1.2 Deliberations and Recommendations: Overarching issues.
CW comments 16/04/2018

A few points regarding this draft (35pp.):

 It is not clear at which stage of the process, someone (who?) decided that these were the overarching issues. Also, it should clarified whether references to 'existing policy' refers to the 2007 reports or to the 2012 AGB. It would be preferable if the WG/WTs could cease reference to the 2007 reports. Very few participants today, with the exeaption of a few GNSO members at the time, can really appreciate what that policy was, more than ten years ago.

1.2.2   Predictability: At present the discussion focusses almost entirely on predictability from the perspective of eventual applicants, whereas predictability is equally important from the perspective of the ultimate final users or third parties and that would be impacted by new TLDs.

The reader gathers that the demand for predictability arises from the (external) changes that were made to the policies post 2007 and post AGB. Whence the demand for a predictable process to address such changes as and when they arise in ethe future.

However, one could equally well argue that those problem arose from a lack of multi-stakeholder consultation during the previous policy development processes. For instance the requirement for (enforceable) Public Interest Commitments (PICs) – or their equivalent - was manifestly inevitable and desirable, long before the matter reached the application stages.

1.2.2.2 Clarity of Application Process: There is an underlying assumption in this part of the draft that all applications would be subject to the same guidelines and evaluation processes irrespective of the nature of the proposed TLD. That is very unlikely to be the case because different categories of applications will manifest quite different characteristics. This is elaborated later in the draft (p.26)[1] . Thus the statement to the effect that "Normally no subsequent additional selection criteria should be used …" (p.3) is only credible if (a) there has been much more thorough prior consultation with all stakeholders and (b) there are distinct selection criteria for identified categories of applications.

Arguably, many of the problems with the previous 'round' arose from the attempt to fit too many different categories of applications into one standardized policy and process. We should learn from that experience and not try to do it again.

We encounter the analogous issue with the concepts of "criteria fully available to the applicants prior to the initiation of the process." and the "pre-defined roadmap". (p.12). That is all very well and very desirable provided that the necessary degree of differentiation has been achieved. To date there is little indication of that.

For other aspects of the application process, such as multiple applications and Registry Service Providers see below under Competition. For application prioritization, see below under multiple rounds and 'batches'.

1.2.3   Application Submission Periods.   For the credibility and acceptability of another new TLD programme, in the global context, it is absolutely essential that the vast imbalances of the previous round be recognised and corrected. This is the principal over-arching issue that is not recognised - indeed hardly mentioned – in the current draft. For instance, there is but one reference

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1.   Provisional page numbers in this note refer to the un-numbered pages of an A4 printout. There are are no page or paragraph numbers in the draft itself.

to IDN and the reference to Applicant support and Community applications are referred to 'outreach' to ALAC and the GAC suggesting that At Large and GAC have not effectively participated to date. (p.11). It is time GNSO took applicant support on-board on its own behalf.

The principal constraint on managing the evaluation of new TLD applications is the capacity of the ICANN.org Staff. Questions about ICANN's "scale" (p.13) and hints about "ICANN subcontract[ing]…tasks:" (p.6) amount to wishful thinking in the current budgetary context. No. We need a positive statement from ICANN staff about how many applications per month and per topic they will be able to process.

The next 'rounds' should be focussed in phases over time, and designed to address specified priorities. Their scale at any point in time should be related to the evaluation capacity of the ICANN staff and related (independent) community support. From this point of view, the characterization on page 26 is a useful start, but incomplete and lacking prioritization. For instance, there is no mention of IDN TLDs, and we already know that Geographical Indications will have to become a specific category, not unlike Brands.

Thus, most of the discussion (pp. 17-20) could conveniently be dropped from the draft, since none of those 'Models' are likely to be sustained.

Competition policy aspects:　　　The authors of the draft seem to be unaware that whilst they seem to believe that the 2012 round contributed to competition, most of the – limited – data that is referred to rather indicates an increase in concentration.

Thus we have three companies who applied for more than 100 new TLDs! Furthermore one of them is a Registrar, presumably taking advantage of the flawed concept of vertical integration in the 2012 round.
The next round should ensure (a) that diverse entities had access to the application process and (b) that new applicants have the option of engaging an RSP that is independent of pre-existing Registries or Registrars. From this point of view, the WT should have considered a cap on new applications from individual entities. That would be a particularly sensitive issue in the case of geographical names.

There would also be great merit in having an independent market for so called 'Registry back-end' services, also known as Registry Service Providers (RSP). But we learn from the draft that "The top five RSPs accounted for over 70% of the 2012 new gTLD applications." We are not told who they were. Some of the RSPs are also historical Registries or Registrars. It is difficult to conceive of a competitive DNS market unless there is at least a clear structural separation between the RSP activities and the Registry and Registrar activities within the same entity.

Finally, it is rather odd that the WT determined that accreditation of RSPs was not required, whereas- to the best of my knowledge – ICANN does accredit escrow service providers, albeit they are a rather less critical function than the RSP.

New bodies and entities required to implement the proposals

Predictability: Standard Implementation Review Team
　　　　　Consensus Policy Implementation Framework (CPIF)
　　　　　Implementation Review Team (IRT) for Subsequent Procedures

The draft refers to the "_Duty_ of the ICANN organisation… to follow recommendations of the Standing IRT" (p. 11). This is potentially problematic: The ICANN staff are accountable to the

CEO and Board. The Board is responsible for the public interest, including taking account of GAC advice.

In what sense has the ICANN Board a "duty" to respect the IRT?
Also, in the light of the complexities of the proposed IRT (page 10), who is responsible for its creation, with what budgetary resources or authority?

What is not in the draft report?

The draft refers on more than one occasion to the fact that "… the WG has not agreed upon a set of arguments …" (p.2), or " …it has not yet reached any conclusions on specific success metrics." (p.3).
It is not clear whether these are the result of disagreements within the WT or a decision that they were not necessary - ?
Furthermore, regarding establishing additional categories beyond the ones coming from the 2012 round, we have "It is time consuming to develop policy using an approach with many categories"[2] (p. 25).

This reverts to the discussion above about categories of TLDs and the merits of dealing with applications in batches scheduled according to priority and distinct categories. Even within the context of the existing draft we have 14 categories which may be needed (p. 26), most of which would in any event require distinct evaluation criteria. [3]

Multiple rounds and 'batches'

In my view, The evaluation and implementation of new TLDs will become quite specific to the objectives and policies of each application. The time for 'vanilla' generic applications is probably past. In any event, the hundreds of generic applications in 2012, many of which – I understand - are still not operational, suggests that even more Generic gTLDs are hardly a global priority for the next rounds.

This is tacitly accepted by the draft's recognition of thirteen or more categories of TLDs in addition to the standard open registries – 2012 category. (p.26)

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Apart from the technical and security related considerations, which should be maintained as a common trunk to all TLDs, most of the other evaluation criteria will differ among categories. It is quite possible to prepare these criteria, and it is regrettable that a start has not yet been made.

CW 16/04/2018

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2.   Which inspired my (contested!) comment that the WT had been rather lazy.
3.   Even so, this list does not include any IDN categories, nor the Geographical Indications.