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

- Topic 20: Application Change Requests addresses processes related to changes in the application, including an additional public comment period, where appropriate.
- This topic includes a recommendation that the public comment period for Community Priority Evaluation applications should be the same as the public comment period for standard applications. Consideration of Community Priority Evaluation applications more broadly is included under Topic 34: Community Applications.
- This topic includes a recommendation and implementation guidance regarding systems supporting application comment. Recommendations on systems that are "applicant-facing" are included under Topic 14: Systems.
- Application comment is closely tied to communications with both the ICANN community and applicants. The subject of communications is covered more broadly under Topic 28: Role of Application Comment.

Topic 29: Name Collisions

a. Recommendations and/or implementation guidelines

Recommendation 4 from the 2007 policy is affirmed under Topic 26: Security and Stability. Recommendation 4 is also relevant to this topic.

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.

Affirmation 29.2: The Working Group affirms continued use of the New gTLD Collision Occurrence Management framework unless and until the ICANN Board adopts a new mitigation framework. This includes not changing the controlled interruption duration and the required readiness for human-life threatening conditions for currently delegated gTLDs and future new gTLDs.[186]

> Implementation Guidance 29.3: To the extent possible, ICANN should seek to identify high-risk strings in advance of opening the Application Submission Period, which should constitute a "Do Not Apply" list. ICANN should also seek

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

to identify aggravated risk strings in advance of the next application window opening and whether it would require a specific name collision mitigation framework.

Implementation Guidance 29.4: To the extent possible, all applied-for strings should be subject to a DNS Stability evaluation to determine whether they represent a name collision risk.

Implementation Guidance 29.5: The ICANN community should develop name collision risk criteria and a test to provide information to an applicant for any given string after the application window closes so that the applicant can determine if they should move forward with evaluation.

Implementation Guidance 29.6: If controlled interruption (CI) for a specific label (usually a 2nd-level domain) is found to cause disruption, ICANN may decide to allow CI to be disabled for that label while the disruption is fixed, provided that the minimum CI period is still applied to that label.

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

Rationale for Recommendation 29.1: The Working Group agreed that the recommendation that ICANN must include a mechanism to evaluate the risk of name collisions in the TLD evaluation process as well during the transition to delegation phase is still relevant, with the addition of the requirement for such a mechanism to be ready prior to the next application period. The Working Group agreed that the requirement for a mechanism would promote predictability for applicants and other parties. In response to concerns raised in comments, the Working Group agreed that it did not have to recommend what the mechanism is.

Rationale for Affirmation 29.2: In its deliberations the Working Group noted that while there was some support for some aspects of a new mitigation strategy relating to evaluation of high and aggravated-risk strings, and disabling controlled interruption, there was considerable disagreement concerning the form of a new mitigation framework. The Working Group noted that in its Final Report,[187] JAS Global Advisors does believe that the previous mitigation measures have worked. The Working Group noted also that no data that has been presented has shown that the previous mitigation measures haven't worked. The Working Group acknowledged that there are a number of groups that think that the launch of the next round should be dependent on the outcome of the NCAP studies, while noting that at the time of deliberation it was unclear whether the NCAP studies would be completed by the time subsequent gTLDs are ready to launch.

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[187] See "Mitigating the Risk of DNS Namespace Collisions Final Report," a report by JAS Global Advisors ("JAS"). June 2014 at https://www.icann.org/en/system/files/files/name-collision-mitigation-study-06jun14-en.pdf .

With respect to the NCAP, the Working Group reviewed the Board resolution on its creation as well as in directing ICANN org to initiate Study 1.[188] The Working Group agreed that it is up to the ICANN community and ICANN Board of Directors to determine any dependencies between the NCAP and the next round of new gTLD applications. To gain some clarification from the ICANN Board concerning possible dependencies with the ongoing work of the NCAP, the GNSO Council sent a letter on 20 September 2019 requesting guidance from the ICANN Board of Directors concerning its views related to "dependencies, if any, between the NCAP and the ongoing policy work of the New gTLD Subsequent Procedures PDP."[189] In its response on 1 November 2019 Cherine Chalaby, then Chairman of the ICANN Board, noted that the "Board has not sought to establish a new dependency on completion of the PDP work based on commissioning NCAP Study 1", which had not yet started at that time, but that "upon completion of Study 1, the Board can determine in consultation with the community whether additional NCAP work is necessary and, if so, which elements should be a dependency for any of the other future milestones noted in your letter."[190] At the time of the Working Group deliberations on the public comments the GNSO Council had not yet sent its letter to the ICANN Board, but the Working Group agreed that it needed to plan for a circumstance where the NCAP work is either not completed or they choose not to go on with Study 2 or 3.

The Working Group notes that ICANN org, in cooperation with the NCAP Discussion Group, has since completed its Study 1 and published the Study 1 report,[191] leveraging an outside consultant. The consultant who produced the Study 1 report made the following conclusions relating to Studies 2 and 3: "Regarding Study 2, analyzing datasets is unlikely to identify significant root causes for name collisions that have not already been identified. New causes for name collisions are far more likely to be found by investigating TLD candidates for potential delegation on a case by case basis. Regarding Study 3, controlled interruption has already proven an effective mitigation strategy, and there does not appear to be a need to identify, analyze, and test alternatives for the vast majority of TLD candidates. All of that being said, this does not mean further study should not be conducted into name collision risks and the feasibility of potentially delegating additional domains that are likely to cause name collisions. Most notably, the Study 3 question of how to mitigate name collisions for potential delegation of the corp, home, and mail TLDs is still unresolved. However, the proposals for Studies 2 and 3,

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[188] Specifically, in November 2017 the ICANN Board asked the ICANN Security and Stability Advisory Committee (SSAC) to study the impact of name collisions and advise the Board on their effects and possible mitigation. In response, the SSAC started the NCAP effort and designed Study 1, the first of three name collision studies intended to address the Board's request. See: https://www.icann.org/resources/board-material/resolutions-2019-03-14-en

[189] See GNSO Council Response to ICANN Board on potential dependencies between the Name Collisions Analysis Project (NCAP) and New gTLD Subsequent Procedures at: https://gnso.icann.org/sites/default/files/file/field-file-attach/drazek-et-al-to-chalaby-2-20sep19-en.pdf.

[190] See https://gnso.icann.org/sites/default/files/file/field-file-attach/chalaby-to-drazek-et-al-01nov19-en.pdf.

[191] https://www.icann.org/en/system/files/files/ncap-study-1-report-19jun20-en.pdf

which were developed years ago, do not seem to be effective ways of achieving the intended goals."

The Working Group notes that the SSAC and the NCAP Discussion Group are currently working on a new scope of work for Study 2 which must be approved by the ICANN Board prior to commencement. The Board will not likely be acting on Study 2 until after the Working Group publishes its Final Report.

Given that the Working Group did not agree on a new mitigation framework, the Working Group affirms continued use of the New gTLD Collision Occurrence Management framework unless and until the ICANN Board adopts a new mitigation framework.

Rationale for Implementation Guidance 29.3 and 29.4: The Working Group agreed that to the extent possible, ICANN should seek to identify high-risk strings in advance of opening the application submission period, which should constitute a "Do Not Apply" list. ICANN should also seek to identify aggravated strings in advance of the next application window opening and whether it would require a specific name collision mitigation framework. However, to the extent possible, all applied-for strings should be subject to a DNS Stability evaluation to determine whether they represent risk of name collision. The Working Group's justification for including this implementation guidance is that high-risk strings are likely to cause technical instability by definition, so these should not be able to be delegated. In addition, the Working Group agreed that identifying high-risk and aggravated-risk strings early in the process would promote predictability for applicants and other parties to the extent possible.

Rationale for Implementation Guidance 29.5: The Working Group agreed that the ICANN community should develop name collision risk criteria and a test to provide information to an applicant for any given string after the application window closes so that the applicant can determine if they should move forward with evaluation. The Working Group reviewed the SSAC's advice in SAC090 and agreed that Recommendation 2, part 3 may provide guidance concerning the development of criteria and a test.[192]

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

Rationale for Implementation Guidance 29.6: The Working Group agreed that if controlled interruption (CI) for a specific label is found to cause disruption, ICANN may

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[192] See SAC090 SSAC Advisory on the Stability of the Domain Namespace (22 December 2016) at https://www.icann.org/en/system/files/files/sac-090-en.pdf.

decide to disable CI for that label while the disruption is fixed, provided that the minimum CI period is still applied to that string. The Working Group noted that this recommendation is one on which the Working Group's Work Track 4 reached consensus. The Working Group agreed that there was support to include this item as implementation guidance.

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

In its deliberations, the Working Group discussed those comments to the Initial Report, including from the ALAC, that said that the NCAP work should be completed before any new round begins.[193] Subsequent to those deliberations and to gain some clarification from the ICANN Board concerning possible dependencies with the ongoing work of the NCAP, the GNSO Council sent a letter on 20 September 2019 requesting guidance from the ICANN Board of Directors concerning its views related to "dependencies, if any, between the NCAP and the ongoing policy work of the New gTLD Subsequent Procedures PDP."[194] In its response on 01 November 2019 Cherine Chalaby, then Chairman of the ICANN Board, noted that the "Board has not sought to establish a new dependency on completion of the PDP work based on commissioning NCAP Study 1", (which had not yet started at that time), but that "upon completion of Study 1, the Board can determine in consultation with the community whether additional NCAP work is necessary and, if so, which elements should be a dependency for any of the other future milestones noted in your letter."[195] The Working Group notes that the Board will not be acting on Study 2 until after the Working Group publishes its Final Report.

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

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[193] In its comments on the Initial Report, the ALAC stated, "In several places in our response, the ALAC defer to the SSAC for further recommendations. This includes areas such as dotless domains and name collisions. Again, we reiterate, there is no cause for urgency surrounding the further introduction of gTLDs and due time should be given to the SSAC to explore the security and stability implications of various proposals before any New round should begin." See: https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/attachments/20180926/8dbfd251/AL-ALAC-ST-0926-01-00-EN-0001.pdf.
[194] See GNSO Council response to ICANN Board on potential dependencies between the Name Collisions Analysis Project (NCAP) and New gTLD Subsequent Procedures at:
https://gnso.icann.org/sites/default/files/file/field-file-attach/drazek-et-al-to-chalaby-2-20sep19-en.pdf.
[195] See https://gnso.icann.org/sites/default/files/file/field-file-attach/chalaby-to-drazek-et-al-01nov19-en.pdf.

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

- The recommendations under this topic seek to promote security and stability of the DNS, a subject this is addressed more broadly under Topic 26: Security and Stability.

2.8 Dispute Proceedings

Topic 30: GAC Consensus Advice and GAC Early Warning

a. Recommendations and/or implementation guidelines

Affirmation 30.1: The Working Group acknowledges the ability of the GAC to issue GAC Consensus Advice in accordance with the ICANN Bylaws. In addition, subject to the recommendations below, the Working Group supports the 2012 implementation of GAC Early Warnings. Section 1.1.2.4 of the 2012 Applicant Guidebook describes the Early Warning mechanism: "Concurrent with the [public] comment period, ICANN's Governmental Advisory Committee (GAC) may issue a GAC Early Warning notice concerning an application. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments."

Implementation Guidance 30.2: To the extent that the GAC provides GAC Consensus Advice (as defined in the ICANN Bylaws) in the future on categories of TLDs, the GAC should provide this Advice prior to the finalization and publication of the next Applicant Guidebook. In the event that GAC Consensus Advice is issued after the finalization and publication of the Applicant Guidebook and whether the GAC Consensus Advice applies to categories, groups or classes of applications or string types, or to a particular string, the ICANN Board should take into account the circumstances resulting in such timing and the possible detrimental effect of such timing in determining whether to accept or override such GAC Consensus Advice as provided in the Bylaws.

Recommendation 30.3: As stated in the ICANN Bylaws, GAC Consensus Advice must include a clearly articulated rationale.[196] The Working Group recommends that GAC Consensus Advice be limited to the scope set out in the applicable Bylaws provisions and elaborate on any "interaction between ICANN's policies and various laws and

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

international agreements or where they may affect public policy issues."[197]

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.[198] 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.[199]

Recommendation 30.5: The Working Group recommends that GAC Early Warnings are issued during a period that is concurrent with the Application Comment Period.[200] To the extent that there is a longer period given for the GAC to provide Early Warnings (above and beyond the Application Comment Period), the Applicant Guidebook must define a specific time period during which GAC Early Warnings can be issued.

Recommendation 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 member's concerns.

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,

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

[198] 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."

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

[200] See Topic 28 of this report for discussion of the Application Comment Period.

and/or other comments from the GAC.[201] Relevant GAC members are strongly encouraged to make themselves available during a specified period of time for direct dialogue[202] with applicants impacted by GAC Early Warnings, GAC Consensus Advice, or comments to determine if a mutually acceptable solution can be found.

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

Rationale for Affirmation 30.1: The Working Group believes that the GAC Early Warning mechanism served its intended purpose of allowing GAC members to raise concerns about New gTLD applications, and further acknowledges the role of GAC Consensus Advice as defined in the ICANN Bylaws. The Working Group supports continuation of these mechanisms in subsequent rounds, subject to the recommendations included in this report.

Rationale for Implementation Guidance 30.2: GAC Consensus Advice in the 2012 round was provided for whole categories of applications, whereas the 2012 Applicant Guidebook states that Consensus Advice is to be provided for individual applications. The Working Group reviewed that when the GAC initially issued Consensus Advice on categories of strings in the 2012 round, applicants and other parties experienced uncertainty because it was unclear if the lists provided were exhaustive and was also unknown whether those applying for strings in related industries might be impacted. The Working Group believes that in support of predictability, if the GAC issues Consensus Advice on categories in the future, this Consensus Advice should be given by the GAC before the next version of Applicant Guidebook is finalized and published, so that prospective applicants and the Internet community fully understand the implications and scope of the Consensus Advice before the application process begins. To further support predictability for applicants, if GAC Consensus Advice is issued after the next version of Applicant Guidebook is finalized and published, whether the GAC Consensus Advice applies to categories, groups or classes of applications or string types, or to a particular string, the ICANN Board should take into account the circumstances resulting in such timing and the possible detrimental effect of such timing in determining whether to accept or override such GAC Consensus Advice as provided in the Bylaws.

In developing this implementation guidance, the Working Group considered input from individual GAC members on an early draft of the text.[203] A number of GAC members emphasized that it is important for the GAC to have flexibility in providing Consensus

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[201] 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.

[202] 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.

[203] https://community.icann.org/download/attachments/93129620/GAC%20Written%20Consultation_%20Input%20Received-%20Updated%209%20May.pdf?version=1&modificationDate=1589186135000&api=v2