**PACKAGE 1**

## 2.4.1 Applicant Guidebook

**a. Recommendations and/or implementation guidelines**

Affirmation xx:The Working Group affirms that an Applicant Guidebook should be utilized for future new gTLD procedures 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.

Affirmation xx with modification: With the substitution included in italicized text, the Working Group affirms Implementation Guideline E: “The *commencement of the* application submission period will be at least four (4) months after the issue of the *Applicant Guidebook* 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.”

Recommendation xx: 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 subsequent procedures.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.

Recommendation xx: The English version of the Applicant Guidebook must be issued at least four (4) months prior to the commencement of the applicant submission period.

Recommendation xx: 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.

Implementation Guidance xx: All translations of the final Applicant Guidebook (as referenced in Affirmation xx above) should be available at or as close as practicable in time to the point at which the English version is published.

Implementation Guidance xx: 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.[[1]](#footnote-1)

Implementation Guidance xx: 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.

Implementation Guidance xx: 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.

Implementation Guidance xx: In addition to the base Registry Agreement and the Applicant Terms and Conditions, any other Agreements or Terms of Use associated with systems access (including those required to be “clicked-through”)should be referenced in the Applicant Guidebook and published at the same time as the final Applicant Guidebook. See also Implementation Guidance xx in Section xx Systems.

Recommendation xx: Application fees for each application must be published in that rounds’ Applicant Guidebook.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

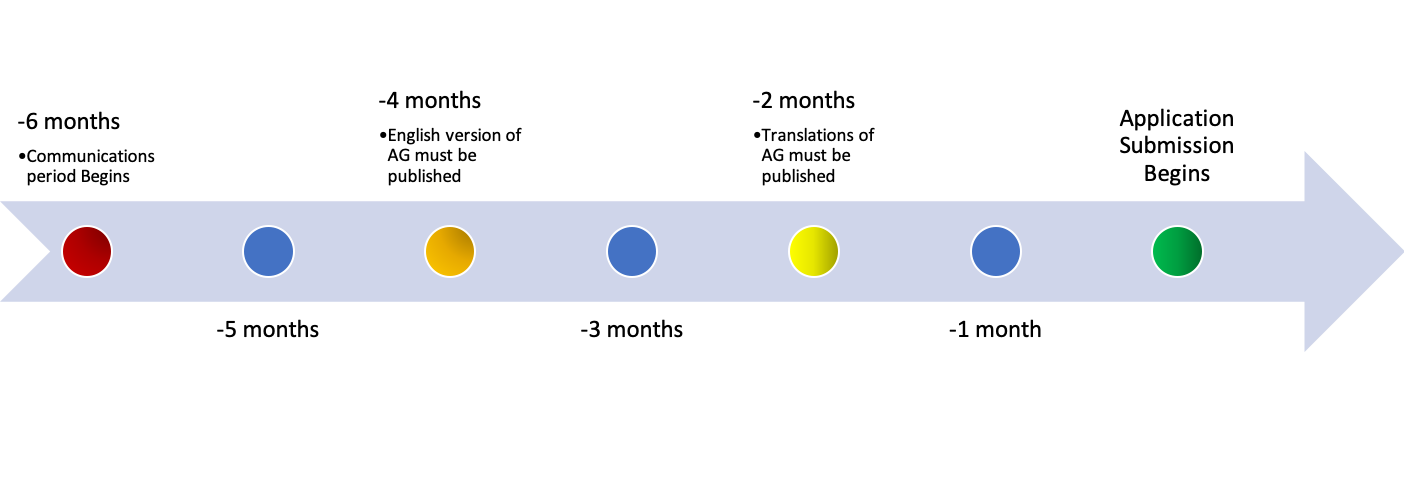
The Working Group generally agreed that an AGB of some form should continue to be utilized in future waves of applications. The Working Group recommendations and Implementation Guidance therefore focus on ways to improve the AGB to better serve key programmatic goals. The Working Group considered the importance of ensuring that the New gTLD Program is widely accessible and easy to understand for a broad, global audience. Noting that the AGB is the central resource for applicants to find information and instructions regarding the application process, the Working Group developed recommendations and implementation guidance that support usability, clarity, and practicality of the AGB for its primary audience.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable**

In reviewing public comments on the Initial Report, the Working Group found that respondents were largely supportive of the preliminary recommendations included in this Section. Therefore, additional discussions on this topic focused on ensuring that recommendations are as clear and concise as possible to support effective interpretation and implementation by ICANN org. In particular, the Working Group discussed and agreed that greater specificity should be provided with respect to any Implementation Guidance related to Agreements/Terms of Use for applicants. Revised Implementation Guidance has been clarified in this regard.

**d. Dependencies/relationships with other areas of this report or external efforts**

* Agreements or Terms of Use associated with systems access should be referenced in the Applicant Guidebook (see also section xx Systems).



2.4.2 Communications

**a. Recommendations and/or implementation guidelines**

Affirmation xx: The Working Group affirms Implementation Guideline C and Implementation Guideline M from the 2007 Final Report:

* Implementation Guideline C: “ICANN will provide frequent communications with applicants and the public including comment forums which will be used to inform evaluation panels.”[[2]](#footnote-2)
* 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 no longer requires all participants in the conversation to be able to read and write English.”

Recommendation xx: The Working Group believes that an effective communications strategy and plan is needed to support the goals of the program. 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.

Implementation Guidance xx: 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:

* Outreach related to Applicant Support
* Establishing and allowing interested parties to engage in the RSP pre-evaluation process

Implementation Guidance xx: Consistent with the recommendations in section xx 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.

Implementation Guidance xx: For **broad outreach**, the Working Group believes that consistent with recommendation 8.4.b[[3]](#footnote-3) 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.

Implementation Guidance xx: 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.a[[4]](#footnote-4) 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:

* 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.

Implementation Guidance xx: 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.[[5]](#footnote-5) 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.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

The Working Group was in wide agreement that the New gTLD Program’s communications plan should serve the goals of raising awareness about the New gTLD Program to as many potential applicants as possible around the world and making sure that potential applicants know about the program in time to apply. To serve this objective, the Working Group determined that the focus should be on **timeliness, broad outreach, and accessibility**. As a result, the Working Group focused on specific suggestions that would further those high-level goals. Public comment received was largely supportive of the Working Group’s preliminary outcomes and accordingly, they have been carried forth as Implementation Guidance in this report.

The Working Group also recognizes that during the 2012 round, ICANN org was reluctant to provide real time support due to its equal access obligations and not wanting to appear to be giving some applicants information that was not necessarily provided to other applicants. The Working Group notes that although this is a legitimate concern, there should be ways to provide real-time support in a manner which does not run afoul of those equal access obligations.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable**

Public comments received suggested that while there may be goals specific to the communications plan, the communications plan itself should be designed to help achieve the goals for the New gTLD Program. The Working Group felt this was a helpful distinction and accordingly, integrated this element into the recommendation above.

**d. Dependencies/relationships with other areas of this report or external efforts**

* The communications plan should be consistent with the overall goals of the program (e.g., metrics established in section xx Continuing Subsequent Procedures), as well as goals specific to certain elements (e.g., the success factors in xx Applicant Support, work necessary in relation to setting up the RSP pre-evaluation process described in section xx RSP Pre-Evaluation).
* The structure of application windows (see section xx Applications Assessed in Rounds) and length of the application submission period (see section xx) may impact the length of time needed to perform outreach.
* Implementation Guidance regarding customer support also applies to customer support related to the use of applicant-facing systems, which are further discussed in section xx Systems.
* The impact of comments made on applications collected through the comment forums referred to in Implementation Guideline C is addressed separately (see xx Role of Application Comment).

2.4.3 Systems

**a. Recommendations and/or implementation guidelines**

Affirmation xx: The WG 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.”

Recommendation xx: The design, development, and deployment of applicant-facing systems should prioritize **security, stability, usability,** **and a positive user experience** following industry best practices.

Implementation Guidance xx: 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.[[6]](#footnote-6)

Implementation Guidance xx: 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.[[7]](#footnote-7) 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.

Implementation Guidance xx: 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 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.”

Implementation Guidance xx: In support of improved **usability**, the Working Group suggests thatspecific 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.

Implementation Guidance xx: 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:

* 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 to the following questions in the 2012 Applicant Guidebook: 16,[[8]](#footnote-8) 18(a),[[9]](#footnote-9) 18(b),[[10]](#footnote-10) 19,[[11]](#footnote-11) 20,[[12]](#footnote-12) 21,[[13]](#footnote-13) 22,[[14]](#footnote-14) and 23[[15]](#footnote-15) (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).
* 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.

Recommendation xx: The principles of **predictability and transparency** should be observed in the deployment and operation of applicant-facing systems.

Implementation Guidance xx: 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 AGB.[[16]](#footnote-16) See also Implementation Guidance xx in Section xx Applicant Guidebook.

Implementation Guidance xx: 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 Section xx Predictability should be followed.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

The Working Group believes that applicant-facing systems should facilitate the application process in an effective manner consistent with industry best practices. Recommendations and Implementation Guidance aimed at improving usability and user experience seek to minimize unnecessary logistical barriers to completing the application process. The Working Group further emphasizes security and stability to ensure that trust with potential applicants is maintained and users have a high-level of confidence that data is being handled safely and appropriately. In developing recommendations regarding security and stability, the Working Group carefully reviewed and considered security incidents related to systems in the 2012 round that are detailed in the Program Implementation Review Report. Recommendations and Implementation Guidance regarding predictability and transparency reflect broader goals for the New gTLD Program that are discussed throughout this Report.

The Working Group understands that some of the system enhancements included in the Implementation Guidance for this section would result in added complexity, cost, and time to implement systems. The Working Group recognizes that ICANN org will need to balance different priorities in the implementation of applicant-facing systems and consider this guidance in the broader context of different objectives and constraints. Nonetheless, the Working Group sees value in detailing specific changes that it believes would improve the applicant experience and make systems easier to use.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

In preliminary recommendations, the Working Group considered providing guidance on disclosure requirements regarding data breaches in applicant-facing systems. In its public comment on the Initial Report, ICANN org clarified that the Cybersecurity Transparency Guidelines and Coordinated Vulnerability Disclosure Reporting at ICANN[[17]](#footnote-17) governs how ICANN org discloses major security vulnerabilities and resulting incidents that cause significant risk to the security of ICANN’s systems, or to the rights and interests of data subjects, or otherwise require disclosure under applicable legal requirements. Given that these guidelines cover the data breach scenarios discussed in the Working Group, the Working Group emphasizes the importance of timely disclosure of data breaches to potentially affected parties but does not feel that any additional specific guidance is needed at this time.

In reviewing public comments, the Working Group reviewed the preliminary recommendation to allow applicants to reproduce, or “auto-fill”, responses from one application into another application. Concerns were raised by some Working Group members that each application should be unique, so that the community can effectively review and comment on pending applications. From this perspective, by enabling auto-fill, systems would undermine the distinct and individualized nature of applications. Auto-fill would also incentivize and make it easier for applicants not to provide clear, distinctive and individualized responses for each gTLD. Others disagreed with those concerns noting that Applicants will still manually copy and paste the information without the auto-fill capabilities and therefore we would not be making applications more distinct, but rather just making it more difficult for applicants to complete their applications. In addition, they challenged whether having unique applications is a goal of the program. As a compromise, the Working Group nevertheless agreed that auto-fill could be allowed in a limited number of fields without jeopardizing the unique nature of applications.

**d. Dependencies/relationships with other areas of this report or external efforts**

* **Any changes to applicant facing systems once they are in use should follow processes described in section xx Predictability.**
* Implementation Guidance regarding customer support in section xx Communications also applies to customer support related to the use of applicant-facing systems.
* Agreements or Terms of Use associated with systems access should be referenced in the Applicant Guidebook, which is discussed in section xx Applicant Guidebook.

2.5.1 Application Fees & 2.5.2 Variable Fees

**a. Recommendations and/or implementation guidelines**

Affirmation xx (rationale 1)**:** Subject to Implementation Guidance xx 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.

Implementation Guidance xx (rationale 1): 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.

Affirmation xx with modification (rationale 2): With the addition of the italicized text, the Working Group affirms Implementation Guideline B: “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 *that qualify for applicant support*.” 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.

Affirmation xx with modification (rationale 3)**:** 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.” This affirmation is modified by the below Implementation Guidance.

Implementation Guidance xx (rationale 3): For the next application round and each subsequent round, an assessment should 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.

Implementation Guidance xx (rationale 3): The development of the Application Fee should be fully transparent with all cost assumptions explained and documented.

Recommendation xx (rationale 4): 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.

Implementation Guidance xx (rationale 4): 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. The disbursement mechanism must be communicated before applicants submit applications and fees to ICANN.

Recommendation xx (rationale 4): 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.

Implementation Guidance xx (rationale 4): 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.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmation xx and Implementation Guidance xx (rationale 1):The Working Group considered different perspectives on whether a single base fee should apply to all applications (with the exception of successful applications for Applicant Support), or whether different fees may be appropriate for certain application types or applicants, for example IDNs, applications for IDN strings in multiple scripts, .brands, all community applications, only community applications with non-profit intentions, or in the case of applicants who apply for multiple strings.

In addition to considering proposals from Working Group members and input received through public comment, the Working Group reviewed GAC Advice in the Nairobi Communiqué (2010) which stated the following with respect to fees in the 2012 round, “instead of the currently proposed single-fee requirement, a cost-based structure of fees appropriate to each category of TLD would a) prevent cross subsidisation and b) better reflect the project scale, logistical requirements and financial position of local community and developing country stakeholders who should not be disenfranchised from the new TLD round.”

With respect to this advice, the Working Group noted that the fee structure included a single base fee, but also included additional fees for certain circumstances where additional costs were incurred, therefore avoiding excessive cross-subsidization. At the same time, given the numerous factors that could apply to each application that could impact the cost of processing, the Working Group agreed that it is not possible to categorize applications in a way that would have a corresponding simple fee structure based on cost of processing. Further, the Working Group considered that the Applicant Support Program was established to assist applicants that might otherwise be excluded from the program due to the cost of the application fee. The Working Group has provided recommendations to enhance the Applicant Support Program so that it better serves this goal in subsequent procedures. Ultimately, the Working Group did not come to any agreement to recommend charging different fees for different types of applications and further, did not agree on a feasible path for implementing such an approach; as discussed during deliberations for TLD Types, the Working Group is cognizant of the unintentional impacts and potentially inappropriate incentives created by the establishment of different application tracks. Therefore, the Working Group recommends maintaining the single base fee charged in the 2012 application round.

The Working Group has provided Implementation Guidance on the Technical Evaluation Fee, taking into account that technical and operational evaluation for the core registry may occur as part of the Pre-Evaluation Process or as part of the application process.

Rationale for Affirmation xx-xx (rationale 2): The Working Group supports the overall approach to funding outlined prior to the 2012 application round, namely, that the New gTLD Program should be self sustaining without the need for funding from other sources and that the program should operate on a cost recovery basis with the goal of being revenue neutral. The Working Group believes that in developing a cost structure to determine application fees, the only historical costs that should be factored in are actual costs directly related to the implementation of the New gTLD Program.

Rationale for Implementation Guidance xx (rationale 3): The Working Group believes that it is appropriate to establish an application fee floor, or minimum application fee that would apply regardless of projected program costs that would need to be recovered through application fees collected. The purpose of an application fee floor is to deter speculation and potential warehousing of TLDs, as well as mitigate against the use of TLDs for abusive or malicious purposes. The Working Group’s support for a fee floor is also based on the recognition that the operation of a domain name registry is akin to the operation of a critical part of the Internet infrastructure.

The Working Group envisions the fee floor concept to be implemented as follows. ICANN org conducts an analysis to determine an appropriate fee floor, X, based on the principles described above. ICANN org also conducts an analysis prior to each application round to calculate an appropriate application fee based on the principle of cost recovery, Y. If Y is higher than X, ICANN uses fee Y, the fee based on the cost recovery calculation. If Y falls below X, the fee floor applies. As an example, and purely as an example, a fee floor (X) of $150,000 will be used to illustrate the concept. If the fee floor (X) is $150,000 and the fee based on cost recovery (Y) is estimated at $200,000, the fee based on cost recovery applies ($200,000). Alternately, if the fee based on cost recovery (Y) is estimated at $100,000, the fee floor applies ($150,000).

The Working Group emphasizes that ICANN should be fully transparent about how the application fee has been developed, explaining and documenting all cost assumptions.

Rationale for Recommendation xx-xx and Implementation Guidance xx-xx (rationale 4): The Working Group agreed that while cost recovery is the objective of budget planning for the New gTLD Program, it can be difficult to project costs precisely due to numerous variables that are hard to predict, especially the number of applications that will be received in a given application window. Therefore the Working Group agreed that it is important for ICANN to have a clear plan to address any budget surpluses or shortfalls that might take place. The Working Group agreed that in principle, as the fee is set to fund Program costs, any fee charged that is in excess of what is needed should be returned, at least in part, to applicants. Further, if the use of an application fee floor (see explanation above) results in additional surplus, the Working Group emphasizes that these funds must be placed in a segregated fund that is only used for the benefit of the New gTLD Program. In this regard, the Working Group agreed that just as the New gTLD Program must not use funds from other sources, fees collected through the New gTLD Program should not be used to fund other programs or initiatives. The Working Group lists appropriate uses of excess fees collected that benefit the New gTLD Program. Finally, the Working Group agreed that it is important for ICANN to have a contingency fund to support the program if fees are insufficient to support program activities in the short term. The Working Group notes that the fund could later be replenished through additional application fees collected in subsequent rounds.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group considered ICANN org’s request for guidance onwhat the fee floor amount should be, or criteria by which it is established, as well as any thoughts on ongoing reviews of that fee floor amount. While the Working Group did not come to an agreement on a specific amount or set of criteria, it noted that some of the public comments received on the Initial Report suggested further study in the implementation phase of what level of fee floor would effectively deter the behaviors that a fee floor seeks to prevent.

**d. Dependencies/relationships with other areas of this report or external efforts**

* **This section addresses the technical evaluation fee, including that associated with the RSP Pre-Evaluation Program. The RSP Pre-Evaluation Program is further discussed in section xx.**
* **This section mentions fee reduction associated with the Applicant Support Program. The Applicant Support Program is further discussed in section xx.**
* **Recommendation xx states that 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, including elements such as Applicant Support (see section xx) and a global communication and awareness campaign about the introduction and availability of new gTLDs (see also section xx Communications).**
* **Program elements discussed throughout this report will impact the cost of operating the New gTLD Program and therefore the calculations associated with the cost recovery model.**

2.5.3 Application Submission Period

**a. Recommendations and/or implementation guidelines**

Recommendation xx: 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 fixed period of 13 weeks and should not begin or end on a weekend.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

The Working Group believes that the application period should be long enough to provide a fair opportunity for all prospective applicants to submit an application, including newcomers to the program, those submitting community-based applications, and those applying for Applicant Support. The Working Group further notes that there is a link between the effectiveness of outreach and communications efforts prior to the application window and requirements for the length of the window itself. Namely, if ICANN’s communications and outreach efforts are effective prior to the point at which the window opens, prospective applicants will be prepared to apply and will therefore need less time to actually submit the application. Similarly, if processes and systems are predictable and accessible and customer support is readily available, less time may be required to apply. The Working Group anticipates that its recommendations regarding Predictability, Systems, Communications, and Applicant Support will assist in improving the applicant experience, but notes that further consideration of these program elements may need to be given before the length of the application submission period is finalized in the implementation phase.

In the 2012 round, there was a three (3) month application submission period specified in the Applicant Guidebook, meaning a three month window between the time that TLD applicants were able to enter the application system to the end of the time period in which applications would be accepted. While members of the Working Group had different opinions on the exact period of time that the window should be open, the Working Group ultimately agreed to recommend an application submission period of 13 weeks in order to be fair to all prospective applicants and to ensure predictability. The Working Group specified the length of the application submission period in weeks rather than months, because months vary in length, although 13 weeks is roughly equivalent to 3 months or 90 days.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

None.

**d. Dependencies/relationships with other areas of this report or external efforts**

* **The length of the application submission period is closely related to the broader issue of how application windows are structured, a topic that is discussed in section xx Applications Assessed in Rounds.**
* **In implementation, a number of program elements will need to be considered in tandem to ensure that there is sufficient time and appropriate resources available for prospective applicants to learn about the New gTLD Program, prepare, and then apply. Therefore, the application submission period should be considered in conjunction with topics such as** Communications (section xx), Systems (section xx), Applicant Support (section xx), and Applicant Guidebook (section xx).

2.5.5 Terms and Conditions

**a. Recommendations and/or implementation guidelines**

Recommendation xx (rationale 1): 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.

Implementation Guidance xx (rationale 1): 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 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.

Recommendation xx (rationale 2): 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 in Section xx 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.

Recommendation xx (rationale 3): 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.[[18]](#footnote-18)

Implementation Guidance xx (rationale 3): 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.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

The Working Group reviewed the Terms and Conditions from the 2012 round with a view towards ensuring that the Terms and Conditions provide for fairness to applicants, and also provide transparency and accountability in program processes and decisions.

Rationale for Recommendation xx and Implementation Guidance xx (rationale 1): The Working Group agreed that it must be clear to the applicant why an application was rejected and that any rejection must be justified under provisions of the Applicant Guidebook unless required by specific laws, ICANN Board members’ fiduciary duties, or the ICANN Bylaws. The purpose of this recommendation is to guard against arbitrary rejection of an application and ensure that there is transparency when rejections occur. To protect the privacy of applicants, the Working Group believes that ICANN should not publish the detailed reason for rejecting an application if that reason is based on confidential information submitted by the applicant.

Rationale for Recommendation xx (rationale 2): Working Group members expressed different views about whether the covenant not to sue ICANN was appropriate and necessary in subsequent procedures, and therefore did not make a recommendation about whether the covenant should be retained. Working Group members agreed that if the covenant remains in place, it is important for applicants and other parties to have appropriate channels to address concerns that ICANN (or its designees/contractors) acted inconsistently (or failed to act consistently) with the Applicant Guidebook through a limited appeals mechanism, as recommended in Section xx.

Rationale for Recommendation xx and Implementation Guidelines xx-xx (rationale 3): In connection with recommendations under Section xx Predictability, the Working Group agreed that there should be a clear and consistent framework for handling changes in the New gTLD Program, including changes to the Applicant Guidebook. The Working Group recommends that an applicant must be eligible for 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. The Working Group expects that the Implementation Review Team will conduct further work regarding the details of this refund. The Working Group also provided Implementation Guidance regarding recourse for cases where an applicant applies for a string and that application is later disqualified because of risk of Name Collision.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

None.

**d. Dependencies/relationships with other areas of this report or external efforts**

* This section recommends that the Terms of Use must only contain a covenant not to sue if a challenge/appeal mechanism is established. Recommendations regarding the establishment of a challenge/appeal mechanism are included in section xx.
* This section recommends refunds in cases where changes to the program or Applicant Guidebook have a material impact on applicants. See section xx Predictability for further discussion of measures to support predictability when such changes are needed.
* This section provides implementation guidance regarding refunds in the case of applications not approved because of Name Collision risk. Further discussion of name collisions and the work of the Name Collision Analysis Project is included in section xx.

**PACKAGE 2**

## 2.10.2 Registrar Non-Discrimination / Registry/Registrar Standardization

**a. Recommendations and/or implementation guidelines**

Recommendation xx: 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 *unless an exemption to the Registry Code of Conduct is granted as stated therein,[[19]](#footnote-19) provided, however, that no such exemptions shall be granted without public comment.”*

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

The Working Group’s recommendation to update Recommendation 19 resolves the current inconsistency between existing policy from 2007 and current practice in the New gTLD Program. Namely, restrictions against registry and registrar cross-ownership from the 2000 and 2005 New gTLD rounds were removed after the 2007 policy was approved.[[20]](#footnote-20) In place of these restrictions, ICANN included Specification 9 in the base Registry Agreement. Specification 9 contained a Registry Code of Conduct, which required registries to utilize accredited registrars and to maintain separate books and records with respect to cross-owned organizations. Certain exemptions to the Code of Conduct were subsequently approved by the ICANN Board of Directors, particularly with Brand TLD registries (in Specification 13) as well as with respect to entities that restricted their TLDs to only themselves and/or their affiliates and trademark licensees. The updated policy language acknowledges these exemptions.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group spent considerable time discussing whether registry operators that wanted to be registrars could complete the registrar accreditation process at the same time as during registry operator contracting and whether all of the provisions could be included in one overall agreement. This would especially apply in cases where a registry operator was given an exemption from the Code of Conduct. Although an exemption to the Code of Conduct means you can use a limited number of registrars, you still may only use “ICANN-accredited registrars.” This means that if such an entity wanted to be its own registrar, it would have to still go through the lengthy ICANN accreditation process to become a registrar. The group discussed ways in which this could be combined with the Registry Agreement. Though the group believes this issue may be explored in the future, it is not making a recommendation on this area at this time.

**d. Dependencies/relationships with other areas of this report or external efforts**

* Consideration of options to support registries that have difficulty attracting ICANN accredited registrars is included in section xx Registrar Support for New gTLDs.

2.5 Registrar Support for New gTLDs

**a. Recommendations and/or implementation guidelines**

Recommendation 19 from the 2007 policy is relevant to this topic. See section 2.10.2 Registrar Non-Discrimination / Registry/Registrar Standardization for recommendation to update language of Recommendation 19.

Affirmation xx: The Working Group affirms existing practice that it is up to a registrar to determine which gTLDs it carries.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

The Working Group considered Public Comments received on a series of proposals to assist TLD registries that have difficulty attracting ICANN accredited registrars, including small, specialized gTLDs and those attempting to implement innovative new business models. In reviewing Public Comments, the Working Group noted that there continues to be no strong agreement that this is an issue that should be addressed by ICANN or through policy. Public comments were equally divided on whether the proposals included in the Initial Report should be pursued. Therefore, no recommendations are included on this topic.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group considered whether it would be beneficial and appropriate for ICANN to warn applicants in the New gTLD Program that delegating a gTLD does not guarantee registrations, and that registries will need to build a sales channel if their business model relies on sales. Some support was expressed for this proposal, but the Working Group did not reach agreement that this should be included in the recommendations.

**d. Dependencies/relationships with other areas of this report or external efforts**

* **Under the topic Registrar Non-Discrimination / Registry/Registrar Standardization (section xx), the Working Group considered whether registry operators that wanted to be registrars could complete the registrar accreditation process at the same time as during registry operator contracting and whether all of the provisions could be included in one overall agreement. No recommendation was made in this regard.**

2.11.1 Registry System Testing

**a. Recommendations and/or implementation guidelines**

The following recommendation from the 2007 policy remains applicable to this subject:

* Recommendation 8: “Applicants must be able to demonstrate their financial and organisational operational capability.”

Affirmation with modification (rationale 1): The Working Group affirms Recommendation 7 from 2007, with the modification in italicized text: “Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out *either by submitting their plan for evaluation at the time of application or agreeing to use a previously evaluated Registry Service Provider through the RSP Pre-Evaluation program.[[21]](#footnote-21)*

Recommendation xx (rationale 2): ICANN must develop a set of Registry System tests[[22]](#footnote-22) designed to demonstrate the technical capabilities of the Registry Operator.

Implementation Guidance xx (rationale 2): ICANN should include operational tests to assess readiness for Domain Name System Security Extensions (DNSSEC) contingencies (key roll-over, zone re-signing).

Implementation Guidance xx (rationale 2): 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.[[23]](#footnote-23)

Recommendation xx (rationale 3): Registry System Testing (RST) must be efficient.

Implementation Guidance xx (rationale 3): The testing of Internationalized Domain Name (IDN) tables should be removed if the applicant is using tables that are pre-vetted by the community. To the extent an applicant is proposing tables that are not pre-vetted by the community, the tables should be reviewed during the evaluation process and the evaluator should utilize IDN tools available at the time of review.

Implementation Guidance xx (rationale 3): To the extent practical, RST should not repeat testing that has already taken place during the testing of the RSP (including during *RSP pre-evaluation*) 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.[[24]](#footnote-24)

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmation with modification xx (rationale 1): The Working Group agreed that technical capability should be demonstrated at application time, as was done in the 2012 round. However, the Working Group felt a modification was needed to account for the recommendations related to the RSP Pre-Evaluation program, which would negate individual registry testing, other than elements that are specific to an application and/or TLD.

Rationale for Recommendation xx and Implementation Guidance xx-xx (rationale 2): The Working Group noted that despite registries and RSPs passing Pre-Delegation Testing (PDT), there are still breaches of Service Level Agreements. Thus, the Working Group believes that there are practical improvements that should be made to the operational readiness testing to better ensure the security and stability of the DNS. The Working Group agreed with input[[25]](#footnote-25) from ICANN org’s Global Domains Division that recommended that instead of relying on self-certifications, there needed to be a stronger emphasis on testing of operational tasks, many of which have been shown to be the source of issues flagged by ICANN org’s SLA Monitoring system. Testing the applicant/RSP’s ability to do certain key operational tasks (e.g., key rollover, resigning TLD zone) could improve the chances of success when operating TLDs in production.

Rationale for Recommendation xx and Implementation Guidance xx-xx (rationale 3): The Working Group noted that the testing procedure was highly redundant, which increased time and cost spent by ICANN, applicants, and RSPs. As a result, the Working Group identified several areas and also agreed with input from ICANN org on aspects that could warrant change to enhance efficiency. Firstly, the Working Group agreed with ICANN org that to improve efficiency and precision, the review process for IDN tables, to the extent it is needed, should leverage IDN tools available at the time. The Working Group agreed that the testing of IDN tables may not be necessary if the applicant has proposed using pre-vetted tables. The Working Group believed that the redundant nature of having every application complete RST was a key source for inefficiencies. The Working Group agreed that leveraging an RSP Pre-Evaluation program to test the technical infrastructure only once is helpful, but also agreed that testing components of an individual application is needed.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

None

**d. Dependencies/relationships with other areas of this report or external efforts**

* **Additional discussion and recommendations related to testing as part of the RSP Pre-Evaluation Program is included in section xx.**
* **Section xx Metrics & Monitoring includes recommendations in relation to Service Level Agreement (SLA) Monitoring and the publication of SLA Monitoring data.**
* **Recommendations regarding Applicant Reviews are included in section xx.**

2.12.1 TLD Rollout

**a. Recommendations and/or implementation guidelines**

Affirmation xx (rationale 1): 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.”

Affirmation xx (rationale 1): 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.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmations xx-xx (rationale 1): Although some members of the Working Group were in favor of trying to further define what it means to “use” a TLD, The Working Group ultimately affirms the existing definition for “use” of a gTLD (namely, delegation into the root and meeting all other contractual commitments with respect to required content). It believes that as was the case in the 2012 round, there should be a specified timeframe in which the gTLD should be used. Further the Working Group believes that the timeframes for gTLD rollout from the 2012 round continue to be appropriate in subsequent rounds. The Working Group acknowledges that the provision of extensions to applicants can result in programmatic delays and additional costs and that the lack of a time limit for launch of a gTLD also carries operational costs. The Working Group nonetheless believes that maintaining the existing rules strikes the right balance between establishing appropriate requirements while providing applicants with flexibility when extra time is needed to roll out a gTLD.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group discussed Public Comments providing different perspectives on whether any adjustments need to be made to the definition of “use” of a TLD and whether any additional measures are needed to prevent possible squatting and/or warehousing of TLDs, noting that the Working Group did not come to agreement on definitions for terms “squatting” and “warehousing.” The Working Group noted different points of view continue to be expressed on these topics. Some do not believe that the “squatting” or “warehousing” of TLDs is a documented problem that needs to be solved, and further believe measures to address these concerns should not be considered unless there is a clear definition of the associated terminology. From this perspective, existing requirements and definitions related to use are appropriate and sufficient. From another perspective, squatting and warehousing are significant concerns, and new definitions and requirements should be developed regarding how and when a TLD is used.

The Working Group considered a proposal put forward by a Working Group member that the new Registry Agreement should contain a clause that denies contract renewal if registries have not had a Sunrise registration phase. Specification 13 Brand Registries would be exempted from this clause. Those supporting the proposal expressed that a gTLD should operate for the benefit of the Internet community, drawing on the analogy of public land use. From this perspective, if a gTLD is not “used” for an extended period, it is effectively taken out of circulation, closing off a segment of the gTLD space that could be used by someone else. From this point of view, “unused” TLDs are contrary to the intent of the New gTLD Program and provisions of the Applicant Guidebook.

Those opposing the proposal reiterated that there is no agreement of an issue or problem to solve, and further expressed that Sunrise is not an appropriate proxy for “use.” From this perspective, the proposal forces all applicants and registry operators into the model of selling domain names to third parties, hampering innovation and new business models in the gTLD space. In this view, it can take time for businesses to find the right niche for their gTLD, and business plans can change over time. Setting an arbitrary deadline serves neither registries or the gTLD ecosystem. Some noted that delays, programmatic changes, and other circumstances during the course of the 2012 round impacted many registries’ plans to launch, citing in particular the impact on registries from the global south. While Working Group members expressed hope that there would be greater predictability in subsequent procedures, they noted the need for flexibility to support the ability of registries to navigate program requirements.

The Working Group did not come to an agreement on whether there is a problem to solve on this topic, and therefore did not put forward any new recommendations related to “use” of a TLD.

**d. Dependencies/relationships with other areas of this report or external efforts**

* Section xx Security and Stability addresses limits to the rate of delegation from a technical perspective.

2.12.3 Contractual Compliance

**a. Recommendations and/or implementation guidelines**

Affirmation xx: 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.”

Recommendation xx: 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 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.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

The Working Group supports existing policy Recommendation 17, noting that a clear compliance and sanctions process is important for ensuring that contracted parties meet their contractual obligations and face appropriate consequences when they fail to do so, including the potential for contract termination.

The Working Group believes that by providing additional data and corresponding insights based on that data about the activities of ICANN’s Contractual Compliance department and the nature of complaints handled, ICANN can better support the community in evaluating the functioning of the New gTLD Program and developing policy on this topic in the future.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group discussed Initial Report Public Comment responses that provided different perspectives on whether there is evidence of the following issues, as well as different perspectives on whether these topics should be addressed by the PDP:

* Arbitrary and abusive pricing for premium domains targeting trademarks[[26]](#footnote-26);
* Use of reserved names to circumvent Sunrise;
* Operating launch programs that differed materially from what was approved by ICANN.

The Working Group acknowledges concerns raised by some Working Group members but it did not come to agreement that recommendations should be put forward on these topics, and therefore none are included in this report.

**d. Dependencies/relationships with other areas of this report or external efforts**

* The Contractual Compliance function enforces provisions of the Registry Agreement. Recommendations and discussion regarding the Base Registry Agreement itself are included in section xx.

**PACKAGE 3**

## 2.2.1 Continuing Subsequent Procedures

**a. Recommendations and/or implementation guidelines**

Affirmation xx (see rationale 1): The Working Group recommends that the existing policy contained in the 2012 Applicant Guidebook[[27]](#footnote-27), that a “systematized manner of applying for gTLDs be developed in the long term,” be maintained.

Affirmation xx (see rationale 2): The Working Group affirms Principle A from the 2007 policy[[28]](#footnote-28) and recommends that the New gTLD Program must continue to be administered “in an ongoing, orderly, timely and predictable way.”

Affirmation xx (see rationale 3): The Working Group affirms that the primary purposes of new gTLDs are to foster diversity, encourage competition, and enhance the utility of the DNS*.*

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmation xx (rationale 1): The existing policy for New gTLDs states that there will be a “systemized manner of applying for gTLDs to be developed in the long term.” In affirming the continuation of this policy the Working Group applied the consistent approach outlined in Section xx [the introduction] of this report.

The Working Group took note of the Competition, Consumer Choice & Consumer Trust Review Team (CCT-RT) Final Report, which states that “on balance the expansion of the DNS marketplace has demonstrated increased competition and consumer choice.”[[29]](#footnote-29) While the Working Group recognizes that some parties believe the New gTLD market to already be saturated others have indicated that they are aware of interested potential applicants, including dot Brands. Overall, the Working Group did not agree that a compelling reason was identified to override existing policy. The Working Group also took note that support from some parties was contingent on the basis of other elements being completed prior to the eventual launch of subsequent New gTLDs (e.g., previous commitments for review of the New gTLD Program, including a costs and benefits analysis as advised by the GAC in its Helsinki Communiqué[[30]](#footnote-30)). The Working Group agreed that determining what dependencies might need to be completed prior to program launch is outside of its remit and should be decided elsewhere (e.g., ICANN Board). In addition, the Working Group believes that the number of studies commissioned on behalf of the CCT-RT, including economic analyses on marketplace competition and end-user/registrant surveys, and which ultimately fed into the CCT-RT’s determination of increased competition and consumer choice, address at least in part the GAC’s request for a costs and benefits analysis.

The Working Group took note of the GAC Advice contained in the Montréal Communiqué[[31]](#footnote-31), which states that future rounds should not begin until the prerequisite and high priority recommendations of the CCT-RT are implemented. The Working Group understands that it is required to consider all CCT-RT recommendations directed to it via the 01 March 2019 ICANN Board resolution[[32]](#footnote-32), but is not necessarily required to agree with all outcomes and suggested solutions. Accordingly, this report will describe the manner in which all relevant CCT-RT recommendations were considered and how they were or were not integrated into any final recommendations.

Rationale for Affirmation xx (rationale 2): A major theme that was repeatedly raised throughout the life cycle of this PDP was the need for predictability for all parties involved. The desire for an “orderly, timely and predictable” New gTLD Program is universally supported. A major theme that was repeatedly raised throughout the life cycle of this PDP was the need for balanced predictability for all parties involved. It is on this basis that the desire for an “orderly, timely and predictable” New gTLD Program is universally supported.

Rationale for Recommendation xx (rationale 3): The Working Group agreed that fostering consumer choice, consumer trust, and market differentiation should continue to be primary focal points for the New gTLD Program.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

None identified for this topic.

**d. Dependencies/relationships with other areas of this report or external efforts**

* **Section xx Applications Assessed in Rounds discusses in further detail the “systematized manner” in which the New gTLD application opportunities should be available.**
* **Section xx Metrics & Monitoring includes recommendations on the collection of data to support further understanding of the New gTLD Program’s impact.**

## 2.2.3 Applications Assessed in Rounds

**a. Recommendations and/or implementation guidelines**

Affirmation xx *with modification* (rationale 1): 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.”

Recommendation xx (rationale 2): 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 shall 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.

Implementation Guidance xx (rationale 2): A new round may initiate even if steps related to application processing and delegation from previous application rounds have not been fully completed.

Implementation Guidance xx (rationale 2): Where a TLD has already been delegated, no application for that string will be allowed for a string in a subsequent round.

It should in general not be possible to apply for a string that is still being processed from a previous application round, i.e.

* 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.

However,

* If all applications for a particular string have been Withdrawn, meaning the string has not been delegated, 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:
  + 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:
  + 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 the application of 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 at the time such policies or procedures are put into place.

In addition,

* 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.

Recommendation xx (see rationale 3): 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. 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.

Recommendation xx (see rationale 3): 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.

Recommendation xx (See rationale 3): 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.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmation xx (rationale 1): Given the period of time between the 2012 round of the New gTLD Program and the eventual launch of the next application procedure, the scale of demand is unclear. Accordingly, at a minimum, the next application procedure should be processed in the form of a round.

Rationale for Recommendation xx-xx (rationale 2): The Working Group believes that predictability is a key element of the New gTLD Program and notes that the program cannot be predictable if there are indeterminate periods of time between application opportunities. Therefore, the Working Group recommends that once subsequent procedures begin, information should be provided about when additional application opportunities will become available. As an example, and merely as an example, prior to the launch of the next round of new gTLDs, ICANN could state something like, “The subsequent introduction of new gTLDs after this round will occur on [specific date] or nine months following the date in which 50% of the applications from the last round have completed Initial Evaluation.”This measure will ensure that prospective applicants have the information they need to decide whether to apply and when to do so.

The Working Group does not believe that all applications from an application window must be processed and delegated before subsequent windows can open. It is the Working Group’s view that such a dependency is unnecessary and would cause significant uncertainty for prospective applicants. Given that an application for a string from one round may still be in process when the following round opens, the Working Group agreed that it is important for applicants to have a clear understanding of when it is possible to apply for a string that had been applied for in a previous round. Specifically, the Working Group believes that it should not be possible to apply for a string that is still being processed from a previous application round. The Working Group provided specific Implementation Guidance on the definition of when an application should be considered “in process” and outlined circumstances in which new applications for a string should and should not be permitted.

While many within the Working Group either supported or did not oppose this recommendation, some expressed opposition. Some Working Group members advocated for an alternate recommendation that, in recognition of Principle G, Applicant Freedom of Expression, timely applications for any string previously applied for but not yet delegated should be permitted, but such applications should not be processed further unless and until the matching string from the previous round has been classified as “Will Not Proceed.” The rationale for opposing Recommendation xx was that applicants from prior rounds could retain too much power to (a) insist on non-compliance with new policy requirements applicable to subsequent procedures and (b) be able to effectively block later applicants for the same string who are willing to comply with new subsequent procedures policy requirements. Examples provided related to evolving name collisions policy and closed generics policy. The Working Group discussed this view, but ultimately determined that there was greater support for barring new applications for strings still in process from a previous round.

Rationale 3 (Rationale for Recommendations xx-xx): When feasible, application opportunities should be available at regular intervals. The Working Group believes that reviewing the New gTLD Program on a regular, ongoing basis is also important, but in support of predictability, does not believe that subsequent procedures should be paused pending input from reviews or PDPs unless extraordinary circumstances dictate that this is necessary.

The Working Group analyzed the possibility of using other application processes for subsequent procedures including a model based on accepting applications on a first-come-first-served basis. Although that model had support from a few participants, there was no consensus in the group in support of using a first-come-first-served model. Rounds enhance the predictability for applicants (e.g., preparation), the ICANN community and other third-party observers to the program (e.g., public comments, objections).

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group considered several proposals that put forward the idea of having rounds consisting only of dot-brands, geographic top level domains, IDN TLDs and/or community-based TLDs prior to a general open application period. Although there was a small level of support for those proposals, the Working Group did not reach consensus on recommending priority rounds for certain types of TLDs and therefore did not include such elements in its recommendations.

**d. Dependencies/relationships with other areas of this report or external efforts**

* **Section xx Continuing Subsequent Procedures includes an affirmation that opportunities to apply to New gTLDs should continue to be available in a “systemitized manner.” This section discusses in further detail the “systematized manner” in which the New gTLD application opportunities should be available.**
* **As details about the cadence of future application opportunities are established in implementation, recommendations in this section should be considered in conjunction with recommendations in the following sections: section xx Application Submission Period, section xx Application Submission Limits, section xx Application Queuing Section xx Security and Stability (with regard to limits to the rate of delegation from a technical perspective), and section xx TLD Rollout.**
* **The manner in which subsequent rounds are structured may impact the implementation of a number of program elements, for example Applicant Guidebook (section xx), Communications (section xx), Application Support (section xx), and RSP pre-evaluation (section xx).**

## 2.2.5 Application Submission Limits

**a. Recommendations and/or implementation guidelines**

Affirmation xx: 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.

**b. Deliberations and rationale for recommendations and/or implementation guidelines.**

The Working Group considered that any policy recommendations on this topic should support the underlying goals of the New gTLD Program, including the promotion of competition and consumer choice. The concept of fairness was also discussed as a potential guiding principle, although the Working Group did not come to an agreement about what fairness would mean in the context of potential application submission limits. The Working Group believes that if application submission limits are to be specified, that there must be a clear fact-based justification for setting these limits and they must be consistent with underlying program goals and principles. Further, it must be operationally feasible to enforce any limits that are set.

There were three different perspectives expressed in the Working Group on this topic:

* Those that supported the status quo in which no limits are imposed
* Those that supported setting limits in principle, but could not identify an effective, fair and/or feasible mechanisms to enforce such limits, and therefore accepted the status quo
* Those that supported setting limits and did not accept the status quo

In reviewing the above considerations and positions, the Working Group did not reach any agreement that application submission limits are justified or feasible to implement and therefore did not recommend any change to existing implementation from the 2012 round.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

While a number of responses to public comment supported preliminary recommendations that no application submission limits should be put in place, the Working Group also reviewed and discussed comments that favored placing limits on the number of applications. In particular, the Working Group considered a suggestion that ICANN should allow no more than 24 applications for each company, including its parent company, subsidiaries, and affiliates. The rationale was that potentially unlimited application numbers favored large, existing entities, which appear at odds with the overall goals of encouraging applications for gTLDs from companies and communities around the world. From this perspective if hundreds, or thousands, of applications are allowed from large companies in developed countries, there may be few gTLDs left for the Global South. The stated goals of this proposal were to increase fairness and allow for adequate oversight and public review. The Working Group did not find a clear rationale for the specific number proposed (24 applications per company) and did not come to any agreement to move forward with the proposal.

**d. Dependencies/relationships with other areas of this report or external efforts.**

* Section xx Metrics & Monitoring includes recommendations on the collection of data to support further understanding of the New gTLD Program’s impact.

2.2.6 RSP Pre-Evaluation

**a. Recommendations and/or implementation guidelines**

Affirmation xx (rationale 1): 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.”

Recommendation xx (rationale 1): The Working Group recommends establishing a program in which Registry Service Providers (“RSPs”)[[33]](#footnote-33) 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.

Recommendation xx (rationale 2): 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.

Recommendation xx (rationale 3): 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.

Recommendation xx (rationale 4): Pre-evaluation occurs prior to each application round and only applies to that specific round. Reassessment must occur prior to each subsequent application round.

Implementation Guidance xx (rationale 7): 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.

Implementation Guidance xx (rationale 8): 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.

Recommendation xx (rationale 5): 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.

Recommendation xx (rationale 6): 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.

**b. Deliberations and rationale for recommendations and/or implementation guidelines.**

Rationale for Affirmation xx and Recommendation xx (rationale 1): The Working Group affirms the goals identified in Principle C of the 2007 policy, namely the promotion of competition in the provision of registry services, as well as enhancing consumer choice, market differentiation and geographical and service provider diversity. In addition, the Working Group considered the importance of the principle of efficiency in the program, and agreed in particular that where operationally feasible and appropriate, efficiencies should be realized in the technical evaluation of registry services without compromising the other goals of the program, such as diversity, competition, and security of the DNS. The Working Group reviewed the fact that where a single RSP provided registry services for multiple TLD applications in the 2012 application round, the RSP was subject to duplicative evaluation and testing (in some cases hundreds of times). The Working Group agreed that this duplicative evaluation and testing could be reduced by establishing a program in which RSPs are evaluated in advance of an application round opening. To ensure that processes are fair to all RSPs (those pre-evaluated and those not pre-evaluated), the Working Group believes that criteria for evaluation and testing should be the same for all RSPs, regardless of when they are assessed.

Rationale for Recommendation xx (rationale 2): The Working Group considered different perspectives on whether the RSP pre-evaluation process should be optional or mandatory and reviewed points in support of each position. The Working Group noted that if the program was mandatory, ICANN could greatly streamline technical evaluations, limiting focus to applicants that are proposing “non-standard” or new registry services. In addition, applicants would know all of the RSP providers in advance of the application window opening. The Working Group also considered possible disadvantages to making the program mandatory. In particular, it would force RSPs to be evaluated prior to knowing the potential applicant base. If an entity wanted to provide its own services, it would be required to be evaluated in advance of the application window and therefore let all other applicants know that the entity was applying for a string. It could limit competition by requiring all RSPs to be evaluated early. In addition, it could favor incumbents that are insiders and know about ICANN’s processes. The Working Group also noted that ICANN would still have to do technical evaluations for anyone proposing “non-standard” or new registry services, so ICANN would still have to have evaluators on call. On balance, the Working Group determined that the disadvantages of making the program mandatory outweighed the advantages, and therefore recommends that the program should be optional for RSPs.

Rationale for Recommendation xx (rationale 3): The Working Group considered different perspectives on whether incumbent RSPs should be “grandfathered” into the pre-evaluation process and be subject to different requirements compared to new RSPs. The Working Group ultimately agreed that the principles of fairness, competition, and consumer choice would best be served if the RSP pre-evaluation processes and structures treat incumbent RSPs and prospective RSPs in an equitable manner. Therefore, the Working Group recommends that all RSPs are subject to the same requirements and criteria in the pre-evaluation process.

Rationale for Recommendation xx (rationale 4): The Working Group supports the notion that pre-evaluated RSPs should periodically be subject to reassessment to ensure that they continue to meet eligibility criteria over time. The Working Group considered two options, one focused on reassessment every “x” number of years and another based on reassessment prior to the opening of each subsequent application window. The Working Group settled on the second option, noting though that this option would work only if subsequent procedures continue to operate as a series of application rounds; therefore the testing timing would need to be revisited if a first-come, first-serve model was later adopted. However, acknowledging that the Working Group is recommending that application opportunities be organized as rounds for the foreseeable future, the Working Group came to the conclusion that reassessment prior to each round is the most logical approach for the program.

Rationale for Recommendation xx (rationale 5): The Working Group does not believe that any external source of funding should be leveraged to establish and operate the RSP pre-evaluation process. It further does not view the RSP pre-evaluation process as a source of revenue for ICANN. The Working Group recommends that the program should be funded by fees paid by RSPs seeking pre-evaluation and that the program should operate on a revenue-neutral, cost-recovery basis. The Working Group anticipates that as part of program implementation, cost estimates for the program will be generated and a corresponding fee structure will be established.

The Working Group notes concerns raised in Working Group discussions that it is difficult to recommend a costing model for the RSP pre-evaluation process in the absence of information about the potential costs of implementation or the Pre-Evaluation process. The Working Group encourages further exploration of this issue in the implementation phase.

Rationale for Recommendation xx (rationale 6): The Working Group suggests that a round of pre-evaluation (and reassessment for those RSPs that have already been pre-evaluated in a previous round) will take place in advance of each application round. This will provide the opportunity for applicants to choose to use a pre-evaluated RSP as part of their application if they would like to do so. The Working Group understands that prospective applicants need time to evaluate their options when selecting an RSP. Therefore, the Working Group recommends that the pre-evaluation round should take place well enough in advance of the application window to allow prospective applicants to consider the options for pre-evaluated RSPs and make an informed decision.

Rationale for Implementation Guidance xx (rationale 7): In discussing the topic of reassessment of RSPs, particularly around the reassessment taking place prior to each round, the Working Group considered whether efficiencies could be gained once the series of application rounds become regularly occurring and the gap in time between each round is minimized. Some Working Group members suggested that for RSPs that have been pre-evaluated previously, a more limited review could be warranted.

Rationale for Implementation Guidance xx (rationale 8): The Working Group noted that 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, which would govern the limited RSP pre-evaluation process and not any ongoing relationship.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group discussed a number of specific potential elements of the RSP pre-evaluation process in considering Public Comments on the Initial Report. One of the issues discussed was whether there should be measures built into the pre-evaluation process to protect applicants, and in particular whether there should be a method for removing approval of a pre-evaluated RSP that is in breach or terminated. Some Working Group members expressed that it is important to protect applicants by ensuring that any RSP with the label “pre-evaluated” is not failing. Other Working Group members pointed out that in the 2012 round, if an RSP passed the evaluation it was approved. If the RSP later failed, this was an issue to be resolved between the RSP and the Registry Operator. There was no contractual agreement between ICANN and the RSP. These members of the Working Group envision that the RSP pre-evaluation would work in a similar manner. Prior to each round, a set of RSPs would be pre-evaluated for that round. In the case of a failure once the contract was executed, this would be an issue for the Registry Operator to address directly with the RSP. The Working Group did not come to an agreement whether to (or how to) remove an RSP from the pre-evaluated list but did agree that the RSP pre-evaluation process was intended to be forward-looking as opposed to looking at past history (see below).

On a related subject, the Working Group discussed whether past performance of a RSP should be taken into account in the RSP pre-evaluation process. Some Working Group members expressed that information about past performance is an important indicator of potential future performance, and therefore should be considered. From another perspective, historically, all evaluations have been forward-looking. If the Working Group follows the principle that the only difference between pre-evaluation and standard evaluation is timing, pre-evaluation should also be forward-looking and should not take into consideration past performance. The Working Group did not come to an agreement on a recommendation on this topic.

The Working Group considered whether it is appropriate to have an appeals process to allow RSPs who are denied pre-evaluation status to request that the decision is reconsidered. From one perspective, it is important for applicants to have recourse if they think that an application has been inappropriately turned down. From another perspective an appeals process is not necessary because (a) it is a voluntary program, and (b) RSPs that are not “pre-evaluated” can always support applications and elect to be evaluated again during the actual application window. Ultimately, the Working Group did not think a recommendation was necessary.

**d. Dependencies/relationships with other areas of this report or external efforts.**

* **Section xx Application Fees includes implementation guidance regarding the technical evaluation fee, including that associated with the RSP Pre-Evaluation Program.**
* **Discussion and recommendations regarding evaluation and testing are included in sections xx Applicant Reviews: Technical/Operational, Financial and Registry Services, and section xx** Registry System Testing. See also section xx for a broader discussion of considerations related to security and stability.

2.3.3 Applicant Freedom of Expression

**a. Recommendations and/or implementation guidelines**

Affirmation xx: 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 particular freedom of speech rights).”

Implementation Guidance xx: 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]](#footnote-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.

**b. Deliberations and rationale for recommendations and/or implementation guidelines.**

The Working Group believes that Principle G and Recommendation 3 from the 2007 policy remain important and appropriate for subsequent procedures of the New gTLD Program. The Working Group understands the challenges of ensuring that freedom of expression and other rights are appropriately incorporated into the implementation and operation of the Program, and therefore recommends a proactive approach to ensuring that these rights are taken into account in the development of program rules, processes, and materials. While the Working Group did not agree to specific recommendations in this regard, it encourages ICANN org to give additional consideration to this issue in the implementation phase.

In November 2019, The ICANN Board adopted[[35]](#footnote-35) all recommendations of the Cross Community Working Group on Enhancing ICANN Accountability (CCWG Accountability) Work Stream 2 (WS2), including a Framework for Interpretation (FOI)[[36]](#footnote-36) for the human rights core value added to the Bylaws in October 2016.[[37]](#footnote-37) The FOI is “a high-level framework for how the bylaw language should be interpreted and applied to ensure that ICANN accomplishes its Mission consistent with its core values and operates within law applicable to its operations.”[[38]](#footnote-38) To the extent that additional work is undertaken to reflect human rights considerations in ICANN’s processes, including through the implementation of WS2 recommendations, such work should also incorporate freedom of expression rights in the New gTLD Program application processes consistent with the Working Group’s Implementation Guidance.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

None.

**d. Dependencies/relationships with other areas of this report or external efforts.**

* To the extent that additional work is undertaken to reflect human rights considerations in ICANN’s processes, including through the implementation of Cross Community Working Group on Enhancing ICANN Accountability (CCWG Accountability) Work Stream 2 (WS2) recommendations, the Working Group anticipates that Implementation Guidance in this section will be taken into account.

2.3.4 Universal Acceptance

**a. Recommendations and/or implementation guidelines**

Affirmation xx:The Working Group welcomes and encourages the work of the Universal Acceptance Initiative[[39]](#footnote-39) and the Universal Acceptance Steering Group.[[40]](#footnote-40)

Affirmation xx: 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”).

Recommendation xx: Principle B from the 2007 policy states: “Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root.” The Working Group recommends revising Principle B to read: “Some new generic top-level domains should be internationalised domain names (IDNs), although 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.”

Implementation Guidance xx: ICANN should include more detailed information regarding Universal Acceptance issues either directly in the Applicant Guidebook or by reference in the AGB to additional resources produced by the Universal Acceptance Steering Group or other related efforts.

**b. Deliberations and rationale for recommendations and/or implementation guidelines.**

The Working Group affirms the importance of efforts related to Universal Acceptance and encourages the ongoing work taking place through the Universal Acceptance Initiative and the Universal Acceptance Steering Group. The Working Group acknowledges that language in the 2012 Applicant Guidebook and the Registry Agreement raises awareness about potential challenges that applicants and registries may face with respect to Universal Acceptance. At the same time, the Working Group believes that ICANN should more clearly and thoroughly illustrate to potential applicants the possible problems that registrants of IDNs in particular may face in the usage of those domains, as well as work underway in this regard. Implementation Guidance xx and Recommendation xx seek to ensure that potential applicants have the information they need to make an informed decision before submitting the application.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

While some commenters thought that no additional work should be proposed beyond that being done through the Universal Acceptance Initiative and by the Universal Acceptance Steering Group, others believe that more can and should be done to further the adoption of Universal Acceptance (UA). They believe that since the primary obstacle to the successful expansion of the domain namespace remains the rejection of these new gTLDs by legacy code, the community and ICANN Org need to involve themselves in more active outreach efforts to explain to third parties the benefits of increasing Internet inclusivity and diversity in UA to reach Internet end-users.Some commenters also believe thatCANN should, at a minimum, require registries and registrars that are owned by the same entity, to be UA ready as part of their application for a new gTLD. This would mean that their systems should be ready for IDN registrations, ready to handle IDNs and non-IDN new gTLD consistently on nameserves and other machines, be able to manage any Email Address Internationalization (EAI), and to send and receive emails from these types of addresses. Finally, some commenters also claim that ICANN should also require registries and registrars to take affirmative action to ensure UA-readiness in their downstream supply-chains.

**d. Dependencies/relationships with other areas of this report or external efforts.**

* Related efforts external to this PDP include the Universal Acceptance Initiative and the Universal Acceptance Steering Group.

## PACKAGE 4

2.3 Role of Application Comment

**a. Recommendations and/or implementation guidelines**

Affirmation xx (rationale 1): The Working Group affirms Implementation Guideline C from 2007, which states: “ICANN will provide frequent communications with applicants and the public including comment forums.”

Affirmation xx (rationale 1): 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.

Affirmation xx (rationale 1): 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.

Recommendation xx (rationale 2): 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.

Implementation Guidance xx (rationale 2): 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.

Implementation Guidance xx (rationale 2): 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.

Recommendation xx (rationale 3): 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.”

Implementation Guidance xx (rationale 3): 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.

Implementation Guidance xx (rationale 3): 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.

Recommendation xx (rationale 4): The New gTLD Program must be clear and transparent about the role of application comment in the evaluation of applications.

Implementation Guidance xx (rationale 4): 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.

Recommendation xx (rationale 5): 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.

Implementation Guidance xx (rationale 5): 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.

Recommendation xx (rationale 6): 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.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmations xx-xx (rationale 1): The Working Group agreed that it is important for ICANN to continue to maintain lines of communication with applicants and the public in subsequent procedures, including through Application Comment. It therefore affirmed Implementation Guideline C from 2007 and continued use of an Application Comment Period in subsequent procedures. The Working Group further agreed that in cases where application comments might impact scoring of an application, the applicant should have an opportunity to respond through Clarifying Questions, as was the case in the 2012 round. This practice ensures that evaluators take into account different perspectives and information before making adjustments to a score.

Rationale for Recommendation xx and Implementation Guidance xx-xx (rationale 2): In the 2012 round, in order to submit a comment, a user first needed to create an account by providing name, email address, and optionally affiliation. The system sent an email to the email address provided and affirmative confirmation from the email address needed to be received by the system before an account was created. This functionality verified that there was a person attached to the email account. The Working Group raised concern, however, that this system did not verify that the person creating the account was who he or she claimed to be. The Working Group noted commenters could potentially misrepresent who they were or who they represented and “game” the system to disadvantage certain applicants. Recognizing that evaluation panelists perform due diligence in considering application comment, and the challenge of confirming the true identity of all contributors to public comment, the Working Group nevertheless encourages ICANN to seek opportunities to verify the identity of commenters in a meaningful way to reduce the risk of gaming and further to require commenters to disclose any relationship with an applicant for the sake of transparency. The Working Group notes that further consideration may need to be given to specific implementation elements, for example whether there should be consequences to the applicant if a commenter does not disclose a relationship with that applicant.

Rationale for Recommendation xx and Implementation Guidance xx-xx (rationale 3): The Working Group raised concern about usability challenges with the Public Comment Forum and considered possible ways to improve related systems. In particular, the Working Group noted that some users found it difficult to sort large volumes of comments in a meaningful way and some commenters found it limiting that they were unable to include attachments with their submissions. The Working Group notes that some sorting functionality was available in the 2012 round, but encourages ICANN to look for more opportunities to help those reviewing comments do so in an efficient manner. In addition, the Working Group acknowledges feedback from ICANN org that allowing attachments may make searchability of comments more difficult and may increase time and cost of processing comments by the relevant evaluation panels, but still encourages ICANN org to consider this potential change, because it would allow commenters to supply more detailed supporting documentation. The Working Group encourages ICANN to explore tools that allow users to search text included in attachments.

Rationale for Recommendation xx and Implementation Guidance xx (rationale 4): The Working Group agreed that applicants in the 2012 round did not always have sufficient clarity about how application comments were being taken into account in the application evaluation process. While applicants were given the opportunity to respond through Clarifying Questions to any comments that might impact scoring, the Working Group believes that there would be greater transparency and accountability in the evaluation process if the Implementation Review Team developed more specific guidelines about how comments should be used and taken into account in the evaluation process. Any such guidelines should be incorporated into the Applicant Guidebook so that all potential applicants and commenters have the same baseline knowledge with which to operate.

Rationale for Recommendation xx and Implementation Guidance xx (rationale 5): The Working Group believes that, to the extent possible, evaluators should have a full picture of the different perspectives on an application, including arguments or evidence from the applicant itself. Therefore, the Working Group believes that while applicants had the ability to respond to any comment in the 2012 round, applicants should have a dedicated period of time to reply to any comments posted in the public comment forum.

The Working Group notes that if an applicant proposes changes to the application in response to public comments, additional processes apply, including an additional public comment period, where applicable. Please see section xx Application Change Requests for discussion of processes related to changes in the application.

Rationale for Recommendation xx (rationale 6): The Working Group acknowledges that third-parties may want to submit information pertaining to confidential portions of an application, and that these third-parties may not feel comfortable submitting this information publicly through public comment. As an example, a community member may want to send ICANN information relevant to the background screening for an applicant and may prefer to do so privately. The Working Group recommends that ICANN create a process to allow for the private submission of such information.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group discussed whether the public comment period for Community Priority Evaluation applications should be longer than the public comment period for standard applications, as was the case in the 2012 round, or if the two periods should be equal in length. The Working Group did not reach any agreement to change the 2012 practice, and therefore has not made any recommendations in this regard.

In discussion of Implementation Guidance xx, which states that applicants should be given a fixed amount of time to respond to public comments, the Working Group discussed whether the community should have an opportunity to comment following the window for applicants to comment. The Working Group did not come to a conclusion on this issue and notes that it may be an item for consideration in the implementation phase.

**d. Dependencies/relationships with other areas of this report or external efforts**

* **Section xx Application Change Requests addresses processes related to changes in the application, including an additional public comment period, where appropriate.**
* **This section includes discussion of whether the public comment period for Community Priority Evaluation applications should be the same or longer than the public comment period for standard applications. Consideration of Community Priority Evaluation applications more broadly is included in section xx.**
* **This section includes a recommendation and implementation guidance regarding systems supporting application comment. Recommendations on systems that are “applicant-facing” are included in section xx Systems.**
* **Application Comment is closely tied to communications with both the ICANN community and applicants. The topic of communications is covered more broadly in section xx.**

2.7.2 Registrant Protections

**a. Recommendations and/or implementation guidelines**

Affirmation xx (rationale 1):The Working Group affirms Principle D from the 2007 policy, which states: “A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.”

Affirmation xx (rationale 1):The Working Group affirms existing registrant protections used in the 2012 round, including the Emergency Back-end Registry Operator (EBERO)[[41]](#footnote-41) and associated triggers for an EBERO event and critical registry functions. In addition, as described in section xx 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 Specfication 6 of the Registry Agreement.[[42]](#footnote-42)

Affirmation xx (rationale 2): Background screenings should be conducted during Initial Evaluation, as was the case in the 2012 round.

Implementation Guidance xx (rationale 2): 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.

Recommendation xx (rationale 3): 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).”

Recommendation xx (rationale 3): 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].”

Implementation Guidance xx (rationale 3): 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.

Recommendation xx (rationale 4): 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.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmation xx (rationale 1): The Working Group believes that it is important that the New gTLD Program continue to incorporate measures into the application process and program implementation that provide protection for registrants. On the whole, the Working Group considers the existing registrant protections to be appropriate in subsequent procedures.

Rationale for Affirmation xx and Implementation Guidance xx (rationale 2): The Working Group notes that PIRR recommendation 2.2.a states: “Consider whether background screening should be performed during IE or at the time of contract execution.” The Working Group reviewed that in the 2012 round, background screening took place during Initial Evaluation. Per the Program Implementation Review Report (PIRR), “The timing was intended to prevent applicants that did not meet the eligibility criteria from progressing beyond IE and participating in downstream processes which could affect other applicants (e.g., objections, contention resolution).” The Working Group supports this rationale as a basis for maintaining background screening as part of IE. The Working Group notes that in the 2012 round, if a change request was submitted during the course of Initial Evaluation, the re-screening would occur during Initial Evaluation. The Working Group suggests deferring the re-screening until just prior to execution of the Registry Agreement, which would be a departure from the 2012 practice. The Working Group notes concerns that deferring re-screening until execution of the RA could result in an applicant that would otherwise be disqualified taking part in string contention resolution. A similar concern could potentially apply to objections. The Working Group encourages further consideration of this issue in the implementation phase.

The PIRR discusses that because the period between the application submission deadline and the signing of Registry Agreements was longer than anticipated, many applicants submitted application changes that required repeat background screening (for example, due to changes in officers or directors of the applying entity). The Working Group anticipates ICANN will be able to process applications more efficiently in subsequent procedures drawing on lessons learned from the 2012 round. If the application processing period is shorter, there will likely be fewer application changes that occur during the normal course of business. As a result, the volume of repeat background screenings will likely be more manageable.

Rationale for Recommendations xx-xx and Implementation Guidance xx (rationale 3): The Working Group notes areas of potential improvement raised by Working Group members and in public comment regarding background screenings and funding of EBERO. It therefore agrees with the corresponding recommendations included in the Program Implementation Review Report, 2.2.b and 7.1.a. To simplify requirements for applicants, the Working Group believes that if the Continued Operations Instrument is required in subsequent rounds, it should only be required at the time of executing a registry agreement.

Rationale for Recommendation xx (rationale 4): The Working Group agreed that all registrant protections from the 2012 round are appropriate and important in the case of open TLDs. However, the Working Group believes that EBERO requirements should not apply in business models where there are no registrants in need of such protections in the event of a TLD failure. In particular, the Working Group believes that gTLDs that are exempt from specification 9 (including .Brand TLDs qualified for specification 13) should also be exempt from Continued Operations Instrument requirements.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group is monitoring the work of the second Security, Stability, and Resiliency Review (SSR2) and considered recommendation 26 included the SSR2 draft report[[43]](#footnote-43) to “Document, Improve, and Test the EBERO Processes.” In preliminary discussions, Working Group members responded positively to recommendation 26.5 of the draft report, which states: “ICANN org should publicly document the ERERO processes, including decision points, actions, and exceptions. The document should describe the dependencies for every decision, action, and exception.” Noting that the SSR2’s work is ongoing, the Working Group will continue to follow developments from the Review as they are applicable to this PDP.

**d. Dependencies/relationships with other areas of this report or external efforts**

* **Section xx Applicant Reviews: Technical/Operational, Financial and Registry Services includes recommendations to maintain the substantive technical and operational evaluation. Protections against registry failure, including registry continuity, registry transition, and failover testing continue to be important registrant protections.**
* The Working Group is monitoring the work of the second Security, Stability, and Resiliency Review (SSR2) in relation to the EBERO process.

2.7.4 String Similarity Evaluation

**a. Recommendations and/or implementation guidelines**

Affirmation xx (rationale 1): 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.”

Affirmation xx (rationale 1): 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.”[[44]](#footnote-44) The Working Group affirms the visual standard for determining similarity with the updates included in the recommendations below.

Recommendation xx (rationale 2): 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 .EXAMPLE[[45]](#footnote-45) 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.

* 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.

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.

Implementation Guidance xx (rationale 2): In the event that intended use is unclear from the application, and therefore evaluators are unable to determine whether one string is a singular or plural of another, ICANN should issue a clarifying question to ascertain the intended use of the string.

Recommendation xx (rationale 2): 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,[[46]](#footnote-46) the applications will only be able to proceed if the applicants agree to the inclusion of a mandatory Public Interest Commitment (PIC) in their Registry Agreements. 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.

Recommendation xx (rationale 3): Eliminate the use of the SWORD tool in subsequent procedures.

Recommendation xx (rationale 4): 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 PIRR recommendation 2.3.a.[[47]](#footnote-47)

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

The Working Group notes that recommendation 2.3.b from the Program Implementation Review Report states: “Consider any additional policy guidance provided to ICANN on the topic of string similarity.” The Working Group anticipates that ICANN org will leverage the above recommendations in the development of String Similarity review processes for subsequent procedures.

Rationale for Affirmations xx and xx (rationale 1): Subject to the recommendations included in this section, the Working Group believes that existing policy and implementation related to the String Similarity Review remain appropriate. Therefore the Working Group affirms Recommendation 2 from 2007 and the existing evaluation standard described in the Applicant Guidebook, as amended by the Working Group’s recommendations.

Rationale for Recommendations xx and xx (rationale 2): Neither GNSO policy from 2007 nor the 2012 Applicant Guidebook defined a specific rule regarding singulars and plurals of the same string, and in the 2012 application evaluation process, the String Similarity Evaluation Panel did not find singular and plural versions of strings to be visually confusingly similar. The GAC,[[48]](#footnote-48) the ALAC,[[49]](#footnote-49) the ICANN Board,[[50]](#footnote-50) and the Final Issue Report on New gTLD Subsequent Procedures[[51]](#footnote-51) have raised that existing guidance does not address the issue of singulars and plurals of the same word and that additional guidelines may be needed. The Working Group’s recommendation to prohibit singulars and plurals of the same word within the same language/script and to expand the scope of the String Similarity Review to include singulars/plurals provides a clear, consistent standard for subsequent procedures that will provide greater predictability for applicants.

The Working Group’s recommendation that singular/plural versions of the same string should be considered confusingly similar only applies when both strings are intended to be used in connection with the same meaning of the word. In the case 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, both strings may be permitted to proceed. The Working Group understands that in such cases, there needs to be a means for the registries to commit to the use stated in the application and a method for enforcing adherence to this commitment. The Working Group believes that a mandatory PIC will serve this need.

The Working Group notes that Recommendation 35 from the Competition, Consumer Trust, and Consumer Choice Review Team states: “The Subsequent Procedures PDP should consider adopting new policies to avoid the potential for inconsistent results in string confusion objections. In particular, the PDP should consider the following possibilities: 1) Determining through the initial string similarity review process that singular and plural versions of the same gTLD string should not be delegated 2) Avoiding disparities in similar disputes by ensuring that all similar cases of plural versus singular strings are examined by the same expert panelist 3) Introducing a post dispute resolution panel review mechanism.”[[52]](#footnote-52) This recommendation was directed at the Subsequent Procedures PDP Working Group. In its resolution on the CCT-RT Final Report and recommendations,[[53]](#footnote-53) the ICANN Board passed recommendation 35 through to the Subsequent Procedures PDP.[[54]](#footnote-54) The Working Group’s recommendation addresses the component of Recommendation 35 concerning singulars and plurals. See section xx on a Limited Challenge/Appeal Mechanism for further information about the Working Group’s recommendations regarding part 3 of CCT-RT Recommendation 35.

Rationale for Recommendation xx (rationale 3): The Working Group agreed that there was insufficient correlation between the results of the SWORD Tool and the outcomes of the String Similarity Review, indicating that that tool, as implemented, was not a helpful resource for evaluators and especially for applicants, where the SWORD results could be counterproductive. Given the limited utility of SWORD Tool to provide consistent and predictable results, the Working Group believes that it should not be used in subsequent procedures. The Working Group leaves open the possibility that in the implementation phase, an alternate tool may be leveraged to address the issues experienced in the 2012 round.

Rationale for Recommendation xx (rationale 4): The Working Group notes that the delay of releasing String Similarity results during the 2012 round caused those wishing to file a String Confusion objection to only have two weeks to file the String Confusion Objection, which many viewed as too short. Therefore, the Working Group recommends that there be at least thirty (30) days between the publication of the String Similarity Evaluation results and the deadline for filing a String Confusion Objection.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

In reviewing input received through public comment and engaging in additional discussion with ICANN org, the Working Group considered several issues that are relevant to the String Similarity Review.

The Working Group considered that in the TLD environment, an applicant may suggest a particular language of a label when applying for a TLD and operating that TLD, but the user might not relate to the label in the same language. The Working Group discussed the following questions:

* How should it be handled if there are two strings which belong to two different languages from the applicant point of view, but they represent singular/plural form of the same word in a particular language?
* What should be the primary consideration in developing rules -- the intent of the applicant or possible confusion by the user?

From one perspective, the only way to address potential concerns about end user confusion in the application process is to look at the intent of the applicant, because the TLD has not yet been launched. From another perspective, the user may still ultimately be confused by the end result if the sole focus is on the intent of the applicant.

The Working Group considered a related issue raised by the SSAC in public comment, which stated “It may not be possible for rules regarding string similarity to be as simple or straightforward as the above referenced preliminary recommendations state. For example, singular and plural noun forms are represented differently by different languages.”

The Working Group reviewed that in its draft recommendations, there is a suggestion to use a dictionary to determine singular/plural versions of a word. It was noted that a word may be identical in many languages but generate different plural forms in each of the languages. From one perspective, examples of this issue may be considered edge cases. The primary goal of developing policy on this topic is to prevent clear cases where the applied-for TLD is a singular or plural of an existing TLD. From this perspective, edge cases can be handled through additional contract language.

The Working Group discussed that there are different forms of inflection beyond pluralization in many languages. Inflectional morphology refers to cases where words change in grammatical form but not meaning. For example, in addition to inflection associated with singular/plural forms of a word, nouns in some languages inflect for gender. Further, it is not only nouns where inflection comes into play. Verb conjugation is a form of inflection, as well. By way of example, “decide” and “decides” are different forms of the verb inflected for agreement with the singular and plural subjects. The Working Group discussed the following questions:

* Does it make sense that the “s” would differentiate between two forms of a noun and not two forms of a verb for the purposes of defining confusing similarity?
* If a grammatical category like singular or plural is confusingly similar, why not also consider other grammatical categories confusingly similar like masculine and feminine or different tenses?
* Is there a way to make the framework for determining confusing similarity manageable so that it is predictable to the applicant?

The Working Group received feedback from ICANN org that from a linguistics perspective, inflection on a per-language basis is fairly well understood and bounded. Inflections are given in many dictionaries, which makes it possible to apply rules about inflection consistently.

The Working Group considered input from the SSAC received through public comment on the Initial Report: “Beyond visual similarity, trying to determine confusability based on the meaning of words is fundamentally misguided, as domain names are not semantically words in any language.” The Working Group considered an alternate point of view that the SSAC’s statement may be true from a purely technical perspective, but many of the gTLDs now delegated have semantic intent.

The Working Group conducted a comparison between the gTLD String Similarity Review and the review for string similarity that takes place as part of the IDN ccTLD Fast Track Process[[55]](#footnote-55) to determine if any additional harmonization between the two processes may be appropriate. The Working Group noted that both reviews focus on a similar standard for visual similarity. In addition, both processes compare requested/applied-for TLDs against existing TLDs, reserved names, and other applied-for strings (ccTLDs or gTLDs). The Working Group reviewed that in the ccTLD process, a second review can be requested by the requestor if the applied-for string is found to be confusingly similar by the DNS Stability Panel’s initial review. An external and independent Extended Process Similarity Review Panel (“EPSRP”) conducts a second review using a different standard based on a “behavioral metric.” The behavioral metric “provides quantitative and statistical evidence about the likelihood of confusing two possible strings and its methods are open and repeatable to enable replication by third parties.”[[56]](#footnote-56) The Working Group considered whether the GNSO process might benefit from a secondary review like that available through the ccNSO process. The Working Group ultimately agreed that such a process would be too costly as a component of the application review process. The Working Group also considered whether the standard used by the EPSRP could be adopted in considering challenges to the results of String Similarity evaluations. For additional information on this issue, please see section xx Limited Challenge/Appeal Mechanism.

The Working Group considered whether synonyms should be included in the String Similarity Review for those strings associated with highly-regulated sectors and those representing verified TLDs. The example of .DOCTOR and .PHYSICIAN was raised in discussion. Public comments expressed diverging perspectives on this issue. The Working Group further considered whether exact translations of these strings should be included in the String Similarity Review, but did not conclude the discussion with any recommendations. See Section xx Objections for further discussion of potential protections for exact translations of strings associated with highly-regulated sectors.

The Working Group considered a proposal put forward in public comment that homonyms should be included in the String Similarity review. From one perspective, homonyms may cause user confusion, for example in the 2012 round an application for .thai phonetically clashed with existing . ไทย (Thai IDN ccTLD). Some Working Group members felt that there is the possibility of end-user confusion if two TLD strings are spelled differently but pronounced the same. Other Working Group members did not feel that there was a clear problem to address through policy with respect to homonyms. It was raised that even if the Working Group agreed that there was a well-defined problem that needed to be solved, it might not be possible to develop clear rules on homonyms that could be fairly enforced. Some Working Group members raised that even within a language, there may be different pronunciations of a word. Across languages, it is even more difficult to determine whether words are pronounced the same. The Working Group did not conclude the discussion with any recommendations.

**d. Dependencies/relationships with other areas of this report or external efforts**

* **The String Similarity Review is distinct from, but related to, the String Confusion Objection. In this section, the Working Group has made a recommendation about the relative timing of the two processes. The String Confusion Objection process is discussed further in section xx Objections.**
* The Working Group has recommended in this section introducing a mandatory PIC as a means for registries to commit to the use stated in the application. Mandatory PICs are further discussed in section xx Registry commitments / Public Interest Commitments.
* Regarding work external to this PDP, the Working Group conducted a comparison between the gTLD String Similarity Review and the review for string similarity that takes place as part of the IDN ccTLD Fast Track Process to analyze whether any additional alignment is appropriate between the two processes.

## 2.7.5 Internationalized Domain Names

### **a. Recommendations and/or implementation guidelines**

Affirmation xx with modification (rationale 1): 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 *should continue to be an integral part of the New gTLD Program.*” 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.”

Recommendation xx (rationale 2): Compliance with Root Zone Label Generation Rules (RZ-LGR[[57]](#footnote-57)) must be required for the generation of IDN TLDs and variants[[58]](#footnote-58) labels, including the determination of whether the label is blocked or allocatable.

Implementation Guidance xx (Rationale 2): To the extent possible, compliance with IDNA2008 (RFCs 5890-5895) or its successor(s) and applicable Root Zone Label Generation Rules (RZ-LGR, RZ-LGR-2, and any future RZ-LGR rules sets) should be automated for future applicants. The Working Group recognizes that some instances of manual analysis may be required.

Implementation Guidance xx (Rationale 2): 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.

Recommendation xx (Rationale 3): 1-Unicode character 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[[59]](#footnote-59) and Joint ccNSO-GNSO IDN Workgroup (JIG)[[60]](#footnote-60) reports.

Recommendation xx (Rationale 4): IDN gTLDs identified as IDN variants of already existing or applied for gTLDs will be allowed only if they have the same registry operator and back-end registry service provider. This policy of cross-variant IDN gTLD bundling must be captured in relevant Registry Agreements[[61]](#footnote-61).

Recommendation xx (Rationale 5): A given second-level label under any allocated IDN variant TLD must only be allocated to the same entity/registrant, or else withheld for possible allocation only to that entity (e.g., s1 under {t1, t1v1, …}, e.g., s1.t1 and s1.t1v1).

Recommendation xx (Rationale 5): For second-level IDN variant labels that arise from a registration based on a second-level IDN table, all allocatable IDN 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, …}).

Recommendation xx (Rationale 5): Second-level labels derived from Recommendation xx or Recommendation xx are not required to act, behave, or be perceived as identical.

### **b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmation xx with modification (rationale 1): The Working Group continues to support IDNs being available in the New gTLD Program. The modification here is merely grammatical to note that IDNs already exist in the DNS.

Rationale for Recommendation xx and Implementation Guidance xx-xx(rationale 2): The Working Group understands that label generation rules provide a consistent and predictable set of permissible code points for IDN TLDs, as well as a mechanism to determine whether there are variant labels (and if so, what they are). Evaluating all TLDs using Root Zone Label Generation Rules (RZ-LGR) allows for a consistent approach and one that complies with community-driven and community-vetted outcomes. Further to the purpose of consistency and efficiency, the Working Group welcomes any automation of the RZ-LGR in the evaluation processes, although it recognizes that automation may not be feasible in some circumstances.

While the Working Group is fully supportive of requiring IDN TLDs to comply with RZ-LGR, it’s cognizant that this may impact potential applicants who want to apply for an application in a script that is not yet integrated into the RZ-LGR. The Working Group believes that applicants should be provided the opportunity to apply for a string in a script that is not yet integrated into the RZ-LGR, and it should be processed up to but not including contracting. It should of course not be delegated until it is compliant. The Working Group believes the burden in this case is on the applicant, who may have to wait for an indeterminate amount of time but is not aware of any other serious concerns.

Rationale for Recommendation xx (rationale 3): The Working Group believes that 1-Unicode character gTLDs should be allowed for limited script/language combinations where a character is an ideograph (or ideogram), in support of choice and innovation, but recognizes that care should be taken in doing so. The Working Group believes that it is appropriate to limit 1-Unicode character gTLDs to only certain scripts and languages, though it does not believe it has the relevant expertise to make this determination. The Working Group would welcome the identification of the limited set of scripts and languages (e.g., during implementation), which will substantially increase the predictability of what will likely still remain a case-by-case, manual process. This conservative approach is consistent with both the SSAC and Joint ccNSO-GNSO IDN Workgroup (JIG) reports.

Rationale for Recommendation xx (rationale 4): In support of security and stability, and in light of the fact that IDN variants are considered to essentially be identical, the Working Group believes that IDN variant TLDs must be operated by the same Registry Operator and must have the same back-end registry service provider if delegated. In its discussion regarding whether variants must have the same back-end registry service provider, the Working Group noted ICANN org’s Recommendations for Managing IDN Variant Top-Level Domains, which state: “For feasible and consistent implementation of these requirements, the same back-end registry service provider, if applicable, must be employed for operating all the activated IDN variant TLDs by the registry operator.”[[62]](#footnote-62) To the extent that the TLD were to change hands at any point after delegation, the IDN variants TLDs must remain bundled together. Accordingly, IDN variant TLDs should be linked contractually. In reviewing the draft final recommendations, some limited discussion took place regarding how an applicant would be able to seek to obtain allocatable IDN variants, for both existing IDN gTLDs and new IDN gTLDs. In the ICANN Org paper referenced above, Section 3.3.1 recommends that the application process and fee apply to variant labels, similar to any gTLD label, which is consistent and furthers the principle of conservative allocation of variants. However, some Working Group members believe that allocatable IDN variants should be made available to IDN gTLD registry operators and applicants, with only limited procedures and costs in place. As these deliberations arose late in the Working Group’s life cycle, the group elected to only recommend the “same entity” principle for IDN variants but refrained from providing recommendations on how IDN variants can be obtained. The Working Group notes that the GNSO Council initiated an IDN Scoping Team, which delivered its Final Report[[63]](#footnote-63) to the Council in February of 2020. At the time of this writing, the GNSO Council is contemplating if and when it may initiate a policy development process specifically focused on IDNs and in particular, IDN variants.

Rationale for Recommendation xx (rationale 5): For similar reasons as indicated in rationale 4 (i.e., security and stability, that IDN variants should be considered as identical), the Working Group believes that second-level IDN variants should only be allocated (or reserved for allocation) to the same registrant. This applies both when it is a certain second-level label under multiple variant IDN TLDs (e.g., s1 under {t1, t1v1, …}, e.g., s1.t1 and s1.t1v1) and variants at the second-level derived from the registry operator’s approved IDN table (e.g., all allocatable second-level labels {s1, s1v1, …} under all allocated variant TLD labels {t1, t1v1, …})[[64]](#footnote-64). However, the Working Group, in taking note of public comments received from the SSAC, agrees that second-level variants should not be required to behave exactly the same. Ensuring that second-level domains behave the same has not been found to be technically feasible in the DNS. In addition, there are practical reasons for second-level variants to not be the same (e.g., Simplified and Traditional Chinese second-level variants could have the content on the respective web pages available in Simplified or Traditional Chinese, consistent with the DNS label).

### **c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

None.

### **d. Dependencies/relationships with other areas of this report or external efforts**

* Work may be initiated by the GNSO Council in reaction to the IDN Scoping Team Final Report[[65]](#footnote-65). The Working Group had performed much of its work on IDNs prior to the initiation of the Scoping Team. As such, the Working Group has elected to deliver its recommendations, aware that subsequent work may be convened.

## 2.7.6 Security and Stability

### **a. Recommendations and/or implementation guidelines**

Affirmation xx (Rationale 1): The Working Group affirms Principle A from the 2007 policy, which states: “New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way.”

Affirmation xx (Rationale 1): The Working Group affirms Recommendation 4 from the 2007 policy, which states: “Strings must not cause any technical instability.”

Recommendation xx (Rationale 1): ICANN must honor and review the principle of conservatism when adding new gTLDs to the root zone.

Recommendation xx (Rationale 1): 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.

Implementation Guidance xx (Rationale 1): 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.

Implementation Guidance xx (Rationale 2): 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.”

Implementation Guidance xx (Rationale 2): ICANN should investigate and catalog the long term obligations for root zone operators of maintaining a larger root zone.

Implementation Guidance xx (Rationale 2): The Office of the Chief Technology Officer (OCTO) should consult with PTI, the Root Zone Manager, the root operators via RSSAC, and the larger DNS technical community on the implementation of these recommendations.

Implementation Guidance x (Rationale 2): ICANN should continue developing the monitoring and early warning capability with respect to root zone scaling.

Recommendation xx (Rationale 3): In connection to the affirmation of Recommendation 4, Emoji in domain names, at any level, must not be allowed.

Implementation Guidance xx (Rationale 4): 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.

### **b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmations xx-xx, Recommendations xx-xx, and Implementation Guidance xx (Rationale 1): In delegating new gTLDs, the Working Group agrees with the RSSAC that “trouble free access to the root zone is one of the very few things that are critical for all Internet users,” and therefore, ICANN should honor the principle of conservatism when adding new gTLDs to the root zone. The Working Group supports both the RSSAC and SSAC advice that an overall cap of 1000 annually is not the appropriate measure of stability, rather, it is the rate of delegation (adding names to the root).[[66]](#footnote-66) The Working Group recommends that further work be done on establishment of an appropriate rate of delegation from a technical standpoint. Although the Working Group discussed operational and community concerns about the ability to evaluate new gTLDs, it noted that the recommendations in this section relate only to the technical concerns of rating or capping the adding of new gTLDs to the root zone, from a Security and Stability risk assessed perspective.

Rationale for Implementation Guidance xx-xx (Rationale 2): The Working Group supports the recommendations proposed by the SSAC that 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. The Working Group also agrees with the SSAC recommendation that ICANN should investigate and catalog the long term obligations of maintaining a larger root zone. In addition, in accordance with the comments received from ICANN’s Office of the Chief Technology Officer (OCTO), the Working Group recommends that OCTO consult with PTI, the Root Zone Manager, the root operators via RSSAC, and the larger DNS technical community on these recommendations.

With respect to an early warning system, the Working Group notes the ICANN Org comments that the ICANN Office of the Chief Technology Officer is researching the design of an “early warning system” that could monitor several aspects of the root server system. ICANN Org noted that It is possible, though not assured, that such a system could monitor for possible signs of stress on various aspects of the root server system that could result from increased size of the root zone. The Working Group notes that ICANN Org emphasized that this research is in a very early, exploratory stage, and the design of any possible “early warning system”, as well as its capabilities, are still unknown.

Rationale for Recommendation xx (Rationale 3): The Working Group agreed that it supports the SSAC position that emoji in domain names at any level should not be allowed.[[67]](#footnote-67) The Working Group discussed the comments from the Registry Stakeholder Group that the Working Group’s recommendations should not interfere with already registered emoji second level domains (SLDs) in gTLDs. The Working Group noted that recommendations relating to already registered emoji SLDs would not be in its jurisdiction.

Rationale for Implementation Guidance xx (Rationale 4): The Working Group agreed that the application submission system should do all feasible algorithmic checking of TLDs, noting that ICANN Org in its comments agreed that from a system development perspective, automation could be built into the application system to check applied-for gTLDs against specific lists, such as the Reserved Names list, ISO-3166 list, and the Root Zone LGR. ICANN Org further noted that some level of algorithmic checking of applied-for gTLDs is also possible. The availability of a deterministic list of labels and whether the RZ-LGR is defined for the scripts of these labels would determine the complexity of the implementation of algorithmic checks.

### **c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

None.

### **d. Dependencies/relationships with other areas of this report or external efforts**

* **Recommendations included in section xx Applicant Reviews: Technical/Operational, Financial and Registry Services; section xx Registry System Testing; and section xx Name Collisions support the policy that “Strings must not cause any technical instability.”**
* **This section includes implementation guidance that 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.** Further discussion and recommendations regarding IDNs are included in section xx..

2.7.7 Applicant Reviews: Technical/Operational, Financial and Registry Services

**a. Recommendations and/or implementation guidelines**

Affirmation xx (rationale 0): The Working Group affirms several Principles and Recommendations from the 2007 policy relative to Applicant Reviews:

* Principle D: “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.”
* Principle E: “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.”
* 2007 Recommendation 1: “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.”
* 2007 Recommendation 9: “There must be a clear and pre-published application process using objective and measurable criteria.”
* 2007 Recommendation 18 (with slight modification): “If an applicant offers an IDN service, then ICANN’s *then current* IDN guidelines must be followed.”

**Overall Evaluation**

Recommendation xx (rationale 1): Evaluation scores on all questions should be limited to a pass/fail scale (0-1 points only).

Recommendation xx (rationale 2): All application evaluation questions and any accompanying guidance must be written such that it maximizes predictability and minimizes the likelihood of Clarifying Questions (CQs).

Implementation Guidance xx (rationale 2): 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[[68]](#footnote-68).

Recommendation xx (rationale 2): 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.

**Technical and Operational Evaluation**

Affirmation xx (with modification) (rationale 3): 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 *and operational* capability to run a registry operation for the purpose that the applicant sets out*, 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.[[69]](#footnote-69)*

Affirmation xx (rationale 4): While affording the improvements to clarity that will result from Recommendation xx, ICANN org should retain the same substantive framework for the technical and operational questions utilized in the 2012 round of the New gTLD Program. The exception to this affirmation is Q30b - Security Policy.

Implementation Guidance xx (rationale 5): 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 AGB.[[70]](#footnote-70)

Recommendation xx (rationale 6): The technical and operational evaluation must be done in an efficient manner as described in the Implementation Guidance below.

Implementation Guidance xx (rationale 6): 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.

Recommendation xx (rationale 7): Consistent with Implementation Guidance xx, 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.

Implementation Guidance xx (rationale 7): 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-evaluated RSP during the evaluation phase, and actually selects its chosen pre-evaluated RSP during the transition to delegation phase.

Recommendation xx (rationale 8): When responding to questions, applicants must identify which services are being outsourced to be performed by third parties.

Recommendation xx (rationale 9): The technical and operational evaluation must also consider the total number of TLDs and expected registrations for an applicant’s given RSP.

**Financial Evaluation**

Recommendation xx (rationale 10): 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.

Implementation Guidance xx (rationale 10): 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.

Implementation Guidance xx (rationale 10): 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.

Implementation Guidance xx (rationale 10): 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 xx. This self-certification will serve as evidence that the applicant has the financial wherewithal to support its application for the TLD.

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 is 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.

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 xx.

Affirmation (with modification) (rationale 10): The Working Group affirms Recommendation 8 from the 2007 policy, which states: “Applicants must be able to demonstrate their financial and organizational operational capability *in tandem for all currently-owned and applied-for TLDs that would become part of a single registry family.*”

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).

Implementation Guidance xx (rationale 10): The following is a tentative but exhaustive set of financial questions:

* “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 multiple TLDs where the registries are dependent upon the sale of registrations” (0-1 scoring) (publicly posted).

**Registry Services**

Recommendation xx (rationale 11):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 *Fast Track RSEP Process and Standard Authorization Language[[71]](#footnote-71)* page as of the drafting of this report and as updated from time to time.

Recommendation xx (rationale 12):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.

Implementation Guidance xx (rationale 12):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).

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmation xx (rationale 0): The Working Group believes that the policy recommendations included in Principles D and E and Recommendations 1, 9, and 18 continue to be appropriate in the context of applicant reviews and therefore affirms these Principles and Recommendations for subsequent procedures.

**Overall Evaluation**

Rationale for Recommendation xx (rationale 1): The Working Group agreed with a recommendation from ICANN org to simplify the scoring framework. The input[[72]](#footnote-72) noted that the 2012 scoring framework “...added complexity to the evaluation process with little benefit. ICANN recommends defining the criteria such that a passing score equates to the desired amount of capability to run a registry, and removing the option for 2 points.” This input was in respect of the technical and operational evaluation, but the Working Group believes that it applies equally to the financial evaluation as well.

Rationale for Recommendation xx-xx (rationale 2): The Working Group believes that in support of transparency, the Clarifying Questions (CQs) and responses to those CQs should be published for all publicly posted application questions. However, the Working Group recognizes that CQs and their responses for publicly posted application questions may inadvertently share private information. Respecting the privacy and confidentiality of responses is important.

The Working Group believes that the number of CQs in the 2012 round were excessive, indicating a lack of clarity in the way that the application questions were phrased and/or presented. Accordingly, there is support for a thorough examination during the implementation of these policy recommendations of why there were so many CQs in 2012 and how they can be significantly reduced in future rounds. This review should be completed prior to the finalization of the Applicant Guidebook and duly considered in adjusting the questions as applicable.

**Technical and Operational Evaluation**

Rationale for Affirmation xx (with modification) (rationale 3): This modification is intended to make it clear that an applicant is able to provide its own technical infrastructure or to leverage a pre-evaluated RSP.

Rationale for Affirmation xx (rationale 4): The Working Group believes that the substantive elements of the technical and operational questions provide the correct basis for evaluating whether an applicant or its RSP have the requisite technical and operational capabilities.

Rationale for Recommendation xx (rationale 6): In the 2012 round of the New gTLD Program, all applications were evaluated independently and individually, with all evaluation steps repeated for applications that were essentially identical and/or shared the same Registry Service Provider (RSP). The Working Group believes that aggregating and consolidating evaluations as much as feasible will help correct what was perceived as a great source of inefficiencies for ICANN org and applicants, as well as potentially a source for inconsistencies in evaluations.

Rationale for Recommendation xx (rationale 7): In the 2012 round of the New gTLD Program, all applications were evaluated independently and individually, resulting in evaluation steps being repeated for applications that shared the same Registry Service Provider (RSP). This inefficiency is expected to be reduced greatly by introducing an RSP Pre-Evaluation Process, though the Working Group recognizes that applications may still require some level of evaluation if they contain specific or unique characteristics.

Rationale for Recommendation xx (rationale 8): The Working Group believes that in order to reduce the risk of misinterpretation or ambiguity, it is important to understand if a party other than the applying entity will be providing a specific service.

Rationale for Recommendation xx (rationale 9): The Working Group believes that it is important for the security and stability of the DNS to assess an RSP’s ability to scale to address growth in the number of registries the RSP supports, as well as growth of domains under management within those registries. The Working Group acknowledges that it may be challenging to assess scalability.

**Financial Evaluation**

Rationale for Recommendation xx-xx, Implementation Guidance xx-xx and Affirmation with modification xx (rationale 10): The Working Group believes that the way the financial evaluation was framed in the 2012 round did not meaningfully assess the applicant’s financial capabilities. The applicant’s financial capabilities were assessed against a projections model, which was completed at the applicant’s discretion, and drove consideration of funding, costs and the sizing requirements for Continuing Operations Instrument (COI). While the Working Group agreed with ICANN org that ICANN org is not in a position to evaluate an applicant’s business model and projections, this meant that the plan was not questioned during the evaluation process. The Working Group believes that in most cases, registries have not seen their delegated TLDs match the projections contained in their applications. As a result, the Working Group has proposed a model that while streamlined, is expected to more meaningfully assess an applicant’s long term financial capabilities to support its chosen registry model.

The Working Group believes that basing the financial evaluation off of the financial projections model was also problematic in that it seemed to assume that the registry would be sustained by third party domain registrations. As was demonstrated in the 2012 round, there are many registries that are not following that type of registry model. The Working Group believes that the applicant is in the best position and has the proper incentives to ensure there is adequate funding for the applicant’s registry model type to support at least the critical registry services, even in worst-case scenarios. However, the Working Group believes that there must at least be self-certification of this assessment by the applicant, where that applicant meets certain thresholds of trust. If those thresholds are not met, then it makes sense that a third party will instead need to certify the applicant meets the financial capability goals. The Working Group also believes that it is important to have a holistic understanding of the applicant’s funding, relative to the overall number applications being submitted.

**Registry Services**

Rationale for Recommendation xx (rationale 11): Question 23, which is where applicants provided the proposed registry services needed to support their registry, was a source of applicant confusion where over 50% of applications required CQs. With the open text nature of the question, there was also difficulty in translating the applicant’s responses into contractual language. In the 2012 round, the proposed registry services were highly homogenous and provided by a small set of RSPs. The Working Group believes that this process can be greatly simplified by relying on a set of pre-approved registry services (e.g., selected by checkbox rather than an open text field). The registry services contained in the base Registry Agreement and those that have been shown to be regularly approved via the RSEP Process make sense to be included on the pre-approved list.

Rationale for Recommendation xx (rationale 12): The Working Group agreed that applicants should be able to submit non pre-approved registry services, with some believing that applicants should be encouraged or even required to submit all proposed registry services at the time of application submission. This recommendation is intended to minimize the impact on applicants that submit non pre-approved registry services by ensuring that they are not subject to undue delays or costs for any initial assessments and that if an extended review is needed, that the RSEP Process be no different than for an existing registry.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

Rationale for Implementation Guidance xx (rationale 5): In reviewing public comments, concerns were expressed about the preliminary recommendation to eliminate the requirement for applicants to submit their security policy. The Working Group believes that requiring applicants to submit their security policy introduces risk to applicants, in the event that the policy falls into the wrong hands. However, the SSAC expressed concerns that removing this requirement would weaken the ability to evaluate applicants’ expertise to assure the secure and stable operation of the registry. The Working Group considered how to meet the spirit of the SSAC’s concerns without requiring applicants to provide the full security policy. There were suggestions of on-site visits, posing yes/no questions or check boxes, asking how often the policy is activated and reviewed/updated as examples. The Working Group did not agree on the precise method for balancing the concerns of applicants and the SSAC, but believe they are both important considerations. The Working Group believes that the evaluation process should continue to validate the adequacy of an applicant’s security policy, which is consistent with the goal to allow applicants to demonstrate its expertise and assure the secure and stable operation of the registry.

**d. Dependencies/relationships with other areas of this report or external efforts**

* **This section includes recommendations to maintain the substantive technical and operational evaluation. Protections against registry failure, including registry continuity, registry transition, and failover testing continue to be important registrant protections. Further discussion of registrant protections is included in section xx.**
* **The Working Group has recommended that elements of technical and operational capability can optionally be evaluated in advance through the RSP Pre-Evaluation Program. Additional discussion and recommendations related to the RSP Pre-Evaluation Program are included in section xx.**

## 2.7.8 Name Collisions

### **a. Recommendations and/or implementation guidelines**

Affirmation xx (Rationale 1): The Working Group affirms Recommendation 4 of the 2007 policy, which states: “Strings must not cause any technical instability.”

Recommendation xx (Rationale 2): 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.

Affirmation xx (Rationale 3): 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 controlled interruption duration and the required readiness for human-life threatening conditions for currently delegated gTLDs and future new gTLDs.[[73]](#footnote-73)

Implementation Guidance (Rationale 5): 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.

Implementation Guidance (Rationale 5): 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.

Implementation Guidance xx (Rationale 4): 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.

Implementation Guidance xx (Rationale 6): 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.

### **b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmation xx (Rationale 1): In its deliberations the Working Group agreed that the policy goal continues to be what it was in 2007, which is that any string must not cause any technical instability. The Working Group thinks that still remains an appropriate objective, and therefore affirms Recommendation 4 from the 2007 policy.

Rationale for Recommendation xx (Rationale 2): The Working Group agreed that the recommendation that ICANN must include a mechanism to evaluate the risk of name collisions in the TLD evaluation process as well during the transition to delegation phase is still relevant, with the addition of the requirement for such a mechanism to be ready prior to the next application period. The Working Group agreed that the requirement for a mechanism would promote predictability for applicants and other parties. In response to concerns raised in comments, the Working Group agreed that it did not have to recommend what the mechanism is.

Rationale for Affirmation xx (Rationale 3): In its deliberations the Working Group noted that while there was some support for some aspects of a new mitigation strategy relating to evaluation of high and aggravated-risk strings, and disabling CI, there was considerable disagreement concerning the form of a new mitigation framework. The Working Group noted that in its Final Report,[[74]](#footnote-74) JAS Global Advisors does believe that the previous mitigation measures have worked. The Working Group noted also that no data that has been presented has shown that the previous mitigation measures haven’t worked. The Working Group acknowledged that there are a number of groups that think that the launch of the next round should be dependent on the outcome of the NCAP studies, while noting that at the time of deliberation it was unclear whether any of the NCAP studies would be completed by the time subsequent gTLDs are ready to launch.

With respect to the NCAP, the Working Group reviewed the Board resolution on its creation as well as in directing ICANN org to initiate Study 1.[[75]](#footnote-75) The Working Group agreed that it is up to the ICANN community and ICANN Board of Directors to determine any dependencies between the NCAP and the next round of new gTLD applications. To gain some clarification from the ICANN Board concerning possible dependencies with the ongoing work of the NCAP, the GNSO Council sent a letter on 20 September 2019 requesting guidance from the ICANN Board of Directors concerning its views related to “dependencies, if any, between the NCAP and the ongoing policy work of the New gTLD Subsequent Procedures PDP.”[[76]](#footnote-76) In its response on 1 November 2019 Cherine Chalaby, then Chairman of the ICANN Board, noted that the “Board has not sought to establish a new dependency on completion of the PDP work based on commissioning NCAP Study 1”, which had not yet started at that time, but that “upon completion of Study 1, the Board can determine in consultation with the community whether additional NCAP work is necessary and, if so, which elements should be a dependency for any of the other future milestones noted in your letter.”[[77]](#footnote-77) At the time of the Working Group deliberations on the public comments the GNSO Council had not yet sent its letter to the ICANN Board, but the Working Group agreed that it needed to plan for a circumstance where the NCAP work is either not completed or they choose not to go on with Study 2 or 3, or there are no new recommendations coming out of Study 1.

The Working Group notes that ICANN org, in cooperation with the NCAP Discussion Group, has since completed its Study 1, leveraging an outside consultant. The consultant who produced the Study 1 report made the following draft conclusions relating to Studies 2 and 3: “Regarding Study 2 analyzing datasets is unlikely to identify significant root causes for name collisions that have not already been identified. New causes for name collisions are far more likely to be found by investigating TLD candidates for potential delegation on a case by case basis. Regarding Study 3, the review of prior work has not identified any new mitigation strategies for name collisions to be tested. Also, controlled interruption has already proven an effective mitigation strategy. Without a compelling new mitigation strategy to consider, Study 3 does not seem to be needed at this time. All of that being said, this does not mean further study should not be conducted into name collision risks and the feasibility of potentially delegating additional domains that are likely to cause name collisions. Most notably, the Study 3 question of how to mitigate name collisions for potential delegation of the corp, home, and mail TLDs is still unresolved. However, the proposals for Studies 2 and 3, which were developed years ago, do not seem to be effective ways of achieving the intended goals.”

Given that the Working Group did not agree on a new mitigation framework, 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.

Rationale for Implementation Guidance xx (Rationale 5): The Working Group agreed that 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 strings in advance of the next application window opening and whether it would require a specific name collision mitigation framework. However, to the extent possible, all applied-for strings should be subject to a DNS Stability evaluation to determine whether they represent risk of name collision. The Working Group’s justification for including this Implementation Guidance is that high-risk strings are likely to cause technical instability by definition, so these should not be able to be delegated. In addition, the Working Group agreed that identifying high-risk and aggravated-risk strings early in the process would promote predictability for applicants and other parties to the extent possible.

Rationale for Implementation Guidance xx (Rationale 4): The Working Group agreed that 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. The Working Group reviewed the SSAC’s advice in SAC090 and agreed that Recommendation 2, part 3 may provide guidance concerning the development of criteria and a test.[[78]](#footnote-80)

The Working Group acknowledges that the Name Collision Analysis Project work in relation to Board Resolutions 2017.11.02.29 - 2017.11.02.31 is ongoing and that the Board advised the Working Group in public comment on the Subsequent Procedures Initial Report to work together with the NCAP Discussion Group on the topic of name collisions. Accordingly, some Subsequent Procedures Working Group members are participating in the NCAP.

Rationale for Implementation Guidance xx (Rationale 6): The Working Group agreed that if CI for a specific label is found to cause disruption, ICANN may decide to disable CI for that label while the disruption is fixed, provided that the minimum CI period is still applied to that string. The Working Group noted that this recommendation is one on which the Working Group’s Work Track 4 reached consensus. The Working Group agreed that there was support to include this recommendation as Implementation Guidance.

### **c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

In its deliberations, the Working Group discussed those comments to the Initial Report, including from the ALAC, that said that the NCAP work should be completed before any new round begins.[[79]](#footnote-81) Subsequent to those deliberations and to gain some clarification from the ICANN Board concerning possible dependencies with the ongoing work of the NCAP, the GNSO Council sent a letter on 20 September 2019 requesting guidance from the ICANN Board of Directors concerning its views related to “dependencies, if any, between the NCAP and the ongoing policy work of the New gTLD Subsequent Procedures PDP.”[[80]](#footnote-82) In its response on 01 November 2019 Cherine Chalaby, then Chairman of the ICANN Board, noted that the “Board has not sought to establish a new dependency on completion of the PDP work based on commissioning NCAP Study 1”, (which had not yet started at that time), but that “upon completion of Study 1, the Board can determine in consultation with the community whether additional NCAP work is necessary and, if so, which elements should be a dependency for any of the other future milestones noted in your letter.”[[81]](#footnote-83)

Since its deliberations on the comments to the Initial Report, the Working Group has continued to discuss the issue of whether the completion of the NCAP studies is a contingency for the Working Group to complete its work. In reviewing the NCAP’s work as well as the Board’s response to the GNSO Council, the Working Group believes that the completion of the NCAP’s studies and SSAC work are not necessarily a contingency for the PDP Working Group to complete its work, but as the Board notes, “the Board can determine in consultation with the community whether additional NCAP work is necessary and, if so, which elements should be a dependency for any of the other future milestones”.

### **d. Dependencies/relationships with other areas of this report or external efforts**

* The recommendations in this section seek to promote security and stability of the DNS, a topic this is addressed more broadly in section xx.

## PACKAGE 5

2.7.1 Reserved Names

**a. Recommendations and/or implementation guidelines**

Affirmation xx (rationale 1): The Working Group affirms that following recommendations from the 2007 policy:

* Recommendation 5: “Strings must not be a Reserved Word.”
* Recommendation 2: “Strings must not be confusingly similar to an existing top-level domain.”

Affirmation xx (rationale 1): The Working Group supports continuing to reserve as unavailable[[82]](#footnote-84) for delegation those strings at the top level that were considered Reserved Names and were unavailable for delegation in the 2012 round.[[83]](#footnote-85)

Affirmation xx (rationale 2): The Working Group acknowledges the reservation at the top level of Special-Use Domain Names through the procedure described in IETF RFC 6761.[[84]](#footnote-86)

Recommendation xx (rationale 3): The Working Group recommends reserving as unavailable for delegation at the top level the acronym associated with Public Technical Identifiers, “PTI”.

Affirmation xx (rationale 1): 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. .

Recommendation xx (rationale 4): 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.[[85]](#footnote-87)

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmations xx-xx (rationale 1): The Working Group believes that the general framework created by the 2007 policy and subsequent implementation with respect to unavailable/reserved names at the top and second levels remains appropriate for subsequent procedures. Therefore, the Working Group affirms Recommendation 5 from the 2007 policy, which prohibits the use of “Reserved Word(s)”, as well as Recommendation 2 which prohibits strings at the top level that are confusingly similar to existing TLDs. The Working Group further affirms that strings that were unavailable at the top level in the 2012 round should remain unavailable and that strings at the second level that are on the then-current schedule of Reserved Names at the second level should continue to be reserved. In developing this affirmation, the Working Group considered the GAC Principles on New gTLDs and noted that the final version of the 2012 Applicant Guidebook took into account the GAC Principles, including provisions regarding unavailable/reserved names.

Rationale for Affirmation xx (rationale 2): The Working Group considered the reservation of Special Use Domain Names in the context of the recommendations from the SSAC contained in SAC090.[[86]](#footnote-88) The Working Group acknowledges work by the Internet Engineering Task Force with respect to Special-Use Domain Names, including documentation on how to establish that it is appropriate to reserve such a name, and the procedure for doing so as described in RFC 6761. Taking into account the limited and judicious usage of the RFC 6761 process, the Working Group acknowledges that ICANN reserves names in the New gTLD Program established as Special-Use Domain Names using the procedure described under RFC 6761.[[87]](#footnote-89)

Rationale for Recommendation xx (rationale 3): The Working Group considered that Public Technical Identifiers (PTI) was incorporated in August 2016 as an affiliate of ICANN with the primary responsibility of operating the IANA functions. The acronym “PTI” is not included in the list of unavailable/reserved names from the 2012 round because PTI had not yet been established at the time the list was developed. The Working Group recommends that for subsequent procedures, the string “PTI” should be reserved and unavailable for delegation at the top level.

Rationale for Recommendation xx (rationale 4): Specification 5, Section 2 of the New gTLD Registry Agreement requires registry operators to reserve two-character ASCII labels within the TLD at the second level. The Working Group notes developments regarding the registration of two-character domain names and recommends that ICANN update Specification 5, Section 2 to be consistent with these changes. Specifically, as of 1 December 2014, ICANN authorized all new gTLD registries to release all digit/digit, digit/letter, and letter/digit two-character ASCII labels for registration to third parties and activation in the DNS at the second level.[[88]](#footnote-90) Further, effective 13 December 2016, ICANN authorized all new gTLD registries to release for registration to third parties and activation in the DNS at the second level all two-character letter/letter ASCII labels not previously authorized by ICANN for release and not otherwise required to be reserved, subject to implementing “Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes.”[[89]](#footnote-91) The Working Group recommends updating Specification 5, Section 2 to reflect these authorizations and the “Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes.” The Working Group has reviewed relevant GAC Advice in relation to this issue as well as ICANN Org’s documentation explaining how implementation is consistent with GAC Advice.[[90]](#footnote-92) [[91]](#footnote-93) The Working Group understands that conversations regarding implementation continue to take place, and that Specification 5 could be updated, as necessary, to reflect any further developments.

In developing recommendations regarding reserved names, the Working Group reviewed and discussed relevant SSAC Advice, and specifically recommendations contained in SAC090.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group discussed a proposal included in public comment to reserve at the top level currency codes included in the International Organization for Standardization (ISO) 4217 list. One perspective presented within the Working Group was that currency codes should be reserved by ICANN until there is a clear agreement with the international Central Banks (e.g. through IMF or BSI) as to whether these codes could be delegated and to which entities, not excluding themselves. The Working Group did not come to agreement on any clear justification to recommend preventative measures for these codes. No clear risk or threat was identified in discussion. The Working Group noted that to the extent that an applicant applied for a string matching a currency code with the intent to use the TLD in association with the currency, there would be an opportunity for concerned parties to raise objections. GAC members could take action through GAC Early Warning or GAC Advice. The Working Group generally believed that these existing measures are sufficient to address potential concerns about confusion or misuse, and therefore did not make any recommendations to reserve currency codes.

The Initial Report requested community input on the possibility of removing the reservation of two-character letter-number combinations at the top level. The Working Group noted that in the 2012 round, digits were disallowed entirely, so any recommendation on this issue would be contingent on the removal of that additional restriction. The Working Group reviewed public comments on this issue, which included a substantial number of responses raising concern about potential confusion with country code top-level domains. The Working Group considered that one possible means of addressing potential confusion would be to conduct an analysis as part of the string similarity review. The Working Group ultimately did not come to a conclusion on this issue and therefore did not put forward a recommendation to eliminate reservation of two-character letter-number combinations at the top level.

**d. Dependencies/relationships with other areas of this report or external efforts**

* **Adopted policy recommendations from a separate Working Group regarding the top-level protections of International Governmental Organizations (IGOs), International Olympic Committee (IOC), and International Non-Governmental Organizations (INGOs), and RCRC Movement (Red Cross) will be integrated into the Applicant Guidebook.**[[92]](#footnote-94)
* The topic of Geographic Names at the Top Level is addressed in the Final Report of the Subsequent Procedures PDP WG’s Work Track 5. The Work Track 5 Final Report includes recommendations regarding the reservation of certain strings at the top level.

2.8.2 Limited Challenge/Appeal Mechanism

**a. Recommendations and/or implementation guidelines**

Affirmation xx (rationale 1): Recommendation 12 from 2007 states: “Dispute resolution and challenge processes must be established prior to the start of the process.” 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, the details of which must be published in the Applicant Guidebook.”

Recommendation xx (rationale 2): 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.[[93]](#footnote-95)

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.

The Working Group recommends that the limited challenge/appeal mechanism applies to the following types of evaluations and formal objections decisions[[94]](#footnote-96):

**Evaluation Challenges**

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

**Appeals of Formal Objections Decisions**

1. String Confusion Objection
2. Legal Rights Objection
3. Limited Public Interest Objection
4. Community Objection
5. Conflict of Interest of Panelists

Recommendation xx (rationale 3): In support of transparency, clear procedures and rules must be established for challenge/appeal processes as described in the Implementation Guidance below.

Implementation Guidance xx (rationale 4): 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 xx.

Implementation Guidance xx (rationale 5): 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 xx.

Implementation Guidance xx (rationale 6): The Working Group’s guidance on the arbiter for each type of challenge/appeal is summarized in Annex xx. 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 an 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.

Implementation Guidance xx (rationale 7): 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.[[95]](#footnote-97)

Implementation Guidance xx (rationale 8): All challenges and appeals except for the conflict of interest appeals should be reviewed under the “clearly erroneous”[[96]](#footnote-98) standard. Conflict of interests should be reviewed under a “de novo”[[97]](#footnote-99) standard.

Implementation Guidance xx (rationale 9): The Working Group’s guidance on the party bearing the cost of a challenge/appeal is summarized in Annex xx. 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.

Implementation Guidance xx (rationale 10): The Working Group’s guidance on the remedy for a successful challenge/appeal is summarized in Annex xx.

Recommendation xx (rationale 11): 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.

Implementation Guidance xx (rationale 11): A designated time frame should be established in which challenges and appeals may be filed. The Working Group’s guidance on the timeframe for filing appeals is summarized in Annex xx.

Implementation Guidance xx (rationale 11): The limited challenge/appeal mechanism should include a “quick look” step at the beginning of the process to identify and eliminate frivolous challenges/appeals.

Implementation Guidance xx (rationale 11): 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.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmation xx (rationale 1): The Working Group believes that it is important for New gTLD Program elements to be predictable for applicants and other interested parties. By establishing dispute resolution and challenge processes in advance, ICANN provides a greater degree of predictability. Therefore, the Working Group affirms Recommendation 12 from the 2007 policy, although to be consistent with Implementation Guidance provided in section xx Objections, the text has been modified to state that the details of these processes must be published in the Applicant Guidebook.

Rationale for Recommendation xx (rationale 2): In the 2012 application round, there was no challenge/appeal mechanism specifically designed to address decisions made as part of the New gTLD Program. The Working Group considered that in some cases, parties used ICANN’s Accountability Mechanisms to challenge the outcome of formal objections decisions from the 2012 round, and that following two such instances,[[98]](#footnote-100) [[99]](#footnote-101) the New gTLD Program Committee (NGPC) adopted a Final Review Mechanism for a limited set of formal objections.[[100]](#footnote-102) The Working Group noted that the NGPC recommended further consideration of this issue in developing policy for subsequent rounds: ". . . the development of rules and processes for future rounds of the New gTLD Program (to be developed through the multi-stakeholder process) should explore whether a there is a need for a formal review process with respect to Expert Determinations."[[101]](#footnote-103) The Working Group believes that a targeted and limited challenge/appeals process is an appropriate and necessary element of the New gTLD Program going forward. Such a mechanism will ensure that applicants and other interested parties have fair, clear, and predictable means to address specific types of actions or inactions that are inconsistent with the Applicant Guidebook.

This recommendation is consistent with Program Implementation Review Report recommendation 3.2.a, which states: "Explore a potential review mechanism for the next round." It is also responsive to CCT-RT Recommendation 35, which was directed at the Subsequent Procedures Working Group and passed through by the ICANN Board. Recommendation 35 states: “The Subsequent Procedures PDP should consider adopting new policies to avoid the potential for inconsistent results in string confusion objections. In particular, the PDP should consider the following possibilities: 1) Determining through the initial string similarity review process that singular and plural versions of the same gTLD string should not be delegated 2) Avoiding disparities in similar disputes by ensuring that all similar cases of plural versus singular strings are examined by the same expert panelist 3) **Introducing a post dispute resolution panel review mechanism**.”

Rationale for Recommendation xx and Implementation Guidance xx (rationale 3): The Working Group believes that challenges/appeals should be subject to clear procedures and rules in order to ensure transparency and predictability for all parties.

Rationale for Implementation Guidance xx (rationale 4): In general, the Working Group believes that parties affected by an evaluation or objections decision should have the opportunity to file a challenge/appeal under limited circumstances. The affected parties for each type of evaluation and objection under different circumstances are outlined in Annex xx.

Rationale for Implementation Guidance xx (rationale 5): The Working Group has provided a summary of specific types of actions or inactions that are inconsistent with the Applicant Guidebook for each type of evaluation and objection decision, and therefore should be eligible for challenge/appeal. Details are outlined in Annex xx.

Rationale for Implementation Guidance xx (rationale 6): The Working Group believes that it is important for the mechanism to remain lightweight and cost-effective, and therefore believes that it is appropriate to use the original entity/panel that conducted the evaluation or handled the objection to also consider the challenge/appeal. In both cases, the ultimate decision maker(s) within the entity/panel handling the challenge/appeal should be different than those that conducted the original evaluation or considered the original objection. The Working Group discussed whether there would be a large enough number of experts in all evaluation entities to ensure that a different individual(s) within the entity could serve as the arbiter of challenge. This question may require further consideration in the implementation phase. The Working Group considered a proposal in which an alternate evaluation provider/entity would consider the challenge. The Working Group noted, however, that in some cases there was only a single evaluation entity used in the 2012 round for a specific type of evaluation (for example, Community Priority Evaluation and the Application Support Program). The Working Group understands that there could be significant cost implications if additional providers needed to be onboarded in subsequent rounds solely for the purpose of addressing evaluation challenges. The Working Group considered the idea that in cases where there was a single evaluation provider, ICANN org could be the arbiter of a challenge. The Working Group did not come to a conclusion on whether this would be an appropriate path forward. On balance, the Working Group agreed that the “same-provider” approach would be the most efficient and cost-effective solution.

Rationale for Implementation Guidance xx (rationale 7): The Working Group acknowledges that there are potential costs and benefits to dispute resolution provider panels composed of one or three expert panelist(s). Panels containing three panelists may be more reliable and less likely to result in the inconsistent application of criteria, procedures, or outcomes compared to panels composed of a single expert. At the same time, these larger panels are more costly. The Working Group believes that parties to the appeal are in the best position to weigh the potential tradeoffs between cost and consistency and make this decision, and therefore recommends that they should collectively have the option to mutually agree whether the appeal of an objection is considered by a one- or three-expert 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.

Rationale for Implementation Guidance xx (rationale 8): The Working Group recognizes that reviews under the de novo standard would be time consuming and costly, and further that such reviews could substantially delay applications. The Working Group expects ICANN to have a thorough screening process to pick its evaluators/panelists and believes that deference should be given to the determinations that evaluators/panels make. Therefore, it believes that the clearly erroneous standard is sufficient and appropriate in most cases. As an exception, the Working Group believes that determinations related to panelists’ conflict of interest should use the de novo standard of review because the original determination could be made by the party against whom the assertion of a conflict is made.

Rationale for Implementation Guidance xx (rationale 9): The party bearing the cost of the challenge/appeal will depend on what is being challenged/appealed, as well as the outcome of the challenge/appeal. In general, the Working Group believes that in the case of evaluation, the filing party should pay for the challenge. In general, the Working Group believes for appeals of objections decisions, the non-prevailing party should bear the cost of the proceeding fees charged by the third-party arbiter.

The Working Group considered whether it is appropriate to give partial refunds to those who are successful in challenging an evaluation decision. For example, one Working Group member proposed that a partial refund could be applied in limited cases where there is an additional finding of clear error on the part of the evaluator or fundamental failure to apply the standards. Other Working Group members noted challenges in implementing such a standard. Ultimately, the Working Group determined that the most appropriate path forward is to ensure that fees are modest, transparent, and flat, so that they are not an excessive burden on those who want to file challenges.

Rationale for Implementation Guidance xx (rationale 10): The remedy will be dependent upon what is being challenged/appealed, but the Working Group believes that it should typically involve a reversal of the original decision in some form, as outlined in Annex xx.

Rationale for Recommendation xx (rationale 11): The Working Group believes that the new challenge/appeals mechanism must operate in an efficient manner that does not result in excessive costs or process delays. The Working Group has provided Implementation Guidance for specific measures in this regard. Specifically, a “quick look” mechanism is proposed to avoid unnecessary costs and delays associated with frivolous challenges/appeals. In addition, the Working Group suggests that ICANN set a designated time frame in which challenges/appeals may be filed. Additional detail is available in Annex xx. Finally, the Working Group provides guidance that ICANN should prevent parties from filing multiple appeals for the same matter to avoid excessive delays.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group discussed different perspectives about whether ICANN should fund appeals filed by the ALAC on formal objections decisions. The Working Group considered that if the ALAC filed a Community Objection or Limited Public Interest Objection and the panel made a determination in the applicant’s favor that the ALAC felt was incorrect, the ALAC should be in a position to file an appeal. Some Working Group members raised concern that if ICANN funded the original formal objection and also funded an appeal that was ultimately unsuccessful, ICANN would effectively pay twice for the formal objection.

From another perspective, the ALAC has no independent funding, and therefore would be unable to file an appeal absent funding from ICANN. In this view, without funding to file appeals, the ALAC would be denied the ability to fulfill its duty under the Bylaws as the primary organizational constituency for the voice and concerns of the individual Internet user. Further, some believe that the question of standing for the ALAC to file a formal objection and appeal is beyond the scope of the Subsequent Procedures PDP WG.

The Working Group discussed several proposals on this topic, for example providing a numerical limit on the number of appeals that the ALAC could file or providing a budget for funding such appeals commensurate with the number of applications received. It was noted that it could be difficult for the ALAC to strategically allocate a limited budget for appeals because the relative timing of different appeals processes is difficult to predict. The Working Group also considered a proposal that would require the ALAC to convince ICANN to fund an appeal based on the merits of the case. ICANN would only fund appeals that it deemed likely to succeed. A variation on this proposal suggested that ICANN could delegate the responsibility to a third party to decide which ALAC appeals to fund. The Working Group ultimately agreed that it was most logical to give the ALAC a finite budget from which it could pay for appeals.

The Working Group discussed who should serve as the arbiter in cases where a party appeals the determination that an objection panelist has no conflict of interest. In such a case, the applicant or objector has submitted a filing with the provider stating that they believe that the panelist has a conflict of interest. The provider has determined that there is no conflict of interest. The applicant or objector then appeals this decision. The Working Group considered the possibility that a panel of ICANN community members could serve as the arbiter of such an appeal, but did not come to agreement on this point. The Working Group ultimately decided that the IRT is best positioned to make a decision on this matter.

In considering challenges to String Similarity Reviews, the Working Group reviewed elements of the IDN ccTLD Fast Track Process[[102]](#footnote-104) that evaluate whether a requested ccTLD string is confusingly similar to other existing or applied-for TLDs:

* Initial DNS Stability Evaluation conducted by a DNS Stability Panel. This evaluation includes a string similarity review.
* A second review can be requested by the applicant if the applied-for string is found to be confusingly similar by the DNS Stability Panel. An external and independent Extended Process Similarity Review Panel (“EPSRP”) conducts a second review using a different standard (described below).

For further discussion of IDN ccTLD Fast Track Process as it relates to the New gTLD String Similarity Evaluation, please see section xx of this report. In the context of challenges to String Similarity Reviews, the Working Group discussed whether it might be appropriate to consider challenges under a different standard than the original String Similarity Evaluation, and specifically whether the standard used by the EPSRP should be used for these challenges. The EPSPR conducts its analysis using a “behavioral metric.” The behavioral metric “provides quantitative and statistical evidence about the likelihood of confusing two possible strings and its methods are open and repeatable to enable replication by third parties.”[[103]](#footnote-105) The Working Group considered whether such a methodology could provide a more accurate determination of string similarity, but did not come to a conclusion on this issue.

**d. Dependencies/relationships with other areas of this report or external efforts**

* As described in this section, certain parties can challenge the outcome of specific elements of the evaluation process. The evaluation processes themselves are discussed further in other parts of this report:
  + Section xx Registrant Protections (Background Screening)
  + Section xx String Similarity
  + Annex xx Work Track 5 Final Report on Geographic Names at the Top Level
  + Section xx Applicant Reviews: Technical/Operational, Financial and Registry Services
  + Section xx Community Applications
  + Section xx Applicant Support Program
  + Section xx RSP Pre-Evaluation
* As described in this section, parties can appeal formal objections decisions. The objections processes themselves are discussed further in Section xx Objections.
* In Section xx Terms and Conditions, the Working Group recommends that Terms of Use must only contain a covenant not to sue if, and only if, the appeals/challenge mechanism is adopted.
* The Working Group discussed theIDN ccTLD Fast Track Process in considering the standard for challenges associated with the results of String Similarity Evaluations.

2.8.2 Dispute Resolution Procedures After Delegation

**\*\* This section is limited to the two Dispute Resolution Procedures available after delegation that the Working Group considers to be within its remit: The Registration Restrictions Dispute Resolution Procedure (RRDRP) and the Public Interest Commitment Dispute Resolution Procedure (PICDRP). The Trademark Post-Delegation Dispute Resolution Procedure is within the remit of the Review of All Rights Protection Mechanisms in All gTLDs PDP Working Group.**

**a. Recommendations and/or implementation guidelines**

Affirmation xx: The Working Group affirms that the Public Interest Commitment Dispute Resolution Procedure (PICDRP)[[104]](#footnote-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.

Recommendation xx: 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.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

The Working Group believes that post-delegation dispute resolution procedures continue to be appropriate mechanisms to provide those harmed by a new gTLD Registry Operator's conduct an avenue to complain about that conduct. The Working Group believes, however, that in support of transparency and predictability, clearer and more detailed documentation for these procedures should be published.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group did not conduct an exhaustive review of the PICDRP, because at the beginning of the PDP, no PICDRP cases had been filed. Since that time, only two cases had been filed, which the Working Group felt was too few to support an intensive review.

**d. Dependencies/relationships with other areas of this report or external efforts**

* This section provides recommendations about the PICDRP, the dispute resolution process associated with Registry Voluntary Commitments (RVCs) and mandatory Public Interest Commitments (PICs). RVCs and PICs are discussed further in section xx Registry Voluntary Commitments / Public Interest Commitments.

2.10.1 Base Registry Agreement

**a. Recommendations and/or implementation guidelines**

Affirmation xx: The Working Group affirms the following recommendations and implementation guidelines from the 2007:

* 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 K: “ICANN should take a consistent approach to the establishment of registry fees.”
* Implementation Guideline J: “The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing marketplace.”

Affirmation xx: The Working Group affirms the current practice of maintaining a single base Registry Agreement with “Specifications.”

Recommendation xx: 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. 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.

Recommendation xx: ICANN must add a contractual provision stating that the Registry Operator will not engage in fraudulent or deceptive practices.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

The Working Group supports maintaining relevant policy recommendations and implementation guidance from the 2012 round, including Recommendations 10, 14, 15, and 16 and Implementation Guidelines J and K. In particular, the Working Group emphasizes that in support of predictability for applicants, the base Registry Agreement should be available to applicants at the beginning of the application process (Recommendation 10). The Working Group reviewed the Program Implementation Review Report’s discussion of circumstances in the 2012 round that led to a series of revisions to the base Registry Agreement. The Working Group notes that the PIRR includes a recommendation aimed at addressing this issue (see Recommendation 5.1.a): “Explore the feasibility of finalizing the base Registry Agreement before applications are submitted or establishing a process for updating the Registry Agreement.”

The Working Group considered the issue of whether there should continue to be a single base Registry Agreement with specifications, or multiple Registry Agreements for different types of TLDs.[[105]](#footnote-107) Absent a clear and compelling argument to change existing practice and acknowledging the detrimental effects multiple Registry Agreements would have on ICANN org (e.g., contracting, contractual compliance), the Working Group affirms the current implementation of a single base Registry Agreement with specifications. The Working Group believes that the single base Registry agreement is consistent with principles of predictability, fairness, simplicity, consistency and efficiency.

The Working Group agreed that the New gTLD Program should encourage innovation and allow ICANN to be more accommodating towards additional types of business models. In support of this goal, the Working Group believes that ICANN should seek opportunities to improve processes related to obtaining exemptions to certain provisions of the RA. The Working Group notes that it is important for ICANN to make a balanced determination about whether proposed modifications are in the public interest. To assist with this determination, it may be beneficial to require a clear rationale accompanying any request for an exemption and explicitly define criteria for which changes would be allowed.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group discussed specific circumstances in which it may be appropriate for ICANN to grant Code of Conduct exemptions. In particular the Working Group considered a proposal that if a registry makes a good faith effort to get registrars to carry a TLD, but is unable to do so after a given period of time, the registry should have the opportunity to seek a Code of Conduct exemption so that it can be its own registrar without needing to maintain separate books and records and legally separate entities. The Working Group has not yet reached a conclusion on this proposal.

The Working Group considered a proposal from a Working Group member that there should be a question in the New gTLD application asking if the registry plans to request any exemptions to provisions of the base Registry Agreement. From one perspective, the public should have information about the registry’s intentions in this regard as early as possible. Some Working Group members noted that stating the intent to request exemptions in the application should not be a prerequisite for later requesting and obtaining exemptions, because the registry may decide at a later stage to seek exemptions. The Working Group did not reach any agreement on this proposal.

The Working Group considered a suggestion received through public comment that SLA metrics should be equal, regardless of exemptions to certain requirements in the RA. Some support was expressed in the Working Group, but no specific recommendation on this issue has been put forward.

Following the public comment period, the Working Group further discussed The Public Interest Commitment (PIC) Standing Panel Evaluation Report dated March 17, 2017 in the case of Adobe Systems Incorporated et al. v. Top Level Spectrum, Inc., d/b/a/ Fegistry, LLC et al., which states the following:

*Second, the Panel notes that PIC (3)(a) of Specification 11 imposes no obligation on Respondent as the Registry Operator itself to avoid fraudulent and deceptive practices. Third, the Panel finds that Respondent’s Registry Operator Agreement contains no covenant by the Respondent to not engage in fraudulent and deceptive practices.[[106]](#footnote-108)*

In formulating Recommendation xx, “ICANN must add a contractual provision stating that the Registry Operator will not engage in fraudulent or deceptive practices,” the Working Group discussed two options for implementing the recommendation: the addition of a PIC or a provision in the Registry Agreement. A new PIC would allow third parties to file a complaint regarding fraudulent and deceptive practices. ICANN would then have the discretion to initiate a PICDRP using the third-party complaint. If a provision regarding fraudulent and deceptive practices would be included in the RA, enforcement would take place through ICANN exclusively. The Working Group did not come to an agreement on this issue.

The Working Group discussed public comments received in relation to the issue of premium pricing of domain names. The Working Group agreed that transparency is an important principle to observe and that provisions in the RA and RAA exist to require this transparency, and that it is important for ICANN to enforce these provisions. The Working Group did not agree to any further recommendations on this topic.

**d. Dependencies/relationships with other areas of this report or external efforts**

* **Enforcement of provisions of the Registry Agreement is discussed in section xx** Contractual Compliance.
* This section discusses the possibility of introducing a mandatory Public Interest Commitment stating that the Registry Operator will not engage in fraudulent or deceptive practices. Mandatory Public Interest Commitments are discussed further in section xx Registry Voluntary Commitments / Public Interest Commitments.
* This section discusses a proposal to provide Code of Conduct exemptions to certain registries that have had difficulty getting registrars to carry a TLD. Additional proposals to support registries experiencing such challenges are included in section xx Registrar Support for New gTLDs.

2.4 Application Change Requests

**a. Recommendations and/or implementation guidelines**

Affirmation xx (rationale 1)**:** The Working Group supports maintaining a high-level, criteria-based change request process, as was employed in the 2012 application round.

Implementation Guidance xx (rationale 1): ICANN org should provide guidance on both changes that will likely be approved and changes that will likely not be approved.

Implementation Guidance xx (rationale 1): 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.

Recommendation xx (rationale 2): ICANN org must document the types of changes which are required to be posted for public comment and which are not required to be posted for public comment. The following is a non-exhaustive list of changes that must require public comment:

* The addition of Registry Voluntary Commitments in response to public comments, objections, GAC Consensus Advice, or GAC Early Warnings
* Changes to Registry Voluntary Commitments in response to public comments, objections, GAC Consensus Advice, or GAC Early Warnings
* Changes associated with the formation of joint ventures (see Recommendation xx below)
* Changes to the applied-for string (see Recommendation xx below)

In the 2012 round, public comment was not required for certain types of application changes.[[107]](#footnote-109) The Working Group believes that public comment continues to be unnecessary for these types of changes in subsequent rounds.

Implementation Guidance xx (rationale 2): Community members should have the option of being notified if an applicant submits an application change request that requires a public comment period to be opened at the commencement of that public comment period.

Recommendation xx (rationale 3): 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 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.

Implementation Guidance xx (rationale 3): 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.

Recommendation xx (rationale 4): 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 public comment period and opportunity for objection and, (e) the new string complies with all New gTLD Program requirements.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmation xx and Implementation Guidance xx-xx (rationale 1): The Working Group agreed that it is important to have aframework for considering and responding to change requests that is clear, consistent, fair and predictable. The Working Group generally agreed that the criteria-based framework[[108]](#footnote-110) developed to address change requests in the 2012 round met these objectives, and that a similar approach continues to be appropriate for subsequent procedures. The Working Group considered that it might be helpful to provide additional specific information to applicants about the way that different types of change requests will be handled in order to increase predictability and clarity. Specifically, the Working Group believes that ICANN org should provide additional guidance on the types of requests that will be accepted or rejected and the types of changes that will or will not require re-evaluation.

Rationale for Recommendation xx (rationale 2): The Working Group believes that it is important for the community to have an opportunity to review and provide input on certain types of proposed changes to an application. The Working Group’s recommendations highlight specific types of changes which must be subject to public comment.

To facilitate community input on application changes, the Working Group has provided Implementation Guidance in support of informing the community when an application change request triggers public comment.

Rationale for Recommendation xx (rationale 3): The Working Group sees merit in allowing applicants in a contention set to form a joint venture and make corresponding changes to the application. The establishment of joint ventures allows applicants to come to mutually beneficial arrangements and avoid resolving contention through auctions of last resort. The Working Group considered that the formation of joint ventures may cause delays and may require applicants to go through elements of evaluation again and incur resulting costs, but nonetheless considered this an appropriate change to the program that could help to reduce the need for auctions of last resort. The Working Group further suggests that ICANN org should consider 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 prior to the Initial Evaluation. The purpose is to save time and costs by facilitating evaluation (instead of re-evaluation) of the new combined venture or entity. The Working Group notes that Module 6 of the Applicant Guidebook, Top-Level Domain Application – Terms and Conditions, has a requirement that: “Applicant may not resell, assign, or transfer any of applicant’s rights or obligations in connection with the application.” This language would likely need to be reconsidered in light of Recommendation xx (rationale 3).

Rationale for Recommendation xx (rationale 4): The Working Group sees merit in allowing .Brands in contention to change their applied-for string, noting the importance of having appropriate guardrails in place to avoid gaming. Applicants for .Brand strings will be given the opportunity to continue with the application process for a change in string that is linked to their brand without the need for an auction of last resort to resolve contention, contingent on process guardrails which ensure that changes in the applied-for string occur only under narrow circumstances, limit impact on the New gTLD Program more broadly, and are subject to public comment and objections processes. The Working Group notes that when the .Brand applicant changes the applied-for string, the Working Group anticipates that the new string will also be considered a .Brand. During the implementation phase, further consideration should be given to whether any changes will be needed to Specification 13 criteria in this regard.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group considered different perspectives included in public comment on the Supplemental Initial Report and raised within the Working Group on whether an applicant should be able to change the applied-for string because the original string is in a contention set or in response to an objection. Those who supported this idea expressed that it could be an effective means for eliminating contention while avoiding the need for an auction of last resort. A number of those supporting the ability of an applicant to change the applied-for string provided caveats for this support. For example, some only favored allowing a change if the new string does not create a new contention set or result in the application entering into another existing contention set. Others suggested that the new string should be closely connected to the original string.

Those opposing the idea raised concerns that allowing applicants to change the applied-for string encouraged applicants to game the system and allowed applicants who opted to change their application to cherry-pick uncontended strings, providing an unfair advantage compared to those who follow the standard application process. Another concern raised is that by allowing applicants to change the applied-for string, it becomes more difficult for the public and the ICANN community to monitor applications and raise objections where appropriate. Finally, it was noted that any changes to the applied-for string would necessitate a repeat of the string similarity evaluation of all applications, causing delays and disruptions to all applications, including those that are not in a contention set. This would impact program timelines and costs.

The Working Group considered a more limited proposal that would allow .Brand TLDs to change the applied-for string as a result of a contention set under specific circumstances. The Working Group agreed that this narrow proposal provided a common sense solution to resolving contention among .Brand applications and included appropriate guardrails to protect against potential gaming. Following extensive discussion, this proposal was included in the recommendations above.

**d. Dependencies/relationships with other areas of this report or external efforts**

* **This section includes a recommendation to allow for the formation of joint ventures to resolve contention. Further discussion of** rivate resolution of contention is discussed in section xx Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets.
* This section addresses types of application changes that do and do not require public comment. Discussion of tools and processes associated with application comment are included in section xx Role of Application Comment.
* This section discusses certain types of application changes including adding or modifying Registry Voluntary Commitments in response to public comments, objections, GAC Consensus Advice, or GAC Early Warnings. These program elements are discussed in the following sections: section xx Role of Application Comment, section xx Objections, and section xx GAC Early Warning and GAC Consensus Advice, section xx Registry Voluntary Commitments / Public Interest Commitments.

2.8.1 GAC Consensus Advice and GAC Early Warning

**a. Recommendations and/or implementation guidelines**

Affirmation xx (rationale 0): 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.”

Implementation Guidance xx (rationale 2): 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 AGB 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.

Recommendation xx (rationale 1): As stated in the ICANN Bylaws, GAC Consensus Advice must include a clearly articulated rationale.[[109]](#footnote-111) 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.”[[110]](#footnote-112) To the extent that the rationale for GAC Consensus Advice is based on public policy considerations, well-founded merits-based public policy reasons must be articulated.[[111]](#footnote-113)

Recommendation xx (rationale 3): 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.[[112]](#footnote-114) 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.[[113]](#footnote-115)

Recommendation xx (rationale 4): The Working Group recommends that GAC Early Warnings are issued during a period that is concurrent with the application comment period.[[114]](#footnote-116) 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.

Recommendation xx (rationale 5): 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.

Recommendation xx (rationale 6): 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 and/or GAC Consensus Advice.[[115]](#footnote-117) Relevant GAC members are strongly encouraged to make themselves available during a specified period of time for direct dialogue[[116]](#footnote-118) with applicants impacted by GAC Early Warnings or GAC Consensus Advice to determine if a mutually acceptable solution can be found.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmation xx (rationale 0): The Working Group believes that the GAC Early Warning mechanism served its intended purpose of allowing GAC members to raise concerns about New gTLD applications, and further acknowledges the role of GAC Consensus Advice as defined in the ICANN Bylaws. The Working Group supports continuation of these mechanisms in subsequent rounds, subject to the recommendations included in this report.

Rationale for Implementation Guidance xx (rationale 2): GAC Consensus Advice in the 2012 round was provided for whole categories of applications, whereas the 2012 Applicant Guidebook states that Consensus Advice is to be provided for individual applications. The Working Group reviewed that when the GAC initially issued Consensus Advice on categories of strings in the 2012 round, applicants and other parties experienced uncertainty because it was unclear if the lists provided were exhaustive and was also unknown whether those applying for strings in related industries might be impacted. The Working Group believes that in support of predictability, if the GAC issues Consensus Advice on categories in the future, this Consensus Advice should be given by the GAC before the next version of Applicant Guidebook is finalized and published, so that prospective applicants and the Internet community fully understand the implications and scope of the Consensus Advice before the application process begins. To further support predictability for applicants, if GAC Consensus Advice is issued after the next version of Applicant Guidebook is finalized and published, 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.

In developing this Implementation Guidance, the Working Group considered input from individual GAC members on an early draft of the text.[[117]](#footnote-119) A number of GAC members emphasized that it is important for the GAC to have flexibility in providing Consensus Advice. Noting this input, the Working Group revised the Implementation Guidance to provide for flexibility while also encouraging the Board to consider all relevant factors when making a decision on GAC Advice.

Rationale for recommendation xx (rationale 1): The ICANN Bylaws require that Advice provided by Advisory Committees must be clear, unambiguous and accompanied by a rationale.[[118]](#footnote-120) The Working Group notes that CCT-RT Recommendation 33[[119]](#footnote-121) specifically references this requirement with respect to GAC Consensus Advice related to gTLDs. The Working Group emphasizes that by providing a rationale that is in line with the scope of GAC Consensus Advice described in the ICANN Bylaws, the GAC not only permits the Board to determine how to apply that Advice, but it also gives applicants an opportunity to remedy concerns raised in GAC Consensus Advice while still proceeding with the application process if those concerns have been sufficiently addressed. The Working Group further believes that the requirement to provide a rationale supports transparency and predictability, which are essential in processes related to the New gTLD Program.

Rationale for recommendation xx (rationale 3): The Working Group seeks to ensure that policy and future versions of the Applicant Guidebook are consistent with the applicable provisions of the ICANN Bylaws. The Working Group reviewed that as part of the 2016 revisions to the ICANN Bylaws, changes were made to Bylaws section 12.2, which describes the role of the GAC and GAC Consensus Advice. Noting that the Bylaws do not indicate that GAC Consensus Advice “will create a strong presumption for the ICANN Board that the application should not be approved,”[[120]](#footnote-122) the Working Group recommends that future versions of the Applicant Guidebook do not contain this language. By omitting the language referenced in this recommendation, the Board has greater flexibility to facilitate a solution that both accepts GAC Consensus Advice and allows for the delegation of a string if the underlying concerns that gave rise to the GAC Consensus Advice are addressed. Allowing for mutually acceptable solutions is consistent with the relevant section of the Bylaws.

The Working Group considered input from individual GAC members regarding this recommendation,[[121]](#footnote-123) noting that a number of GAC members, although not all, favored retaining the existing “strong presumption” language in the Applicant Guidebook. The Working Group appreciates this input but nonetheless believes that it is appropriate to omit the language for the reasons stated above.

Rationale for recommendation xx (rationale 4): The Working Group supports processes that provide the GAC with a fair and consistent opportunity to provide Early Warnings while also ensuring that that application process is transparent and predictable for all parties. The Working Group believes that by providing a clear timeframe in which GAC members may provide Early Warning(s) on applications, predictability will be increased in the application process for all parties.

Rationale for recommendation xx (rationale 5): The Working Group recommends that Early Warnings include a written explanation, so that it is clear why the Early Warning is being issued and how the applicant may potentially be able to address the underlying concerns. This measure provides greater transparency in the process and also enables applicants to propose specific changes to the application to address concerns raised by GAC members.

Rationale for recommendation xx (rationale 6): The Working Group believes that to the extent that applicants can address concerns raised in GAC Early Warnings or GAC Consensus Advice through proposed changes to the application, they must have the opportunity to make such changes and continue with the application process. Potential amendments could include the addition of Registry Voluntary Commitments (formerly PICs). Application changes would be subject to public comment and evaluation by ICANN as discussed in section xx Application Change Requests.

The Working Group believes that applicants and GAC members both benefit from the opportunity to engage directly in dialogue about the content of Early Warnings and GAC Consensus Advice, as well as underlying concerns that the GAC members may have about an application. This provides parties the opportunity to avoid misunderstandings, address any incorrect assertions of fact, and potentially come to a mutually agreeable solution.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group reviewed public comments submitted by the GAC in response to the Working Group’s Initial Report. The Working Group noted the GAC’s openness to discussion on opportunities to increase the transparency and fairness in the GAC Early Warning and GAC Consensus Advice process and further noted the GAC’s position that the PDP should not make recommendations on GAC activities. In discussion of these comments, Working Group members agreed that it is within the PDP’s remit to make recommendations regarding ICANN processes as they apply specifically to future rounds of the New gTLD Program. Therefore, the Working Group determined that it is appropriate to make recommendations with a focus exclusively on GAC Early Warning and GAC Consensus Advice as they apply to subsequent rounds.

On 4 May 2020, the GAC provided consolidated input from individual GAC members on the topics discussed at ICANN67, including GAC Early Warnings and GAC Advice.[[122]](#footnote-124) In this informal input, a number of commenters reiterated the important role the GAC Early Warning and GAC Advice play in the New gTLD Program. Some comments raised that the PDP should not make recommendations that limit the scope of GAC Advice. Another theme in the comments was concern raised by some about the draft recommendation to omit language from the Applicant Guidebook that GAC Consensus Advice “will create a strong presumption for the ICANN Board that the application should not be approved.” However, these concerns were not universal among commenters.[[123]](#footnote-125)

The Working Group considered recommendation 33 from the CCT-RT, which was directed in part at the Subsequent Procedures PDP WG and which the Board passed through to the targets of the recommendations, including the New gTLD Subsequent Procedures Working Group. Recommendation 33 states: “As required by the October 2016 Bylaws, GAC consensus advice to the Board regarding gTLDs should also be clearly enunciated, actionable and accompanied by a rationale, permitting the Board to determine how to apply that advice. ICANN should provide a template to the GAC for advice related to specific TLDs, in order to provide a structure that includes all of these elements. In addition to providing a template, the Applicant Guidebook (AGB) should clarify the process and timelines by which GAC advice is expected for individual TLDs.”

As noted in sub-section b above, the Working Group believes that recommendation xx is consistent with the CCT-RT’s recommendation that GAC Consensus Advice is “enunciated, actionable and accompanied by a rationale.” The Working Group has not yet made a decision about whether to provide further recommendations corresponding to the other elements of the CCT-RT recommendation, in particular regarding the proposed template for GAC Consensus Advice related to specific TLDs and clarification in the Applicant Guidebook regarding process and timelines for GAC Consensus Advice directed at specific TLDs.

The Working Group notes that the details of the CCT-RT recommendation state: "While the details should be left to the Subsequent Procedures PDP Working Group, the CCT believes there should be a mechanism created to specifically allow objections by individual members of the GAC and means to challenge assertions of fact by GAC members. Finally, some sort of appeals mechanism is imperative." The Working Group believes that creating the opportunity for dialogue between applicants and GAC members as part of the Early Warning and GAC Consensus Advice processes (Working Group recommendation xx) provides a potential means to “challenge assertions of fact by GAC members.” The Working Group further believes that the substantive appeals mechanism proposed in section xx Limited Challenge/Appeal Mechanism addresses the need for an appeals mechanism expressed by the CCT-RT.

**d. Dependencies/relationships with other areas of this report or external efforts**

* **This section includes a recommendation that applicants must be allowed to change their applications, including the addition or modification of Registry Voluntary Commitments (RVCs), to address GAC Early Warnings and/or GAC Consensus Advice. RVCs are discussed in section xx Registry Voluntary Commitments / Public Interest Commitments. Changes to applications are discussed in section xx** Application Change Requests.

2.5.4 Applicant Support

**a. Recommendations and/or implementation guidelines**

Affirmation xx *with modification* (rationale 1): With the addition of the text included in italics, the Working Group affirms Implementation Guideline B from 2007, which states: “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 *that qualify for applicant support*.”

Recommendation xx (rationale 2): 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. 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.[[124]](#footnote-126) 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:

* 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

Recommendation xx (rationale 3): 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.

Recommendation xx (rationale 4): 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.

Implementation Guidance xx (rationale 4): 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 Communication Period.[[125]](#footnote-127)

Implementation Guidance xx (rationale 4): 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[[126]](#footnote-128) as well as the 2012 implementation of the Applicant Support program.

Implementation Guidance xx (rationale 4): Outreach efforts should not only target the Global South, but also “middle applicants,” which are 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 “middle applicants” similar to those currently set forth in Criteria #1, Section 4 (Operation in a developing economy) of the Financial Assistance Handbook.[[127]](#footnote-129)

Implementation Guidance xx (rationale 4): 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.[[128]](#footnote-130)

Implementation Guidance xx (rationale 4): 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.

Implementation Guidance xx (rationale 4): The dedicated Implementation Review Team[[129]](#footnote-131) 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:

* Awareness and Education:
  + number of outreach events and follow up communications with potential applicants
  + level of awareness about the New gTLD Program/Applicant Support Program
  + level of interest expressed/number that considered applying
  + number of applicants
  + diversity of the applicant pool (including geographic diversity and IDNs)
  + number of service providers offering pro-bono assistance
* Approval Rate:
  + number of approved applicants
* Success of Launched gTLD:
  + 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.

Implementation Guidance xx (rationale 4): 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.

Recommendation xx (rationale 5): 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.”[[130]](#footnote-132)

Recommendation xx (rationale 6): ICANN org must develop a plan for funding the Applicant Support Program, as detailed in the Implementation Guidelines below.

Implementation Guideline xx (rationale 6): ICANN org should evaluate whether it can provide funds (as they did in 2012) or whether additional funding is needed for the Applicant Support Program in subsequent rounds.[[131]](#footnote-133)

Implementation Guideline xx (rationale 6): ICANN org should seek funding partners to help financially support the Applicant Support Program, as appropriate.

Recommendation xx (rationale 7): Unless the Support Applicant Review Panel (SARP) reasonably believes there was willful gaming, applicants who are not awarded Applicant Support (whether “Qualified” or “Disqualified[[132]](#footnote-134)”) 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.

Recommendation xx (rationale 8): The Financial Assistance Handbook[[133]](#footnote-135) or its successor, subject to the changes included in the above recommendations, must be incorporated into the Applicant Guidebook for subsequent rounds.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

The Working Group notes that CCT-RT Recommendation 32 states: “Revisit the Applicant Financial Support Program.” This recommendation is directed at the Subsequent Procedures PDP and passed through by the Board. The Working Group has extensively discussed the Applicant Support Program and has put forward the above recommendations to support improving the program in subsequent procedures.

Rationale for Affirmation xx with modification (rationale 1): As discussed in greater detail under the topic Application Fees, the Working Group supports the general approach to application fees taken in the 2012 round. Implementation Guideline B states that “Application fees may differ for applicants.” In the 2012 round, successful candidates to the Applicant Support Program were eligible for a reduced application fee. The Working Group supports maintaining a reduced application fee for Applicant Support recipients, and therefore affirms this Implementation Guideline with the addition of clarifying language.

Rationale for Affirmation xx with modification (rationale 2): The Working Group believes that financial assistance should continue to be provided to eligible applicants in subsequent procedures in order “to serve the global public interest by ensuring worldwide accessibility to, and competition within, the new gTLD Program,”[[134]](#footnote-136) as was the case in the 2012 round. The Working Group further supports ICANN’s facilitation of non-financial pro-bono assistance to applicants in need. The Working Group emphasizes that ICANN must conduct outreach and awareness-raising activities during the communications period to both potential applicants and prospective pro-bono service providers to ensure the success of this initiative. The Working Group believes that the high-level Applicant Support Program eligibility requirements from 2012 remain appropriate, namely that applicants must demonstrate financial need, provide a public interest benefit, and possess the necessary management and financial capabilities.[[135]](#footnote-137) The Working Group notes that the program was available to applicants regardless of location in the 2012 round and believes that this should continue to be the case, as there are prospective applicants in need of assistance around the world that may want to launch TLDs serving the public interest or an underserved community.

The Working Group notes that CCT-RT Recommendation 31 states: “The ICANN organization to coordinate the pro bono assistance program.” This recommendation is directed at the ICANN organization. The ICANN Board accepted the recommendation contingent on the recommendation from the New gTLD Subsequent Procedures PDP WG that the pro bono assistance program continue. Recommendation xx provides guidance that the Applicant Support Program’s pro bono assistance program should continue in subsequent procedures along with other elements of the program.

Rationale for Recommendation xx (rationale 3): The Working Group recognizes that the costs of applying for a TLD extend beyond the application fee and that these additional costs could be uncertain and prohibitive for applicants with limited financial resources. Therefore, the Working Group recommends that the Applicant Support Program provide financial assistance to cover additional fees associated with the application process.

Rationale for Recommendation xx and Implementation Guidance xx-xx (rationale 4): The Working Group believes that there there are opportunities for improvement in the outreach, awareness-raising, application evaluation, and program evaluation elements of the Applicant Support Program, as well as usability of the Program, and suggests that a dedicated IRT should be formed to focus on implementation of the Applicant Support Program.

The Working Group considered why there were a very limited number of applicants to the Applicant Support Program in the 2012 round and that only one applicant ultimately met the Program criteria to receive assistance. The Working Group believes that in the 2012 application round, the main factor was that there was a limited amount of time available to conduct outreach for the Program in between finalization of Applicant Support Program details and launch of the application window.[[136]](#footnote-138)

The Working Group reviewed and discussed recommendations contained in the report “New gTLDs and the Global South: Understanding Limited Global South Demand in the Most Recent new gTLD Round and Options Going Forward” by AMGlobal, which focuses on recommendations for the New gTLD Program to more effectively reach prospective applicants in the Global South and developing economies. While this report does not specifically discuss the Applicant Support Program, the Working Group notes that the recommendations from the report may still be applicable as the Global South and developing economies were and continue to be targets of the Applicant Support Program. The AMGlobal Report emphasizes the importance of timely and effective outreach and communications regarding the New gTLD Program to better reach potential applicants in the Global South and emerging markets. The Working Group believes that similar conclusions can be made about the Applicant Support Program.

The Working Group considered that ALAC Advice to the ICANN Board has emphasized the importance of outreach in the implementation of the Applicant Support Program.[[137]](#footnote-139) Observations by Working Group members from the 2012 round and community input reinforce the necessity of making sure that information about the Applicant Support Program is accessible to the target audience. The Working Group agrees that outreach and awareness-raising activities are critical to the success of the Program, and notes in particular that it is important to create awareness about different possible business models for operating a TLD.

The Working Group notes that CCT-RT Recommendation 30 states: “Expand and improve outreach into the Global South.” This recommendation is directed at the ICANN organization. The relevant Board Resolution mentions that the Subsequent Procedures may want to work on a definition of the Global South. Recommendation xx and Implementation Guidance xx focus on the importance of improved outreach consistent with the CCT-RT recommendation on this topic, although the Subsequent Procedures recommendations do not focus exclusively on the “Global South” or attempt to define this term.

The Working Group believes that “middle applicants” are an important potential target of the Applicant Support Program, because they may be better positioned to operate a TLD and may operate in a market that is more prepared for TLD expansion compared to potential applicants in underserved or underdeveloped regions, but at the same time may also require assistance in applying for a TLD. Therefore, the Working Group recommends that outreach efforts and application criteria target prospective applicants from these areas, noting that further work may be needed in the implementation phase to define the “middle applicant.”

The Working Group agrees with the PIRR that globally recognized procedures, for example from the World Bank, could potentially be adapted for use in the Applicant Support Program. The Working Group encourages the dedicated IRT to conduct further work to identify such procedures in the implementation phase. The Working Group emphasizes that it is important for the dedicated IRT to consult with relevant experts in the implementation of the Applicant Support Program in order to ensure that best practices are followed and knowledge about the target regions is appropriately leveraged.

The Working Group believes that the dedicated IRT should additionally work with experts to develop metrics to evaluate the success of the Applicant Support Program. The Working Group notes that CCT-RT Recommendation 29 states: “Set objectives/metrics for applications from the Global South.” This recommendation is directed at the Subsequent Procedures PDP and GNSO. The ICANN Board passed this recommendation through with the suggestion that the PDP could work with ICANN org on defining “Global South” or agree on another term to describe underserved or underrepresented regions or stakeholders in coordination with ICANN org. The Working Group notes that ICANN org is currently undertaking work to define and standardize usage of terminology related to underserved and underrepresented regions in ICANN org's work, with a focus on consistently using terminology across programs. The Working Group expects that the Implementation Review Team will continue to follow this work as it develops and draws on any applicable takeaways, as appropriate, in the implementation of the Applicant Support Program.

Without exclusively focusing on the Global South, the Working Group has considered possible metrics to define success of the Applicant Support Program, which avoids focusing solely on the number of applicants that are approved by the Applicant Support Program. This approach is in recognition that in some circumstances, potential applicants may not see a new gTLD as a priority, their locale lacks sufficient infrastructure to support a gTLD, or other factors that may prevent their pursuit of a gTLD.

This non-exhaustive list provided in Implementation Guideline xx may serve as a starting point for discussion as the dedicated IRT consults with experts in the implementation phase regarding metrics to evaluate the success of the Applicant Support Program.

The Working Group considered that in subsequent rounds it may be the case that there are not sufficient funds available to provide fee reductions to all applicants that meet threshold scoring requirements. The Working Group reviewed the 2012 approach[[138]](#footnote-140) to this issue as well as public comments received on the Working Group’s Initial Report,[[139]](#footnote-141) but did not come to an agreement on any specific recommendations in this regard. The Working Group believes that this topic should be considered further by the dedicated Implementation Review Team.

Rationale for Recommendation xx (rationale 5): The Working Group agrees with the Program Implementation Review Report conclusion that lessons learned from the implementation of other New gTLD Program evaluation panels should be applied, where applicable, to the SARP. As noted in the PIRR, possible areas of improvement include publication of processes, format of the final report, and documentation of rationale for decisions.

Rationale for Recommendation xx and Implementation Guidance xx-xx (rationale 6): There will need to be a clear plan in place for funding the Applicant Support Program. ICANN will need to evaluate the extent to which funds will be provided from the ICANN org budget and if additional funding is needed, should consider additional funding sources.

Rationale for Recommendation xx (rationale 7): In the 2012 round, unsuccessful candidates for the Applicant Support Program were not able to transfer their applications to the standard application process. If they were found to be ineligible for the Applicant Support Program, this decision marked the end of the application process for a New gTLD for that round. In public comment and Working Group discussions, a number of groups and individuals raised the concern that candidates who would have been a good match for the Applicant Support Program may have been deterred in the 2012 round because of this limitation. The Working Group agreed that given low application rates for Applicant Support in the 2012 round, it would be beneficial to adjust program rules to be more inviting to prospective candidates in the target groups. The Working Group believes that the opportunity to transfer an application is an important part of the equation to attract eligible applicants. The Working Group’s recommendation extends this option to any Applicant Support candidates who are not awarded Applicant Support, whether “Qualified” or “Disqualified[[140]](#footnote-142)”. The Working Group notes ICANN org’s concerns about this programmatic change, in particular that if there are no penalties or other mechanisms to prevent gaming and further, no geographic location criteria, it is more likely that there will be many ASP applications, which could impact costs to process applications and to fund applicants who do qualify, as well as the impact on program timelines. In considering how to address this concern, the Working Group included in the recommendation that if the SARP reasonably believes there was willful gaming, application transfer should not be permitted. The Working Group discussed additional potential measures to reduce the risk of gaming, for example a quick look mechanism like that discussed in section xx on Objections. The Working Group suggests that further consideration may be given to gaming prevention measures in the implementation phase.

Rationale for Recommendation xx (rationale 8): The Working Group believes that in support of transparency and predictability, the Financial Assistance Handbook should be published as part of the Applicant Guidebook.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group considered whether the Applicant Support Program should include the reduction or elimination of ongoing registry fees specified in [Article 6](https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html#article6) of the Registry Agreement for eligible candidates. The Working Group’s Initial Report included a preliminary recommendation that the Applicant Support Program should include coverage of such fees.[[141]](#footnote-143) The Working Group has removed this element in the above recommendations, noting that different perspectives were expressed on the topic in public comment on the Initial Report and in Working Group discussions.

Those that oppose coverage of registry fees note that financial support provided directly by ICANN in the 2012 round was limited to costs associated with the application process. In this view, the Applicant Support Program was never intended to subsidize registries, and further, this is not ICANN’s responsibility. From this perspective, there are security and stability concerns associated with registries that are not financially self-sustaining.

Those that support coverage of registry fees have expressed that ICANN should have an interest in the success of registries beyond the application process. From this perspective, a registry may be stable but may still require financial assistance to be successful. As an example, a registry with limited revenue could be supported through pro bono services from an EBERO registry service provider. The registry may be stable but still rely on coverage of registry fees to remain financially viable.

As a compromise, a proposal was put forward that ICANN should cover registry fees for a limited period of time. The Working Group did not come to any agreement on this proposal.

The Working Group welcomes community input on whether the Applicant Support Program should include the reduction or elimination of ongoing registry fees specified in [Article 6](https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html#article6) of the Registry Agreement for eligible candidates.

The Working Group noted that the recommendation to allow unsuccessful Applicant Support candidates to transfer to a standard application raises new questions about the timing of the Applicant Support process relative to the timing of the overall application evaluation process. The Working Group considered a proposal to address concerns about gaming associated with transfers. Under this proposal, applicants requesting support are notified before “reveal day" whether they qualify for the Applicant Support Program. If they do not qualify and decide to transfer to the standard application process, they are required to pay the full standard application fee. If there are multiple applications for the same string, all applicants for that string are only revealed after all applicants have paid their full fees. The Working Group considered that under this proposal, the Applicant Support Program applicant has no information to gain, and therefore is not in a position to game the system.

On 4 May 2020, the GAC provided consolidated input from individual GAC members on the topics discussed at ICANN67, including Applicant Support.[[142]](#footnote-144) In this informal input, most comments expressed support for the draft recommendations on this topic. Several GAC members also provided specific suggestions regarding recommendations on this topic, for example several comments encouraged providing greater detail in the definition of target populations.[[143]](#footnote-145)

**d. Dependencies/relationships with other areas of this report or external efforts**

* **The Working Group discusses in this section ICANN org’s work to define and standardize usage of terminology related to underserved and underrepresented regions in ICANN org's work, which may inform work conducted by the IRT.**
* This section addresses outreach and awareness-raising activities specifically related to the Applicant Support Program. Outreach and awareness-raising activities about the New gTLD Program more broadly are discussed in section xx Communications.

2.2.7 Metrics & Monitoring

**a. Recommendations and/or implementation guidelines**

Recommendation xx (rationale 1): 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.

Implementation Guidance xx (rationale 1): 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 Report[[144]](#footnote-146) 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.

Recommendation xx (rationale 2): 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.

Recommendation xx (rationale 3): ICANN org must further develop its Service Level Agreement (SLA) monitoring to allow for more robust ongoing monitoring of TLD operations.

Recommendation xx (rationale 3): ICANN org must publish anonymized, aggregate SLA monitoring data on a regular basis.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Recommendation xx (rationale 1): The Working Group agreed that fostering consumer choice, consumer trust, and market differentiation must continue to primary focal points for the New gTLD Program, and therefore areas around which measures of success should be established, data collected, and effectiveness measured. The PDP briefly sought to try and identify metrics for success but ultimately determined that this exercise is more appropriately completed during the implementation phase, in accordance with Board-approved recommendations of the CCT-RT. The Working Group believes that an implementation review team should determine the appropriate metrics, and the data[[145]](#footnote-147) required, to measure such metrics on a regular basis to help evaluate the New gTLD Program.

The Working Group recognizes that certain metrics may require the collection of additional data from the contracted parties which may not already be collected under the current Registry and Registrar Agreements. The Working Group therefore recognizes that ICANN Org may need to enter into discussions with the Contracted Parties during implementation to determine what, if any, data may be needed in the future to measure these metrics on an ongoing basis, and to include the collection and use of such data in any subsequent Registry and Registrar Agreements, provided that such collection and use is in accordance with applicable law.

Rationale for Recommendation xx (rationale 2): The Working Group believes that predictability is a key factor supporting the success of applicants as they proceed through contracting and delegation phases of the New gTLD Program. The Working Group understands that registries will be better positioned to successfully implement business plans if they have a clear understanding of how long steps of the contracting and delegation process will take. Therefore, the Working Group recommends that the ICANN organization publish and adhere to specific timeframes and deadlines throughout these processes to ensure predictability for registries and allow them to plan effectively.

Rationale for Recommendation xx and xx (rationale 3): The Working Group agreed with ICANN org’s recommendation that in order to streamline RST by removing certain tests, ICANN should be relying on ongoing monitoring of TLD operations against existing contractual requirements. In a public comment to the Working Group’s Initial Report, the SSAC noted that, “In general, it is preferable to discover major failures before delegation instead of after the TLD is in operation. Past performance is not a guarantee of future performance.” However, the Working Group believes that expanded operational testing in conjunction with more robust ongoing monitoring will better ensure that registries are able to meet SLAs. To support the development of recommendations on this topic and related topics, the Working Group requested that ICANN org provide the Working Group with statistics resulting from SLA monitoring and data on EBERO thresholds reached.[[146]](#footnote-148) The Working Group believes that from a transparency perspective and to support future policy development, the ongoing publication of similar data will benefit the ICANN community and the New gTLD Program. The Working Group noted that it could be beneficial to publish anonymized responses given in relation to failures in order to provide context for the statistics, for example if there was an error in the monitoring process. The Working Group encourages further consideration of this issue during the implementation phase.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

None identified for this topic.

**d. Dependencies/relationships with other areas of this report or external efforts**

* **Metrics to understand the impact of the New gTLD Program may impact future discussions related to section xx** Continuing Subsequent Procedures.
* Section xx Registry System Testing provides suggestions to streamline RST. This section notes ICANN org’s recommendation that in order to streamline RST, ICANN should be relying on ongoing monitoring of TLD operations against existing contractual requirements through SLA monitoring. Recommendations regarding SLA monitoring are included in this section. .
* Discussion of metrics specifically related to the Applicant Support Program is included in section xx Applicant Support Program

## **PACKAGE 6**

## 2.2.4 Different TLD Types

**a. Recommendations and/or implementation guidelines**

Recommendation xx: 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 eligibility[[147]](#footnote-149); Application evaluation process/requirements[[148]](#footnote-150); Order of processing; String contention[[149]](#footnote-151); Objections[[150]](#footnote-152); Contractual provisions.

* Different application types:
  + Standard
  + Community-Based (for different application questions, Community Priority Evaluation, and contractual requirements)[[151]](#footnote-153)
  + Geographic Names (for different application questions)[[152]](#footnote-154)
  + Specification 13 (.Brand TLDs) (for different application questions and contractual requirements)[[153]](#footnote-155)
* Different string types:
  + Geographic Names (for different application questions)[[154]](#footnote-156)
  + IDN TLDs (priority in order of processing)[[155]](#footnote-157)
  + IDN Variants[[156]](#footnote-158)
  + Category 1 - GAC Safeguards[[157]](#footnote-159)
* Different Applicant Types:
  + Intergovernmental organizations or governmental entities (for different contractual requirements)
  + Applicants eligible for Applicant Support[[158]](#footnote-160)

Recommendation xx: Other than the types listed in Recommendation xx, creating additional application types[[159]](#footnote-161) must only be done under exceptional circumstances. 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.

Implementation Guidance xx: 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 in Section xx. See also recommendation xx in Section xx Base Registry Agreement regarding processes for obtaining exemptions to certain provisions of the base Registry Agreement.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

The Working Group reviewed the types of applications, strings, and applicants that were either explicitly or implicitly identified in the 2012 round. This included standard and community-based application types described in the Applicant Guidebook, types implicitly identified in the base Registry Agreement through additional evaluation criteria (as was the case for geographic names) or different contractual provisions (governmental applicants), as well as the .Brand TLD type registry that was established in Specification 13 of the Registry Agreement. The Working Group supported continuing the overall approach used in the 2012 round in which types were identified based on specific programmatic needs, and corresponding program elements associated with these types were developed to meet the needs established.

In its deliberations leading to this recommendation, the Working Group discussed that creating strict additional categories of different TLD types will likely impact one or more aspects of the New gTLD Program (e.g., application requirements, evaluation, base Registry Agreement, post-delegation activities, etc.). As such, the creation of new types should not be taken lightly and must account for any differences through the entirety of the application, evaluation and delegation processes. There must be a clear justification for new types and benefits must outweigh the potential costs.

The Working Group considered GAC Advice contained in the Nairobi Communiqué[[160]](#footnote-162) (2010) that suggested exploring the potential benefits of further categories that could simplify management of the new gTLD program, create greater flexibility in the application procedures to address the needs of different applicants, make application processes more predictable, and create greater efficiencies for ICANN. Ultimately, after careful consideration, the Working Group concluded that it is challenging to implement categories in a simple, effective, and predictable manner. The Working Group did not find a compelling reason to do so in light of these difficulties. The Working Group particularly emphasized that the establishment of new types adds elements to the application, evaluation, and contractual compliance aspects of the program, which may have unintended impacts. The Working Group further considered that the introduction of different types and corresponding differential treatment of applications could create inappropriate incentives for applicants to “game” the system and win an unfair advantage over other applicants, or to simply select the easiest or simplest path to approval. Creating additional categories may also lead to a more complicated contractual compliance environment and challenges in supporting changes between the various types after delegation.

The Working Group acknowledged that there are legitimate and important differences that may exist between different strings and/or registry business plans, and does not seek to discount these differences. However, given the complexity of the issue, the Working Group believes that the additional types should be added under exceptional circumstances only. The Working Group notes that there may be legitimate needs to make adjustments to the New gTLD Program’s approach to types in the future, but it is not in a position to anticipate these needs based on the information currently available.

The Working Group further reviewed the GAC Durban Communiqué,[[161]](#footnote-163) which advises on differential treatment of specific types of strings. Please see the applicable sections of this report for further discussion on the following:

* Strings subject to Category 1 Safeguard Advice: Please see section xx on Global Public Interest for further discussion on this topic.
* Community Applications: Please see section xx on Community Applications for further discussion of this topic.

Note that GAC Advice regarding geographic names at the top level is not addressed in this section of the report as the topic was considered by Work Track 5 in the context of WT5 deliberations and was taken into account in the formulation of Work Track 5’s recommendations. Please see Section xx on Geographic Names at the Top Level for further information.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group discussed specific proposals put forward in Public Comment on the Initial Report and through Work Track discussions for additional types, including Verified TLDs, applications from the Global South, and Non-Profit TLDs. As discussed in sub-section b above, given the complexity of implementing differential treatment based on new and additional types of TLDs, applications, or applicants, the Working Group determined that any additions to the existing framework should be done on an exceptional basis. The Working Group does not rule out the possibility of establishing differential treatment for the proposed types in the future through community processes, but it is not putting forward any recommendations on the issue at this time.

**d. Dependencies/relationships with other areas of this report or external efforts**

* IDNs, Application Queuing, Global Public Interest, Community Applicants, Applicant Support, Base Registry Agreement, as well as Registrant Protections, Global Public Interest, and Application Change Requests for recommendations impacting .Brand applicants.
* Outputs of Work Track 5 on Geographic Names at the Top Level

## 2.2.8 Conflicts of Interest

**a. Recommendations and/or implementation guidelines**

Recommendation xx (rationale 1): 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.[[162]](#footnote-164)

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Recommendation xx-xx (rationale 1): The Working Group believes that provisions in the 2012 round were insufficient to effectively guard against conflicts of interest among Dispute Resolution Service Provider panelists, the Independent Objector, and application evaluators. Therefore, the Working Group recommends that ICANN develop a transparent process to prevent conflicts of interest among these parties in subsequent rounds.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

None identified for this topic.

**d. Dependencies/relationships with other areas of this report or external efforts**

Objections

2.6.1 Application Queuing

**a. Recommendations and/or implementation guidelines**

Affirmation xx: The Working Group affirms 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. The Working Group notes that in the 2012 round, the implementation of these drawings included prioritization of IDN applications. This Affirmation xx 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.[[163]](#footnote-165)

Affirmation with modification xx: If the volume of applications received exceeds 500, applications will be processed in batches of 500. In the 2012 round, the Section 1.1.2.5 of the Applicant Guidebook[[164]](#footnote-166) provided that the first batch would consist of 500 applications, but each subsequent batch was to be only 400 applications. [For ease, the Working Group has modified this to an even 500 applications per batch.] [Proposed alternate text for the previous sentence: Nevertheless, the actual 2012 implementation had no batching at all. The working group affirms the 2012 implementation, so it also prescribes changing the Applicant Guidebook to reflect it.]

Recommendation xx: For subsequent rounds, the Working Group recommends that the following formula must be used with respect to giving priority to Internationalized Domain Name applications:

* First batch of 500
  + If there are more than 125 applications for IDN strings that elect to participate in the prioritization draw, the first 25% of applications processed in the first batch shall be those applications for IDN strings that elect to participate in the prioritization draw. The remaining 75% of applications in the first batch 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 processed in the first batch prior to any non-IDN application.
* Each subsequent batch of those electing to participate in the prioritization draw
  + For each subsequent batch, the first 10% of each batch of applications must consist of IDN applications until there are no more IDN applications.
  + The remaining applications in each batch shall be selected at random out of the pool of IDN and non-IDN applications that remain.
* Processing of applications which do not elect to participate in the prioritization draw
  + When all of the applications that have elected to participate in the prioritization draw have been processed, ICANN shall process the remaining applications in batches of 500 applications.
  + The first 10% of each batch of applications must consist of IDN applications until there are no more IDN applications.
  + The remaining applications in each batch shall be selected at random out of the pool of IDN and non-IDN applications that remain.

Recommendation xx: Any processes put into place for application queuing should be clear, predictable, finalized and published in the Applicant Guidebook. The recommendation to establish procedures 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.”

Implementation Guidance xx: 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. [If the fee is not required to establish a legal basis for the randomization, then a fee must not be required, only an indication of wanting prioritization or not.] Another suggestion is to explore ways to assign a prioritization number during the application process without the need for a distinctly separate drawing event.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

The Working Group agreed that predictability is a key factor in developing recommendations related to application queuing in the subsequent procedures. Reflecting on the challenges associated with digital archery[[165]](#footnote-167) and the resulting need to establish an alternate method application queuing, the Working Group agreed on the importance of establishing an effective and reliable system that is ready to use when it is needed to establish priority order for applications. The Working Group felt that the drawing method ultimately adopted was fit for purpose, but also noted that the system should be simplified where possible to make the process simpler for applicants. The Working Group did not want to be prescriptive in putting forward changes to streamline the process, because the Working Group understands that ICANN org will need to conduct additional legal analysis on requirements and restrictions under local law before implementing any improvements. Therefore the Working Group has provided Implementation Guidance rather than Recommendations in this regard.

The Working Group notes that in the 2012 round a decision was made by ICANN org to prioritize applications for IDN strings.[[166]](#footnote-168) Although there was a 30-day public comment period[[167]](#footnote-169), the decision to prioritize IDN strings was never subject to policy review. Taking into account comments received on this issue, both in support and against prioritizing IDNs, the Working Group put forward recommendation xx, which seeks to create a compromise between the different viewpoints by ensuring that IDNs are in fact being prioritized, but not to the extent where all other applications would be significantly delayed.

The Working Group acknowledges that may not be the simplest solution, but it is one that the Working Group believes is necessary.

The following is an example to illustrate how recommendation xx would work in practice drawing on hypothetical numbers.

Assume ICANN receives 3,000 applications. There are 1,200 applications for IDN strings and 1,800 applications for non-IDN strings. 1,000 of the IDN strings and 1,000 of the non-IDN strings elect to participate in the prioritization draw. The remaining 200 IDN strings and 800 non-IDN strings have declined to participate in the prioritization draw. ICANN places the applications in 6 batches of 500 applications in the following manner:

* Batch 1: 125 of the 1,000 IDN applications (selected during the prioritization draw) shall be processed first. The remaining 750 IDN applications shall be combined with the 1,000 non-IDN applications. Of those 1,750 applications, 375 of them shall be selected at random to be processed in the first batch.
* Batch 2: Assume there are 700 IDN applications and 800 non-IDN applications remaining that have elected to participate in the prioritization draw. In the second batch, the first 50 applications processed shall be for IDN strings selected at random. The remaining 450 applications processed in the second batch shall be selected at random from the pool of both the 800 non-IDN applications and the remaining 650 IDN applications.
* Batch 3: Assume that there are now 400 IDN applications and 600 non-IDN applications that have elected to participate in the prioritization draw. In the third batch, the first 50 applications processed shall be for IDN strings selected at random. The remaining 450 applications processed in the second batch shall be selected at random from the pool of both the 600 non-IDN applications and the remaining 400 IDN applications.
* Batch 4: Assume there are now only 25 IDN applications and 475 non-IDN applications for the last batch that has elected to participate in the prioritization draw. In this case only 5% of the last batch is comprised of IDN applications. Therefore all of the remaining IDN applications will be processed in the last batch prior to the remaining 475 non-IDN strings.
* Batch 5: There are now 200 IDN strings and 800 non-IDN strings that have elected not to participate in the prioritization draw. The first 50 applications process in Batch 5 shall be IDN strings. The remaining 450 applications processed shall be selected at random from the pool of both the 800 non-IDN applications and the remaining 150 IDN applications.
* Batch 6: Assume of the remaining 500 applications, 30 of them are for IDN strings and 470 of them are for non-IDN strings. In this case only 7.5% of the last batch is comprised of IDN applications. Therefore all of the remaining IDN applications will be processed in the last batch prior to the remaining 470 non-IDN strings.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group reviewed public comments on the Initial Report that considered whether certain types of applications or strings should receive priority processing. Some comments supported prioritizing applications for Applicant Support, community-based applications, or all applications in a contention set that contains one or more community-based application(s). In the case of community-based applications, it was raised that the processing time for these applications is longer than standard applications, and therefore it would make sense to begin processing them earlier.

Specifically on the topic of prioritizing entire contention sets including community-based applications, the Working Group considered a proposed recommendation put forward by one member: “All community applications in contention sets should be prioritized for Initial Evaluation if they provide advance commitment to enter the Community Priority Evaluation immediately up completing initial evaluation.” The Working Group member noted that the processing time for these applications is longer than standard applications, and therefore it would make sense to begin processing them earlier. Further, in the 2012 round, Community Priority Evaluations (CPE) were held until the entire contention set was through Initial Evaluation. The member noted that CPE is the quickest way to resolve a contention set, and a positive CPE result could spare standard applicants in the contention set any expense for Initial Evaluation, therefore creating greater efficiency in the process and savings for members of the contention set.

The Working Group also noted comments that supported treating all applications equally in the drawing process. Given the diversity of views expressed by the community and in the Working Group, no recommendations have been put forward on this issue and further consideration may be needed in the implementation phase.

The Initial Report included a preliminary recommendation that priority numbers should be transferable between applications in an applicant portfolio. The Working Group reviewed input received through public comment on the Initial Report that allowing such transfers could create a secondary market for drawing numbers. The Working Group considered that if numbers were only transferable between applications with the same owner, there may not be a risk of a secondary market forming. The Working Group did not come to a conclusion about whether to move forward with this potential recommendation.

**d. Dependencies/relationships with other areas of this report or external efforts**

Applications assessed in rounds - contains recommendations about prioritization between rounds, originally included in this section.

2.7.3 Closed Generics

**a. Recommendations and/or implementation guidelines**

**[**No Agreement: The Working Group notes that in the 2012 round of the New gTLD Program, a decision was made by the ICANN Board[[168]](#footnote-170) to effectively ban exclusive use / generic applications. It is the understanding of the Working Group that the ICANN Board intended that its decision to effectively ban Closed Generics applied only to the 2012 round and that it wanted the GNSO to engage in policy discussions regarding the treatment of such strings in subsequent rounds. 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 as to how to treat these applications in subsequent rounds. ]

[Alternative text proposed by Jeff Neuman: No Agreement: The Working Group notes that in the 2012 round of the New gTLD Program, a decision was made by the ICANN Board to require applicants for exclusive generic strings to either (a) “submit a change request to no longer be an exclusive generic TLD”, (b) “withdraw 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 TLD.” All applicants in 2012 chose either options (a) or (b). It is the understanding of the Working Group that the ICANN Board intended that its decision to not allow Closed Generics to proceed in the 2012 round applied only to the 2012 round and that it wanted the GNSO to engage in policy discussions regarding the treatment of such strings in subsequent rounds. 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 as to how to treat these applications in subsequent rounds.]

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013.[[169]](#footnote-171) In the Beijing Communiqué, the GAC advised the Board that, "For strings representing generic terms, exclusive registry access should serve a public interest goal" (the "Category 2.2 Safeguard Advice"). The GAC identified a non-exhaustive list of strings in the current round of the New gTLD Program that it considers to be generic terms where the applicant is proposing to provide exclusive registry access.

[On 21 June 2015, the ICANN Board passed a resolution that effectively banned Exclusive Generic / Closed Generic TLDs in the 2012 round.] [Suggested alternative to the previous sentence: On 21 June 2015, the ICANN Board passed a resolution that required applicants for exclusive generic strings to either (a) “submit a change request to no longer be an exclusive generic TLD”, (b) “withdraw 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 TLD.”] [Another suggested alternative: On 21 June 2015, the ICANN Board passed a resolution that prevented Exclusive Generic / Closed Generic TLDs proceeding in the 2012 round.] In addition, the Board requested that the GNSO consider this topic in future policy development work for subsequent procedures.[[170]](#footnote-172) The GNSO Council has in turn charged the Working Group with analyzing the impact of Closed Generics and considering future policy.

Although the Working Group generally agrees that some form of policy guidance should be drafted on this topic, at this stage, however, there continue to be different and strongly-held views on the specific policy goals. There also continue to be different and strongly-held views on the alleged harms and merits of closed generics. In reviewing public comments on the Initial Report and continuing its deliberations, the Working Group revisited the alleged harms and merits summarized in the Initial Report, which will not be repeated here.[[171]](#footnote-173)

Four options were discussed and were put out for public comment in the Initial Report. As the Working Group developed and deliberated on these options, it took into consideration GAC Advice included in the Beijing Communique on Category 2.2 Safeguards, and specifically the Advice that “For strings representing generic terms, exclusive registry access should serve a public interest goal.”[[172]](#footnote-174) The Working Group was careful to note that the implementation in 2012[, of effectively banning closed generics,] was not necessarily representative of the GAC Advice, which appeared to envision a scenario where an exclusive registry (i.e., closed generic) could be acceptable. Therefore, four options were considered by the Working Group:

* Option 1: Formalize GNSO policy, making it consistent with the existing base Registry Agreement that Closed Generics should not be allowed.
* Option 2: Allow Closed Generics but require that applicants demonstrate that the Closed Generic serves a public interest goal in the application. Potential objections process could be similar to community-based objections.
* Option 3: Allow Closed Generics but require the applicant to commit to a code of conduct that addresses the concerns expressed by those not in favor of Closed Generics. An objections process for Closed Generics could be modelled on community objections.
* Option 4: Allow Closed Generics with no additional conditions. Establish an objections process modelled on community objections.

Divergent views were expressed on these options within the Working Group and in the responses received through public comment.There was also a split within the comments received by the Working Group from the Governmental Advisory Committee. In particular, there are some that believe that closed generics should not be allowed under any circumstances, and others believe that Option 4 is the only acceptable solution, both of which effectively means that options 2 and 3, or any other proposed solution that seeks to either mitigate perceived harms or impose conditions on the use of Closed Generics, are therefore unacceptable.

Nevertheless, the Working Group considered possible ways to implement Options 2 and/or 3, which could be considered further if the Board selects one of these options.

Specifically, the Working Group reviewed proposals put forward by some Working Group members regarding treatment of Closed Generics in subsequent rounds that most closely related to Option 2 (where closed generics could be allowed if the applicant was able to demonstrate that their application for the string served a public interest goal).

* Some Working Group members felt that it may not be possible to define the public interest, but it may be possible to entrust an entity to judge whether a proposed Closed Generic is or is not in the public interest. For example, one Working Group member suggested allowing Closed Generic applications in line with GAC Advice only where the ICANN Board determined that the TLD would serve a public interest goal. Some proposed that the Board could only do this if the Board approved the application by a supermajority for example at least 90% of sitting, non-conflicted, Board members) that the TLD would serve a public interest goal.
  + Some Working Group members expressed different perspectives on whether the decision by the Board should be appealable through the ICANN Reconsideration or IRP processes or whether it should be considered final.
  + One possibility to reduce the number of potential applications would be to limit applicants for closed generics to non-profit entities, or perhaps public entities and non-profits. This limitation was proposed by one Working Group member as a potentially reasonable way to restrict the applicant pool that is aligned with the objective of serving the public interest.
  + An additional supplemental proposal from a Working Group member suggested additional contractual enforcement provisions in the relevant Registry Agreement (RA) for a Closed Generic TLD that is a generic word, such terms and conditions: (1) to be derived from the applicant's submission on the use of the Closed Generic TLD as being in the public interest;

(2) which prohibit any action considered as anti-competitive (eg. discriminatory registration policies in favour of certain parties or against competitors in the applicable industry);

(3) which govern any dealings on the disposal and/or future use of the Closed Generic TLDs - that (1) and (2) must be adhered to at all times and by any party which operates or acquires the rights under the RA; and

(4) to stipulate that launching for SLD registration for the closed generic TLD by the (first) Registry Operator must take place within 2 years of signing the RA.

The breach of one or more of which will constitute cause for termination of the RA.

* Some Working Group members suggested factors that could be considered in developing a framework for evaluating Closed Generic applications if the Board chooses to allow such applications. Some members suggested examining the meaning and specificity of the word, the extent to which the application serves the public interest, the proposed use of the string, and the parties affected by the TLD being operated as a Closed Generic.
* One Working Group member suggested, and some other Working Group members supported, using the following specific questions as a basis to develop a framework:

1. Why is the selected string necessary for your registry / Why did you choose this string at the exclusion of others?
2. How does the proposed closed registry serve the public interest?
3. How is the proposed use of the string innovative in nature? How does the proposed mission and purpose of the registry support such use?
4. What is the likely effect on competition of awarding the proposed closed registry for the same or similar goods and/or services? Is it minimal or is it vast?[[173]](#footnote-175) Why must it be closed?
5. Is there more than one proposed closed registry application for the same string? If so, should the applications be evaluated against each other to determine which one serves the public interest better or should both of them proceed to a mechanism of last resort?
6. Should there be restrictions on resale of the proposed Closed Registry, and if so, what restrictions?
7. What specific Registry Voluntary Commitments are proposed by the registry and how can these be effectively monitored and enforced? Would additional fees be due from such a registry in order to pay for enforcement of the RVCs, e.g. by ICANN Compliance staff set up for this purpose?

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group further considered input from the ICANN Board that “Because difficult questions on how to define the public interest and public interest goals have been pending for several years, the Board re-emphasizes that it remains critical for the Subsequent Procedures group to further flesh out these concepts in all proposed options for addressing closed generics.”[[174]](#footnote-176) The Working Group discussed challenges associated with defining the public interest and noted that the definition may impact whether it is possible to have closed generics that are in the public interest.

The Working Group considered an approach to defining the public interest focused on identifying specific behaviors or practices that policy should prevent. Some Working Group members stated, for example, that anti-competitive behavior should be avoided. Others provided the perspective that this term needs to be more specifically and clearly defined if the Working Group is to design targeted provisions to avoid anti-competitive behavior, and further pointed out that it may not always be possible to identify potential competitors. In further discussing the prevention of anti-competitive behavior, some Working Group members stated that if closed generic strings are permitted, there should be requirements that they are used within a specific period of time. The Working Group noted the different perspectives on requirements for the use of a TLD, which are described in further detail in section xx TLD Rollout. The Working Group ultimately did not come to agreement about whether such an approach is appropriate for defining public interest.

Some Working Group members raised the concern that if the Working Group recommended allowing Closed Generics in subsequent procedures, the new policy might be unfair to applicants from the 2012 round who were forced to withdraw or alter their applications. For context, it was noted that all of the affected applicants in the 2012 round chose either to convert their applications to open TLDs or withdraw their applications completely. There were no applicants that elected to defer their applications to any future round. Therefore, the Working Group does not believe there are any substantial outstanding issues from the 2012 round that need to be addressed on this topic. The Working Group further agreed that the main focus of the Working Group, for this topic and all others, should be on developing appropriate policy without the consideration of the fairness or unfairness to previous applicants for having different rules. If additional work is needed to address issues of fairness, this can be addressed at a future date by the GNSO Council or another group set up for this purpose.

On 4 May 2020, the GAC provided consolidated input from individual GAC members on the topics discussed at ICANN67, including Closed Generics.[[175]](#footnote-177) The Working Group discussed the input received from GAC members on this topic, while also taking into account the other perspectives on this issue put forward by SO/ACs, ICANN community members, and other interested parties.[[176]](#footnote-178) In summary, just as there was no agreement within the Working Group on this issue, there seemed to be no agreement within many of these groups (including the GAC) on the conditions for which Closed Generics could be allowed.

**d. Dependencies/relationships with other areas of this report or external efforts**

None identified at this time.

2.8.1 Objections

**a. Recommendations and/or implementation guidelines**

Affirmation xx (rationale 1): Subject to the recommendations/implementation guidance below, The Working Group affirms the following recommendations and implementation guidance from 2007:

* Recommendation 2: “Strings must not be confusingly similar to an existing top-level domain.”
* 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 particular freedom of speech rights).”
* 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 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.

**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).

**Guidelines**

The task of the panel is the determination of substantial opposition.

a) substantial – in determining substantial the panel will assess the following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment

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 to the explicit or implicit targeting.

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.

d) explicitly targeting – explicitly targeting means there is a description of the intended use of the TLD in the application.

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.

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.

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.

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.”

Affirmation xx *with modification* (rationale 1): Recommendation 12 from 2007 states: “Dispute resolution and challenge processes must be established prior to the start of the process.” Consistent with Implementation Guidance xx 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, *the details of which must be published in the Applicant Guidebook*.”

Affirmation xx *with modification* (rationale 1): 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 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 formally submitted to the applicable arbitration forum.”

Affirmation xx (rationale 1): 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.

Implementation Guidance xx (rationale 1): Where possible, costs associated with filing an objection should be reduced while maintaining the quality and integrity of the objections process.

Implementation Guidance xx (rationale 1): Information about fees that were charged by Dispute Resolution Service Providers in previously filed objections should be accessible for future review.

Implementation Guidance xx (rationale 1): Consideration should be given to whether there were barriers to filing an 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 an objection, the expertise required, and limited awareness of the opportunity to file.

Affirmation xx (rationale 1): The Working Group affirms that the role of the Independent Objector (IO) should exist in subsequent procedures,[[177]](#footnote-179) 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.

Implementation Guidance xx (rationale 1): 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.

Recommendation xx (rationale 3): For all types of 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.

Recommendation xx (rationale 4): ICANN must provide transparency and clarity in the objection filing and processing procedures, 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.

Implementation Guidance xx (rationale 4): All criteria to be used by panelists for the filing of, response to, and evaluation of each objection, should be included in the Applicant Guidebook.

Implementation Guidance xx (rationale 4): Information about fees and refunds for the dispute resolution processes should be readily available prior to the commencement/opening of the application submission period.

Implementation Guidance xx (rationale 4): 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.

Recommendation xx (rationale 5): 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 objection types. The “quick look” is designed to identify and eliminate frivolous and/or abusive objections.[[178]](#footnote-180)

Recommendation xx (rationale 6): Applicants must have the opportunity to amend an application or add Registry Voluntary Commitments (RVCs) in response to concerns raised in an 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 in Section xx Application Change Requests including, but not limited to, public comment in accordance with ICANN’s standard procedures and timeframes.

Recommendation xx (rationale 6): To the extent that RVCs are used to resolve an 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.

Recommendation xx (rationale 7): 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.

Implementation Guidance xx (rationale 7): 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:

* + 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 indirect[[179]](#footnote-181) contention should be explained as part of the DRSP’s determination.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

Rationale for Affirmations xx-xx and Implementation Guidance xx (rationale 1): The Working Group believes that the ground for objections and the general approach taken in the 2012 round to objections processes continues to be appropriate in subsequent procedures, and therefore affirms relevant recommendations and implementation guidelines from 2007, as well as the relevant sections of the 2012 Applicant Guidebook, subject to the recommendations and implementation guidance included in this report. The Working Group provided implementation guidance that ICANN should investigate barriers to filing objections and reduce those barriers where possible. Cost of filing objections is one potential barrier that the Working Group discussed extensively. The Working Group provided implementation guidance that costs should be better understood and reduced where feasible while maintaining the quality and integrity of the objections process.

The Working Group expressed concerns about the effectiveness and execution of the Independent Objector (IO), but believes that the role should be maintained, with similar rules and procedures in place, though it notes that stricter adherence to constraints may improve effectiveness. The Working Group agreed that there may be conflict of interest issues with relying on a single panelist to serve in the IO role. While the Working Group did not reach agreement on the specific mechanism to mitigate conflicts of interest for the IO, it nevertheless recognized the need for a mechanism.

The Working Group modified Recommendation 12 from 2007 to clarify that the details of dispute resolution and challenge processes must be published in the Applicant Guidebook. This modification updates the recommendation to be consistent with the Implementation Guidance in this section of the Final Report.

The Working modified Implementation Guideline R from 2007 to indicate that a cooling off period for negotiation or compromise should only apply if both parties to an objection agree and request such a period. The Working Group does not believe that it is necessary or appropriate to universally mandate a cooling off period, which was required in the 2012 round.

Rationale for Recommendation xx (rationale 3): The Working Group acknowledges that there are potential costs and benefits to dispute resolution provider panels composed of one or three expert panelist(s). Panels containing three panelists may be more reliable and less likely to result in the inconsistent application of objection criteria, procedures, or outcomes compared to panels composed of a single expert. At the same time, these larger panels are more costly. The Working Group believes that parties to the proceeding are in the best position to weigh the potential tradeoffs between cost and consistency and make this decision, and therefore recommends that they should collectively have the option to mutually agree whether the objection is considered by a one or three expert 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.

Rationale for Recommendation xx and Implementation Guidance xx (rationale 4): The Working Group put forward recommendations and implementation guidance aimed at increasing transparency and clarity in the objection filing and processing procedures. The Working Group believes that by publishing all objections criteria and detailed processes, along with any supplemental information from the Dispute Resolution Service Providers, ICANN will provide greater transparency and clarity in the objections processes. The Working Group believes this is critical to ensuring that parties to objections have equal access to procedural information and clearer expectations on what may be required of them. In doing so, it may also help to ensure that outcomes of objections decisions are as consistent as possible in subsequent application rounds. Also in service of clarity and transparency, the Working Group provided Implementation Guidance regarding the publication of information about fees and refunds for the dispute resolution processes, as well as the publication of any guidance, processes and/or sources of information used by Dispute Resolution Service Providers to assist them with making decisions.

Rationale for Recommendation xx (rationale 5): The Working Group believes that the “quick look” mechanism was an important tool in the 2012 application round to identify frivolous objections quickly at the beginning of the Limited Public Interest Objection process, and thereby avoid unnecessary delays and costs to the applicant. The Working Group believes that the “quick look” mechanism can provide similar benefits for other objection types, and therefore recommends extending the mechanism to all objections processes in subsequent rounds.

Rationale for Recommendation xx-xx (rationale 6): The Working Group agreed that it is important for applicants to have an opportunity to make commitments or change an application in response to concerns that have been raised through the objections process. The Working Group believes that by providing greater flexibility to applicants, the process may allow mutually satisfactory outcomes, and if successful, allow the application to move forward. Mitigating concerns in objections in this manner may also reduce the number of objections that require formal proceedings to reach resolution. In support of accountability, these RVCs should be included in the applicable Applicant(s) Registry Agreement(s) as binding contractual commitments enforceable by ICANN through the PICDRP.

Rationale for Recommendation xx and Implementation Guidance xx (rationale 7): Following the 2012 round, concerns were raised about perceived inconsistent outcomes of String Confusion Objections. The Working Group reviewed key developments regarding the String Confusion Objection in the 2012 round, including publication of the *Proposed Review Mechanism to Address Perceived Inconsistent Expert Determinations on String Confusion Objections*[[180]](#footnote-182) and the New gTLD Program Committee (NGPC) resolution identifying three String Confusion Objection Expert Determinations as not being in the best interest of the New gTLD Program and the Internet community.[[181]](#footnote-183) The Working Group also considered concerns regarding cases of singular and plural versions of the same string. The Working Group reviewed relevant documentation, including the NGPC resolution, determining that no changes were needed to the existing mechanisms in the Applicant Guidebook to address potential consumer confusion resulting from allowing singular and plural versions of the same string.[[182]](#footnote-184) Noting that some community members remain concerned that there is not sufficient guidance on this issue, the Working Group put forward a recommendation and Implementation Guidance that seeks to reduce the risk of inconsistent outcomes by allowing an objector to file a single objection that would extend to all applications for an identical string.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group discussed a proposal that there should be grounds for an objection if an applied-for string is an exact translation[[183]](#footnote-185) of an existing TLD string that is in a highly regulated sector, and the applied-for string would not employ the same safeguards as the existing TLD, subject to the applicant’s governing law. This proposal would potentially require creating a new type of objection.[[184]](#footnote-186) The rationale for this proposal is that end-users may be confused and assume that both strings have the same safeguards in place. A concern was raised that this proposal could potentially harm competition and discourage the use of innovative business models. The Working Group determined that if the Working Group agreed upon Category 1 restrictions for regulated strings, then there would not be a need for the objection process.

The Working Group discussed the possibility of extending objections mechanisms in other ways, for example, allowing objections if an applicant applies for a synonym of an existing Verified TLD without offering the same protections as the Verified TLD, or allowing objections if an applicant applies for a homonym of an existing TLD where the spelling of the two words is different but the pronunciation is the same. The Working Group did not agree to include any recommendations on these topics in this section of the Report.

The Working Group has also discussed strings associated with highly regulated sectors and Verified TLDs in the context of application evaluation criteria. Please see section xx Registry Commitments / Public Interest Commitments and section xx String Similarity Evaluation for additional information. Section xx Global Public Interest also includes a discussion of CCT-RT Recommendation 12.[[185]](#footnote-187)

**d. Dependencies/relationships with other areas of this report or external efforts**

Registry Commitments / Public Interest Commitments (Category 1, highly regulated sectors, verified TLDs), Application Change Requests, String Similarity, Applicant Freedom of Expression, Limited Challenge/Appeal Mechanism

2.9.1. Community Applications

**a. Recommendations and/or implementation guidelines**

Affirmation xx (rationale 1): The Working Group affirms the following concept derived from Implementation Guideline F from 2007: “If there is contention for strings...a claim to support a community by one party will be a reason to award priority to that application.”

Affirmation xx (rationale 1): The Working Group affirms Implementation Guideline H from 2007, which states: “External dispute providers will give decisions on complaints.”

Recommendation xx (rationale 2): The Community Priority Evaluation (CPE) process must be efficient, transparent and predictable.

Implementation Guideline xx (rationale 2): To support predictability, the CPE guidelines, or as amended, should be considered a part of the policy adopted by the Working Group.

Implementation Guideline xx (rationale 3): ICANN org should examine ways to make the CPE process more efficient in terms of costs and timing.

Recommendation xx (rationale 2): 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.

Recommendation xx (rationale 4): 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.

Recommendation xx (rationale 4): 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.

Recommendation xx (rationale 5): Letters of opposition to a community-based application, if any, must be considered in balance with documented support for the application.

Recommendation xx (rationale 6): 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.”

Implementation Guideline xx (rationale 6): 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.

**b. Deliberations and rationale for recommendations and/or implementation guidelines**

In considering this topic, the Working Group notes that the ICANN Board previously identified Communities as one of the areas for potential policy development work for subsequent procedures.[[186]](#footnote-188) The Working Group offers the above recommendations in an effort to guide improvements in the Community Priority Evaluation process.

Rationale for Affirmation xx and xx (rationale 1): The Working Group supports the overall approach used in the 2012 round for community-based applications, as well as the continued prioritization of applications in contention sets that have passed Community Priority Evaluation. Therefore, the Working Group affirms the concept derived from Implementation Guideline F as well as the text of Implementation Guideline H from 2007.

Rationale for Recommendation xx-xx and Implementation Guidance xx-xx (rationale 2): The Working Group believes that the 2012 CPE process lacked the appropriate level of transparency and predictability. The Working Group believes that transparency and predictability are essential objectives in the implementation of CPE and recommends that ICANN org seek opportunities to improve the evaluation process to ensure that evaluation criteria and the application of these criteria are transparent and predictable to all parties. The Working Group has provided specific suggestions in this regard through Implementation Guidance. In further support of transparency and predictability, the Working Group has recommended that evaluation procedures (including any supplemental dispute provider rules) are widely available before the opening of the application submission period.

Rationale for Implementation Guidance xx (rationale 3): The Working Group believes that the CPE process was too costly for applicants, considering that the actual cost incurred by applicants was essentially double compared to what was predicted in the Applicant Guidebook, and further believes that the process took too long to complete. The Working Groups believes that drawing on lessons learned from the 2012 round, the CPE process should be able to realize efficiencies in both costs and time in subsequent rounds.

Rationale for Recommendation xx-xx (rationale 4): In the 2012 application round, evaluators could submit clarifying questions (CQs) to CPE applicants through ICANN org.[[187]](#footnote-189) The Working Group believes, however, that evaluators should have additional resources at their disposal to gather information about a CPE application and any opposition to that application.

In developing recommendations on this topic, the Working Group reviewed relevant GAC Advice included in the Beijing Communiqué (ICANN46),[[188]](#footnote-190) Durban Communiqué (ICANN47),[[189]](#footnote-191) Singapore Communiqué (ICANN49),[[190]](#footnote-192) Los Angeles Communiqué (ICANN51),[[191]](#footnote-193) Buenos Aires Communiqué (ICANN53),[[192]](#footnote-194) and Dublin Communiqué (ICANN54).[[193]](#footnote-195) The Working Group further reviewed relevant At-Large Statements on Community Expertise in Community Priority Evaluation[[194]](#footnote-196) and Preferential Treatment for Community Applications in String Contention.[[195]](#footnote-197) The Working Group has not identified any conflicts between the Working Group’s recommendations and the Advice provided by the GAC and ALAC. The Working Group believes that its recommendations for improved transparency and predictability are aligned with concerns expressed by the GAC that greater consistency is needed in the Community Priority Evaluation process. The Working Group further notes that it is recommending the establishment of a limited challenge/appeals mechanism for the New gTLD Program that would enable applicants and other parties to challenge or appeal decisions made in the application process, including the results of Community Priority Evaluation (see section xx Accountability Mechanisms for additional information). The Working Group believes that this mechanism has the potential to support more consistent outcomes in CPE for subsequent procedures.

The Working Group notes that CCT-RT Recommendation 34 states: “A thorough review of the procedures and objectives for community based applications should be carried out and improvements made to address and correct the concerns raised before a new gTLD application process is launched. Revisions or adjustments should be clearly reflected in an updated version of the 2012 AGB.” This recommendation was directed to the Subsequent Procedures PDP WG. The ICANN Board passed this recommendation through to the Working Group. The Working Group has extensively discussed this in the Community Priority Evaluation process and put forward the above recommendations to address concerns raised about CPE in the 2012 round. The Working Group believes that the work it has completed is in line with that recommended by the CCT-RT.

Rationale for Recommendation xx (rationale 5): The Working Group believes that the The 2012 Community Priority Evaluation Guidelines were not sufficiently clear in defining “relevance” under Criterion 4-B Opposition, which may have resulted in panelists evaluating letters of opposition in isolation without also considering the level of support for an application. The Working Group therefore recommends amending the Guidelines to make clear that any letters of opposition should be considered in balance with documented support for an application.

Rationale for Recommendation xx (rationale 6): Section 4.2.3 of the 2012 Applicant Guidebook states: “The [Community Priority Evaluation Panel] may also perform independent research, if deemed necessary to reach informed scoring decisions.” To reduce the risk of introducing inaccurate information and bias into the evaluation process and to support transparency, the Working Group has provided alternate language to include in the Applicant Guidebook for subsequent procedures. To promote transparency, the Working Group suggests that if the Community Priority Evaluation Panel relied on research for the decision it should be cited and a link to the information provided.

**c. New issues raised in deliberations since publication of the Initial Report, if applicable.**

The Working Group considered proposals for specific changes to the CPE Guidelines from 2012, but did not ultimately recommend any specific changes to the text of the Guidelines.[[196]](#footnote-198) Rather, this should be done by the Implementation Review Team taking into account all of the recommendations and implementation guidance described herein.

[Proposed alternative text for the above paragraph: “The Working Group considered proposals for specific changes to the CPE Guidelines from 2012 but did not fully review and discuss the changes proposed by Working Group members to the CPE Guidelines. Accordingly, the Working Group is seeking public comment on the 2012 CPE Guidelines linked at Footnote 197 prior to the finalization of its recommendations for changes to those Guidelines and will incorporate the public comment into its consideration of the changes needed for the implementation of CPE Guidelines and scoring system to be applied in the next round.”]

The Working Group considered feedback that it might be beneficial to have a less restrictive word count for communities to engage in clarifying and providing information. The Working Group did not come to a conclusion on this issue.

The Working Group discussed a proposal to grant “extra credit” in CPE to applicants that help or solve a problem inside a community to which the proposed gTLD relates. In reviewing this proposal, it was raised that most community applicants felt that they were solving a problem within the community they served, and therefore it is unclear why this criterion should be used to grant “extra credit.” It was further raised that the proposal lacks detail about the definition of “a problem inside a community.” The Working Group did not make a recommendation on this issue.

The Working Group considered input regarding the composition of the CPE panel. Specifically the Working Group noted the perspective that those evaluating community applications should have significant expertise in applying the concept of “community.” The Working Group did not come to any conclusions on this point.

The Working Group notes the perspective raised in discussions that additional steps should be taken to ensure the legitimacy of any opposition expressed to the community-based application. Specifically, the Working Group notes the suggestion that those raising opposition should be prepared to engage in an ongoing dialogue regarding their opposition. It also notes the suggestion that a public and transparent verification process should be conducted on any opposition letter to ensure that the author of the letter represents the organization that it claims to represent.

On 4 May 2020, the GAC provided consolidated input from individual GAC members on the topics discussed at ICANN67, including Community Applications.[[197]](#footnote-199) In this informal input, many of the respondents expressed support for the draft recommendations on this topic, although some expressed that they still have outstanding concerns about the CPE process and its effectiveness. Several respondents noted that additional details would need to be filled in to ensure that concerns about CPE from the 2012 round are addressed in the implementation of subsequent rounds. In addition, a few comments made specific suggestions about possible changes to the CPE process and criteria.[[198]](#footnote-200)

**d. Dependencies/relationships with other areas of this report or external efforts**

Community Objections (Section - Objections)

1. <https://www.plainlanguage.gov/about/definitions/> [↑](#footnote-ref-1)
2. Usage of comments to inform evaluation panels is addressed more specifically in section xx Role of Application Comment. [↑](#footnote-ref-2)
3. http://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf [↑](#footnote-ref-3)
4. 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 [↑](#footnote-ref-4)
5. 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 [↑](#footnote-ref-5)
6. 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 [↑](#footnote-ref-6)
7. 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 [↑](#footnote-ref-7)
8. 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. [↑](#footnote-ref-8)
9. This question asks the applicant to describe the mission/purpose of the proposed gTLD. [↑](#footnote-ref-9)
10. This question asks the applicant how the proposed gTLD will benefit registrants, Internet users, and others. [↑](#footnote-ref-10)
11. This question asks the applicant if the application is for a community-based TLD. [↑](#footnote-ref-11)
12. This question asks community-based applicants for additional information about the community that the applicant is committing to serve. [↑](#footnote-ref-12)
13. This question asks the applicant if the application is for a geographic name, and if so, requests supporting documentation, where applicable. [↑](#footnote-ref-13)
14. 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. [↑](#footnote-ref-14)
15. This question asks the applicant to provide the name and full description of all the Registry Services to be provided. [↑](#footnote-ref-15)
16. This Implementation Guidance refers to all Agreements and Terms of Use other than the Registry Agreement and Applicant Terms of Use. [↑](#footnote-ref-16)
17. https://www.icann.org/cybersecurityincidentlog [↑](#footnote-ref-17)
18. This refund would differ from the normal refund schedule. [↑](#footnote-ref-18)
19. 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> [↑](#footnote-ref-19)
20. See <https://features.icann.org/2011-01-25-cross-ownership-adopting-rationale> [↑](#footnote-ref-20)
21. See section 2.2.6. [↑](#footnote-ref-21)
22. 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. [↑](#footnote-ref-22)
23. Recommendation 5.2.b states: “Consider which, if any, tests can be converted from self-certifying tests to operational tests.” [↑](#footnote-ref-23)
24. 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.” [↑](#footnote-ref-24)
25. See input here: <https://community.icann.org/download/attachments/58735969/Response%20to%20WT4%20re%20RST%20improvements.pdf?version=2&modificationDate=1502939084000&api=v2> [↑](#footnote-ref-25)
26. The Working Group notes, however, that some of these issues have since been addressed by the Rights Protection Mechanisms PDP. The PDP’s Initial Report is available at: https://gnso.icann.org/en/issues/rpm-phase-1-initial-18mar20-en.pdf [↑](#footnote-ref-26)
27. See section 1.1.6 of the Applicant Guidebook [↑](#footnote-ref-27)
28. 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-parta-08aug07.htm> [↑](#footnote-ref-28)
29. <https://www.icann.org/en/system/files/files/cct-final-08sep18-en.pdf> at p. 5. [↑](#footnote-ref-29)
30. See Helsinki Communiqué here: <https://gac.icann.org/contentMigrated/icann56-helsinki-communique> [↑](#footnote-ref-30)
31. See Montréal Communiqué here: <https://gac.icann.org/contentMigrated/icann66-montreal-communique> [↑](#footnote-ref-31)
32. See Board resolution here: <https://www.icann.org/resources/board-material/resolutions-2019-03-01-en> [↑](#footnote-ref-32)
33. 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. [↑](#footnote-ref-33)
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. [↑](#footnote-ref-34)
35. <https://www.icann.org/resources/board-material/resolutions-2019-11-07-en#2.c> [↑](#footnote-ref-35)
36. See Annex 3 of the WS2 Final Report: <https://www.icann.org/en/system/files/files/ccwg-acct-ws2-final-24jun18-en.pdf> [↑](#footnote-ref-36)
37. See Section 1.2.(b)(viii) in the current version of the Bylaws (as amended 28 November 2019): “Subject to the limitations set forth in Section 27.2, within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create, and shall not be interpreted to create, any obligation on ICANN outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate ICANN to enforce its human rights obligations, or the human rights obligations of other parties, against other parties.” [↑](#footnote-ref-37)
38. For additional information see the WS2 Implementation Assessment Report: https://community.icann.org/display/WEIA/Public+Documents?preview=/120819602/120819621/WS2%20Implementation%20Assessment%20Report\_5Nov2019.pdf [↑](#footnote-ref-38)
39. Additional information about the Universal Acceptance Initiative is available at: <https://www.icann.org/resources/pages/universal-acceptance-initiative-2014-10-03-en> [↑](#footnote-ref-39)
40. Additional information about the Universal Acceptance Steering Group is available at: <https://uasg.tech/> [↑](#footnote-ref-40)
41. For more information about EBERO, see: <https://www.icann.org/resources/pages/ebero-2013-04-02-en> [↑](#footnote-ref-41)
42. 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 in Section xx of this report. [↑](#footnote-ref-42)
43. https://www.icann.org/en/system/files/files/ssr2-review-24jan20-en.pdf [↑](#footnote-ref-43)
44. See Applicant Guidebook section 2.2.1.1.1 [↑](#footnote-ref-44)
45. .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. [↑](#footnote-ref-45)
46. 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. [↑](#footnote-ref-46)
47. PIRR recommendations 2.3.a states: “Review the relative timing of the String Similarity evaluation and the Objections process.” [↑](#footnote-ref-47)
48. <https://gac.icann.org/contentMigrated/icann46-beijing-communique> [↑](#footnote-ref-48)
49. <https://atlarge.icann.org/advice_statements/7151> [↑](#footnote-ref-49)
50. <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf> [↑](#footnote-ref-50)
51. See section 4.4.2 of the Final Issue Report on New gTLD Subsequent Procedures. [↑](#footnote-ref-51)
52. <https://www.icann.org/en/system/files/files/cct-final-08sep18-en.pdf> [↑](#footnote-ref-52)
53. <https://www.icann.org/resources/board-material/resolutions-2019-03-01-en> [↑](#footnote-ref-53)
54. <https://www.icann.org/en/system/files/files/resolutions-final-cct-recs-scorecard-01mar19-en.pdf> [↑](#footnote-ref-54)
55. For more information about the IDN ccTLD Fast Track Process, see: <https://www.icann.org/en/system/files/files/idn-cctld-implementation-plan-28mar19-en.pdf> [↑](#footnote-ref-55)
56. See Guidelines for the Extended Process Similarity Review Panel (EPSRP) for the IDN ccTLD Fast Track Process: <https://www.icann.org/en/system/files/files/epsrp-guidelines-04dec13-en.pdf> [↑](#footnote-ref-56)
57. To see the current versions of RZ-LGRs, see: <https://www.icann.org/resources/pages/generation-panel-2015-06-21-en> [↑](#footnote-ref-57)
58. 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> [↑](#footnote-ref-58)
59. See report here: <https://www.icann.org/en/system/files/files/sac-052-en.pdf> [↑](#footnote-ref-59)
60. See report here: <https://ccnso.icann.org/sites/default/files/filefield_22667/jig-final-report-single-character-idns-08mar11-en.pdf> [↑](#footnote-ref-60)
61. The Working Group did not discuss the process by which an existing registry operator could apply for, or be given, an IDN 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 IDN variant(s). [↑](#footnote-ref-61)
62. See the set of documents here <https://www.icann.org/resources/pages/idn-variant-tld-implementation-2018-07-26-en> and in particular, document three here directly <https://www.icann.org/en/system/files/files/idn-variant-tld-recommendations-analysis-25jan19-en.pdf> [↑](#footnote-ref-62)
63. The IDN Scoping Team Final Report is available here: <https://gnso.icann.org/sites/default/files/file/field-file-attach/idn-scoping-team-final-report-17jan20-en.pdf> [↑](#footnote-ref-63)
64. The Working Group considered the IDN variant TLD recommendations here: <https://www.icann.org/en/system/files/files/idn-variant-tld-recommendations-analysis-25jan19-en.pdf> [↑](#footnote-ref-64)
65. GNSO Council IDN Scoping Team Final Report: <https://gnso.icann.org/sites/default/files/file/field-file-attach/idn-scoping-team-final-report-17jan20-en.pdf> [↑](#footnote-ref-65)
66. See RSSAC031: Response to the GNSO Policy Development Process (PDP) Working Group on the new Generic Top Level Domains (gTLDs) Subsequent Procedures at <https://www.icann.org/en/system/files/files/rssac-031-02feb18-en.pdf> and SAC100: SSAC Response to the New gTLD Subsequent Procedures Policy Development Process Working Group Request Regarding Root Scaling at <https://www.icann.org/en/system/files/files/sac-100-en.pdf>; The SSAC recommendations are: Recommendation (1) : ICANN should continue developing the monitoring and early warning capability with respect to root zone scaling. Recommendation (2): ICANN should focus on the rate of change for the root zone, rather than the total number of delegated strings for a given calendar year. Recommendation (3): 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. Recommendation (4): ICANN should investigate and catalog the long term obligations of maintaining a larger root zone. [↑](#footnote-ref-66)
67. See SAC095 SSAC Advisory on the Use of Emoji in Domain Names (25 May 2017) at: <https://www.icann.org/en/system/files/files/sac-095-en.pdf> [↑](#footnote-ref-67)
68. 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. [↑](#footnote-ref-68)
69. Please see section xx of this report for additional information about the RSP Pre-Evaluation Program. [↑](#footnote-ref-69)
70. See pages A1-4 of the Attachment to Module 2. [↑](#footnote-ref-70)
71. 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> [↑](#footnote-ref-71)
72. See ICANN org response here: <https://community.icann.org/download/attachments/58735969/Response%20to%20WT4%20re%20RST%20improvements.pdf?version=2&modificationDate=1502939084000&api=v2> [↑](#footnote-ref-72)
73. “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>. [↑](#footnote-ref-73)
74. See "Mitigating the Risk of DNS Namespace Collisions Final Report," a report by JAS Global Advisors ("JAS"). June 2014 at <https://www.icann.org/en/system/files/files/name-collision-mitigation-study-06jun14-en.pdf> . [↑](#footnote-ref-74)
75. Specifically, in November 2017 the ICANN Board asked the ICANN Security and Stability Advisory Committee (SSAC) to study the impact of name collisions and advise the Board on their effects and possible mitigation. In response, the SSAC started the NCAP effort and designed Study 1, the first of three name collision studies intended to address the Board's request. See: [https://www.icann.org/resources/board-material/resolutions-2019-03-14-en](https://www.icann.org/resources/board-material/resolutions-2019-03-14-en#2.h.1) [↑](#footnote-ref-75)
76. See GNSO Council Response to ICANN Board on Potential dependencies between the Name Collisions Analysis Project (NCAP) and New gTLD Subsequent Procedures at: <https://gnso.icann.org/sites/default/files/file/field-file-attach/drazek-et-al-to-chalaby-2-20sep19-en.pdf>. [↑](#footnote-ref-76)
77. See <https://gnso.icann.org/sites/default/files/file/field-file-attach/chalaby-to-drazek-et-al-01nov19-en.pdf>. [↑](#footnote-ref-77)
78. See SAC090 SSAC Advisory on the Stability of the Domain

    Namespace (22 December 2016) at <https://www.icann.org/en/system/files/files/sac-090-en.pdf>. [↑](#footnote-ref-80)
79. In its comments on the Initial Report the ALAC stated, “In several places in our response, the ALAC defer to the SSAC for further recommendations. This includes areas such as dotless domains and name collisions. Again, we reiterate, there is no cause for urgency surrounding the further introduction of gTLDs and due time should be given to the SSAC to explore the security and stability implications of various proposals before any New round should begin.” See: <https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/attachments/20180926/8dbfd251/AL-ALAC-ST-0926-01-00-EN-0001.pdf>. [↑](#footnote-ref-81)
80. See GNSO Council Response to ICANN Board on Potential dependencies between the Name Collisions Analysis Project (NCAP) and New gTLD Subsequent Procedures at: <https://gnso.icann.org/sites/default/files/file/field-file-attach/drazek-et-al-to-chalaby-2-20sep19-en.pdf>. [↑](#footnote-ref-82)
81. See <https://gnso.icann.org/sites/default/files/file/field-file-attach/chalaby-to-drazek-et-al-01nov19-en.pdf>. [↑](#footnote-ref-83)
82. “Unavailable Names”, referred to in 2012 AGB as “Reserved Names.” [↑](#footnote-ref-84)
83. See section 2.2.1.2.1 of the 2012 Applicant Guidebook. [↑](#footnote-ref-85)
84. See <https://tools.ietf.org/html/rfc6761>. [↑](#footnote-ref-86)
85. The Working Group notes that discussions on this topic are ongoing, and this recommendation is subject to the outcomes of related discussions. [↑](#footnote-ref-87)
86. See https://www.icann.org/en/system/files/files/sac-090-en.pdf. The ICANN Board accepted the recommendations in SAC090 and asked ask the Subsequent Procedures PDP to include

    recommendations 1-4 in its work: https://www.icann.org/en/system/files/files/resolutions-board-action-ssac-advice-scorecard-08jun18-en.pdf [↑](#footnote-ref-88)
87. For broader context on the technical work carried out by the Internet Assigned Numbers Authority on behalf of the Internet Engineering Task Force, see the Memorandum of Understanding between the IETF and ICANN signed on March 1, 2000 and ratified by the ICANN Board on March 10, 2000: https://tools.ietf.org/rfc/rfc2860. [↑](#footnote-ref-89)
88. <https://www.icann.org/en/system/files/files/spec5-amend-two-char-01dec14-en.pdf> [↑](#footnote-ref-90)
89. <https://www.icann.org/en/system/files/files/two-character-ltr-ltr-authorization-release-13dec16-en.html> [↑](#footnote-ref-91)
90. <https://www.icann.org/en/system/files/files/summary-documents-two-character-ascii-labels-22jan19-en.pdf> [↑](#footnote-ref-92)
91. See also ICANN Board resolution: <https://www.icann.org/resources/board-material/resolutions-2016-11-08-en#2.a> [↑](#footnote-ref-93)
92. See <https://gnso.icann.org/en/group-activities/active/igo-ingo> [↑](#footnote-ref-94)
93. 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. [↑](#footnote-ref-95)
94. 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. [↑](#footnote-ref-96)
95. In section xx 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. [↑](#footnote-ref-97)
96. 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. [↑](#footnote-ref-98)
97. 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. [↑](#footnote-ref-99)
98. See Reconsideration Request 13-9: Amazon EU S.á.r.l: <https://www.icann.org/resources/pages/13-9-2014-02-13-en> [↑](#footnote-ref-100)
99. See Request 13-10: Commercial Connect, LLC: <https://www.icann.org/resources/pages/13-10-2014-02-13-en> [↑](#footnote-ref-101)
100. <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b> [↑](#footnote-ref-102)
101. <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b.rationale> [↑](#footnote-ref-103)
102. <https://www.icann.org/en/system/files/files/epsrp-guidelines-04dec13-en.pdf> [↑](#footnote-ref-104)
103. See Guidelines for the Extended Process Similarity Review Panel (EPSRP) for the IDN ccTLD Fast Track Process: <https://www.icann.org/en/system/files/files/epsrp-guidelines-04dec13-en.pdf> [↑](#footnote-ref-105)
104. The PICDRP will apply to both mandatory PICs and Registry Voluntary Commitments, formerly called voluntary PICs. [↑](#footnote-ref-106)
105. This topic is connected to recommendation 5.1.b in the Program Implementation Review Report, which states: “Explore whether different application types could be defined in a fair and objective manner, and if there are to be different applicant types, consider whether there should be different versions of the Registry Agreement.” [↑](#footnote-ref-107)
106. See https://www.icann.org/uploads/compliance\_notice/attachment/911/serad-to-westerdal-16mar17.pdf P. 17. [↑](#footnote-ref-108)
107. Please see <https://newgtlds.icann.org/en/applicants/global-support/change-requests#change-requests-comment> [↑](#footnote-ref-109)
108. <https://newgtlds.icann.org/en/applicants/global-support/change-requests> [↑](#footnote-ref-110)
109. 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>. [↑](#footnote-ref-111)
110. 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>. [↑](#footnote-ref-112)
111. See the Amazon IRP Final Declaration, which states: "The Panel recommends that the Board of ICANN promptly re-evaluate Amazon’s applications in light of the Panel’s declarations above. In its re-evaluation of the applications, the Board should make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon’s applications." See icann.org/en/system/files/files/irp-amazon-final-declaration-11jul17-en.pdf [↑](#footnote-ref-113)
112. 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.” [↑](#footnote-ref-114)
113. See section 12.2(a)(x) of the current ICANN Bylaws: <https://www.icann.org/resources/pages/governance/bylaws-en/#article12> [↑](#footnote-ref-115)
114. See section xx of this report for discussion of the application comment period. [↑](#footnote-ref-116)
115. 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 in Section xx Application Change Requests including, but not limited to, public comment in accordance with ICANN’s standard procedures and timeframes. [↑](#footnote-ref-117)
116. 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. [↑](#footnote-ref-118)
117. https://community.icann.org/download/attachments/93129620/GAC%20Written%20Consultation\_%20Input%20Received-%20Updated%209%20May.pdf?version=1&modificationDate=1589186135000&api=v2 [↑](#footnote-ref-119)
118. See Section 12.3. PROCEDURES of the ICANN Bylaws [https://www.icann.org/resources/pages/governance/bylaws-en](https://www.icann.org/resources/pages/governance/bylaws-en/#article12) [↑](#footnote-ref-120)
119. Recommendation 33 states: “As required by the October 2016 Bylaws, GAC consensus advice to the Board regarding gTLDs should also be clearly enunciated, actionable and accompanied by a rationale, permitting the Board to determine how to apply that advice. ICANN should provide a template to the GAC for advice related to specific TLDs, in order to provide a structure that includes all of these elements. In addition to providing a template, the Applicant Guidebook (AGB) should clarify the process and timelines by which GAC advice is expected for individual TLDs.” [↑](#footnote-ref-121)
120. See Article 12, Section 2.2(a) (x) and (xi) of the Bylaws dated 28 November 2019: <https://www.icann.org/resources/pages/governance/bylaws-en> [↑](#footnote-ref-122)
121. https://community.icann.org/download/attachments/93129620/GAC%20Written%20Consultation\_%20Input%20Received-%20Updated%209%20May.pdf?version=1&modificationDate=1589186135000&api=v2 [↑](#footnote-ref-123)
122. https://community.icann.org/download/attachments/93129620/GAC%20Written%20Consultation\_%20Input%20Received-%20Updated%209%20May.pdf?version=1&modificationDate=1589186135000&api=v2 [↑](#footnote-ref-124)
123. This reference to informal GAC input is not intended to be a comprehensive summary of all comments. Please review the compilation of comments for full text of the input received. [↑](#footnote-ref-125)
124. 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> [↑](#footnote-ref-126)
125. For additional recommendations regarding the communication period, please see section xx Communications. [↑](#footnote-ref-127)
126. http://dakar42.icann.org/meetings/dakar2011/presentation-jas-final-report-13sep11-en.pdf [↑](#footnote-ref-128)
127. See https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf , pg 12. [↑](#footnote-ref-129)
128. 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.” [↑](#footnote-ref-130)
129. 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. [↑](#footnote-ref-131)
130. 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.” [↑](#footnote-ref-132)
131. See section xx 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. [↑](#footnote-ref-133)
132. See https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf. [↑](#footnote-ref-134)
133. 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> [↑](#footnote-ref-135)
134. Stated objective of the Applicant Support Program from the 2012 round: <https://newgtlds.icann.org/en/applicants/candidate-support#financial-assistance> [↑](#footnote-ref-136)
135. See the New gTLD Financial Assistance Handbook for additional information: <https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf> [↑](#footnote-ref-137)
136. See December 2011 Board Resolution directing staff to finalize the implementation plan for the launch of the Applicant Support Program in January 2012: <https://features.icann.org/2011-12-08-applicant-support> [↑](#footnote-ref-138)
137. <https://atlarge.icann.org/advice_statements/8071> [↑](#footnote-ref-139)
138. See page 17 of the 2012 Financial Assistance Handbook, available at: https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf [↑](#footnote-ref-140)
139. Question 2.5.4.e.3 in the Initial Report asked for community input on the following: “If there are more applicants than funds, what evaluation criteria should be used to determine how to disperse the funds: by region, number of points earned in the evaluation process, type of application, communities represented, other?” The Initial Report is available at: https://gnso.icann.org/en/issues/new-gtlds/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf [↑](#footnote-ref-141)
140. See https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf. [↑](#footnote-ref-142)
141. Preliminary Recommendation 2.5.4.c.7 in the Initial Report states: “Additionally, financial support should go beyond the application fee, such as including application writing fees, related attorney fees, and ICANN registry-level fees.” See https://gnso.icann.org/en/issues/new-gtlds/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf [↑](#footnote-ref-143)
142. https://community.icann.org/download/attachments/93129620/GAC%20Written%20Consultation\_%20Input%20Received-%20Updated%209%20May.pdf?version=1&modificationDate=1589186135000&api=v2 [↑](#footnote-ref-144)
143. This reference to informal GAC input is not intended to be a comprehensive summary of all comments. Please review the compilation of comments for full text of the input received. [↑](#footnote-ref-145)
144. See https://www.icann.org/en/system/files/files/cct-final-08sep18-en.pdf [↑](#footnote-ref-146)
145. Without being proscriptive, the Working Group believes that the initial metrics from the Identifier Technology Health Indicators (ITHI) project (https://ithi.privateoctopus.com/metrics.html) and the Implementation Advisory Group’s report, which served the work of the Competition, Consumer Trust & Consumer Choice Review Team work, are beneficial resources for establishing metrics. The Working Group also received guidance from the community during its public comment on its Initial Report (See section 2.2.1.e.1 here https://docs.google.com/spreadsheets/d/15zDdzlBwLCz5m2sNXui6N6pporbUq-lDFEwfh4rKi4A/edit#gid=0) [↑](#footnote-ref-147)
146. The response received from ICANN org is available at: https://mm.icann.org/pipermail/gnso-newgtld-wg/2020-January/002378.html [↑](#footnote-ref-148)
147. See section 1.2.1 of the 2012 Applicant Guidebook. [↑](#footnote-ref-149)
148. See Module 2 of the 2012 Applicant Guidebook. [↑](#footnote-ref-150)
149. See Module 4 of the 2012 Applicant Guidebook. [↑](#footnote-ref-151)
150. See Module 3 of the 2012 Applicant Guidebook. [↑](#footnote-ref-152)
151. As defined in section xx Community Applications. [↑](#footnote-ref-153)
152. As defined in section xx on Geographic Names at the Top Level. [↑](#footnote-ref-154)
153. See sections xx Registrant Protections, xx Global Public Interest, and xx Application Change Requests for recommendations impacting .Brand applicants. [↑](#footnote-ref-155)
154. As defined in section xx on Geographic Names at the Top Level. [↑](#footnote-ref-156)
155. As defined in section xx Application Queuing. [↑](#footnote-ref-157)
156. As defined in section xx Internationalized Domain Names. [↑](#footnote-ref-158)
157. As defined in section xx Global Public Interest. [↑](#footnote-ref-159)
158. As identified in Section xx Applicant Support. [↑](#footnote-ref-160)
159. 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 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. [↑](#footnote-ref-161)
160. <https://gac.icann.org/contentMigrated/icann37-nairobi-communique> [↑](#footnote-ref-162)
161. <https://gac.icann.org/contentMigrated/icann47-durban-communique> [↑](#footnote-ref-163)
162. <https://www.icann.org/resources/pages/governance/coi-en#:~:text=The%20purpose%20of%20this%20Board,the%20Internet%20community%2C%20as%20a> [↑](#footnote-ref-164)
163. 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.” [↑](#footnote-ref-165)
164. See page 1-9 off the 2012 Applicant Guidebook. [↑](#footnote-ref-166)
165. See Board Resolutions initiating digital archery (<https://www.icann.org/resources/board-material/resolutions-2012-03-28-en>) and terminating digital archery (<https://features.icann.org/2012-06-27-digital-archery>). [↑](#footnote-ref-167)
166. See http://newgtlds.icann.org/en/applicants/batching/drawing-prioritization-10oct12-en.pdf and https://newgtlds.icann.org/en/applicants/prioritization-draw [↑](#footnote-ref-168)
167. See https://forum.icann.org/lists/drawing-prioritization/ [↑](#footnote-ref-169)
168. https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a [↑](#footnote-ref-170)
169. See<https://gac.icann.org/contentMigrated/icann46-beijing-communique> [↑](#footnote-ref-171)
170. https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a [↑](#footnote-ref-172)
171. See Initial Report section 2.7.3 beginning on page 119: <https://gnso.icann.org/sites/default/files/file/field-file-attach/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf> [↑](#footnote-ref-173)
172. <https://gac.icann.org/contentMigrated/icann46-beijing-communique> [↑](#footnote-ref-174)
173. Some Working Group members expressed that if a proposed closed generic effectively eliminates competition by using a term which defines a category, industry, or field of goods or services, it should not be allowed to proceed. Some members suggested that applicants should be required to obtain letters of support or non-objection from potential competitors as evidence that the proposed closed generic does not eliminate competition. Other Working Group members suggested that it is not realistic to require such letters. Instead, evaluators should be responsible for assessing the potential impact on competition. [↑](#footnote-ref-175)
174. https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/2018q3/000046.html [↑](#footnote-ref-176)
175. See https://community.icann.org/download/attachments/93129620/GAC%20Written%20Consultation\_%20Input%20Received-%20Updated%209%20May.pdf?version=1&modificationDate=1589186135000&api=v2 [↑](#footnote-ref-177)
176. For additional information about these perspectives, see responses to Community Comment 2 (https://community.icann.org/pages/viewpage.action?pageId=63155738) the Working Group’s Initial Report (https://gnso.icann.org/sites/default/files/file/field-file-attach/subsequent-procedures-initial-overarching-issues-work-tracks-1-4-03jul18-en.pdf) and public comment on the Initial Report (https://www.icann.org/public-comments/gtld-subsequent-procedures-initial-2018-07-03-en). [↑](#footnote-ref-178)
177. 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.

     [↑](#footnote-ref-179)
178. 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. [↑](#footnote-ref-180)
179. 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.” [↑](#footnote-ref-181)
180. <https://www.icann.org/public-comments/sco-framework-principles-2014-02-11-en> [↑](#footnote-ref-182)
181. <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b> [↑](#footnote-ref-183)
182. https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-25-en#2.d [↑](#footnote-ref-184)
183. “Translation” in this context refers to two words that are translations of one another in two different languages, for example “pharmacy” in English and “farmacia” in Spanish. [↑](#footnote-ref-185)
184. The Working Group noted that the new type of objection could share certain elements of the Morality and Public Order Objection, namely that anyone with standing could bring that objection, including perhaps the Independent Objector. [↑](#footnote-ref-186)
185. CCT-RT Recommendation 12 states: “Create incentives and/or eliminate current disincentives that encourage gTLD registries to meet user expectations regarding (1) the relationship of content of a gTLD to its name; (2) restrictions as to who can register a domain name in certain gTLDs based upon implied messages of trust conveyed by the name of its gTLDs (particularly in sensitive or regulated industries; and (3) the safety and security of users’ personal and sensitive information (including health and financial information). These incentives could relate to applicants who choose to make public interest commitments in their applications that relate to these expectations. Ensure that applicants for any subsequent rounds are aware of these public expectations by inserting information about the results of the ICANN surveys in the Applicant Guide Books.”  
      [↑](#footnote-ref-187)
186. See 17 November 2014 Board resolution: https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf [↑](#footnote-ref-188)
187. For specific information about the circumstances under which CQs were issued in CPE, please see 126-127 of the Program Implementation Review Report. [↑](#footnote-ref-189)
188. “The GAC advises the Board that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information.” See: <https://gac.icann.org/contentMigrated/icann46-beijing-communique> [↑](#footnote-ref-190)
189. “The GAC advises the ICANN Board to consider to take better account of community views, and improve outcomes for communities, within the existing framework, independent of whether those communities have utilized ICANN’s formal community processes to date.” See <https://gac.icann.org/contentMigrated/icann47-durban-communique> [↑](#footnote-ref-191)
190. “The GAC Advises ICANN to continue to protect the public interest and improve outcomes for communities, and to work with the applicants in an open and transparent manner in an effort to assist those communities. The GAC further notes that a range of issues relating to community applications will need to be dealt with in future rounds.” See <https://gac.icann.org/contentMigrated/icann49-singapore-communique> [↑](#footnote-ref-192)
191. “The GAC has concerns about the consistency of the Community Priority Evaluation Process, following the rejection of a number of applications. There is a need to ensure that criteria for community priority treatment are applied consistently across the various applications. The GAC requests the ICANN Board to examine the feasibility of implementing an appeal mechanism in the current round in case an applicant contests the decision of a community priority evaluation panel.” See <https://gac.icann.org/contentMigrated/icann51-los-angeles-communique> [↑](#footnote-ref-193)
192. “The GAC continues to keep under review the community application process for new gTLDs, noting that it does not appear to have met applicant expectations. The GAC looks forward to seeing the report of the ICANN Ombudsman on this matter following his current inquiry and will review the situation at its meeting in Dublin.” See <https://gac.icann.org/contentMigrated/icann53-buenos-aires-communique> [↑](#footnote-ref-194)
193. “The GAC advises the ICANN Board that: i. The GAC reiterates previously expressed concerns that the Community Priority Evaluation (CPE) process has not met the expectations of applicants and notes that all the successful applications are currently the subject dispute resolution procedures; ii. The GAC expects the current specific problems faced by individual applicants to be resolved without any unreasonable delay, and in a manner in which justified community interests are best served; iii. The GAC notes possibly unforeseen consequences for community applicants of recourse by competing applicants to other accountability mechanisms; and the specific challenges faced by some community applicants in auctions when in competition with commercial applicants; iv. The GAC will take into account the final report of the ICANN Ombudsman on this issue when preparing the GAC’s input into the GNSO’s review of issues for improving procedures relating to community-based applications in the next gTLD round; and the Competition, Trust, and Consumer Choice Review (CCT) under the Affirmation of Commitments.” See <https://gac.icann.org/contentMigrated/icann54-dublin-communique> [↑](#footnote-ref-195)
194. “1. The ALAC has concerns about the sufficiency of community expertise in panels that evaluate new gTLD community applications. 2. The ALAC stands ready to offer appropriate ICANN community volunteers to serve as panel members or advisors.” See <https://atlarge.icann.org/advice_statements/7201> [↑](#footnote-ref-196)
195. “Applications with demonstrable support, appropriate safeguards and strong emphasis on community service should be accorded preferential treatment in the new gTLD string contention resolution process.” See <https://atlarge.icann.org/advice_statements/7211> [↑](#footnote-ref-197)
196. https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf [↑](#footnote-ref-198)
197. https://community.icann.org/download/attachments/93129620/GAC%20Written%20Consultation\_%20Input%20Received-%20Updated%209%20May.pdf?version=1&modificationDate=1589186135000&api=v2 [↑](#footnote-ref-199)
198. This reference to informal GAC input is not intended to be a comprehensive summary of all comments. Please review the compilation of comments for full text of the input received. [↑](#footnote-ref-200)