

## **Scorecard: Subsequent Procedures (SubPro PDP)**

Board Action -16 March 2023

(See related Board Resolutions 2023.03.16.04 - Resolutions 2023.03.16.15 and Rationale for more detail)

This Scorecard is intended to facilitate the Board's consideration of the recommendations, affirmations, affirmations with modification, and implementation guidance (collectively Outputs) contained in the [“Final Report on the New gTLD Subsequent Procedures Policy Development Process”](#) (Final Report). Section A of the Scorecard identifies the Outputs that the Board adopts. Section B identifies the Outputs that the Board designates as pending. Section C identifies dependencies, which the Board is committed to resolving in a timely manner.

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## General Note

The Board notes that the GNSO Council provided additional input on several topics as part of the Operational Design Phase (ODP). ICANN org should take into account this input when implementing the applicable Recommendations. The ODP Policy Questions and GNSO Council Answers can be consulted at the following link:

<https://community.icann.org/download/attachments/213680813/ODP%20Policy%20Questions%20and%20GNSO%20Council%20Answers.pdf?version=1&modificationDate=1663077418000&api=v2>

The Final Report also included a number of Recommendations developed as part of the Policy Development Process Working Group's (PDP WG's) Work Track 5. These are marked as "Additional Outputs from the Subsequent Procedures PDP Working Group" in this Scorecard and can be found in Annex J in the Final Report.

Footnotes in the text of the Outputs were embedded in the original Outputs from the [Final Report on the new gTLD Subsequent Procedures Policy Development Process](#), but the footnote numbers in this Scorecard may differ from the footnote numbering in the Final Report.

## A. Outputs That the Board Adopts

The Board adopts the Outputs in this section pursuant to Resolutions 2023.03.16.04 - 2023.03.16.15.

### Topic 2: Predictability

**Recommendation 2.1:** ICANN must establish predictable, transparent, and fair processes and procedures for managing issues that arise in the New gTLD Program after the Applicant Guidebook is approved which may result in changes to the Program and its supporting processes. The Working Group recommends that ICANN org use the Predictability Framework detailed in Annex E of this Report as its guidance during implementation to achieve the goal of predictability in mitigating issues.

The Predictability Framework is principally:

- A framework for analyzing the type/scope/context of an issue and if already known, the proposed or required Program change, to assist in determining the impact of the change and the process/mechanism that should be followed to address the issue. The framework is therefore a tool to help the community understand how an issue should be addressed as opposed to determining what the solution to the issue should be; the framework is not a mechanism to develop policy.

The Framework is not intended to identify the solution to an issue but rather, to identify the proper mechanism to reach a solution in a consistent and procedurally sound manner. Therefore, this Framework complements the existing GNSO processes and procedures. It is not intended to be a substitute or replacement for those, nor should the Framework be seen as supplanting the GNSO Council’s decision-making authority. In fact, the GNSO processes and procedures are incorporated into the Predictability Framework explicitly. In the event of a conflict, existing GNSO processes and procedures, including the GNSO Input Process, GNSO Guidance Process, and EPDP as contained in the Annexes to the GNSO Operating Procedures take precedence.

Additionally, the Working Group recommends the formation of a Standing Predictability Implementation Review Team (“SPIRT”) (Pronounced “spirit”) to serve as the body responsible for reviewing potential issues related to the Program, to conduct analysis utilizing the framework, and to recommend the process/mechanism that should be followed to address the issue (i.e., utilize the Predictability Framework). The GNSO Council shall be responsible for oversight of the SPIRT and may review all recommendations of the SPIRT in accordance with the procedures outlined in the GNSO Operating Procedures and Annexes thereto.

**Recommendation 2.7:** In the event significant issues arise that require resolution via the Predictability Framework, applicants should be afforded the opportunity to withdraw their application from the process and receive an appropriate refund consistent with the standard schedule of refunds.

## Topic 4: Different TLD Types

**Recommendation 4.1:** The Working Group recommends differential treatment for certain applications based on either the application type, the string type, or the applicant type. Such differential treatment may apply in one or more of the following elements of the New gTLD Program: Applicant eligibility<sup>1</sup>; Application evaluation process/requirements<sup>2</sup>; Order of processing; String contention<sup>3</sup>; Objections<sup>4</sup>; Contractual provisions.

- Different application types:
  - Standard
  - Community-Based (for different application questions, Community Priority Evaluation, and contractual requirements)<sup>5</sup>
  - Geographic Names (for different application questions)<sup>6</sup>
  - Specification 13 (.Brand TLDs) (for different application questions and contractual requirements)<sup>7</sup>
  
- Different string types:
  - Geographic Names (for different application questions)<sup>8</sup>
  - IDN TLDs (priority in order of processing)<sup>9</sup>
  - Variant TLDs<sup>10</sup>
  - Strings subject to Category 1 Safeguards<sup>11</sup>
  
- Different Applicant Types:
  - Intergovernmental organizations or governmental entities (for different contractual requirements)
  - Applicants eligible for Applicant Support<sup>12</sup>

<sup>1</sup> See section 1.2.1 of the 2012 Applicant Guidebook.

<sup>2</sup> See Module 2 of the 2012 Applicant Guidebook.

<sup>3</sup> See Module 4 of the 2012 Applicant Guidebook.

<sup>4</sup> See Module 3 of the 2012 Applicant Guidebook.

<sup>5</sup> As defined under Topic 34: Community Applications.

<sup>6</sup> As defined in Annex J: Final Report of Work Track 5 on Geographic Names at the Top Level.

<sup>7</sup> See Topic 22: Registrant Protections, Topic 9: Registry Voluntary Commitments / Public Interest Commitments, and Topic 20: Application Change Requests for recommendations impacting .Brand applicants.

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

<sup>9</sup> As defined under Topic 19: Application Queuing.

<sup>10</sup> As defined under Topic 25: IDNs.

<sup>11</sup> As defined under Topic 9: Registry Voluntary Commitments / Public Interest Commitments.

<sup>12</sup> As identified under Topic 17: Applicant Support.

**Recommendation 4.2:** Other than the types<sup>13</sup> listed in Recommendation 4.1, creating additional application types must only be done under exceptional circumstances.<sup>14</sup> Creating additional application types, string types, or applicant types must be done solely when differential treatment is warranted and is NOT intended to validate or invalidate any other differences in applications.

#### **Topic 6: Registry Service Provider Pre-Evaluation**

**Recommendation 6.2:** The Working Group recommends establishing a program in which registry service providers (“RSPs”)<sup>15</sup> may receive pre-evaluation by ICANN if they pass the required technical evaluation and testing conducted by ICANN, or their selected third party provider. The only difference between a pre-evaluated RSP and one that is evaluated during the application evaluation process is the timing of when the evaluation and testing takes place; Therefore, all criteria for evaluation and testing must be the same.

**Recommendation 6.3:** Participation in the RSP pre-evaluation process must be voluntary and the existence of the process shall not preclude an applicant from providing its own registry services or providing registry services to other new gTLD registry operators, provided that the applicant passes technical evaluation and testing during the standard application process.

**Recommendation 6.4:** The RSP pre-evaluation process shall be open to all entities seeking such evaluation, including both new and incumbent RSPs. For the initial RSP pre-evaluation process, both the evaluation criteria and testing requirements shall be the same regardless of whether the RSP applying for evaluation is a new RSP or an incumbent RSP.

**Recommendation 6.5:** Pre-evaluation occurs prior to each application round and only applies to that specific round. Reassessment must occur prior to each subsequent application round.

<sup>13</sup> In the 2012 round, there were only two types of applications, standard and community-based. Per the 2012 AGB, it stated that, “A standard gTLD can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. A standard applicant may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions. Standard simply means here that the applicant has not designated the application as community-based.” The WG believes that there is a difference between the type of application versus the type of string, and they are not necessarily dependent upon one another. For instance, a standard application can apply for a geographic names string. In addition, the type of applicant may have additional impacts on the process or contracting.

<sup>14</sup> The Working Group notes that the so-called ‘Closed Generic’ application type is a separate type of application treated under Topic 23 of this report. The recommendation and implementation guidance provided under this topic is not intended to apply to Closed Generics, as that subject needs further policy work.

<sup>15</sup> The term “Registry Services Provider” or “RSP” refers to the entity that performs the critical registry services on behalf of a registry operator. In some cases, this may be the same entity as the registry operator itself; in other cases, this may be a third party to whom the registry operator subcontracts those services.

**Recommendation 6.9:** A list of pre-evaluated RSPs must be published on ICANN’s website with all of the other new gTLD materials and must be available to be used by potential applicants with an adequate amount of time to determine if they wish to apply for a gTLD using a pre-evaluated RSP.

### **Topic 7: Metrics and Monitoring**

**Recommendation 7.1:** Meaningful metrics must be identified to understand the impact of the New gTLD Program. To review metrics, data must be collected at a logical time to create a basis against which future data can be compared.

**Recommendation 7.3:** ICANN org must establish metrics and service level requirements for each phase of the application process including each during the review, evaluation, contracting and transition to delegation stages. ICANN must report on a monthly basis on its performance with respect to these key performance indicators.

**Recommendation 7.4:** ICANN org must further develop its Service Level Agreement (SLA) monitoring to allow for more robust ongoing monitoring of TLD operations.

**Recommendation 7.5:** ICANN org must publish anonymized, aggregate SLA monitoring data on a regular basis.

### **Topic 8: Conflicts of Interest**

**Recommendation 8.1:** ICANN must develop a transparent process to ensure that dispute resolution service provider panelists, Independent Objectors, and application evaluators are free from conflicts of interest. This process must serve as a supplement to the existing Code of Conduct Guidelines for Panelists, Conflict of Interest Guidelines for Panelists, and ICANN Board Conflicts of Interest Policy.<sup>16</sup>

### **Topic 11: Universal Acceptance**

**Recommendation 11.3:** Applicants should be made aware of Universal Acceptance challenges in ASCII and IDN TLDs. Applicants must be given access to all applicable information about Universal Acceptance currently maintained on ICANN’s Universal Acceptance Initiative page, through the Universal Acceptance Steering Group, as well as future efforts.

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<sup>16</sup> <https://www.icann.org/resources/pages/governance/coi-en#>

## Topic 12: Applicant Guidebook

**Recommendation 12.4:** The Working Group recommends focusing on the user when drafting future versions of the Applicant Guidebook (AGB) and prioritizing usability, clarity, and practicality in developing the AGB for future new gTLD processes. The AGB should effectively address the needs of new applicants as well as those already familiar with the application process. It should also effectively serve those who do not speak English as a first language in addition to native English speakers.

**Recommendation 12.8:** The English version of the Applicant Guidebook must be issued at least four (4) months prior to the commencement of the applicant submission period.

**Recommendation 12.9:** All other translated versions of the Applicant Guidebook, including in the 6 UN languages, must be available no later than two (2) months prior to the commencement of the application submission period.

**Recommendation 12.11:** Application fees for each application must be published in that round's Applicant Guidebook.

## Topic 13: Communications

**Recommendation 13.2:** The Working Group believes that an effective communications strategy and plan is needed to support the goals of the program referenced in Affirmation 6.1. Accordingly, the Working Group recommends that the New gTLD communications plan must be developed with timeliness, broad outreach and accessibility as key priorities. The communications plan must be targeted to achieve the goals of the New gTLD Program as articulated. The plan must include a Communications Period commensurate in length to achieve those goals.

## Topic 14: Systems

**Recommendation 14.2:** The design, development, and deployment of applicant-facing systems must prioritize security, stability, usability, and a positive user experience following industry best practices.

**Recommendation 14.8:** The principles of predictability and transparency must be observed in the deployment and operation of applicant-facing systems.

**Recommendation 14.11:** With respect to its operation and administration of the systems, ICANN must retain the ability to act in emergency



situations, including those where immediate action is necessary to remedy any service interruption, interference, service obstruction or other imminent threat to the systems, provided that ICANN gives notice to all impacted users of the affected system(s) as soon as reasonably practicable after such action has been taken. If such action involves any downtime to the system(s), ICANN shall provide updates to impacted users as to the root cause of the downtime, the impact of the downtime event on users of the system(s), and when normal service can be restored.

#### **Topic 15: Application Fees**

**Recommendation 15.7:** In the event that an application fee floor is used to determine the application fee, excess fees received by ICANN must be used to benefit the New gTLD Program and not any other ICANN program or purpose; that includes one or more of the following elements of the New gTLD Program:

- a. a global communication and awareness campaign about the introduction and availability of new gTLDs;
- b. long-term program needs such as system upgrades, fixed assets, etc.;
- c. Applicant Support Program;
- d. top-up of any shortfall in the segregated fund as described below; or
- e. other purpose(s) that benefits the New gTLD Program.

#### **Topic 17: Applicant Support**

**Recommendation 17.1:** Implementation Guideline N from 2007 states: “ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.” The Working Group recommends that as was the case in the 2012 round, fee reduction must be available for select applicants who meet evaluation criteria through the Applicant Support Program. The Working Group further recommends new types of financial support for subsequent procedures that were not part of the Program in 2012, specifically, coverage of additional application fees (see Recommendation 17.2) and a bid credit, multiplier, or other similar mechanism that applies to a bid submitted by an applicant qualified for Applicant Support who participates in an ICANN Auction of Last Resort (see Recommendation 17.15 and Implementation Guidance 17.16 and 17.17). In addition, the Working Group recommends that ICANN facilitate non-financial assistance including the provision of pro-bono assistance to applicants in need. Further, ICANN must conduct outreach and awareness-raising activities during the Communications Period to both potential applicants and prospective pro-bono service providers.<sup>17</sup> The Working Group believes that the high-level goals and eligibility requirements for the Applicant Support Program remain appropriate. The Working Group notes, however, that the Applicant Support Program was not limited to least developed countries in the 2012 round and believes that the Program should continue to be open to applicants regardless of their location as long as they meet other program criteria. Therefore, the Working Group recommends the following

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<sup>17</sup> In the 2012 round, the pro-bono assistance program was implemented through the Applicant Support Directory: <https://newgtlds.icann.org/en/applicants/candidate-support/non-financial-support>.

language in place of Implementation Guideline N: “ICANN must retain the Applicant Support Program, which includes fee reduction for eligible applicants and facilitate the provision of pro-bono non-financial assistance to applicants in need.” The revised language updates the original Implementation Guideline to:

- acknowledge that the Applicant Support Program was in place in the 2012 round
- include reference to pro-bono non-financial assistance in addition to fee reduction
- eliminate the reference to economies classified by the UN as least developed, as the Program is not limited to these applicants.

**Recommendation 17.3:** The Working Group recommends that ICANN improve outreach, awareness-raising, application evaluation, and program evaluation elements of the Applicant Support Program, as well as usability of the Program.

**Recommendation 17.11:** The Working Group supports Recommendation 6.1.a in the Program Implementation Review Report, which states: “Consider leveraging the same procedural practices used for other panels, including the publication of process documents and documentation of rationale.”<sup>18</sup>

**Recommendation 17.12:** ICANN org must develop a plan for funding the Applicant Support Program, as detailed in the Implementation Guidelines below.

**Recommendation 17.15:** If an applicant qualifies for Applicant Support and is part of a contention set that is resolved through an ICANN Auction of Last Resort, a bid credit, multiplier, or other similar mechanism must apply to the bid submitted by that applicant.

**Recommendation 17.18:** Unless the Support Applicant Review Panel (SARP) reasonably believes there was willful gaming, applicants who are not awarded Applicant Support (whether “Qualified” or “Disqualified”<sup>19</sup>) must have the option to pay the balance of the full standard application fee and transfer to the standard application process. Applicants must be given a limited period of time to provide any additional information that would be necessary to convert the application into one that would meet the standard criteria (e.g., showing how the applicant for financial and other support could acquire the requisite financial backing and other support services to pass the applicable evaluation criteria). That said, this limited period of time should not cause unreasonable delay to the other elements of the New gTLD Program or to any other applicants for a string in which its application may be in a contention set.

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<sup>18</sup> The detailed description of this recommendation in the PIRR states: “Regarding execution of the program, in this round, the SARP was an independent panel that defined its own processes, procedures, and final reports. The SARP’s work was performed earlier than the other New gTLD Program evaluation panels, and based on lessons learned from the implementation of other panels, ICANN should consider whether additional guidance should be provided to the SARP regarding publication of their processes, final report format, and documentation of rationale.”

<sup>19</sup> See <https://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf>.

**Recommendation 17.19:** The Financial Assistance Handbook<sup>20</sup> or its successor, subject to the changes included in the above recommendations, must be incorporated into the Applicant Guidebook for subsequent rounds.

#### **Topic 18: Terms & Conditions**

**Recommendation 18.6:** Access to confidential parts of the application should be appropriately limited, as detailed in the following implementation guidance.

#### **Topic 19: Application Queuing**

**Recommendation 19.4:** Any processes put into place for application queuing should be clear, predictable, finalized and published in the Applicant Guidebook. The recommendation to establish processes in advance is consistent with Recommendation 1.2.a in the Program Implementation Review Report, which states: “Assign priority numbers to applications prior to commencement of application processing.”

#### **Topic 20: Application Change Request**

**Recommendation 20.4:** ICANN org must document the types of changes which are required to be posted for an operational comment period<sup>21</sup> and which are not required to be posted for an operational comment period. The following is a non-exhaustive list of changes that must require an operational comment period:

- The addition of Registry Voluntary Commitments in response to public comments, objections, whether formal or informal, GAC Consensus Advice, GAC Early Warnings, or other comments from the GAC
- Changes to Registry Voluntary Commitments in response to public comments, objections, whether formal or informal, GAC Consensus Advice, GAC Early Warnings, or other comments from the GAC
- Changes associated with the formation of joint ventures established to resolve string contention (see Recommendation 20.6 below)
- Changes to the applied-for string (see Recommendation 20.8 below)

In the 2012 round, an operational comment period was not required for certain types of application changes.<sup>22</sup> The Working Group believes that an operational comment period continues to be unnecessary for these types of changes in subsequent rounds.

<sup>20</sup> The Financial Assistance Handbook from the 2012 round is available at:

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

<sup>21</sup> A 30-day comment period giving the public the opportunity to comment on any change to a public part of an application, including PICs.

<sup>22</sup> Please see <https://newgtlds.icann.org/en/applicants/global-support/change-requests#change-requests-comment>.

**Recommendation 20.6:** The Working Group recommends allowing application changes to support the settling of contention sets through business combinations or other forms of joint ventures. In the event of such a combination or joint venture, ICANN org may require that re-evaluation is needed to ensure that the new combined venture or entity still meets the requirements of the program. The applicant must be responsible for additional, material costs incurred by ICANN due to re-evaluation and the application could be subject to delays.

**Recommendation 20.8:** The Working Group recommends allowing .Brand TLDs to change the applied-for string as a result of a contention set where (a) the change adds descriptive word to the string, (b) the descriptive word is in the description of goods and services of the Trademark Registration, (c) such a change does not create a new contention set or expand an existing contention set, (d) the change triggers a new operational comment period and opportunity for objection and, (e) the new string complies with all New gTLD Program requirements. When the .Brand applicant changes the applied-for string, the new string will also be considered a .Brand. The Working Group recognizes that an exception or a modification to Specification 13 will be needed to implement this recommendation. The Working Group further recognizes that in order to implement this recommendation, applications seeking to change their applied-for string will need to be evaluated for eligibility as a .brand before the string change request can be accepted. This may occur either by ICANN specifically evaluating those individual applications during Initial Evaluation or by evaluating all applicants that elect to be .brands during Initial Evaluation.

#### **Topic 21: Reserved Names**

**Affirmation 21.1:** The Working Group affirms Recommendation 5 from the 2007 policy, which states: “Strings must not be a Reserved Word.”

**Recommendation 21.4:** The Working Group recommends reserving as unavailable for delegation at the top level the acronym associated with Public Technical Identifiers, “PTI”.

**Recommendation 21.6:** The Working Group recommends updating Specification 5 of the Registry Agreement (Schedule of Reserved Names) to include the measures for second-level Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes adopted by the ICANN Board on 8 November 2016.<sup>23</sup>

#### **Topic 21.1 - Work Track 5: Geographic Names (see Annex J of the Final Report)<sup>24</sup>**

<sup>23</sup> The Working Group notes that discussions on this topic are ongoing, and this recommendation is subject to the outcomes of related discussions.

<sup>24</sup> Please note that Annex J of the Final Report contains the recommendations from the PDP WG’s “Work Track 5 on Geographic Names at the Top Level”; for ease of reference we have maintained in this scorecard the same numbering as in Annex J: recommendation 1, 2, and 3.

**Recommendation 1:** Consistent with Section 2.2.1.3.2 String Requirements, Part III, 3.1 of the 2012 Applicant Guidebook, continue to reserve all two-character<sup>25</sup> letter-letter ASCII combinations at the top level for existing and future country codes.<sup>26</sup>

This recommendation is consistent with the GNSO policy contained in the Introduction of New Generic Top-Level Domains policy recommendations from 8 August 2007.

**Recommendation 2:** Maintain provisions included in the 2012 Application Guidebook section 2.2.1.4.1 Treatment of Country and Territory Names,<sup>27</sup> with the following clarification regarding section 2.2.1.4.1.vi:

Permutations and transpositions of the following strings are reserved and unavailable for delegation:

- long-form name listed in the ISO 3166-1 standard.
- short-form name listed in the ISO 3166-1 standard.
- short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.
- separable component of a country name designated on the “Separable Country Names List.”

Strings resulting from permutations and transpositions of alpha-3 codes listed in the ISO 3166-1 standard are available for delegation, unless the strings resulting from permutations and transpositions are themselves on that list.

The 2012 Applicant Guidebook provisions contained in section 2.2.1.4.1 are inconsistent with the GNSO policy recommendations contained in the Introduction of New Generic Top Level Domains from 8 August 2007. This recommendation would make the policy consistent with the 2012 Applicant Guidebook, and therefore represents a change to the existing policy recommendation.

**Recommendation 3:** Maintain provisions included in the 2012 Application Guidebook section 2.2.1.4.2 Geographic Names Requiring Government Support,<sup>28</sup> with the following update regarding section 2.2.1.4.2.4:

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<sup>25</sup> The term “character” refers to either a single letter (for example “a”) or a single digit (for example “1”).

<sup>26</sup> Note that Section 2.2.1.3.2 String Requirements, Part III, 3.1 of the 2012 Applicant Guidebook addresses all 2-character strings. It states, “Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard.” Work Track 5’s recommendation specifically addresses letter-letter combinations, a subset of the strings that this provision addresses, because Work Track considers only letter-letter combinations to be within WT5’s scope (geographic names at the top level).

<sup>27</sup> See page 3 of this report for a summary of the rules contained in section 2.2.1.4.1.

<sup>28</sup> See page 3 of this report for a summary of the rules contained in section 2.2.1.4.2.

The “Composition of macro geographical (continental) regions, geographical subregions, and selected economic and other groupings” list is more appropriately called the “Standard country or area codes for statistical use (M49).” The current link for this resource is <https://unstats.un.org/unsd/methodology/m49>.<sup>29</sup>

The 2012 Applicant Guidebook provisions contained in section 2.2.1.4.2 are inconsistent with the GNSO policy recommendations contained in the Introduction of New Generic Top Level Domains from 8 August 2007. This recommendation would make the policy consistent with the 2012 Applicant Guidebook, and therefore represents a change to the existing policy recommendation.

#### **Topic 22: Registrant Protection**

**Recommendation 22.4:** The Working Group supports recommendation 2.2.b. in the Program Implementation Review Report, which states: “Consider whether the background screening procedures and criteria could be adjusted to account for a meaningful review in a variety of cases (e.g., newly formed entities, publicly traded companies, companies in jurisdictions that do not provide readily available information).”

**Recommendation 22.5:** The Working Group supports recommendation 7.1.a. in the Program Implementation Review Report, which states: “Explore whether there are more effective and efficient ways to fund emergency back-end registry operator in the event of a TLD failure [other than requiring Continuing Operations Instruments].”

#### **Topic 24: String Similarity Evaluations**

**Affirmation 24.1:** The Working Group affirms Recommendation 2 from the 2007 policy, which states “Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.”

**Recommendation 24.6:** Eliminate the use of the SWORD tool in subsequent procedures.

**Recommendation 24.7:** The deadline for filing a String Confusion Objection must be no less than thirty (30) days after the release of the String Similarity Evaluation results. This recommendation is consistent with Program Implementation Review Report recommendation 2.3.a.<sup>30</sup>

#### **Topic 25: IDNs**

<sup>29</sup> This information has been confirmed by the Statistical Services Branch of the UN Statistics Division.

<sup>30</sup> PIRR Recommendation 2.3.a states: “Review the relative timing of the String Similarity evaluation and the Objections process.”

<p><b>Recommendation 25.2:</b> Compliance with Root Zone Label Generation Rules (RZ-LGR, RZ-LGR-2, and any future RZ-LGR<sup>31</sup> rules sets) must be required for the generation of TLDs and variants<sup>32</sup> labels, including the determination of whether the label is blocked or allocatable. IDN TLDs must comply with IDNA2008 (RFCs 5890-5895) or its successor(s). To the extent possible, and consistent with Implementation Guidance 26.10, algorithmic checking of TLDs should be utilized.</p>
<p><b>Recommendation 25.4:</b> Single character<sup>33</sup> gTLDs may be allowed for limited script/language combinations where a character is an ideograph (or ideogram) and do not introduce confusion risks that rise above commonplace similarities, consistent with SSAC<sup>34</sup> and Joint ccNSO-GNSO IDN Workgroup (JIG)<sup>35</sup> reports.</p>
<p><b>Recommendation 25.5:</b> IDN gTLDs identified as variant TLDs of already existing or applied for gTLDs will be allowed only if labels are allocated to the same entity and, when delegated, only if they have the same back-end registry service provider. This policy must be captured in relevant Registry Agreements.<sup>36</sup></p>
<p><b>Recommendation 25.6:</b> A given second-level label under any allocated variant TLD must only be allocated to the same entity/registrant, or else withheld for possible allocation only to that entity (e.g., s1 under {t1, t1v1, ...}, e.g., s1.t1 and s1.t1v1).</p>
<p><b>Recommendation 25.7:</b> For second-level variant labels that arise from a registration based on a second-level IDN table, all allocatable variant labels in the set must only be allocated to the same entity or withheld for possible allocation only to that entity (e.g., all allocatable second-level labels {s1, s1v1, ...} under all allocated variant TLD labels {t1, t1v1, ...}).</p>
<p><b>Recommendation 25.8:</b> Second-level labels derived from Recommendation 25.6 or Recommendation 25.7 are not required to act, behave, or be perceived as identical.</p>
<p><b>Topic 26: Security and Stability</b></p>

<sup>31</sup> To see the current versions of RZ-LGRs, see: <https://www.icann.org/resources/pages/generation-panel-2015-06-21-en>.

<sup>32</sup> For more information about the definition of IDN variants as well as examples, please see section 2 of IDN Variant TLD Implementation: Motivation, Premises and Framework, available at <https://www.icann.org/en/system/files/files/idn-variant-tld-motivation-premises-framework-25jan19-en.pdf>.

<sup>33</sup> Meaning a character in a U-label.

<sup>34</sup> See report here: <https://www.icann.org/en/system/files/files/sac-052-en.pdf>.

<sup>35</sup> See report here: [https://censo.icann.org/sites/default/files/filefield\\_22667/jig-final-report-single-character-idns-08mar11-en.pdf](https://censo.icann.org/sites/default/files/filefield_22667/jig-final-report-single-character-idns-08mar11-en.pdf).

<sup>36</sup> The Working Group did not discuss the process by which an existing registry operator could apply for, or be given, a variant for its existing gTLD. Nor has it discussed the process by which an applicant applying for a new IDN gTLD could seek and obtain any allocatable variant(s).

<p><b>Affirmation 26.1:</b> The Working Group affirms Recommendation 4 from the 2007 policy, which states: “Strings must not cause any technical instability.”</p>
<p><b>Recommendation 26.2:</b> ICANN must honor and review the principle of conservatism when adding new gTLDs to the root zone.</p>
<p><b>Recommendation 26.3:</b> ICANN must focus on the rate of change for the root zone over smaller periods of time (e.g., monthly) rather than the total number of delegated strings for a given calendar year.</p>
<p><b>Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services</b></p>
<p><b>Affirmation 27.1:</b> The Working Group affirms several Principles and Recommendations from the 2007 policy relative to Applicant Reviews:</p> <ul style="list-style-type: none"> <li>● <u>Principle D</u>: “A set of technical criteria must be used for assessing a new gTLD registry applicant to minimize the risk of harming the operational stability, security and global interoperability of the Internet.”</li> <li>● <u>Principle E</u>: “A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN’s registry agreement.”</li> <li>● <u>Recommendation 1</u>: “ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedures for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.”</li> <li>● <u>Recommendation 9</u>: “There must be a clear and pre-published application process using objective and measurable criteria.”</li> <li>● <u>Recommendation 18</u> (with slight modification): “If an applicant offers an IDN service, then ICANN’s then current IDN guidelines must be followed.”</li> </ul>
<p><b>Recommendation 27.2:</b> Evaluation scores on all questions should be limited to a pass/fail scale (0-1 points only).</p>
<p><b>Recommendation 27.3:</b> All application evaluation questions and any accompanying guidance must be written such that it maximizes predictability and minimizes the likelihood of Clarifying Questions (CQs).</p>
<p><b>Recommendation 27.5:</b> ICANN org must publish CQs and CQ responses related to public questions. ICANN org may redact certain parts of the CQ and CQ response if there is nonpublic information directly contained in these materials or if publication in full is likely to allow the inference of nonpublic or confidential information.</p>



<p><b>Affirmation with Modification 27.6:</b> The Working Group affirms recommendation 7 from the 2007 policy with the following proposed additional text in italics: “Applicants must be able to demonstrate their technical and operational capability to run a registry operation for the purpose that the applicant sets out, either by submitting it to evaluation at application time or agreeing to use an RSP that has successfully completed pre-evaluation as part of the RSP pre-evaluation program.”<sup>37</sup></p>
<p><b>Recommendation 27.9:</b> The technical and operational evaluation must be done in an efficient manner as described in the implementation guidance below.</p>
<p><b>Recommendation 27.11:</b> Consistent with Implementation Guidance 39.6 under Topic 39: Registry System Testing, the technical and operational evaluation must emphasize evaluation of elements that are specific to the application and/or applied-for TLD and should avoid evaluating elements that have already been thoroughly considered either as part of the RSP pre-evaluation program or previously in connection with another application and/or applied-for TLD.</p>
<p><b>Recommendation 27.13:</b> When responding to questions, applicants must identify which services are being outsourced to be performed by third parties.</p>
<p><b>Recommendation 27.14:</b> The technical and operational evaluation must also consider the total number of TLDs and expected registrations for an applicant’s given RSP.</p>
<p><b>Recommendation 27.15:</b> The Working Group recommends that the financial evaluation must focus on ensuring that an applicant is able to demonstrate financial wherewithal and assure long-term survivability of the registry, thus reducing the security and stability risk to the DNS. The Working Group believes that the following implementation guidance will simplify the process but still allow for meaningful assurance of an applicant’s financial capabilities, while duly taking into account how the applicant will operate its registry.</p>
<p><b>Affirmation with Modification 27.19:</b> The Working Group affirms Recommendation 8 from the 2007 policy with the following proposed additional text in italics: “Applicants must be able to demonstrate their financial and organizational operational capability in tandem for all currently-owned and applied-for TLDs that would become part of a single registry family.”</p> <p>Therefore, applicants must identify whether the financial statements in its application apply to all of its applications, a subset of them or a single application (where that applicant and/or its affiliates have multiple applications).</p>

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<sup>37</sup> Please see Topic 6 of this report for additional information about the RSP pre-evaluation program.

**Recommendation 27.21:** A certain set of optional pre-approved additional registry services will not require registry services evaluation and those selected by the applicant at the time application submission will automatically be included in the applicant’s Exhibit A upon contract execution. That list will include those that are included in the base Registry Agreement and on the *Fast Track RSEP Process and Standard Authorization Language*<sup>38</sup> page as of the drafting of this report and as updated from time to time.

**Recommendation 27.22:** Any additional optional registry services not included on the pre-approved list must be reviewed in a timely manner to determine if they might raise significant stability or security issues. Criteria used to evaluate those non-pre-approved registry services must be consistent with the criteria applied to existing registries that propose new registry services and should not result in additional fees. However, if that initial assessment determines that the proposed registry services might raise significant stability or security issues, the application will be subject to extended review by the Registry Services Technical Evaluation Panel (RSTEP). Applicants will be subject to additional fees under this circumstance.

#### **Topic 28: Role of Application Comment**

**Recommendation 28.3:** For purposes of transparency and to reduce the possibility of gaming, there must be clear and accurate information available about the identity of a person commenting on an application as described in the implementation guidance below.

**Recommendation 28.6:** Systems supporting application comment must emphasize usability for those submitting comments and those reviewing the comments submitted. This recommendation is consistent with Program Implementation Review Report recommendation 1.3.a, which states: “Explore implementing additional functionality that will improve the usability of the Application Comment Forum.”

**Recommendation 28.9:** The New gTLD Program must be clear and transparent about the role of application comment in the evaluation of applications.

**Recommendation 28.11:** Applicants must have a clear, consistent, and fair opportunity to respond to the public comments on their application prior to the consideration of those comments in the evaluation process.

**Recommendation 28.13:** ICANN must create a mechanism for third-parties to submit information related to confidential portions of the application, which may not be appropriate to submit through public comment. At a minimum, ICANN must confirm receipt and that the

<sup>38</sup> These optional additional services include Bulk Transfer After Partial Portfolio Acquisition (BTAPPA), Registry Lock, Block Services, and/or validation services as examples. See page here: <https://www.icann.org/resources/pages/fast-track-rsep-process-authorization-language-2019-06-14-en>.

information is being reviewed. The applicant must be fully informed of the submitted information and be able to respond through the same mechanism.

**Recommendation 28.14:** A single Application Comment Period must apply to both standard and community-based applications. To the extent that third-parties submit expressions of support for or opposition to a community-based application, these comments must be submitted during the Application Comment Period if they are to be considered during Community Priority Evaluation.

### **Topic 30: GAC Consensus Advice and GAC Early Warning**

**Recommendation 30.3:** As stated in the ICANN Bylaws, GAC Consensus Advice must include a clearly articulated rationale.<sup>39</sup> The Working Group recommends that GAC Consensus Advice be limited to the scope set out in the applicable Bylaws provisions and elaborate on any “interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues.”<sup>40</sup>

### **Topic 31: Objections**

**Affirmation 31.1:** Subject to the recommendations/implementation guidance below, The Working Group affirms the following recommendations and implementation guidance from 2007:

- Recommendation 6: “Strings must not be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally accepted and internationally recognized principles of law. Examples of such limitations that are internationally recognized include, but are not limited to, restrictions defined in the Paris Convention for the Protection of Industrial Property (in particular restrictions on the use of some strings as trademarks), and the Universal Declaration of Human Rights (in particular, limitations to freedom of speech rights).”
- Recommendation 20: “An application will be rejected if it is determined, based on public comments or otherwise, that there is substantial opposition to it from among significant established institutions of the economic sector, or cultural or language community, to which it is targeted or which it is intended to support.”

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<sup>39</sup> 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>.

<sup>40</sup> 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>.

- Implementation Guideline H: “External dispute providers will give decisions on objections.”
- Implementation Guideline P (IG P, including subheadings on process and guidelines, refers specifically to the Community Objection):  
“The following process, definitions and guidelines refer to Recommendation 20.

**Process**

Opposition must be objection based.

Determination will be made by a dispute resolution panel constituted for the purpose.

The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).

**Guidelines**

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

- a. substantial – in determining substantial the panel will assess the following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment
- b. significant portion – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.
- c. community – community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted.
- d. explicitly targeting – explicitly targeting means there is a description of the intended use of the TLD in the application.
- e. implicitly targeting – implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.
- f. established institution – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years.

Exceptional circumstances include but are not limited to a reorganization, merger or an inherently younger community.

The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

- g. formal existence – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar.
- h. detriment – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely.”

- Implementation Guideline Q: “ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.”

**Affirmation with Modification 31.2:** Recommendation 12 from 2007 states: “Dispute resolution and challenge processes must be established prior to the start of the process.” Consistent with Implementation Guidance 31.12 below, the Working Group affirms Recommendation 12 with the following modification in italicized text: “Dispute resolution and challenge processes must be established prior to the start of the process, *the details of which must be published in the Applicant Guidebook.*”

**Recommendation 31.10:** For all types of formal objections, the parties to a proceeding must be given the opportunity to mutually agree upon a single panelist or a three-person panel, bearing the costs accordingly. Following the model of the Limited Public Interest Objection in the 2012 round, absent agreement from all parties to have a three-expert panel, the default will be a one-expert panel.

**Recommendation 31.11:** ICANN must provide transparency and clarity in the processes used to handle the filing and processing of formal objections, including the resources and supplemental guidance used by dispute resolution provider panelists to arrive at a decision, expert panelist selection criteria and processes, and filing deadlines. The following implementation guidance provides additional direction in this regard.

**Recommendation 31.15:** The “quick look” mechanism, which applied to only the Limited Public Interest Objection in the 2012 round, must be developed by the Implementation Review Team for all formal objection types. The “quick look” is designed to identify and eliminate frivolous and/or abusive objections.<sup>41</sup>

**Recommendation 31.18:** ICANN must reduce the risk of inconsistent outcomes in the String Confusion Objection Process, especially where an objector seeks to object to multiple applications for the same string. The following implementation guidance provides additional direction in this regard.

### **Topic 33: Dispute Resolution Procedures After Delegation**

**Recommendation 33.2:** For the Public Interest Commitment Dispute Resolution Procedure (PICDRP) and the Registration Restrictions Dispute

<sup>41</sup> The Working Group expects the Implementation Review Team to determine in greater detail how the quick look mechanism will identify and eliminate frivolous and/or abusive objections for each objection type. The Working Group anticipates that standing will be one of issues that the quick look mechanism will review, where applicable.

Resolution Procedure (RRDRP), clearer, more detailed, and better-defined guidance on the scope of the procedure, the role of all parties, and the adjudication process must be publicly available.

#### **Topic 34: Community Applications**

**Recommendation 34.13:** The Community Priority Evaluation (CPE) process must be efficient, transparent and predictable.

**Recommendation 34.16:** All Community Priority Evaluation procedures (including any supplemental dispute provider rules) must be developed and published before the opening of the application submission period and must be readily and publicly available.

**Recommendation 34.17:** Evaluators must continue to be able to send Clarifying Questions to CPE applicants but further, must be able to engage in written dialogue with them as well.

**Recommendation 34.18:** Evaluators must be able to issue Clarifying Questions, or utilize similar methods to address potential issues, to those who submit letters of opposition to community-based applications.

**Recommendation 34.19:** Letters of opposition to a community-based application, if any, must be considered in balance with documented support for the application.

**Recommendation 34.21:** If the Community Priority Evaluation Panel conducts independent research while evaluating an application, limitations on this research and additional requirements must apply. The Working Group recommends including the following text in the Applicant Guidebook: “The Community Priority Evaluation Panel may perform independent research deemed necessary to evaluate the application (the “Limited Research”), provided, however, that the evaluator shall disclose the results of such Limited Research to the applicant and the applicant shall have an opportunity to respond. The applicant shall be provided 30 days to respond before the evaluation decision is rendered. When conducting any such Limited Research, panelists are cautioned not to assume an advocacy role either for or against the applicant or application.”

#### **Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets**

**Affirmation 35.1:** Implementation Guideline F from 2007 states: “If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of

contention and; iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.” The Working Group affirms this Implementation Guideline with the following changes in italicized text: “If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe in accordance with the Applicant Guidebook and supporting documents ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement, contention will be resolved through an ICANN Auction of Last Resort and; iii) Expert panels may be used to make Community Priority Evaluation determinations.” The revision to part i) specifies that any private resolution of contention must be in accordance with the Application Guidebook and supporting documents, including the Application Change request process and Terms and Conditions. Adjustments in the text of ii) and iii) describe in greater specificity program elements as they were implemented in the 2012 round, which will carry over into subsequent rounds.

### **Topic 36: Base Registry Agreement**

**Affirmation 36.1:** The Working Group affirms the following recommendations and implementation guidelines from the 2007:

- Principle F: “A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.”
- Recommendation 10: “There must be a base contract provided to applicants at the beginning of the application process.”
- Recommendation 14: “The initial registry agreement term must be of a commercially reasonable length.”
- Recommendation 15: “There must be a renewal expectancy.”
- Recommendation 16: “Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.”
- Implementation Guideline J: “The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing marketplace.”
- Implementation Guideline K: “ICANN should take a consistent approach to the establishment of registry fees.”

**Recommendation 36.3:** There must be a clearer, structured, and efficient method to apply for, negotiate, and obtain exemptions to certain provisions of the base Registry Agreement, subject to public notice and comment. A clear rationale must be included with any exemption request. This allows ICANN org to consider unique aspects of registry operators and TLD strings, as well as provides ICANN org the ability to accommodate a rapidly changing marketplace. The Working Group notes that consensus policy must not be the subject of individual Registry Agreement negotiations.

**Recommendation 36.4:** ICANN must add a contractual provision stating that the registry operator will not engage in fraudulent or deceptive practices. In the event that ICANN receives an order from a court that a registry has engaged in fraudulent or deceptive practices, ICANN may issue a notice of breach for such practices and allow the registry to cure such breach in accordance with the Registry Agreement. Further, in the event that there is a credible allegation by any third party of fraudulent or deceptive practices, other than as set forth in above, ICANN may, at its

discretion, either commence dispute resolution actions under the Registry Agreement (Currently Article 5 of the Registry Agreement), or appoint a panel under the PICDRP. For the purposes of a credible claim of fraudulent or deceptive practices the reporter (as defined by the PICDRP) must only specifically state the grounds of the alleged non-compliance, but not that it personally has been harmed as a result of the registry operator's act or omission.

#### **Topic 37: Registrar Non-Discrimination / Registry/Registrar Standardization**

**Recommendation 37.1:** Recommendation 19 in the 2007 policy states: "Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars." The Working Group recommends updating Recommendation 19 to state: "Registries must use only ICANN accredited registrars in registering domain names, and may not discriminate among such accredited registrars unless an exemption to the Registry Code of Conduct is granted as stated therein,<sup>42</sup> provided, however, that no such exemptions shall be granted without public comment."

#### **Topic 39: Registry System Testing**

**Recommendation 39.1:** ICANN must develop a set of Registry System tests<sup>43</sup> designed to demonstrate the technical capabilities of the registry operator.

**Recommendation 39.4:** Registry System Testing (RST) must be efficient.

#### **Topic 41: Contractual Compliance**

**Affirmation 41.1:** The Working Group affirms Recommendation 17 from the 2007 policy, which states: "A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination."

**Recommendation 41.2:** ICANN's Contractual Compliance Department should publish more detailed data on the activities of the department and

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<sup>42</sup> See Specification 9 - Registry Operator Code of Conduct for additional information about Code of Conduct exemptions: <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html#specification9>.

<sup>43</sup> Note that there is an important distinction between "evaluation" and "testing." Evaluation includes review of an applicant's responses to written questions regarding capabilities that cannot be demonstrated until the registry is operational. Testing refers to ICANN org's assessment of a registry's capabilities through the tests it conducts.



the nature of the complaints handled; provided however, that ICANN should not publish specific information about any compliance action against a registry operator unless the alleged violation amounts to a clear breach of contract. To date, ICANN compliance provides summary statistics on the number of cases opened, generalized type of case, and whether and how long it takes to close. More information must be published on: (a) the context of the compliance action and whether it was closed due to action taken by the registry operator, or whether it was closed due to a finding that the registry operator was never out of compliance, and (b) standards and/or thresholds ICANN applies in assessing, and accepting each complaint for further action.

## B. Outputs That the Board Is Still Discussing (“Pending”)

All Outputs in this section are “pending”, as adopted in Resolutions 2023.03.16.04 - 2023.03.16.15.

Output Synopsis	Issue Synopsis
<b>Topic 3: Applications Assessed in Rounds</b>	
<p><b>Affirmation with Modification 3.1:</b> 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.”</p>	<p>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.”<sup>44</sup></p>
<p><b>Recommendation 3.2:</b> 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.</p>	<p>See Affirmation with Modification 3.1</p>
<p><b>Recommendation 3.5:</b> Absent extraordinary circumstances application procedures must take place at predictable, regularly occurring intervals without indeterminable periods of review unless the GNSO Council recommends pausing the program and such recommendation is approved by the Board. Such extraordinary circumstances must be subject to the Predictability Framework under Topic 2 of this Report. Unless and until other procedures are recommended by the GNSO</p>	<p>See Affirmation with Modification 3.1</p>

<sup>44</sup> New gTLD Subsequent Procedures Operational Design Assessment, pp. 142-143.

Output Synopsis	Issue Synopsis
Council and approved by the ICANN Board, ICANN must only use “rounds” to administer the New gTLD Program.	
<p><b>Recommendation 3.6:</b> Absent extraordinary circumstances, future reviews and/or policy development processes, including the next Competition, Consumer Choice &amp; 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.</p>	See Affirmation with Modification 3.1
<p><b>Recommendation 3.7:</b> 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.</p>	See Affirmation with Modification 3.1
<p><b>Topic 6: Registry Service Provider Pre-Evaluation</b></p>	
<p><b>Recommendation 6.8:</b> 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.</p>	<p>The Board is concerned about the recommended roles and responsibilities during the implementation process. Per Consensus Policy Implementation Framework (<a href="#">CPIF</a>) and the <a href="#">IRT Principles &amp; Guidelines</a> ICANN org leads implementation efforts. Therefore, the costs of the program should be established by ICANN org during implementation in consultation with the IRT.</p>
<p><b>Topic 9: Registry Voluntary Commitments / Public Interest Commitments</b></p>	
<p><b>Recommendation 9.1:</b> Mandatory Public Interest Commitments (PICs) currently captured in Specification 11 3(a)-(d) of the Registry</p>	<p>The Board remains concerned, as previously voiced as part of its <a href="#">comment on the Draft Final Report</a>, over risks of challenges related to</p>

Output Synopsis	Issue Synopsis
<p>Agreement<sup>45</sup> 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).<sup>46</sup></p>	<p>ICANN’s ability to enter into and enforce PICs/RVCs in accordance with its mission, due to limitations in the Bylaws Section 1.1.</p>
<p><b>Recommendation 9.2:</b> Provide single-registrant TLDs with</p>	<p>The Board is concerned that a waiver to Specification 11, sections 3(a)</p>

<sup>45</sup> 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. 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. 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. 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. 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>.

<sup>46</sup> 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.

Output Synopsis	Issue Synopsis
<p>exemptions and/or waivers to mandatory PICs included in Specification 11 3(a) and Specification 11 3(b).<sup>47</sup></p>	<p>and 3(b) could lead to DNS abuse for second-level registrations in a single-registrant TLD going undeterred, unobserved and therefore unmitigated.</p> <p>The Board is also concerned that a waiver to Specification 11, sections 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.</p>
<p><b>Recommendation 9.4:</b> 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.</p>	<p>See Recommendation 9.1</p>
<p><b>Recommendation 9.8:</b> 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.</p>	<p>See Recommendation 9.1</p>
<p><b>Recommendation 9.9:</b> ICANN must allow applicants to submit Registry Voluntary Commitments (RVCs) (previously called voluntary PICs) in subsequent rounds in their applications or to respond to public comments, objections, whether formal or informal, GAC Early Warnings, GAC Consensus Advice, and/or other comments from the</p>	<p>See Recommendation 9.1</p>

<sup>47</sup> For the sake of clarity, this recommendation and the exemption does NOT apply to Specification 11 3(c) or 11 3(d).

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<p>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<sup>48</sup> in accordance with ICANN’s standard procedures and timeframes.</p>	
<p><b>Recommendation 9.10:</b> RVCs must continue to be included in the applicant’s Registry Agreement.</p>	<p>See Recommendation 9.1</p>
<p><b>Recommendation 9.12:</b> At the time an RVC is made, the applicant must set forth whether such commitment is limited in time, duration and/or scope. Further, an applicant must include its reasons and purposes for making such RVCs such that the commitments can adequately be considered by any entity or panel (e.g., a party providing a relevant public comment (if applicable), an existing objector (if applicable) and/or the GAC (if the RVC was in response to a GAC Early Warning, GAC Consensus Advice, or other comments from the GAC)) to understand if the RVC addresses the underlying concern(s).</p>	<p>See Recommendation 9.1</p>
<p><b>Recommendation 9.13:</b> 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.</p>	<p>See Recommendation 9.1</p>
<p><b>Recommendation 9.15:</b> The Working Group acknowledges ongoing</p>	<p>See Recommendation 9.1</p>

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<sup>48</sup> a 30-day comment period giving the public the opportunity to comment on any change to a public part of an application.

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<p>important work in the community on the topic of DNS abuse<sup>49</sup> 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).</p> <p>The Working Group has reached this conclusion after duly considering the DNS abuse related CCT-RT Recommendations, which includes</p>	

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<sup>49</sup> 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://gns0.icann.org/sites/default/files/filefield\\_12530/rap-wg-final-report-29may10-en.pdf](https://gns0.icann.org/sites/default/files/filefield_12530/rap-wg-final-report-29may10-en.pdf).

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14, <sup>50</sup> 15, <sup>51</sup> and 16 <sup>52</sup> . 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. <sup>53</sup>	
<b>Topic 16: Application Submission Period</b>	
<b>Recommendation 16.1:</b> 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.
<b>Topic 17: Applicant Support</b>	

<sup>50</sup> 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.”

<sup>51</sup> 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.”

<sup>52</sup> 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.”

<sup>53</sup> 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>.



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<p><b>Recommendation 17.2:</b> 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.</p>	<p>The Board remains concerned, as previously voiced as part of its <a href="#">comment on the Draft Final Report</a>, over the open-ended nature of these fees as affirmative payments of costs beyond application fees could raise fiduciary concerns for the Board.</p> <p>Note, this concern does not extend to facilitation of <i>pro bono</i> services.</p>
<p><b>Topic 18: Terms &amp; Conditions</b></p>	
<p><b>Recommendation 18.1:</b> 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.</p>	<p>The Board remains concerned, as previously voiced as part of its <a href="#">comment on the Draft Final Report</a>, 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.</p>
<p><b>Recommendation 18.3:</b> 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.</p>	<p>The Board remains concerned, as previously voiced as part of its <a href="#">comment on the Draft Final Report</a>, 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. Anything that could weaken the covenant not to sue might preclude the ability to offer the program due to an unreasonable risk of lawsuits.</p>
<p><b>Recommendation 18.4:</b> 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</p>	<p>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”.</p>

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impact on applicants. <sup>54</sup>	
<b>Topic 19: Application Queuing</b>	
<p><b>Recommendation 19.3:</b> 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.</p> <p>The Working Group recommends that the following formula must be used with respect to giving priority to IDN applications:</p> <ul style="list-style-type: none"> <li>● <u>First 500 applications</u> <ul style="list-style-type: none"> <li>○ 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.</li> <li>○ 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</li> </ul> </li> </ul>	<p>The Board is concerned that the precise number of applications per batch could be too limiting for future rounds as the recommendation prescribes a batch size that might not align with future system capabilities.</p>

<sup>54</sup> This refund would differ from the normal refund schedule.

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<p>prior to any non-IDN application.</p> <ul style="list-style-type: none"> <li>● <u>Each subsequent group of those electing to participate in the prioritization draw</u> <ul style="list-style-type: none"> <li>○ For each subsequent group, the first 10% of each group of applications must consist of IDN applications until there are no more IDN applications.</li> <li>○ The remaining applications in each group shall be selected at random out of the pool of IDN and non-IDN applications that remain.</li> </ul> </li> <li>● <u>Processing of applications which do not elect to participate in the prioritization draw</u> <ul style="list-style-type: none"> <li>○ 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.</li> <li>○ The first 10% of each group of applications must consist of IDN applications until there are no more IDN applications.</li> <li>○ The remaining applications in each group shall be selected at random out of the pool of IDN and non-IDN applications that remain.</li> </ul> </li> </ul>	
<b>Topic 22: Registrant Protections</b>	
<p><b>Recommendation 22.7:</b> 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.</p>	<p>The Board is concerned that an exemption from a Continued Operations Instrument requirement for Specification 9 applications would have a negative financial impact on ICANN since there would be no fund to draw from if such a registry went into EBERO.</p> <p>Further, not moving a Brand TLD into EBERO might have a security</p>

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	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.
<b>Topic 24: String Similarity Evaluations</b>	
<p><b>Recommendation 24.3:</b> The Working Group recommends updating the standards of both (a) confusing similarity to an existing top-level domain or a Reserved Name, and (b) similarity for purposes of determining string contention, to address singular and plural versions of the same word, noting that this was an area where there was insufficient clarity in the 2012 round. Specifically, the Working Group recommends prohibiting plurals and singulars of the same word within the same language/script in order to reduce the risk of consumer confusion. For example, the TLDs .EXAMPLE<sup>55</sup> and .EXAMPLES may not both be delegated because they are considered confusingly similar. This expands the scope of the String Similarity Review to encompass singulars/plurals of TLDs on a per-language/script basis.</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• If there is an application for the singular version of a word and</li> </ul>	<p>The Board remains concerned, as previously voiced as part of its <a href="#">comment on the Draft Final Report</a>, over the wording in sections (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.</p>

<sup>55</sup> .EXAMPLE is used here for illustrative purposes only. The Working Group is aware that technically .EXAMPLE cannot be delegated at all because it is one of the names already reserved from delegation as a Special Use name.

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<p>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.</p> <ul style="list-style-type: none"> <li>• Applications will not automatically be placed in the same contention set because they appear visually to be a single and plural of one another but have different intended uses. For example, .SPRING and .SPRINGS could both be allowed if one refers to the season and the other refers to elastic objects, because they are not singular and plural versions of the same word. However, if both are intended to be used in connection with the elastic object, then they will be placed into the same contention set. Similarly, if an existing TLD .SPRING is used in connection with the season and a new application for .SPRINGS is intended to be used in connection with elastic objects, the new application will not be automatically disqualified.</li> </ul> <p>The Working Group recommends using a dictionary to determine the singular and plural version of the string for the specific language. The Working Group recognizes that singulars and plurals may not visually resemble each other in multiple languages and scripts globally. Nonetheless, if by using a dictionary, two strings are determined to be the singular or plural of each other, and their intended use is substantially similar, then both should not be eligible for delegation.</p>	
<p><b>Recommendation 24.5:</b> 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</p>	<p>See Recommendation 24.3 above</p>

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<p>meanings,<sup>56</sup> 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.</p>	
<b>Topic 26: Security and Stability</b>	
<p><b>Recommendation 26.9:</b> In connection to the affirmation of Recommendation 4 from the 2007 policy, Emoji in domain names, at any level, must not be allowed.</p>	<p>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 <b>second-level</b> [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... [.]”</p>
<b>Topic 29: Name Collisions</b>	
<p><b>Recommendation 29.1:</b> 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.</p>	<p>The Board has concerns around the potential impact of Name Collision Analysis Project on this recommendation and believes it is prudent to wait until after the release of the Name Collision Analysis Project (NCAP) 2<sup>57</sup> Study before resolving on this recommendation.</p>

<sup>56</sup> 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.

<sup>57</sup> For more information about the NCAP Study 2, see

<https://www.icann.org/en/announcements/details/icann-publishes-name-collision-analysis-project-ncap-study-2-documents-27-1-2022-en>.

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<b>Topic 30: GAC Consensus Advice and GAC Early Warning</b>	
<p><b>Recommendation 30.4:</b> 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.<sup>58</sup> 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.<sup>59</sup></p>	<p>The Board will consult with GNSO Council and GAC before resolving on this recommendation.</p> <p>The GAC has publicly expressed its view on the removal of the “presumption” language from the AGB.</p> <p>See page 8 of <a href="#">Governmental Advisory Committee Comment on Subsequent Rounds for New gTLDs Draft Final Report Public Comment Proceeding</a>.</p>
<p><b>Recommendation 30.5:</b> The Working Group recommends that GAC Early Warnings are issued during a period that is concurrent with the Application Comment Period.<sup>60</sup> To the extent that there is a longer</p>	<p>The Board will consult with GNSO Council and GAC before resolving on this recommendation.</p>

<sup>58</sup> 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.”

<sup>59</sup> See section 12.2(a)(x) of the current ICANN Bylaws: <https://www.icann.org/resources/pages/governance/bylaws-en/#article12>.

<sup>60</sup> See Topic 28 of this report for discussion of the application comment period.

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<p>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.</p>	<p>The GAC has publicly expressed its negative view on Implementation Guidance 30.2<sup>61</sup>, which concerns the limitation of “the timing of GAC Consensus Advice on future categories of TLDs and particular applications, oriented to disincentivizing any such Advice being submitted after the finalization and publication of the next Applicant Guidebook”. It is the view of ICANN org that this has repercussions on Recommendation 30.5 as well.</p> <p>See page 7 of <a href="#">Governmental Advisory Committee Comment on Subsequent Rounds for New gTLDs Draft Final Report Public Comment Proceeding</a>.</p>
<p><b>Recommendation 30.6:</b> 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.</p>	<p>The Board will consult with GNSO Council and GAC before resolving on this recommendation.</p> <p>The GAC has publicly expressed its view on the need to update the language of the recommendation as follows: “[...] <i>how the applicant may potentially address the GAC member’s concerns to the extent feasible</i>”.</p> <p>See page 7 of <a href="#">Governmental Advisory Committee Comment on Subsequent Rounds for New gTLDs Draft Final Report Public Comment Proceeding</a>.</p>

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<sup>61</sup> 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.



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<p><b>Recommendation 30.7:</b> 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.<sup>62</sup> Relevant GAC members are strongly encouraged to make themselves available during a specified period of time for direct dialogue<sup>63</sup> with applicants impacted by GAC Early Warnings, GAC Consensus Advice, or comments to determine if a mutually acceptable solution can be found.</p>	<p>See Recommendation 9.1</p>
<p><b>Topic 31: Objections</b></p>	
<p><b>Recommendation 31.16:</b> 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.</p>	<p>See Recommendation 9.1</p>
<p><b>Recommendation 31.17:</b> 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)</p>	<p>See Recommendation 9.1</p>

<sup>62</sup> 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.

<sup>63</sup> While face-to-face dialogue is encouraged, the Working Group recognizes that this may not be feasible in all cases. Dialogue through remote channels may also support the productive exchange of ideas.

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Registry Agreement(s) as binding contractual commitments enforceable by ICANN through the PICDRP.	
<b>Topic 32: Limited Challenge/Appeal Mechanism</b>	
<p><b>Recommendation 32.1:</b> 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.<sup>64</sup></p> <p>The new substantive challenge/appeal mechanism is not a substitute or replacement for the accountability mechanisms in the ICANN Bylaws that may be invoked to determine whether ICANN staff or Board violated the Bylaws by making or not making a certain decision. Implementation of this mechanism must not conflict with, be inconsistent with, or impinge access to accountability mechanisms under the ICANN Bylaws.</p> <p>The Working Group recommends that the limited challenge/appeal mechanism applies to the following types of evaluations and formal objections decisions<sup>65</sup>:</p> <p><b>Evaluation Challenges</b></p> <ol style="list-style-type: none"> <li>1. Background Screening</li> <li>2. String Similarity</li> <li>3. DNS Stability</li> </ol>	<p>The Board is concerned regarding this recommendation as set out in <a href="#">Operational Design Assessment</a>, at topic 32 (pp. 169-176).</p> <p>In sum, it is not clear that a challenge/appeal mechanism applicable to Initial/Extended Evaluation decisions made by ICANN or third-party providers or challenges concerning conflict of interest of panelists could be designed in a way that does not cause excessive, unnecessary costs or delays in the application process.</p>

<sup>64</sup> 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.

<sup>65</sup> The list of challenges and appeals herein are based on the current and envisaged processes and procedures for the New gTLD Program. In the event that additional evaluation elements and/or objections are added, modified or removed from the program, the challenges and/or appeals may have to be modified as appropriate.

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<ul style="list-style-type: none"> <li>4. Geographic Names</li> <li>5. Technical / Operational Evaluation</li> <li>6. Financial Evaluation</li> <li>7. Registry Services Evaluation</li> <li>8. Community Priority Evaluation</li> <li>9. Applicant Support</li> <li>10. RSP Pre-Evaluation</li> </ul> <p><b>Appeals of Formal Objections Decisions</b></p> <ul style="list-style-type: none"> <li>1. String Confusion Objection</li> <li>2. Legal Rights Objection</li> <li>3. Limited Public Interest Objection</li> <li>4. Community Objection</li> <li>5. Conflict of Interest of Panelists</li> </ul>	
<p><b>Recommendation 32.2:</b> In support of transparency, clear procedures and rules must be established for challenge/appeal processes as described in the implementation guidance below.</p>	<p>See Recommendation 32.1</p>
<p><b>Recommendation 32.10:</b> 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.</p>	<p>See Recommendation 32.1</p>
<p><b>Topic 34: Community Applications</b></p>	
<p><b>Recommendation 34.12:</b> 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</p>	<p>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.</p>

Output Synopsis	Issue Synopsis
<p>Provider regarding the CPE process must be subject to public comment.</p>	
<b>Topic 35: Auctions</b>	
<p><b>Recommendation 35.3:</b> Applications must be submitted with a bona fide (“good faith”) intention to operate the gTLD. Applicants must affirmatively attest to a bona fide intention to operate the gTLD clause for all applications that they submit.</p> <ul style="list-style-type: none"> <li>● 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.</li> <li>● Applicants may mark portions of any such responses as “confidential” if the responses include proprietary business information.</li> </ul> <p>The Working Group discussed the following potential non-exhaustive list of “Factors” that ICANN may consider in determining whether an application was submitted with a bona fide (“good faith”) intention to operate the gTLD. Note that potential alternatives and additional language suggested by some Working Group members are included in brackets:</p> <ul style="list-style-type: none"> <li>● If an Applicant applies for [four] [five] or more strings that are</li> </ul>	<p>The Board is concerned that this recommendation contains a reference to private auctions. Since there is no policy on private auctions, this reference may create confusion during implementation and operationalization of the program.</p>

Output Synopsis	Issue Synopsis
<p>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.</p> <ul style="list-style-type: none"> <li>● Possible alternatives to the above bullet point: <ul style="list-style-type: none"> <li>○ [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.]</li> <li>○ [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.]</li> <li>○ [If an applicant: a. Has six or more applications in contention sets; and b. 50% or more of the contention sets are resolved in private auctions; and c. 50% or more of the private auctions produce a financial windfall to the applicant.]</li> <li>○ [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</li> </ul> </li> </ul>	

Output Synopsis	Issue Synopsis
<p style="text-align: center;">applications from continuing to delegation.]</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• If an applicant is awarded a top-level domain and [sells or assigns] [attempts to sell] the TLD (separate and apart from a sale of all or substantially all of its non-TLD related assets) within (1) year, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for that applicant.</li> <li>• [If an applicant with multiple applications resolves contention sets by means other than private auctions and does not win any TLDs.]</li> </ul> <p>Consideration of whether an application was submitted with a bona fide intention to operate the gTLD must be determined by considering all of the facts and circumstances surrounding the impacted application.</p>	
<p><b>Recommendation 35.5:</b> Applicants resolving string contention must adhere to the Contention Resolution Transparency Requirements as detailed below. Applicants disclosing relevant information will be subject to the Protections for Disclosing Applicants as detailed below.</p> <p><b><u>Contention Resolution Transparency Requirements</u></b></p> <ul style="list-style-type: none"> <li>• <u>For Private Auction or Bidding Process / ICANN Auction of Last Resort:</u> In the case of a private auction or an ICANN Auction of Last Resort, all parties in interest<sup>66</sup> to any</li> </ul>	<p>The Board is concerned that this recommendation contains a reference to private auctions. Since there is no policy on private auctions, this reference may create confusion during implementation and operationalization of the program.</p>

<sup>66</sup> 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.

Output Synopsis	Issue Synopsis
<p>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:</p> <ul style="list-style-type: none"> <li>○ 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;</li> <li>○ List the names and contact information<sup>67</sup> 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;</li> <li>○ List the names and contact information<sup>68</sup> of all officers, directors, and other controlling interests in the applicant and/or the application;</li> <li>○ The amount paid (or payable) by the winner of the auction;</li> <li>○ The beneficiary(ies) of the proceeds of the bidding process and the respective distribution amounts;</li> <li>○ The beneficiary(ies) of the proceeds of the bidding process; and</li> <li>○ The value of the Applicant Support bidding credits or multiplier used, if applicable.<sup>69</sup></li> </ul>	

<sup>67</sup> Contact Information will be subject to the same publication rules as contact information is treated in the application process.

<sup>68</sup> Same as above.

<sup>69</sup> 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 Synopsis	Issue Synopsis
<ul style="list-style-type: none"> <li>● <u>For Other Forms of Private Resolution</u>: Where contention sets are privately resolved through a mechanism other than a private auction, the following must be disclosed: <ul style="list-style-type: none"> <li>○ The fact that the contention set (or part of a contention set), has been resolved privately (and the names of the parties involved);</li> <li>○ Which applications are being withdrawn (if applicable);</li> <li>○ Which applications are being maintained (if applicable);</li> <li>○ 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;</li> <li>○ All material information regarding any changes to information contained in the original application(s)(if any).</li> </ul> </li> </ul> <p>In the event that any arrangements to resolve string contention results in any material changes to the surviving application, such changes must be submitted through the Application Change process set forth under Topic 20: Application Change Requests.</p> <p><b><u>Protections for Disclosing Applicants</u></b></p> <ul style="list-style-type: none"> <li>● 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 information of officers and directors unless such information is otherwise required as part of a normal TLD application.</li> <li>● 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</li> </ul>	



<b>Output Synopsis</b>	<b>Issue Synopsis</b>
gTLD Program, or to otherwise comply with applicable law.	

### C. Dependencies Related to Final Report Outputs, Outstanding Advice Items, Specific Review Recommendations and Other Issues

All Outputs in this section identified as “dependencies”, which the Board is committed to resolving in a timely manner as adopted in Resolutions 2023.03.16.04 - 2023.03.16.15.

Concern / Reason for Dependency	Board Considerations / Options / Action	Timeframe for Action
<b>Topic 17: Applicant Support</b>		
<a href="#">GNSO Guidance Process on Applicant Support</a>	Anticipate guidance from the WG on implementation of certain SubPro Final Report outputs relating to Applicant Support, including: <ul style="list-style-type: none"> <li>● Recommendation 17.3</li> <li>● Implementation Guidance 17.5</li> <li>● Implementation Guidance 17.8</li> <li>● Implementation Guidance 17.9</li> <li>● Implementation Guidance 17.10</li> </ul> NOTE: The GGP on Applicant Support is expected to complete its work, including Public Comment and Final Report, by December 2023.	Prior to completion of Applicant Guidebook. Also refer to the <a href="#">GNSO Guidance Process on Applicant Support</a> section below under “Other issues”.
<b>Topic 23: Closed Generics</b>		
No consensus recommendations from the SubPro Final Report; community dialogue. The lack of consensus on recommendations means that there is no clear path from a policy perspective and there are outstanding questions as to how to proceed with Closed Generic strings.	A Board-facilitated dialogue between a small group of individuals selected by the GNSO, GAC, and ALAC is ongoing. Should the dialogue result in an agreed-upon framework, the next step will be for the GNSO Council to move the framework through the appropriate policy process. Should the dialogue not result	Prior to completion of Applicant Guidebook. The Board’s final action on Closed Generics depends on the outcome of the facilitated dialogue and the results of any additional GNSO policy work. The outcome(s), if any, will need to be factored into SubPro planning, design, and implementation. Note that any

	in a mutually agreed-upon framework, it may be presumed that the Board will need to decide on the most appropriate way forward (taking into account the defined roles and respective remits of the Board, GAC, and GNSO Council.)	action taken by the Board on the outputs is not dependent upon a resolution to the Closed Generics issue.
<b>ALAC Advice</b>		
<a href="#">ALAC Advice on SubPro</a>	Consider and take action on advice	Following Board resolution on the Final Report Outputs
<a href="#">ALAC Advice on DNS Abuse</a>	Consider and take action on advice based on outcome of DNS abuse work in the ICANN community	Prior to completion of Applicant Guidebook
<b>SSAC Advice</b>		
<a href="#">SAC059: Response to The ICANN Board Regarding Interdisciplinary Studies</a>	Consider and take action on advice based on outcome of NCAP Study 2	Prior to completion of Applicant Guidebook
<a href="#">SAC114: SSAC Comments on the GNSO New gTLD Subsequent Procedures Draft Final Report</a>	Further engagement with SSAC on clarifying questions / responses; consider and take action on advice	Prior to completion of Applicant Guidebook
<b>Specific Review Items</b>		
<a href="#">SSR2 Recommendation 17.1 (Framework for name collisions)</a>	Consider and take action on recommendation based on outcome of NCAP Study 2 <sup>70</sup>	Prior to completion of Applicant Guidebook

<sup>70</sup> For more information, see <https://www.icann.org/en/announcements/details/icann-publishes-name-collision-analysis-project-ncap-study-2-documents-27-1-2022-en>

<a href="#">CCT Recommendation 14 (Incentives for anti-abuse measures)</a>	Consider and take action on recommendation based on outcome of DNS abuse work in the ICANN community	Prior to completion of Applicant Guidebook
<a href="#">CCT Recommendation 15 (Preventing systemic abuse)</a>	Consider and take action on recommendation based on outcome of DNS abuse work in the ICANN community	Prior to completion of Applicant Guidebook
<b>Other Issues</b>		
<a href="#">Expedited Policy Development Process (EPDP) on Internationalized Domain Names (IDNs)</a> <i>[Current actionholder: IDN EPDP Working Group]</i>	Finalize EPDP, final phase currently scheduled to conclude April 2025, followed by Council consideration and, if approved, Board consideration and approval before it can be implemented by ICANN org.	Prior to completion of Applicant Guidebook
<a href="#">DNS Abuse</a> <i>[Current actionholder: ICANN Board/ ICANN Community]</i>	Determine what actions, if any, need to be taken regarding DNS abuse and act on them.	Prior to opening of application submission period
<a href="#">Name Collision Analysis Project (NCAP) Study 2</a> <i>[Current actionholder: NCAP Discussion Group]</i>	Consider any advice received related to NCAP Study 2 recommendations and implications for SubPro, specifically Recommendation 29.1.	Prior to completion of Applicant Guidebook