

GNSO Council Recommendations Report to the ICANN Board - Regarding Adoption of the Final Recommendations from the New gTLD Subsequent Procedures Policy Development Process

[Date]

Status of This Document

This is the GNSO Council Recommendations Report to the ICANN Board following the GNSO Council's approval of the final recommendations of the New gTLD Subsequent Procedures Policy Development Process.

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1. Executive Summary

On 18 February 2021, the GNSO Council voted to approve, by a GNSO Supermajority, the Affirmations, Recommendations, and Implementation Guidance (collectively referred to as "Outputs") that were determined to have received either Full Consensus or Consensus designations by the New gTLD Subsequent Procedures Policy Development Process (PDP) Working Group. This reflects that the New gTLD Subsequent Procedures Policy Development Process (PDP) Working Group operated on the basis that unless consensus was reached, the status quo would remain in place as a default position. This Recommendations Report is being sent to the ICANN Board for its review of the Outputs approved by the GNSO Council, which the GNSO Council recommends be adopted by the ICANN Board. Please see Annex A of this Recommendations Report for a summary of all of the Outputs.

The Working Group's [Final Report](#) is divided into 42 topics, each of which contains a series of Outputs. There are 5 types of Outputs: (a) Affirmation, (b) Affirmation with Modification, (c) Recommendation, (d) Implementation Guidance, and/or (e) No Agreement. Please see the Preamble of the Final Report for an explanation of each type of Output.

While most of the 300+ Outputs in the Final Report were approved by the GNSO Council, there are three exceptions:

- The single Output under Topic 23: Closed Generics was classified in the Final Report as Output category **No Agreement**. While the Working Group agreed by Full Consensus that there was No Agreement on this topic, the GNSO Council believes No Agreement is functionally equivalent to the designation of Divergence as detailed in the GNSO Working Group Guidelines, meaning that the Working Group was unable to reach Consensus in recommending an alternate course of action.
- Two of the Outputs under Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets, Recommendations 35.2 and 35.4, obtained the designation Strong Support but Significant Opposition and were not approved by the GNSO Council.

The GNSO Council [chartered](#) the PDP to call upon the community's collective experiences from the 2012 New gTLD Program round to determine what, if any changes needed to be made to the existing Introduction of New Generic Top-Level Domains policy recommendations from 8 August 2007.

The Affirmations, Recommendations, and Implementation Guidance included in the Final Report are the culmination of years of Working Group deliberations and community consultations that take into account input received through a number of public comment periods, including a survey of existing Stakeholder Group / Constituency / Advisory Committee statements from the 2012 round of new gTLDs, a set of initial questions aimed at getting input on the processes and results of the 2012 new gTLD round, as well as comments on the Working

Group's Initial Report, Supplemental Initial Report, additional Supplemental Initial Report on Geographic Names at the Top Level (produced by a Working Group sub-team known as Work Track 5, which focused exclusively on this topic), and draft Final Report. The Working Group finalized its recommendations and submitted its Final Report to the GNSO Council on 18 January 2021.

Annex C of the Final Report provides the consensus designations for the Outputs. In summary, all but 1 of the topics received a designation of either Full Consensus or Consensus. More specifically, 25 topics received Full Consensus, 16 received Consensus and 1 received a designation of Strong Support but Significant Opposition. Within the Topic designated as Strong Support but Significant Opposition (Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets), three of the five Outputs obtained a Consensus designation, and two of the five Outputs, Recommendations 35.2 and 35.4, obtained the designation Strong Support but Significant Opposition. As noted above, the Output under Topic 23: Closed Generics was categorized as **No Agreement** in the Final Report, which did achieve Full Consensus. However, the GNSO Council believes No Agreement is functionally equivalent to the designation of Divergence, and therefore the Output was treated as such. Annex C of the Final Report provides further detail about the consensus designations for specific outputs under each topic.

While the adopted Outputs are primarily concerned with the rules ICANN should use to administer the New gTLD Program, if approved by the Board, some of the Outputs require implementation via contractual obligations. These obligations would become binding on applicants who successfully satisfy the requirements to become a registry operator for a new gTLD. Under the ICANN Bylaws Section 11.3(i)(x), the GNSO Council's Supermajority support for these recommendations obligates the Board to adopt the recommendations unless, by a vote of more than two-thirds, the Board determines that its adoption is not in the best interests of the ICANN community or ICANN.

2. GNSO Vote

If a successful GNSO Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the Constituency(ies) or Stakeholder Group(s) that held that position.

The GNSO Council unanimously approved the Working Group's Final Report, which exceeded the Supermajority threshold. The vote results can be found [here](#).

3. Analysis of affected parties

An analysis of how the issue(s) would affect each Constituency or Stakeholder Group, including any financial impact on the Constituency or Stakeholder Group.

The Working Group's more than 300 Outputs related to subsequent procedures for the new gTLD Program cover a wide range of issues including evaluation criteria, support for applicants from developing countries, contractual requirements, and many other areas. As such, the impact is not isolated to any one Stakeholder Group (SG)/Constituency (C)/Supporting Organization (SO)/Advisory Committee (AC). In addition to impacting new applicants, registrars, registrants, existing registries, end-users, intellectual property owners, and Internet and service providers may also be affected. ICANN org will need to revise existing processes and procedures, design new program elements, update the Applicant Guidebook, and work with external contracted service providers to implement the recommendations and other outputs included in the Final Report.

The Working Group's membership included individuals from the GNSO's Stakeholder Groups and Constituencies, as well as the Governmental Advisory Committee (GAC), the At-Large Advisory Committee (ALAC), and the Country Code Names Supporting Organization (ccNSO). A number of unaffiliated individuals with an interest in the Working Group subject matter also served as members. ICANN org regularly participated in Working Group calls and provided extensive input through public comment, which informed the final scope of the PDP Outputs. The Working Group's final Outputs were also informed by the ICANN Board's responses to public comment periods and the regular participation of Board Liaisons Avri Doria and Becky Burr in Working Group calls.

The deliberations sections of the Initial Report and Final Report provide summaries of different perspectives expressed by Working Group members on each of the topic areas, offering insight into the perceived impact of the Outputs as well as alternatives considered. In addition, Minority Statements were received in response to the Final Report, which provide further material for consideration regarding the potential impact. The following briefly summarizes topics covered in the Minority Statements. For full text, please Annex I of the Final Report.

- [Alan Greenberg, Christopher Wilkinson, Elaine Pruis, George Sadowsky, Jessica Hooper, Jim Prendergast, Jorge Cancio \(in a personal capacity\), Kathryn Kleiman](#): The authors express support for a ban on private auctions. They oppose the use of private auctions as a contention resolution option due to the risk to ICANN, the harm to single TLD applicants and the potential for gaming of the new gTLD program for profit.
- [At-Large Advisory Committee](#): The ALAC 1. States that new policy on DNS abuse mitigation must be put in place prior to the initiation of a new round of New gTLDs 2. Raises concerns about the enforceability of Public Interest Commitments (PICs) and Registry Voluntary Commitments (RVCs) 3. Expresses that ICANN org should suspend any processing or acceptance of applications for Closed Generics until the GNSO

provides consensus policy recommendations on how to address applications for Closed Generics which serve a global public interest 4. Expresses concerns about omissions, from the ALAC's perspective, in the Working Group's recommendations regarding the Applicant Support Program 5. Opposes allowing private auctions; Supports extending "bona fide intent" provisions to all applications; Opposes use of second-price, sealed bid auctions; Disagrees with the protections for disclosing applicants under the Contention Resolution Transparency Requirements framework 6. Notes shortcomings, from ALAC's perspective, in recommendations regarding Community Priority Evaluation 7. Advocates for additional measures in relation to geographic names at the top level 8. Recommends that ALAC should be given automatic standing to file Community Objections in subsequent procedures.

- [Christopher Wilkinson](#): The author expresses concern that the PDP has failed to fulfill the objectives of competition and open entry.
- [Christopher Wilkinson](#): The author expresses support for additional preventative protections with respect to geographic names at the top level.
- [Dotzon GmbH](#): The authors express support for additional rules/measures with respect to geographic names at the top level.
- [Elaine Pruis, Jessica Hooper, Kathryn Kleiman, George Sadowsky, Jim Prendergast](#): The authors express concern that the PDP did not sufficiently address questions and concerns raised during the public comment period, including from the ICANN Board, on the scope and limits of voluntary commitments that new gTLD applicant registries may write into their Base Registry Agreements with ICANN.
- [National Association of Boards of Pharmacy](#): The authors advocate for revising Specification 11 3(a) of the Base Registry Agreement to not only mandate that registries include specific language in their Registry-Registrar Agreements, but also require contractual enforcement of the safeguards described in that language. The authors similarly advocate for updating the current Base Registry Agreement to ensure that Category 1 Safeguards are enforceable.

4. Period of time needed to implement recommendations

An analysis of the period of time that would likely be necessary to implement the policy.

With more than 300 approved Outputs touching on nearly every element of the New gTLD Program, the Working Group recognized that substantial time and effort will be needed to translate the approved Outputs into policy language and operational requirements, as well as the complexity of implementing these recommendations with the involvement of various stakeholders.

The GNSO Council has requested that the ICANN Board initiate an Operational Design Phase (ODP) on the Final Report of the Subsequent Procedures PDP Working Group and its approved Outputs as soon as possible. The objective of the ODP is to perform an assessment of GNSO Council recommendations in order to provide the Board with relevant operational information to facilitate the Board's determination, in accordance with the Bylaws, on the operational impact of the implementation of the approved Outputs, including whether the approved Outputs are in the best interests of the ICANN community or ICANN. The results of the ODP assessment may provide additional insight into the period of time needed to implement the adopted Outputs.

In reviewing the Final Report, the Board may identify specific Outputs that require further analysis to support Board consideration. In addition, it is likely that the Outputs contained in the Final Report that the GNSO Council did not approve may nevertheless warrant the Board's attention and examination of possible ways forward:

- Topic 23: Closed Generics: The Working Group provided no recommendations on whether Closed Generic TLDs should be permitted in subsequent rounds, and determined that there was No Agreement on this topic within the Working Group. The Working Group operated under the assumption that, in the event the Working Group was unable to reach consensus in recommending an alternate course of action, the "status quo" should remain in place as a default position, with the status quo consisting of the 2007 policy, the final Applicant Guidebook, and any implementation elements that were put into practice in the 2012 application round. On this particular issue there were diverging interpretations within the Working Group of what constitutes the "status quo." From the perspective of the Working Group members, it remains an open question how this issue should be resolved.
- Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets: Two of the Outputs under this topic, Recommendations 35.2 and 35.4, obtained the designation Strong Support but Significant Opposition and were not approved by the GNSO Council. The other Outputs under this topic obtained Consensus support and were approved by Council, although it is important to highlight that some of these approved Outputs were designed to support Recommendation 35.2. The Board may

want to consider how the approved Outputs might be implemented for this topic, given the two non-adopted Outputs.

The GNSO Council has also requested that ICANN org convene an Implementation Review Team (IRT), as is the regular practice and in accordance with the IRT Principles & Guidelines approved in 2016. Noting that an IRT will also be needed for the recently concluded Review of All Rights Protection Mechanism in All gTLDs (RPMs) Policy Development Process, it will be important for the Subsequent Procedures IRT to coordinate efforts with the RPMs IRT to ensure consistency with those RPMs Phase 1 recommendations that will affect subsequent round(s) of new gTLDs. As the work of the Subsequent Procedures IRT progresses, it is likely that an increasingly refined estimate of the implementation timeframe will become available.

Under its Charter requirements, the Working Group took into account outputs of concluded efforts (for example the Competition, Consumer Trust and Consumer Choice Review (CCT) and the Cross Community Working Group on the Use of Country and Territory Names (CCWG-UCTN)) and coordinated its work with other relevant efforts that ran concurrently (for example the Review of All Rights Protection Mechanism in All gTLDs (RPMs) Policy Development Process and the Name Collision Analysis Project (NCAP)). In its resolution approving the PDP's Outputs, the GNSO Council requested that "the ICANN Board consider and direct the implementation of the Outputs adopted by the GNSO Council without waiting for any other proposed or ongoing policy work unspecific to New gTLD Subsequent Procedures to conclude, while acknowledging the importance of such work."

As a standard element of GNSO Council Recommendations Reports, staff is asked to provide an estimated time period needed to implement final recommendations to provide the Board with preliminary information on a rough potential implementation timeframe. Given the complexity of this project, and the fact that the approved Outputs have not yet been subject to detailed implementation planning and, as such, any estimate cannot take into account other ICANN org or community work that may impact the timing, staffing, and resourcing required for implementation, it is not possible to provide a precise number at this time with confidence. As noted above, the ODP assessment will inform estimates of the time needed to implement the approved Outputs. Until that assessment is complete, as a point of reference, it may be useful to examine the length of time required to implement previous GNSO policy efforts (including the 2012 round of the New gTLD Program) as a starting point for estimating the time to implement future efforts. At the same time, it is important to note that there are differences between the implementation of this Policy Development Process and previous initiatives. There may also be additional organizational resource limitations in place by the time implementation begins.

5. External advice (if any)

The advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor's (i) qualifications and relevant experience; and (ii) potential conflicts of interest.

The Working Group did not engage with any external advisors in a formal manner as part of the Policy Development Process. Instead, the Working Group relied on the following types of input to support its deliberations:

- Data provided by ICANN org, both in the form of existing reports that are publicly available (such as the Program Implementation Review Report) as well as metrics that the Working Group specifically requested that ICANN org share to support deliberations (such as the information about cases in which emergency thresholds were reached on critical registry functions and input on complaints filed with ICANN Contractual Compliance about registry operators' Public Interest Commitments).
- Reports and data produced as part of other ICANN projects, for example studies and research commissioned by the Competition, Consumer Trust and Consumer Choice Review Team (CCT-RT).
- In specific instances, the Working Group invited individuals with specific experience or expertise to join the Working Group discussion on relevant topics. Examples include individuals who had participated in the Joint SO/AC New gTLD Applicant Support Working Group, those previously involved in Public Interest Commitment Dispute Resolution Procedure proceedings, a provider associated with private auctions from the 2012 application round, and members of the SSAC. The purpose of these invitations was not to obtain formal advice, but to gain additional context to support deliberations.

The Working Group also carefully considered input received through community consultations (see section 8 of this report), public comment (see section 9 of this report), as well as discussions with the GAC, ALAC, CCT-RT, and other community groups during ICANN meetings and when topics of interest to these groups were being discussed by the Working Group.

6. Final Report Submission

The Working Group's Final Report, which includes valuable rationale and context related to all of the Outputs, was submitted to the GNSO Council on 18 January 2021 and can be found in full [here](#). The full text of all Outputs are included as Annex B to this Recommendations Report.

7. Council Deliberations

A copy of the minutes of the Council deliberation on the policy issue, including all opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

Between the submission of the Final Report in January 2021 and the GNSO Council's vote on 18 February 2021, the GNSO Council discussed the Working Group's recommendations on the [email list](#) and by teleconference. Specifically, On 21 January 2021, the GNSO Council received a [high-level briefing](#) of the Final Report by the GNSO Council Liaison to the PDP Working Group. In addition, on 28 January 2021, the GNSO Council Liaison to the PDP Working Group and PDP Working Group Co-Chairs held a [webinar](#), directed at the GNSO Council, to discuss the Final Report.

On 5 February 2021, the GNSO Council Liaison to the PDP [submitted](#) a [motion](#) to approve the Final Report to the GNSO Council mailing list. Several friendly amendments were introduced by email. These were primarily editorial in nature and sought to provide greater clarity about the Outputs that Council was approving for the Board's consideration as well as additional context about those Outputs that Council was not approving. The GNSO Council passed the [resolution](#) via a unanimous vote, which exceeded the Supermajority threshold, during its meeting on 18 February 2021. For additional details, see the transcript and the minutes from the GNSO Council's [February 2021 meeting](#).

8. Consultations undertaken

In accordance with the requirements of the [GNSO PDP Manual](#), the Working Group solicited early input from ICANN's Supporting Organizations and Advisory Committees as well as the GNSO's Stakeholder Groups and Constituencies. Specifically, the Working Group first requested a Historical Record of Statements and Advice from these groups. Subsequently, the Working Group sought input on its overarching issues via Community Comment 1 (CC1) and then input on its remaining Charter topics via Community Comment 2 (CC2). Please see Annex G of the Final Report for more details.

As mandated by the GNSO's PDP Manual, the Working Group published its Initial Report on 3 July 2019, though it followed that publication with public comment periods on its Supplemental Initial Report on 30 October 2018 and its Work Track 5 Supplemental Initial Report on 5 December 2018. On 20 August 2020, a draft Final Report was published for public comment. See section 9 of this report for further details.

During its deliberations, the Working Group also consulted ICANN org's Global Domains and Strategy (GDS) department to answer specific questions or solicit input on proposed recommendations. GDS staff also regularly attended Working Group meetings, especially during the final stages of the PDP. Board Liaisons Avri Doria and Becky Burr also regularly participated in Working Group calls.

9. Summary and analysis of Public Comment Forum

Summary and analysis of Public Comment Forum.

The following public comment periods were held during the course of the PDP:

- On 22 March 2017, a [public comment](#) proceeding was opened to obtain input on the Community Comment 2 (CC2) questionnaire developed by the Working Group to support initial deliberations on the topics within the Working Group's charter.
- On 3 July 2019, the first Initial Report was published for [public comment](#) and contained the output of the Working Group on the Overarching Issues as well as preliminary recommendations and questions for community feedback from Work Tracks 1-4. [Seventy-two \(72\) contributions](#) were received from ICANN community groups, organizations, and individuals.
- On 30 October 2018, a Supplemental Initial Report was published for [public comment](#) covering additional issues that were deemed to warrant deliberations by the Working Group. [Fourteen \(14\) contributions](#) were received from ICANN community groups, organizations, and individuals.
- On 5 December 2018, the Working Group's Work Track 5 published a Supplemental Initial Report for [public comment](#) focused exclusively on the topic of geographic names at the top level. [Forty-two \(42\) contributions](#) were received from ICANN community groups, organizations, and individuals.
- On 20 August 2020, a draft Final Report was published for [public comment](#) by the full Working Group. [Fifty-one \(51\) contributions](#) were received from ICANN community groups, organizations, and individuals.

To facilitate its review and analysis of the public comments received, the Working Group used a set of public comment review tools and analysis summary documents for each public comment period (see [here](#)). Following each public comment period, the Working Group completed its review and assessment of the public comments received through online review, sub group processes, and plenary sessions. After completing this review, the Working Group revised and incorporated feedback received, where appropriate, into recommendations and other outputs, as well as the explanatory text included under each topic of the Final Report.

An additional public comment period will be opened on the approved Outputs from the Working Group to solicit feedback on the recommendations prior to ICANN Board consideration. A summary and analysis of public comments received will be prepared to inform the ICANN Board's consideration of the approved Outputs. At the time of the publication of this report, the public comment forum had not been opened yet.

10. Impact/implementation considerations from ICANN staff

At this stage, it is difficult to accurately estimate the resource requirements to implement all of the approved Outputs; however, there is a high degree of confidence, drawing on experience from the 2012 round, that considerable ICANN org resources will be required for this effort. ICANN org will need to analyze the scope and budget implications in order to determine how the implementation can be best managed.

As an initial step in conducting this analysis, The GNSO Council has requested that the ICANN Board request an Operational Design Phase (ODP). The resulting ODP assessment will provide the Board with additional information about the operational impact of the implementation of the recommendations and likely include an analysis of the resources impact of the implementation process.

ICANN org is developing a communications plan to ensure that information about the progress of the ODP and implementation is transparent and available in a timely manner.

Annex A: Council Resolution

Adoption of the Policy Development Process on New gTLD Subsequent Procedures Final Report

Submitted by: Flip Petillion

Seconded by: Kurt Pritz

WHEREAS

1. On 17 December 2015 the GNSO Council resolved to [initiate](#) a PDP to consider and analyze issues discussed in the Final Issue Report on New gTLD Subsequent Procedures (SubPro PDP) to determine whether changes or adjustments to the existing policy recommendations in the Final Report on the Introduction of New Generic Top-Level Domains from 08 August 2007 are needed.
2. On 21 January 2016 the GNSO Council [approved](#) the Charter for the SubPro PDP and directed ICANN staff to issue a call for volunteers for the SubPro PDP Working Group.
3. After initiating a call for community comment in June of 2016 (Community Comment 1), the SubPro PDP divided its work into four Work Tracks culminating in a second call for community comment (Community Comment 2) in March of 2017, that provided an insight into the work of each of the initial four Work Tracks, and asked a series of questions of the community for further consideration.
4. In November of 2017, a fifth Work Track (WT5) was created solely for the purpose of examining the issues related to Geographic Names as the Top Level. In recognition of the broad interest in the topic and to encourage participation from the ICANN community, it was set up to include four WT5 leaders, one each from the GNSO, ccNSO, GAC and At-Large.
5. The SubPro PDP has followed the prescribed PDP steps as stated in the Bylaws, including the publication of the following Reports for public comment:
 - a. an [Initial Report](#) on 08 July 2018 for public comment.
 - b. a [Supplemental Initial Report](#) on 30 October 2018, covering certain issues not included in the Initial Report.
 - c. a [Supplemental Initial Report](#) on Geographic Names at the Top Level on 5 December 2018.
 - d. a [Draft Final Report](#) on 20 August 2020.
6. On 18 January 2021, the SubPro PDP Working Group submitted its Final Report to the Council for its consideration.
7. On 21 January 2021, the GNSO Council received a high-level briefing of the Final Report by the GNSO Council Liaison to the SubPro PDP Working Group.
8. On 28 January 2021, the GNSO Council Liaison to the SubPro PDP Working Group and its Co-Chairs held a webinar, directed at the GNSO Council, to discuss the Final Report's 41 Topics, which included hundreds of Affirmations, Recommendations and Implementation Guidance (Collectively referred to as "Outputs") in more detail.

9. Each of the Outputs in the following topics obtained a Full Consensus designation (Topics 1, 5, 6, 7, 8, 10, 11, 13, 14, 16, 19, 20, 22, 23, 25, 26, 28, 31, 32, 33, 36, 37, 38, 39, and 40).
10. Each of the following topics received an overall designation of Consensus, with all of the Outputs obtaining at least a Consensus designation (Topics 2, 3, 4, 9, 12, 15, 17, 18, 21, 24, 27, 29, 30, 34, and 41).
11. One Topic obtained a Strong Support but Significant Opposition designation (#35); However, within that one Topic, three of the five Outputs obtained a Consensus designation, and two of the five Outputs, Recommendations 35.2 and 35.4, obtained the designation Strong Support but Significant Opposition.
12. While not seeking to affirm that the status quo prevails in any particular instance, the GNSO Council notes that the Working Group operated under the assumption that, in the event the Working Group was unable to reach consensus in recommending an alternate course of action, the "status quo" should remain in place as a default position, with the status quo consisting of the 2007 policy, the final Applicant Guidebook, and any implementation elements that were put into practice in the 2012 application round.
13. The GNSO Council notes that Topic 23: Closed Generics was identified as an Output category of **No Agreement**, which did achieve Full Consensus. However, the GNSO Council believes No Agreement is functionally equivalent to the designation of Divergence as detailed in the GNSO Working Group Guidelines, meaning that the Working Group was unable to reach consensus in recommending an alternate course of action. The GNSO Council further notes that especially as it relates to Topic 23: Closed Generics, there were diverging interpretations within the Working Group of what constitutes the "status quo".
14. Given the large number of topics and the interdependency of many of the subjects, the SubPro PDP Working Group recommends that all Outputs be considered as one package by the GNSO Council and subsequently the ICANN Board, notwithstanding any Outputs that did not achieve Consensus or Full Consensus.

RESOLVED

1. The GNSO Council approves, and recommends that the ICANN Board adopt, the Affirmations, Recommendations, and Implementation Guidance (Collectively referred to as "Outputs") that were determined to have received either Full Consensus or Consensus designations as documented in the SubPro PDP Working Group's Final Report
2. Recognizing that nearly a decade has passed since the opening of the 2012 round of new gTLDs, the GNSO Council requests that the ICANN Board consider and direct the implementation of the Outputs adopted by the GNSO Council without waiting for any other proposed or ongoing policy work unspecific to New gTLD Subsequent Procedures to conclude, while acknowledging the importance of such work.
3. Further, the GNSO Council requests that the ICANN Board initiate an Operational Design Phase on the Final Report of the SubPro Working Group and its Outputs as soon as possible, to perform an assessment of GNSO Council recommendations in order to provide the Board with relevant operational information to facilitate the Board's

determination, in accordance with the Bylaws, on the impact of the operational impact of the implementation of the recommendations, including whether the recommendations are in the best interests of the ICANN community or ICANN.

4. The GNSO Council requests that the ICANN Org convene an Implementation Review Team to work on the implementation of these Outputs. The Implementation Review Team will be tasked with assisting ICANN org in developing the implementation details for the New gTLD Program, evaluating the proposed implementation of the Outputs as approved by the Board, and working with ICANN staff to ensure that the resultant implementation conforms to the intent of the approved Outputs. The Implementation Review Team shall operate in accordance with the Implementation Review Team Principles and Guidance approved by the GNSO Council in June 2015.
5. The GNSO Council extends its sincere appreciation to the Co-Chairs, Cheryl Langdon-Orr and Jeffrey Neuman, as well as past Co-Chair Avri Doria, the SubPro PDP Work Track leaders, the SubPro Working Group members and support staff of the SubPro PDP for their tireless efforts these past five years to deliver this Final Report.

Annex B: Final Outputs

In order to provide a complete record for reference, the following summary includes all Outputs from the PDP Working Group’s Final Report, including those Outputs that the GNSO Council did not approve. The Council would like to stress that the Outputs should be considered in conjunction with the valuable rationale and context included in the Final Report. For clarity, Outputs that were not approved (23.1, 35.2, and 35.4) are printed in red text and marked “This output was not approved by the GNSO Council.”

Summary of Outputs	
Topic	Output
Topic 1: Continuing Subsequent Procedures	<u>Affirmation 1.1</u> : The Working Group recommends that the existing policy contained in the 2012 Applicant Guidebook ¹ , that a “systematized manner of applying for gTLDs be developed in the long term,” be maintained.
Topic 1: Continuing Subsequent Procedures	<u>Affirmation 1.2</u> : The Working Group affirms Principle A from the 2007 policy ² and recommends that the New gTLD Program must continue to be administered “in an ongoing, orderly, timely and predictable way.”
Topic 1: Continuing Subsequent Procedures	<u>Affirmation 1.3</u> : The Working Group affirms that the primary purposes of new gTLDs are to foster diversity, encourage competition, and enhance the utility of the DNS.
Topic 2: Predictability	<p><u>Recommendation 2.1</u>: ICANN must establish predictable, transparent, and fair processes and procedures for managing issues that arise in the New gTLD Program after the Applicant Guidebook is approved which may result in changes to the Program and its supporting processes. The Working Group recommends that ICANN org use the Predictability Framework detailed in Annex E of this Report as its guidance during implementation to achieve the goal of predictability in mitigating issues.</p> <p>The Predictability Framework is principally:</p> <ul style="list-style-type: none"> • A framework for analyzing the type/scope/context of an issue and if already known, the proposed or required Program change, to assist in determining the impact of the change and the process/mechanism that should be followed to address the issue. The framework is therefore a tool to help the community understand <u>how</u> an issue should be addressed as opposed to determining what the <u>solution</u> to the issue should be; the framework is not a mechanism to develop policy.

¹ See section 1.1.6 of the Applicant Guidebook

² See the Final Report for the Introduction of New Generic Top-Level Domains here: <https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>

Summary of Outputs	
Topic	Output
	<p>The Framework is not intended to identify the solution to an issue but rather, to identify the proper mechanism to reach a solution in a consistent and procedurally sound manner. Therefore, this Framework <u>complements</u> the existing GNSO processes and procedures. It is not intended to be a substitute or replacement for those, nor should the Framework be seen as supplanting the GNSO Council’s decision-making authority. In fact, the GNSO processes and procedures are incorporated into the Predictability Framework explicitly. In the event of a conflict, existing GNSO processes and procedures, including the GNSO Input Process, GNSO Guidance Process, and EPDP as contained in the Annexes to the GNSO Operating Procedures take precedence.</p> <p>Additionally, the Working Group recommends the formation of a Standing Predictability Implementation Review Team (“SPIRT”) (Pronounced “spirit”) to serve as the body responsible for reviewing potential issues related to the Program, to conduct analysis utilizing the framework, and to recommend the process/mechanism that should be followed to address the issue (i.e., utilize the Predictability Framework). The GNSO Council shall be responsible for oversight of the SPIRT and may review all recommendations of the SPIRT in accordance with the procedures outlined in the GNSO Operating Procedures and Annexes thereto.</p>
Topic 2: Predictability	<u>Implementation Guidance 2.2</u> : The Working Group recognizes the challenges in determining the details of the framework and establishing the SPIRT and therefore emphasizes that implementation of both elements should focus on simplicity and clarity.
Topic 2: Predictability	<u>Implementation Guidance 2.3</u> : Once the SPIRT has been formed, the ICANN Board/ICANN org should engage in dialogue with the SPIRT to determine the process required to consider future GAC Consensus Advice on new gTLDs where such GAC Consensus Advice could potentially have an impact on any applications or the program in general.
Topic 2: Predictability	<u>Implementation Guidance 2.4</u> : The SPIRT should be subject to a lean, focused review once it has undertaken enough work to support this review. The review should be supervised by the GNSO Council. The SPIRT should continue to operate during the period that the review takes place.
Topic 2: Predictability	<u>Implementation Guidance 2.5</u> : ICANN org should maintain and publish a change log or similar record to track changes to the New gTLD Program, especially those that arise and are addressed via the Predictability Framework and the SPIRT. The change log should contain a level of detail sufficient for the community to understand the scope and

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	nature of the change without compromising security, the privacy of individuals, or confidentiality obligation owed to applicants or to other third parties. The GNSO Council should be informed of updates to the change log on a regular and timely basis. Interested parties should be able to subscribe to the change log to be informed of changes.
Topic 2: Predictability	<u>Implementation Guidance 2.6</u> : The Working Group acknowledges that there may be emergency circumstances which will require ICANN org to take an action that may impact the New gTLD Program. In such a case, the action should be narrowly tailored to address only the emergency situation. The ICANN Board should notify all impacted applicants (if any) and the SPIRT within 24 hours after the emergency situation. The notification should include the nature of the emergency, the action taken (or anticipated action) in response to the emergency, as well as expected impacts on the New gTLD Program. That notification will be considered a referral to the SPIRT of an issue if the SPIRT elects to address that issue.
Topic 2: Predictability	<u>Recommendation 2.7</u> : In the event significant issues arise that require resolution via the Predictability Framework, applicants should be afforded the opportunity to withdraw their application from the process and receive an appropriate refund consistent with the standard schedule of refunds.
Topic 2: Predictability	<u>Implementation Guidance 2.8</u> : Under the circumstances described in Recommendation 2.7, a refund should be permitted on an exceptional basis even if it does not follow the refund schedule.
Topic 3: Applications Assessed in Rounds	<u>Affirmation with Modification 3.1</u> : The Working Group affirms recommendation 13 from the 2007 policy, which states: “Applications must initially be assessed in rounds until the scale of demand is clear.” However, the Working Group believes that the recommendation should be revised to simply read, “Applications must be assessed in rounds.”
Topic 3: Applications Assessed in Rounds	<u>Recommendation 3.2</u> : Upon the commencement of the next Application Submission Period, there must be clarity around the timing and/or criteria for initiating subsequent procedures from that point forth. More specifically, prior to the commencement of the next Application Submission Period, ICANN must publish either (a) the date in which the next subsequent round of new gTLDs will take place or (b) the specific set of criteria and/or events that must occur prior to the opening up of the next subsequent round.

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Topic 3: Applications Assessed in Rounds	<u>Implementation Guidance 3.3</u> : A new round may initiate even if steps related to application processing and delegation from previous application rounds have not been fully completed.
Topic 3: Applications Assessed in Rounds	<p><u>Implementation Guidance 3.4</u>: Where a TLD has already been delegated, no application for that string will be allowed for a string in a subsequent round.</p> <p>It should in general not be possible to apply for a string that is still being processed from a previous application round, i.e.</p> <ul style="list-style-type: none"> ● If there is an application that has a status of “Active”, “Applicant Support”, “In Contracting”, “On-hold” or “In PDT”, a new application for that string will not be allowed in a subsequent round. <p>However,</p> <ul style="list-style-type: none"> ● If all applications for a particular string have been Withdrawn in a given round, meaning that no registry operator has signed (or will be eligible to sign) a Registry Agreement for the string in that round, new applications for the string will be allowed in a subsequent round. ● If all applications for a given string have a status of “Will Not Proceed”, an application for the TLD will only be allowed if: <ul style="list-style-type: none"> ○ All appeals and/or accountability mechanisms have proceeded through final disposition and no applications for the string have succeeded in such appeals and/or accountability mechanisms; or ○ All applicable time limitations (statute of limitations) have expired such that all applicants for a particular string would not be in a position to file an appeal or accountability mechanism with respect to the string. ● If all applications for a given string have a status of “Not Approved”, an application for the TLD string will only be allowed if:

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	<ul style="list-style-type: none"> ○ All appeals and/or accountability mechanisms have proceeded through final disposition and no applications for the string have succeeded in such appeals and/or accountability mechanisms; or ○ All applicable time limitations (statute of limitations) have expired such that all applicants for a particular string would not be in a position to file an appeal or accountability mechanism with respect to the string; and ○ The ICANN Board has not approved new policies or procedures that would allow one or more of the applicants from the prior round to cure the reasons for which it was placed in the “Not Approved” category, but has approved new policies or procedures that would allow an applicant to apply for the string in any subsequent round. In the event that there are new policies or procedures put into place which would allow applications for strings which were “Not Approved” in a prior round, the ICANN Board must make a determination as to whether the applicants in the prior round have any preferential rights for those strings if such prior applicants commit to adopt such new policies or procedures at the time such policies or procedures are put into place. <ul style="list-style-type: none"> ● Once a string has been delegated, ICANN should be able to force other applications for the string to withdraw/close out, unless an applicant provides ICANN good reason to keep the application in “Active” status. Such reason could include the fact that there are ongoing accountability mechanisms and/or litigation with respect to the given string. <p>In addition,</p> <ul style="list-style-type: none"> ● If a registry operator has terminated its Registry Agreement and (i) the TLD has not been reassigned to a different registry operator, and (ii) in the case of a Specification 13 Brand TLD, it is more than 2 years following the Expiration Date (See RA Section 4.5(a)), then applications will be allowed to be submitted during a subsequent round.

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Topic 3: Applications Assessed in Rounds	<u>Recommendation 3.5</u> : Absent extraordinary circumstances application procedures must take place at predictable, regularly occurring intervals without indeterminable periods of review unless the GNSO Council recommends pausing the program and such recommendation is approved by the Board. Such extraordinary circumstances must be subject to the Predictability Framework under Topic 2 of this Report. Unless and until other procedures are recommended by the GNSO Council and approved by the ICANN Board, ICANN must only use “rounds” to administer the New gTLD Program.
Topic 3: Applications Assessed in Rounds	<u>Recommendation 3.6</u> : Absent extraordinary circumstances, future reviews and/or policy development processes, including the next Competition, Consumer Choice & Consumer Trust (CCT) Review, should take place concurrently with subsequent application rounds. In other words, future reviews and/or policy development processes must not stop or delay subsequent new gTLD rounds.
Topic 3: Applications Assessed in Rounds	<u>Recommendation 3.7</u> : If the outputs of any reviews and/or policy development processes has, or could reasonably have, a material impact on the manner in which application procedures are conducted, such changes must only apply to the opening of the application procedure subsequent to the adoption of the relevant recommendations by the ICANN Board.
Topic 4: Different TLD Types	<p><u>Recommendation 4.1</u>: The Working Group recommends differential treatment for certain applications based on either the application type, the string type, or the applicant type. Such differential treatment may apply in one or more of the following elements of the New gTLD Program: Applicant eligibility³; Application evaluation process/requirements⁴; Order of processing; String contention⁵; Objections⁶; Contractual provisions.</p> <ul style="list-style-type: none"> ● Different application types: <ul style="list-style-type: none"> ○ Standard ○ Community-Based (for different application questions, Community Priority Evaluation, and

³ See section 1.2.1 of the 2012 Applicant Guidebook.

⁴ See Module 2 of the 2012 Applicant Guidebook.

⁵ See Module 4 of the 2012 Applicant Guidebook.

⁶ See Module 3 of the 2012 Applicant Guidebook.

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	<ul style="list-style-type: none"> contractual requirements)⁷ ○ Geographic Names (for different application questions)⁸ ○ Specification 13 (.Brand TLDs) (for different application questions and contractual requirements)⁹ ● Different string types: <ul style="list-style-type: none"> ○ Geographic Names (for different application questions)¹⁰ ○ IDN TLDs (priority in order of processing)¹¹ ○ Variant TLDs¹² ○ Strings subject to Category 1 Safeguards¹³ ● Different Applicant Types: <ul style="list-style-type: none"> ○ Intergovernmental organizations or governmental entities (for different contractual requirements) ○ Applicants eligible for Applicant Support¹⁴
Topic 4: Different TLD Types	<u>Recommendation 4.2</u> : Other than the types listed in Recommendation 4.1, creating additional application types ¹⁵

⁷ As defined under Topic 34: Community Applications.

⁸ As defined in Annex J: Final Report of Work Track 5 on Geographic Names at the Top Level.

⁹ See Topic 22: Registrant Protections, Topic 9: Registry Voluntary Commitments / Public Interest Commitments, and Topic 20: Application Change Requests for recommendations impacting .Brand applicants.

¹⁰ As defined in Annex J: Final Report of Work Track 5 on Geographic Names at the Top Level.

¹¹ As defined under Topic 19: Application Queuing.

¹² As defined under Topic 25: IDNs.

¹³ As defined under Topic 9: Registry Voluntary Commitments / Public Interest Commitments.

¹⁴ As identified under Topic 17: Applicant Support.

¹⁵ In the 2012 round, there were only two types of applications, standard and community-based. Per the 2012 AGB, it stated that, “A standard gTLD can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. A standard applicant may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions. Standard simply means here that the applicant has not designated the application as community-based.” The WG believes that there is a difference between the **type of**

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	must only be done under exceptional circumstances. ¹⁶ Creating additional application types, string types, or applicant types must be done solely when differential treatment is warranted and is NOT intended to validate or invalidate any other differences in applications.
Topic 4: Different TLD Types	<u>Implementation Guidance 4.3</u> : To the extent that in the future, the then-current application process and/or base agreement unduly impedes an otherwise allowable TLD application by application type, string type, or applicant type, there should be a predictable community process by which potential changes can be considered. This process should follow the Predictability Framework discussed under Topic 2. See also the recommendation under Topic 36: Base Registry Agreement regarding processes for obtaining exemptions to certain provisions of the base Registry Agreement.
Topic 5: Application Submission Limits	<u>Affirmation 5.1</u> : In the 2012 application round, no limits were placed on the number of applications in total or from any particular entity. The Working Group is not recommending any changes to this practice and therefore affirms the existing implementation.
Topic 6: RSP Pre-Evaluation	<u>Affirmation 6.1</u> : The Working Group affirms Principle C of the 2007 policy, which states: “The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition, the introduction of a new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service provider diversity.”
Topic 6: RSP Pre-Evaluation	<u>Recommendation 6.2</u> : The Working Group recommends establishing a program in which registry service providers

application versus the **type of string**, and they are not necessarily dependent upon one another. For instance, a standard application can apply for a geographic names string. In addition, the **type of applicant** may have additional impacts on the process or contracting.

¹⁶ The Working Group notes that the so-called ‘Closed Generic’ application type is a separate type of application treated under Topic 23 of this report. The recommendation and implementation guidance provided under this topic is not intended to apply to Closed Generics, as that subject needs further policy work.

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	<p>(“RSPs”)¹⁷ may receive pre-evaluation by ICANN if they pass the required technical evaluation and testing conducted by ICANN, or their selected third party provider. The only difference between a pre-evaluated RSP and one that is evaluated during the application evaluation process is the timing of when the evaluation and testing takes place; Therefore, all criteria for evaluation and testing must be the same.</p>
Topic 6: RSP Pre-Evaluation	<p><u>Recommendation 6.3</u>: Participation in the RSP pre-evaluation process must be voluntary and the existence of the process shall not preclude an applicant from providing its own registry services or providing registry services to other new gTLD registry operators, provided that the applicant passes technical evaluation and testing during the standard application process.</p>
Topic 6: RSP Pre-Evaluation	<p><u>Recommendation 6.4</u>: The RSP pre-evaluation process shall be open to all entities seeking such evaluation, including both new and incumbent RSPs. For the initial RSP pre-evaluation process, both the evaluation criteria and testing requirements shall be the same regardless of whether the RSP applying for evaluation is a new RSP or an incumbent RSP.</p>
Topic 6: RSP Pre-Evaluation	<p><u>Recommendation 6.5</u>: Pre-evaluation occurs prior to each application round and only applies to that specific round. Reassessment must occur prior to each subsequent application round.</p>
Topic 6: RSP Pre-Evaluation	<p><u>Implementation Guidance 6.6</u>: With respect to each subsequent round, ICANN org may establish a separate process for reassessments that is more streamlined compared to the evaluation and testing of those entities seeking RSP pre-evaluation for the first time.</p>
Topic 6: RSP Pre-Evaluation	<p><u>Implementation Guidance 6.7</u>: It may be appropriate to require an RSP to agree to a more limited set of click-wrap terms and conditions when submitting their application for the pre-evaluation process. Such an agreement would be limited to the terms and conditions of the pre-evaluation program and may not create an ongoing direct contractual relationship between ICANN and the RSP nor be interpreted in any way to make an RSP a “contracted party” as that term is used in the ICANN community.</p>

¹⁷ The term “Registry Services Provider” or “RSP” refers to the entity that performs the critical registry services on behalf of a registry operator. In some cases, this may be the same entity as the registry operator itself; in other cases, this may be a third party to whom the registry operator subcontracts those services.

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Topic 6: RSP Pre-Evaluation	<u>Recommendation 6.8:</u> The RSP pre-evaluation program must be funded by those seeking pre-evaluation on a cost-recovery basis. Costs of the program should be established during the implementation phase by the Implementation Review Team in collaboration with ICANN org.
Topic 6: RSP Pre-Evaluation	<u>Recommendation 6.9:</u> A list of pre-evaluated RSPs must be published on ICANN’s website with all of the other new gTLD materials and must be available to be used by potential applicants with an adequate amount of time to determine if they wish to apply for a gTLD using a pre-evaluated RSP.
Topic 7: Metrics and Monitoring	<u>Recommendation 7.1:</u> Meaningful metrics must be identified to understand the impact of the New gTLD Program. To review metrics, data must be collected at a logical time to create a basis against which future data can be compared.
Topic 7: Metrics and Monitoring	<p><u>Implementation Guidance 7.2:</u> Metrics collected to understand the impact of New gTLD Program should, broadly speaking, focus on the areas of trust, competition, and choice. The Working Group notes that the Competition, Consumer Trust and Consumer Choice Review’s 2018 Final Report¹⁸ includes a series of recommendations regarding metrics. Work related to the development of metrics should be in accordance with CCT-RT recommendations currently adopted by the Board, as well as those adopted in the future. The Working Group suggests the following possible metrics for further consideration in the implementation phase:</p> <ul style="list-style-type: none"> • The presence of new gTLDs in lists of highly used websites, such as Alexa 1 Million and Cisco Umbrella 1 Million • Recognition of specific gTLDs in niches, communities, and verticals • Annual growth of new gTLDs as compared to legacy TLDs and previous application rounds, i.e., comparing the growth of TLDs approved in 2012 with TLDs approved in subsequent rounds • Number of new registries and registrars year over year • Locations of new registries and registrars year over year, in an effort to see how subsequent rounds affects diversity in the marketplace • Categories of gTLDs offered and diversity metrics within those categories

¹⁸ See <https://www.icann.org/en/system/files/files/cct-final-08sep18-en.pdf>

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Topic 7: Metrics and Monitoring	<u>Recommendation 7.3</u> : ICANN org must establish metrics and service level requirements for each phase of the application process including each during the review, evaluation, contracting and transition to delegation stages. ICANN must report on a monthly basis on its performance with respect to these key performance indicators.
Topic 7: Metrics and Monitoring	<u>Recommendation 7.4</u> : ICANN org must further develop its Service Level Agreement (SLA) monitoring to allow for more robust ongoing monitoring of TLD operations.
Topic 7: Metrics and Monitoring	<u>Recommendation 7.5</u> : ICANN org must publish anonymized, aggregate SLA monitoring data on a regular basis.
Topic 7: Metrics and Monitoring	<u>Implementation Guidance 7.6</u> : ICANN org should publish 1. The thresholds on the five critical registry functions that it has used to determine the triggering of an EBERO event 2. The number of events that have triggered or come close to triggering EBERO since launch of EBERO for the 2012 round.
Topic 8: Conflicts of Interest	<u>Recommendation 8.1</u> : ICANN must develop a transparent process to ensure that dispute resolution service provider panelists, Independent Objectors, and application evaluators are free from conflicts of interest. This process must serve as a supplement to the existing Code of Conduct Guidelines for Panelists, Conflict of Interest Guidelines for Panelists, and ICANN Board Conflicts of Interest Policy. ¹⁹
Topic 9: Registry Voluntary	<u>Recommendation 9.1</u> : Mandatory Public Interest Commitments (PICs) currently captured in Specification 11 3(a)-(d) of the Registry Agreement ²⁰ must continue to be included in Registry Agreements for gTLDs in subsequent

¹⁹ <https://www.icann.org/resources/pages/governance/coi-en#:~:text=The%20purpose%20of%20this%20Board,the%20Internet%20community%2C%20as%20a>

²⁰The relevant sections are as follows:

3. Registry Operator agrees to perform the following specific public interest commitments, which commitments shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN (posted at <http://www.icann.org/en/resources/registries/picdrp>), which may be revised in immaterial respects by ICANN from time to time (the “PICDRP”). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

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Commitments / Public Interest Commitments	procedures. Noting that mandatory PICs were not included in the 2007 recommendations, this recommendation puts existing practice into policy. One adjustment to the 2012 implementation is included in the following recommendation (Recommendation 9.2). ²¹
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<u>Recommendation 9.2</u> : Provide single-registrant TLDs with exemptions and/or waivers to mandatory PICs included in Specification 11 3(a) and Specification 11 3(b). ²²

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- (a) Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.
 - (b) Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.
 - (c) Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.
 - (d) Registry Operator of a “Generic String” TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person’s or entity’s “Affiliates” (as defined in Section 2.9(c) of the Registry Agreement). “Generic String” means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.

For full detail, see the 31 June 2017 Registry Agreement here: <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.pdf>

²¹ In addition to the existing mandatory PICs discussed under this topic, Topic 24: String Similarity Evaluations includes a recommendation to introduce a new mandatory PIC that would be required in cases where two applications are submitted during the same application window for strings that create the probability of a user assuming that they are single and plural versions of the same word, but the applicants intend to use the strings in connection with two different meanings. The applicants would commit to the use stated in the application via a mandatory PIC.

²² For the sake of clarity, this recommendation and the exemption does NOT apply to Specification 11 3(c) or 11 3(d).

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Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<p><u>Affirmation 9.3</u>: The Working Group affirms the framework established by the New gTLD Program Committee (NGPC) to apply additional Safeguards to certain new gTLD strings that were deemed applicable to highly sensitive or regulated industries,²³ as established in response to the Governmental Advisory Committee (GAC) Beijing Communiqué.²⁴</p> <p>This framework includes ten (10) Safeguards of different levels implemented amongst a set of four groups with ascending levels of requirements:</p> <ol style="list-style-type: none"> 1) Regulated Sectors/Open Entry Requirements in Multiple Jurisdictions: Category 1 Safeguards 1-3 applicable 2) Highly-Regulated Sectors/Closed Entry Requirements in Multiple Jurisdictions: Category 1 Safeguards 1-8 applicable 3) Potential for Cyber Bullying/Harassment: Category 1 Safeguards 1-9 applicable 4) Inherently Governmental Functions: Category 1 Safeguards 1-8 and 10 applicable <p>Strings that fall into these categories require the adoption of the relevant Category 1 Safeguards as contractually binding requirements in Specification 11 of the Registry Agreement (i.e., as mandatory Public Interest Commitments, or PICs).</p> <p>The Working Group affirms:</p> <ol style="list-style-type: none"> a) The four groups described in the NGPC’s scorecard; b) The four groups’ varying levels of required Category 1 Safeguards; and, c) The integration of the relevant Category 1 Safeguards into the Registry Agreement, by way of PICs.
Topic 9: Registry Voluntary	<p><u>Recommendation 9.4</u>: The Working Group recommends establishing a process to determine if an applied-for string falls into one of four groups defined by the NGPC framework for new gTLD strings deemed to be applicable to highly</p>

²³ See the relevant NGPC scorecard here: <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf>

²⁴ See Beijing Communiqué (<https://gac.icann.org/contentMigrated/icann46-beijing-communication>): “Strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm.”

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Commitments / Public Interest Commitments	sensitive or regulated industries. This process must be included in the Applicant Guidebook along with information about the ramifications of a string being found to fall into one of the four groups.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<u>Implementation Guidance 9.5</u> : Applicants may choose to self-identify if they believe that their string falls into one of the four groups. This designation will be confirmed, or not, using the process outlined below in Implementation Guidance 9.6.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<u>Implementation Guidance 9.6</u> : During the evaluation process, each applied-for string should be evaluated to determine whether it falls into one of the four groups, and therefore is subject to the applicable Safeguards. An evaluation panel should be established for this purpose, the details of which will be determined in the implementation phase. The panel should be composed of experts in regulated industries, who will also be empowered to draw on the input of other experts in relevant fields.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<u>Implementation Guidance 9.7</u> : The panel evaluating whether a string is applicable to highly sensitive or regulated industries should conduct its evaluation of the string after the Application Comment Period is complete.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<u>Recommendation 9.8</u> : If an applied-for string is determined to fall into one of the four groups of strings applicable to highly sensitive or regulated industries, the relevant Category 1 Safeguards must be integrated into the Registry Agreement as mandatory Public Interest Commitments.
Topic 9: Registry Voluntary Commitments /	<u>Recommendation 9.9</u> : ICANN must allow applicants to submit Registry Voluntary Commitments (RVCs) (previously called voluntary PICs) in subsequent rounds in their applications or to respond to public comments, objections, whether formal or informal, GAC Early Warnings, GAC Consensus Advice, and/or other comments from the GAC.

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Public Interest Commitments	Applicants must be able to submit RVCs at any time prior to the execution of a Registry Agreement; provided, however, that all RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendation set forth under topic 20: Application Changes Requests, including, but not limited to, an operational comment period ²⁵ in accordance with ICANN’s standard procedures and timeframes.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<u>Recommendation 9.10</u> : RVCs must continue to be included in the applicant’s Registry Agreement.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<u>Implementation Guidance 9.11</u> : The Public Interest Commitment Dispute Resolution Process (PICDRP) and associated processes ²⁶ should be updated to equally apply to RVCs. ²⁷
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<u>Recommendation 9.12</u> : At the time an RVC is made, the applicant must set forth whether such commitment is limited in time, duration and/or scope. Further, an applicant must include its reasons and purposes for making such RVCs such that the commitments can adequately be considered by any entity or panel (e.g., a party providing a relevant public comment (if applicable), an existing objector (if applicable) and/or the GAC (if the RVC was in response to a GAC Early Warning, GAC Consensus Advice, or other comments from the GAC)) to understand if the RVC addresses the underlying concern(s).
Topic 9: Registry Voluntary Commitments /	<u>Recommendation 9.13</u> : In support of the principle of transparency, RVCs must be readily accessible and presented in a manner that is usable, as further described in the implementation guidance below.

²⁵ a 30-day comment period giving the public the opportunity to comment on any change to a public part of an application.

²⁶ “Associated processes” refers to all existing processes relevant to what were formerly known as voluntary PICs.

²⁷ For additional discussion of the PICDRP, see Topic 33: Dispute Resolution Procedures After Delegation.

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Public Interest Commitments	
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<u>Implementation Guidance 9.14</u> : The Working Group notes that the CCT-RT’s recommendation 25 ²⁸ has recommended developing an “organized, searchable online database” for RVCs. The Working Group agrees and believes that ICANN org should evaluate this recommendation in the implementation phase and determine the best method for ensuring that RVCs are widely accessible.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	<u>Recommendation 9.15</u> : The Working Group acknowledges ongoing important work in the community on the topic of DNS abuse ²⁹ and believes that a holistic solution is needed to account for DNS abuse in all gTLDs as opposed to dealing with these recommendations with respect to only the introduction of subsequent new gTLDs. In addition, recommending new requirements that would only apply to the new gTLDs added to the root in subsequent rounds could result in singling out those new gTLDs for disparate treatment in contravention of the ICANN Bylaws. Therefore, this PDP Working Group is not making any recommendations with respect to mitigating domain name abuse other than stating that any such future effort must apply to both existing and new gTLDs (and potentially ccTLDs).

²⁸ CCT-RT Recommendation 25 states: “To the extent voluntary commitments are permitted in future gTLD application processes, all such commitments made by a gTLD applicant must state their intended goal and be submitted during the application process so that there is sufficient opportunity for community review and time to meet the deadlines for community and Limited Public Interest objections. Furthermore, such requirements should apply to the extent that voluntary commitments may be made after delegation. Such voluntary commitments, including existing voluntary PICs, should be made accessible in an organized, searchable online database to enhance data-driven policy development, community transparency, ICANN compliance, and the awareness of variables relevant to DNS abuse trends.”

²⁹ The Working Group did not attempt to define the term “DNS abuse” in the course of its discussions and is not endorsing any particular definition of this term. The Working Group notes, however, that the CCT-RT used the following definition to support its work: “Intentionally deceptive, conniving, or unsolicited activities that actively make use of the DNS and/or the procedures used to register domain names.” See p. 3 of the “New gTLD Program Safeguards Against DNS Abuse: Revised Report” (2016) for additional context on this definition: <https://www.icann.org/news/announcement-2016-07-18-en>. The CCT-RT used the term “DNS Security Abuse” in its Final Report to refer to specific, technical forms of abusive behavior: spam, phishing, and malware distribution in the DNS. The CCT-RT also drew on the Registration Abuse Policies Working Group’s Final Report, which provides additional detail about how abuse has been characterized by the ICANN Community: https://gnso.icann.org/sites/default/files/filefield_12530/rap-wg-final-report-29may10-en.pdf

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	The Working Group has reached this conclusion after duly considering the DNS abuse related CCT-RT recommendations, which includes 14, ³⁰ 15, ³¹ and 16. ³² Note, however, that at the time of the drafting of this report, the ICANN Board only approved Recommendation 16. Recommendations 14 and 15 remain in a “Pending” status. ³³
Topic 10: Applicant Freedom of Expression	<u>Affirmation 10.1</u> : The Working Group affirms Principle G from the 2007 policy, which states: “The string evaluation process must not infringe the applicant’s freedom of expression rights that are protected under internationally recognized principles of law.” The Working Group further affirms Recommendation 3: “Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industrial Property (in particular trademark rights), the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (in

³⁰ CCT-RT Recommendation 14 states: “Consider directing ICANN org, in its discussions with registries, to negotiate amendments to existing Registry Agreements, or in consideration of new Registry Agreements associated with subsequent rounds of new gTLDs, to include provisions in the agreements to provide incentives, including financial incentives, for registries, especially open registries, to adopt proactive anti-abuse measures.”

³¹ CCT-RT Recommendation 15 states: “ICANN Org should, in its discussions with registrars and registries, negotiate amendments to the Registrar Accreditation Agreement and Registry Agreements to include provisions aimed at preventing systemic use of specific registrars or registries for DNS Security Abuse. With a view to implementing this recommendation as early as possible, and provided this can be done, then this could be brought into effect by a contractual amendment through the bilateral review of the Agreements. In particular, ICANN should establish thresholds of abuse at which compliance inquiries are automatically triggered, with a higher threshold at which registrars and registries are presumed to be in default of their agreements. If the community determines that ICANN org itself is ill-suited or unable to enforce such provisions, a DNS Abuse Dispute Resolution Policy (DADRP) should be considered as an additional means to enforce policies and deter against DNS Security Abuse. Furthermore, defining and identifying DNS Security Abuse is inherently complex and would benefit from analysis by the community, and thus we specifically recommend that the ICANN Board prioritize and support community work in this area to enhance safeguards and trust due to the negative impact of DNS Security Abuse on consumers and other users of the Internet.”

³² CCT-RT Recommendation 16 states: “Further study the relationship between specific registry operators, registrars and technical DNS abuse by commissioning ongoing data collection, including but not limited to, ICANN Domain Abuse Activity Reporting (DAAR) initiatives. For transparency purposes, this information should be regularly published, ideally quarterly and no less than annually, in order to be able to identify registries and registrars that need to come under greater scrutiny, investigation, and potential enforcement action by ICANN org. Upon identifying abuse phenomena, ICANN should put in place an action plan to respond to such studies, remediate problems identified, and define future ongoing data collection.”

³³ See relevant Board scorecards here: <https://www.icann.org/en/system/files/files/resolutions-final-cct-recs-scorecard-01mar19-en.pdf> and here: <https://www.icann.org/en/system/files/files/cct-pending-recs-board-action-22oct20-en.pdf>

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	particular freedom of speech rights).”
Topic 10: Applicant Freedom of Expression	<u>Implementation Guidance 10.2</u> : As the ICANN organization and community incorporate human rights into ICANN’s processes in line with the recommendations of CCWG-Accountability Work Stream 2, they should consider the application of this work to elements of the New gTLD Program. Specifically, the Working Group suggests further consideration of applicant freedom of expression rights in the TLD proposed during pre-application through delegation stages of the process. Applicant freedom of expression should be balanced with other third party ³⁴ rights recognized in the 2012 Applicant Guidebook as modified by this PDP, legitimate interests, the principle of fairness, and “generally accepted legal norms of morality and public order that are recognized under principles of international law.” For example, it may be beneficial to include concrete case studies or examples in guidance to evaluators and dispute resolution service providers to ensure that criteria are correctly and consistently applied in support of the applicable principles and rights.
Topic 11: Universal Acceptance	<u>Affirmation 11.1</u> : The Working Group welcomes and encourages the work of the Universal Acceptance Initiative ³⁵ and the Universal Acceptance Steering Group. ³⁶
Topic 11: Universal Acceptance	<u>Affirmation 11.2</u> : The Working Group affirms 2012 implementation elements addressing Universal Acceptance issues, and in particular, guidance provided in section 1.2.4 of the Applicant Guidebook (“Notice concerning Technical Acceptance Issues with New gTLDs”), as well as clause 1.2 of the Registry Agreement (“Technical Feasibility of String”).
Topic 11: Universal Acceptance	<u>Recommendation 11.3</u> : Applicants should be made aware of Universal Acceptance challenges in ASCII and IDN TLDs. Applicants must be given access to all applicable information about Universal Acceptance currently maintained on ICANN’s Universal Acceptance Initiative page, through the Universal Acceptance Steering Group, as well as future efforts.

³⁴ The term “third party” in this context includes the Independent Objector as well as any parties on behalf of whom the Independent Objector is acting.

³⁵ Additional information about the Universal Acceptance Initiative is available at: <https://www.icann.org/resources/pages/universal-acceptance-initiative-2014-10-03-en>

³⁶ Additional information about the Universal Acceptance Steering Group is available at: <https://uasg.tech/>

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Topic 11: Universal Acceptance	<u>Implementation Guidance 11.4</u> : ICANN should include more detailed information regarding Universal Acceptance issues either directly in the Applicant Guidebook or by reference in the Applicant Guidebook to additional resources produced by the Universal Acceptance Steering Group or other related efforts.
Topic 12: Applicant Guidebook	<u>Affirmation 12.1</u> : The Working Group affirms that an Applicant Guidebook should be utilized for future new gTLD processes as was the case in the implementation of the 2012 application round. The Working Group further affirms that the Applicant Guidebook should continue to be available in the 6 United Nations languages as was the case in the 2012 application round.
Topic 12: Applicant Guidebook	<u>Affirmation 12.2</u> : The Working Group affirms Implementation Guideline A from the 2007 policy, which states: “The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains.”
Topic 12: Applicant Guidebook	<u>Affirmation with Modification 12.3</u> : With the substitution included in italicized text, the Working Group affirms Implementation Guideline E from the 2007 policy: “The <i>commencement of the</i> application submission period will be at least four (4) months after the issue of the <i>Applicant Guidebook</i> and ICANN will promote the opening of the applicant round.” The term “Request for Proposal” in the original Implementation Guideline has been substituted with “Applicant Guidebook” to reflect the actual name of the document used in 2012 and the “application submission period” has been replaced with the “commencement of the application submission period.”
Topic 12: Applicant Guidebook	<u>Recommendation 12.4</u> : The Working Group recommends focusing on the user when drafting future versions of the Applicant Guidebook (AGB) and prioritizing usability, clarity, and practicality in developing the AGB for future new gTLD processes. The AGB should effectively address the needs of new applicants as well as those already familiar with the application process. It should also effectively serve those who do not speak English as a first language in addition to native English speakers.
Topic 12: Applicant Guidebook	<u>Implementation Guidance 12.5</u> : To promote usability and clarity, write the Applicant Guidebook using Plain Language standards to the extent possible and avoid complex legal terminology when it is not necessary. ³⁷

³⁷ <https://www.plainlanguage.gov/about/definitions/>

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Topic 12: Applicant Guidebook	<u>Implementation Guidance 12.6</u> : To ensure that the AGB is a practical resource for users, the core text of the AGB should be focused on the application process. Historical context and policy should be included in appendices or a companion guide, while remaining linked to relevant AGB provisions. The Working Group suggests including step-by-step instructions for applicants with clear guidance about how the process may vary in the case of applications for different categories of TLDs or other variable situations.
Topic 12: Applicant Guidebook	<u>Implementation Guidance 12.7</u> : In service of usability, ICANN org should ensure that the AGB has a robust Table of Contents and Index. The online version should be tagged and searchable, so that users may easily find sections of text that are applicable to them.
Topic 12: Applicant Guidebook	<u>Recommendation 12.8</u> : The English version of the Applicant Guidebook must be issued at least four (4) months prior to the commencement of the applicant submission period.
Topic 12: Applicant Guidebook	<u>Recommendation 12.9</u> : All other translated versions of the Applicant Guidebook, including in the 6 UN languages, must be available no later than two (2) months prior to the commencement of the application submission period.
Topic 12: Applicant Guidebook	<u>Implementation Guidance 12.10</u> : All translations of the final Applicant Guidebook should be available at or as close as possible in time to the point at which the English version is published, but in no event later than two (2) months prior to the commencement of the application submission period.
Topic 12: Applicant Guidebook	<u>Recommendation 12.11</u> : Application fees for each application must be published in that round's Applicant Guidebook.
Topic 13: Communications	<p><u>Affirmation 13.1</u>: The Working Group affirms Implementation Guideline C and Implementation Guideline M from the 2007 Final Report:</p> <ul style="list-style-type: none"> ● Implementation Guideline C: "ICANN will provide frequent communications with applicants and the public including comment forums which will be used to inform evaluation panels."³⁸ ● Implementation Guideline M: "ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way that

³⁸ Usage of comments to inform evaluation panels is addressed more specifically under Topic 28: Role of Application Comment.

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	no longer requires all participants in the conversation to be able to read and write English.”
Topic 13: Communications	<u>Recommendation 13.2:</u> The Working Group believes that an effective communications strategy and plan is needed to support the goals of the program referenced in Affirmation 6.1. Accordingly, the Working Group recommends that the New gTLD communications plan must be developed with timeliness, broad outreach and accessibility as key priorities. The communications plan must be targeted to achieve the goals of the New gTLD Program as articulated. The plan must include a Communications Period commensurate in length to achieve those goals.
Topic 13: Communications	<u>Implementation Guidance 13.3:</u> For timeliness, the Working Group believes that for the next subsequent round, the Communications Period should begin at least six (6) months prior to the beginning of the application submission period. Essentially, the communications plan should be commensurate with the time needed to perform elements like the non-exhaustive list below: <ul style="list-style-type: none"> ● Outreach related to Applicant Support ● Establishing and allowing interested parties to engage in the RSP pre-evaluation process
Topic 13: Communications	<u>Implementation Guidance 13.4:</u> Consistent with the recommendations under Topic 3: Applications Assessed in Rounds, the Working Group believes that a shorter Communications Period (i.e., less than the minimum 6 months stated above) may be needed for subsequent rounds if and when a steady state for application submission periods is established.
Topic 13: Communications	<u>Implementation Guidance 13.5:</u> For broad outreach, the Working Group believes that consistent with recommendation 8.4.b ³⁹ from the Program Implementation Review Report, the program should “Leverage ICANN’s Global Stakeholder Engagement (GSE) team to promote awareness of the New gTLD Program within their regions/constituencies.” The Working Group believes that the GSE team should be leveraged to support the dissemination of program information and support education and overall outreach. The various Supporting Organizations and Advisory Committees are also important partners in sharing information.

³⁹ <http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf>

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Topic 13: Communications	<p><u>Implementation Guidance 13.6</u>: For accessibility, the Working Group stresses the need for a single, well-designed website dedicated to the New gTLD Program to support the sharing and accessibility of program information, which is consistent with recommendation 8.4.a⁴⁰ from the Program Implementation Review Report. Once on the site, broadly speaking, users should be able to obtain information they are seeking in an effective manner. To that end, the Working Group has suggested specific elements for consideration:</p> <ul style="list-style-type: none"> • Continue to maintain an online knowledge database, but ensure that it is robust, is easy to search and navigate, is updated on a timely basis, and emphasizes issues with wide-ranging impact. In addition, to the extent possible, all items in the online knowledge database should reference applicable sections of the Applicant Guidebook to which the items relate. • Create an opt-in based notification system for applicants to receive program updates, updates to the online knowledge database, and application-specific updates.
Topic 13: Communications	<p><u>Implementation Guidance 13.7</u>: For timeliness and accessibility as it relates to applicant communications, the Working Group believes that robust customer support is needed to address substantive and logistical questions as well as inquiries regarding use of applicant-facing systems.⁴¹ Real-time communication methods are preferred (e.g., telephone, online chat), but the Working Group recognizes that these forms of communication may be costly. Further, the Working Group also recognizes that there may need to be different methods utilized. For instance, technical support for submitting an application may be different than responding to substantive inquiries about completing an application.</p>
Topic 14: Systems	<p><u>Affirmation 14.1</u>: The Working Group affirms Implementation Guideline O from the 2007 Final Report, which states: "ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations." The Working Group further affirms Implementation Guideline L, which states: "The use of personal data must be limited to the purpose for which it is</p>

⁴⁰ Recommendation 8.4.a states: "Consolidate all next round program information into a single site and make information as accessible as possible." See <http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf>

⁴¹ The Working Group agrees with Recommendation 8.5.a in the Program Implementation Review Report, which states: "Consider customer service to be a critical function of the organization, and ensure that the Customer Service Center has the appropriate resources to support the ongoing and future activities of the New gTLD Program." See <http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf>

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	collected.”
Topic 14: Systems	<u>Recommendation 14.2</u> : The design, development, and deployment of applicant-facing systems must prioritize security, stability, usability, and a positive user experience following industry best practices.
Topic 14: Systems	<u>Implementation Guidance 14.3</u> : In support of security, stability, usability, and a positive user experience, systems should be designed and developed well in advance of the point that they need to be used by applicants, so that there is sufficient time for system testing without causing undue delay. System tests should follow industry best practices and ensure that all tools meet security, stability, and usability requirements and that confidential data will be kept private. ⁴²
Topic 14: Systems	<u>Implementation Guidance 14.4</u> : In support of improved usability, the Working Group advises that ICANN org should leverage prospective end-users to beta test systems, perhaps by setting up an Operational Test and Evaluation environment. The Working Group notes that if beta testing is conducted, it must be done in an open and transparent manner that does not provide the testers with an unfair advantage in the application process. ⁴³ The Working Group notes however that the mere access to beta testing does not in and of itself constitute such an unfair advantage. It further notes that ICANN org did not have an end user beta testing program in 2012 because it believed that allowing some users to have access to the system for beta testing provided those users with an unfair advantage over others. The Working Group does not agree with ICANN org’s assertion from that time period.
Topic 14: Systems	<u>Implementation Guidance 14.5</u> : In support of improved usability, the Working Group suggests integrating systems to the extent possible and simplifying login management. Specifically, if the use of multiple systems are required, the Working Group encourages enabling users to access different systems using a single login and, as recommended in

⁴² This recommendation is consistent with Recommendation 8.1.a in the Program Implementation Review Report, which states: “In developing timelines for future application rounds, provide an appropriate amount of time to allow for the use of best practices in system development.” See <http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf>

⁴³ This implementation guidance is consistent with Recommendation 8.1.b in the Program Implementation Review Report, which states: “Explore beta testing for systems to allow for lessons learned, to increase effectiveness of such systems, and to provide further transparency, clarity, and opportunity for preparation to applicants.” See <http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf>

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	the Program Implementation Review Report (recommendation 1.1.b), “Implement a system that would allow applicants the flexibility to associate as many applications as desired to a single user account.”
Topic 14: Systems	<u>Implementation Guidance 14.6</u> : In support of improved usability, the Working Group suggests that specific data entry fields in applicant-facing systems should accept both ASCII and non-ASCII characters. Although the Working Group recognizes that English is the authoritative language for the New gTLD Program, there are a number of fields including the applied-for string, applicant’s name, and contact information (including email addresses) that should be collected and displayed in their native language / script. In addition, systems should accept standard nomenclature and terminology for services being proposed by the applicant, including associated characters.
Topic 14: Systems	<u>Implementation Guidance 14.7</u> : The Working Group suggests a number of feature enhancements to support an improved user experience. Specifically, the Working Group suggests the following capabilities for applicant-facing systems: <ul style="list-style-type: none"> ● Provide applicants with automated confirmation emails when information or documentation is submitted. Where applicable, applicants should also receive confirmation of payments. ● Provide applicants with automated invoices for application-related fees. ● Allow applicants to view historical changes that have been made to the application by any system user, including ICANN org, both during the application and evaluation phases. ● Allow applicants to upload application documents into the application system for additional questions where this was not possible in the 2012 round. ● Allow applicants to auto-fill information/documentation in multiple fields across applications. This functionality should only be enabled in a limited number of fields where it would be appropriate for responses to be identical. It should not be possible to auto-fill responses to questions corresponding

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	<p>to the following questions in the 2012 Applicant Guidebook: 16,⁴⁴ 18(a),⁴⁵ 18(b),⁴⁶ 19,⁴⁷ 20,⁴⁸ 21,⁴⁹ 22,⁵⁰ and 23⁵¹ (for question 23, autofill should not be allowed only if services are specified that are not pre-approved). It should not be possible to auto-fill Registry Voluntary Commitments (formerly called voluntary PICs).</p> <ul style="list-style-type: none"> ● Allow applicants to specify additional contacts to receive communication about the application and/or access the application and specify different levels of access for these additional points of contact.
Topic 14: Systems	<u>Recommendation 14.8:</u> The principles of predictability and transparency must be observed in the deployment and operation of applicant-facing systems.
Topic 14: Systems	<u>Implementation Guidance 14.9:</u> To ensure predictability and minimize obstacles and legal burdens for applicants, any Agreements or Terms of Use associated with systems access (including those required to be “clicked-through”) should be finalized in advance of the Applicant Guidebook’s publication and published with the Applicant Guidebook. ⁵²
Topic 14: Systems	<u>Implementation Guidance 14.10:</u> In service of transparency, once the systems are in use, ICANN should communicate any system changes that may impact applicants or the application process. Processes described under Topic 2: Predictability should be followed.

⁴⁴ This question asks the applicant for a description of applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string.

⁴⁵ This question asks the applicant to describe the mission/purpose of the proposed gTLD.

⁴⁶ This question asks the applicant how the proposed gTLD will benefit registrants, Internet users, and others.

⁴⁷ This question asks the applicant if the application is for a community-based TLD.

⁴⁸ This question asks community-based applicants for additional information about the community that the applicant is committing to serve.

⁴⁹ This question asks the applicant if the application is for a geographic name, and if so, requests supporting documentation, where applicable.

⁵⁰ This question asks the applicant to describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD.

⁵¹ This question asks the applicant to provide the name and full description of all the Registry Services to be provided.

⁵² This implementation guidance refers to all Agreements and Terms of Use other than the Registry Agreement and Applicant Terms of Use.

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Topic 14: Systems	<u>Recommendation 14.11</u> : With respect to its operation and administration of the systems, ICANN must retain the ability to act in emergency situations, including those where immediate action is necessary to remedy any service interruption, interference, service obstruction or other imminent threat to the systems, provided that ICANN gives notice to all impacted users of the affected system(s) as soon as reasonably practicable after such action has been taken. If such action involves any downtime to the system(s), ICANN shall provide updates to impacted users as to the root cause of the downtime, the impact of the downtime event on users of the system(s), and when normal service can be restored.
Topic 15: Application Fees	<u>Affirmation 15.1</u> : Subject to Implementation Guidance 15.2 below, the Working Group affirms that as was the case in the 2012 round, all applications in subsequent procedures should pay the same base application fee regardless of the type of application or the number of applications that the same applicant submits. This would not preclude the possibility of additional fees in certain circumstances, as was the case in the 2012 round of the program (e.g., Community Priority Evaluation, Registry Service Evaluation Process, etc.).The Working Group notes that as was the case in the 2012 round, successful candidates for the Applicant Support Program will be eligible for a reduced application fee.
Topic 15: Application Fees	<u>Implementation Guidance 15.2</u> : Fees for the technical and operational evaluation for the core registry services should be charged to an applicant if they are using a registry service provider that is not pre-evaluated (“Technical Evaluation Fee”). The Technical Evaluation Fee should be the same regardless of whether the evaluation occurs as part of the pre-evaluation process or as part of the application process. For example, if the Technical Evaluation Fee portion of the overall application fee is \$US25,000, that portion of the application fee should only be charged to those applicants that do not select a pre-evaluated registry service provider.
Topic 15: Application Fees	<u>Affirmation with Modification 15.3</u> : With the addition of the italicized text, the Working Group affirms Implementation Guideline B from 2007: “Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants <i>that qualify for applicant support.</i> ” The Working Group believes, however, that for subsequent procedures the only historical costs that should be part of the cost structure in determining application fees are those actual costs directly related to the implementation of the New gTLD Program.

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Topic 15: Application Fees	<p><u>Affirmation with Modification 15.4:</u> The Working Group affirms the principle of cost recovery reflected in the 2012 Applicant Guidebook: “The gTLD evaluation fee is set to recover costs associated with the new gTLD program. The fee is set to ensure that the program is fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions.”</p> <p>For the next application round and each subsequent round, an assessment must take place prior to each round to estimate the application fee that would be necessary to achieve cost recovery. In the event that the estimated application fee, based on the revenue neutral principle, falls below a predetermined threshold amount (i.e., the application fee floor), the actual application fee should be set at that higher application fee floor instead. The development of the application fee must be fully transparent with all cost assumptions explained and documented.</p> <p>In managing funds for the New gTLD Program, ICANN must have a plan in place for managing any excess fees collected or budget shortfalls experienced. The plan for the management and disbursement of excess fees, if applicable, must be communicated in advance of accepting applications and collecting fees for subsequent procedures. The implementation guidance below describes in more detail how this should be accomplished.</p>
Topic 15: Application Fees	<p><u>Implementation Guidance 15.5:</u> Although ICANN must operate the new gTLD Program on a cost recovery basis (subject to any floors as set forth in this report) ICANN org may set aside a certain small percentage of excess fees (to the extent there are excess fees) to apply towards covering the costs of maintaining the capability to assemble future subsequent rounds of new gTLDs with minimum delay and to ensure that the new gTLD Program is able to continue into the future. Examples of such costs include retaining staff with program expertise and maintaining requisite systems. Any excess fees set aside by ICANN for this purpose should be explicitly recorded and justified.</p>
Topic 15: Application Fees	<p><u>Implementation Guidance 15.6:</u> If excess fees are collected in subsequent procedures and the cost recovery model is followed (i.e., the application fee floor is not implemented) any excess fees should be returned to applicants where possible in the form of a refund or a credit towards future fees, where applicable. ICANN may establish a schedule for the disbursement of refunds upon the achievement of specified milestones. For illustrative purposes only, such a schedule could establish that once 50% of the applications have been fully processed (eg., delegated, withdrawn, or not approved), ICANN would issue a payment of 25% of the excess fees back to the applicants. The disbursement</p>

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	mechanism must be communicated before applicants submit applications and fees to ICANN. If ICANN is unable to locate the applicant for the return of excess fees, the amount of the excess for that applicant should be used for the purposes described in Recommendation 15.7. Further, to the extent that excess fees per applicant are lower than a predetermined amount, for example \$US1,000, the funds should not be refunded to the applicant, but rather should be used for the purposes described in Recommendation 15.7. ICANN org should further explore the issues related to the management of excess fees with the Implementation Review Team and ensure that the resulting implementation is clearly documented in the Applicant Guidebook.
Topic 15: Application Fees	<u>Recommendation 15.7</u> : In the event that an application fee floor is used to determine the application fee, excess fees received by ICANN must be used to benefit the New gTLD Program and not any other ICANN program or purpose; that includes one or more of the following elements of the New gTLD Program: (a) a global communication and awareness campaign about the introduction and availability of new gTLDs; (b) long-term program needs such as system upgrades, fixed assets, etc.; (c) Applicant Support Program; (d) top-up of any shortfall in the segregated fund as described below; or (e) other purpose(s) that benefits the New gTLD Program.
Topic 15: Application Fees	<u>Implementation Guidance 15.8</u> : To help alleviate the potential burden of an overall budget shortfall, a separate segregated fund should be set up that can be used to absorb any shortfalls and topped-up in a later round. The amount of the contingency should be a predetermined value that is reviewed periodically to ensure its adequacy.
Topic 16: Application Submission Period	<u>Recommendation 16.1</u> : The Working Group recommends that for the next application window and subsequent application windows, absent “extenuating or extraordinary” circumstances, the application submission period must be a minimum of 12 and a maximum of 15 weeks in length.
Topic 17: Applicant Support	<u>Recommendation 17.1</u> : Implementation Guideline N from 2007 states: “ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.” The Working Group recommends that as was the case in the 2012 round, fee reduction must be available for select applicants who meet evaluation criteria through the Applicant Support Program. The Working Group further recommends new types of financial support for subsequent procedures that were not part of the Program in 2012, specifically, coverage of

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	<p>additional application fees (see Recommendation 17.2) and a bid credit, multiplier, or other similar mechanism that applies to a bid submitted by an applicant qualified for Applicant Support who participates in an ICANN Auction of Last Resort (see Recommendation 17.15 and Implementation Guidance 17.16 and 17.17). In addition, the Working Group recommends that ICANN facilitate non-financial assistance including the provision of pro-bono assistance to applicants in need. Further, ICANN must conduct outreach and awareness-raising activities during the Communications Period to both potential applicants and prospective pro-bono service providers.⁵³ The Working Group believes that the high-level goals and eligibility requirements for the Applicant Support Program remain appropriate. The Working Group notes, however, that the Applicant Support Program was not limited to least developed countries in the 2012 round and believes that the Program should continue to be open to applicants regardless of their location as long as they meet other program criteria. Therefore, the Working Group recommends the following language in place of Implementation Guideline N: “ICANN must retain the Applicant Support Program, which includes fee reduction for eligible applicants and facilitate the provision of pro-bono non-financial assistance to applicants in need.” The revised language updates the original Implementation Guideline to:</p> <ul style="list-style-type: none"> ● acknowledge that the Applicant Support Program was in place in the 2012 round ● include reference to pro-bono non-financial assistance in addition to fee reduction ● eliminate the reference to economies classified by the UN as least developed, as the Program is not limited to these applicants.
Topic 17: Applicant Support	<u>Recommendation 17.2</u> : The Working Group recommends expanding the scope of financial support provided to Applicant Support Program beneficiaries beyond the application fee to also cover costs such as application writing fees and attorney fees related to the application process.
Topic 17: Applicant Support	<u>Recommendation 17.3</u> : The Working Group recommends that ICANN improve outreach, awareness-raising, application evaluation, and program evaluation elements of the Applicant Support Program, as well as usability of the Program, as proposed in the implementation guidance below.

⁵³ In the 2012 round, the pro-bono assistance program was implemented through the Applicant Support Directory: <https://newgtlds.icann.org/en/applicants/candidate-support/non-financial-support>

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Topic 17: Applicant Support	<u>Implementation Guidance 17.4</u> : Outreach and awareness-raising activities should be delivered well in advance of the application window opening, as longer lead times help to promote more widespread knowledge about the program. Such outreach and education should commence no later than the start of the Communications Period. ⁵⁴
Topic 17: Applicant Support	<u>Implementation Guidance 17.5</u> : A dedicated Implementation Review Team should be established and charged with developing implementation elements of the Applicant Support Program. In conducting its work, the Implementation Review Team should revisit the 2011 Final Report of the Joint Applicant Support Working Group ⁵⁵ as well as the 2012 implementation of the Applicant Support program.
Topic 17: Applicant Support	<u>Implementation Guidance 17.6</u> : Outreach efforts should not only target the Global South, but also those located in struggling regions that are further along in their development compared to underserved or underdeveloped regions. In addition, the evaluation criteria for Applicant Support must treat those applicants similar to those currently set forth in Criteria #1, Section 4 (Operation in a developing economy) of the Financial Assistance Handbook. ⁵⁶
Topic 17: Applicant Support	<u>Implementation Guidance 17.7</u> : The Working Group supports Recommendation 6.1.b in the Program Implementation Review Report, which states: “6.1.b: Consider researching globally recognized procedures that could be adapted for the implementation of the Applicant Support Program.” ⁵⁷
Topic 17: Applicant Support	<u>Implementation Guidance 17.8</u> : In implementing the Applicant Support Program for subsequent rounds, the dedicated Implementation Review Team should draw on experts with relevant knowledge, including from the targeted regions, to develop appropriate program elements related to outreach, education, business case development, and application evaluation. Regional experts may be particularly helpful in providing insight on the development of business plans from different parts of the world.

⁵⁴ For additional recommendations regarding the Communications Period, please see Topic 13: Communications.

⁵⁵ <http://dakar42.icann.org/meetings/dakar2011/presentation-jas-final-report-13sep11-en.pdf>

⁵⁶ See <https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf> , pg 12.

⁵⁷ The detailed description of this recommendation in the PIRR states: “In regards to the development of criteria and processes, the community may wish to research globally recognized procedures that could be adapted for the implementation of a financial assistance program (e.g., World Bank programs). Additional [research] may also be undertaken to better understand the needs of the target market and their obstacles to becoming registry operators (e.g., infrastructure, training). This information would help to design a program to better meet the needs of the target market.”

Summary of Outputs	
Topic	Output
Topic 17: Applicant Support	<p><u>Implementation Guidance 17.9</u>: The dedicated Implementation Review Team⁵⁸ should seek advice from experts in the field to develop an appropriate framework for analysis of metrics to evaluate the success of the Applicant Support Program. The Working Group identified a non-exhaustive list of potential data points to support further discussion in the implementation phase. The Working Group anticipates that the dedicated IRT will consider how these and other potential metrics may be prioritized:</p> <ul style="list-style-type: none"> ● Awareness and Education: <ul style="list-style-type: none"> ○ number of outreach events and follow up communications with potential applicants ○ level of awareness about the New gTLD Program/Applicant Support Program ○ number of enquiries about the program/level of interest expressed/number that considered applying ○ number of applicants <ul style="list-style-type: none"> ■ first-time applicants versus repeat applicants ■ applicants submitting a single application versus portfolio applicants ■ applications based on pre-existing trademarks ○ diversity and distribution of the applicant pool: geographic diversity, languages, scripts ● Other Elements of Program Implementation: <ul style="list-style-type: none"> ○ number of ICANN staff members and contractors supporting the Applicant Support Program ○ number of service providers offering pro-bono assistance and value of assistance offered/provided ○ number of applicants accessing/using pro-bono assistance ○ number of approved applicants for financial assistance ○ number of applicants who received bid credits, multiplier, other and were successful in auction ○ the value of the bid credits, multiplier, other ○ number of applicants who withdrew from auction

⁵⁸ Although the Working Group discussed a separate IRT, this could also be achieved through a dedicated Work Stream or Track of the overall New gTLDs Implementation Review Team. The important concept here is that there is a dedicated team of knowledgeable and diverse experts in this niche area that understand the unique nature of financial and non-financial support for those in need.

Summary of Outputs	
Topic	Output
	<ul style="list-style-type: none"> ○ number of applicants who entered in to a business combination or other forms of joint ventures ○ length of time before any change of ownership occurred ● Success of Launched gTLD: <ul style="list-style-type: none"> ○ The number of registrants of domain names registered in “regional” TLDs (e.g., TLDs focusing mainly on a local, limited market), keeping in mind that there are other barriers for registrants in developing countries to access domain names, such as inability to access online payment services and a lack of local registrars. ○ The number of domain names registered in “regional” new gTLDs compared to the number of Internet users in such regions. These numbers could be compared with the same numbers for Internet users and “regional” new gTLDs in developed regions such as Europe and North America.
Topic 17: Applicant Support	<u>Implementation Guidance 17.10</u> : The dedicated Implementation Review Team should consider how to allocate financial support in the case that available funding cannot provide fee reductions to all applicants that meet the scoring requirement threshold.
Topic 17: Applicant Support	<u>Recommendation 17.11</u> : The Working Group supports Recommendation 6.1.a in the Program Implementation Review Report, which states: “Consider leveraging the same procedural practices used for other panels, including the publication of process documents and documentation of rationale.” ⁵⁹
Topic 17: Applicant Support	<u>Recommendation 17.12</u> : ICANN org must develop a plan for funding the Applicant Support Program, as detailed in the Implementation Guidelines below.
Topic 17: Applicant Support	<u>Implementation Guideline 17.13</u> : ICANN org should evaluate whether it can provide funds (as they did in 2012) or

⁵⁹ The detailed description of this recommendation in the PIRR states: “Regarding execution of the program, in this round, the SARP was an independent panel that defined its own processes, procedures, and final reports. The SARP’s work was performed earlier than the other New gTLD Program evaluation panels, and based on lessons learned from the implementation of other panels, ICANN should consider whether additional guidance should be provided to the SARP regarding publication of their processes, final report format, and documentation of rationale.”

Summary of Outputs	
Topic	Output
	whether additional funding is needed for the Applicant Support Program in subsequent rounds. ⁶⁰ The amount of funding available to applicants should be determined and communicated before the commencement of the application round.
Topic 17: Applicant Support	<u>Implementation Guideline 17.14</u> : ICANN org should seek funding partners to help financially support the Applicant Support Program, as appropriate.
Topic 17: Applicant Support	<u>Recommendation 17.15</u> : If an applicant qualifies for Applicant Support and is part of a contention set that is resolved through an ICANN Auction of Last Resort, a bid credit, multiplier, or other similar mechanism must apply to the bid submitted by that applicant.
Topic 17: Applicant Support	<u>Implementation Guidance 17.16</u> : Research should be conducted in the implementation phase to determine the exact nature and amount of the bid credit, multiplier, or other mechanism described in Recommendation 17.15. Research should also be completed to determine a maximum value associated with the bid credit, multiplier, or other mechanism.
Topic 17: Applicant Support	<u>Implementation Guidance 17.17</u> : If the applicant getting Applicant Support prevails in an auction, there should be restrictions placed on the applicant from assigning the Registry Agreement, and/or from any Change of Control for a period of no less than three (3) years. This restriction seeks to prevent gaming of the Applicant Support Program whereby an applicant transfers its ownership of a registry to a third party in exchange for any form of financial gain. However, assignments that become necessary for the following reasons shall be permitted: <ul style="list-style-type: none"> ● Assignments due to the TLD being unable to meet its financial obligations and unable to secure financing or restructure operations to carry out operations in the short-term ● Assignments due to death or retirement of a majority shareholder ● Assignments due to EBERO ● Assignments to affiliates or subsidiaries ● Assignments required by competition authorities

⁶⁰ See Topic 15: Application Fees for implementation guidance regarding use of excess application fees resulting from establishment of a fee floor to fund the Applicant Support Program and other New gTLD Program elements.

Summary of Outputs	
Topic	Output
	All assignments after such time shall be governed under the then-current Registry Agreement standard provisions; provided that any Assignment or Change of Control after the third (3rd) year, but prior to the seventh (7th) year, shall require the applicant to repay the full amount of financial support received through the ASP Program, including application fees and any bid credit, multiplier, or related benefits, plus an additional ten percent (10%).
Topic 17: Applicant Support	<u>Recommendation 17.18</u> : Unless the Support Applicant Review Panel (SARP) reasonably believes there was willful gaming, applicants who are not awarded Applicant Support (whether “Qualified” or “Disqualified ⁶¹ ”) must have the option to pay the balance of the full standard application fee and transfer to the standard application process. Applicants must be given a limited period of time to provide any additional information that would be necessary to convert the application into one that would meet the standard criteria (e.g., showing how the applicant for financial and other support could acquire the requisite financial backing and other support services to pass the applicable evaluation criteria). That said, this limited period of time should not cause unreasonable delay to the other elements of the New gTLD Program or to any other applicants for a string in which its application may be in a contention set.
Topic 17: Applicant Support	<u>Recommendation 17.19</u> : The Financial Assistance Handbook ⁶² or its successor, subject to the changes included in the above recommendations, must be incorporated into the Applicant Guidebook for subsequent rounds.
Topic 18: Terms & Conditions	<u>Recommendation 18.1</u> : Unless required by specific laws, ICANN Board members’ fiduciary duties, or the ICANN Bylaws, ICANN must only reject an application if done so in accordance with the provisions of the Applicant Guidebook. In the event an application is rejected, ICANN org must cite with specificity the reason in accordance with the Applicant Guidebook, or if applicable, the specific law and/or ICANN Bylaws for not allowing an application to proceed. This recommendation constitutes a revision to Section 3 of the Terms and Conditions from the 2012 round.
Topic 18: Terms & Conditions	<u>Implementation Guidance 18.2</u> : ICANN should not publish the specific reason for the rejection of an application where that reason is based on confidential information submitted by the applicant (but may post a generalized categorical

⁶¹ See <https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf>.

⁶² The Financial Assistance Handbook from the 2012 round is available at: <https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf>

Summary of Outputs	
Topic	Output
	reasoning for the rejection). This implementation guidance does not prevent the applicant from disclosing information about its own application. For example, if an applicant’s application is denied because of insufficient financial resources, ICANN may publish that the applicant’s application has been rejected for not passing the financial evaluation, but should not publish the specific details except to the applicant itself.
Topic 18: Terms & Conditions	<u>Recommendation 18.3</u> : In subsequent rounds, the Terms of Use must only contain a covenant not to sue if, and only if, the appeals/challenge mechanisms set forth under Topic 32 of this report are introduced into the program (in addition to the accountability mechanisms set forth in the current ICANN Bylaws). This recommendation is in reference to Section 6 of the Terms and Conditions from the 2012 round.
Topic 18: Terms & Conditions	<u>Recommendation 18.4</u> : Applicants must be allowed some type of refund if they decide to withdraw an application because substantive changes are made to the Applicant Guidebook or program processes and such changes have, or are reasonably likely to have, a material impact on applicants. ⁶³
Topic 18: Terms & Conditions	<u>Implementation Guidance 18.5</u> : If the risk of name collisions will be determined after applications are submitted, ICANN should provide a full refund to applicants in cases where a new gTLD is applied for but later is not approved because of risk of name collision.
Topic 18: Terms & Conditions	<u>Recommendation 18.6</u> : Access to confidential parts of the application should be appropriately limited, as detailed in the following implementation guidance.
Topic 18: Terms & Conditions	<u>Implementation Guidance 18.7</u> : Confidentiality provisions in the Terms and Conditions should limit access to confidential parts of the application to those individuals and entities that need to access that information, including those within ICANN org as well as any third parties conducting application evaluations or providing dispute or appeals services, if applicable.
Topic 19: Application Queuing	<u>Affirmation 19.1</u> : The Working Group supports the approach ultimately taken to application queuing during the 2012 round, in which ICANN conducted drawings to randomize the order of processing applications within an application window, and therefore affirms the use of a “prioritization draw” for subsequent procedures. The Working Group

⁶³ This refund would differ from the normal refund schedule.

Summary of Outputs	
Topic	Output
	acknowledges that there may be possible adjustments or alternatives to the logistics of the prioritization draw used in the 2012 round that either would improve on existing processes or be necessitated under applicable law. ⁶⁴ The Working Group supports such improvements and provides some examples in Implementation Guidance 19.2. The Working Group notes that in the 2012 round, the implementation of drawings included prioritization of IDN applications. This Affirmation does not address the prioritization of IDNs. Please see below for additional information on this issue. The Working Group acknowledges that continuing to use the randomized drawing approach is contingent upon local law and the ability of ICANN to obtain the necessary license to conduct such drawings, but advises that ICANN must not under any circumstances attempt to create a “skills-based” system like “digital archery” to determine the processing order of applications in subsequent procedures. This affirmation updates and replaces Implementation Guideline D from 2007 which recommended a first-come first served method of processing applications. ⁶⁵
Topic 19: Application Queuing	<u>Implementation Guidance 19.2</u> : Procedures related to application queuing should be simplified and streamlined to the extent possible. For example, applicants could be provided the opportunity to pay the optional fee for participating in the drawing along with payment for the application. Another suggestion is to explore ways to assign a prioritization number during the application process without the need for a distinctly separate drawing event.
Topic 19: Application Queuing	<u>Recommendation 19.3</u> : All applications must be processed on a rolling basis, based on assigned priority numbers. While the 2012 AGB prescribed batches of 500 applications, ICANN org noticed during that round that moving through the priority list without splitting the applications into batches was more efficient. The Working Group affirms that approach by not recommending batches. However, if the volume of Internationalized Domain Names (IDN) applications received equals or exceeds 125, applications will be assigned priority numbers consistent with the formula below. The Working Group recommends that the following formula must be used with respect to giving priority to IDN applications:

⁶⁴ One example may be exploring whether the prioritization draw must be in person as opposed to virtual.

⁶⁵ Implementation Guideline D from 2007 stated: “A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary. Applications will be time and date stamped on receipt.”

Summary of Outputs	
Topic	Output
	<ul style="list-style-type: none"> ● <u>First 500 applications</u> <ul style="list-style-type: none"> ○ If there are 125 applications or more for IDN strings that elect to participate in the prioritization draw, the first 25% of applications assigned priority numbers in the first group shall be those applications for IDN strings that elect to participate in the prioritization draw. The remaining 75% of applications in the group shall consist of both IDN and non-IDN applications that elect to participate in the prioritization draw. ○ If there are less than 125 applications for IDN strings that elect to participate in the prioritization draw, then all such applications shall be assigned priority numbers prior to any non-IDN application. ● <u>Each subsequent group of those electing to participate in the prioritization draw</u> <ul style="list-style-type: none"> ○ For each subsequent group, the first 10% of each group of applications must consist of IDN applications until there are no more IDN applications. ○ The remaining applications in each group shall be selected at random out of the pool of IDN and non-IDN applications that remain. ● <u>Processing of applications which do not elect to participate in the prioritization draw</u> <ul style="list-style-type: none"> ○ When all of the applications that have elected to participate in the prioritization draw have been assigned priority numbers, ICANN shall assign priority numbers to the remaining applications in groups of 500 applications. ○ The first 10% of each group of applications must consist of IDN applications until there are no more IDN applications. ○ The remaining applications in each group shall be selected at random out of the pool of IDN and non-IDN applications that remain.
Topic 19: Application Queuing	<u>Recommendation 19.4:</u> Any processes put into place for application queuing should be clear, predictable, finalized and published in the Applicant Guidebook. The recommendation to establish processes in advance is consistent with Recommendation 1.2.a in the Program Implementation Review Report, which states: “Assign priority numbers to applications prior to commencement of application processing.”
Topic 20: Application Change Requests	<u>Affirmation 20.1:</u> The Working Group supports maintaining a high-level, criteria-based change request process, as was employed in the 2012 application round.

Summary of Outputs	
Topic	Output
Topic 20: Application Change Requests	<u>Implementation Guidance 20.2</u> : ICANN org should provide guidance on both changes that will likely be approved and changes that will likely not be approved.
Topic 20: Application Change Requests	<u>Implementation Guidance 20.3</u> : ICANN org should identify in the Applicant Guidebook the types of changes that will require a re-evaluation of some or all of the application and which do not require any re-evaluation.
Topic 20: Application Change Requests	<p><u>Recommendation 20.4</u>: ICANN org must document the types of changes which are required to be posted for an operational comment period⁶⁶ and which are not required to be posted for an operational comment period. The following is a non-exhaustive list of changes that must require an operational comment period:</p> <ul style="list-style-type: none"> • The addition of Registry Voluntary Commitments in response to public comments, objections, whether formal or informal, GAC Consensus Advice, GAC Early Warnings, or other comments from the GAC • Changes to Registry Voluntary Commitments in response to public comments, objections, whether formal or informal, GAC Consensus Advice, GAC Early Warnings, or other comments from the GAC • Changes associated with the formation of joint ventures established to resolve string contention (see Recommendation 20.6 below) • Changes to the applied-for string (see Recommendation 20.8 below) <p>In the 2012 round, an operational comment period was not required for certain types of application changes.⁶⁷ The Working Group believes that an operational comment period continues to be unnecessary for these types of changes in subsequent rounds.</p>
Topic 20: Application Change Requests	<u>Implementation Guidance 20.5</u> : Community members should have the option of being notified if an applicant submits an application change request that requires an operational comment period to be opened at the commencement of that operational comment period.
Topic 20: Application Change Requests	<u>Recommendation 20.6</u> : The Working Group recommends allowing application changes to support the settling of contention sets through business combinations or other forms of joint ventures. In the event of such a combination or

⁶⁶ A 30-day comment period giving the public the opportunity to comment on any change to a public part of an application, including PICs.

⁶⁷ Please see <https://newgtlds.icann.org/en/applicants/global-support/change-requests#change-requests-comment>

Summary of Outputs	
Topic	Output
	joint venture, ICANN org may require that re-evaluation is needed to ensure that the new combined venture or entity still meets the requirements of the program. The applicant must be responsible for additional, material costs incurred by ICANN due to re-evaluation and the application could be subject to delays.
Topic 20: Application Change Requests	<u>Implementation Guidance 20.7</u> : ICANN org should explore the possibility of allowing applicants to request that the evaluation of their own application is delayed by 60-90 days so that they can submit an applicant change request on the basis of business combination or other form of joint venture. This request would need to be made prior to Initial Evaluation of the application.
Topic 20: Application Change Requests	<u>Recommendation 20.8</u> : The Working Group recommends allowing .Brand TLDs to change the applied-for string as a result of a contention set where (a) the change adds descriptive word to the string, (b) the descriptive word is in the description of goods and services of the Trademark Registration, (c) such a change does not create a new contention set or expand an existing contention set, (d) the change triggers a new operational comment period and opportunity for objection and, (e) the new string complies with all New gTLD Program requirements. When the .Brand applicant changes the applied-for string, the new string will also be considered a .Brand. The Working Group recognizes that an exception or a modification to Specification 13 will be needed to implement this recommendation. The Working Group further recognizes that in order to implement this recommendation, applications seeking to change their applied-for string will need to be evaluated for eligibility as a .brand before the string change request can be accepted. This may occur either by ICANN specifically evaluating those individual applications during Initial Evaluation or by evaluating all applicants that elect to be .brands during Initial Evaluation.
Topic 21: Reserved Names	<u>Affirmation 21.1</u> : The Working Group affirms Recommendation 5 from the 2007 policy, which states: “Strings must not be a Reserved Word.”
Topic 21: Reserved Names	<u>Affirmation 21.2</u> : The Working Group supports continuing to reserve as unavailable ⁶⁸ for delegation those strings at the top level that were considered Reserved Names and were unavailable for delegation in the 2012 round. ⁶⁹

⁶⁸ “Unavailable Names”, referred to in 2012 AGB as “Reserved Names.”

⁶⁹ See section 2.2.1.2.1 of the 2012 Applicant Guidebook.

Summary of Outputs	
Topic	Output
Topic 21: Reserved Names	<u>Affirmation 21.3</u> : The Working Group acknowledges the reservation at the top level of Special-Use Domain Names through the procedure described in IETF RFC 6761. ⁷⁰
Topic 21: Reserved Names	<u>Recommendation 21.4</u> : The Working Group recommends reserving as unavailable for delegation at the top level the acronym associated with Public Technical Identifiers, “PTI”.
Topic 21: Reserved Names	<u>Affirmation 21.5</u> : The Working Group supports continuing to reserve as unavailable for registration those strings that are on the then-current schedule of Reserved Names at the second level. The schedule may only change through the then-current process for making such changes.
Topic 21: Reserved Names	<u>Recommendation 21.6</u> : The Working Group recommends updating Specification 5 of the Registry Agreement (Schedule of Reserved Names) to include the measures for second-level Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes adopted by the ICANN Board on 8 November 2016. ⁷¹
Topic 22: Registrant Protections	<u>Affirmation 22.1</u> : The Working Group affirms existing registrant protections used in the 2012 round, including the Emergency Back-end Registry Operator (EBERO) ⁷² and associated triggers for an EBERO event and critical registry functions. In addition, as described under Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services, the substantive technical and operational evaluation is being maintained and therefore, protections against registry failure, including registry continuity, registry transition, and failover testing continue to be important registrant protections. The Working Group also supports the registrant protections contained in Specification 6 of the Registry Agreement. ⁷³

⁷⁰ See <https://tools.ietf.org/html/rfc6761>.

⁷¹ The Working Group notes that discussions on this topic are ongoing, and this recommendation is subject to the outcomes of related discussions.

⁷² For more information about EBERO, see: <https://www.icann.org/resources/pages/ebero-2013-04-02-en>

⁷³ Specifically Section 2.2 (prohibition on Wildcards), Section 3 (Continuity), Section 4 (Abuse Mitigation) and Section 5 (Initial and Renewal Periods). Section 6 deals with Name Collision and is addressed separately under Topic 29 of this report.

Summary of Outputs	
Topic	Output
Topic 22: Registrant Protections	<u>Affirmation 22.2</u> : Background screenings should be conducted during Initial Evaluation, as was the case in the 2012 round.
Topic 22: Registrant Protections	<u>Implementation Guidance 22.3</u> : If there is a change in the application that requires additional or repeat background screening (for example, a change in applying entity or change to major shareholders, officers, or directors of the applying entity) this additional background screening should occur prior to execution of the Registry Agreement. Deferring the re-screening until just prior to execution of the Registry Agreement represents a change to the process from 2012.
Topic 22: Registrant Protections	<u>Recommendation 22.4</u> : The Working Group supports recommendation 2.2.b. in the Program Implementation Review Report, which states: “Consider whether the background screening procedures and criteria could be adjusted to account for a meaningful review in a variety of cases (e.g., newly formed entities, publicly traded companies, companies in jurisdictions that do not provide readily available information).”
Topic 22: Registrant Protections	<u>Recommendation 22.5</u> : The Working Group supports recommendation 7.1.a. in the Program Implementation Review Report, which states: “Explore whether there are more effective and efficient ways to fund emergency back-end registry operator in the event of a TLD failure [other than requiring Continuing Operations Instruments].”
Topic 22: Registrant Protections	<u>Implementation Guidance 22.6</u> : To the extent that it is determined that a Continued Operations Instrument will be required, it should not be part of the financial evaluation. It should only be required at the time of executing the Registry Agreement.
Topic 22: Registrant Protections	<u>Recommendation 22.7</u> : TLDs that have exemptions from the Code of Conduct (Specification 9), including .Brand TLDs qualified for Specification 13, must also receive an exemption from Continued Operations Instrument (COI) requirements or requirements for the successor to the COI.
Topic 23: Closed Generics	<u>No Agreement 23.1</u> : The Working Group notes that in the 2012 round of the New gTLD Program, a decision was made by the ICANN Board ⁷⁴ to either (a) “submit a change request to no longer be an exclusive generic TLD”, (b) “withdraw

⁷⁴ <https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a>

Summary of Outputs	
Topic	Output
This output was not approved by the GNSO Council	<p>their application” or (c) “maintain their plan to operate an exclusive generic TLD,” which would operate to defer their application to the next round of the New gTLD Program, subject to rules developed for the next round, to allow time for the GNSO to develop policy advice concerning exclusive generic TLDs.” All applicants in 2012 chose either options (a) or (b). The result was that no exclusive generic gTLDs (also called “Closed Generic” gTLDs) were delegated in the first round.</p> <p>It was the expectation of the ICANN Board that the GNSO would “develop policy advice concerning exclusive generic TLDs.”⁷⁵ Although the Working Group has had numerous discussions about this topic, and received extensive comments from the community, including members of the Governmental Advisory Committee, the Working Group was not able to agree on “policy advice concerning exclusive generic TLDs.”</p> <p>Questions within the Working Group arose on the impact of a failure to develop any policy advice concerning exclusive generic TLDs. Following the approach the Working Group has taken on other issues where there is no agreement on changes to the implementation of the new gTLD program, the Working Group would normally recommend applying the Status Quo (i.e., no changes to 2012 implementation recommended). However, in this unique case, the Working Group was not able to agree on what the Status Quo actually was given the Board’s expectation that the Working Group would develop policy on this matter. In the absence of agreement on any policy, the Working Group debated, and was unable to come to agreement on, whether the status quo meant that either (i) Closed Generics would be allowed (as there were no provisions in the final Applicant Guidebook that prohibited them), (ii) Closed Generics would not be allowed (noting that none were delegated in the 2012 round), or (iii) Closed Generics would be allowed if they serve a public interest goal (in accordance with the GAC Consensus Advice that was accepted by the Board).</p> <p>The Working Group understands that members of the community expected the GNSO through this PDP to resolve the issue of whether or not Closed Generics would be allowed in subsequent rounds of new gTLDs. However, it became clear during Working Group deliberations that some members of the Working Group strongly supported a policy that allowed all Closed Generic applications to proceed, others strongly supported a policy that banned all forms of Closed Generic applications, and a number of members supported the GAC Advice which provides that Closed Generics</p>

⁷⁵ <https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a>

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	<p>should be allowed if they serve a public interest goal. But even amongst those members that supported the latter, there was no agreement on (a) how to define the public interest, (b) who would make the determination as to whether the application supported a public interest goal, and (c) how would such a requirement be enforced.</p> <p>The Working Group believes that if this issue were to be considered in future policy work, it should also involve experts in the areas of competition law, public policy, and economics. In addition, it should be performed by those in the community that are not associated with any past, present, or expectations of future work in connection with new gTLD applications or objections to new gTLD applications. Absent such independence, any future work is unlikely to result in an outcome any different than the one achieved in this Working Group.</p>
Topic 24: String Similarity Evaluations	<u>Affirmation 24.1</u> : The Working Group affirms Recommendation 2 from the 2007 policy, which states “Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.”
Topic 24: String Similarity Evaluations	<u>Affirmation 24.2</u> : Subject to the recommendations below, the Working Group affirms the standard used in the String Similarity Review from the 2012 round to determine whether an applied-for string is “similar” to any existing TLD, any other applied-for strings, Reserved Names, and in the case of 2-character IDNs, any single character or any 2-character ASCII string. According to Section 2.2.1 of the 2012 Applicant Guidebook, “similar” means “strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.” In the 2012 round, the String Similarity Panel was tasked with identifying “visual string similarities that would create a probability of user confusion.” ⁷⁶ The Working Group affirms the visual standard for determining similarity with the updates included in the recommendations below.
Topic 24: String Similarity Evaluations	<u>Recommendation 24.3</u> : The Working Group recommends updating the standards of both (a) confusing similarity to an existing top-level domain or a Reserved Name, and (b) similarity for purposes of determining string contention, to address singular and plural versions of the same word, noting that this was an area where there was insufficient clarity in the 2012 round. Specifically, the Working Group recommends prohibiting plurals and singulars of the same word within the same language/script in order to reduce the risk of consumer confusion. For example, the TLDs

⁷⁶ See Applicant Guidebook section 2.2.1.1.1

Summary of Outputs	
Topic	Output
	<p>.EXAMPLE⁷⁷ and .EXAMPLES may not both be delegated because they are considered confusingly similar. This expands the scope of the String Similarity Review to encompass singulars/plurals of TLDs on a per-language/script basis.</p> <ul style="list-style-type: none"> • An application for a single/plural variation of an existing TLD or Reserved Name will not be permitted if the intended use of the applied-for string is the single/plural version of the existing TLD or Reserved Name. For example, if there is an existing TLD .SPRINGS that is used in connection with elastic objects and a new application for .SPRING that is also intended to be used in connection with elastic objects, .SPRING will not be permitted. • If there is an application for the singular version of a word and an application for a plural version of the same word in the same language/script during the same application window, these applications will be placed in a contention set, because they are confusingly similar. • Applications will not automatically be placed in the same contention set because they appear visually to be a single and plural of one another but have different intended uses. For example, .SPRING and .SPRINGS could both be allowed if one refers to the season and the other refers to elastic objects, because they are not singular and plural versions of the same word. However, if both are intended to be used in connection with the elastic object, then they will be placed into the same contention set. Similarly, if an existing TLD .SPRING is used in connection with the season and a new application for .SPRINGS is intended to be used in connection with elastic objects, the new application will not be automatically disqualified. <p>The Working Group recommends using a dictionary to determine the singular and plural version of the string for the specific language. The Working Group recognizes that singulars and plurals may not visually resemble each other in multiple languages and scripts globally. Nonetheless, if by using a dictionary, two strings are determined to be the singular or plural of each other, and their intended use is substantially similar, then both should not be eligible for delegation.</p>
Topic 24: String Similarity Evaluations	<u>Implementation Guidance 24.4</u> : All applicants should be required to respond to an application question asking the applicant to explain the scope of intended use of the TLD, including any ways the applicant <u>does not</u> intend to use the TLD. If two or more applicants in the same round apply for strings that appear visually to be a single and plural of one

⁷⁷ .EXAMPLE is used here for illustrative purposes only. The Working Group is aware that technically .EXAMPLE cannot be delegated at all because it is one of the names already reserved from delegation as a Special Use name.

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	another, and it is not clear to evaluators based on the applications whether the intended use is the same or different and therefore whether one string is a singular or plural of another, ICANN should issue a Clarifying Question.
Topic 24: String Similarity Evaluations	<u>Recommendation 24.5:</u> If two applications are submitted during the same application window for strings that create the probability of a user assuming that they are single and plural versions of the same word, but the applicants intend to use the strings in connection with two different meanings, ⁷⁸ the applications will only be able to proceed if each of the applicants agrees to the inclusion of a mandatory Public Interest Commitment (PIC) in its Registry Agreement. The mandatory PIC must include a commitment by the registry to use the TLD in line with the intended use presented in the application, and must also include a commitment by the registry that it will require registrants to use domains under the TLD in line with the intended use stated in the application.
Topic 24: String Similarity Evaluations	<u>Recommendation 24.6:</u> Eliminate the use of the SWORD tool in subsequent procedures.
Topic 24: String Similarity Evaluations	<u>Recommendation 24.7:</u> The deadline for filing a String Confusion Objection must be no less than thirty (30) days after the release of the String Similarity Evaluation results. This recommendation is consistent with Program Implementation Review Report recommendation 2.3.a. ⁷⁹
Topic 25: IDNs	<u>Affirmation with Modification 25.1:</u> With the change in italicized text, the Working Group affirms Principle B from the 2007 policy: “Internationalised domain name (IDNs) new generic top-level domains <i>should continue to be an integral part of the New gTLD Program.</i> ” Principle B originally stated, “Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root.”
Topic 25: IDNs	<u>Recommendation 25.2:</u> Compliance with Root Zone Label Generation Rules (RZ-LGR ⁸⁰ , RZ-LGR-2, and any future RZ-

⁷⁸ As an example, if the two applicants applied for .SPRING and .SPRINGS, one might intend to use the TLD .SPRING in connection with the season and the other might intend to use the TLD .SPRINGS in connection with the elastic object.

⁷⁹ PIRR Recommendation 2.3.a states: “Review the relative timing of the String Similarity evaluation and the Objections process.”

⁸⁰ To see the current versions of RZ-LGRs, see: <https://www.icann.org/resources/pages/generation-panel-2015-06-21-en>

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	LGR rules sets) must be required for the generation of TLDs and variants ⁸¹ labels, including the determination of whether the label is blocked or allocatable. IDN TLDs must comply with IDNA2008 (RFCs 5890-5895) or its successor(s). To the extent possible, and consistent with Implementation Guidance 26.10, algorithmic checking of TLDs should be utilized.
Topic 25: IDNs	<u>Implementation Guidance 25.3</u> : If a script is not yet integrated into the RZ-LGR, applicants should be able to apply for a string in that script, and it should be processed up to but not including contracting. Applicants under such circumstances should be warned of the possibility that the applied-for string may never be delegated and they will be responsible for any additional evaluation costs.
Topic 25: IDNs	<u>Recommendation 25.4</u> : Single character ⁸² gTLDs may be allowed for limited script/language combinations where a character is an ideograph (or ideogram) and do not introduce confusion risks that rise above commonplace similarities, consistent with SSAC ⁸³ and Joint ccNSO-GNSO IDN Workgroup (JIG) ⁸⁴ reports.
Topic 25: IDNs	<u>Recommendation 25.5</u> : IDN gTLDs identified as variant TLDs of already existing or applied for gTLDs will be allowed only if labels are allocated to the same entity and, when delegated, only if they have the same back-end registry service provider. This policy must be captured in relevant Registry Agreements ⁸⁵ .
Topic 25: IDNs	<u>Recommendation 25.6</u> : A given second-level label under any allocated variant TLD must only be allocated to the same entity/registrar, or else withheld for possible allocation only to that entity (e.g., s1 under {t1, t1v1, ...}, e.g., s1.t1 and s1.t1v1).
Topic 25: IDNs	<u>Recommendation 25.7</u> : For second-level variant labels that arise from a registration based on a second-level IDN

⁸¹ For more information about the definition of IDN variants as well as examples, please see section 2 of IDN Variant TLD Implementation: Motivation, Premises and Framework, available at <https://www.icann.org/en/system/files/files/idn-variant-tld-motivation-premises-framework-25jan19-en.pdf>

⁸² Meaning a character in a U-label.

⁸³ See report here: <https://www.icann.org/en/system/files/files/sac-052-en.pdf>

⁸⁴ See report here: https://ccnso.icann.org/sites/default/files/filefield_22667/jig-final-report-single-character-idns-08mar11-en.pdf

⁸⁵ The Working Group did not discuss the process by which an existing registry operator could apply for, or be given, a variant for its existing gTLD. Nor has it discussed the process by which an applicant applying for a new IDN gTLD could seek and obtain any allocatable variant(s).

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	table, all allocatable variant labels in the set must only be allocated to the same entity or withheld for possible allocation only to that entity (e.g., all allocatable second-level labels {s1, s1v1, ...} under all allocated variant TLD labels {t1, t1v1, ...}).
Topic 25: IDNs	<u>Recommendation 25.8</u> : Second-level labels derived from Recommendation 25.6 or Recommendation 25.7 are not required to act, behave, or be perceived as identical.
Topic 26: Security and Stability	<u>Affirmation 26.1</u> : The Working Group affirms Recommendation 4 from the 2007 policy, which states: “Strings must not cause any technical instability.”
Topic 26: Security and Stability	<u>Recommendation 26.2</u> : ICANN must honor and review the principle of conservatism when adding new gTLDs to the root zone.
Topic 26: Security and Stability	<u>Recommendation 26.3</u> : ICANN must focus on the rate of change for the root zone over smaller periods of time (e.g., monthly) rather than the total number of delegated strings for a given calendar year.
Topic 26: Security and Stability	<u>Implementation Guidance 26.4</u> : The number of TLDs delegated in the root zone should not increase by more than approximately 5 percent per month, with the understanding that there may be minor variations from time-to-time.
Topic 26: Security and Stability	<u>Implementation Guidance 26.5</u> : ICANN should structure its obligations to new gTLD registries so that it can delay their addition to the root zone in case of DNS service instabilities. Objective criteria should be developed to determine what could be classified as a “service instability.”
Topic 26: Security and Stability	<u>Implementation Guidance 26.6</u> : ICANN should investigate and catalog the long term obligations for root zone operators of maintaining a larger root zone.
Topic 26: Security and Stability	<u>Implementation Guidance 26.7</u> : ICANN org should consult with PTI, the Root Zone Maintainer, the root operators via RSSAC, and the larger DNS technical community on the implementation of these recommendations.

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Topic 26: Security and Stability	<u>Implementation Guidance 26.8</u> : ICANN should continue to work with the community on mechanisms to monitor the root and develop procedures to ensure that any root zone scaling issues are detected in a timely manner.
Topic 26: Security and Stability	<u>Recommendation 26.9</u> : In connection to the affirmation of Recommendation 4 from the 2007 policy, Emoji in domain names, at any level, must not be allowed.
Topic 26: Security and Stability	<u>Implementation Guidance 26.10</u> : The application submission system should do all feasible algorithmic checking of TLDs, including against RZ-LGRs and ASCII string requirements, to better ensure that only valid ASCII and IDN TLDs can be submitted. A proposed TLD might be algorithmically found to be valid, algorithmically found to be invalid, or verifying its validity may not be possible using algorithmic checking. Only in the latter case, when a proposed TLD doesn't fit all the conditions for automatic checking, a manual review should occur to validate or invalidate the TLD.
Topic 27: Applicant Reviews	<p><u>Affirmation 27.1</u>: The Working Group affirms several Principles and Recommendations from the 2007 policy relative to Applicant Reviews:</p> <ul style="list-style-type: none"> ● <u>Principle D</u>: "A set of technical criteria must be used for assessing a new gTLD registry applicant to minimize the risk of harming the operational stability, security and global interoperability of the Internet." ● <u>Principle E</u>: "A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN's registry agreement." ● <u>Recommendation 1</u>: "ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedures for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process." ● <u>Recommendation 9</u>: "There must be a clear and pre-published application process using objective and measurable criteria." ● <u>Recommendation 18 (with slight modification)</u>: "If an applicant offers an IDN service, then ICANN's <i>then current</i> IDN guidelines must be followed."

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Topic 27: Applicant Reviews	<u>Recommendation 27.2:</u> Evaluation scores on all questions should be limited to a pass/fail scale (0-1 points only).
Topic 27: Applicant Reviews	<u>Recommendation 27.3:</u> All application evaluation questions and any accompanying guidance must be written such that it maximizes predictability and minimizes the likelihood of Clarifying Questions (CQs).
Topic 27: Applicant Reviews	<u>Implementation Guidance 27.4:</u> In order to meet the objectives of the relevant recommendation, ICANN org should at a minimum, conduct a detailed analysis of CQs and CQ responses, additional guidance to the Applicant Guidebook, Knowledge Articles, and Supplemental Notes from the 2012 round of the New gTLD Program to better understand the basis for applicants’ providing unanticipated responses to the 2012 questions and therefore, how to improve the clarity of questions in the future. This implementation guidance is consistent with recommendations 2.6.b and 2.7.b from ICANN org’s Program Implementation Review Report ⁸⁶ .
Topic 27: Applicant Reviews	<u>Recommendation 27.5:</u> ICANN org must publish CQs and CQ responses related to public questions. ICANN org may redact certain parts of the CQ and CQ response if there is nonpublic information directly contained in these materials or if publication in full is likely to allow the inference of nonpublic or confidential information.
Topic 27: Applicant Reviews	<u>Affirmation with Modification 27.6:</u> The Working Group affirms recommendation 7 from the 2007 policy with the following proposed additional text in italics: “Applicants must be able to demonstrate their technical <i>and operational</i> capability to run a registry operation for the purpose that the applicant sets out, <i>either by submitting it to evaluation at application time or agreeing to use an RSP that has successfully completed pre-evaluation as part of the RSP pre-evaluation program.</i> ⁸⁷ ”
Topic 27: Applicant Reviews	<u>Affirmation 27.7:</u> While affording the improvements to clarity that will result from Recommendation 27.3, ICANN org should retain the same substantive framework for the technical and operational questions utilized in the 2012 round

⁸⁶ Recommendation 2.6.b states: “Review Technical and Operational Capability CQs and responses to determine whether improvements to the application questions can be made”; Recommendation 2.7.b states: “Review Financial Capability CQs and responses to determine whether improvements to the application questions can be made.”

⁸⁷ Please see Topic 6 of this report for additional information about the RSP pre-evaluation program.

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	of the New gTLD Program. The exception to this affirmation is Q30b - Security Policy.
Topic 27: Applicant Reviews	<u>Implementation Guidance 27.8</u> : A mechanism(s) should be established to meet the spirit of the goals embodied within Q30b - Security Policy without requiring applicants to provide their full security policy. The Applicant Guidebook should clearly explain how the mechanism meets these goals and may draw on explanatory text included in the Attachment to Module 2: Evaluation Questions and Criteria from the 2012 Applicant Guidebook. ⁸⁸
Topic 27: Applicant Reviews	<u>Recommendation 27.9</u> : The technical and operational evaluation must be done in an efficient manner as described in the implementation guidance below.
Topic 27: Applicant Reviews	<u>Implementation Guidance 27.10</u> : ICANN org or its designee should aggregate and/or consolidate the technical and operational evaluation across applications to the extent feasible where the applications, for all intents and purposes, share identical responses to the relevant questions, particularly as it relates to the proposed registry services. This is intended to apply even when an applicant indicates that it will not use a pre-evaluated RSP. For example, if an applicant submits multiple applications or multiple applications are submitted from different applicants that share a common technical infrastructure, the technical and operational evaluation may only need to be performed once for the first application processed and then applied to subsequent applications. Additional evaluation would only need to occur for subsequent applications if a new service is being proposed or the application includes a new element that requires additional evaluation of services.
Topic 27: Applicant Reviews	<u>Recommendation 27.11</u> : Consistent with Implementation Guidance 39.6 under Topic 39: Registry System Testing, the technical and operational evaluation must emphasize evaluation of elements that are specific to the application and/or applied-for TLD and should avoid evaluating elements that have already been thoroughly considered either as part of the RSP pre-evaluation program or previously in connection with another application and/or applied-for TLD.
Topic 27: Applicant Reviews	<u>Implementation Guidance 27.12</u> : Applications should have a streamlined technical and operational evaluation if the applicant has either selected a pre-evaluated RSP in its application submission or if it commits to only using a pre-

⁸⁸ See pages A1-4 of the Attachment to Module 2.

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	evaluated RSP during the evaluation phase, and actually selects its chosen pre-evaluated RSP during the transition to delegation phase.
Topic 27: Applicant Reviews	<u>Recommendation 27.13</u> : When responding to questions, applicants must identify which services are being outsourced to be performed by third parties.
Topic 27: Applicant Reviews	<u>Recommendation 27.14</u> : The technical and operational evaluation must also consider the total number of TLDs and expected registrations for an applicant’s given RSP.
Topic 27: Applicant Reviews	<u>Recommendation 27.15</u> : The Working Group recommends that the financial evaluation must focus on ensuring that an applicant is able to demonstrate financial wherewithal and assure long-term survivability of the registry, thus reducing the security and stability risk to the DNS. The Working Group believes that the following implementation guidance will simplify the process but still allow for meaningful assurance of an applicant’s financial capabilities, while duly taking into account how the applicant will operate its registry.
Topic 27: Applicant Reviews	<u>Implementation Guidance 27.16</u> : As part of the financial evaluation, ICANN should not evaluate proposed business models, nor provide sample business models and/or tools for applicants to demonstrate financial wherewithal. The Applicant Guidebook should provide applicants with a list of resources to get information on RSPs, Stakeholder Groups and associations from which applicants can get information.
Topic 27: Applicant Reviews	<u>Implementation Guidance 27.17</u> : The evaluation should determine whether an applicant will be able to withstand missing revenue goals, exceeding expenses, funding shortfalls, or the inability to manage multiple TLDs in the case of registries that are dependent upon the sale of registrations. This evaluation must recognize and take into account the different ways to operate a registry, including instances where there is no reliance on the sale of third party registrations to generate revenue for the registry. Therefore, determining the financial wherewithal of an applicant to sustain the maintenance of a TLD may require different criteria for different types of registries; criteria should not be established in a “one-size-fits-all” manner.
Topic 27: Applicant Reviews	<u>Implementation Guidance 27.18</u> : If any of the following conditions are met, an applicant should be allowed to self-certify that it is able to meet the goals as described in Implementation Guidance 27.17. This self-certification will serve

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	<p>as evidence that the applicant has the financial wherewithal to support its application for the TLD.</p> <ul style="list-style-type: none"> i. If the applicant is a publicly traded corporation, or an affiliate as defined in the current Registry Agreement, listed and in good standing on any of the world’s largest 25 stock exchanges (as listed by the World Federation of Exchanges); ii. If the applicant and/or its officers are bound by law in its jurisdiction to represent financials accurately and the applicant is in good standing in that jurisdiction; or, iii. If the applicant is a current registry operator or an affiliate (as defined in the current Registry Agreement) of a current registry operator that is not in default on any of its financial obligations under its applicable Registry Agreements, and has not previously triggered the utilization of its Continued Operations Instrument. <p>If the applicant is unable to meet the requirements for self-certification, the applicant must provide credible third-party certification of its ability to meet the goals as described in Implementation Guidance 27.17.</p>
Topic 27: Applicant Reviews	<p><u>Affirmation with Modification 27.19</u>: The Working Group affirms Recommendation 8 from the 2007 policy with the following proposed additional text in italics: “Applicants must be able to demonstrate their financial and organizational operational capability <i>in tandem for all currently-owned and applied-for TLDs that would become part of a single registry family.</i>”</p> <p>Therefore, applicants must identify whether the financial statements in its application apply to all of its applications, a subset of them or a single application (where that applicant and/or its affiliates have multiple applications).</p>
Topic 27: Applicant Reviews	<p><u>Implementation Guidance 27.20</u>: The following is a tentative but exhaustive set of financial questions:</p> <ul style="list-style-type: none"> ● “Identify whether this financial information is shared with another application(s)” (not scored). ● “Provide financial statements (audited and self-certified by an officer where applicable or audited and independently certified if unable to meet the requirements for self-certification)” (0-1 scoring) (certification posted). ● “Provide a declaration, self-certified by an officer where applicable or independently certified if unable to meet the requirements for self-certification, that the applicant will be able to withstand missing revenue goals, exceeding expenses, funding shortfalls, and will have the ability to manage

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	multiple TLDs where the registries are dependent upon the sale of registrations” (0-1 scoring) (publicly posted).
Topic 27: Applicant Reviews	<u>Recommendation 27.21:</u> A certain set of optional pre-approved additional registry services will not require registry services evaluation and those selected by the applicant at the time application submission will automatically be included in the applicant’s Exhibit A upon contract execution. That list will include those that are included in the base Registry Agreement and on the <i>Fast Track RSEP Process and Standard Authorization Language</i> ⁸⁹ page as of the drafting of this report and as updated from time to time.
Topic 27: Applicant Reviews	<u>Recommendation 27.22:</u> Any additional optional registry services not included on the pre-approved list must be reviewed in a timely manner to determine if they might raise significant stability or security issues. Criteria used to evaluate those non-pre-approved registry services must be consistent with the criteria applied to existing registries that propose new registry services and should not result in additional fees. However, if that initial assessment determines that the proposed registry services might raise significant stability or security issues, the application will be subject to extended review by the Registry Services Technical Evaluation Panel (RSTEP). Applicants will be subject to additional fees under this circumstance.
Topic 27: Applicant Reviews	<u>Implementation Guidance 27.23:</u> The Registry Services Evaluation Policy (RSEP) Process Workflow should be amended to fit within the new gTLD processes and timelines (e.g., using priority number to order evaluation, using Clarifying Questions to address issues).
Topic 28: Role of Application Comment	<u>Affirmation 28.1:</u> Section 1.1.2.3 of the 2012 Applicant Guidebook states “ICANN will open a comment period (the Application Comment Period) at the time applications are publicly posted on ICANN’s website . . . This period will allow time for the community to review and submit comments on posted application materials.” The Working Group affirms that as was the case in the 2012 round, community members must have the opportunity to comment during the Application Comment Period on applications submitted. Comments must be published online as they were in the 2012 round so that they are available for all interested parties to review.

⁸⁹ These optional additional services include Bulk Transfer After Partial Portfolio Acquisition (BTAPPA), Registry Lock, Block Services, and/or validation services as examples. See page here: <https://www.icann.org/resources/pages/fast-track-rsep-process-authorization-language-2019-06-14-en>

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Topic 28: Role of Application Comment	<u>Affirmation 28.2</u> : As was the case in the 2012 round, when an application comment might cause an evaluator to reduce scoring, ICANN must issue a Clarifying Question to the applicant and give the applicant an opportunity to respond to the comment.
Topic 28: Role of Application Comment	<u>Recommendation 28.3</u> : For purposes of transparency and to reduce the possibility of gaming, there must be clear and accurate information available about the identity of a person commenting on an application as described in the implementation guidance below.
Topic 28: Role of Application Comment	<u>Implementation Guidance 28.4</u> : The system used to collect application comment should continue to require that affirmative confirmation be received for email addresses prior to use in submission of comments. To the extent possible, ICANN org should seek to verify the identity of the person submitting the comment.
Topic 28: Role of Application Comment	<u>Implementation Guidance 28.5</u> : In addition, each commenter should be asked whether they are employed by, are under contract with, have a financial interest in, or are submitting the comment on behalf of an applicant. If so, they must reveal that relationship and whether their comment is being filed on behalf of that applicant.
Topic 28: Role of Application Comment	<u>Recommendation 28.6</u> : Systems supporting application comment must emphasize usability for those submitting comments and those reviewing the comments submitted. This recommendation is consistent with Program Implementation Review Report recommendation 1.3.a, which states: “Explore implementing additional functionality that will improve the usability of the Application Comment Forum.”
Topic 28: Role of Application Comment	<u>Implementation Guidance 28.7</u> : The system used to collect application comment should better support filtering and sorting of comments to help those reviewing comments find relevant responses, particularly when there is a large number of entries. One example is an ability to search comments for substantive text within the comment itself. In the 2012 new gTLD round a search could be done on categories of comments, but not a search of the actual text within the comment itself.
Topic 28: Role of Application Comment	<u>Implementation Guidance 28.8</u> : The system used to collect application comment should allow those submitting comments to include attachments. ICANN should investigate whether there are any commercially reasonable mechanisms to search attachments.

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Topic 28: Role of Application Comment	<u>Recommendation 28.9</u> : The New gTLD Program must be clear and transparent about the role of application comment in the evaluation of applications.
Topic 28: Role of Application Comment	<u>Implementation Guidance 28.10</u> : The Implementation Review Team should develop guidelines about how public comments are to be utilized or taken into account by the relevant evaluators and panels, and these guidelines should be included in the Applicant Guidebook. The Applicant Guidebook should also be clear to what extent different types of comments will or will not impact scoring.
Topic 28: Role of Application Comment	<u>Recommendation 28.11</u> : Applicants must have a clear, consistent, and fair opportunity to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.
Topic 28: Role of Application Comment	<u>Implementation Guidance 28.12</u> : Applicants should be given a fixed amount of time to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.
Topic 28: Role of Application Comment	<u>Recommendation 28.13</u> : ICANN must create a mechanism for third-parties to submit information related to confidential portions of the application, which may not be appropriate to submit through public comment. At a minimum, ICANN must confirm receipt and that the information is being reviewed. The applicant must be fully informed of the submitted information and be able to respond through the same mechanism.
Topic 28: Role of Application Comment	<u>Recommendation 28.14</u> : A single Application Comment Period must apply to both standard and community-based applications. To the extent that third-parties submit expressions of support for or opposition to a community-based application, these comments must be submitted during the Application Comment Period if they are to be considered during Community Priority Evaluation.
Topic 29: Name Collisions	<u>Recommendation 29.1</u> : ICANN must have ready prior to the opening of the application submission period a mechanism to evaluate the risk of name collisions in the New gTLD evaluation process as well as during the transition to delegation phase.
Topic 29: Name Collisions	<u>Affirmation 29.2</u> : The Working Group affirms continued use of the New gTLD Collision Occurrence Management framework unless and until the ICANN Board adopts a new mitigation framework. This includes not changing the

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	controlled interruption duration and the required readiness for human-life threatening conditions for currently delegated gTLDs and future new gTLDs. ⁹⁰
Topic 29: Name Collisions	<u>Implementation Guidance 29.3</u> : To the extent possible, ICANN should seek to identify high-risk strings in advance of opening the application submission period, which should constitute a “Do Not Apply” list. ICANN should also seek to identify aggravated risk strings in advance of the next application window opening and whether it would require a specific name collision mitigation framework.
Topic 29: Name Collisions	<u>Implementation Guidance 29.4</u> : To the extent possible, all applied-for strings should be subject to a DNS Stability evaluation to determine whether they represent a name collision risk.
Topic 29: Name Collisions	<u>Implementation Guidance 29.5</u> : The ICANN community should develop name collision risk criteria and a test to provide information to an applicant for any given string after the application window closes so that the applicant can determine if they should move forward with evaluation.
Topic 29: Name Collisions	<u>Implementation Guidance 29.6</u> : If controlled interruption (CI) for a specific label (usually a 2nd-level domain) is found to cause disruption, ICANN may decide to allow CI to be disabled for that label while the disruption is fixed, provided that the minimum CI period is still applied to that label.
Topic 30: GAC Consensus Advice and GAC Early Warning	<u>Affirmation 30.1</u> : The Working Group acknowledges the ability of the GAC to issue GAC Consensus Advice in accordance with the ICANN Bylaws. In addition, subject to the recommendations below, the Working Group supports the 2012 implementation of GAC Early Warnings. Section 1.1.2.4 of the 2012 Applicant Guidebook describes the Early Warning mechanism: “Concurrent with the [public] comment period, ICANN’s Governmental Advisory Committee (GAC) may issue a GAC Early Warning notice concerning an application. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments.”

⁹⁰ “Registry operators will implement a period of, at least, 90 days of continuous controlled interruption. ICANN will monitor and time the implementation of the measure, primarily using the zone files that are transferred to ICANN from new gTLD registries once they are delegated (per Specification 4 off the new gTLD Registry Agreement).”, 3. Controlled Interruption, and 7. Emergency Response, pages 2 and 4, in the New gTLD Collision Occurrence Management framework. See: <https://www.icann.org/en/system/files/files/name-collision-framework-30jul14-en.pdf>.

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Topic 30: GAC Consensus Advice and GAC Early Warning	<u>Implementation Guidance 30.2</u> : To the extent that the GAC provides GAC Consensus Advice (as defined in the ICANN Bylaws) in the future on categories of TLDs, the GAC should provide this Advice prior to the finalization and publication of the next Applicant Guidebook. In the event that GAC Consensus Advice is issued after the finalization and publication of the Applicant Guidebook and whether the GAC Consensus Advice applies to categories, groups or classes of applications or string types, or to a particular string, the ICANN Board should take into account the circumstances resulting in such timing and the possible detrimental effect of such timing in determining whether to accept or override such GAC Consensus Advice as provided in the Bylaws.
Topic 30: GAC Consensus Advice and GAC Early Warning	<u>Recommendation 30.3</u> : As stated in the ICANN Bylaws, GAC Consensus Advice must include a clearly articulated rationale. ⁹¹ The Working Group recommends that GAC Consensus Advice be limited to the scope set out in the applicable Bylaws provisions and elaborate on any “interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues.” ⁹²
Topic 30: GAC Consensus Advice and GAC Early Warning	<u>Recommendation 30.4</u> : Section 3.1 of the 2012 Applicant Guidebook states that GAC Consensus Advice “will create a strong presumption for the ICANN Board that the application should not be approved.” Noting that this language does not have a basis in the current version of the ICANN Bylaws, the Working Group recommends omitting this language in future versions of the Applicant Guidebook to bring the Applicant Guidebook in line with the Bylaws language. ⁹³

⁹¹ Section 12.3. PROCEDURES of the ICANN Bylaws states: “. . .each Advisory Committee shall ensure that the advice provided to the Board by such Advisory Committee is communicated in a clear and unambiguous written statement, including the rationale for such advice.” See <https://www.icann.org/resources/pages/governance/bylaws-en>.

⁹² Section 12.2(a)(i) of the ICANN Bylaws states: “The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues.” See <https://www.icann.org/resources/pages/governance/bylaws-en>.

⁹³ Section 12.2 (a)(x) of the ICANN Bylaws states: “The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee advice, it shall so inform the Governmental Advisory Committee and state the reasons why it decided not to follow that advice. Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection (“GAC Consensus Advice”), may only be rejected by a vote of no less than 60% of the Board, and the Governmental Advisory Committee and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee will state whether any advice it gives to the Board is GAC Consensus Advice.”

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	The Working Group further notes that the language may have the unintended consequence of hampering the ability of the Board to facilitate a solution that mitigates concerns and is mutually acceptable to the applicant and the GAC as described in the relevant Bylaws language. Such a solution could allow an application to proceed. In place of the omitted language, the Working Group recommends including in the Applicant Guidebook a reference to applicable Bylaws provisions that describe the voting threshold for the ICANN Board to reject GAC Consensus Advice. ⁹⁴
Topic 30: GAC Consensus Advice and GAC Early Warning	<u>Recommendation 30.5:</u> The Working Group recommends that GAC Early Warnings are issued during a period that is concurrent with the Application Comment Period. ⁹⁵ To the extent that there is a longer period given for the GAC to provide Early Warnings (above and beyond the Application Comment Period), the Applicant Guidebook must define a specific time period during which GAC Early Warnings can be issued.
Topic 30: GAC Consensus Advice and GAC Early Warning	<u>Recommendation 30.6:</u> Government(s) issuing Early Warning(s) must include a written explanation describing why the Early Warning was submitted and how the applicant may address the GAC member’s concerns.
Topic 30: GAC Consensus Advice and GAC Early Warning	<u>Recommendation 30.7:</u> Applicants must be allowed to change their applications, including the addition or modification of Registry Voluntary Commitments (RVCs, formerly voluntary PICs), to address GAC Early Warnings, GAC Consensus Advice, and/or other comments from the GAC. ⁹⁶ Relevant GAC members are strongly encouraged to make themselves available during a specified period of time for direct dialogue ⁹⁷ with applicants impacted by GAC Early Warnings, GAC Consensus Advice, or comments to determine if a mutually acceptable solution can be found.

⁹⁴ See section 12.2(a)(x) of the current ICANN Bylaws: <https://www.icann.org/resources/pages/governance/bylaws-en/#article12>

⁹⁵ See Topic 28 of this report for discussion of the application comment period.

⁹⁶ The addition or modification of RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendations set forth under Topic 20: Application Change Requests including, but not limited to, an operational comment period in accordance with ICANN’s standard procedures and timeframes.

⁹⁷ While face-to-face dialogue is encouraged, the Working Group recognizes that this may not be feasible in all cases. Dialogue through remote channels may also support the productive exchange of ideas.

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Topic 31: Objections	<p><u>Affirmation 31.1</u>: Subject to the recommendations/implementation guidance below, The Working Group affirms the following recommendations and implementation guidance from 2007:</p> <ul style="list-style-type: none"> ● Recommendation 6: “Strings must not be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally accepted and internationally recognized principles of law. Examples of such limitations that are internationally recognized include, but are not limited to, restrictions defined in the Paris Convention for the Protection of Industrial Property (in particular restrictions on the use of some strings as trademarks), and the Universal Declaration of Human Rights (in particular, limitations to freedom of speech rights).” ● Recommendation 20: “An application will be rejected if it is determined, based on public comments or otherwise, that there is substantial opposition to it from among significant established institutions of the economic sector, or cultural or language community, to which it is targeted or which it is intended to support.” ● Implementation Guideline H: “External dispute providers will give decisions on objections.” ● Implementation Guideline P (IG P, including subheadings on process and guidelines, refers specifically to the Community Objection): “The following process, definitions and guidelines refer to Recommendation 20. <p style="margin-left: 40px;">Process Opposition must be objection based. Determination will be made by a dispute resolution panel constituted for the purpose. The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).</p> <p style="margin-left: 40px;">Guidelines The task of the panel is the determination of substantial opposition.</p> <p style="margin-left: 40px;">a) substantial – in determining substantial the panel will assess the following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment</p> <p style="margin-left: 40px;">b) significant portion – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate</p>

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	<p>to the explicit or implicit targeting.</p> <p>c) community – community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted.</p> <p>d) explicitly targeting – explicitly targeting means there is a description of the intended use of the TLD in the application.</p> <p>e) implicitly targeting – implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.</p> <p>f) established institution – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years. Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community. The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.</p> <p>g) formal existence – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar.</p> <p>h) detriment – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely.”</p> <ul style="list-style-type: none"> • Implementation Guideline Q: “ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.”
Topic 31: Objections	<p><u>Affirmation with Modification 31.2:</u> Recommendation 12 from 2007 states: “Dispute resolution and challenge processes must be established prior to the start of the process.” Consistent with Implementation Guidance 31.12 below, the Working Group affirms Recommendation 12 with the following modification in italicized text: “Dispute resolution and challenge processes must be established prior to the start of the process, <i>the details of which must be published in the Applicant Guidebook.</i>”</p>

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Topic 31: Objections	<u>Affirmation with Modification 31.3</u> : Implementation Guideline R from 2007 states: “Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated.” The Working Group modifies this Implementation Guideline to read: “Once a response to the formal objection has been filed by the applicant(s), there may be a cooling off period for negotiation or compromise by agreement of both parties if the parties formally notify the dispute resolution provider that they would like to initiate a cooling off period.”
Topic 31: Objections	<u>Affirmation 31.4</u> : The Working Group affirms the overall approach to the public objection and dispute resolution process described in Section 3.2 of the 2012 Applicant Guidebook, subject to the recommendations below. The Working Group further affirms that parties with standing should continue to be able to file formal objections with designated third-party dispute resolution providers on specific applications based on the following grounds: (i) String Confusion Objection (ii) Existing Legal Rights Objection (iii) Limited Public Interest Objection (iv) Community Objection.
Topic 31: Objections	<u>Implementation Guidance 31.5</u> : Where possible, costs associated with filing a formal objection should be reduced while maintaining the quality and integrity of the objections process.
Topic 31: Objections	<u>Implementation Guidance 31.6</u> : Information about fees that were charged by dispute resolution service providers in previously filed formal objections should be accessible for future review.
Topic 31: Objections	<u>Implementation Guidance 31.7</u> : Consideration should be given to whether there were barriers to filing a formal objection in the 2012 round, and if so, whether those barriers can and should be reduced in subsequent procedures. Specifically, the Working Group suggests further consideration of the time required to file a formal objection, the expertise required, and limited awareness of the opportunity to file.
Topic 31: Objections	<u>Affirmation 31.8</u> : The Working Group affirms that the role of the Independent Objector (IO) should exist in

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	subsequent procedures, ⁹⁸ subject to the changes introduced from other recommendations, and the implementation guidance below. The Working Group further affirms that the IO should be given the opportunity to file only Community and/or Limited Public Interest objections when doing so serves the best interests of the public who use the global Internet.
Topic 31: Objections	<u>Implementation Guidance 31.9</u> : A mechanism should be established (e.g., standing panel of multiple IO panelists) that mitigates the possible conflict of interest issues that may arise from having a single panelist serving as the IO.
Topic 31: Objections	<u>Recommendation 31.10</u> : For all types of formal objections, the parties to a proceeding must be given the opportunity to mutually agree upon a single panelist or a three-person panel, bearing the costs accordingly. Following the model of the Limited Public Interest Objection in the 2012 round, absent agreement from all parties to have a three-expert panel, the default will be a one-expert panel.
Topic 31: Objections	<u>Recommendation 31.11</u> : ICANN must provide transparency and clarity in the processes used to handle the filing and processing of formal objections, including the resources and supplemental guidance used by dispute resolution provider panelists to arrive at a decision, expert panelist selection criteria and processes, and filing deadlines. The following implementation guidance provides additional direction in this regard.
Topic 31: Objections	<u>Implementation Guidance 31.12</u> : All criteria and/or processes to be used by panelists for the filing of, response to, and evaluation of each formal objection should be included in the Applicant Guidebook.

⁹⁸ Section 3.2.5 of the 2012 Applicant Guidebook describes the role of the Independent Objector. The Working Group believes that a number of existing practices for the IO should be maintained. These include:

- ICANN org continuing to provide the budget for the IO;
- The IO continuing to be limited to filing objections for Limited Public Interest and Community Objections;
- Continuing to require that a relevant public comment be submitted in order to file an objection;
- Impose no limit on the number of objections the IO may file, subject to budgetary constraints; and,
- Continue to require extraordinary circumstances to file an objection where an objection has already been filed by another entity on the same ground.

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Topic 31: Objections	<u>Implementation Guidance 31.13</u> : Information about fees and refunds for the dispute resolution processes should be readily available prior to the commencement/opening of the application submission period.
Topic 31: Objections	<u>Implementation Guidance 31.14</u> : Prior to the launch of the application submission period, to the extent that dispute resolution panelists draw on other guidance, processes and/or sources of information to assist them with processing and making decisions, such information should be made publicly available and easily found, either on their respective websites or preferably, in a central location.
Topic 31: Objections	<u>Recommendation 31.15</u> The “quick look” mechanism, which applied to only the Limited Public Interest Objection in the 2012 round, must be developed by the Implementation Review Team for all formal objection types. The “quick look” is designed to identify and eliminate frivolous and/or abusive objections. ⁹⁹
Topic 31: Objections	<u>Recommendation 31.16</u> : Applicants must have the opportunity to amend an application or add Registry Voluntary Commitments (RVCs) in response to concerns raised in a formal objection. All these amendments and RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendations set forth under Topic 20: Application Change Requests including, but not limited to, an operational comment period in accordance with ICANN’s standard procedures and timeframes.
Topic 31: Objections	<u>Recommendation 31.17</u> : To the extent that RVCs are used to resolve a formal objection either (a) as a settlement between the objector(s) and the applicant(s) or (b) as a remedy ordered by an applicable dispute panelist, those RVCs must be included in the applicable applicant(s) Registry Agreement(s) as binding contractual commitments enforceable by ICANN through the PICDRP.
Topic 31: Objections	<u>Recommendation 31.18</u> : ICANN must reduce the risk of inconsistent outcomes in the String Confusion Objection Process, especially where an objector seeks to object to multiple applications for the same string. The following implementation guidance provides additional direction in this regard.

⁹⁹ The Working Group expects the Implementation Review Team to determine in greater detail how the quick look mechanism will identify and eliminate frivolous and/or abusive objections for each objection type. The Working Group anticipates that standing will be one of issues that the quick look mechanism will review, where applicable.

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Topic 31: Objections	<p><u>Implementation Guidance 31.19</u>: ICANN should allow 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. Specifically:</p> <ul style="list-style-type: none"> • An objector may file a single objection that extends to all applications for an identical string. • Given that an objection that encompasses several applications would require more work to process and review, the string confusion dispute resolution service provider (DSRP) could introduce a tiered pricing structure for these sets. Each applicant for that identical string should still prepare a response to the objection. • The same panel should review all documentation associated with the objection. Each response should be reviewed on its own merits. • The panel should issue a single determination that identifies which applications should be in contention. Any outcome that results in indirect¹⁰⁰ contention should be explained as part of the DRSP’s determination.
Topic 32: Limited Challenge/Appeal Mechanism	<p><u>Recommendation 32.1</u>: The Working Group recommends that ICANN establish a mechanism that allows specific parties to challenge or appeal certain types of actions or inactions that appear to be inconsistent with the Applicant Guidebook.¹⁰¹</p> <p>The new substantive challenge/appeal mechanism is not a substitute or replacement for the accountability mechanisms in the ICANN Bylaws that may be invoked to determine whether ICANN staff or Board violated the Bylaws by making or not making a certain decision. Implementation of this mechanism must not conflict with, be inconsistent with, or impinge access to accountability mechanisms under the ICANN Bylaws.</p> <p>The Working Group recommends that the limited challenge/appeal mechanism applies to the following types of</p>

¹⁰⁰ Per Applicant Guidebook Module 4 (p 4-3): “Two strings are in direct contention if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another. Two strings are in indirect contention if they are both in direct contention with a third string, but not with one another.”

¹⁰¹ Examples of such actions or inactions include where an evaluator misapplies the Guidebook or omits Guidebook criteria or where a panel relies on incorrect information or standard to decide an objection.

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	<p>evaluations and formal objections decisions¹⁰²:</p> <p>Evaluation Challenges</p> <ol style="list-style-type: none"> 1. Background Screening 2. String Similarity 3. DNS Stability 4. Geographic Names 5. Technical / Operational Evaluation 6. Financial Evaluation 7. Registry Services Evaluation 8. Community Priority Evaluation 9. Applicant Support 10. RSP Pre-Evaluation <p>Appeals of Formal Objections Decisions</p> <ol style="list-style-type: none"> 1. String Confusion Objection 2. Legal Rights Objection 3. Limited Public Interest Objection 4. Community Objection 5. Conflict of Interest of Panelists
Topic 32: Limited Challenge/Appeal Mechanism	<u>Recommendation 32.2</u> : In support of transparency, clear procedures and rules must be established for challenge/appeal processes as described in the implementation guidance below.

¹⁰² The list of challenges and appeals herein are based on the current and envisaged processes and procedures for the New gTLD Program. In the event that additional evaluation elements and/or objections are added, modified or removed from the program, the challenges and/or appeals may have to be modified as appropriate.

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Topic 32: Limited Challenge/Appeal Mechanism	<u>Implementation Guidance 32.3</u> : Parties with standing to file a challenge/appeal should vary depending on the process being challenged/appealed. The Working Group’s guidance on this issue is summarized in Annex F.
Topic 32: Limited Challenge/Appeal Mechanism	<u>Implementation Guidance 32.4</u> : The type of decision that may be challenged/appealed should vary depending on the process being challenged/appealed. The Working Group’s guidance on this issue is summarized in Annex F.
Topic 32: Limited Challenge/Appeal Mechanism	<p><u>Implementation Guidance 32.5</u>: The Working Group’s guidance on the arbiter for each type of challenge/appeal is summarized in Annex F. In the case of challenges to evaluation decisions, the arbiter should typically be from the entity that conducted the original evaluation, but the person(s) responsible for making the ultimate decision in the appeal must be different from those that were responsible for the evaluation. In the case of an appeal of a formal objection decision, the arbiter will typically be a panelist or multiple panelists from the entity that handled the original formal objection, but will not be the same panelist(s) that provided the original formal objection decision.</p> <p>The Working Group recognizes that ICANN itself may be an evaluator for any of the application evaluation components. This would not change the types of challenges allowed as set forth in Annex F. The arbiter of a challenge where ICANN itself was the evaluator should be a person or persons within ICANN that were not involved in the ultimate evaluation decision. If possible, the Working Group also recommends that the challenge process should be done under the supervision of the ICANN Ombudsman.</p>
Topic 32: Limited Challenge/Appeal Mechanism	<u>Implementation Guidance 32.6</u> : For all types of appeals to formal objections, the parties to a proceeding must be given the opportunity to mutually agree upon a single panelist or a three-person panel, bearing the costs accordingly. ¹⁰³ Following the model of the Limited Public Interest Objection in the 2012 round, absent agreement from all parties to have a three-expert panel, the default will be a one-expert panel.

¹⁰³ Under Topic 31: Objections, the Working Group recommends that parties to a formal objections proceeding have the opportunity to mutually agree on whether to use a single panelist or a three-person panel, bearing the costs accordingly. This recommendation extends the same opportunity for appeals of objections decisions.

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Topic 32: Limited Challenge/Appeal Mechanism	<u>Implementation Guidance 32.7</u> : All challenges and appeals except for the conflict of interest appeals should be reviewed under the “clearly erroneous” ¹⁰⁴ standard. Conflict of interests should be reviewed under a “de novo” ¹⁰⁵ standard.
Topic 32: Limited Challenge/Appeal Mechanism	<u>Implementation Guidance 32.8</u> : The Working Group’s guidance on the party bearing the cost of a challenge/appeal is summarized in Annex F. Regarding appeals filed by the Independent Objector and ALAC, the Working Group notes that in the 2012 round, ICANN designated a budget for the IO. The Working Group believes that this should continue to be the case in subsequent procedures, and that ALAC should similarly have a budget provided by ICANN. The IO and ALAC should pay for any costs related to the appeal out of the budget provided.
Topic 32: Limited Challenge/Appeal Mechanism	<u>Implementation Guidance 32.9</u> : The Working Group’s guidance on the remedy for a successful challenge/appeal is summarized in Annex F.
Topic 32: Limited Challenge/Appeal Mechanism	<u>Recommendation 32.10</u> : The limited challenge/appeal process must be designed in a manner that does not cause excessive, unnecessary costs or delays in the application process, as described in the implementation guidance below.
Topic 32: Limited Challenge/Appeal Mechanism	<u>Implementation Guidance 32.11</u> : A designated time frame should be established in which challenges and appeals may be filed. The Working Group’s guidance on the time frame for filing appeals is summarized in Annex F.
Topic 32: Limited Challenge/Appeal Mechanism	<u>Implementation Guidance 32.12</u> : The limited challenge/appeal mechanism should include a “quick look” step at the beginning of the process to identify and eliminate frivolous challenges/appeals.

¹⁰⁴ Under a clearly erroneous standard of review, the appeals panel must accept the evaluator’s or dispute panel’s findings of fact unless (1) the panel failed to follow the appropriate procedures or (2) failed to consider/solicit necessary material evidence or information.

¹⁰⁵ Under a de novo standard of review, the appeals panel is deciding the issues without reference to any of the conclusions or assumptions made by the evaluator/dispute panel. It can refer to the evaluator/dispute panel to determine the facts, but it need not defer to any of the findings or conclusions. It would be as if the appeals panel is hearing the facts for the first time.

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Topic 32: Limited Challenge/Appeal Mechanism	<u>Implementation Guidance 32.13</u> : A party should be limited to a single round of challenge/appeal for an issue. With the exception of challenges to conflict of interest determinations, parties should only be permitted to challenge/appeal the final decision on an evaluation or objection and should not be permitted to file "interlocutory" appeals as the process progresses. Parties should be able to appeal a conflict of interest determination prior to the objection panel hearing the formal objection.
Topic 33: Dispute Resolution Procedures After Delegation	<u>Affirmation 33.1</u> : The Working Group affirms that the Public Interest Commitment Dispute Resolution Procedure (PICDRP) ¹⁰⁶ and the Registration Restrictions Dispute Resolution Procedure (RRDRP) should remain available to those harmed by a new gTLD registry operator's conduct, subject to the recommendation below.
Topic 33: Dispute Resolution Procedures After Delegation	<u>Recommendation 33.2</u> : For the Public Interest Commitment Dispute Resolution Procedure (PICDRP) and the Registration Restrictions Dispute Resolution Procedure (RRDRP), clearer, more detailed, and better-defined guidance on the scope of the procedure, the role of all parties, and the adjudication process must be publicly available.
Topic 34: Community Applications	<u>Affirmation with Modification 34.1</u> : The Working Group affirms the continued prioritization of applications in contention sets that have passed Community Priority Evaluation (CPE). The Working Group further affirms Implementation Guideline H* from the 2007 policy, with one small modification: "Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions: (i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and (ii) a formal objection process is initiated. Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P." This modified text removes the following sentence under (ii) in order to be consistent with 2012 implementation: "Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim."

¹⁰⁶ The PICDRP will apply to both mandatory PICs and Registry Voluntary Commitments, formerly called voluntary PICs.

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Topic 34: Community Applications	<u>Implementation Guidance 34.2</u> : In the 2012 Applicant Guidebook, the following text is included under definitions for Criterion 1-A Delineation, “ “Delineation” relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.” The corresponding Evaluation Guidelines from the 2012 round include a non-exhaustive list of “elements of straight-forward member definitions.” This list should continue to include elements applicable to economic communities with a formal membership structure, but it should also include elements applicable to communities that are not economic in nature, including linguistic and cultural communities, that have clear and straight-forward membership definition. The term “member” in this context should be interpreted broadly enough to include communities that do not have “card carrying” members. Further, the Evaluation Guidelines should include provisions that allow communities which are not economic in nature (and which therefore may not have clear and straight-forward membership structure) with an equal opportunity to score a full 2 points on the Delineation Criterion, as well as an opportunity to score a single point if some but not all elements of this criterion are met.
Topic 34: Community Applications	<u>Implementation Guidance 34.3</u> : In the 2012 Applicant Guidebook, the following text is included under Definitions for CPE Criterion 1-A Delineation: “Notably, as “community” is used throughout the application, there should be: . . . (b) some understanding of the community’s existence prior to September 2007 (when the new gTLD policy recommendations were completed). . .” and “ “Pre-existing” means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.” The corresponding section of the CPE Evaluation Guidelines states, “The following questions must be scored when evaluating the application: . . . <i>Has the community been active since at least September 2007?</i> ” For subsequent procedures, references to “September 2007” should be changed to “the beginning of the then current application submission period.”
Topic 34: Community Applications	<u>Implementation Guidance 34.4</u> : In the 2012 Applicant Guidebook, in order to succeed in a Community Priority Evaluation, Criterion 1-A stated that a community should have the requisite “awareness and recognition” among its members (“Delineation”). The Working Group recommends that this criterion must take into consideration the views of the relevant community-related experts, especially in cases where recognition of the community is not measurable (eg., where such recognition is prevented by national law).
Topic 34: Community Applications	<u>Implementation Guidance 34.5</u> : In the 2012 Applicant Guidebook, the following text is included under Definitions for CPE Criterion 1-A Delineation: “ “Organized” implies that there is at least one entity mainly dedicated to the

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	community, with documented evidence of community activities.” The interpretation in the Evaluation Guidelines of the term “mainly” should make clear that it is possible for more than one entity to administer and/or represent a community. The Guidelines should further make clear that an organization that represents a community should be treated on equal footing with one that administers a community.
Topic 34: Community Applications	<u>Implementation Guidance 34.6:</u> In the 2012 Applicant Guidebook, text regarding CPE Criterion 2-A Nexus includes guidance on scoring in relation to the criterion. Corresponding text included in the Evaluation Guidelines should be more specific and clear regarding scoring to eliminate any ambiguity in interpretation. The Working Group suggests the following text to include in the Evaluation Guidelines: “With respect to “Nexus”, for a score of 3, the essential aspect is that the applied-for string matches the name of the community. Where an exact match is not established but the applied-for string is established as commonly known by others as a well-known short-form or abbreviation of the community, it will also be eligible for a score of 3. Where the applied-for string does not match the name of the community or is not a well-known short-form or abbreviation of the community, it may score a 2 if it identifies the community - i.e. closely describes either the community or a reasonably understood boundary of the community members, without over-reaching substantially beyond the community. An applied-for string which identified the community but over-reaches substantially into a community will score a zero.”
Topic 34: Community Applications	<u>Implementation Guidance 34.7:</u> In the 2012 Applicant Guidebook, text regarding CPE Criterion 2-B Uniqueness includes the following definition: “ “Identify” means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.” The corresponding Evaluation Guidelines should make clear that there are two distinct paths to establish if an applied for string identifies the community: 1. describing the community OR 2. describing the community members. The Guidelines should explicitly state that these paths are not interconnected or contingent on one another.
Topic 34: Community Applications	<u>Implementation Guidance 34.8:</u> The Evaluation Guidelines regarding Criterion 2-B Uniqueness should make clear that evaluators should not be making a qualitative assessment of whether the a term is the most appropriate or descriptive term for a given community compared to other possible terms. Instead, they should be examining whether this is a term that the public in general associates with this community as opposed to another meaning.

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Topic 34: Community Applications	<u>Implementation Guidance 34.9</u> : CPE Evaluation Guidelines regarding scoring for Criterion 4-A Support should make clear that it is not assumed for the purposes of scoring that only a single organization will serve as the representative for an entire community and that other considerations may be taken into account in scoring for this criterion if multiple organizations represent a community.
Topic 34: Community Applications	<u>Implementation Guidance 34.10</u> : The following text included in the 2012 Applicant Guidebook Section 4.2.3 Community Priority Evaluation Criteria should also be incorporated into the CPE Evaluation Guidelines: “The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any "double-counting" - any negative aspect found in assessing an application for one criterion should only be counted there and should not affect the assessment for other criteria.”
Topic 34: Community Applications	<u>Implementation Guidance 34.11</u> : The Working Group urges the Implementation Review Team to consider 1. Changing the passing score for achieving community priority status from a numerical score to a percentage of the total number of possible points and 2. Lowering the threshold for achieving community-based status from the 87.5% of the total available evaluation points (14 out of 16 points) as was the case in the 2012 round to 75-80% of the total available points.
Topic 34: Community Applications	<u>Recommendation 34.12</u> : The process to develop evaluation and selection criteria that will be used to choose a Community Priority Evaluation Provider (CPE Provider) must include mechanisms to ensure appropriate feedback from the ICANN community. In addition, any terms included in the contract between ICANN org and the CPE Provider regarding the CPE process must be subject to public comment.
Topic 34: Community Applications	<u>Recommendation 34.13</u> : The Community Priority Evaluation (CPE) process must be efficient, transparent and predictable.
Topic 34: Community Applications	<u>Implementation Guidance 34.14</u> : To support predictability, the CPE guidelines, or as amended, should be considered a part of the policy adopted by the Working Group.
Topic 34: Community Applications	<u>Implementation Guidance 34.15</u> : ICANN org should examine ways to make the CPE process more efficient in terms of costs and timing.

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Topic 34: Community Applications	<u>Recommendation 34.16</u> : All Community Priority Evaluation procedures (including any supplemental dispute provider rules) must be developed and published before the opening of the application submission period and must be readily and publicly available.
Topic 34: Community Applications	<u>Recommendation 34.17</u> : Evaluators must continue to be able to send Clarifying Questions to CPE applicants but further, must be able to engage in written dialogue with them as well.
Topic 34: Community Applications	<u>Recommendation 34.18</u> : Evaluators must be able to issue Clarifying Questions, or utilize similar methods to address potential issues, to those who submit letters of opposition to community-based applications.
Topic 34: Community Applications	<u>Recommendation 34.19</u> : Letters of opposition to a community-based application, if any, must be considered in balance with documented support for the application.
Topic 34: Community Applications	<u>Implementation Guidance 34.20</u> : The 2012 Applicant Guidebook includes the following text regarding scoring for CPE Criterion 4-B Opposition: “Opposition: 2= No opposition of relevance; 1= Relevant opposition from one group of non-negligible size; 0= Relevant opposition from two or more groups of non-negligible size.” In listing considerations for determining whether an organization is of “non-negligible size,” the Evaluation Guidelines should include text indicating that the determination of what is non-negligible must be relative to the size of the community that that applicant is proposing to serve.
Topic 34: Community Applications	<u>Recommendation 34.21</u> : If the Community Priority Evaluation Panel conducts independent research while evaluating an application, limitations on this research and additional requirements must apply. The Working Group recommends including the following text in the Applicant Guidebook: “The Community Priority Evaluation Panel may perform independent research deemed necessary to evaluate the application (the “Limited Research”), provided, however, that the evaluator shall disclose the results of such Limited Research to the applicant and the applicant shall have an opportunity to respond. The applicant shall be provided 30 days to respond before the evaluation decision is rendered. When conducting any such Limited Research, panelists are cautioned not to assume an advocacy role either for or against the applicant or application.”

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Topic 34: Community Applications	<u>Implementation Guideline 34.22</u> : To support transparency, if the Community Priority Evaluation Panel relied on research for the decision it should be cited and a link to the information provided.
Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets	<p><u>Affirmation with Modification 35.1</u>: Implementation Guideline F from 2007 states: “If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and; iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.”</p> <p>The Working Group affirms this Implementation Guideline with the following changes in italicized text: “If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe <i>in accordance with the Applicant Guidebook and supporting documents</i> ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement, <i>contention will be resolved through an ICANN Auction of Last Resort</i> and; iii) <i>Expert panels may be used to make Community Priority Evaluation determinations.</i>”</p> <p>The revision to part i) specifies that any private resolution of contention must be in accordance with the Application Guidebook and supporting documents, including the Application Change request process and Terms and Conditions. Adjustments in the text of ii) and iii) describe in greater specificity program elements as they were implemented in the 2012 round, which will carry over into subsequent rounds.</p>
Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets **This output was not approved by the GNSO Council**	<p><u>Recommendation 35.2</u>: Consistent with the Application Change processes set forth under Topic 20: Application Change Requests, the Applicant Guidebook (AGB) must reflect that applicants will be permitted to creatively resolve contention sets in a multitude of manners, including but not limited to business combinations or other forms of joint ventures and private resolutions (including private auctions).</p> <ul style="list-style-type: none"> • All private resolutions reached by means of forming business combinations or other joint ventures resulting in the withdrawal of one or more applications are subject to the Application Change processes set forth under Topic 20: Application Change Requests. • Any materially modified application resulting from a private resolution will be subject to a new operational comment period on the changes as well as a new period to file objections; provided however, objections

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	<p>during this new period must be of the type that arise due to the changing circumstances of the application and not merely the type of objection that could have been filed against the surviving application or the withdrawn applications in the contention set during the initial objection filing period.</p> <ul style="list-style-type: none"> • All contention sets resolved through private resolution shall adhere to the transparency requirements set forth in the Contention Resolution Transparency Requirements in the relevant recommendation.
Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets	<p><u>Recommendation 35.3</u>: Applications must be submitted with a bona fide (“good faith”) intention to operate the gTLD. Applicants must affirmatively attest to a bona fide intention to operate the gTLD clause for all applications that they submit.</p> <ul style="list-style-type: none"> • Evaluators and ICANN must be able to ask clarifying questions to any applicant it believes may not be submitting an application with a bona fide intention. Evaluators and ICANN shall use, but are not limited to, the “Factors” described below in their consideration of whether an application was submitted absent bona fide intention. These “Factors” will be taken into consideration and weighed against all of other facts and circumstances surrounding the impacted applicants and applications. The existence of any one or all of the “Factors” may not themselves be conclusive of an application made lacking a bona fide use intent. • Applicants may mark portions of any such responses as “confidential” if the responses include proprietary business information. <p>The Working Group discussed the following potential non-exhaustive list of “Factors” that ICANN may consider in determining whether an application was submitted with a bona fide (“good faith”) intention to operate the gTLD. Note that potential alternatives and additional language suggested by some Working Group members are included in brackets:</p> <ul style="list-style-type: none"> • If an Applicant applies for [four] [five] or more strings that are within contention sets and participates in private auctions for more than fifty percent (50%) of those strings for which the losing bidder(s) receive the proceeds from the successful bidder, and the applicant loses each of the private auctions, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for each of those applications. • Possible alternatives to the above bullet point: <ul style="list-style-type: none"> ○ [If an applicant participates in six or more private auctions and fifty percent (50%) or greater of its contention strings produce a financial windfall from losing.]

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	<ul style="list-style-type: none"> ○ [If an applicant receives financial proceeds from losing greater than 49% of its total number of contention set applications that are resolved through private auctions.] ○ [If an applicant: a. Has six or more applications in contention sets; and b. 50% or more of the contention sets are resolved in private auctions; and c. 50% or more of the private auctions produce a financial windfall to the applicant.] ○ [If an applicant applies for 5 or more strings that are within contention sets and participated in 3 private auctions for which the applicant is the losing bidder and receives proceeds from the successful bidder it MUST send to the evaluators a detailed reconciliation statement of its auction fund receipts and expenditure immediately on completion of its final contention set resolution. In addition this may be considered a factor by the evaluators and ICANN in determining lack of bona fide intention to operate the gTLD for all of its applications and in doing so might stop all its applications from continuing to delegation.] <ul style="list-style-type: none"> • If an applicant’s string is not delegated into the root within two (2) years of the Effective Date of the Registry Agreement, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for that applicant. • If an applicant is awarded a top-level domain and [sells or assigns] [attempts to sell] the TLD (separate and apart from a sale of all or substantially all of its non-TLD related assets) within (1) year, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for that applicant. • [If an applicant with multiple applications resolves contention sets by means other than private auctions and does not win any TLDs.] <p>Consideration of whether an application was submitted with a bona fide intention to operate the gTLD must be determined by considering all of the facts and circumstances surrounding the impacted applicants and applications. The above factors may be considered by ICANN in determining such intent provided that there are no other credible explanations for the existence of those Factors.</p>
Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of	<p>Recommendation 35.4: ICANN Auctions of Last Resort must be conducted using the second-price auction method, consistent with following rules and procedural steps.</p> <ul style="list-style-type: none"> • Once the application submission period closes, the String Similarity Evaluation for all applied-for strings must be completed prior to any application information being revealed to anyone other than the evaluators and

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<p>Contention Sets</p> <p>**This output was not approved by the GNSO Council**</p>	<p>ICANN org.</p> <ul style="list-style-type: none"> • At the end of the String Similarity Evaluation period, applicants in contention sets will be informed of the number of other applications in their contention set, but no other information regarding the other applications will be shared. All applicants must submit a sealed bid for each relevant application (“Last Resort Sealed Bids”). Any applicant that does not submit a sealed bid at this time will be deemed to submit a bid of zero. • Only after the window to submit Last Resort Bids closes, non-confidential information submitted by applicants in their applications will be published (i.e., “Reveal Day”), including the composition of contention sets and the nature of the applications, (e.g., community-based applications, .Brand applications, etc.). Beginning on Reveal Day, applicants may participate in various forms of private resolution, subject to the Contention Resolution Transparency Requirements set forth herein. • All applications shall be evaluated and are subject to other application procedures (e.g., Initial Evaluation, Extended Evaluation, Objections, GAC Early Warning/Advice, Community Priority Evaluation). Some of these procedures may affect the composition of contention sets. <ul style="list-style-type: none"> ○ To the extent any contention sets are expanded, by having other applications added (e.g., String Confusion Objections, appeals to the String Similarity Evaluation), all applicants (including both the existing members of the contention set as well as the new members) will be allowed, but are not required, to submit a new Last Resort Sealed Bid. ○ To the extent any contention sets are shrunk, by having other applications removed from the process (e.g., withdrawal, losing objections, failing evaluation, Community Priority Evaluation identifying only community-based applications which prevailed, etc.), applicants will NOT be allowed to adjust their sealed bids. However, in the event of a partial resolution of a contention set through the formation of a business combination or joint venture and the corresponding withdrawal of one or more applications, the remaining application AND each of the other existing applications in the contention set will be allowed, but are not required, to submit a new Last Resort Sealed Bid. • ICANN Auctions of Last Resort shall only take place after all other evaluation procedures, objections, etc., similar to the 2012 round. In addition, the ICANN Auction of Last Resort cannot occur if one or more of the applications in the contention set is involved in an active appeal or ICANN Accountability mechanism or is in a new operational comment period or reevaluation due to private resolution. <ul style="list-style-type: none"> ○ Applicants in the contention set must be informed of the date of the ICANN Auction of Last Resort.

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	<ul style="list-style-type: none"> ○ Deposits for the ICANN Auction of Last Resort will be collected a fixed amount of time prior to the auction being conducted. ○ On the ICANN Auction of Last Resort date, the applicant that submitted the highest Last Resort Sealed Bid amount pays the second-highest bid amount. ○ Once payment is received within the specified time period, the applicant may proceed to the transition to delegation. ○ Non-payment within the specified time period will result in disqualification of the applicant.
Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets	<p><u>Recommendation 35.5</u>: Applicants resolving string contention must adhere to the Contention Resolution Transparency Requirements as detailed below. Applicants disclosing relevant information will be subject to the Protections for Disclosing Applicants as detailed below.</p> <p><u>Contention Resolution Transparency Requirements</u></p> <ul style="list-style-type: none"> • <u>For Private Auction or Bidding Process / ICANN Auction of Last Resort</u>: In the case of a private auction or an ICANN Auction of Last Resort, all parties in interest¹⁰⁷ to any agreements relating to participation of the applicant in the private auction or ICANN Auction of Last Resort must be disclosed to ICANN within 72 hours of resolution and ICANN must, in turn, publish the same within 72 hours of receipt. This includes: <ul style="list-style-type: none"> ○ A list of the real party or parties in interest in each applicant or application, including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant; ○ List the names and contact information¹⁰⁸ of any party holding 15% or more direct or indirect ownership of each applicant or application, whether voting or nonvoting, including the specific amount of the interest or percentage held;

¹⁰⁷ A party in interest is a person or entity who will benefit from the transaction even if the one participating in the transaction is someone else. This includes, but is not limited to any person or entity that has more than a *de minimus* ownership interest in an applicant, or who will be in a position to actually or potentially control the operation of an applicant.

¹⁰⁸ Contact Information will be subject to the same publication rules as contact information is treated in the application process.

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	<ul style="list-style-type: none"> ○ List the names and contact information¹⁰⁹ of all officers, directors, and other controlling interests in the applicant and/or the application; ○ The amount paid (or payable) by the winner of the auction; ○ The beneficiary(ies) of the proceeds of the bidding process and the respective distribution amounts; ○ The beneficiary(ies) of the proceeds of the bidding process; and ○ The value of the Applicant Support bidding credits or multiplier used, if applicable.¹¹⁰ <ul style="list-style-type: none"> • <u>For Other Forms of Private Resolution:</u> Where contention sets are privately resolved through a mechanism other than a private auction, the following must be disclosed: <ul style="list-style-type: none"> ○ The fact that the contention set (or part of a contention set), has been resolved privately (and the names of the parties involved); ○ Which applications are being withdrawn (if applicable); ○ Which applications are being maintained (if applicable); ○ If there will be a change in ownership of the applicant, or any changes to the officers, directors, key personnel, etc., along with the corresponding information; ○ All material information regarding any changes to information contained in the original application(s)(if any). <p>In the event that any arrangements to resolve string contention results in any material changes to the surviving application, such changes must be submitted through the Application Change process set forth under Topic 20: Application Change Requests.</p> <p><u>Protections for Disclosing Applicants</u></p> <ul style="list-style-type: none"> • Except as otherwise set forth in the transparency requirements above, no participant in any private resolution

¹⁰⁹ Same as above.

¹¹⁰ We assume that Applicant Support bidding credits or multipliers would only be used in cases where the resolution sets were decided by an ICANN Auction of Last Resort, however, we note that it is theoretically possible that such credits or multipliers could be used during a private auction if all parties in the private auction agreed.

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	<p>process shall be required to disclose any proprietary information such as trade secrets, business plans, financial records, or personal information of officers and directors unless such information is otherwise required as part of a normal TLD application.</p> <ul style="list-style-type: none"> • The information obtained from the contention resolution process may not be used by ICANN for any purpose other than as necessary to evaluate the application, evaluate the New gTLD Program, or to otherwise comply with applicable law.
Topic 36: Base Registry Agreement	<p><u>Affirmation 36.1</u>: The Working Group affirms the following recommendations and implementation guidelines from the 2007:</p> <ul style="list-style-type: none"> • Principle F: “A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.” • Recommendation 10: “There must be a base contract provided to applicants at the beginning of the application process.” • Recommendation 14: “The initial registry agreement term must be of a commercially reasonable length.” • Recommendation 15: “There must be a renewal expectancy.” • Recommendation 16: “Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.” • Implementation Guideline J: “The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing marketplace.” • Implementation Guideline K: “ICANN should take a consistent approach to the establishment of registry fees.”
Topic 36: Base Registry Agreement	<p><u>Affirmation 36.2</u>: The Working Group affirms the current practice of maintaining a single base Registry Agreement with “Specifications.”</p>
Topic 36: Base Registry Agreement	<p><u>Recommendation 36.3</u>: There must be a clearer, structured, and efficient method to apply for, negotiate, and obtain exemptions to certain provisions of the base Registry Agreement, subject to public notice and comment. A clear rationale must be included with any exemption request. This allows ICANN org to consider unique aspects of registry operators and TLD strings, as well as provides ICANN org the ability to accommodate a rapidly changing marketplace. The Working Group notes that consensus policy must not be the subject of individual Registry Agreement</p>

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	negotiations.
Topic 36: Base Registry Agreement	<u>Recommendation 36.4</u> : ICANN must add a contractual provision stating that the registry operator will not engage in fraudulent or deceptive practices. In the event that ICANN receives an order from a court that a registry has engaged in fraudulent or deceptive practices, ICANN may issue a notice of breach for such practices and allow the registry to cure such breach in accordance with the Registry Agreement. Further, in the event that there is a credible allegation by any third party of fraudulent or deceptive practices, other than as set forth in above, ICANN may, at its discretion, either commence dispute resolution actions under the Registry Agreement (Currently Article 5 of the Registry Agreement), or appoint a panel under the PICDRP. For the purposes of a credible claim of fraudulent or deceptive practices the reporter (as defined by the PICDRP) must only specifically state the grounds of the alleged non-compliance, but not that it personally has been harmed as a result of the registry operator’s act or omission.
Topic 37: Registrar Non-Discrimination / Registry/Registrar Standardization	<u>Recommendation 37.1</u> : Recommendation 19 in the 2007 policy states: “Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.” The Working Group recommends updating Recommendation 19 to state: “Registries must use only ICANN accredited registrars in registering domain names, and may not discriminate among such accredited registrars <i>unless an exemption to the Registry Code of Conduct is granted as stated therein,¹¹¹ provided, however, that no such exemptions shall be granted without public comment.</i> ”
Topic 38: Registrar Support for New gTLDs	<u>Affirmation 38.1</u> : The Working Group affirms existing practice that it is up to a registrar to determine which gTLDs it carries.

¹¹¹ See Specification 9 - Registry Operator Code of Conduct for additional information about Code of Conduct exemptions: <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html#specification9>

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Topic 39: Registry System Testing	<u>Recommendation 39.1</u> : ICANN must develop a set of Registry System tests ¹¹² designed to demonstrate the technical capabilities of the registry operator.
Topic 39: Registry System Testing	<u>Implementation Guidance 39.2</u> : ICANN should include operational tests to assess readiness for Domain Name System Security Extensions (DNSSEC) contingencies (key roll-over, zone re-signing).
Topic 39: Registry System Testing	<u>Implementation Guidance 39.3</u> : ICANN should only rely on self-certifications in cases where such testing could be detrimental or disruptive to test operationally (e.g., load testing). This guidance is consistent with recommendation 5.2.b from ICANN org’s Program Implementation Review Report. ¹¹³
Topic 39: Registry System Testing	<u>Recommendation 39.4</u> : Registry System Testing (RST) must be efficient.
Topic 39: Registry System Testing	<u>Implementation Guidance 39.5</u> : The testing of Internationalized Domain Name (IDN) tables should be removed if the applicant is using reference Label Generation Rules published by ICANN. To the extent an applicant is proposing tables that are reference Label Generation Rules, the tables should be reviewed during the evaluation process and the evaluator should utilize IDN tools available at the time of review.
Topic 39: Registry System Testing	<u>Implementation Guidance 39.6</u> : To the extent practical, RST should not repeat testing that has already taken place during the testing of the RSP (including during <i>RSP pre-evaluation</i>) and should instead emphasize testing of elements that are specific to the application and/or applied-for TLD. This guidance is consistent with recommendation 5.2.a and 5.2.c from ICANN org’s Program Implementation Review Report. ¹¹⁴

¹¹² Note that there is an important distinction between “evaluation” and “testing.” Evaluation includes review of an applicant’s responses to written questions regarding capabilities that cannot be demonstrated until the registry is operational. Testing refers to ICANN org’s assessment of a registry’s capabilities through the tests it conducts.

¹¹³ Recommendation 5.2.b states: “Consider which, if any, tests can be converted from self-certifying tests to operational tests.”

¹¹⁴ Recommendation 5.2.a states: “Consider which tests should be performed once per technical infrastructure implementation and which should be performed for each TLD.” Recommendation 5.2.c states: “In considering an alternate approach to the Technical and Operational Capability evaluation, if an RSP accreditation program is considered, explore how Pre-Delegation Testing would be impacted.”

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Topic 40: TLD Rollout	<u>Affirmation 40.1</u> : The Working Group affirms Implementation Guideline I from 2007, which states: “An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.”
Topic 40: TLD Rollout	<u>Affirmation 40.2</u> : The Working Group supports maintaining the timeframes set forth in the 2012 Applicant Guidebook and base Registry Agreement; namely (i) that successful applicants continue to have nine (9) months following the date of being notified that it successfully completed the evaluation process to enter into a Registry Agreement, and (ii) that registry operators must complete all testing procedures for delegation of the TLD into the root zone within twelve (12) months of the Effective Date of the Registry Agreement. In addition, extensions to those time frames should continue to be available according to the same terms and conditions as they were allowed during the 2012 round.
Topic 41: Contractual Compliance	<u>Affirmation 41.1</u> : The Working Group affirms Recommendation 17 from the 2007 policy, which states: “A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.”
Topic 41: Contractual Compliance	<u>Recommendation 41.2</u> : ICANN’s Contractual Compliance Department should publish more detailed data on the activities of the department and the nature of the complaints handled; provided however, that ICANN should not publish specific information about any compliance action against a registry operator unless the alleged violation amounts to a clear breach of contract. To date, ICANN compliance provides summary statistics on the number of cases opened, generalized type of case, and whether and how long it takes to close. More information must be published on: (a) the context of the compliance action and whether it was closed due to action taken by the registry operator, or whether it was closed due to a finding that the registry operator was never out of compliance, and (b) standards and/or thresholds ICANN applies in assessing, and accepting each complaint for further action.