Key source documents:
- **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
- **Draft Final Report:** https://gnso.icann.org/sites/default/files/file/field-file-attach/draft-final-report-new-gtld-subsequent-21sep20-en.pdf
- **Final Report:** https://gnso.icann.org/sites/default/files/file/field-file-attach/final-report-newgtld-subsequent-procedures-pdp-02feb21-en.pdf

Shortcut to:

[a) Provision of clarifying information to the Board](#)
[b) Determination that the issue can be resolved during implementation](#)
[e) Explore a Bylaw process](#)
[g) Other – Dialogue between the Council and the Board](#)

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
a) Provision of clarifying information to the Board				
Topic 3: Applications Assessed in Rounds				
Affirmation with Modification 3.1: 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."	As noted in the ODA, "ICANN org considered that assessing applications in rounds and establishing criteria for starting subsequent rounds requires deliberation of what it means to close a round and possibly, the implications of simultaneous rounds for both applicants and ICANN org."[1] The Board is considering to direct ICANN org to establish the exact criteria for considering a round "closed" during the implementation process, doing so in consultation with the Implementation Review Team (IRT). 28 March Context: The issue here is forward-looking, as in what will the program look like after the next round (recognizing that the next incarnation of the program must be a round). The future steady state is not necessarily first come first served. It appears that the issue here is primarily around providing flexibility rather than locking the program into rounds. 4 April Context: When building a sustainable program, it helps to think about a future steady state. Building	**Deliberations:** - Broad agreement that at a minimum, the immediate next launch of the program must be in the form of a round. - Recognition that this set of recommendations is indeed prescriptive, but policy can always be modified in the future. - Because the implications of moving to some form of steady state other than continuous rounds (especially one which includes a first come first serve component) are substantial, careful thought and analysis are needed (e.g., in the form of future policy development) if indeed this is the direction the community desires to go.. - Because nothing precludes policy development in the future to modify the requirement of rounds, the small team believes that the recommendation can be accepted unless and until future policy is developed. **Assessment:** In regards to the commitment to rounds (line items 1 & 3), the small team understands the Board's	Steady State: ● The rationale for Rec 3.1 states "Accordingly, at a minimum, the next application procedure should be processed in the form of a round." This rationale indicates that the PDP already contemplates the possibility of another application acceptance model in the future. ● While the PDP recommended rounds, it envisioned that they would occur regularly (see Rec 3.5). ● The PDP considered the possibility of a first-come-first-served approach, acknowledging the simplicity it brings to the process. However, the PDP ultimately decided against it, stating in the rationale to 3.5-3.7 that "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)." This implies that an ongoing process may negatively impact those third-party observers to the program. ● In the WG's Initial Report, it had been considering 6 different options, several of which included a first-come-first-served component. Section 2.2.3 provides an explanation of those options and detailed consideration of the pros and cons of each option. ● The WG's recommendations taken	Clarification Statement: Council to note willingness to engage with the Board to explore a steady state in the future.

[1] New gTLD Subsequent Procedures Operational Design Assessment, pp. 142-143.

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
	up the program for rounds may mean that the program will be "switched on and off" which can lead to costs and issues with resourcing. In addition, there are concerns about implementing a system (IT, HR, service providers etc) for the next round that at the same time, is "modular" enough to meet demands for an eventual steady state of applications, without expending too much now for fear of committing to sunk costs.	comments, but does not believe they need to be addressed immediately and should not be a barrier to accepting the recommendations. The Working Group recommendations proposed a steady state of "rounds" as opposed to a first-come first-served model. The small team understands that a first-come first-served steady state model has some advantages, but believes it is a complicated subject and if there is a desire to transition to such a model, that would require focused community work on the subject (e.g., PDP) because it would have a significant impact on other parts of the program such as how to accept applications, comment periods, objections, GAC Advice/GAC Early Warnings, etc.. In respect of the need to establish criteria during implementation, to define what round "closure" means, the small team is fully supportive of this need and believes that such criteria can be developed by ICANN org and reviewed by the IRT. **Proposed Path Forward:** **a) Provision of clarifying information to the Board including:** ● The rationale the Working Group used to make this recommendation, utilizing the preliminary report (for Work Tracks 1-4), comments received to that report, as well	collectively, aim to provide for, "clarity around the timing and/or criteria for initiating subsequent procedures." In particular, Rec 3.5 states that, "Application procedures must take place at predictable, regularly occurring intervals without indeterminable periods of review," which is a form of a steady state. Round closure: ● Implementation Guidance (IG) 3.3 states that, "A new round may initiate even if steps related to application processing and delegation from previous application rounds have not been fully completed." This IG is indicative of the WG's intent to provide for predictable, regularly occurring intervals of rounds. In particular, it seeks to minimize the significance of the round closure, which is presumably important for financial elements.	

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
		as the Draft Final Report and comments received). Summary of the deliberations where the WG decided against a first-come first-served model, as well as acknowledgment that nothing precludes the GNSO from considering a different model to introduce new gTLDs in the future, via policy development.		
Recommendation 3.2: 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 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.	See Affirmation with Modification 3.1		See proposed clarifying information provided to recommendation 3.1.	See potential landing spot for recommendation 3.1.
Recommendation 3.5: Absent extraordinary circumstances application procedures must take place at predictable, regularly occurring intervals without indeterminable periods of review unless the GNSO Council recommends pausing the program and such recommendation is approved by the Board. Such extraordinary circumstances must be subject to the Predictability Framework under Topic 2 of this	See Affirmation with Modification 3.1		See proposed clarifying information provided to recommendation 3.1.	See potential landing spot for recommendation 3.1.

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
Report. Unless and until other procedures are recommended by the GNSO Council and approved by the ICANN Board, ICANN must only use "rounds" to administer the New gTLD Program.				
Recommendation 3.6: 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.	See Affirmation with Modification 3.1		See proposed clarifying information provided to recommendation 3.1.	See potential landing spot for recommendation 3.1.
Recommendation 3.7: 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.	See Affirmation with Modification 3.1		See proposed clarifying information provided to recommendation 3.1.	See potential landing spot for recommendation 3.1.
Topic 9: Registry Voluntary Commitments / Public Interest Commitments				
Recommendation 9.2: Provide single-registrant TLDs with exemptions and/or waivers to mandatory PICs included in Specification 11 3(a) and Specification 11 3(b).[2]	The Board is concerned that a waiver to Spec 11 3 (a) and 3 (b) could lead to DNS abuse for second level registrations in a single registrant TLD going undeterred, unobserved and therefore unmitigated.	**Deliberations:** - Unclear if the concern is more about the harmonization of future RAs with the 2012 agreement or if it's more about waiving requirements	The rationale for Rec 9.2 explains why the WG concluded that exemptions/waivers from the requirements in Specification 11 3(a) and 11 3(b) are appropriate. Regarding 11 3(a), the rationale states, "Specifically, the Working Group notes that commitments included in	Board Non-adoption with the Board to "articulate the reasons for its determination in a report to the Council". Next steps to be determined based on the reasons for non-adoption and potential space

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

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
	The Board is also concerned that a waiver to Spec 11 3 (a) and 3 (b) could require a change to the RA's Specification 13, which would introduce significant implementation efforts to harmonize current 2012 agreements with future rounds if ICANN org elected to leverage the current agreement for the future rounds. _____ 28 March Context: Skipped, may want to revisit during next meeting. 3 April Context: Not all single registrant registries will operate in the same way so it might not make sense to exempt all single-registrant TLDs.	for all single-registrant TLDs. - As noted in the 3 April Context, this is primarily about the waiver applying to all single-registrant TLDs, understanding that not all registries will operate in the same manner. **Assessment:** Consistent with the small team's consideration of Recommendation 22.7, because registrants in a .brand will always be the registry, an affiliate, or licensee, it is difficult to understand why these contractual provisions would be necessary. **Proposed Path Forward:** **a) Provision of clarifying information to the Board.** The small team believes information consistent with the Assessment should be provided to the Board and that there should be an ensuing conversation to gain alignment on the issue and potential resolution.	Specification 11 3(a) are required to be passed down to a registrar and from there to the registrant. Therefore, they are not relevant in the case of a single registrant TLD." Without Recommendation 9.2, a single registrant registry would be required to include a provision in its RAA which itself requires a provision in their Registration Agreements that prohibits certain activities for registrants. In this scenario this appears to create a circular set of contractual requirements that are unusual in nature. Regarding 11 3 (b), the rationale states, "The Working Group further believes that security threat monitoring and reporting requirements under Specification 11 3(b) should not be applicable to single registrant TLDs because the threat profile for such TLDs is much lower compared to TLDs that sell second level domains." In a single registrant registry, the registry operator would be in the position of conducting analysis in a TLD where it is the registrant for every domain name. In other words, the registry operator, which is also the registrant of all domains, would both be the perpetrator of abuse and also be required to faithfully report abuse in its domain space. In addition, the WG discussed that .brands in particular have a keen interest in monitoring their TLD space to ensure it is not being used for abusive practices because it is part of their infrastructure.	for a successful Supplemental Recommendation.

Topic 18: Terms & Conditions

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
Recommendation 18.3: In subsequent rounds, the Terms of Use must only contain a covenant not to sue if, and only if, the appeals/challenge mechanisms set forth under Topic 32 of this report are introduced into the program (in addition to the accountability mechanisms set forth in the current ICANN Bylaws). This recommendation is in reference to Section 6 of the Terms and Conditions from the 2012 round.	The Board remains concerned, as previously voiced as part of its comment on the Draft Final Report, over undue legal exposure. 28 March Context: The issue here is the potential for an aggrieved party to assert that the appeals/challenge mechanisms are not implemented precisely as described in Topic 32, thereby allowing them to challenge the validity of the covenant not to sue.	**Deliberations:** - The SubPro PDP made clear that the covenant not to sue could remain only if an appeals/challenge mechanism was established. - The SubPro PDP has already carefully considered the Board's concerns that recommendation 18.3 may be argued to be dependent upon the appeals/challenge mechanism being implemented precisely as Topic 32 dictates through policy recommendations and implementation guidance. - The SubPro WG provided rationale in its review of public comments (see line 19 here). In brief, the purpose of the recommendation is not to give applicants grounds to allege that the appeal process did not meet their satisfaction, but rather to state the WG's view that a covenant not to sue in favor of ICANN is only palatable if an Appeals / Challenge mechanism is implemented. - The provision not to sue cannot easily be argued away. **Assessment:** The small team does not agree with this concern as the SubPro WG has thoroughly considered the concerns in the context of public comments and	The WG received and considered the public comment from the Board on its Draft Final Report, which in part stated that, "The Board understands the intent behind this recommendation, but is concerned that dissatisfied applicants or objectors might argue based on this policy recommendation that the covenant not to sue is not valid because they did not like the way the appeals/challenge mechanism was built or operated." The WG, in considering (see line 19 in the WG's public comment analysis here) the Board's concern, concluded that, "The purpose of this provision is not to give applicants grounds to allege that the appeal process did not meet their satisfaction, but rather to state the Working Group's view that a covenant not to sue in favor of ICANN is only palatable if the Appeals / Challenge mechanism (as described in Section 32 is actually implemented)." [Additional potential next steps For Council: ● Written statement that makes clear that the requirement in Rec 18.3 is that an Appeals / Challenge mechanism is needed, implemented in line with Topic 32, but that it does NOT include a requirement that the challenger be satisfied with the result. The mere implementation and existence of an Appeals / Challenge mechanism is all that was intended by the recommendation]	Board Non-adoption with the Board to "articulate the reasons for its determination in a report to the Council". Next steps to be determined based on the reasons for non-adoption and potential space for a successful Supplemental Recommendation.

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
		concluded that the covenant not to sue can remain if AN appeals/challenge mechanism is established. The deliberations of the SubPro WG can be found at the link above regarding the WG's deliberations for public comments. **Proposed Path Forward:** **a) Provision of clarifying information to the Board.** The small team believes information consistent with the Assessment should be provided to the Board and that there should be an ensuing conversation to gain alignment on the issue and potential resolution.		
Topic 19: Application Queuing				
Recommendation 19.3: All applications must be processed on a rolling basis, based on assigned priority numbers. While the 2012 AGB prescribed batches of 500 applications, ICANN org noticed during that round that moving through the priority list without splitting the applications into batches was more efficient. **The Working Group affirms that approach by not recommending batches.** However, if the volume of Internationalized Domain Names (IDN) applications received equals or exceeds 125, applications will be assigned priority numbers consistent with the formula below.	The Board is concerned that the precise number of batching could be/is too limiting for future rounds as the recommendation prescribes a batch size that might not align with future system capabilities. _____ 3 April Context: The very prescriptive nature of this recommendation appears better suited for implementation guidance.	**Deliberations:** - As noted in the 3 April Context, this recommendation seems to stray into implementation guidance, given how precise the formula is. - The Board concern seems to be concentrated on the prescriptive batch size (i.e., 500), but the recommendation itself specifically notes that the WG does NOT recommend batching and states affirmatively that applications should be processed on a rolling basis. - The core of the recommendation is about how to determine the priority	There appears to be a misalignment between the Board's concern and the text of Rec 19.3. The Board notes that, "that the precise number of batching could be/is too limiting for future rounds." However, the text of the recommendation explicitly states that, " The Working Group affirms that approach by not recommending batches." The WG is therefore not recommending batches at all and accordingly, not prescribing a certain batch size. The core of the recommendation is about how to determine the priority ordering, specifically for IDN applications, and not about prescribing batch sizes.	Clarification Statement: Council to affirm that the recommendation is not prescribing batch sizes. OR Possibly, the Board can accept as-is, given provision of clarifying information.

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot

The Working Group recommends that the following formula must be used with respect to giving priority to IDN applications:
 	
● First 500 applications
  ○ If there are 125 applications or more for IDN strings that elect to participate in the prioritization draw, the first 25% of applications assigned priority numbers in the first group shall be those applications for IDN strings that elect to participate in the prioritization draw. The remaining 75% of applications in the group shall consist of both IDN and non-IDN applications that elect to participate in the prioritization draw.
  ○ If there are less than 125 applications for IDN strings that elect to participate in the prioritization draw, then all such applications shall be assigned priority numbers prior to any non-IDN application.
● Each subsequent group of those electing to participate in the prioritization draw
  ○ For each subsequent group, the first 10% of each group of applications must consist of IDN applications until there are no more IDN applications.
  ○ The remaining applications
		ordering, specifically for IDN applications, and not about prescribing anything about batch sizes.
		- Some discussion around batching, especially around the 450 number referenced in the ODA regarding Option 2. Clarified that this recommendation is about the order of application processing, not about prescribing batch sizes.
		
		Assessment:
		
		The small team believes it understands the Board's concern but believes there is perhaps a misalignment between the Board's concern and what the recommendation is saying. The SubPro recommendation is not intended to prescribe a batch size but rather, it provides a formula to assign priority numbers for evaluation processing.
		
		Proposed Path Forward:
		
		a) Provision of clarifying information to the Board.
		
		The small team believes information consistent with the Assessment should be provided to the Board and that there should be an ensuing conversation to gain alignment on the issue and potential resolution.		

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
in each group 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 assigned priority numbers, ICANN shall assign priority numbers to the remaining applications in groups of 500 applications. ○ The first 10% of each group of applications must consist of IDN applications until there are no more IDN applications. ○ The remaining applications in each group shall be selected at random out of the pool of IDN and non-IDN applications that remain.				
Topic 22: Registrant Protections				

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
Recommendation 22.7: 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.	The Board is concerned that an exemption from an COI for Spec 9 applications would have financial impact on ICANN since there would be no fund to draw from if such a registry went into EBERO. Further, not moving a Brand TLD into EBERO might have a security and stability impact, especially if Brands allocate second level TLDs to customers -such as a car manufacturer providing a second level registration for their cars. _____ 3 April Context: Similar to row 8, not all registries will operate the same way and therefore, a blanket exemption may not be advisable. 17 Apr Context: It may be advisable that instead of having an exemption for all .Brands, it be subject to a case-by-case review.	**Deliberations:** - The additional context notes that not all brands/single registrant registries will operate in the same manner. There may be instances where a consumer or end-user is impacted (see car manufacturer example). - The rationale for this recommendation is centered on the lack of 3rd party registrants. Requiring .brand TLDs to still go through the arduous process of obtaining a COI where there is minimal to no risk to registrants does not seem warranted. - It is also not necessarily ICANN's job to prop up every registry, especially if there are no registrants to protect. Businesses in the real world can and do fail. - For the example of a car manufacturer, the registrant must still be the registry, an affiliate, or licensee. There should not be third-party registrants in a .brand registry. - A licensee could seek recourse with the Registry. **Assessment:** The small team understands the concern but consistent with the deliberations and outcomes captured in the SubPro Final Report, it believes that registrants in a .brand will always	The WG sought community feedback in advance of developing its Initial Report (see public comment proceeding for Community Comment 2 (CC2) here), which included the topic of Registrant Protections. The public comments received to 2.3.1 in CC2 were nearly unanimously in favor of limiting registrant protections for .Brands qualified for Spec 13. Respondents cited what the WG ultimately agreed upon: since all domains must be registered to the registry, an affiliate, or licensee in a .brand registry, there is no set of registrants that require protections.	Board Non-adoption with the Board to "articulate the reasons for its determination in a report to the Council". Next steps to be determined based on the reasons for non-adoption and potential space for a successful Supplemental Recommendation.

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
		be the registry, an affiliate, or licensee and that there are no third-party registrants to protect. **Proposed Path Forward:** **a) Provision of clarifying information to the Board.** The small team believes information consistent with the Assessment should be provided to the Board and that there should be an ensuing conversation to gain alignment on the issue and potential resolution.		

Topic 26: Security and Stability

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
Recommendation 26.9: In connection to the affirmation of Recommendation 4 from the 2007 policy, Emoji in domain names, at any level, must not be allowed.	The Board is concerned that this recommendation could be argued to fall outside ICANN's mission which states, per the Bylaws (Section 1.1.(i)): "… Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS") and coordinates the development and implementation of policies concerning the registration of **second-level** [emphasis added] domain names in generic top-level domains ("gTLDs"). In this role, ICANN's scope is to coordinate the development and implementation of policies… [.]" ―――――――――― 3 April Context: The Bylaws talk about ICANN's role at the first and second level, but not third and beyond. What	**Deliberations:** - Given that the RA already has provisions regulating the 3rd level, why is it problematic now? - This recommendation is consistent with SSAC Advice. - Concern raised that accepting a recommendation that is potentially contrary to the Bylaws limitations of policy development at the top and second-levels could create unwanted precedence. - The contracts require adherence to IDNA 2008, which itself prohibits the use of emojis. However, it was noted that requirements and RFCs can change, so not having an explicit recommendation preventing emojis could be problematic in the future.	The WG cites SAC095 in its rationale to Rec 26.9 in its Final Report. In that rationale, the WG notes that emojis "are already not permitted by the underlying technology, e.g., adherence to the Internationalizing Domain Names in Applications (IDNA) specification, and that the standard would need to be willfully broken in order to support them." However, the WG still believed that an explicit disallowance of emojis at any level is needed since RFCs and standards can change, even if infrequently. Rec 26.9 is in line with Rec 2 from SAC095 which states, "Because the risks identified in this Advisory cannot be adequately mitigated without significant changes to Unicode or IDNA (or both), the SSAC strongly discourages the registration of any domain name that includes emoji in any of its labels." The WG took note of the fact that the recommendation mentioned "any of its labels" specifically. While not a part of the WG's deliberations, the Council notes that there are a number of	Clarification Statement: Council to affirm that the recommendation is only in respect of domain names that are allocated at the registry level.

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
	has changed is that the 2016 Bylaws say ICANN cannot operate outside of its mission. This helps explain why existing agreements include provisions related to all levels. --- Bylaws concerns (different than Topic 9)	**Assessment:** The small team understands the concerns but believes that because there are a number of existing references and requirements in the agreements that pertain to any levels (and because new contracts with those same provisions have been entered into post-transition), it should be acceptable to include reference to any level in this recommendation. The small team recognizes that the purpose of this recommendation may be accomplished by requirements for contracted parties to follow IDNA 2008 and relevant RFCs that prevent the usage of emojis, but because RFCs and standards can change, the preference is to have an explicit recommendation barring emojis. **Proposed Path Forward:** <u>a) Provision of clarifying information to the Board.</u> The small team believes information consistent with the Assessment should be provided to the Board and that there should be an ensuing conversation to gain alignment on the issue and potential resolution.	existing references and requirements in the agreements that apply to any levels. In addition, ICANN has entered into new contracts with those same any level provisions post-transition.	
Topic 29: Name Collision				

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
Recommendation 29.1: 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.	The Board has concerns around the potential impact of NCAP on this recommendation and believes it is prudent to wait until after the release of the NCAP2 study before resolving on this recommendation. 3 April Context: Nothing additional.	**Deliberations:** - The SubPro recommendation acknowledges that adjustments may be needed subject to the outcomes of the NCAP studies. - It appears that NCAP study 3 will not be needed. **Assessment:** The small team understands the concern but believes that because of the accommodation for adjustments stemming from NCAP studies outcomes, this recommendation could be accepted now. At a minimum, the small team does not believe that waiting for the NCAP studies to conclude should delay the next round. **Proposed Path Forward:** **<u>a) Provision of clarifying information to the Board.</u>** The small team believes information consistent with the Assessment should be provided to the Board and that there should be an ensuing conversation to gain alignment on the issue and potential resolution.	Rec 29.1 states that "a mechanism to evaluate the risk of name collisions in the New gTLD evaluation process as well as during the transition to delegation phase" is needed, but does not specify how it must be done. Affirmation 29.2 states that the WG "affirms continued use of the New gTLD Collision Occurrence Management framework unless and until the ICANN Board adopts a new mitigation framework." Taken together, Rec 29.1 is about the need for risk mitigation (which the Council expects will persist into the future) and Affirmation 29.2 states how it should be accomplished, but specifically calls out the possibility of a new mitigation framework (e.g., stemming from the NCAP studies). Accordingly, the Council believes that the Recommendation can be approved as written.	Clarification Statement: Council to agree that this recommendation does not need to be actioned until after the NCAP Study 2 completes.

Topic 32: Limited Challenge/Appeal Mechanism

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
Recommendation 32.1: 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.[3] 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[4]: **Evaluation Challenges** 1. Background Screening 2. String Similarity 3. DNS Stability 4. Geographic Names 5. Technical / Operational	The Board is still assessing the concerns regarding this recommendation, as set out in [Operational](#) [Design Assessment](#), at topic 32 (pp. 169-176) ――――――――― 4 April Context: Besides specific concerns identified in the ODA, the Board wants to make sure it understands how it will coexist with the Bylaws mechanisms, and not only wait until implementation. Need to make sure that the mechanisms do not just create bureaucracy and complications. ――――――――― For ease of reference, the concerns stated in the ODA are: ● Challenges/ appeals ending in decisions which are not in the best interest of ICANN ● The possibility of challenges/ appeals against Initial/Extended Evaluation decisions by ICANN or third-party providers and the likelihood of challenges concerning conflict of interest causing excessive,	**Deliberations:** - This set of recommendations is intended to be discrete from the Bylaws mechanisms and is an important piece of the recommendations. - Need to make sure that the mechanisms do not interfere with the Bylaws mechanisms. - The recommendations and the supporting annex are quite detailed regarding the limited grounds and eligibility for challenges and appeals. - The recommendations and rationale can be reviewed to see if they help address the concerns identified in the ODA. - Discussion with the Caucus is likely warranted. The "answers" to the concerns in the ODA can help form the basis for that conversation. **Assessment:** The small team understands that the Board is still assessing potential issues with these recommendations, but believes that it can respond to the concerns addressed in the ODA. **Proposed Path Forward:** **a) Provision of clarifying information to the Board.**	The small team has pulled the highlighted text from the concerns identified in the ODA and has sought to find references in the various outputs from the SubPro WG which help address the concerns. **1. Extending a limited challenge/appeal mechanism to cover evaluation decisions made by ICANN or third-party providers may cause unnecessary cost and delay, given the availability and purpose of Extended Evaluation.** ● The WG did not specifically discuss the interplay between the challenge / appeal mechanism and Extended Evaluation. However, Rec 32.10 does note that, "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." As such, the interplay could likely be explored during implementation. **2. This potentially challenges the ability to predictably plan for the opening and closing of the application submission period.** ● There are several Recs/IG that will likely mitigate these concerns. These include: ○ IG 32.7, which limits the scope of what can be	TBD - Further dialogue needed.

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[3] 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.

[4] 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.

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
Evaluation 6. Financial Evaluation 7. Registry Services Evaluation 8. Community Priority Evaluation 9. Applicant Support 10. RSP Pre-Evaluation **Appeals of Formal Objections Decisions** 11. String Confusion Objection 12. Legal Rights Objection 13. Limited Public Interest Objection 14. Community Objection 15. Conflict of Interest of Panelists	unnecessary costs or delays to the application process. ● Risk of gaming ● Endless loop of challenges / appeals ● Finding suitable arbiters to hear the challenge / appeal ● Details for challenge / appeal mechanism in implementation on process, timing, impact to the round ● Risks involved	The small team believes the Council should develop responses to the concerns identified in the ODA and share those with the Board. Following the provision of that information, the Council should remain available to discuss with the Board.	appealed. ○ IG 32.12, which suggests a "quick look" mechanism to eliminate frivolous activity. ○ IG 32.12, which limits challenges to a single round. ● The concern in the ODA specifically cites RSP Pre-Evaluation as potentially creating timing issues in the context of the challenge / appeal mechanisms. The WG reviewed the New gTLD Program Implementation Review Report as part of its deliberations. One of the elements that was important in the WG's recommendations on RSP Pre-Evaluation was the limited number of RSPs. The Operational Design Assessment (ODA) estimates on page 319 that there are, "about 40 RSPs in the gTLD space now. This number is not expected to increase significantly. However, for capacity-planning purposes, ICANN will plan for 60 RSPs to go through evaluation." The limited number of entities going through the process should also limit the reliance on the challenge mechanism. **3. The broad scope of parties who are recommended in the Final Report to have standing could potentially open the door to gaming/manipulating the process.** ● The WG believes that there are several recommendations that will	

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
			collectively aid in mitigating this concern. These include: ○ IG 32.3, which establishes the limited set of parties that should have standing to initiate a challenge or appeal process. ○ IG 32.7, which limits the scope of what can be appealed. ○ IG 32.8, which generally makes the party bringing the challenge responsible for paying for the challenge. ○ IG 32.11, which provides for timeframes for appeals. ○ IG 32.12, which suggests a "quick look" mechanism to eliminate frivolous activity. **4. ICANN org notes another potential challenge related to the possibility for an "endless loop" of challenges/appeals regarding an application. Implementation Guidance 32.13 states, that "A party should be limited to a single round of challenge/appeal for an issue…."** ● As the concern notes, IG 32.13 makes clear that, "A party should be limited to a single round of challenge/appeal for an issue." ● Specifically, the IG states, "parties should only be permitted to challenge/appeal **the final decision** on an evaluation or objection" (emphasis added). This text would appear to address the	

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
			concern of numerous appeals against appeals. **5. Finding suitable arbiters to hear the challenge / appeal** ● The rationale for IG 32.5 notes that, "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." This rationale goes on to describe other options that were considered, which could presumably be considered during implementation if the specific mechanism in IG 32.5 proves to not be feasible.	
Recommendation 32.2: In support of transparency, clear procedures and rules must be established for challenge/appeal processes as described in the implementation guidance below.	See recommendation 32.1		See proposed clarifying information provided to recommendation 32.1.	See potential landing spot for recommendation 32.1.
Recommendation 32.10: 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.	See recommendation 32.1		See proposed clarifying information provided to recommendation 32.1.	See potential landing spot for recommendation 32.1.
Topic 34: Community Applications				

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
Recommendation 34.12: The process to develop evaluation and selection criteria that will be used to choose a Community Priority Evaluation Provider (CPE Provider) must include mechanisms to ensure appropriate feedback from the ICANN community. In addition, any terms included in the contract between ICANN org and the CPE Provider regarding the CPE process must be subject to public comment.	The Board is concerned that this recommendation may require ICANN to publish for public comment confidential information, such as terms of a contract with a third party, including, e.g., fees and payments.: <hr> 4 April Context: Understanding what specific issue is being addressed by this recommendation will help to understand what the "right" level of information is needed in regards to the contract.	**Deliberations:** - The issue being addressed is regarding all of the additional guidance that was developed long after applicants had already submitted their applications. The intention was to try and ensure that applicants had complete information, not seeking the disclosure of confidential information. - There was also concern about the assessment performed as to the suitability of the CPE provider. **Assessment:** The small team understands the concern. The belief is that in clarifying the purpose (e.g., ensuring applicants understand all requirements up front, ensuring that all processes are understood, the interactions between ICANN staff and evaluators, etc.), this concern can be addressed. **Proposed Path Forward:** **a) Provision of clarifying information to the Board.** The small team believes information consistent with the Assessment should be provided to the Board and that there should be an ensuing conversation to gain alignment on the issue and potential resolution.	The WG documented a number of concerns in its Initial Report under 2.9.1.f. Many of the concerns are focused on not having complete information, especially prior to applying for a community-based application. This includes the Supplemental CPE Guidelines being released after application submission and perceived lack of transparency and predictability, particularly around process, documentation, third-party evaluator contracts, and outcomes. The purpose of this recommendation per the Final Report rationale is to provide "greater transparency and a role for the ICANN community in the process to develop evaluation and selection criteria that will be used to choose a Community Priority Evaluation Provider (CPE Provider)." There is also a key element in Rec 34.12 when it is referring to the contract, where it says "regarding the CPE process," which would presumably exclude confidential terms like "e.g., fees and payments," that have no connection to the CPE process for applicants.	Clarification Statement: Council to confirm that the recommendation is not intended to include confidential terms of the agreement.

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
Topic 35: Auctions				
Recommendation 35.3: Applications must be submitted with a bona fide ("good faith") intention to operate the gTLD. Applicants must affirmatively attest to a bona fide intention to operate the gTLD clause for all applications that they submit. ● Evaluators and ICANN must be able to ask clarifying questions to any applicant it believes may not be submitting an application with a bona fide intention. Evaluators and ICANN shall use, but are not limited to, the "Factors" described below in their consideration of whether an application was submitted absent bona fide intention. These "Factors" will be taken into consideration and weighed against all of the other facts and circumstances surrounding the impacted applicants and applications. The existence of any one or all of the "Factors" may not themselves be conclusive of an application made lacking a bona fide use intent. ● Applicants may mark portions of any such responses as "confidential" if the responses include proprietary business information. The Working Group discussed the following potential non-exhaustive	The Board is concerned that this recommendation contains a reference to private auctions. Since there is no policy on private auction, this reference may create confusion during implementation and operationalization of the program. 4 April Context: Concerns within the Board about private auctions being gamed, in particular, submitting applications to lose on purpose for financial gain and/or to lose for certain applications in order to better fund applications that the applicant wants to pursue. Including a reference to private auctions can be seen as tacitly approving them.	**Deliberations:** - Since there was an expectation in SubPro that unless there was a recommendation, the status quo would prevail. And in this case, as private auctions were a part of the 2012 round, they were mentioned as part of that status quo. - Unclear if the Board is opposed to private auctions as a collective body, which could impact potential next steps. - The Board has advice it will need to consider, some of which opposes private auctions. - Unclear if the removal of the specific mentions of private auctions would be helpful. - And unclear if the Board will be able to accept these recommendations without an explicit recommendation that allows private auctions. - One option could be to get the advice of expert auction providers to help design auctions in a manner that dissuades applicants from seeking private auctions. If they could be designed in such an effective manner, private auctions could remain allowable, but if there is no benefit to pursuing their usage, it would not matter that they are still allowed.	Recs 35.3 and 35.5 both reference private auctions because the WG operated under an assumption that if there was no consensus to change a part of the 2012 New gTLD Program, the status quo would remain. In the case of private auctions, there was no consensus within the WG to explicitly maintain nor to eliminate private auctions entirely. Operating under the WG's assumption, this would indicate that private auctions would remain, absent any policy recommendations. In the rationale for 35.2-35.3, it notes, "While not all Working Group members agree that private auctions are problematic, the Working Group noted that significant concerns have been raised within the community and by the ICANN Board about the practice of applying for top-level domains with the purpose of financial gain. This includes the utilization of proceeds from lost auctions towards future auctions." The rationale for 35.5 states that, "By requiring all applicants to agree to the bona fide intention clause, some in the Working Group believe that the Board's primary concerns are mitigated and that private resolutions (including private auctions) as a mechanism to resolve string contention, should be permitted. However, some others in the Working Group still believe that private auctions (and similar private resolution mechanisms) may be a cause for concern, and believe that data must be collected to help determine in the future if a problem exists."	Clarification Statement: Council to make clear that the references to private auctions in Recs 35.3 and 35.5 are acknowledging that they existed in 2012 and should NOT be seen as an endorsement or prohibition of their continued practice in future iterations of the New gTLD Program.

list of "Factors" that ICANN may consider in determining whether an application was submitted with a bona fide ("good faith") intention to operate the gTLD. Note that potential alternatives and additional language suggested by some Working Group members are included in brackets: ● If an Applicant applies for [four] [five] or more strings that are within contention sets and participates in private auctions for more than fifty percent (50%) of those strings for which the losing bidder(s) receive the proceeds from the successful bidder, and the applicant loses each of the private auctions, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for each of those applications. ● Possible alternatives to the above bullet point: 　• [If an applicant participates in six or more private auctions and fifty percent (50%) or greater of its contention strings produce a financial windfall from losing.] 　• [If an applicant receives financial proceeds from losing greater than 49% of its total number of contention set applications that are resolved through private auctions.] 　• [If an applicant: a. Has six or more applications in		- If there is an expectation that auctions be designed in such a manner, it could mean that the recommendations are ok as they are. - Taking a step back, clarification that the concern of the Board is the explicit mention of private auctions. The reason private auctions were referenced is merely because they were a part of 2012 and there were no recommendations to eliminate them - therefore, it's intended to merely be an acknowledgment of the status quo, not an endorsement of private auctions. **Assessment:** The small team understands the concern but would stress that the recommendation is not intended to condone nor exclude private auctions, it is merely an acknowledgment that they occurred in 2012 and that the recommendations are intended to mitigate potential gaming concerns. **Proposed Next Step:** **a) Provision of clarifying information to the Board.** The small team believes information consistent with the Assessment should be provided to the Board and that there should be an ensuing conversation to gain alignment on the issue and potential resolution.	These two references from the rationale indicate that the WG was not in agreement on whether private auctions should be allowed or not. The references to private auctions in Recs 35.3 and 35.5 can be considered acknowledgements of the status quo. For the references to private auctions in Rec 35.3, these mentions are in the context of "Factors" that may indicate that the application was not submitted with a bona fide intent; the "Factors" listed are specifically labeled as "non-exhaustive." [Additional potential next steps For Council: ● Written statement that makes clear that the references to private auctions in Recs 35.3 and 35.5 are acknowledging that they existed in 2012 and should NOT be seen as an endorsement or prohibition of their continued practice in future iterations of the New gTLD Program.]	

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contention sets; and b. 50% or more of the contention sets are resolved in private auctions; and c. 50% or more of the private auctions produce a financial windfall to the applicant.] ● [If an applicant applies for 5 or more strings that are within contention sets and participated in 3 private auctions for which the applicant is the losing bidder and receives proceeds from the successful bidder it MUST send to the evaluators a detailed reconciliation statement of its auction fund receipts and expenditure immediately on completion of its final contention set resolution. In addition this may be considered a factor by the evaluators and ICANN in determining lack of bona fide intention to operate the gTLD for all of its applications and in doing so might stop all its applications from continuing to delegation.] ● If an applicant's string is not delegated into the root within two (2) years of the Effective Date of the Registry Agreement, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for that applicant. ● If an applicant is awarded a top-level domain and [sells				

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or assigns] [attempts to sell] the TLD (separate and apart from a sale of all or substantially all of its non-TLD related assets) within (1) year, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for that applicant. ● [If an applicant with multiple applications resolves contention sets by means other than private auctions and does not win any TLDs.] ● Consideration of whether an application was submitted with a bona fide intention to operate the gTLD must be determined by considering all of the facts and circumstances surrounding the impacted application.				
Recommendation 35.5: Applicants resolving string contention must adhere to the Contention Resolution Transparency Requirements as detailed below. Applicants disclosing relevant information will be subject to the Protections for Disclosing Applicants as detailed below. **Contention Resolution Transparency Requirements** ● For Private Auction or Bidding Process / ICANN Auction of Last Resort: In the case of a private auction or an ICANN Auction of Last	The Board is concerned that this recommendation contains a reference to private auctions. Since there is no policy on private auction, this reference may create confusion during implementation and operationalization of the program.		See proposed clarifying information provided to recommendation 35.3.	See potential landing spot for recommendation 35.3.

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Resort, all parties in interest[5] to any agreements relating to participation of the applicant in the private auction or ICANN Auction of Last Resort must be disclosed to ICANN within 72 hours of resolution and ICANN must, in turn, publish the same within 72 hours of receipt. This includes: ○ A list of the real party or parties in interest in each applicant or application, including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant; ○ List the names and contact information[6] of any party holding 15% or more direct or indirect ownership of each applicant or application, whether voting or nonvoting, including the specific amount of the interest or percentage held; ○ List the names and				

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

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

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contact information[7] of all officers, directors, and other controlling interests in the applicant and/or the application;
  ○ The amount paid (or payable) by the winner of the auction;
  ○ The beneficiary(ies) of the proceeds of the bidding process and the respective distribution amounts;
  ○ The beneficiary(ies) of the proceeds of the bidding process; and
  ○ The value of the Applicant Support bidding credits or multiplier used, if applicable.[8]
● For Other Forms of Private Resolution: Where contention sets are privately resolved through a mechanism other than a private auction, the following must be disclosed:
  ○ The fact that the contention set (or part of a contention set), has been resolved privately (and the names of the parties				

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[7] Same as above.

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

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
involved); ○ Which applications are being withdrawn (if applicable); ○ Which applications are being maintained (if applicable); If there will be a change in ownership of the applicant, or any changes to the officers, directors, key personnel, etc., along with the corresponding information; ○ All material information regarding any changes to information contained in the original application(s)(if any). In the event that any arrangements to resolve string contention results in any material changes to the surviving application, such changes must be submitted through the Application Change process set forth under Topic 20: Application Change Requests. **Protections for Disclosing Applicants** ● Except as otherwise set forth in the transparency requirements above, no participant in any private resolution process shall be required to disclose any proprietary information such as trade secrets, business plans, financial records, or personal				

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Clarifying Information	Potential Landing Spot
information of officers and directors unless such information is otherwise required as part of a normal TLD application. ● The information obtained from the contention resolution process may not be used by ICANN for any purpose other than as necessary to evaluate the application, evaluate the New gTLD Program, or to otherwise comply with applicable law.				

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b) Determination that the issue can be resolved during implementation				
Topic 6: Registry Service Provider Pre-Evaluation				
Recommendation 6.8: 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	The Board is concerned about the recommended roles and responsibilities during the implementation process. Per Consensus Policy Implementation Framework (CPIF) and the IRT Principles & Guidelines ICANN org leads implementation efforts. Therefore, the costs of the program should be established by ICANN org during implementation in consultation with the IRT. 28 March Context: Clarified that this issue is about roles and responsibilities (i.e., ICANN org is responsible for implementation and the IRT provides guidance to ensure implementation is true to intent). The IRT would therefore not be the party to establish costs for the program.	**Deliberations:** - Agreement that this language should have been more precise and captured the respective roles of the Org and the IRT. - Specifically, it is Org's role to establish the costs estimates in a manner consistent with the recommendations and it is the role of the IRT to validate that that is indeed the case. - The rationale and deliberations for this recommendation reinforce the intent. **Proposed Path Forward:** **b) Determination that the issue can be resolved during implementation.** The small team believes that once the Council clarifies the intent of the recommendation, that the Board should be able to adopt the recommendation "as clarified by the Council."	The Council understands the concern and how the recommendation could be read in the manner in which it was interpreted by the Board. However, the Council has reviewed the Final Report and other Working Group documents and believes that the intent behind the recommendation is aligned with the Board's view. The Council understands the recommendation to mean that staff working with the IRT will determine the elements that must be considered in determining the fees for the program, but that the actual calculation of those fees are the role of ICANN Org and not that of the IRT. [Additional potential next steps For Council: • Written statement that makes clear that the Council recognizes the proper roles and responsibilities during implementation]	Clarification Statement: Council to make clear that the Council recognizes the proper roles and responsibilities during implementation OR Possibly, the Board can accept as-is, given provision of clarifying information.
Topic 16: Application Submission Period				
Recommendation 16.1: The Working Group recommends that for the next application window and subsequent application windows, absent "extenuating or extraordinary" circumstances, the application submission period must be a minimum of 12 and a maximum of 15 weeks in length.	The Board is concerned that the time period provided in this recommendation could be too limiting for future rounds. 28 March Context: The issue is related to the potential lack of flexibility; 12-15 weeks is prescriptive.	**Deliberations:** - As context, the SubPro PDP discussed timelines extensively with some members asking for longer application windows and others for shorter. As a compromise it landed at the range of 12-15 weeks.. - The Small Team believes that rather than modifying this recommendation, ICANN Org and the IRT can help define	The Council understands the concern. However, the Council's hope is that the issue can be resolved during implementation (e.g., defining "extenuating or extraordinary").	The Board can accept as-is, given provision of clarifying information.

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Assessment	Potential Landing Spot
		what "extenuating or extraordinary" means during implementation, to allow for needed flexibility. **Proposed Path Forward:** **b) Determination that the issue can be resolved during implementation** Specifically "extenuating or extraordinary" should be defined during implementation. If however, the Board is unable to accept the recommendations as written and resolve in implementation, the small team would seek the most expeditious way to correct the issue (e.g., options c or d).		
Topic 18: Terms & Conditions				
Recommendation 18.4: 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.[9]	The Board is concerned that the way the recommendation is worded could lead to gaming because of the subjective nature of the terms 'substantive' and 'material'. 3 April Context: The subjective terms need tightening up, though perhaps this could be addressed in implementation.	**Deliberations:** - If this is just an issue of tightening up the language and limiting gaming, it appears that this could probably be done in implementation. - Specifically, it seems that 'substantive' and 'material' could be defined during implementation. **Proposed Path Forward:** **b) Determination that the issue can be resolved during implementation** Specifically, 'substantive' and 'material' should be defined during implementation	The Council understands the concern and believes that it can be resolved during implementation, specifically by defining 'substantive' and 'material'.	The Board can accept as-is, given provision of clarifying information.

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[9] This refund would differ from the normal refund schedule.

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e) Explore starting a Bylaw Process				
Topic 9: Registry Voluntary Commitments / Public Interest Commitments				
Recommendation 9.1: Mandatory Public Interest Commitments (PICs) currently captured in Specification 11 3(a)-(d) of the Registry Agreement[10] must continue to be included in Registry Agreements for gTLDs in subsequent procedures. Noting that mandatory PICs were not included in the 2007 recommendations, this recommendation puts existing practice into policy. One adjustment to the 2012 implementation is included in the following recommendation (Recommendation 9.2).[11]	The Board remains concerned, as previously voiced as part of its comment on the Draft Final Report, over risks of challenges related to ICANN's ability to enter into and enforce PICs/RVCs in accordance with its mission, due to limitations in the Bylaws Section 1.1. 28 March Context: The issue here is related to potential challenges to ICANN's ability to enforce PICs/RVCs (e.g., regulation of content), which is not allowable within ICANN's Bylaws. The issue therefore does not seem specific to the recommendations	**Deliberations:** - The concern does not appear to be the recommendations themselves but rather, whether or not they are enforceable under the current Bylaws. - While it can be argued that PICs/RVCs are already enforceable under the Bylaws, a Bylaws amendment to make clear that ICANN can enforce these contractual provisions would solidify ICANN's ability to create enforceable commitments - The Board is concerned that without that clarification, one could argue that ICANN is	• The WG relied on PICs/RVCs in a number of circumstances to make enforceable commitments to other parties, often in the context of trying to address a concern and to potentially allow the applicant to move forward with their application. The Council unanimously approved the relevant recommendations. • It can be argued that the current Bylaws allow ICANN to enter into and enforce PICs/RVCs (e.g., Section 1.1.d.ii.A.2 and Section 1.1.d.iv) in the future. • However, if the Board believes it prudent to explore a Bylaws amendment to make clear that PICs/RVCs are enforceable, the Council	TBD - Further dialogue needed.

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[10] The relevant sections are as follows:

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

    (a) Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

    (b) Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.

    (c) Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.

    (d) Registry Operator of a "Generic String" TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person's or entity's "Affiliates" (as defined in Section 2.9(c) of the Registry Agreement). "Generic String" means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.

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

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

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	themselves, but potentially regarding challenges to the implementation, where it may be argued that ICANN is operating outside of its Bylaws by enforcing PICs/RVCs. Bylaws concerns	acting contrary to its Bylaws. - What is being sought from the Council is whether or not it believes a Bylaws amendment is a good idea and something that should be pursued in order to better ensure the implementation of these recommendations, as well as the other recommendations that rely on PICs/RVCs. - The small team believes that the Bylaws amendment should be narrowly focused on specifically ensuring that PICs/RVCs are enforceable and NOT a broader provision that allows ICANN to enforce content. **Assessment:** The small team understands the concern and believes that further discussions between the Council and Board on a Bylaws Amendment are warranted. **Proposed Path Forward:** **e) Explore starting a Bylaw process.** Given the magnitude of the change, conversation between the Council and SubPro caucus (or full Board) is likely warranted before formally suggesting this path forward. However, the small team believes that a potential Bylaws amendment should	is open to discussing that option with the Board. ● The Council believes that it is important to provide context when discussing a possible Bylaws amendment. In this particular instance, the Council expects that the amendment would be narrow and focused specifically on the enforceability of PICs/RVCs. It should NOT seek in any way to more broadly allow ICANN to regulate content. ● If the Board wishes to explore a Bylaws amendment in order to accept the PICs/RVCs related recommendations, the Council stands by as a willing partner in dialogue and emphasizes that if and when the conversation is broadened to other community groups, the scope of the potential Bylaws amendment must be made clear so as to avoid the the issue being made more complex and/or contentious than it needs to be.	

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		be extremely narrow and targeted, specifically to make clear that ICANN is able to enforce commitments made in Registry Agreements, including PICs/RVCs. If the small team's expectations are accurate, discussions with the community about the potential Bylaws amendment should be undertaken with that important context.		
Recommendation 9.4: The Working Group recommends establishing a process to determine if an applied-for string falls into one of four groups defined by the NGPC framework for new gTLD strings deemed to be applicable to highly sensitive or regulated industries. This process must be included in the Applicant Guidebook along with information about the ramifications of a string being found to fall into one of the four groups.	See Recommendation 9.1		See proposed discussion points provided to recommendation 9.1.	TBD - Further dialogue needed.
Recommendation 9.8: If an applied-for string is determined to fall into one of the four groups of strings applicable to highly sensitive or regulated industries, the relevant Category 1 Safeguards must be integrated into the Registry Agreement as mandatory Public Interest Commitments.	See Recommendation 9.1		See proposed discussion points provided to recommendation 9.1.	TBD - Further dialogue needed.
Recommendation 9.9: ICANN must allow applicants to submit Registry Voluntary Commitments (RVCs) (previously called voluntary PICs) in subsequent rounds in their applications or to respond to public comments, objections, whether formal or informal, GAC Early	See Recommendation 9.1		See proposed discussion points provided to recommendation 9.1.	TBD - Further dialogue needed.

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Discussion Points (if any)	Potential Landing Spot
Warnings, GAC Consensus Advice, and/or other comments from the GAC. Applicants must be able to submit RVCs at any time prior to the execution of a Registry Agreement; provided, however, that all RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendation set forth under topic 20: Application Changes Requests, including, but not limited to, an operational comment period[12]in accordance with ICANN's standard procedures and timeframes.				
Recommendation 9.10: RVCs must continue to be included in the applicant's Registry Agreement.	See Recommendation 9.1		See proposed discussion points provided to recommendation 9.1.	TBD - Further dialogue needed.
Recommendation 9.12: At the time an RVC is made, the applicant must set forth whether such commitment is limited in time, duration and/or scope. Further, an applicant must include its reasons and purposes for making such RVCs such that the commitments can adequately be considered by any entity or panel (e.g., a party providing a relevant public comment (if applicable), an existing objector (if applicable) and/or the GAC (if the RVC was in response to a GAC Early Warning, GAC Consensus Advice, or other comments from the GAC)) to understand if the RVC addresses the	See Recommendation 9.1		See proposed discussion points provided to recommendation 9.1.	TBD - Further dialogue needed.

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

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Discussion Points (if any)	Potential Landing Spot
underlying concern(s).				
Recommendation 9.13: In support of the principle of transparency, RVCs must be readily accessible and presented in a manner that is usable, as further described in the implementation guidance below.	See Recommendation 9.1		See proposed discussion points provided to recommendation 9.1.	TBD - Further dialogue needed.
Recommendation 9.15: The Working Group acknowledges ongoing important work in the community on the topic of DNS abuse[13]and believes that a holistic solution is needed to account for DNS abuse in all gTLDs as opposed to dealing with these recommendations with respect to only the introduction of subsequent new gTLDs. In addition, recommending new requirements that would only apply to the new gTLDs added to the root in subsequent rounds could result in singling out those new gTLDs for disparate treatment in contravention of the ICANN Bylaws. Therefore, this PDP Working Group is not making any recommendations with respect to mitigating domain name abuse other than stating that any such future effort must apply to both existing and new gTLDs (and potentially ccTLDs). The Working Group has reached this conclusion after duly considering the DNS abuse related CCT-RT	See Recommendation 9.1 _____ 28 March Context: Skipped, may want to revisit during next meeting. This does not seem connected to the content regulation Bylaws concerns in 9.1. 3 April Context: Does not sound like anything specific is being asked of Council for this line item. The letter from SubPro to the Council gave rise to the DNS abuse small team.		The Council understands that no further action is being sought at this time. If that understanding is incorrect, the Council welcomes dialogue with the Board.	TBD - Further dialogue needed.

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

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Discussion Points (if any)	Potential Landing Spot
Recommendations, which includes 14,[14]15,[15] and 16[16]. Note, however, that at the time of the drafting of this report, the ICANN Board only approved Recommendation 16. Recommendations 14 and 15 remain in a "Pending" status.[17]				
Topic 24: String Similarity Evaluations				
Recommendation 24.3: 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 Board remains concerned, as previously voiced as part of its [comment on the Draft Final Report](#), over the wording in section (a) and (c) of this Recommendation as they stipulate 'intended use' of a gTLD, which implies that ICANN will have to enforce the 'intended use' post delegation, which could be challenged as acting outside its mission. See also Topic 9 above. 3 April Context: This one is similar in nature to 9.1, but it is explicitly content related, making this even more challenging. The solution to 9.1 could address this recommendation,	**Deliberations:** - Similar in nature to 9.1, but content is explicitly implicated in this recommendation. - The solution to 9.1 could also address this concern, but that is not a given. **Assessment:** The small team understands the concern and believes that the solution to 9.1 should also address concerns with this recommendation. **Proposed Path Forward:** **e) Explore starting a Bylaw process.**	See proposed discussion points provided to recommendation 9.1. In addition: ● The Council understands that the resolution of the Board's concern for this recommendation may not be the same as for the other PICs/RVC related concerns. However, the Council expects that a potential Bylaws amendment should address the concern for this recommendation. ● The Council understands that the Board's concerns with this recommendation is limited to the "intended use" aspect and not the singular/plural recommendation.	<mark>START HERE FOR 1 JUNE MEETING</mark>

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

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

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

[17] See relevant Board scorecards here: https://www.icann.org/en/system/files/files/resolutions-final-cctrecs-scorecard-01mar19-en.pdf and here:
https://www.icann.org/en/system/files/files/cct-pending-recsboard-action-22oct20-en.pdf

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Discussion Points (if any)	Potential Landing Spot
the TLDs .EXAMPLE[18] 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	but that is not a given (without knowing specifically what the solution to 9.1 is). <mark>Bylaws concerns</mark>	The small team believes that the solution to 9.1 (i.e., a narrow Bylaws amendment to make it explicit that ICANN can enforce the Registry Agreement, including PICs/RVCs) will address the concern with this set of recommendations. As with Topic 9, the small team believes that it is important to communicate clearly the limited nature of the Bylaws amendment and underlying reasons for considering doing so (i.e., ensuring implementation of consensus recommendations from the GNSO).		

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[18] . 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.

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Discussion Points (if any)	Potential Landing Spot
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.				

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Discussion Points (if any)	Potential Landing Spot
Recommendation 24.5: 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,[19] the applications will only be able to proceed if each of the applicants agrees to the inclusion of a mandatory Public Interest Commitment (PIC) in its Registry Agreement. The mandatory PIC must include a commitment by the registry to use the TLD in line with the intended use presented in the application, and must also include a commitment by the registry that it will require registrants to use domains under the TLD in line with the intended use stated in the application	See 24.3 above		See proposed discussion points provided to recommendation 9.1.	
Topic 30: GAC Consensus Advice and GAC Early Warning				
Recommendation 30.7: Applicants must be allowed to change their applications, including the addition or modification of Registry Voluntary Commitments (RVCs, formerly voluntary PICs), to address GAC Early Warnings, GAC Consensus Advice, and/or other comments from the GAC.[20]Relevant GAC members are strongly encouraged to make themselves available during	See Recommendation 9.1. Bylaws concerns		See proposed discussion points provided to recommendation 9.1.	

[19] 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.

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

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Discussion Points (if any)	Potential Landing Spot
a specified period of time for direct dialogue[21] with applicants impacted by GAC Early Warnings, GAC Consensus Advice, or comments to determine if a mutually acceptable solution can be found.				
Topic 31 Objections				
Recommendation 31.16: Applicants must have the opportunity to amend an application or add Registry Voluntary Commitments (RVCs) in response to concerns raised in a formal objection. All these amendments and RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendations set forth under Topic 20: Application Change Requests including, but not limited to, an operational comment period in accordance with ICANN's standard procedures and timeframes.	See Recommendation 9.1 Bylaws concerns		See proposed discussion points provided to recommendation 9.1.	
Recommendation 31.17: To the extent that RVCs are used to resolve a formal objection either (a) as a settlement between the objector(s) and the applicant(s) or (b) as a remedy ordered by an applicable dispute panelist, those RVCs must be included in the applicable applicant(s) Registry Agreement(s) as binding contractual commitments enforceable by ICANN through the PICDRP.	See Recommendation 9.1		See proposed discussion points provided to recommendation 9.1.	

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[21] 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.

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Speaking Points	Potential Landing Spot
g) Other – Dialogue between the Council and Board				
Topic 17: Applicant Support				
Recommendation 17.2: 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.	The Board remains concerned, as previously voiced as part of its comment on the Draft Final Report, over the open ended nature of these fees as affirmative payments of costs beyond application fees could raise fiduciary concerns for the Board. Note, this concern does not extend to facilitation of *pro bono* services. --- 28 March Context: The issue here appears to be mainly focused on the open-ended nature of the potential payments. 18 May Context: Ambiguity about whether application writing fees and attorney fees are examples or limiting.	**Deliberations:** - As noted in the 28 March Context, these concerns are about the open-ended nature of the fees, and that payments are to qualified applicants' vendors not under the control of ICANN, and potential liability issues from the suppliers of these services. - The small team believes that there can be measures put in place that would eliminate or at least mitigate these concerns (e.g., establish an upper bound for payments and make it reimbursement based rather than handing out money, etc.). - The small team discussed the possibility of referring this issue to the GGP Charter to address this issue, but there was not agreement to do so, due to concerns about impacting the GGP's work plan. **Proposed Path Forward:** **b) Determination that the issue can be resolved during implementation** The Small team notes that the Final Report provided Implementation Guidance recommending the creation of an IRT devoted just to Applicant Support issues. This recommendation is	The Council understands the set of concerns, which includes: the potential for open-ended costs, nature of payments (e.g., direct disbursement of cash to parties), ambiguity concerning whether "application writing fees and attorney fees" should be considered inter alia or exhaustive. The Council believes that these concerns can likely be addressed by ICANN org and the IRT address during implementation, but welcomes dialogue with the Board to determine the best path forward.	

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Speaking Points	Potential Landing Spot
		indicative of the fact that the SubPro WG expected important work to be completed during implementation.		

Topic 18: Terms and Conditions				
Recommendation 18.1: 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.	The Board remains concerned, as previously voiced as part of its comment on the Draft Final Report, over this recommendation unduly restricting ICANN's discretion to reject an application in circumstances that fall outside the specific grounds set out in the recommendation. 28 March Context: The issue here is that the potential reasons for rejecting an application are unknown. Because ICANN and the Board are required to abide by the Bylaws, providing rationale (that is consistent with the Bylaws) would seem to suffice.	**Deliberations:** - The SubPro PDP felt very strongly that allowing ICANN to reject an application at its sole discretion was a fundamental problem. - There are carve outs that appear to be quite broad, including fiduciary duty, so it's unclear what would arise that wouldn't fit into the allowable reasons. **Assessment:** The small team appreciates that the Board has this concern but does not share it. The small team considers that this is a matter of balancing contractual risk. There are broad carve outs to allow the rejection of an application and that allowing ICANN to reject an application at its sole discretion is fundamentally problematic. **Proposed Path Forward:** **g) Other - Dialogue between the Council and Board** The dialogue on this topic should be centered around the SubPro WG's rationale and small team's Assessment.	● There are carve outs that appear to be quite broad, including fiduciary duty, so it remains unclear what would arise that would not fit into the allowable reasons. It appears that the risk identified here is a fear of the unknown unknowns. ● The Council would welcome an example of a particularly problematic application that must be rejected but the Board would be limited in its ability to do so because of this recommendation. ● The Council, in adopting the recommendations in the SubPro Final Report, is concerned that if the Board were not to adopt this recommendation, that it would allow ICANN to reject an application at its sole discretion, which remains fundamentally problematic. ● The Council believes that if the Board reasonably adopts a standard prohibiting a string/class of strings from proceeding in order to meet its obligations under the Bylaws, e.g. in order to protect the security, stability and resilience of the DNS then the rejection of application(s) due to the fair and consistent application of that standard by the Board would fall inside the parameters of this Recommendation.	

Topic 30: GAC Consensus Advice and GAC Early Warning				

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Speaking Points	Potential Landing Spot
Recommendation 30.4: 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.[22] 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.[23]	The GAC has previously raised concerns around the wording of this recommendation. The Board will consult with GNSO Council and GAC before resolving on this recommendation. ——————— 3 April Context: The Board does not have a particular view on this one, but recognizes that a process needs to be followed (i.e., consultation with the GAC). Depending on the outcome of that conversation, the small team/Council could have a role to play.	**Deliberations:** - Unclear if the small team/Council will have a role to play. The answer is that it depends. - Based on the outcome of the consultation between the Board and the GAC, if it is clear that there is consensus within the GAC to provide Advice, there may be a need to consider and determine potential next steps. - This particular set of recommendations is one that the SubPro WG felt strongly about, which recommends that the Board follow the Bylaws when considering Advice, and not to create a separate process. - The March 23, 2023 letter from the GAC to GNSO Council should be considered. It was acknowledged that the letter states that there are members of the GAC that support the recommendation and others that have concerns (e.g., in other words, there does not appear to be consensus within the GAC on this topic). **Assessment:**	The Council welcomes being a part of the dialogue, including in conjunction with the GAC where that may be more efficient.	

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[22] 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."

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

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Speaking Points	Potential Landing Spot
		The small team understands that the Board expects to consult with the GAC on these recommendations. However, these recommendations are extremely important to the SubPro WG and the small team believes the Council should stand ready to assist in those conversations as deemed helpful. **Proposed Path Forward:** **g) Other** Stress to the Board how important this set of recommendations are and ensure they are aware that the Council stands by to take part in any ensuing conversations with the Board and GAC on these recommendations.		
Recommendation 30.5: The Working Group recommends that GAC Early Warnings are issued during a period that is concurrent with the Application Comment Period.[24] 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.	The GAC has previously raised concerns around the wording of this recommendation. The Board will consult with GNSO Council and GAC before resolving on this recommendation.		See proposed speaking points provided to recommendation 30.4.	
Recommendation 30.6: 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	The GAC has previously raised concerns around the wording of this recommendation. The Board will consult with GNSO Council and GAC before resolving on this recommendation.		See proposed speaking points provided to recommendation 30.4.	

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[24] See Topic 28 of this report for discussion of the application comment period.

Output Overview	Issue Synopsis	Small Team Notes & Proposed Action	Proposed Speaking Points	Potential Landing Spot
member's concerns.				