideration requests that it could not process on a reasonable time frame. It also drove the creation of post-decision mechanisms which were only made available to a narrow subset of applicants who faced the most obviously inconsistent objection determinations.



Specific to the application process we believe that a narrowly-tailored appeals process should be introduced for objection procedures, to better-address perceived inconsistent outcomes and areas where applicant believes that objection panels failed to apply the proper standard. Our recommendations for an appeals process, including a discussion of several possible approaches to the introduction of an appeals process can be found in our response to Question 3.1.2.

Beyond this proposed mechanism, which is specific to the application process, we believe that this question is premature and may be beyond the WG's scope. First, some of the accountability mechanisms under discussion have changed significantly since the 2012 round as part of the CCWG-Accountability, and others remain under discussion and may be altered as a result of Workstream 2 of the CCWG Accountability work. Second, these mechanisms go beyond the scope of the gTLD application process, and are more appropriately considered in devoted review or policy processes like the CCWG-Accountability or the Accountability and Transparency Review Process.

*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.).*

Some of the objection processes for contested applications had common issues between them. The next gTLD rounds working group identified some of the problems that post-decision mechanisms, such as appeals, may help reduce or solve.

- Lack of panelist training and consistency as evidenced by decisions that were decided differently, despite having substantially similar fact patterns,
- Random opportunities to present new evidence or re-argue a position based on how vehemently a party insisted on the right.
- No opportunity to have the merits of a case revisited – a problem where the providers didn't properly train panelists.

The perception of inconsistent outcomes led to overreliance on existing accountability mechanisms, particularly the Reconsideration Request process, which was ill suited to address the objection related issues as Reconsideration Requests are intended to address action or inaction by ICANN staff or the ICANN Board and not determinations by a third party panel. This situation was detrimental to applicants, who were left without adequate recourse mechanisms, and the ICANN Board's Governance Committee, which was inundated by an unprecedented number of reconsideration requests that it could not process on a reasonable time frame.

It also drove the creation of post-decision mechanisms which were only made available to a narrow subset of applicants who faced the most obviously inconsistent determinations. This situation was inadequate to address the larger issues identified above.

We recommend that, in a subsequent application process, a limited appeals process be introduced for the objection procedures for parties that identify either a reasonable inconsistency in outcome or a specific argument as to why the panel failed to apply the proper standard.

We propose below several models to consider for potential appeal options:

- Delayed appeals: For parties that were the first few cases under a new procedure or mechanism, allow the losing party to request a delayed review by panelists who have experience deciding similar cases under the new system, to cross-check for consistency.
  - Pros: Ensures the first cases are not prejudiced by early learnings by the first panels.
  - Cons: Prevents certainty for the prevailing party. Implies objections are subject to stare decisis.
- Master panel: A traditional appeals process appears to simply substitute the judgment of panelist B for that of panelist A. Instead, hand-pick “master” panelists who have demonstrated consistent, sound judgment in the first round and ensure that they are provided with high-quality briefing materials regarding any changes in the next round. These materials should be approved by the community members who work on any changes to the AG. ICANN can use application fees to pay the Master panel to read every opinion to form its knowledge base. The Master panel may be responsible for providing routine panelist training on each objection process, to be paid by application fees. The Master panel can be retained by ICANN or by one of the Providers (subject to its ability to contract with each of the chosen master panelists). Master panelists may be forbidden from hearing objections in the first instance, to reduce conflict.
  - Pros: Uses proven experts to try to create more consistent outcomes. Application fees fund the effort toward consistency, but parties still pay for their own cases.
  - Cons: No party control over master panel selection, risk of master panelists “going rogue.” Provider that offers the master panel may be at odds with other providers. ICANN- run master panel may invite conspiracy theories. Master panel appointment may become “political.”
- ICANN Review: A panel or team within ICANN could be established to conduct independent reviews of objection outcomes and to make follow up recommendations.
  - Pros: The cost would be borne by applicant fees. If the process is transparent, the community may trust the experts more than panelists hired by third-party providers.
  - Cons: ICANN- run review process may invite conspiracy theories and the experts may not receive community trust if ICANN is not transparent about how the review process works. Without an actual appeal mechanism where facts are re-heard, the community may feel like a review does not go far enough. Similarly, ICANN may be overly conservative in this review for fear of picking winners and losers as part of the application process.

- Appeals: A template exists for this in the URS, TM-PDDRP, and RRDRP. The community would need to decide if all appeals should be heard by a three member panel in order to avoid the perception that it's always just another coin flip. Using those existing procedures as guides, the community could define the appeals process it wants. Some examples include: expedited timelines to avoid dragging out an objection, a rehearing based on the already-submitted data, the use of a short list of panelists who are generally conflict-free and available (similar to the master panel), and clearly-defined fees to be prepaid. Appeals could be limited to specific issues, as determined by the community – each objection process would need to come up with the types of appeals that would be acceptable.
  - Pros: Eliminates concerns about ICANN having the ultimate authority, allows Providers to perpetuate a consistency amongst the panelist list, and provides a basis of competition between panelists (pricing, time-to-decision, quality of training and opinions).
  - Cons: Additional, possibly uncapped, expense. If Panelist training problems persist, an appeals process is still a blind shot.
- Existing accountability mechanisms: Existing mechanisms are best utilized if a Provider goes rogue or underperforms, but the Board's expertise is not policing the day to day work of ADR providers.

## Work Track 4

### **IDNs**

*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)?*

We agree that 1-char IDN TLDs should be allowed, in specific combinations of scripts and languages where that character represents a whole word or concept. 1-character IDNs, whether at the top- or second-level, are represented by much longer strings. (For example, "홍" is not a 1-character string, it is a 7-character string, "xn--s1r".) Therefore, "1-character IDN TLDs" should be allowed (but are a misnomer, as they are not "1-character" strings.)

*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?*

The current IDN policies are adequate for subsequent procedures. We do not believe that IDN-related issues should be handled discretely from overall policy development related to IDNs. IDN policies should apply equally to "legacy TLDs", TLDs from the 2012 round, and TLDs from a future application process.

*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/.org 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?*

For IDN Variant TLDs, bundling is advisable, to guard against confusion for registrants and other users. However, this is not a gating question and need not be resolved prior to launching subsequent procedures.

*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?*

Where a country-name is represented by a single IDN character, it may be allowed as a ccTLD based on the same fact that an IDN 1-character string is not, in fact, 1-character. However, it is not within the GNSO's remit to comment on ccNSO policies and the ccNSO is encouraged to comment and adapt their own policies.

### **Universal Acceptance**

*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/>) ?*

There are no current UA issues that will require policy development work.

### **Technical Evaluation**

*4.3.1.1 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.*

Technical capability should be shown at application time during the testing phase as was done in the 2012 application round. It would seem the best use of an evaluator's time to do the testing in groups instead of waiting until contracting is reached as this may result in periods of uncertainty based on contract negotiations etc. If an RSP accreditation programme is agreed then evaluation of individual registries would not be required.

*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)?*

If a RSP programme is not agreed then the RySG work team is in favour of an approach that would allow evaluation of a registry service platform once, even where it was servicing multiple TLDs. Supplementary, tailored reviews could be conducted for the registry service provider in the event that a particular TLD operating on its platform had materially different requirements such that independent testing and evaluation would be required. Repeating technical

evaluations for a single registry service provider does not adequately address concerns around scaling/capacity. This would be better addressed by establishing intermediate thresholds that could trigger reevaluation if a registry's operational requirements grew without comparable scaling to the platform's capacity.

*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?*

Yes, this should be considered in the financial evaluation portion of the application process.

*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 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.*

It likely provided more inconvenience for some than it did others, depending on systems and software programs employed, etc. It may be more efficient and convenient for an applicant to provide their own financial information. However, we are unaware of any specific issues regarding the inability to satisfy the requirements of the application by using the ICANN template. This would be a good item for discussion between registry financial officers and ICANN staff.

*4.3.2.2 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?*

Financial statements in the form described in the AGB (question 45) were not relevant for some New gTLDs Applicants such as governments. Applicants should be given the flexibility to submit the documents necessary to demonstrate financial position, e.g. a budget. Where the financial statement or similar document demonstrates, subject to objective criteria, that the New gTLD Applicant has access to funding sufficient to cover the costs of running a registry (e.g. government or established corporation or registry operator), additional demonstration of financial capability such as a detailed explanation of costs/capital expenditures and funding/revenue should not be required.

*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?*

Detailed business plan information does not need to be collected in order to evaluate an Applicant's financial capabilities. The evaluation process should require the Applicant to demonstrate financial capability to run a registry and not financial capability to run a particular registry. The costs associated with running a registry can be based on data from the previous New gTLD round and cost guidance previously provided by ICANN;

<https://www.icann.org/news/announcement-3-2011-12-23-en>. Requiring Applicants to describe business plans stifles progress and innovation and is unnecessary for a forward looking assessment of financial capability.

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

No. Even if an applicant intends to run a brand TLD, likely with far fewer second-level registrations than a generic TLD, its request for admission to the root should be accompanied by a thorough demonstration that it is financially capable of holding the TLD to the security and stability standards required of all other applicants.

*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.*

This might depend on the time elapsed between application and contracting. If it's significant and, say, a potential applicant failed to meet certain criteria but remained eligible as an applicant, a second review could be warranted. However, it would be critical not to penalize an applicant with a second demonstration because of delay on ICANN's part, or on foot-dragging by others in the community.

*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?*

This too depends on the approach taken by the registry. But generally, the latter.

*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?*

Yes. Applicants should meet the same standard.

## **Name Collision**

*4.4.1 What general guidance for namespace collisions would you like the community to consider for subsequent procedures, and why?*

The timing of the introduction of name collisions as a concern for new gTLDs during the 2012 round of the Program was extremely disruptive and caused significant delays to the process of delegating new gTLDs while ICANN assessed the issue and considered proposals to mitigate against the risk. In subsequent new gTLD procedures, if name collision is deemed to be a continuing risk that requires mitigation, a clear and fair process for determining which strings will pose a risk for Name Collision should be developed and communicated to future applicants well in advance of any subsequent application procedures. If a similar risk mitigation procedure is

deemed to be appropriate, applicants should be made aware in advance so that they have the opportunity to factor controlled interruption periods into their launch timelines.

*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?*

The 2013 “Name Collision in the DNS” report by Interisle Consulting Group served as the basis for ICANN’s understanding of the potential risks posed by name collision and ultimately led to the development of a mitigation framework. Interisle based its report on “Day in the Life” (DITL) data, or the stream of DNS requests to certain root servers and servers operated by a global DNS resolver organization for two, three-day periods, one in 2013 and one in 2012. It counted individual requests for each gTLD string to determine the level of risk each string presented in terms of collisions. However, the report failed to put into context which of these requests actually presented a concrete collision threat, and which were harmless, which likely served to overstate the potential for risk for certain strings.

At this point, the RySG is not in a position to determine whether specific potential strings should be withheld from registration due to their risk for name collision. If a name collision risk assessment will be part of the evaluation of future gTLD applications, the RySG urges ICANN to work to identify a more rigorous methodology that not only quantifies the number of requests, but is able to provide a more nuanced and detailed assessment of what, if any, real threat is posed by the applied-for string.

*4.4.3 Based on data from the first round, can the controlled interruption period be reduced in future rounds?*

Considering that there were very low instances of name-collision problems reported during the introduction of new gTLDs from the 2012 round, the RySG believes that the controlled interruption period can be reduced to 60 days or fewer.

*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?*

No.

## **SSR**

*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?*

We believe a per-label security and stability review does not make sense anymore, with two very limited exceptions:

- 1-char IDNs
- Scripts and/or languages for which there are no top-level LGRs at time of application

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

The RySG is pleased that the root DNS system has been able to handle the increase in root server traffic observed between January 2014 and January 2016, which was approximately threefold. Considering that only 0.4% of the queries received by the root servers are for new gTLDs, we infer that there is no strong correlation between increase of the root zone size and root servers query load. In fact, making the root zone larger could have contributed to limit the growth of overall traffic to the root servers because of differences in behavior between positive and negative caching. First, positive answers have a larger TTL (Time To Live) than answers of non-existence, and second, as demonstrated in previous analysis of queries to recursive servers versus root servers, negative caching is applicable only to specific host names whereas positive caching applies to an entire TLD.

The RySG is of the opinion that the cautious approach of gradually delegating new gTLDs was the right choice and advises also in future rounds to exercise care and keep the DNS evolving in a healthy way. As experience with the root server system grows, the increased root server system monitoring capabilities should be used as guidance to whether a ceiling is in effect required and what that ceiling should be. We strongly disagree with pre determining a ceiling to the delegation rate of TLDs.