26 May 2017

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

Please find below our comments in response to the New gTLD Subsequent Procedures Working Group's second community consultation (CC2).

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?
	Benefits:
	a. *The primary purpose and benefit of an RSP Program would be to increase efficiency in the TLD application, evaluation, and PDT processes by limiting the need for multiple submissions and evaluations of the same technical answers, and multiple PDTs for the same RSP.*
	b. *It would speed up the overall process time for an application by moving evaluation and PDT testing to before the application window opens, and by likely reducing the number of Clarifying Questions issued.*
	c. *By eliminating multiple evaluations and PDTs of the same RSP it would, by definition, remove inconsistency among results for the same RSP (as was experienced in the 2012 round).*
	d. *It would increase predictability for both applicants and RSPs: it would allow applicants to know prior to the submission of their TLD application that their chosen RSP would meet ICANN's technical criteria; RSPs would be able to offer the same assurance to potential clients when seeking their business.*
	e. *By increasing efficiency of evaluations it should naturally lead to lower application costs (assuming a cost-recovery pricing model). In 2012 approximately $60,000 of each application fee covered evaluations, of which a substantial amount was allocated to technical evaluations. If only one of these evaluations is performed per RSP – rather than one per TLD – the total application fee per TLD should decrease.*
	f. *A properly designed approval process could also remedy flaws in the evaluation process by testing the ability of RSPs to scale.*
	Challenges:
	a. *Some have argued that having a pre-approval process will lead to a "race to the bottom" in technical standards as RSPs will only shoot to meet the minimum*

requirements and not innovate. Moreover, this race to the bottom will cause their services to be commoditized and ultimately threaten the security and stability of the Internet. However, it is not clear why setting minimum standards would stifle innovation or threaten security and stability. It ignores the fact that minimum technical standards have been in place for the 2012-round TLDs with no evidence of a lack of innovation or of threats to the security and stability of the DNS. In fact, these are the same arguments that AT&T made in the 1990s and early 2000s to against cell phone portability. Yet in that case the evidence has shown that services have greatly improved for consumers, prices have dropped substantially, and competition amongst new providers (Sprint, Verizon, Leap/Cricket) has greatly increased.

b.   The argument that setting a minimum set of technical standards will lead to an overall degradation of standards is built on the misconception that the RSP Program is somehow looking to change the current (2012-round) technical standards; it is not. The RSP Program is simply about process and making it more efficient. Any pre-approval of RSPs would need to meet with whatever technical standards are agreed by the ICANN community as being required for ROs (whether that be the current standard or some other agreed standard).

c.   Another argument that has been made charges that an RSP Program would create a contractual relationship between ICANN and RSPs, thus creating a new set of contracted parties within ICANN. To be clear, it does not follow that an RSP Program would require a new contractual relationship between ICANN and RSPs, and we do not agree that one should be created (see 1.1.5).

Other Considerations:

Our view is that in addition to the selection and evaluation process of RSPs for subsequent application windows, such an accreditation, certification or pre-approval program for Registry Service Providers (RSPs) would provide equal benefit if applied retroactively to current Registry Operators in transitioning from one RSP to another.

Background:

a.   Section 7.5 of the Registry Agreement (RA) states that a change of a Material Subcontracting arrangement, which includes the change of any subcontractor providing one or more Critical Functions for the registry, must obtain ICANN's consent.

b.   ICANN has created a bureaucratic process through an "Application for Assignment Form" where Registry Operators seek consent from ICANN to change RSPs.[i]

c.   There is a lack of transparency with ICANN's evaluation process both in terms of timing and requirements.

d.   Anecdotally, irrespective of who the gaining RSP is, the evaluation has been lengthy and incurs fees, estimated by ICANN to be $5,000 for a technical evaluation, even when moving to an existing RSP that operates other TLDs.[ii]

e.   Once approval for the change is received, there is also a requirement for the equivalent of pre-delegation testing of the RSP, again irrespective of who the gaining RSP is and how many TLDs it already operates.

	Benefits: a. *All of the above makes the exercise of changing RSPs time consuming, costly and inconvenient. Reducing the time and financial costs when switching RSPs by means of some form of pre-approval process would be expected to assist in increasing competition between existing back-end RSPs.* b. *In the case of a Registry Operator with multiple TLDs, it would reduce the overall costs paid to ICANN (if not eliminate the costs) of switching RSPs. Currently ICANN charges $4,500 - $5,000 per TLD to Registry Operators that want to switch RSPs. In the case of a Registry Operator that has 50 TLDs, for example, this could cost up to $250,000 (a huge impediment to switching). If there is a list of pre-approved RSPs, ICANN could automatically approve such transfers without any cost (or at a much more reduced cost than currently).*
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? *From a process point of view, at the time of seeking pre-approval, an RSP could state that its system can scale for up to XX number of TLDs (which could be based on estimated demand). They could then be evaluated, tested, and pre-approved based on this number. If they subsequently wish to scale for a higher number of TLDs then this would warrant an additional test by ICANN.*
1.1.3	Who should be responsible for evaluating whether an RSP meets the requirements of the program? *In the 2012 round ICANN outsourced the evaluation and PDT to third parties. We see no reason why this should change, with the proviso that quality and consistency of both the evaluations and PDT is maintained.*
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. *Continuing technical obligations should be placed upon the Registry Operator (RO) through their Registry Agreements, and by consequence, through the RO's commercial contract with their RSP. In other words, the status quo from the 2012 round should be maintained.*
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? *No. ICANN already has a contract with the RO through which it enforces technical SLAs, and in turn the RO has a contract with its RSP through which it enforces the same (or higher) technical SLAs. Creating an additional contractual relationship between two of these three parties would complicate the authorisation and enforcement lines, i.e. with both ICANN and the RO having contractual enforcement power over the RSP for technical SLAs. It may become less clear who is primarily responsible for enforcing technical SLAs on the RSP, and the communication chain would also become blurred.*

	Instead of an agreement between the RSP and ICANN, measures should be sought to improve the ability of ICANN to communicate with the RSPs (see for example the suggestion raised by the RySG in their comment). *We also note that for 2012-round registries, ICANN already has the power to engage the EBERO and migrate a TLD to a different RSP if SLAs are breached.*
1.1.6	What, if any, are the potential impacts (both positive and negative) of an RSP Program on ICANN Accredited Registrars? If there are any negative impacts, what are ways in which those impacts can be mitigated? *We are not aware of any notable impacts upon ICANN Accredited Registrars (either positive or negative) as the result of an RSP Program.*
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? *There already is a continual process to assess the technical capability of RSPs, namely through ICANN Compliance's SLA monitoring. ICANN's SLA monitoring system provides round the clock monitoring of a TLD's SLAs and alerts ICANN when SLAs for a given TLD are approaching breach level and when they hit breach level. At this point, ICANN have the ability to invoke the EBERO and migrate a TLD to a different RSP. Therefore, it is not clear that any arbitrary periodic "assessment" of an RSP would add anything which is not already being covered by ICANN Compliance's SLA monitoring.*
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 soon as possible in order to provide RSPs with enough time to seek pre-approval (if they so desire) before the application window opens. However, not having pre-approval should not be an impediment to a TLD applicant selecting a particular RSP. Therefore, the 2012-round method of submitting technical answers at the time of application and going through evaluation on a TLD basis should also be an option (this would only apply for applicants who have selected a non pre-approved RSP).*
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? *For practical purposes it may be advisable to have a cut-off date in advance of the application window opening, in order to prevent a situation where an RSP fails to achieve pre-approval by the start of the application window, leaving them and the TLD applicant a relatively short period of time to compile answers to the technical section of the TLD application (being the only other approval method available).*
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)? *Pre-approval fees should be charged directly to RSPs, who then have the option of recouping the fees through their pricing models to their clients (ROs). It would not be practical to charge TLD applicants since prior to the application window there would be no certainty of the number of applicants (and thus what the charge should be per applicant).*

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? *Our view is that further information and a better understanding is required. Suggested next steps include research and studies into understanding needs of any program and current weaknesses. Potential areas for expansion include (1) Broaden support to IDNs or other criteria.*
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 need for major changes to the AGB/application processes once a given application window has opened should be minimised or ideally eradicated, since it causes severe disruption to business planning and budgeting. However, if there are exceptional circumstances in which the AGB/application processes need to be changed, prompt and clear communication to the applicant community is key.* *The transparency and credibility of application timelines should also be enhanced in future rounds.* *ICANN should ensure that no future new gTLD round begins without a detailed, realistic, publicly available review of expected timelines for application processes. Since applicants do not have the luxury of missing deadlines and extending timelines then neither should ICANN save in the most exceptional of circumstances. Where timelines are missed during future rounds, ICANN should ensure prompt reporting to the community of (1) why the timeline was missed and (2) what measures have been taken to avoid a repeat occurrence.*

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? *In our view a "break even" fee is appropriate.* *In the first new gTLD round, the application fee of $185,000 was set to "recover costs associated with the new gTLD program" – including all evaluation costs – to ensure that the program is "fully funded and revenue neutral".* *The new gTLD application fee should be reviewed ahead of the next round to align with the actual costs and revenues generated from this first application round in order to be informed to set the fee at the "break even" point.*
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? *We support a primary approach of setting the application fee to "break even". And we do not view this approach as being in conflict with the application fee reflecting any material variance in the costs of different types of applications. We would support further analysis into this area, looking at, e.g., does a Specification 13 TLD, intended for the use of a single registrant, carry the same risk and therefore require the same scope of application and corresponding evaluation as an open TLD?*
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? *In the next round, ICANN should provide applicants with the option to receive an invoice for the purposes of application fee payment.* *Without the provision of invoices, it can be a painstaking process for many organisations – large and small – to gain the internal approvals for the submission of large sums of money to an unrelated entity. Indeed, the larger the company the more difficult it tends to be to obtain an exception to the required financial accounting procedures put in place to safeguard against fraud. This process could be automated through ICANN's application system.*

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, centred 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? *Categories become more relevant if there are different application criteria, obligations, or contractual provisions applied accordingly. Whilst we do not support multiple categories with different criteria, due to the complexity and lack of flexibility to develop and evolve business models that would likely result, the 2012 round did clearly establish a category of Brand TLDs, which we support. A number of Brands would have benefited from an application process and contractual provisions which better acknowledged the different drivers and priorities of a Brand TLD. Specification 13 goes some of the way here, but additional Brand-specific provisions or even a Brand-specific contract would be beneficial. An entirely separate contract for Brand TLDs requires careful consideration, however, as it has the potential to reduce the flexibility of registries. For example, if a registry operator did wish in the future to allocate names more widely, outside the limitations imposed by Specification 13, it is a simple matter to remove the Specification from the contract. With a separate Brand contract the registry operator would need to enter into a replacement contract with ICANN. The same benefits and tailoring for Brand TLD might also satisfactorily be delivered by using the specification model.*
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? *Whilst a number of factors have impacted the cost to brand owners, feedback from Com Laude's clients, and supported by the INTA Impact Study, has highlighted certain pricing practices of some new gTLD registries as being a particular concern, namely the issues of Sunrise pricing and the treatment of Premium and Reserved names. Many trademark holders have reported being offered names during the Sunrise at prices significantly higher than those for general availability, often prohibitively so. This is exacerbated where terms corresponding to the trademark, including examples where the trademark is a coined word, have been designated by some registries as Premium names, attracting even higher prices. We recognize that the matter of pricing raises difficult issues, and that all registries should not be constrained by over-strict rules to follow the same business and pricing models. Nevertheless, there is a point at which pricing ceases to be a legitimate business model in a competitive market and undermines the RPMs. This is particularly so, given the finding from the INTA Impact Study, that there is no substitutability of names in practice for brand owners because of their defensive nature.*

	Another area of concern raised by Com Laude's brand clients is the scope that registry operators appear to have under the RPMS requirements to reserve an unlimited number of names, including names which may be recorded in the TMCH, until after the sunrise has finished. On later release from reservation these names are subject to a trademark claims process but not to the sunrise. This again has the capacity to undermine the intentions of the RPMs. We would welcome consideration by the working group of how holders of TMCH-recorded marks might be given first refusal where the name is released from reservation. *All of these issues have scope for overlap with the work of the RPMs PDP, and thus communication and liaison between the two PDPs is required.*
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 *ICANN's 2009 policy recommendations on reserved appears to anticipate that letter/number combinations, including single letter-single number combinations, would be permitted as TLDs, however the final version of the Applicant Guidebook requires that ASCII label TLDs must consist entirely of letters. A number of brands consist of combinations of numbers and letters. We would support permitting letter/number combinations as gTLDs unless there is a technical reason to prevent this.*
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? *See response to 2.1.2 above*
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? *As indicated, these provisions are intended to provide protection for third party registrants. Where a Brand TLD qualifies for specification 13, or for registries which have been granted an exemption to the specification 9 code of conduct, the classes of registrant are narrowly defined and limited to the registry operator, or for specification 13 registries, to affiliates and trade mark licensees - in other words to group companies and third parties who have a direct contractual relationship with the registry. Consequently, these registrant protection provisions seem excessive and*

	unnecessary. It is possible, of course, that a specification 13 registry operator might have a number of affiliates and trademark licensees, but this possibility does not necessitate all specification 13 registries being subject to these obligations. Consideration could be given to a threshold level of registrants after which the Brand registry would be require de to put these registrant protections in place.
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. *As stated in the Application Guidebook:* *"Applying entities that are publicly traded corporations listed and in good standing on any of the world's largest 25 stock exchanges (as listed by the World Federation of Exchanges) will be deemed to have passed the general business diligence and criminal history screening."* *In subsequent procedures, new gTLD applicants which satisfy this criteria should not be required to provide detailed information relating to the entity, its officers, directors, and major shareholders if this will not be subject to background screening. As the Applicant Guidebook correctly notes, entities listed on these exchanges are subject to rules which already "meet or exceed the screening ICANN will perform".* *As an additional point of review, consideration should be given to whether such a listed entity should be subject to the same level of information disclosure as is required for private entities (relating to its subsidiary's officers and directors), if it chooses to apply for a new gTLD through one of its subsidiary companies.* *Furthermore, there may be other classes of applicant which are not listed corporations, as described above, where there will nonetheless also have been adequate screening that would meet or exceed the screening that ICANN would perform. An example would be a quasi-public body where the senior officers are effectively public appointments.* *Anyone who has been found liable for cybersquatting, and registrants who have lost more than two Uniform Dispute Resolution Policy (UDRP) cases, should not be allowed to participate as an officer of a registry.*

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. *Business applicants require greater certainty and consistency. Many of the new gTLD applicants who are not from the traditional ICANN community have found it inconceivable that ICANN should repeatedly change fundamental terms of the Applicant Guidebook after the process has commenced, seemingly without there being any ground for objection or sanction, when applicants have invested significant time and financial resources on their applications. Two such examples would be the issue of closed generics and the three terms identified as not to be delegated due to name collision. These issues should have been properly considered and addressed in advance, not half-way through the process. Whilst one might assume that Round 1 will now have flushed everything out, it is important that where issues have been identified as contentious there is a firm decision made on how to address this. This should serve to keep the risk of future mid-stream changes to a minimum.* *Since issues may always arise which were unanticipated, it is pragmatic to allow for the possibility of change after the application procedure has been initiated, but this must be kept to a minimum. Applicants affected by such changes must also be given adequate time to consider the impact on them and, if they choose, to withdraw without penalty. If necessary, an application window should be extended to allow for such review.*
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? *We support these exemptions, and the response of the RySG.*
3.1.11	What improvements and clarifications should be made to GAC Advice procedures? What mitigation mechanisms are needed to respond to GAC Advice? How can timelines be made more precise? *The GAC's processes for filing formal advice – including objections to specific applications – and its rationale need to become more transparent and accountable. If there is to be a presumption that the Board will accept that advice, this should not be done blindly, without the Board first having reviewed, clarified, and agreed with the supporting rationale.* *A formal Government Objection process (currently available under the Formal Objection mechanism managed by ICANN's DRSPs) should be considered as the*

	appropriate venue for individual GAC members to file objections to specific applications. Errors of fact made by GAC members should be open to challenge. *A clearer process should be applied to the identification of regulated and safeguard TLDs. Issues of definition and scope for such categories of TLDs, as well as whether terms identified by the GAC as falling under these lists are non-exhaustive or not, cannot be repeated in a future round, let alone under the unpredictable timelines that became a feature of the first round.* *The determination of such lists by the GAC should be transparently reasoned and founded on clearly established guidelines for applicants. It is imperative that this area of new gTLD policy is settled in advance of subsequent procedures, dictated by existing laws related to TLD strings, rather than by who is applying for those strings. The GAC should not be used as a vehicle for applicants to gain a competitive advantage over others.*
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 support the proposal put forward by the RySG.*
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? *ICANN should explore the possibility of providing applicants – at an additional cost – with the option of naming an alternative string at the time of the application, which must be in a related sector to the primary applied-for string. If the primary applied-for string is in contention with another application, the applicant may elect to proceed with the alternative string. This would help to reduce cases of contention.*
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)? *Provided such TLDs are subject to all the usual string confusion mitigation and legal rights principles we believe they should be allowed.*
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/)? *We do not see such an issue.*
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.

		We support the adoption of an RSP program. The adoption of such a program ought to enable a Registry Operator to indicate at application or, at any time prior to contract-signing, its chosen RSP provider, on the condition that such provider has been approved by ICANN. Please see our answers in section 1 for more detail on how we see an RSP Program working.
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)? *Aligned with our support of an RSP program, we support the evaluation of similar infrastructure among all applicants as far as possible.*
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. *Yes. The current model is not appropriate for the .brand registry model, which has a fundamental difference in that it does not have third party registrants. For example, the 2012 template asks for revenue projections for the registry, but as .brands do not sell domains, revenue is not a relevant metric.* *The purpose of the financial evaluation is to ensure sufficient funding of the registry to guard against registry failure. Notwithstanding the fact that protecting against registry failure should be less of an issue for a registry with no third party registrants, it should be sufficient for .brands to simply demonstrate they have the necessary funds to cover their registry costs. Therefore, a much more simplified version of the 2012 template – requiring just an outline of estimated registry costs and a demonstration of the company's financial position through the provision of company financial statements – would be more appropriate for .brands.*
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? *Yes. Please see our answer to 4.3.2.1.*
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? *We supported .brand applicants in the 2012 round. We do not believe that .brands should be required to provide a business plan as part of their application. A company's use of a .brand is for their commercial strategic use, which should not be required to be subject to third party review.*

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. *We agree that .brand applicants should not be required to submit a business plan with their applications, since all domains in the TLD will be for private use of the applicant and their affiliates.*
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. *At application time. However, an issue in the 2012 round was the long time it took between application submission and delegation of TLDs, meaning that financial positions of applicants had changed. It is therefore important that the process of evaluating and delegating TLDs in subsequent rounds is significantly improved and made more efficient.*
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? *Per registry family, if the applicant requests it (some may wish to treat the TLDs separately).*
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? *Please see our answer to 4.3.2.1 with regard to .brands. Other than .brands, we see no reason to further differentiate the financial evaluation for other applicants/TLDs. Note that this does not preclude the Applicant Support Program from having a role to play in assisting applicants from less developed areas.*
4.3.3.1	What suggestions do you have for improving the application evaluation process that you would like the community to consider? *With regard to the Continued Operations Instrument, ICANN should ensure that a template for a compliant LOC is made available to the applicant community which takes account of local financial and legal requirements in different parts of the world.*

[i] Application for Assignment Form, Oct 2015.
[ii] Registry Agreement Assignment Workshop, Nov 2014, p. 32.

Thank you for considering our comments.