

# Final Issue Report on New gTLD Subsequent Procedures

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## STATUS OF THIS DOCUMENT

This is the Final Issue Report in response to the GNSO Council resolution requesting that at a minimum, the subjects identified by the New gTLD Subsequent Procedures Discussion Group be analyzed to help determine if they may lead to changes or adjustments to the existing policy recommendations as determined in the Final Report on the Introduction of New Generic Top-Level Domains.

This Final Issue report reflects feedback received through the public comment forum on the Preliminary Issue Report, published on 31 August 2015. In accordance with the PDP rules, the Preliminary Issue Report was published for public comment for at least thirty (30) days, followed by consideration of public comments and publication of this Final Issue Report.

## SUMMARY

This Final Issue Report on New gTLD Subsequent Procedures is hereby submitted to the GNSO Council in response to the Council's request, and pursuant to the Resolution during the GNSO Council meeting on 24 June 2015.

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# 1. Executive Summary

## 1.1 Background

In 2005, the Generic Names Supporting Organization (GNSO) began a Policy Development Process (PDP) to consider the introduction of new gTLDs. The two-year PDP process resulted in a set of 19 GNSO policy recommendations for implementing new gTLDs. In order to implement the policy recommendations of the GNSO, and to take into consideration subsequent additional GNSO policy recommendations and implementation recommendations from the community (including the GNSO, GAC, ccNSO, ALAC, SSAC and the ICANN Board through the New gTLD Program Committee (NGPC<sup>1</sup>)), a number of draft Applicant Guidebooks (AGBs) were developed by ICANN staff in consultation with the community.

In June 2011, ICANN's Board of Directors approved the final AGB and authorized the launch of the New gTLD Program, although subsequent revised versions of the Final Applicant Guidebook were released by ICANN staff, including the ultimate final New gTLD Applicant Guidebook dated June 4, 2012, a few months after the application window closed, to include information in support of the anticipated objection filing period.

The New gTLD Program application window opened on 12 January 2012 and a total of 1930 complete applications were received. The first set of Initial Evaluation results were released on 22 March 2013, followed by the first set of new gTLD delegations on 21 October 2013.

All applications have now completed the evaluation process and as of the writing of this Final Issue Report, there are nearly 800 gTLDs delegated and approximately 550 applications still proceeding through the remaining steps of the program. Though the 2012 round is ongoing, efforts to examine the round have already begun, which included the creation of the GNSO New gTLD Subsequent Procedures Discussion Group (DG). This Discussion Group was created by the GNSO Council to discuss the experiences gained by the first round of new gTLD applications and identify subjects for future issue reports, if any, that might lead to changes or adjustments for subsequent application procedures.

The DG prepared a set of final deliverables, which included a set of subjects that it anticipated should be analyzed in detail in the context of an Issue Report. On 24 June, 2015 the GNSO Council passed a resolution requesting the drafting of a Preliminary Issue Report on New gTLD Subsequent Procedures.

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<sup>1</sup> The ICANN Board resolved to establish the New gTLD Program Committee (NGPC) in 10 April 2012: <https://www.icann.org/en/groups/board/documents/resolutions-10apr12-en.htm>

In accordance with the PDP Rules, the Preliminary Issue Report was published for public comment on 31 August 2015. Following review of the public comments received, the Staff Manager has updated the Issue Report as accordingly and included a summary of the comments received (see Annex B), which is now submitted as the Final Issue Report to the GNSO Council for its consideration.

## 1.2 Discussion of the Issue

A potential New gTLD Subsequent Procedures PDP Working Group may be tasked with determining what, if any changes may be needed in regards to the existing GNSO's *Final Report on Introduction of New Generic Top-Level Domains*. As the original policy recommendations as adopted by the GNSO Council and the ICANN Board have "been designed to produce a systemized and ongoing mechanisms for applicants to propose new top-level domains," those policy recommendations remain in place for subsequent rounds of the New gTLD Program unless the GNSO Council would decide to modify those policy recommendations via a policy development process.

The work of the PDP is expected to follow the efforts of the New gTLD Subsequent Procedures Discussion Group (DG), which identified a set of subjects for a future PDP to be considered in their deliberations, which the DG saw as possibly being addressed in the following ways:

- Clarifying, amending or overriding existing policy principles, recommendations, and implementation guidelines;
- Developing new policy recommendations, and/or;
- Supplementing or developing new implementation guidance

There are a number of review efforts underway or planned within the community, that may have an impact on the work of the PDP and may help inform the PDP WG's deliberations. Therefore, a PDP would not be expected to be limited to the subjects identified in this Issue Report, and should take into account the findings from parallel efforts external to the PDP-WG.

As part of its deliberations, the DG suggested that a PDP-WG should consider at a minimum, the subjects identified below. These subjects have been organized in suggested groupings that may facilitate establishing a work plan as well as possible sub-teams to undertake the work. The list of subjects is a starting point, and a suggested method of organization, but it is not intended to be exhaustive or impose constraints on how the PDP operates or the issues it discusses, provided that the issues are directly related to new gTLD subsequent procedures. The WG may need to supplement or subtract from this list, or reorganize it, to meet the needs of the PDP-WG as it moves deeper into the substantive policy discussions, keeping the GNSO Council up to date on a regular basis with regards to any changes that are made.

The provisional groupings suggested by the DG and this Issue Report are enumerated directly below, which each contain a set of discrete subjects that have been researched and analyzed for the purposes of this Issue Report, and are likely to warrant additional discussion and possibly the development of recommendations by the PDP:

1. Overall Process / Support / Outreach Issues
2. Legal / Regulatory Issues
3. String Contention / Objections & Disputes
4. Internationalized Domain Names
5. Technical and Operations

The table below provides the list of subjects and the section in which greater detail can be found within this report, a short description that mirrors the language from the draft charter located in Annex A, and preliminary designations of which subjects would appear to require policy developed, based on the work of the DG and analysis by staff for this Issue Report. These designations are intended to differentiate the nature of the work, as the subjects are currently understood, but this analysis is purely preliminary in nature and is absolutely dependent upon the deliberations and outcomes from the PDP-WG.

Section	Subject	Description	Policy Development
<b>Group 1</b>			
4.2.1	Cancelling Subsequent Procedures	Should there in fact be new gTLD subsequent procedures and if not, what are the justifications for and ramification of discontinuing the program?	X
4.2.2	Predictability	How can changes to the program introduced after launch (e.g., digital archery/prioritization issues, name collision, registry agreement changes, public interest commitments (PICs), etc.) be avoided?	
4.2.3	Competition, Consumer Trust and Consumer Choice	Did the implementation meet or discourage these goals?	X
4.2.4	Community Engagement	How can participation from the community be better encouraged and integrated during the policy development process, implementation, and execution?	

4.2.5	Applicant Guidebook	Is the AGB the right implementation of the GNSO recommendations? If so, how can it be improved to ensure that it meets the needs of multiple audiences (e.g., applicants, those monitoring the policy implementation, registry service providers, escrow providers, etc.)	
4.2.6	Clarity of Application Process	How can the application process avoid developing processes on an as-needed basis (e.g., may have included the clarifying question process, change request process, customer support, etc.)	
4.2.7	Applications Assessed in Rounds	Has the scale of demand been made clear? Does the concept of rounds affect market behavior and should factors beyond demand affect the type of application acceptance mechanism?	X
4.2.8	Accreditation Programs	As there appears to be a limited set of technical service and Escrow providers, would the program benefit from an accreditation program for third party service providers? If so, would this simplify the application process with a set of pre-qualified providers to choose from? Are there other impacts that an accreditation program may have on the application process?	X
4.2.9	Systems	How can the systems used to support the New gTLD Program, such as TAS, Centralized Zone Data Service, Portal, etc. be made more robust, user friendly, and better integrated?	
4.2.10	Application Fees	Evaluate accuracy of cost estimates and/or review the methodology to develop the cost model, while adhering to the principle of cost recovery. Examine how payment processing can be improved.	
4.2.11	Communications	Examine access to and content within knowledge base as well as communication methods between the ICANN and the community.	
4.2.12	Application Queuing	Review whether first come first served guidance remains relevant and if not, whether another mechanism is more appropriate.	X
4.2.13	Application Submission Period	Is three months the proper amount of time? Is the concept of a fixed period of time for accepting applications the right approach?	

4.2.14	Support for Applicants From Developing Countries	Evaluate effectiveness of Applicant Support program to assess if the criteria were properly designed, outreach sufficient, monetary support sufficient, etc. In particular, was there enough outreach in developing economies to 1) contribute to the design and nature of the process and 2) to ensure awareness of the opportunity afforded?	X
4.2.15	Different TLD Types	Does the one-size-fits-all application and review process hamper innovation? Should things such as the application process, requirements, annual fees, contractual requirements, etc. be variable based on the TLD type? For instance, should an existing Registry Operator, that is fulfilling the requirements of its Registry Agreement, be subject to a different, more streamlined, application process?	X
4.2.16	Application Submission Limits	Should there be limits to the number of applications from a single applicant/group? Consider if the round could be restricted to a certain applicant type(s) (e.g., from least developed countries) or other limiting factor.	X
4.2.17	Variable Fees	Should the New gTLD application fee be variable based on such factors as application type (e.g., open or closed registries), multiple identical applications, or other factors?	
<b>Group 2</b>			
4.3.1	Reserved Names List	Review the composition of the reserved names list to determine if additions, modifications, or subtractions are needed (e.g., single letter, two letters, special characters, etc.). Evaluate if the implementation matched expectations (e.g., recommendations of the Reserved Names Working Group). Review whether geographic names requirements are appropriate.	X
4.3.2	Base Registry Agreement	Perform comprehensive review of the base agreement, including investigating how and why it was amended after program launch, whether a single base agreement is appropriate, whether Public Interest Commitments (PICs) are the right mechanism to protect the public interest, etc. Should the Article 7.7 review process be amended to allow for customized reviews by	X

		different registry types?	
4.3.3	Registrant Protections	The original PDP assumed there would always be registrants and they would need protecting from the consequences of Registry failure, although it may not make sense to impose registrant protection obligations such as EBERO and the LOC when there are no registrants to protect, such as in a closed registry. Should more relevant rules be established for certain specific cases?	X
4.3.4	Contractual Compliance	While no specific issues were identified, contractual compliance as it relates to New gTLDs may be considered in scope for discussion, though the role of contractual compliance (i.e., enforcing agreements) would not be considered within scope.	
4.3.5	Registrar Non-Discrimination	Are registrar requirements for registries still appropriate?	X
4.3.6	TLD Rollout	Was adequate time allowed for rollout of TLD? When should recurring fees due to ICANN begin?	X
4.3.7	Second-level Rights Protection Mechanisms	Review effectiveness and implementation of RPMs such as TMCH, URS, etc.	
4.3.8	Registry/Registrar Standardization	Consider whether the registry/registrar relationship should have additional standardization and regulation.	X
4.3.9	Global Public Interest	Existing policy advice does not define the application of "Public Interest" analysis as a guideline for evaluation determinations. Consider issues identified in GAC Advice on safeguards, public interest commitments (PICs), and associated questions of contractual commitment and enforcement. It may be useful to consider the global public interest in the context of ICANN's limited technical coordination role, mission and core values and how it applies specifically to the New gTLD Program.	X

4.3.10	IGO/INGO Protections	The PDP for Protection of IGO and INGO Identifiers in All gTLDs and PDP for IGO-INGO Access to Curative Rights Protection Mechanisms are expected to address a number of issues. While no additional work is envisioned, if there are any remaining or new issues for discussion, they could be deliberated in the context of this PDP.	
4.3.11	Closed Generics	Should there be restrictions around exclusive use of generics TLDs?	X
<b>Group 3</b>			
4.4.1	New gTLD Applicant Freedom of Expression	Examine whether GAC Advice, community processes, and reserved names impacted this goal.	X
4.4.2	String Similarity	Were string contention evaluation results consistent and effective in preventing user confusion? Were the string contention resolution mechanisms fair and efficient?	X
4.4.3	Objections	Review rules around standing, fees, objection consolidation, consistency of proceedings and outcomes. Review functions and role of the independent objector. Consider oversight of process and appeal mechanisms.	X
4.4.4	Accountability Mechanisms	Examine whether dispute resolution and challenge processes provide adequate redress options or if additional redress options specific to the program are needed.	
4.4.5	Community Applications	Was the overall approach to communities consistent with recommendations and implementation guidance? Did the Community Priority Evaluation process achieve its purpose and result in anticipated outcomes? Were the recommendations adequate for community protection?	X
<b>Group 4</b>			
4.5.1	Internationalized Domain Names and Universal Acceptance	Consider how to encourage adoption of gTLDs. Evaluate whether rules around IDNs properly accounted for recommendations from IDN WG. Determine and address policy guidance needed for the implementation of IDN variant TLDs.	X
<b>Group 5</b>			

4.6.1	Security and Stability	Were the proper questions asked to minimize the risk to the DNS and ensure that applicants will be able to meet their obligations in the registry agreement? Should there be non-scored questions and if so, how should they be presented? Were the proper criteria established to avoid causing technical instability? Is the impact to the DNS from new gTLDs fully understood?	X
4.6.2	Applicant Reviews: Technical/Operational and Financial	Were Financial and Technical criteria designed properly to allow applicants to demonstrate their capabilities while allowing evaluators to validate their capabilities? How can the criteria be streamlined and made clearer?	X
4.6.3	Name Collisions	How should name collisions be incorporated into future new gTLD rounds? What measures may be needed to manage risks for 2012-round gTLDs beyond their 2 year anniversary of delegation, or gTLDs delegated prior to the 2012 round?	X

### 1.3 Staff Recommendation

ICANN staff has confirmed that the proposed issue is within the scope of the GNSO's Policy Development Process and the GNSO (see section 5). The final deliverables of the New gTLD Subsequent Procedures Discussion Group (DG) provided a recommended minimum set of subjects, which served as the basis for analysis within the scope of this Issue Report and is expected to be the focus of the PDP as well.

A successful outcome of the PDP is critical to addressing the number of issues identified by the DG, by the ICANN Board<sup>2</sup>, and any other issues identified during deliberations. With experiences gained from the 2012 application round of the New gTLD Program, the PDP may be positioned to improve and expand upon the policies that currently govern the New gTLD Program. ICANN staff therefore recommends that the PDP proceed by considering carefully the recommended subjects of the DG, taking into account related efforts to review the New gTLD Program, and working constructively towards new or modified policy recommendations for New gTLD subsequent procedures.

<sup>2</sup> Suggested areas for possible policy work in Annex A to the ICANN Board resolution on Planning for Future gTLD Application Rounds: <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>

The Preliminary Issue Report was published for public comment to allow for community input on information that may be missing from the Preliminary Issue Report, or necessary corrections or updates to information in the Preliminary Issue Report. Following review of the public comments received, the Staff Manager has updated the Issue Report accordingly and included a summary of the comments received (see Annex B), which is now submitted as the Final Issue Report to the GNSO Council for its consideration.

## 2. Objective

### 2.1 Submission

This report is submitted in accordance with Section 4 of the Policy Development Process described in Annex A of the ICANN Bylaws (<http://www.icann.org/general/bylaws.htm#AnnexA>).

### 2.2 Issue

#### a. The proposed issue raised for consideration:

In June of 2014, the GNSO Council created “a new Discussion Group to discuss the experiences gained by the first round of new gTLD applications and identify subjects for future issue reports, if any, that might lead to changes or adjustments for subsequent application procedures.”<sup>3</sup> As the original policy recommendations as adopted by the GNSO Council and ICANN Board have “been designed to produce a systemized and ongoing mechanisms for applicants to propose new top-level domains”, those policy recommendations remain in place for subsequent rounds of the New gTLD Program unless the GNSO Council would decide to modify those policy recommendations via the policy development process. In performing its task, the Discussion Group (DG) identified a number of issues to be considered that may affect existing consensus policy, principles, policy recommendation or implementation guidance and/or generate new policy recommendations.

#### b. The identify of the party submitting the issue:

GNSO Council

#### c. How the party is affected by the issue:

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<sup>3</sup> Resolution creating the New gTLD Subsequent Procedures Discussion Group:  
<http://gns0.icann.org/en/council/resolutions#201406>

The breadth of issues identified include evaluation criteria, support for applicants from developing countries, contractual requirements, the global public interest, and many other areas. As such, the impact is not isolated to any one Stakeholder Group (SG)/Constituency (C)/Advisory Committee (AC). In addition to impacting new applicants, yet, registrars, registrants, existing registries, end-users, intellectual property owners, and Internet and service providers may also be affected.

d. Support for the issue to initiate the PDP:

- On 17 November 2014, the ICANN Board passed a resolution regarding Planning for Future gTLD Application Rounds, including providing suggested areas for policy development: <https://features.icann.org/planning-future-gtld-application-rounds>

The resolution carried, with fourteen members of the Board voting in favor of the relevant resolutions<sup>4</sup>.

- On 24 June 2015, the GNSO Council requested a Preliminary Issue Report to analyze subjects that may lead to changes or adjustments for subsequent New gTLD procedures: <http://gns0.icann.org/en/council/resolutions#201506>

The motion passed, with 100% of the contract part house voting yes and 76.9% of the non-contracted party house voting yes<sup>5</sup>.

e. Staff Recommendations

- i. Whether the issue is within the scope of ICANN's mission statement, and more specifically the role of the GNSO

ICANN's mission statement includes the coordination of the allocation of certain types of unique identifiers, including domain names, and the coordination of policy development reasonably and appropriately related to these technical functions, which includes new gTLDs.

- ii. Whether the issue is broadly applicable to multiple situations or organizations

As new gTLD policy affects applicants, registries, registrars, and registrants, the issue is broadly applicable to multiple situations or organizations. Any changes to

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<sup>4</sup> See ICANN Board meeting minutes: <https://www.icann.org/resources/board-material/minutes-2014-11-17-en#2.b>

<sup>5</sup> See the GNSO Council meeting transcript: <http://buenosaires53.icann.org/en/schedule/wed-gns0-council/transcript-gns0-council-24jun15-en.pdf>

the policy, its rules or program mechanisms that may result from a PDP would also be broadly applicable to multiple situations or organizations.

- iii. Whether the issue is likely to have lasting value or applicability, albeit with the need for occasional updates

Updates or refinements to the existing New gTLD Policy would guide the development and management of future New gTLD subsequent procedures, which would presumably remain “designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains.”

- iv. Whether the issue will establish a guide or framework for future decision-making

The New gTLD policy is expected to govern future New gTLD subsequent procedures, which again, would presumably remain “designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains.”

- v. Whether the issue implicates or affects ICANN policy

The goal of the PDP would be to develop new policy or modify existing New gTLD policy, which would replace the policy as established in *The Final Report on the Introduction of New Generic Top-Level Domains*.

## 2.3 Scope

Based on the recommendations above, the launch of a dedicated policy development process limited to consideration of this issue has been confirmed by the General Counsel to be properly within the scope of the ICANN policy process and within the scope of the GNSO.

## 2.4 Report

In accordance with the GNSO Policy Development Process, the Staff Manager has published the Preliminary Issue Report for public comment in order to allow for community input on additional information that may be missing from the Preliminary Issue Report, or the correction or updating of any information in the Preliminary Issue Report. Following review of the public comments received on this report, the Staff Manager has updated the Issue Report accordingly and included a summary of the comments received (see Annex B), which is now submitted as the Final Issue Report to the GNSO Council for its consideration.

## 3. Background

### 3.1 Process Background

ICANN successfully carried out two proof of concept rounds to introduce a limited number of new gTLDs in 2000<sup>6</sup> and 2003-2005<sup>7</sup>.

Pursuant to the successful proof of concept rounds, in 2005, the Council of the Generic Names Supporting Organization (GNSO) began a policy development process to consider the introduction of new gTLDs. The discussions focused around four key questions, or terms of reference as they were called<sup>8</sup>:

1. Should new generic top level domain names be introduced?
2. Selection criteria for new top level domains
3. Allocation methods for new top level domains
4. Policy to guide contractual conditions for new top level domains

The Working Group and the community collaborated over four versions of the Initial Report:

- Issue Report (5 Dec 2005) - <http://gnso.icann.org/en/issues/new-gtlds/gnso-issues-rpt-gtlds-05dec05.pdf>
- First Draft Initial Report (19 Feb 2006) - <http://archive.icann.org/en/topics/gnso-initial-rpt-new-gtlds-19feb06.pdf>
- Second Draft Initial Report (15 Mar 2006) - <http://gnso.icann.org/en/issues/new-gtlds/issues-report-15mar06.htm>
- Third Draft Initial Report (15 Jun 2006) - <http://gnso.icann.org/en/issues/new-gtlds/issues-report-15jun06.pdf>
- Fourth and Final Initial Report (28 Jul 2006) - <http://gnso.icann.org/en/drafts/newgtlds-issues-report-01-28jul06.htm>

The community developed four versions of the Final Report as well:

- First Draft Final Report (13 Feb 2007) - <http://gnso.icann.org/en/drafts/GNSO-PDP-Dec05-FR13-FEB07.htm>
- Second Draft Final Report (16 Mar 2007) - <http://gnso.icann.org/en/drafts/pdp-dec05-draft-fr.htm>

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<sup>6</sup> Information regarding the year 2000 round: <http://archive.icann.org/en/tlds/app-index.htm>

<sup>7</sup> Information regarding the year 2003-2005 round: <http://archive.icann.org/en/tlds/stld-apps-19mar04/>

<sup>8</sup> Information regarding the Terms of Reference for New gTLDs, including a public comment forum: <https://www.icann.org/news/announcement-2005-12-06-en>

- Third Draft Final Report Part A (18 Jun 2007) – <http://gnso.icann.org/drafts/pdp-dec05-fr-a-18jun07.pdf>
- Third Draft Final Report Part B (18 Jun 2007) - <http://gnso.icann.org/drafts/pdp-dec05-fr-b-18jun07.pdf>
- Fourth and Final Report (6 Sep 2007) - <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

Over the course of deliberations, the WG arrived at a set of principles, policy recommendations, and implementation guidelines to guide the launch of a new gTLD application process. An important component of the Final Report to consider is that it states "This policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains," thereby implying that if there is to be new policy development or adjustments, the GNSO must do so via the Policy Development Process (PDP); otherwise, the existing policy recommendations would remain in place to guide the program.

In September 2007, the GNSO Council adopted the policy recommendations from the GNSO policy development process and forwarded them to the ICANN Board of Directors for adoption.

At a New gTLDs Workshop held in October of 2007, a document was prepared to summarize the recommendations, note other work under way at the time to facilitate the introduction of new gTLDs and where applicable, briefly provide information and rationale behind the principles, recommendations, and implementation guidelines<sup>9</sup>.

In June 2008, the ICANN Board adopted the GNSO's policy recommendations for the introduction of new gTLDs and directed staff to develop an implementation plan for a new gTLD introduction process. The Applicant Guidebook (AGB), or Request for Proposal (RFP) as it was known throughout the policy development process, served as the vehicle that staff used to implement the GNSO policy recommendations. The AGB was intended to serve as a comprehensive guide for applicants on the program's requirements and evaluation process. Staff developed a number of iterations of the Applicant Guidebook, each version incorporating review and consideration of robust community input received through public comments, ICANN meetings, and other avenues:

- Version 1 (Oct 2008) - <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v1>
- Version 2 (Mar 2009) - <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v2>
- Version 3 (Oct 2009) - <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v3>

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<sup>9</sup> See: <http://archive.icann.org/en/meetings/losangeles2007/files/losangeles/gnso-newgtlds-workshop-29oct07.pdf>

- Version 3 – Excerpts (Feb 2009) - <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v3-excerpts>
- Version 4 (May 2010) - <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v4>
- Version 5 (Nov 2010) - <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v5>
- Version 6 (Apr 2011) - <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v6>
- Version 7 (May 2011) - <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v7>

In June 2011, the ICANN Board approved an Applicant Guidebook for new gTLDs and authorized the launch of the New gTLD Program, although additional iterative versions of the Applicant Guidebook were published before being ultimately finalized in June of 2012.

- Version 8 (Sep 2011) - <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v8>
- Version 9 (Jan 2012) - <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v9>
- Applicant Guidebook (Jun 2012) - <http://newgtlds.icann.org/en/applicants/agb>

ICANN opened the application submission period in January of 2012 and closed in June of 2012, receiving 1930 complete applications, exceeding the estimates of many in the community. In December of 2012, ICANN held a prioritization draw to determine the order in which applications would be processed through Initial Evaluation and subsequent phases of the program. In March of 2013, ICANN released the first set of Initial Evaluation results and by May of 2014, had completed the release of all Initial Evaluation results.

As of the beginning of November in 2015, nearly 800 gTLDs have been delegated and introduced into the DNS<sup>10</sup> with approximately 550 still proceeding through the New gTLD Program.

In June 2014, the GNSO Council created the New gTLD Subsequent Procedures Discussion Group (DG) to discuss experiences gained and lessons learned from the 2012 New gTLD round and identify subjects for a future issue report, that may lead to changes or adjustments for subsequent procedures. While New gTLD Program operations are still ongoing, the sense in the community seemed to be that enough applications had been processed through each of the various aspects of the New gTLD Program to allow the DG to be able to at least draw some initial conclusions regarding

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<sup>10</sup> Current 2012 New gTLD Program round statistics can be found here: <http://newgtlds.icann.org/en/program-status/statistics>

the possible scope of subjects to be analyzed in an Issue Report and subsequently, possibly a PDP.

In August 2014, the DG began deliberations, focusing primarily on the identification of issues that members experienced in the 2012 New gTLD round. The DG sought to collect issues in a very liberal manner, considering no issue identified by a DG member to be too big or too small, as long as it was within the context of the New gTLD Program. The issues were collected and organized into logical groupings, initially in a mind mapping software<sup>11</sup>.

In November 2014, the ICANN Board provided initial input on areas for possible policy work (see Annex A<sup>12</sup> related to a resolution on Planning for Future gTLD Application Rounds). In addition, ICANN's Global Domains Division (GDD) team provided staff input<sup>13</sup> to be considered by the DG during its deliberations. These two inputs were considered by the DG and integrated as appropriate.

The DG further refined the list of issues by developing a matrix which attempted to associate each of the identified issues with a corresponding principle, policy recommendation or implementation guideline from the 2007 Final Report on New Generic Top-Level Domains, or to note that the issue may in fact warrant new policy work. Furthermore, the DG developed a draft PDP WG charter that identified subjects, divided into provisional groupings, for further analysis in this Issue Report and a potential PDP.

The DG completed its deliverables<sup>14</sup> in June of 2015 and provided them to the GNSO Council for its deliberations. The GNSO Council passed a resolution to request a Preliminary Issue Report on New gTLD Subsequent Rounds in June of 2015<sup>15</sup>, at the ICANN Meeting in Buenos Aires. The DG deliverables serve as the basis for analysis in this Issue Report, as the DG recommended.

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<sup>11</sup> Mind map available here:

[https://community.icann.org/download/attachments/49356545/New%20gTLD%20Subsequent%20Procedures\\_MM\\_6Oct2014.pdf?version=1&modificationDate=1412728208000&api=v2](https://community.icann.org/download/attachments/49356545/New%20gTLD%20Subsequent%20Procedures_MM_6Oct2014.pdf?version=1&modificationDate=1412728208000&api=v2)

<sup>12</sup> Direct link to Annex A to the ICANN Board resolution on Planning for Future gTLD Application Rounds:

<https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>

<sup>13</sup> The Global Domains Division (GDD) provided input to the set of issues identified by the New gTLD Subsequent Rounds Discussion Group (DG):

<https://community.icann.org/download/attachments/49356545/Staff-input-to-DG-23jan15.pdf?version=1&modificationDate=1425335232000&api=v2>

<sup>14</sup> The final deliverables for the New gTLD Subsequent Rounds Discussion Group (DG) can be found here:

<http://gns0.icann.org/en/issues/new-gtlds/deliverables-subsequent-procedures-01jun15-en.pdf>

<sup>15</sup> Ibid

## 4. Discussion of Proposed Issues

### 4.1 Overview

A potential New gTLD Subsequent Procedures Policy Development Process (PDP) Working Group would be tasked with calling upon the community's collective experiences from the 2012 New gTLD Program round to determine what, if any changes may need to be made to the existing *Introduction of New Generic Top-Level Domains* policy recommendations from 8 August 2007<sup>16</sup>. The original policy recommendations as adopted by the GNSO Council and ICANN Board have "been designed to produce a systemized and ongoing mechanisms for applicants to propose new top-level domains," those policy recommendations remain in place for subsequent rounds of the New gTLD Program unless the GNSO Council would decide to modify those policy recommendations via a policy development process. The work of the PDP would follow the efforts of the New gTLD Subsequent Procedures Discussion Group (DG), which identified a set of subjects for one or more future PDPs to consider in their deliberations. The DG saw the issues to address in a PDP as:

- Clarifying, amending or overriding existing policy principles, recommendations, and implementation guidelines;
- Developing new policy recommendations;
- Supplementing or developing new implementation guidance

In addition to the work of the DG, a number of review efforts are underway within the community, which may have an impact on the future work of a possible PDP and may help inform the PDP WG's deliberations. Therefore, a PDP should not be limited to the issues identified by the DG and should take into account the findings from the parallel efforts external to the PDP.

As part of the PDP deliberations, the PDP-WG is expected to consider at a minimum, the subjects below. These subjects have been organized in suggested groupings that may facilitate developing a work plan and establishing potential sub-teams to undertake the work. The list below in this section of the Issue Report is a starting point, and a suggested method of organization, but it is not intended to be exhaustive or impose constraints on how the PDP-WG operates or the issues it discusses, provided that the issues are directly related to new gTLD subsequent procedures. The WG may need to supplement or subtract from this list, or reorganize it, to meet the needs of the WG as it moves deeper into the substantive policy discussions with the expectation that the GNSO Council is kept up to date with regards to any changes that are made.

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<sup>16</sup> The Final Report on the *Introduction of New Generic Top-Level Domains*, approved by the ICANN Board in 2007, can be read here: <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

The provisional groupings suggested by the DG are enumerated directly below. Within each of these groupings are discrete subjects that have been researched and analyzed for the purposes of this Issue Report, and are likely to warrant additional discussion and possibly the development of recommendations by the PDP-WG:

1. Overall Process / Support / Outreach Issues
2. Legal / Regulatory Issues
3. String Contention / Objections & Disputes
4. Internationalized Domain Names
5. Technical and Operations

In the analysis of each of the subjects, staff has attempted to identify which subjects may require policy development versus what may possibly result in implementation guidance that should be considered by ICANN staff when it undertakes the implementation of subsequent procedures. Note however that these categorizations are merely suggestions and the PDP-WG may come to different conclusions after its own careful consideration of the subjects.

These provisional designations of policy versus implementation may help the PDP-WG in its initial prioritization of its work. The subjects for analysis by the PDP-WG are expected to be numerous, so it may be impractical to work on all concurrently. As a result, staff is providing a selection of suggested work methods for consideration below in section 4.7 on Work Processes. Of particular note, a number of public comments had concerns with the groupings and sequencing of subjects. While the subjects have not been reorganized within this Issue Report, in section 4.7, staff has proposed for consideration an additional way to organize the subjects.

## 4.2 Group 1 Overall Process / Support / Outreach

**The subjects in this section are in relation to the following elements from the 2007 Final Report, as categorized by the DG:**

- **Principles A and C;**
- **Recommendations 1, 9, 10, 12 and 13;**
- **Implementation Guidance A, B, C, D, E, M, N, O and Q, and<sup>17</sup>;**
- **New Topics: “Different TLD Types”, “Application Submission Limits” and “Variable Fees”**

### 4.2.1 Cancelling Subsequent Procedures

- *4.2.1.1 Explanation of Subject*

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<sup>17</sup> Ibid

The *Final Report on Introduction of New Generic Top-Level Domains*<sup>18</sup>, (or 2007 Final Report as it will be referred to in the rest of this Issue Report) states that:

*This policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains. The Request for Proposals (RFP) for the first round will include scheduling information for the subsequent rounds to occur within one year. After the first round of new applications, the application system will be evaluated by ICANN's TLDs Project Office to assess the effectiveness of the application system. Success metrics will be developed and any necessary adjustments made to the process for subsequent rounds.*

In following the guidance in the 2007 Final Report, the Applicant Guidebook (AGB)<sup>19</sup> provided the text in section 1.1.6 in regards to subsequent application rounds:

*ICANN's goal is to launch subsequent gTLD application rounds as quickly as possible. The exact timing will be based on experiences gained and changes required after this round is completed. The goal is for the next application round to begin within one year of the close of the application submission period for the initial round.*

*ICANN has committed to reviewing the effects of the New gTLD Program on the operations of the root zone system after the first application round, and will defer the delegations in a second application round until it is determined that the delegations resulting from the first round did not jeopardize root zone system security or stability.*

*It is the policy of ICANN that there be subsequent application rounds, and that a systemized manner of applying for gTLDs be developed in the long term.*

The 2007 Final Report and the AGB both assume that there will be subsequent new gTLD procedures, implying that if the program were to be discontinued, it would be contrary to the existing GNSO policy.

Reviews of the program were anticipated, and there are several efforts underway to perform those program reviews, or develop possible recommendations, which include:

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<sup>18</sup> The Final Report on the *Introduction of New Generic Top-Level Domains*, approved by the ICANN Board in 2007, can be read here: <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>19</sup> Current version of the AGB: <http://newgtlds.icann.org/en/applicants/agb>

- ICANN New gTLD Program Reviews<sup>20</sup>, which will be looking at several facets of the program, including:
  - Rights Protection Reviews
  - Program Implementation Reviews
  - Security & Stability Reviews
  - Competition, Consumer Trust, and Consumer Choice Data Review
- Affirmation of Commitment (AoC) reviews related to Competition, Consumer Trust, and Consumer Choice<sup>21</sup>
- The Security and Stability Advisory Committee (SSAC) will be reviewing previous guidance provided regarding the New gTLD Program and determining if new recommendations are needed.
- The Governmental Advisory Committee (GAC) has formed working groups on the topics of: a) community applications, b) underserved regions, and c) geographic names.
- The Cross-Community Working Group on Use of Country/Territory Names as TLDs<sup>22</sup> is analyzing the current status of country and territory names in the ICANN ecosystem and determining the feasibility of creating a framework that could be applied across SOs and ACs.

\* Community identification, as part of the public comment period, of additional efforts to review the New gTLD Program are welcome to ensure that their findings can be taken into account by a possible PDP-WG on New gTLD Subsequent Procedures.

- *4.2.1.2 Questions and Concerns Related to Subject*

Expanding the DNS is considered consistent with ICANN's Mission and Core Values<sup>23</sup>, in particular Article 1, Section 2,6 of the ICANN Bylaws:

*Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.*

However multiple views regarding whether new gTLDs are needed and the extent to which they may cause harm to the DNS, consumers, or the global public interest have been articulated throughout the development process to expand the DNS. In the Report from Working Group C on New gTLDs from March of 2000, several concerns were raised, chiefly the potential for user confusion and trademark concerns, where rights holders may feel compelled to protect their marks in an ever

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<sup>20</sup> The ICANN New gTLD Program Reviews page can be found here: <https://newgtlds.icann.org/en/reviews>

<sup>21</sup> The AoC review on Competition, Consumer Trust, and Consumer Choice can be viewed here:

<https://www.icann.org/resources/pages/cctcc-2014-09-04-en>

<sup>22</sup> See: <http://ccnso.icann.org/workinggroups/ccwg-unct.htm>

<sup>23</sup> ICANN's Bylaws can be reviewed here: <https://www.icann.org/resources/pages/governance/bylaws-en/#/>

increasing number of registries<sup>24</sup>. The report also noted that there were concerns that perceived demand for new gTLDs was illusory.

With two proof of concept rounds complete, one in 2000<sup>25</sup> and another in 2003-2005<sup>26</sup>, as well as nearly 800 gTLDs delegated from the 2012 round of the New gTLD Program, the community may be in a better position to gather data in order to assess current conditions to determine the need for the continuation of the program, as well as to examine the effects of the program. As mentioned, the assumption from the 2007 Final Report is that there will be subsequent rounds and cancellation of the New gTLD Program needs to be established via policy development. Factors that may support the cancellation of the program should be weighed against the harm that may be caused by the cancellation of the program, such as potential applicants having assumed that there would be an ongoing program as dictated by existing policy.

Some in the community have stated that consumer adoption of new gTLDs have not met certain expectations, though success or failure was not pre-defined or quantified. It may be useful to explore a more precise definition of success metrics, although this subject will be discussed in greater detail in section 4.2.3 on Competition, Consumer Trust, and Consumer Choice.

The question of whether or not there should be additional New gTLD rounds is a foundational question and should be answered as early as practically possible, to avoid policy work that may end up being unneeded. However, the justification to halt the program may only be determined through deliberations on the number of other subjects identified in this Issue Report, as well as parallel work within the community, such as the AoC reviews on Competition, Consumer Trust, and Consumer Choice.

Finally, as of the writing of this document, it should be noted that the Cross Community Working Group on Enhancing ICANN Accountability (CCWG) has recommended in its 2<sup>nd</sup> Draft Report (Work Stream 1)<sup>27</sup>, that in the proposed ICANN Bylaw amendments that incorporate the Affirmation of Commitments, the following text be added to the Bylaws:

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<sup>24</sup> The Report (Part One) of the Working Group C (New gTLDs) can be read in its entirety here:

<http://archive.icann.org/en/dnso/wgc-report-21mar00.htm>

<sup>25</sup> The year 2000 proof of concept round can be read about here: <http://archive.icann.org/tlds/app-index.htm>

<sup>26</sup> The years 2003-2005 proof of concept round can read about here: <http://archive.icann.org/tlds/std-apps-19mar04/>

<sup>27</sup> Cross Community Working Group on Enhancing ICANN Accountability (CCWG) 2<sup>nd</sup> Draft Report (Work Stream 1): <https://www.icann.org/en/system/files/files/ccwg-draft-2-proposal-work-stream-1-recs-03aug15-en.pdf>

*Subsequent rounds of new gTLDs should not be opened until the recommendations of the previous Review required by this section have been implemented.*

A PDP-WG should remain informed of any changes that the CCWG recommends that may have an impact on its work.

- *4.2.1.3 Relevant Guidance*

- N/A

- *4.2.1.4 Rationale for Policy Development*

The 2007 GNSO Final Report and the AGB are consistent in the position that the previous policy development process was intended to establish an ongoing mechanism for potential applicants to apply for gTLDs. As such, a deviation from this position, such as cancelling the program, would warrant policy work. If the decision is made to deviate from existing policy, it should be based on fact-based decision-making.

## **4.2.2 Predictability**

- *4.2.2.1 Explanation of Subject*

For potential applicants, the wider ICANN community, observers of the New gTLD Program, and ICANN staff, predictability is critical for planning and decision-making. The AGB was established as the vehicle to implement the policy recommendations of the GNSO, and to serve as the application submission and evaluation roadmap for the community. The AGB was developed in an iterative manner, with each version published for public comment to encourage participation of community stakeholders in the finalization of the AGB. This iterative and inclusive nature of efforts to develop the AGB was in part to adhere to Recommendation 1:

*ICANN must implement a process that allows the introduction of new top-level domains.*

*The evaluation and selection procedure 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.*

Recommendation 9:

*There must be a clear and pre-published application process using objective and measurable criteria.*

Principle A:

*New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way*

Although in June 2011, ICANN's Board of Directors approved the final AGB and authorized the launch of the New gTLD Program, subsequent revised versions of the Final Applicant Guidebook were released by ICANN staff, including the final New gTLD Applicant Guidebook dated June 4, 2012, a few months after the application window closed, though changes were focused on providing guidance on objections in advance of the opening of the objection filing period<sup>28</sup>.

- *4.2.2.2 Questions and Concerns Related to Subject*

While it was in the best interest of presumably all parties to have every detail of the New gTLD Program established at a minimum, prior to program launch, it proved a difficult task to finalize all facets of the AGB and the New gTLD Program. As noted above, the AGB was updated after the application window closed and the base registry agreement went through numerous changes to include changes such as Public Interest Commitments (PICs), Specification 13, etc. The difficulty in developing an absolute and predictable roadmap can be traced to a number of issues, although it should be acknowledged that identifying and mitigating every circumstance is a nearly impossible task. This difficulty in fact served as one driving factor in the establishment of the Non-PDP Policy and Implementation Working Group<sup>29</sup>, which developed three new GNSO processes to better account for diverging opinions that may arise during the implementation of GNSO policy recommendations as well as a set of policy and implementation principles, which are expected to be adhered to. These mechanisms and principles did not exist during the implementation of the recommendations from 2007 Final Report, making it far more difficult to course correct when the community determined that guidance was lacking, missing, or otherwise inadequate.

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<sup>28</sup> See announcement: <https://www.icann.org/news/announcement-4-2012-06-04-en>

<sup>29</sup> The Non-PDP Policy and Implementation Working Group project page is available here: <http://gns0.icann.org/en/group-activities/active/policy-implementation>

Some specific elements or areas contributing to the lack of predictability include:

#### Lack of specificity in the 2007 Final Report

During the deliberations of the New gTLD Subsequent Procedures Discussion Group (DG), it became apparent that there was general support for the principles, recommendations, and implementation guidelines, but there were circumstances where the DG felt they could be refined or made more specific, requiring less interpretation when eventually implemented by ICANN staff.

More specific and actionable recommendations could reduce the potential for anything being lost in translation from the policy handoff to implementation. Some examples of elements contained within the AGB that were not discussed specifically in the 2007 Final Report include Uniform Rapid Suspension (URS), Trademark Clearinghouse (TMCH), and objections procedures, though the GNSO was consulted to ensure proposals were consistent with existing policy recommendations.

In circumstances where the policy language may have lacked specificity, it may warrant the drafting of additional, supplemental policy language to existing recommendations. In other circumstances, where it appears that ICANN implementation may not have stemmed directly from policy or implementation guidance, it may be beneficial to confirm the implementation in policy language where the implementation is deemed satisfactory, or provide specificity to course correct where the implementation may be deemed inadequate<sup>30</sup>.

#### Transition from implementation to execution

It is important to distinguish between policy implementation, which took the form of the iteratively and community developed AGB, and execution, which is effectively ICANN operationalization and operating of the New gTLD Program. The DG identified a number of execution phase elements of the program that it felt were drastic deviations from or not detailed within the AGB, including digital archery/application draw, name collisions, changes to the base agreement, auction rules, community priority evaluation (CPE) rules, and public interest commitments (PICs). It should be noted that although some of these execution related changes were not enshrined in policy or the AGB, they were generally debated in the public eye of the community.

The New gTLD Program was developed in a sequential fashion, first the implementation of the policy recommendations in the form of the AGB, then subsequently the execution, which involved the operationalization and operating of

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<sup>30</sup> In this context it might be worth noting the recommendations of the Policy & Implementation Working Group, which were recently adopted by the ICANN Board (see <https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#2.f>).

the program. Minimizing this sequential nature of implementation and execution may help avoid surprises to the community during the operation of the program, though it may be prove impractical to develop the program in this fashion. However, having operationalization complete prior to the launch of program as opposed to developing in a sort of chronological fashion as the need arose (e.g., change requests, CPE, auction, contracting, etc.) may improve predictability.

#### Late arriving program feedback

Some changes to the program were the result of feedback delivered or only considered after the New gTLD Program had launched, such as GAC Advice on Safeguards (and the resultant Public Interest Commitments) and name collisions identified by the Security and Stability Advisory Committee (SSAC). These issues could be attributable to some degree, to a lack of early engagement, as discussed in section 4.2.4 on Community Engagement, or are simply issues not identified during the policy development, or perhaps even during the implementation stage. However, there were some issues identified prior to program launch, such as the aforementioned name collisions, which were in fact identified by the SSAC, though all issues may not have been adequately resolved, for reasons a PDP-WG may want to investigate and seek to rectify.

- *4.2.2.3 Relevant Guidance*
  - Recommendation 1
  - Recommendation 9
  - Principle A
- *4.2.2.4 Rationale for Policy Development*

In regards to the issues identified by the DG regarding predictability, the DG did not anticipate any changes to or the development of new policy, though this may change during the course of deliberations by a potential PDP-WG on New gTLD Subsequent Procedures.

It should be noted and taken into account that there have been measures taken in the wider ICANN community that may help address some of the issues related to the subject of predictability, including the advent of new liaisons between Supporting Organizations (SOs) and Advisory Committees (ACs) and the GNSO actively seeking early engagement with other SOs and ACs, particularly with the GAC. In addition, the new GNSO processes developed by the Non-PDP Policy and Implementation Working Group should help to resolve problems that are only identified at a later stage, in a more consistent, predictable, and transparent manner, for not only this PDP-WG, but future GNSO efforts.

### 4.2.3 Competition, Consumer Trust and Consumer Choice

- 4.2.3.1 Explanation of Subject

The intent to increase competition, consumer trust, and consumer choice within the DNS was a driving rationale in developing and launching the New gTLD Program. The community, prior to the launch of the New gTLD Program, was constrained to 22 gTLDs in an ever expanding Internet user base. As noted above, expanding the DNS is consistent with ICANN's Mission and Core Values, in particular Article 1, Section 2,6 of the ICANN Bylaws:

*Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.*

Increasing competition and participation in the DNS environment was in fact a principal reason for the original privatization of ICANN. In a Statement of Policy issued in 1998 by the United States Department of Commerce<sup>31</sup>, it noted that the "...widespread dissatisfaction about the absence of competition in domain name registration" was a key reason for seeking the change in the DNS management structure.

As noted in above sections, the ICANN community began the process of expanding the DNS by conducting two "proof of concept" rounds, which allowed a limited number of new gTLDs in 2000 and 2003-2005. At this stage, while there was already significant competition at the registrar level, competition could still be perceived as lacking in the registry field. The 2007 Final Report delivered by the GNSO sought to address this issue by recommending that ICANN allow for the expansion in the number of gTLDs, with far less restrictions as imposed on the "proof of concept" rounds. Specifically, Principle C states:

*The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity.*

The decision to expand the DNS was supported in part by a series of economic studies that attempted to examine the impacts, benefits, and costs of adding new gTLDs, to parties directly involved in the program, as well as third parties who may

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<sup>31</sup> The Statement of Policy from the United States NTIA can be read here:

<http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses>

be indirectly affected. The economic studies that ultimately led the ICANN Board to determine that no further studies would be commissioned were delivered in two parts:

- 1) Part one of the study was delivered on 16 June 2010<sup>32</sup>
- 2) Part two was delivered on 3 December 2010<sup>33</sup>.

The Board determined that, “all economic studies have confirmed the overall benefits of continuing to open the domain name space, in terms of enabling innovation, increasing choice and fostering a healthier competitive environment” in resolving that no further economic studies were needed to better inform the Board’s decision<sup>34</sup>.

And finally, in the Preamble to the AGB, it notes that:

*New gTLDs have been in the forefront of ICANN’s agenda since its creation. The new gTLD program will open up the top level of the Internet’s namespace to foster diversity, encourage competition, and enhance the utility of the DNS.*

- **4.2.3.2 Questions and Concerns Related to Subject**

Many members of the DG felt that the 2012 New gTLD round lacked diversity in regards to the types of applicants that applied. From the New gTLD statistics page, one can view the presented numbers and reach conclusions about the diversity, or lack thereof, within the program. However, the 2007 GNSO Final Report did not appear to attempt to establish metrics by which diversity, competition, consumer choice, and other aims of the program could be measured against to determine the level of success. While the statistics page only presents a limited set of numbers that could be examined, they may present some evidence of lack of diversity. For instance, looking at the geographic spread of applications in the ICANN regions, about 1% of applications were received from South America and less than 1% were received from Africa.<sup>35</sup>

<b>Total Applications Received - 1930</b>		
<b>Region</b>	<b>Number</b>	<b>Percentage</b>
North America	911	47%

<sup>32</sup> Part one of the economic study is available here: <https://archive.icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf>

<sup>33</sup> Part two of the economic study is available here: <https://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf>

<sup>34</sup> The ICANN Board Resolution is available here: <https://community.icann.org/pages/viewpage.action?pageId=31173197>

<sup>35</sup> Current 2012 New gTLD Program round statistics can be found here: <http://newgtlds.icann.org/en/program-status/statistics>

Europe	675	35%
Asia Pacific	303	15.5%
South America	24	1%
Africa	17	<1%

As noted, there was no target number to achieve, but this may be considered an area for improvement.

As for application types, the majority of the 1930 applications received would be considered standard, with 84 identifying as community, 66 as geographic, and 116 as IDNs, with some overlap of these three types amongst that collection of applications. The WG that developed the 2007 Final Report considered the definition of types and specific requirements and needs for each type to be too difficult to accurately predict. The AGB followed suit by only allowing for two types, standard and community. For further detail on application types, see section 4.2.15 on Different TLD Types.

There are many other statistics that could be measured, such as geographic spread of back-end providers, diversity of business plans, types of organizations applying, etc. What may be useful is establishing metrics for success, although it must be noted that the Implementation Advisory Group for Competition, Consumer Trust & Consumer Choice (IAG-CCT) has already identified 66 metrics<sup>36</sup> that it recommends ICANN begin collecting in preparation for future New gTLD reviews, in particular the Affirmation of Commitments (AoC)<sup>37</sup> review for section 9.3, which states:

*ICANN will organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.*

A potential PDP-WG on New gTLD Subsequent Procedures considering this subject should take into account the metrics identified by the IAG-CCT and the findings of the AoC reviews. The PDP-WG could consider discussing this subject prior to other efforts concluding, alerting relevant teams to such work, as indeed, its findings may influence the AoC review. However, the PDP-WG may find it beneficial to fully consider the findings from the AoC review prior to reaching final conclusions and/or recommendations, or perhaps even prior to initiating discussions around this subject.

- **4.2.3.3 Relevant Guidance**

<sup>36</sup> Implementation Advisory Group for Competition, Consumer Trust & Consumer Choice (IAG-CCT) recommendations: <https://newgtlds.icann.org/en/reviews/cct/iag-metrics-final-recs-26sep14-en.pdf>

<sup>37</sup> Affirmation of Commitments review for section 9.3:

<https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en>

- ICANN’s Mission and Core Values, in particular Article 1, Section 2,6 of the ICANN Bylaws:
  - Principle C
  - IAG-CCT Metrics -  
<https://community.icann.org/display/IAG/Report+of+All+Consumer+Metrics>
  - ICANN staff Competition, Consumer Choice & Consumer Trust Reviews -  
<https://newgtlds.icann.org/en/reviews/cct>
  - Affirmation of Commitments -  
<https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en>
- *4.2.3.4 Rationale for Policy Development*

In regards to the issues identified by the DG regarding competition, consumer trust & consumer trust, the DG did not anticipate any changes to or the development of new policy. However, the existing principle in the 2007 Final Report is vague in terms of what determines success and the identification of success criteria could be considered. In doing so, the work of the IAG-CCT, the outcome of the AoC reviews, and the ICANN staff led reviews of Competition, Consumer Choice & Consumer Trust (i.e., Rights Protection Reviews, Program Implementation Reviews, Security & Stability Reviews, and Competition, Consumer Trust, and Consumer Choice Data & Review) should be taken into account in reaching any conclusions.

While a PDP-WG may determine that in fact, specific policy development is needed regarding this subject, it can be envisioned at this stage that the findings from this subject may at a minimum, influence outcomes regarding other subjects (e.g., Cancelling Subsequent Procedures, Second-level, Rights Protection Mechanisms, Registrant Protections, Communications, etc.).

#### **4.2.4 Community Engagement**

- *4.2.4.1 Explanation of Subject*

In many ways, this Community Engagement subject for PDP-WG consideration is very much connected to section 4.2.2 on Predictability, as increasing the level of community participation during the early parts and throughout the development lifecycle should allow for better consideration and integration of issues from the various facets of the community prior to the launch of New gTLD Subsequent Procedures. Without robust community engagement, it is conceivable that New gTLD Program requirements could be altered after program launch, which would be a disservice to all those involved with the program, who should be able to rely on pre-published rules and guidelines.

It should be noted that early engagement is not an issue that is isolated to the New gTLD Program. Early engagement is integral to all policy development processes to ensure that various viewpoints are shared, considered, and integrated into final recommendations. As such, improvements to the Policy Development Process (PDP)<sup>38 39</sup> now dictate that outreach be conducted prior to the Issue Report, prior to the initiation of the PDP, upon initiation of the PDP, and other areas.

- *4.2.4.2 Questions and Concerns Related to Subject*

The DG noted that a number of elements of the program changed post-launch. For instance, GAC Early Warnings and GAC Advice were defined in the AGB prior to program launch and appeared to be in regards to single applications, not classes of applications. However, in the Beijing Communiqué<sup>40</sup>, the GAC advised the ICANN Board that, "strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws." The GAC proposed specific safeguards that would apply to a broad category of strings related to "consumer protection, sensitive strings, and regulated markets." To resolve the issues identified in the GAC Safeguard Advice, a public comment period was held to collect input, and the New gTLD Program Committee (NGPC) ultimately adopted an implementation framework for GAC Category 1 Safeguard Advice<sup>41</sup>. The integration of the framework could be construed as a significant change to the New gTLD Program. While additional early engagement might not have avoided this change, it may have helped.

Another example of a change to the program post launch was the identification of the name collisions issue by the SSAC, which is discussed in further detail in section 4.6.3 on Name Collisions. Again, early engagement might not have necessarily helped address the issue prior to launch, though this issue was raised prior to launch.

Identifying these two examples should not create the impression that the GAC and the SSAC did not fully participate in the policy development process. However, the concept of early and consistent engagement throughout the policy development process is a sound principal to follow and additional mechanisms to encourage community engagement could be explored. In some circumstances, an issue raised may warrant resolution via alternative mechanisms (e.g., the 3 new mechanisms developed by the Non-PDP Policy and Implementation Working Group or a cross-community working group if the issue is of mutual interest and better addressed by two or more SO/ACs).

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<sup>38</sup> PDP Manual: <http://gns0.icann.org/en/council/annex-2-pdp-manual-16dec11-en.pdf>

<sup>39</sup> GNSO Working Group Guidelines: <http://gns0.icann.org/en/council/annex-1-gns0-wg-guidelines-07apr11-en.pdf>

<sup>40</sup> GAC Beijing Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013\\_Final.pdf?version=1&modificationDate=1365666376000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2)

<sup>41</sup> NGPC Resolution adopting implementation framework for GAC Category 1 Safeguard Advice:  
<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-2-05feb14-en.pdf>

- **4.2.4.3 Relevant Guidance**

- PDP Manual: <http://gnso.icann.org/en/council/annex-2-pdp-manual-16dec11-en.pdf>
- GNSO Working Group Guidelines: <http://gnso.icann.org/en/council/annex-1-gnso-wg-guidelines-07apr11-en.pdf>
- GAC-GNSO Consultation Group Recommendations Concerning Early Engagement of the GAC in the GNSO Policy Development Process - Issue Scoping Phase: <http://www.gnso.icann.org/en/drafts/gac-cg-issue-scoping-27jan15-en.pdf>

- **4.2.3.4 Rationale for Policy Development**

The subject of early engagement was not anticipated by the DG to require any type of policy development specific to New gTLDs. This issue is not isolated to New gTLDs, and as such, steps to increase opportunities for early engagement or outreach have already been implemented. For instance, the GNSO PDP Manual<sup>42</sup> dictates that outreach to Supporting Organizations (SOs), Advisory Committees (ACs), Stakeholder Groups, and Constituencies be conducted at certain intervals to ensure they are aware of the issue being discussed. In addition, many of the SOs and ACs maintain liaisons between their groups to ensure they remain informed and are able to communicate concerns back and forth. Beyond these proactive engagement measures, the PDP process is open and transparent, so any member of the community is welcome to participate. As well, the implementation of New gTLD policy via the AGB, allowed for participation from any aspect of the community, and this is expected to be the case for any subsequent implementation activities.

## 4.2.5 Applicant Guidebook

- **4.2.5.1 Explanation of Subject**

The Applicant Guidebook (AGB) is effectively the implementation of GNSO policy recommendations from the its 2007 Final Report, although at the time, it was referred to as the Request for Proposal (RFP).

*This policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains. The **Request for Proposals (RFP)** for the first round will include scheduling information for the subsequent rounds to occur within one year. After the first round of new applications, the application system will be evaluated by ICANN's TLDs Project Office*

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<sup>42</sup> GNSO Policy Development Manual: <http://gnso.icann.org/en/council/annex-2-pdp-manual-16dec11-en.pdf>

*to assess the effectiveness of the application system. Success metrics will be developed and any necessary adjustments made to the process for subsequent rounds.*

The development of the AGB, as it became known, was intended to act as a roadmap to potential applicants and other parties interested in the process. The development of the AGB was iterative, integrating public comment and feedback received through other channels into its numerous incarnations, as is noted in the Preamble to the AGB:

*ICANN's work next focused on implementation: creating an application and evaluation process for new gTLDs that is aligned with the policy recommendations and provides a clear roadmap for applicants to reach delegation, including Board approval. This implementation work is reflected in the drafts of the applicant guidebook that were released for public comment, and in the explanatory papers giving insight into rationale behind some of the conclusions reached on specific topics. Meaningful community input has led to revisions of the draft applicant guidebook. In parallel, ICANN has established the resources needed to successfully launch and operate the program. This process concluded with the decision by the ICANN Board of Directors in June 2011 to launch the New gTLD Program.*

The AGB served as the guide for staff in developing operational processes and procedures.

- *4.2.5.2 Questions and Concerns Related to Subject*

The AGB was developed over the course of several years, countless volunteer hours, with numerous iterations and explanatory memoranda, and much debate in public comments, during ICANN meetings, online fora and other channels. As a result, it is a piece of documentation that represents bottom up, multi stakeholder compromise and as such, is unlikely to be considered perfect by all parties, as compromise generally requires concessions.

In the deliberations of the DG, the views exchanged on the AGB were diverse. As the AGB was a singular document intended to support the program, it was likely foreseeable that there would be sections that may be less relevant to certain parties than others. The AGB provided the requirements to be considered by applicants, consultants, back-end providers, registrars, rights holders, governments, and others interested in the program.

Some members of the DG suggested partitioning the AGB into distinct, audience driven sections, believing that it may improve readability and understanding of rules. Others suggested that the AGB could be made more process-driven, providing step-by-step instructions. Still, others even suggested that the AGB was the wrong vehicle for implementation of the policy entirely, although an alternative was not suggested.

As a result of the many program reviews being performed by various facets of the community, it remains likely that there will need to be revisions to the AGB. In addition, in the event that there are substantive changes to the existing New gTLD policy, the AGB must be adjusted accordingly to reflect those changes. Any changes to the AGB for subsequent procedures must be subject to community discourse, as occurred in the past.

- *4.2.5.3 Relevant Guidance*
  - Current AGB - <http://newgtlds.icann.org/en/about/historical-documentation>
- *4.2.5.4 Rationale for Policy Development*

The DG did not anticipate policy development work in regards to the Applicant Guidebook, although it could be necessary if there is broad support for an alternate vehicle for implementation of the new gTLD policy. A potential PDP-WG on New gTLD Subsequent Procedures may want to consider providing implementation guidance, particularly around the structure of the AGB, for consideration by ICANN in developing the next AGB, though modifications to the AGB (provided the AGB remains as the implementation vehicle) would presumably remain an iterative, community-inclusive process.

## 4.2.6 Clarity of Application Process

- *4.2.6.1 Explanation of Subject*

The 2007 Final Report recommended that the New gTLD application process provide clarity and certainty to potential applicants, with Recommendation 1 stating:

*ICANN must implement a process that allows the introduction of new top-level domains.*

*The evaluation and selection procedure 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.*

And Recommendation 9 stating:

*There must be a clear and pre-published application process using objective and measurable criteria.*

The AGB, through the implementation of the GNSO New gTLD policy, sought to provide the clarity and certainty as called for in the recommendations. The themes of predictability and the AGB are explained in further detail in sections 4.2.2 on Predictability and 4.2.5 on the Applicant Guidebook, respectively.

- *4.2.6.2 Questions and Concerns Related to Subject*

From the discussions of the DG, it appeared that there was general agreement that the AGB, developed iteratively and with ample community participation, was the proper vehicle for the implementation of the GNSO New gTLD policy recommendations. However, in translating the AGB into operational processes and procedures, the DG felt that transparency of development was lost to some degree.

In June 2011, the ICANN Board approved the AGB and program launch, with the application submission period opening approximately seven months later in January of 2012, which served as a relatively short period of time to operationalize the finalized requirements in the AGB. Once the application submission process began, the number of applications received exceeded much of the community's estimates, making operationalization of remaining program elements more difficult. According to members of the DG, elements of the program appeared to be developed on an as-needed basis, citing examples such as the processes governing clarifying questions, change requests, customer support, application prioritization, among others.

DG Members noted other issues around the application submission process, though they were not necessarily regarding clarity of process, but more in regards to the lack of efficiency. These members cited the need to create multiple accounts when submitting over 50 applications and the treatment of every application as unique as particular concerns, with the latter issue creating inefficiencies during application submission and subsequent steps in the evaluation process. The inefficiencies in application submission and evaluation will be discussed in further detail in sections 4.2.8 on Accreditation Programs and 4.2.9 on Systems.

- *4.2.6.3 Relevant Guidance*

- Recommendation 1
- Recommendation 9

- *4.2.6.4 Rationale for policy development:*

The DG did not anticipate policy development in regards to Clarity of the Application Process. However, a potential PDP-WG on New gTLD Subsequent Procedures may want

to consider providing implementation guidance for consideration by ICANN if and when it seeks to operationalize New gTLD Subsequent Procedures.

#### 4.2.7 Applications Assessed in Rounds

- 4.2.7.1 *Explanation of Subject*

The 2007 Final Report recommended that applications be assessed in rounds, as the format better allowed for evaluation of the performance of the program. Recommendation 13 states that:

*Applications must initially be assessed in rounds until the scale of demand is clear.*

Per the recommendation, the New gTLD Program is assessing applications in the format of a round. There was a fixed application submission period after which no additional applications were accepted.

- 4.2.7.2 *Questions and Concerns Related to Subject*

Some members of the DG stated that their preference was that the New gTLD Program operate in a perpetually open manner, rather than in distinct rounds. Recommendation 13 asserts that a mechanism other than rounds can only be considered once the scale of demand is clear. However, scale of demand was not defined and perhaps even if it was, a single round may not provide adequate data to come to any meaningful conclusions. As a result, a potential PDP-WG on New gTLD Subsequent Procedures may want to consider defining what scale of demand means and how the criteria could be met. In addition, factors other than demand may be helpful in determining if an alternative application acceptance mechanism is warranted. In the explanatory language for Recommendation 13, it states:

*This recommendation may be amended, after an evaluation period and report that may suggest modifications to this system. The development of objective "success metrics" is a necessary part of the evaluation process that could take place within the new TLDs Project Office.*

If another method for accepting and assessing applications is indeed pondered, the impact on other areas of the program must be fully considered. A different mechanism, such as a perpetually open program, may impact applicant behavior and would likely require the rethinking of many existing program elements, such as objections and string contention, which were designed with fixed periods in mind. As an example, objections could be particularly problematic, as potential objectors would need to be constantly aware of the program at all times in order to potentially protect their interests or rights.

In addition, a perpetually open program could increase program costs, as for example, evaluators and other service providers would need to be retained at all times as well.

These examples are in regards to existing elements of the 2012 New gTLD Program round. If substantive changes are made to program elements, they would need to be taken into consideration in deciding if an alternative application acceptance mechanism is warranted.

Some specific concerns identified by the DG regarding rounds include:

- Potential applicants must decide whether they want to commit to applying, not knowing exactly when the next round will occur.
  - In particular for applicants in contention sets, they may have to wait for other applicants to clear certain phases of the program.
  - It can cause a rush of activities around certain milestones, potentially resulting in strains on applicants, service providers, ICANN staff, and ultimately result in missed deadlines, confusion, and overall inefficiency.
- *4.2.7.3 Relevant Guidance*
    - Recommendation 13:
  - *4.2.7.4 Rationale for Policy Development*

The 2007 Final Report acknowledged that Recommendation 13 could be modified, provided there is data and evidence that supports an alternative mechanism. A potential PDP-WG on New gTLD Subsequent Procedures may want to consider these suggested actions/questions to help determine if a change is warranted:

- Define, capture data, and analyze metrics to understand “scale of demand”
- Define, capture data, and analyze metrics other than “scale of demand” that may help in determining if an alternative application acceptance mechanism should be considered
- Determine if any other New gTLD Program reviews may benefit deliberations on this subject.

If a potential PDP-WG reaches the conclusion that an alternative application acceptance mechanism is needed, policy development would likely be needed, which may include modifying the existing recommendation.

## **4.2.8 Accreditation Programs**

- *4.2.8.1 Explanation of Subject*

Increasing competition within the registry service provider marketplace was identified as a key driver for the introduction of new TLDs in the 2007 Final Report. Principle C states:

*The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity.*

In the 2012 New gTLD Round, a substantial number of applicants did indeed employ the use of an existing back-end provider to both provide the responses to the technical requirements questions defined in the AGB and perform the technical operations of the registry.

The New gTLD Program was designed to be agnostic to what party was provisioning registry services, so long as the technical requirements were met.

- **4.2.8.2 Questions and Concerns Related to Subject**

The New gTLD Program was not built in a way that would take advantage of applicants' use of back-end service providers, both from an applicant's perspective or operationally for ICANN. The concept of an accreditation program received ample support from the DG, citing a number of issues and reasons for its usefulness.

#### Efficiency

Applicants who decided to use a contracted back-end provider for their RSP were required to enter the technical responses during the application submission period, which were likely to have been responses provided by their provider for the purposes of applying. As noted in other sections, applications were treated individually, so to the extent that an applicant was submitting more than one application with essentially identical responses, responses would need to be applied to each individual field for each application. These responses were in turn presumably evaluated individually for each application by ICANN's evaluators, leading to additional inefficiencies and possibility even increasing the likelihood for mistakes or inconsistencies.

The PDP-WG could consider whether accreditation of RSPs would be desirable. For example, if there was an accreditation program in place for future New gTLD Subsequent Procedures, an applicant could conceivably "click a box" to say they are using an accredited RSP, reducing time per application for applicants and evaluators, possibly reducing confusion since the application process could presumably be made

simpler, and likely reducing operational costs for ICANN. This would not remove the need to evaluate circumstances where the applicant is intending to introduce additional registry services. Nevertheless, making the process simpler and lowering costs, without compromising the goals of the program, such as fairness and security of the DNS, may result in additional potential applicants (i.e., competition).

### Security and Stability

There are several principles and recommendations that identify the importance of ensuring the stability and security of the DNS when expanding the DNS, including:

#### Principle D

*A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.*

#### Principle E

*A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN's registry agreement.*

#### Recommendation 7

*Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.*

Per Principle D, assessing an applicant's technical expertise is critical to helping prevent harm to the DNS. The current technical and operational requirements as defined in the AGB allow for some variability based on the type of registry an applicant intends to run, which is important to support in order to promote, or at least allow for innovation. However, it is possible that there is a security and stability benefit to having known-quantity RSPs, that have met certain agreed upon requirements and are intimately familiar with providing registry services.

- *4.2.8.3 Relevant Guidance*
  - Principle D
  - Principle E
  - Recommendation 7
  - Implementation Guideline A
  
- *4.2.8.4 Rationale for Policy Development*

As noted above, the PDP-WG could consider whether an accreditation program would promote benefits that support ICANN's Mission and Core Values, in particular, Article 1, Section 2.1:

*Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet*

And Article 1, Section 2.6

*Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.*

As such, a possible PDP-WG on New gTLD Subsequent Procedures may want to consider policy development on the subject of an accreditation program. There are a number of questions that would need to be considered, including the following:

- Is an accreditation program for RSPs desirable?
- If yes, what would the criteria be for an accreditation program? How would scalability of the RSP be measured across an unknown number of registries?
- How would the program be funded?
- What party would operate the program and perform accreditation?
- How would the application process be changed? Would questions change? Would costs be different?
- Would the creation of a simpler, and potentially cheaper path to approval, create unintended incentives?
- Besides RSPs, are there other areas of the program that might benefit from an accreditation program for service providers?

#### 4.2.9 Systems

- 4.2.9.1 *Explanation of Subject*

There did not appear to be any guidance specifically related to technical systems in the 2007 Final Report.

ICANN developed and deployed a number of applicant-facing systems to facilitate application submission and communications between ICANN operational staff and applicants. The TLD Application System (TAS) was used to allow applicants to submit their applications and to receive the results of the various evaluation procedures, such as Financial Capability, Technical/Operational Capability, Registry Services, overall Initial Evaluation Results, etc. The Customer Portal was responsible for allowing applicants to submit questions to ICANN and for ICANN to provide responses.

In addition to these two primary systems, there were additional solutions developed to support the program, including Digital Archery, Centralized Zone Data Service, and the Application Comments Forum.

- *4.2.9.2 Questions and Concerns Related to Subject*

There were several systems that applicants had to utilize throughout the application process, many requiring different logins, and many presenting a different user experience. Members of the DG suggested that a more integrated set of applicant-facing systems would be a more user friendly, robust approach. There were distinct issues with some of the systems, in particular the TAS system. For instance, TAS required first logging into the Citrix ZenApp layer, which provided a browser agnostic environment, then subsequently logged into TAS itself. While there were benefits to creating a browser agnostic environment, particularly security benefits, it proved to be a poor user experience with applicants having trouble keeping track of multiple sets of login credentials, downloading required software properly, uploading supporting documentation, and even pasting their question responses into the proper fields. Additionally, TAS suffered an applicant data security glitch, which required the system to be taken offline in April of 2012. After an extensive audit, ICANN felt confident that it understood the extent of the issue. After having resolved the cause of the glitch, the system was brought back online in May of 2012.<sup>43</sup>

As mentioned, many of the other applicant-facing systems did not share architecture or a credential database, so they had very little integration, creating what DG members found to be a fragmented experience. Because of issues like the TAS glitch, DG members also recommend more robust security testing and as a result of the negative comments received about user experience, user experience testing is likely also beneficial.

- *Relevant Guidance*

- Recommendation 1
- Implementation Guideline A

- Rationale for policy development:

The DG did not anticipate policy development work in regards to systems. However, a potential PDP-WG on New gTLD Subsequent Procedures may want to consider providing implementation guidance, such as a minimum set of security and infrastructure standards, for consideration by ICANN during implementation of subsequent procedures.

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<sup>43</sup> Details related to the TAS Glitch: <http://newgtlds.icann.org/en/applicants/tas/interruption-faqs>

#### 4.2.10 Application Fees

- *4.2.10.1 Explanation of Subject*

The New gTLD Program was designed to be revenue neutral, which is in support of Implementation Guideline B:

*Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process.*

*Application fees may differ for applicants.*

In section 1.5.1, the AGB captured this guidance with the following text:

*The gTLD evaluation fee is set to recover costs associated with the new gTLD program. The fee is set to ensure that the program is fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions.*

An application fee that is intended to be revenue neutral is also consistent with ICANN's status as a not-for-profit organization. The application fee was developed using "detailed costing methodology that includes program development costs, fixed and variable application evaluation costs, and risks or low probability event costs" as stated in the *Update to the Cost Considerations of the New gTLD Program*<sup>44</sup>.

- *4.2.10.2 Questions and Concerns Related to Subject*

The New gTLD application fee was developed with the acknowledgement that it was being designed for a new program, where it is difficult to predict costs and volumes of applications. With many elements of the 2012 New gTLD round having now been completed, data should be available to refine the costing methodology for subsequent procedures. The DG recommended that ICANN's costing model be thoroughly re-examined, even in the absence of significant changes to the program. For instance, some DG members pointed out that there is a sizeable surplus (~\$89 million USD), mostly attributable to the litigation portion of the fee that has remained largely unspent. Although there is currently no plan for utilizing excess funds, in the *Update to the Cost Considerations of the New gTLD Program* document, ICANN envisioned that the community would be integral in determining how the funds would be handled, in the event that a surplus or a shortfall was realized.

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<sup>44</sup> Update to the Cost Considerations of the New gTLD Program available in its entirety here: <https://archive.icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf>

The DG Members felt that the relatively high cost of applying led to a number of issues, many of which had already been identified in community discussions to establish the original amount. As acknowledged in the *Update to the Cost Considerations of the New gTLD Program*, there remained concerns that \$185,000 USD may act as a deterrent to applicants from developing nations, not-for-profits, and others with limited financial resources. Some members suggested that the fee contributed to the perceived lack of diversity as discussed in section 4.2.3 Competition, Consumer Trust & and Consumer Choice. There were suggestions that the high cost of the application fee could be offset by financial assistance or fee reduction programs, although care would need to be taken in designing these programs to avoid having them being taken advantage of by applicants that may not in fact have financial need. This topic will be discussed in further detail in section 4.2.14 Support for Applicants From Developing Countries.

DG members specifically identified the lack of invoices as a particular challenge for applicants to be able to navigate financial approval processes within their respective organizations.

Another topic that DG members identified was that the application fee was a continuation of the one-size-fits-all methodology ingrained into the program, resulting in all applicants essentially paying the same amount regardless of the complexity of their evaluation, notwithstanding the additional costs for optional program elements like Community Priority Evaluation (CPE), objections, etc. This topic will be discussed in greater detail in section 4.2.17 Variable Fees.

Finally, although ICANN has committed to evaluate the accuracy of its costing model for any subsequent procedures, it may also need to account for any significant changes to the program stemming from policy development, operational changes, or other channels. As examples, the creation of different application types and corresponding application tracks or the creation of an accreditation program may require consideration in evaluating the costing methodology.

- *4.2.10.3 Relevant Guidance*
  - Implementation Guideline B
  - Section 1.5.1 of the AGB
  - *Update to the Cost Considerations of the New gTLD Program* - <https://archive.icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf>
  
- *4.2.10.4 Rationale for Policy Development*

The DG did not anticipate policy development work directly related to Application Fees. However, it may be useful to evaluate how well costing estimates compared to actual costs incurred by ICANN. The results of that review may lead a potential PDP-WG on

New gTLD Subsequent Procedures to consider providing implementation guidance to be taken into account when ICANN works with the community to develop the costing methodology for subsequent procedures. And as noted above, significant changes to the program stemming from policy development, operational changes, or other channels would need to be properly accounted for in any new costing methodology.

#### 4.2.11 Communications

- *4.2.11.1 Explanation of Subject*

Implementation Guideline C states that:

*ICANN will provide frequent communications with applicants and the public including comment forums.*

There are at least a few aspects to communications. One aspect relates to ICANN's communications plan that sought to increase global awareness of the significant changes that the New gTLD Program represented. The intention was to target audiences beyond potential applicants, as the expansion of the DNS impacts more than just that particular audience. ICANN published a working draft of its communications plan in May of 2011<sup>45</sup>, which was authorized by the ICANN Board to serve as the basis for ICANN's global outreach and education activities for the program<sup>46</sup>.

Another aspect of communications is related to the processes to facilitate dialogue between applicants and ICANN, which was primarily supported through the Customer Portal, although ICANN also employed the use of webinars, roadshows, and sessions at ICANN meetings, among other methods, to facilitate dialogue between the community and ICANN.

Lastly, as noted in Implementation Guideline C, ICANN had need to support a mechanism to collect public comment, which it accomplished by establishing the Application Comments Forum<sup>47</sup>.

- *4.2.11.2 Questions and Concerns Related to Subject*

The DG Members raised concerns primarily around the communications between ICANN and applicants and ICANN's outreach activities.

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<sup>45</sup> ICANN's draft communications plan: <http://newgtlds.icann.org/en/about/historical-documentation/matrix-plans>

<sup>46</sup> ICANN Board resolution approving the communications plan: <https://www.icann.org/resources/board-material/resolutions-2011-06-20-en>

<sup>47</sup> Application Comments Forum available here: <https://gtldcomment.icann.org/comments-feedback/applicationcomment/login>

## ICANN-Applicant Communications

DG Members noted issues with receiving answers to questions submitted through the Customer Portal, both related to the adequacy and consistency of the response as well as timeliness in delivery. In addition, members also felt that equal access to information could be improved, perhaps with the creation of a robust knowledge base. While ICANN created knowledge base articles for the purpose of equal access to information, this approach may be less timely and expansive than a searchable knowledge base likely could be.

Some DG Members expressed concerns in the way that ICANN shared information, highlighting webinars in particular as potentially insufficient in properly distributing information.

The PDP-WG could consider reaching out to ICANN's GDD team to see whether they may have statistics on their ability to achieve Service Level Agreements (SLAs) and metrics to help the PDP-WG understand, for instance, what elements of the program may have induced the most customer support cases.

## Outreach

The DG's concerns relating to ICANN's outreach efforts were primarily focused around the perceived lack of outreach to Developing Countries, providing the lack of Applicant Support Program uptake as evidence of these shortcomings. This topic will be discussed in greater detail in section 4.2.14 on Support for Applicants From Developing Countries.

In addition to that specific element, a potential PDP-WG on New gTLD Subsequent Procedures may want to consider suggesting targeted groups or sectors, communication methods, as well as metrics to help identify if the communications plan was effective. A PDP-WG may also want to consider what themes should be conveyed and to what parties, as it may be beneficial to customize messaging based on the needs of the particular demographic.

- *4.2.11.3 Relevant Guidance*
  - Implementation Guideline C
  - ICANN Draft Communications Plan - <http://newgtlds.icann.org/en/about/historical-documentation/matrix-plans>
- *4.2.11.4 Rationale for Policy Development*

The DG did not anticipate policy development work directly related to

Communications. However, a potential PDP-WG on New gTLD Subsequent Procedures may want to consider providing implementation guidance related to communication methods, goals for communications, success criteria, and other elements.

#### 4.2.12 Application Queuing

- 4.2.12.1 *Explanation of Subject*

Implementation Guideline D states that:

*A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary.*

*Applications will be time and date stamped on receipt.*

The AGB had a different implementation than the 2007 Final Report recommended. The AGB anticipated that for Initial Evaluation at least, all applications would be completed and published in a timeframe of five months, unless the number of applications exceeded 500, in which case the AGB called for a secondary time stamp mechanism in order to establish batches for evaluation and subsequent application processing steps.

In the 2012 New gTLD round, 1930 complete applications were received, greatly exceeding 500 applications, and thus requiring the establishment of batches as dictated in the AGB. The initial secondary time stamp mechanism was digital archery, which was suspended due to applicants' reports of inaccuracies and inconsistencies within the system<sup>48</sup>. The use of a random selection mechanism was considered by the community but was decided against as there was the possibility of violating California lottery laws. ICANN ultimately ended up utilizing a prioritization draw to establish the application processing order<sup>49</sup>. The method was selected after consultation with the community and was intended to support the principles of reliability and equitability. The order would affect evaluation, release of results, and other subsequent steps of the process.

It should also be noted that in the 2012 round of the New gTLD Program, IDN strings were batched first.

- 4.2.12.2 *Questions and Concerns Related to Subject*

The DG Members noted that the secondary time-stamp process, as described in the AGB, was not developed or operationalized prior to the launch of the program. They were particularly concerned with the digital archery method, which was later cancelled

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<sup>48</sup> Announcement cancelling digital archery: <https://www.icann.org/news/announcement-2012-06-23-en>

<sup>49</sup> Announcement regarding prioritization draw: <https://www.icann.org/news/announcement-2-2012-10-10-en>

after the community discovered inaccuracies and errors. The prioritization draw did not elicit specific comment, but members had comments regarding how processing took place after the order was established. Some members observed that applications with lower priority numbers seemed to be processed ahead of those with higher numbers, though these observations appeared anecdotal.

Establishing an order for processing allowed for applicants and the rest of the community to have certainty and predictability in the evaluation process. However, having the order established through a random measure introduces operational inefficiencies, as evaluators are less able to build in economies of scale when for instance, a number of applications might be using the same back-end provider, or a single applicant has submitted numerous, essentially identical applications. The prioritization draw as such, emphasizes fairness, by way of randomness, over efficiency.

As noted above, the AGB implementation, and the subsequent operationalization, did not follow the guidance in the 2007 Final Report that recommended first come first served processing scheduling. There were a number of reasons for implementing a different processing methodology, as first come first served introduces a number of potential issues, including:

- Applicants rushing to complete applications, possibly forsaking quality
- Favoring applicants most familiar with the process and requirements
- Favoring applicants who are located closer to ICANN's servers
- Creating the possibility of a self-inflicted distributed denial of service attack as applicants rush to click the submit button first

A potential PDP-WG on New gTLD Subsequent Procedures may want to deliberate on a different application processing methodology, although care should be taken in considering the impact on other areas of the program. For instance if first come first served was strictly observed, would this have an impact on the need for string contention resolution? Changes as a result of deliberations regarding section 4.2.7 on Application Rounds should also be taken into consideration and the questions/concerns posed in this section may be relevant to that discussion.

- *4.2.12.3 Relevant Guidance*
  - Implementation Guideline D
  - "Use of a Drawing for Prioritizing New gTLD Applications" plan - <https://www.icann.org/news/announcement-2-2012-10-10-en>
- *4.2.12.4 Rationale for Policy Development*

The aspect of the 2007 Final Report that provided guidance was Implementation Guideline D, though after community consultation, this guidance was not followed in

implementation or operationalization. As such, a potential PDP-WG on New gTLD Subsequent Procedures may want to consider modifying the existing language to codify the actual implementation, if the PDP-WG were to agree with the implementation. Else, if a new methodology were recommended, it may require new policy development or implementation guidance.

#### 4.2.13 Application Submission Period

- *4.2.13.1 Explanation of Subject*

Some DG Members identified the topic of the length of the application submission window. The 2007 Final Report did not appear to speak to this topic, though Implementation Guideline E is related to some degree:

*The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round.*

During the community discussions about the launch of the program, there was some debate about the intent of this Implementation Guideline. The community agreed that the “Request for Proposal” in the guidance referred to the AGB, as the AGB was not named as such during deliberations to develop the 2007 Final Report. As a result, this guideline was interpreted to mean that the opening of the application submission period would be at least four months after the AGB was approved by the ICANN Board, with the intent that the time would serve at least two purposes:

- ICANN would promote the program for community wide awareness, including beyond the parties that actively participate in the ICANN community.
- Applicants would familiarize themselves with the final AGB requirements.

As such, the length of the application submission period was presumably not an element discussed in the 2007 Final Report, but was included in the AGB. Inclusion in the AGB allowed for public comment to debate the merits of the proposed three month application submission period. Specific details regarding the application submission dates for the 2012 New gTLD round can be found in the AGB, section 1.1.1 Application Submission Dates.

- *4.2.13.2 Problems Caused by Issue*

The DG Members did not identify the length of time between the approval of the AGB and the launch of the program as an issue. However, this could be a topic that warrants

additional discussion, perhaps in the context of the discussions around section 4.2.11 on Communications.

The DG Members did express concerns regarding the length of the application submission period however, with a few parties stating that it may be too brief. It should be noted that the use of an application submission window is in support of the round-based format for the 2012 New gTLD Program. Provided the New gTLD Program continues as rounds-based, the application submission window length may warrant additional debate to determine if it is the proper amount of time. In its deliberations, it may be useful for a possible PDP-WG on New gTLD Subsequent Procedures to collect data, possibly through applicant surveys or other methods, to determine if there was widespread dissatisfaction with the length of time. In addition, the PDP-WG should take into account any other recommended changes to the program that may simplify or complicate the application submission process, as that may play a role in determining if the application submission period should be adjusted accordingly.

- *4.2.13.3 Relevant Guidance*
  - Implementation Guideline E:
- *4.2.13.4 Rationale for Policy Development*

As noted above, there do not appear to be recommendations in the 2007 Final Report related to the application submission period length. As such, a possible PDP-WG on New gTLD Subsequent Procedures may want to consider collecting data, analyzing recommended changes to the program, and determine if the application submission period length warrants policy development and/or implementation guidance.

In addition, Implementation Guideline E related to the outreach period may warrant clarification or refinement, as it was seen as vague by many in the community during implementation.

#### **4.2.14 Support for Applicants From Developing Countries**

- *4.2.14.1 Explanation of Subject*

In an effort to increase global diversity and representation across regions within the New gTLD Program, the ICANN community developed the Applicant Support Program (ASP)<sup>50</sup>. The ASP sought to provide financial and non-financial support to applicants from developing economies, thereby reducing competitive disadvantages that may

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<sup>50</sup> Applicant Support Program page available here: <https://newgtlds.icann.org/en/applicants/candidate-support>

prevent them from participating in the New gTLD Program. The ASP is also in support of Implementation Guideline N, which states:

*ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.*

The ASP was the implementation of the final report delivered by the Joint SO/AC New gTLD Applicant Support Working Group (JAS WG), chartered by the GNSO and the ALAC<sup>51</sup>. The ASP provided financial and non-financial support via three mechanisms:

- Financial assistance in the form of a reduction in the new gTLD evaluation fee (i.e., \$47,000 USD as opposed to \$185,000 USD) for applicants meeting qualifications.
  - Pro bono services via the Applicant Support Directory, which was created to connect potential applicants who wish to establish a new public interest gTLD registry in their community with organizations who wish to offer either financial or non-financial assistance.
  - Establishment of a funding mechanism for the ASP, which received \$2,000,000 USD in seed funding.
- *4.2.14.2 Questions and Concerns Related to Subject*

The topic of support for applicants from Developing Countries received considerable attention from members of the DG. Members noted that of the 1930 complete applications received by ICANN, only three applied for financial assistance via the ASP program, with a single application meeting the criteria<sup>52</sup>. DG Members were concerned with the lack of usage of the Applicant Support Program and identified a number of possible reasons that may have contributed to the limited number of applications for the ASP program:

- The measures introduced to prevent gaming of the ASP may have discouraged possible applicants.
- There was a short trajectory from the JAS WG Final Report, implementation of the recommendations, and the launch of the New gTLD Program, inclusive of the ASP.
- The lack of, or otherwise inadequate, outreach efforts for the ASP.
- The lack of financial support beyond the application fee reduction for other aspects of the program, like objections, string contention resolution, post-

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<sup>51</sup> Joint SO/AC New gTLD Applicant Support Working Group (JAS WG) Final Report available here: <http://gns0.icann.org/drafts/jas-final-report-13sep11-en.pdf>

<sup>52</sup> Applicant Support Program review results: <https://newgtlds.icann.org/en/applicants/candidate-support/sarp-results-20mar13-en.pdf>

delegation operations, and other expenses associated with running a gTLD registry.

Some DG Members provided suggestions on how to address some of the issues identified above, hopefully increasing utilization of the ASP or similar program, such as:

- Improving the outreach for the ASP as well as improved outreach in general for the New gTLD Program in Developing Countries.
- Creating a round dedicated to applicants from Developing Countries, which is discussed in greater detail in section 4.2.16 on Application Submission Limits.
- Making the assistance more comprehensive, so that it extends beyond just the application fee reduction.

With only three ASP applications out of a total of 1930 applications, it is clear that usage of the ASP was minimal. However, there may be a number of reasons why this may be the case. A possible PDP-WG on New gTLD Subsequent Procedures should seek data in understanding why usage was limited, as it will help inform the development of any updated solutions. The PDP-WG may also want to consider identifying success criteria for the program related to communications, funds made available, usage of the program, and other factors.

- *4.2.14.3 Relevant Guidance*

- Implementation Guideline N
- Joint SO/AC New gTLD Applicant Support Working Group (JAS WG) project page: <http://gnso.icann.org/en/group-activities/inactive/2011/jas>
- Applicant Support Program page - <https://newgtlds.icann.org/en/applicants/candidate-support>

- *4.2.14.4 Rationale for policy development*

Support for applicants from developing countries was identified in Implementation Guideline N, but the substantive recommendations are found in the JAS WG Final Report, together with the Board working group that developed an implementation model. In its resolution to approve the ASP, the ICANN Board noted that not all JAS WG recommendations were accepted<sup>53</sup>.

A possible PDP-WG on New gTLD Subsequent Procedures may want to review the existing Implementation Guideline and consider possible additional recommendations to improve the support for applicants from developing nations. Work to support this

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<sup>53</sup> ICANN Board Resolution approving the ASP and directing staff to complete implementation: <https://www.icann.org/resources/board-material/resolutions-2011-12-08-en#1.1>

effort may include identifying recommended support mechanisms, evaluation criteria, clear objectives, success criteria, and other elements. Given the interest in the subject within the DG and the wider community, this subject may warrant policy development.

Finally, the ASP was identified in ICANN Board guidance on initial input on areas for possible policy work<sup>54</sup>.

#### 4.2.15 Different TLD Types

- 4.2.15.1 Explanation of Subject

The 2012 round of the New gTLD Program was operationalized with the general intent to treat all applications equally, with the same process expected to govern the evaluation for all applicants. Consistent with this approach, only two application categories were identified in the AGB, described in detail in section 1.2.3.1 below:

*For purposes of this Applicant Guidebook, a **community-based gTLD** is a gTLD that is operated for the benefit of a clearly delineated community. Designation or non-designation of an application as community-based is entirely at the discretion of the applicant. Any applicant may designate its application as community-based; however, each applicant making this designation is asked to substantiate its status as representative of the community it names in the application by submission of written endorsements in support of the application. Additional information may be requested in the event of a community priority evaluation (refer to section 4.2 of Module 4). An applicant for a community-based gTLD is expected to:*

1. *Demonstrate an ongoing relationship with a clearly delineated community.*
2. *Have applied for a gTLD string strongly and specifically related to the community named in the application.*
3. *Have proposed dedicated registration and use policies for registrants in its proposed gTLD, including appropriate security verification procedures, commensurate with the community-based purpose it has named.*
4. *Have its application endorsed in writing by one or more established institutions representing the community it has named.*

*For purposes of differentiation, an application that has not been designated as community-based will be referred to hereinafter in this document as a **standard application**. A standard gTLD can be used for any purpose consistent with the*

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<sup>54</sup> Ibid

*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 designed the application as community-based.*

The 2007 Final Report provided guidance around community-based applications, but not in regards to any other categories of TLD types. During the deliberations of the GNSO and the wider community in creating the 2007 Final Report, the topic of TLD types was considered, but it was thought to be extremely difficult to predict appropriate categories and to design the corresponding requirements.

As noted above, the catch-all category of “standard application” was not intended to be restrictive and is simply an application that is not “community-based.”

The implementation of minimal application types carried over to other aspects of the program, where each application had essentially the same application submission process and evaluation paths (with the exception of Community Priority Evaluation for community-based applications in string contention sets). It should be noted that in March of 2014, after consulting with the GNSO Council, the NGPC approved Specification 13 to the Registry Agreement, which effectively approved the .Brand category of applications<sup>55</sup>.

- *4.2.15.2 Questions and Concerns Related to Subject*

The New gTLD Program, utilized a mostly one size fits all application process, as there were originally only two categories of applications. There were concerns raised by DG Members that this one size fits all methodology hampered innovation and was inefficient, which was discussed above in sections 4.2.8 on Accreditation Programs and 4.2.9 on Systems. As noted above, a .Brand category was created in March of 2014, long after the New gTLD Program launched, providing some level of evidence that one size fits all may require some exceptions. However, the creation of Specification 13 required extensive community input, indicating as well that creating customized requirements for certain application types may remain difficult.

The topic of Application Types received comment from the DG, GDD Staff (via staff input to the DG<sup>56</sup>), and the ICANN Board (via a Board Resolution and Annex A related to a resolution on Planning for Future gTLD Application Rounds<sup>57</sup>). Some examples of categories that were proposed to be considered include closed generics, further

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<sup>55</sup> ICANN Board Resolution regarding Specification 13: <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-03-26-en>

<sup>56</sup> Ibid

<sup>57</sup> Ibid

refinements around .Brand, sensitive strings, and strings related to regulated markets. The input received from the ICANN Board was described as “special case considerations” but was essentially concerning the subject of application types being discussed in this section:

*Existing policy advice is broadly applicable e.g., policy advice specified requirements to be applied to all applied-for strings. Other than the community considerations noted above, policy advice does not provide a basis for differing requirements for certain types of applications, TLD uses, or business models. Following the publication of the applications received during the application period, issues were raised to the NGPC concerning development of rules for special cases. Examples include:*

- a) the discussion of “closed generic” applications. The NGPC requested guidance<sup>58</sup> from the GNSO on this topic on 2 Feb 13, if it wished to provide such guidance; the GNSO provided a response on<sup>59</sup> 7 Mar 13.*
- b) consideration of a “.brand” category and applicable requirements. The NGPC passed a resolution<sup>60</sup> on 26 March 14 on this issue, also providing the GNSO Council an opportunity to advise on whether the proposed amendment was inconsistent with the letter and intent of GNSO Policy. The GNSO provided its response<sup>61</sup> on 9 May 14.*
- c) GAC advice<sup>62</sup> also included recommendations relating to “categories” of strings (e.g., sensitive strings or strings relating to regulated markets) and requirements that should be applied to these strings.*

*Additional policy work on identifying particular cases of strings, applications, or TLD registration models, and whether any such should be recognized as requiring particular treatment, could be undertaken.*

The creation of categories of applications can have far-reaching impacts on the program, so differences in the application submission process, evaluation requirements, contractual requirements, fees, and other aspects of the program should be thoroughly considered. By introducing additional variability into the program, it could create fairness issues and incite unintended behaviors, such as applicants picking the most

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<sup>58</sup> NGPC Correspondence to GNSO regarding closed generics: <https://features.icann.org/closed-generic-top-level-domains>

<sup>59</sup> GNSO correspondence to NGPC regarding closed generics: <http://gns0.icann.org/en/correspondence/robinson-to-crocker-chalaby-07mar13-en.pdf>

<sup>60</sup> ICANN Board resolution regarding Specification 13: <https://features.icann.org/approval-registry-agreement-specification-13-brand-category-applicants>

<sup>61</sup> GNSO correspondence to NGPC regarding Specification 13” <http://gns0.icann.org/en/correspondence/robinson-to-chalaby-09may14-en.pdf>

<sup>62</sup> GAC Beijing Communiqué: [https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013\\_Final.pdf?version=1&modificationDate=1365666376000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2)

advantageous path to approval. Subsequently, thought would need to be given in how restrictive these categories will be enforced after signing a Registry Agreement.

In relation to the possible topics of sensitive strings or strings related to regulated markets, which stem largely from the GAC's Beijing Communiqué on Safeguards on New gTLDs, it may be particularly challenging for ICANN (and providers) to attempt to validate, for example, applicants' compliance with a wide breadth of industry standards or professional licensing or requirements. Thought would need to be given to how strings related to certain highly regulated industries or markets could be validated and governed within the New gTLD Program.

There is experience from the 2012 round that will better inform the identification of categories of application types, though it may still be challenging to ensure the right application types are identified and defined. It should therefore be considered what recourse should be available should a certain category be critically left absent when the next round (or other mechanism) of the New gTLD Program launches.

- *4.2.15.3 Relevant Guidance*
  - GAC Beijing Communiqué - [https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013\\_Final.pdf?version=1&modificationDate=1365666376000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2)
  - GAC Advice: Category 1 Safeguards - <http://newgtlds.icann.org/en/applicants/gac-advice/cat1-safeguards>
  - GAC Advice: Category 2 Safeguards - <https://newgtlds.icann.org/en/applicants/gac-advice/cat2-safeguards>
  - GDD Input to the DG - <https://community.icann.org/download/attachments/49356545/Staff-input-to-DG-23jan15.pdf?version=1&modificationDate=1425335232000&api=v2>
  - Annex A related to a resolution on Planning for Future gTLD Application Rounds - <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>
  
- *4.2.15.4 Rationale for Policy Development*

Defining application categories was deemed to be challenging during the development of the 2007 Final Report and it will likely remain challenging if a potential PDP-WG on New gTLD Subsequent Procedures decides to undertake the task. Beyond simply identifying categories, the PDP-WG would need to consider the development of distinct and enforceable definitions, development of separate requirements and processes, validation and enforcement measures, and a process to switch categories post-delegation, among many other areas of work.

Given the likely complexity of establishing application categories, policy development is expected if this subject is undertaken by the PDP-WG.

#### 4.2.16 Application Submission Limits

- *4.2.16.1 Explanation of Subject*

There were no policy recommendations in the 2007 Final Report that sought to place restrictions on the number of applications that could be submitted from a single applicant. As such, in the 2012 New gTLD Program round, applicants were not limited in the number of applications they could submit.

- *4.2.16.2 Questions and Concerns Related to Subject*

With the current implementation of the New gTLD Program, the DG noted that allowing unlimited applications from any applicant can make it more difficult for applicants with limited funding to adequately compete. Allowing unlimited applications creates more competition for the most valuable strings, making it especially difficult for applicants from underserved regions to realistically secure certain strings. With auctions identified as the method of last resort to resolve string contention, likely benefitting applicants with the deepest pockets, it makes it challenging for ICANN to achieve Article 1, Section 2,6 of its Bylaws:

*Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.*

In considering establishing limits, DG Members identified a number of questions or concerns that would require deliberations, including:

- Are there questions of fairness in establishing limits? Are there anti-trust implications for ICANN in possibly restricting competition for a scarce resource?
- What is a reasonable limit of applications per applicant?
- With the use of shelf-companies and consultants, is it feasible to restrict applications from an applicant?

Besides restricting the number of applications that an applicant can submit, the DG also considered measures that could be taken after submission. For instance, a limit could be established after string contention sets are established, requiring applicants to prioritize in the selection of their strings. The DG also identified the use of a comparative evaluation resolution method, which for instance could weight certain attributes, such as those related to communities, higher than commercial interests. However, in considering a less objective measure like comparative evaluation, it may warrant taking

into account the challenges in implementing and operating Community Priority Evaluation (CPE), discussed in detail in section 4.4.5 on Community Applications. A comparative evaluation inherently creates winners and losers and the loser will be inclined to challenge the result more so than in the case where more objective measures are utilized (i.e., auctions).

The DG noted the possibility of a dedicated round for certain categories of applicants, such as those from Developing Countries, to help address the issues identified above. The DG also noted an alternative approach to a dedicated round could be placing caps on applicants from certain regions, industries, etc. The concept of a dedicated round or caps on applications from certain parties may be considered exclusionary and could introduce fairness issues that should be fully considered.

- *4.2.16.3 Relevant Guidance*

- N/A

- *4.2.16.4 Rationale for policy development:*

Application limits were not discussed in the 2007 Final Report. If a potential PDP-WG on New gTLD Subsequent Procedures decides to undertake the task, it may need to consider defining the application limitation mechanism, assessing and resolving any questions related to the legality of the mechanism, establishing requirements, establishing validation and enforcement measures, among other elements, as suggested by the DG.

Given the likely complexity of establishing application limits, policy development is anticipated if this subject is undertaken by the PDP-WG.

#### **4.2.17 Variable Fees**

- *4.2.17.1 Explanation of Subject*

For the 2012 New gTLD Program round, the application fee of \$185,000 USD was the same for all applicants, save for two exceptions - applicants eligible for the year 2000 proof of concept credit and applicants approved via the Applicant Support Program (ASP). As application types were limited to standard applications and community-based applications, a single application fee price point was selected. Other elements that only applied to certain applications required the submission of additional fees that were collected separately, which included objections, registry services evaluation, and Community Priority Evaluation (CPE). The single application fee price point was also consistent with the approach to treat every application individually and consistently.

While there was little variability in the application fee amount, it could be considered consistent with Implementation Guideline B:

*Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process.*

*Application fees may differ for applicants.*

The ASP was a reflection of Implementation Guideline N:

*ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.*

- *4.2.17.2 Questions and Concerns Related to Subject*

As noted above, establishing the single application fee, with few exceptions, was consistent with the approach of minimal application types and evaluating each application individually and consistently. DG Members noted that program elements that likely resulted in economies of scale, such as the submission of essentially identical applications or the utilization of a limited set of back-end providers, could be considered for a reduced application fee amount in subsequent procedures.

The DG also noted that the possible introduction of different TLD types, such as .Brand, strings related to regulated industries, or other types that a potential PDP-WG on New gTLD Subsequent Procedures may seek to recommend, could result in differing application evaluation tracks which may accordingly warrant the consideration of different applications fees.

The topic of variable application fees is likely an output of many other subjects that the possible PDP-WG may consider, such as the aforementioned application types, ASP, accreditation programs, or other new developments. This subject should also be considered in concert with discussions related to section 4.2.10 on Application Fees (or combined).

- *4.2.17.3 Relevant Guidance*

- Implementation Guideline B
- Implementation Guideline N

- *4.2.17.4 Rationale for Policy Development*

As noted above, the application fee is likely to be driven by any changes to the program and should remain dependent upon the principle of cost recovery (as opposed to generating excess revenues), as recommended in Implementation Guideline B. In

addition, the existing language in Implementation Guideline B supports the concept of differing application fee amounts for different applicants. The creation of application types could result in the requirement to perform a new costing analysis exercise based on changes that have been recommended for implementation.

The derivation of the fee amounts may be driven by changes to the program, and as such, policy development was not anticipated by the DG, though a possible PDP-WG may reach a different conclusion. Notably, subjects such as the ASP do not currently operate under the principle of cost recovery like the rest of the program and may require policy development.

### 4.3 Group 2 Legal / Regulatory

**The subjects in this section are in relation to the following elements from the 2007 Final Report, as categorized by the DG:**

- **Recommendations 5, 10, 14, 15, 16, 17 and 19;**
- **Implementation Guidance I, J, K and L, and<sup>63</sup>;**
- **New Topics: “Second-level Rights Protection Mechanisms”, “Registry/Registrar Standardization”, “Global Public Interest” and “IGO/INGO Protections”**

#### 4.3.1 Reserved Names

- *4.3.1.1 Explanation of Subject*

In support of the PDP on the Introduction of New Generic Top-Level Domains, the GNSO Council created the Reserved Names Working Group (RN-WG), which was tasked with developing recommendations regarding the role and treatment of reserved domain names at the first and second level within New gTLDs. The RN-WG worked to develop a set of reserved names definitions that would apply:

- At the top-level regarding gTLD string restrictions;
- At the second-level as contractual conditions, and;
- At the third-level as contractual conditions, where applicable.

The RN-WG reviewed, considered, and integrated recommendations found in the GAC Principles Regarding New gTLDs<sup>64</sup> and the IDN-WG Final Report<sup>65</sup>, eventually developing a set of final recommendations, available in the group’s final report, published in May of

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<sup>63</sup> Ibid

<sup>64</sup> GAC Principles Regarding New gTLDs: <https://archive.icann.org/en/topics/new-gtlds/gac-principles-regarding-new-gtlds-28mar07-en.pdf>

<sup>65</sup> IDN-WG Final Report: <http://gns0.icann.org/en/drafts/idn-wg-fr-22mar07.htm>

2007<sup>66</sup>. This report was reviewed and the recommendations were updated at ICANN29 in Puerto Rico, in particular affecting recommendations related to IDNs. These final recommendations were then integrated into the PDP on the Introduction of New Generic Top-Level Domains, where they can be found in the Final Report under Term of Reference - Selection Criteria, section 4, regarding Recommendation 5.

Recommendation 5 states very simply that:

*Strings must not be a Reserved Word.*

The 2007 Final Report provides the specific top-level, second-level, and third-level string restrictions.

The implementation of Recommendation 5 was not merely a list of strings that applicants were prevented from applying for and instead, were integrated into a number of elements regarding the string reviews described in the AGB. For instance, while there was a list of top-level reserved names in section 2.2.1.2.1 of the AGB, the RN-WG recommendations also guided the development of the technical string requirements in section 2.2.1.3.2 of the AGB on string composition for ASCII and IDN strings as well as the Geographic Names requirements in section 2.2.1.4.2 of the AGB.

- *4.3.1.2 Questions and Concerns Related to Subject*

The Reserved Names list and string requirements were intended to provide a measure of certainty to applicants in selecting their strings, which given the inability to change their string after application submission, was of utmost importance. It was acknowledged that these provisions might not be fully comprehensive, as evidenced by the existence of the DNS Stability review described in section 2.2.1.3.1 of the AGB.

DG members noted that the string requirements should be re-examined, to determine if the policy could be changed in regards to things like special characters, 2 letter strings, single letter strings, etc. The DG also noted that the requirements around geographic names may require debate as well, as issues were encountered around certain strings, especially those that related to geographic regions or regional indicators as identified in the GAC's Beijing Communiqué from 2013<sup>67</sup>. Additionally, country or territory names were unavailable in the 2012 New gTLD Program round per the guidance in section 2.2 of the GAC Principles Regarding New gTLDs:

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<sup>66</sup> RN-WG Final Report: <http://gnso.icann.org/en/issues/new-gtlds/final-report-rn-wg-23may07.htm>

<sup>67</sup> GAC Beijing Communiqué: [https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013\\_Final.pdf?version=1&modificationDate=1365666376000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2)

*ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.*

A potential PDP-WG on New gTLD Subsequent Procedures could consider collaborating with other parts of the ICANN community, such as the GAC or ccNSO in particular, in determining if strings described above should be allowed and if so, what requirements would be needed to govern that process. The PDP-WG should also consider the work of the Cross-Community Working Group on Use of Country/Territory Names as TLDs before reaching any conclusions.

- **4.3.1.3 Relevant Guidance**

- Recommendation 2
- Recommendation 5
- Reserved Names Working Group (RN-WG) Final Report - <http://gnso.icann.org/en/issues/new-gtlds/final-report-rn-wg-23may07.htm>
- Excerpts from RN-WG Report - <http://gnso.icann.org/en/issues/new-gtlds/excerpts-gnso-reserved-names-wg-report-22oct08.pdf>
- GAC Principles Regarding New gTLDs - <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>
- Cross-Community Working Group on Use of Country/Territory Names as TLDs - <http://ccnso.icann.org/workinggroups/ccwg-unct.htm>
- Protection of IGO-INGO Identifiers in all gTLDs - <http://gnso.icann.org/en/group-activities/active/igo-ingo>

- **4.3.1.4 Rationale for Policy Development**

If a potential PDP-WG on New gTLD Subsequent Procedures recommends that material changes are needed to Recommendation 5 or the composition of the Reserved Names list, as noted in Specification 5 of the base agreement, and its usage within the program, policy development is likely needed.

### **4.3.2 Base registry agreement**

- **4.3.2.1 Explanation of Subject**

The 2007 Final Report recommended that a base registry agreement be developed in support of the implementation of the policy recommendations. The base agreement would be available to potential applicants at least four months prior to the opening of the New gTLD Program application submittal period, allowing applicants to better understand contractual requirements and make a more informed decision about

applying and designing their business plan. There were several recommendations that were applicable to the base agreement.

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 renewal expectancy.*

Implementation Guideline J

*The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place.*

The base agreement was available in Module 5 of the very first draft version of the AGB and onwards to the final version AGB, and was therefore available for community refinement throughout the entire process. The base agreement was intended to be the starting point for all registries for signing the Registry Agreement, but it did not preclude applicants from negotiating specific changes with ICANN.

Although the program, the AGB, and by extension the base agreement, were approved by the ICANN Board in June 2011<sup>68</sup>, a number of subsequent changes to the base agreement were needed. On 11 January 2012, ICANN published a revised AGB that included minor revisions to clarify some existing provisions of the base agreement<sup>69</sup>, which was the version of the base agreement made available prior to the launch of the New gTLD Program.

Although intended to be the final form of the base agreement, it was revised multiple times as additional program elements were worked on in the community and required integration into the base agreement.

The June 2012 version of the base agreement had a minor correction to a reference in Specification 3 of the base agreement.

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<sup>68</sup> June 2011 AGB: <https://archive.icann.org/en/topics/new-gtlds/rfp-clean-30may11-en.pdf>

<sup>69</sup> June 2012 AGB: <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v9>

The July 2013 version integrated Public Interest Commitments (PICs) and the New gTLD registry operator requirement to use registrars that were a party to the 2013 RAA via Specification 11<sup>70</sup>.

The October 2013 version integrated protections for Intergovernmental Organizations (IGOs), the International Olympic Committee, and the International Red Cross and Red Crescent within Specification 5, as well as integrating a “Name Collision Occurrence Management” section within Specification 6<sup>71</sup>.

The January 2014 version, which is the current form of the base agreement, inserted URLs in the sections below, where placeholders had previously existed<sup>72</sup>:

- Section 2.19 (RRDRP)
- Section 1 of Specification 7 (Trademark Clearinghouse Requirements)
- Section 2(a) of Specification 7 (PPDRP and RRDRP)
- Section 2(b) of Specification 7 (URS)
- Section 2 of Specification 11 (PICDRP)

In February of 2014, the NGPC adopted an implementation framework to address GAC Category 1 Safeguard Advice related to “consumer protection, sensitive strings, and regulated markets”<sup>73</sup>, which required standardized safeguards to be added to Specification 11 as PICs.

In March of 2014, the NGPC passed a resolution approving Specification 13 for .Brand TLDS<sup>74</sup>.

- *4.3.2.2 Questions and Concerns Related to Subject*

The DG members identified specific concerns, but few seemed to apply directly to the existing 2007 Final Report guidance and the implementation of those recommendations. The concerns of the DG were mostly focused on the fact that the base agreement went through a number of new versions after the launch of the program.

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<sup>70</sup> July 2013 version of the base agreement: <https://www.icann.org/resources/pages/base-agreement-2013-02-05-en>

<sup>71</sup> October 2013 version of the base agreement: <https://newgtlds.icann.org/en/applicants/agb/agreement-approved-16oct13-en.pdf>

<sup>72</sup> January 2014 version of the base agreement: <http://newgtlds.icann.org/en/applicants/agb/agreement-approved-09jan14-en.pdf>

<sup>73</sup> ICANN Board resolution adopting implementation framework regarding GAC Category 1 Safeguard Advice: <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a>

<sup>74</sup> ICANN Board resolution approving Specification 13: <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-03-26-en#1.a>

However, the DG identified a number of specific questions, many regarding the contractual requirements of registries. In addition, public comment received to the Preliminary Issue Report suggested that some elements, such as registry pricing, sunrise periods and practices, and other things have been perceived by some in the community to have circumvent the intended goals/protections developed by the community, especially in regards to potential registrants seeking to protect their rights in names. These topics may be appropriate to be discussed in part in the context of 4.3.7 on Second-level Rights Protection Mechanisms, but the enforcement of any new requirements that may be agreed upon would be via the base agreement/Registry Agreement. As such, a PDP-WG could consider amending existing base agreement language in accordance with defined policy goals.

Any new or amended requirements may also warrant inclusion in sections such as 4.6.2 on Applicant Reviews: Technical/Operational and Financial, where for instance, questions could be asked in the Evaluation Questions and Criteria. Ensuring consistency between questions asked, the representations made in applications, and the enforceability of those representations via signed Registry Agreements may be a topic for consideration.

- Does a single base agreement make sense for all types of registries?
- Should the base agreement be available in different languages?
- How can Specification 13, related to .Brand registries, be clarified, or otherwise improved?
- Should rules, definitions, and requirements be established around the selling and maintenance of premium names?
- Should there be rules and restrictions around registry pricing, particularly around premium names? Is it appropriate for ICANN to have a role in enforcing restrictions around pricing? Are there other approaches that can be taken to address concerns?
- Are public interest commitments (PICs), via Specification 11, sufficient to protect the interests of potentially affected parties?
- Should the rules around reservation of domain names by the registry be changed?
- Should there additional contractual obligations for highly regulated TLDs

A potential PDP-WG on New gTLD Subsequent Procedures may want to consider these questions, among others, during their deliberations. The PDP-WG may also want to suggest methods to avoid changes to the base agreement after the launch of subsequent procedures.

An additional area that may require attention from the PDP-WG is the development of requirements around different application types, as a single base agreement may be impractical for that situation.

- **4.3.2.3 Relevant Guidance**

- Recommendation 10:
- Recommendation 14:
- Recommendation 15:
- Implementation Guideline J
- Base Agreement - <https://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting>

- **4.3.2.4 Rationale for Policy Development**

The development of the base agreement appeared to be consistent with the recommendations from the 2007 Final Report. However, there are a number of elements that may require discussions within a potential PDP-WG on New gTLD Subsequent Procedures, notably around the possible development of different contractual requirements for different TLDs and suggestions on how to prevent changes to the base agreement post program launch. Consequently, policy development may be necessary.

### 4.3.3 Registrant Protections

- **4.3.3.1 Explanation of Subject**

Principle D states that:

*A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.*

And in the attachment to Module 2 in the AGB<sup>75</sup>, it states:

*Registrant protection is emphasized in both the criteria and the scoring.*

*Examples of this include asking the applicant to:*

- *Plan for the occurrence of contingencies and registry failure by putting in place financial resources to fund the ongoing resolution of names while a replacement operator is found or extended notice can be given to registrants,*
- *Demonstrate a capability to understand and plan for business contingencies to afford some protections through the marketplace,*
- *Adhere to DNS stability and security requirements as described in the technical section, and*
- *Provide access to the widest variety of services.*

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<sup>75</sup> Ibid

The technical evaluation requirements included several questions related to registry failure protections, such as registry continuity, registry transition, and failover testing. In addition, there were program elements like the Continuing Operations Instrument (COI) in Question 50 of the evaluation criteria and Specification 8 of the base agreement and the Emergency Back-end Registry Operator (EBERO) as additional registrant protection measures.

- *4.3.3.2 Questions and Concerns Related to Subject*

While there were no objections raised to registrant protections in the general sense, there was a concern raised by the DG that registrant protections could be considered unnecessary when there are no registrants in the registry, outside of the registry itself, that presumably would not require protections, as the case may be for .Brand or other possible closed or exclusive use registries. This subject may warrant consideration during wider discussions around application types.

As written, the AGB appears to have assumed that there would always be registrants that may require protection in the event of registry failure. A possible PDP-WG on New gTLD Subsequent Procedures may want to consider if there are practical changes that can be made to account for circumstances where there may be no registrants that require protections. The development of a separate standard in certain specified cases may be warranted.

- *4.3.3.3 Relevant Guidance*

- Principle D
- Attachment to Module 2 in the AGB

- *4.3.3.4 Rationale for Policy Development*

Registrant protections are an important aspect of the program and determining if they are unneeded in certain circumstances should be carefully considered. As such, a potential PDP-WG on New gTLD Subsequent Procedures may want to consider policy development in establishing the requirements where exceptions may be applicable.

### **4.3.4 Contractual Compliance**

- *4.3.4.1 Explanation of Subject*

Within the base agreement, and subsequently the Registry Agreements that applicants sign, are provisions spelling out the contractual requirements that the applicants, or

registries at that stage, must meet, or be subject to specific enforcement measures. The contractual compliance mechanisms related to registries are in support of Principle E:

*A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.*

And Recommendation 17:

*A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.*

As noted in section 5.4.2 of the AGB:

*ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations.*

- *4.3.4.2 Questions and Concerns Related to Subject*

The DG did not have specific concerns related to this subject, but wanted it captured as a potential topic for discussion and to ensure that contractual compliance, as it relates to new gTLDs, may be considered within scope in the event that there are concerns identified during the course of possible deliberations. However, it should be noted that the role of contractual compliance is to ensure that ICANN's contracted parties fulfill the requirements set forth in their agreement with ICANN<sup>76</sup>; changing this role is not within the remit of a GNSO PDP-WG.

Public comments identified a number of operational practices that the commenters found troubling, though they note that ICANN contractual compliance is only able to enforce contractual obligations or prohibitions against certain conduct that are accounted for in the Registry Agreement. Introducing new requirements on registries would need to be done in the context of an agreement (i.e., base agreement/Registry Agreement) for contractual compliance to be able to ensure the fulfillment of those requirements.

Another comment noted that it is unclear how much reliance can be placed on the representations made by applicants in their submitted application. This poses a challenge as the representations are intended to be used for public comment, GAC Advice, objections, etc. However, the ability to rely on application statements may have been undermined by change requests to these representations, or by the possibility that they were not adequately integrated into the signed Registry Agreement in order to be

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<sup>76</sup> See <https://www.icann.org/resources/pages/compliance-2012-02-25-en>

enforceable, though Specification 11 in the RA was intended to address this concern, at least in part. These issues may be more appropriately discussed and possibly addressed by making changes to the application submission, evaluation, and contracting processes, rather than in the context of contractual compliance.

- *4.3.4.3 Relevant Guidance*
  - Principle E
  - Recommendation 17
- *4.3.4.4 Rationale for Policy Development*

As there were no specific concerns identified by the DG, the subject of Contractual Compliance is not seen to require any type of policy development. Public comments identified concerns around applicant representations in their applications, the reliance the community can place on those representations, and how those representations are ultimately integrated into the Registry Agreement. These concerns may be best addressed via recommendations related to the application submission and evaluation processes, as well as potentially translating those representations in contractual requirements, as changing the role of contractual compliance is considered outside the remit of a GNSO PDP-WG.

#### 4.3.5 Registrar Non-Discrimination

- *4.3.5.1 Explanation of Subject*

The 2007 Final Report required that registries must use ICANN-accredited registrars, which are under contract with ICANN and as such, must fulfill the obligations of their Registrar Accreditation Agreement (RAA). This requirement was consistent with existing practices at that time, which viewed those contractual requirements as supporting the security and stability of the DNS by promoting beneficial behaviors through adherence to the RAA. In addition, Recommendation 19 stated that registries could not discriminate among accredited registrars:

*Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.*

Historically, registries were unable to also act as registrars and the 2007 Final Report<sup>77</sup> recommended that this practice be maintained. During deliberations of the policy, the Registry Constituency (RyC) noted that small, specialized registries may encounter issues in finding registrars to offer their TLD if there is perhaps no compelling business reason

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<sup>77</sup> Ibid

for registrars to do so. Though registry agreements prevented registries from also acting as registrars at the time, the idea was suggested that a registry owner could act as a registrar for its own TLD to alleviate the issue just described. However, in November of 2012, the ICANN Board approved the removal of the restriction on cross ownership in Registry Agreements<sup>78</sup>, the principles of which were integrated into the AGB, in the base agreement as well as in section 5.1, which states:

*The applicant must report: (i) any ownership interest it holds in any registrar or reseller of registered names, (ii) if known, any ownership interest that a registrar or reseller of registered names holds in the applicant, and (iii) if the applicant controls, is controlled by, or is under common control with any registrar or reseller of registered names. ICANN retains the right to refer an application to a competition authority prior to entry into the registry agreement if it is determined that the registry-registrar cross-ownership arrangements might raise competition issues. For this purpose "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.*

- 4.3.5.2 Questions and Concerns Related to Subject

As noted above, the situation in which registrars may have no business incentive to offer a particular TLD was considered during the policy development process. Concerns similar to those raised by the RyC previously, were again noted by DG Members, particularly in regards to .Brands.

Registries that applied for corporate identifiers, or .Brands, had concerns with the Registry Code of Conduct<sup>79</sup>, particularly the contractual requirement to use accredited registrars, but more specifically the non-discrimination aspect. As such, the Brand Registry Group engaged with ICANN to develop a solution that would address the concerns of its constituents, which led to the drafting of Specification 13. Specification 13 established a definition for a Brand category of applicants and allowed those that qualified, to designate up to three ICANN accredited registrars to serve as the exclusive registrars for their TLD<sup>80</sup>. Specification 13 also, by default, includes an exemption to the Registry Code of Conduct.

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<sup>78</sup> ICANN Board resolution approving the removal of cross ownership restrictions in registry agreements: <https://features.icann.org/2010-11-05-new-gtlds-cross-ownership-issues-registries-and-registrars>

<sup>79</sup> Registry Code of Conduct: <http://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting#conduct>

<sup>80</sup> Specification 13: <http://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting#spec13>

In passing a resolution on Specification 13<sup>81</sup>, the NGPC acknowledged that Specification 13 was contrary to Recommendation 19 and requested consideration of the matter by the GNSO. In its response<sup>82</sup>, the GNSO Council confirmed that the provision was indeed inconsistent with Recommendation 19, but did not object to adoption of Specification 13 in its entirety. A potential PDP-WG on New gTLD Subsequent Procedures may want to consider updating the existing policy recommendation to ensure it is consistent with the current environment, as well as exploring whether other well-defined groups of applicants might warrant an exception.

The DG identified several other items for consideration, including:

- Should registries be able to market directly to or otherwise contact potential customers?
  - Is there a need for more distinct separation of registry and registrar entities?
- *4.3.5.3 Relevant Guidance*
  - Recommendation 19:
- *4.3.5.4 Rationale for Policy Development*

As noted above, Recommendation 19 should be made consistent with the changes resulting from the adoption of Specification 13. If there are additional changes a potential PDP-WG on New gTLD Subsequent Procedures foresees, such as identifying additional situations where exceptions to the registrar non-discrimination recommendations, it may also require policy development.

### 4.3.6 TLD Rollout

- *4.3.6.1 Explanation of Subject*

The 2007 Final Report included language intended to prevent TLD “squatting”, which is captured in Implementation Guideline I:

*An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.*

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<sup>81</sup> ICANN Board resolution regarding Specification 13: <https://features.icann.org/approval-registry-agreement-specification-13-brand-category-applicants>

<sup>82</sup> GNSO correspondence to NGPC regarding Specification 13: <http://gns0.icann.org/en/correspondence/robinson-to-chalaby-09may14-en.pdf>

In the AGB, the spirit of this guidance was captured in both contracting and delegation. Applicants that have completed the evaluation process are expected to execute their Registry Agreement within nine months, as stated in section 5.1 of the AGB:

*Eligible applicants are expected to have executed the registry agreement within nine (9) months of the notification date. Failure to do so may result in loss of eligibility, at ICANN's discretion. An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN's reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.*

Per the base agreement, after execution of the Registry Agreement, applicants are expected to have had their TLD delegated into the root zone within 12 months of the Effective Date, as stated in Article 4.3.b of the base agreement:

*ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.*

The implementation sought to capture the intent of the guidance from the 2007 Final Report, but also allow some level of flexibility where applicants might have difficulty in meeting the specified deadlines, but are working in good faith to complete necessary steps.

- **4.3.6.2 Questions and Concerns Related to Subject**

The DG questioned whether adequate time was allowed for the rollout of TLDs, noting that upon delegation of the TLD to the Registry Operator, recurring registry-level fees are due to be paid to ICANN. The requirements in the AGB and base agreement seek to follow the guidance provided in the 2007 Final Report, while accounting for circumstances that may cause an applicant (or registry) to have difficulty in meeting the timeline requirements.

It is unclear if the concerns related to delegation timeline requirements are widely held, so a potential PDP-WG on New gTLD Subsequent Procedures may want to collect data, possibly through applicant surveys or other mechanisms, to determine the scope of the

issue, and to the extent that there is a significant issue, seek information on what the community thinks is a more appropriate timeline.

- *4.3.6.3 Relevant Guidance*
  - Implementation Guideline I
- *4.3.6.4 Rationale for Policy Development*

A potential PDP-WG on New gTLD Subsequent Procedures may want to determine the extent of the concerns related to delegation timeline requirements and then consider developing solutions accordingly. If mitigation is needed, it may warrant expanding upon the language in Implementation Guideline I, or other development of policy language.

### **4.3.7 Second-level Rights Protection Mechanisms**

- *4.3.7.1 Explanation of Subject*

The 2007 Final Report discussed the protection of legal rights of others, but it was seemingly in the context of top-level strings, as described in Recommendation 3:

*Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.*

*Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).*

However, minimal guidance was provided for Rights Protection Mechanisms (RPMs) at the second-level. RPMs such as the Trademark Clearinghouse (TMCH)<sup>83</sup> and the Uniform Rapid Suspension (URS)<sup>84</sup> which were developed during the implementation phase of the New gTLD Program and not via policy recommendations or policy development. However, the GNSO had the opportunity to review these proposed RPMs, done via the Special Trademark Issue Review Team (STI)<sup>85</sup>, which produced endorsements and

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<sup>83</sup> Trademark Clearinghouse page: <http://newgtlds.icann.org/en/about/trademark-clearinghouse>

<sup>84</sup> Uniform Rapid Suspension page: <http://newgtlds.icann.org/en/applicants/urs>

<sup>85</sup> STI Project page: <http://gns0.icann.org/en/group-activities/inactive/2010/sti>

revisions to the TMCH and URS that were ultimately integrated into the final versions of the protection mechanisms.

While there was limited RPMs guidance in the 2007 Final Report, it should be noted that the Protecting the Rights of Others Working Group (PRO WG) had discussed, "...what additional protections beyond the current terms in the registration agreement and existing dispute resolution mechanisms should be in place to protect the legal rights of others during the domain name registration process, particularly during the initial start up of a new gTLD where there is contention for what Registrants perceive as the "best" names,"<sup>86</sup> indicating that the need for future work was understood at the time.

- *4.3.7.2 Questions and Concerns Related to Subject*

The DG raised a number of concerns related to the RPMs developed to support the New gTLD Program. Members identified concerns regarding the development and implementation of both the TMCH and URS. The DG noted the following issues, comments, and suggestions, taken largely verbatim from group members' comments as found in the working materials of the group on the DG's community Wiki space<sup>87</sup>:

- Trademark Clearing House (TMCH)
  - Customer confusion caused by pre-registration claims notice requirement
  - Alleged abuse of TMCH protection mechanism for generic reservations
  - While the TMCH was introduced in 2013, there remain unresolved issues
  - Lack of input from registries/registrar during development
  - Can the scope, or value, of the TMCH registration be extended, for example, integrating to be used as proof for the UDRP
  - As TMCH recordal is a pre-requisite for qualifying as a .Brand under Specification 13, should the trademark requirement be removed?
  - Are the mandatory pre-registration TMCH notices to registrants necessary?
  - Issues around decision not to allow TM Claims for confusingly similar strings and "mark plus", where the "plus" is a descriptive term
  - Consider making the TM Claims service a genuinely protective mechanism by giving the TM owner advance notice of registration with a mechanism for objection
  - Rules are insufficiently clear and thus open to interpretation and abuse to circumvent the sunrise. Consideration needed as to whether there should be limits on the number of reserved names, prohibitions against reserving

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<sup>86</sup> Protecting the Rights of Others Working Group (PRO WG) Final Report:  
<http://gnso.icann.org/en/drafts/GNSO-PRO-WG-final-01Jun07.pdf>

<sup>87</sup> See  
[https://community.icann.org/download/attachments/49356545/New%20gTLD%20Subsequent%20Procedures\\_MM\\_6Oct2014.pdf?version=1&modificationDate=1412728208000&api=v2](https://community.icann.org/download/attachments/49356545/New%20gTLD%20Subsequent%20Procedures_MM_6Oct2014.pdf?version=1&modificationDate=1412728208000&api=v2)

- TMCH terms, and/or all subsequently-released names being offered on a sunrise.
- Consider level of fees, in particular for dotBrand registries who do not run a Sunrise
- Uniform Rapid Suspension
  - Should the URS be expanded beyond suspending the domain, like transferring the domain name to the trademark owner?
  - Consider whether appropriate to dispense with full assessment on merits if the registrant defaults, since de novo review is available
  - Is there a lack of balance between complainant and registrant? For instance, the Complainant cannot correct administrative errors and there is relatively limited financial risk to the registrant.
    - Complainant one year ban for two abusive complaints, possible permanent ban thereafter without appeal process

While there were a number of comments made by members in regards to rights protection mechanisms, it should be noted that there is a pending request from the GNSO Council for a Preliminary Issue Report on RPMs, which may lead to a PDP dedicated to the topic. As such, care should be taken to avoid conflicting work, if the PDP on RPMs is in fact initiated. Public comment received on the Preliminary Issue Report for New gTLD Subsequent Procedures suggested some specific questions and topics that should be considered, though as noted, the potential PDP-WG on RPMs may serve as a more optimal vehicle for resolution:

1. Whether RPMs are working as anticipated;
2. Whether and why trademark owners are avoiding or under-utilizing certain RPMs;
3. Whether registrar and registry practices are interfering with the effective operation of the RPMs, and;
4. Any other issues impacting the use or effectiveness of the RPMs.

The comment highlighted premium names, reserved names, trademark blocks, sunrise pricing and the TMCH, trademark claims services, URS, and post-delegation dispute resolution procedures as areas that should specifically be considered<sup>88</sup>. Any resulting recommendations could result in changes to the base contract, to the application submission process (e.g., Evaluation Questions and Criteria), and other perhaps other areas.

- *4.3.7.3 Relevant Guidance*

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<sup>88</sup> See the full public comment here: <http://forum.icann.org/lists/comments-new-gtld-subsequent-prelim-31aug15/msg00004.html>

- Protecting the Rights of Others Working Group (PRO WG) Final Report - <http://gnso.icann.org/en/drafts/GNSO-PRO-WG-final-01Jun07.pdf>
  - Information about the Special Trademark Issue Review Team (STI) - <http://gnso.icann.org/en/group-activities/inactive/2010/sti>
  - Information about the Trademark Clearinghouse (TMCH) - <http://newgtlds.icann.org/en/about/trademark-clearinghouse>
  - Information about Uniform Rapid Suspension (URS) - <http://newgtlds.icann.org/en/applicants/urs>
- **4.3.7.4 Rationale for Policy Development**

It is critical to note that there is a request for a Preliminary Issue Report on the “current state of all rights protection mechanisms (RPMs) for both existing and new gTLDs, including but not limited to the UDRP and the URS...”<sup>89</sup>, which was published for public comment<sup>90</sup> in October 2015 and may potentially lead to a PDP on that subject. As such, a potential PDP-WG on New gTLD Subsequent Procedures should consider how efforts should be coordinated to avoid duplication or creation of conflicting work. One possible outcome, as an example, could be that the PDP-WG on RPMs could determine that a particular element of their scope is better addressed by the PDP-WG on New gTLDs, or perhaps the effort is addressed in tandem by the two WGs, although presumably only one WG would be expected to provide policy recommendations on the subject.

Also of note, in support of the potential PDP-WG on RPMs, ICANN staff has performed RPM review activities in support of the CCT review, which may also help identify areas for policy development or implementation guidance that might be beneficial to consider<sup>91</sup>.

### 4.3.8 Registry/Registrar Standardization

- **4.3.8.1 Explanation of Subject**

The Registry-Registrar Agreement (RRA) is the agreement between a registry and a registrar. The contents of the RRA are not entirely dictated by ICANN and may vary from registry to registry. The New gTLD Program, nor the 2007 Final Report sought to establish absolute requirements for the RRA, though there are some provisions in the base agreement that do establish consistent requirements that registries must adhere to when dealing with any ICANN-accredited registrars who have entered into its RRA, including:

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<sup>89</sup> GNSO Council resolution requesting RPMs Preliminary Initial Report: <http://gnso.icann.org/en/council/resolutions#201112>

<sup>90</sup> See <https://www.icann.org/public-comments/rpm-prelim-issue-2015-10-09-en>

<sup>91</sup> See <https://newgtlds.icann.org/en/reviews/rpm>

- Provision of non-discriminatory access to its registry services
  - Provision of advance written notice of any price increases, including those related to Qualified Marketing Programs
  - Notification of the purpose for data collected about any personally identifiable information collected by the Registry Operator
  - Etc.<sup>92</sup>
- *4.3.8.2 Questions and Concerns Related to Subject*

DG Members noted that RRAs can vary from registry to registry, and with a growing population of registries, the increasing variability will make it more challenging for registrars. Instituting some additional measures for RRA standardization may be helpful. Most of the specific concerns were related to non-discriminatory treatment or access to registry services and included:

- Requiring the provision of RRA in languages other than English as a non-binding reference copy
- Response time requirements for Registries to accreditation requests
- Sunrise notice requirement expanded to availability of complete accreditation documentation and agreements at the time of the sunrise notice to allow timely accreditation
- Registry requirements to disclose all promotional programs offered to registrars.
- More transparency in contracting (NDAs, RRA, side letters, etc.)
- Removal of mandatory pre-registration TMCH notices to registrants

The issues identified here could possibly be discussed in concert with discussions related to section 4.3.5 on Registrar Non-Discrimination, or the categories could be combined.

- *4.3.8.3 Relevant Guidance*
  - Description of Agreements & Policies on icann.org - <https://www.icann.org/resources/pages/agreements-policies-2012-02-25-en>
- *4.3.8.4 Rationale for Policy Development*

As noted above, the contents of the RRA are established by the registry, not ICANN, although there are certain requirements placed on registries via the registry agreement. If there is community support to establish additional standardization of requirements within RRAs, it could be considered in the context of the base agreement. However, the subject may be beyond the scope of a potential PDP-WG for New gTLD Subsequent Procedures, which is presumably focused more narrowly on New gTLDs.

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<sup>92</sup> Base agreement Ibid

### 4.3.9 Global Public Interest

- 4.3.9.1 *Explanation of Subject*

One of the governing elements in introducing new gTLDs was that they adhere to ICANN's Mission and Core Values, with the subject of Global Public Interest specifically identified in Article 1, Section 2.6, which states:

*Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.*

The 2007 Final Report did not attempt to define, or measure the impact of the introduction of new gTLDs on the public interest. Only Recommendation 6 appeared to provide guidance on the subject, though it was limited to the composition of the string, not regarding the behavior of the registry:

*Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.*

*Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).*

- 4.3.9.2 *Questions and Concerns Related to Subject*

The ICANN Board provided suggestions on areas for possible policy work in Annex A to a resolution passed on 17 November 2014 on Planning for Future gTLD Application Rounds<sup>93</sup>. One of those areas identified was focused on “public interest guidance”, which the DG found to capture their issue sufficiently and succinctly:

*The New gTLD Program was developed in the spirit of advancing the public interest; however, existing policy advice does not define the application of “public interest” analysis as a guideline for evaluation determinations on individual applications. Issues such as those identified in GAC advice on safeguards, the development of Public Interest Commitments (PICs), and associated questions of*

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<sup>93</sup> Ibid

*contractual commitment and enforcement may be an area for policy development.*

Section 4.4.1 on Applicant Freedom of Expression contains substantial analysis around human rights and the global public interest and may be of some use to the discussion around this subject.

- *4.3.9.3 Relevant Guidance*
  - Annex A - <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>
- *4.3.9.4 Rationale for Policy Development*

ICANN's mission is primarily of a technical coordination role, though its core values note that in carrying out this mission, it should be done in a fashion that takes into account the public interest. A potential PDP-WG on New gTLD Subsequent Procedures may want to consider the issues identified above for possible policy development.

It should be noted that the discussion of global public interest is not isolated to the New gTLD Program and is possibly beyond the scope of this potential PDP-WG on New gTLD Subsequent Procedures. It may be more appropriate to integrate the definition of global public interest and ICANN's policies towards those interests, which would presumably be developed within the wider community. In particular, the development and implementation of a global public interest framework is part of ICANN's Strategic Plan<sup>94</sup> and the work related to this effort should be taken into account during PDP-WG deliberations.

#### **4.3.10 IGO/INGO Protections**

- *4.3.10.1 Explanation of Subject*

Some level of IGO/INGO protections were included in the AGB, though there was no guidance from the 2007 Final Report. The AGB included a list of Red Cross and International Olympic Committee (IOC) names that were prohibited from delegation during the 2012 New gTLD round. In addition, an IOC, Red Cross, and IGO reserved names list was established to prevent the registration of certain names at the second-level<sup>95</sup>. These temporary protections were put in place until a more permanent policy could be developed.

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<sup>94</sup> See: <https://features.icann.org/plan/objective/9622286347d80fd5fd89d3b537417aeb>

<sup>95</sup> Reserved names XML list: <https://www.icann.org/sites/default/files/packages/reserved-names/ReservedNames.xml>

- *4.3.10.2 Questions and Concerns Related to Subject*

The PDP for Protection of IGO and INGO Identifiers in All gTLDs<sup>96</sup> provided recommendations for preventative protections, though some were identified to be inconsistent with GAC Advice. The GNSO has been asked to consider modifying its policy recommendations to address conflicts with GAC Advice.

The PDP on Curative Rights Protections for IGO/INGOs is actively considering solutions to allow access by IGOs and INGOs to curative rights mechanisms<sup>97</sup>.

The DG did not raise any concerns related to this subject, though it was an area identified in Annex A to a resolution passed on 17 November 2014 on Planning for Future gTLD Application Rounds<sup>98</sup>.

- *4.3.10.3 Relevant Guidance*

- PDP for Protection of IGO and INGO Identifiers in All gTLDs - <http://gns0.icann.org/en/group-activities/active/igo-ingo>
- PDP on Curative Rights Protections for IGO/INGOs - <http://gns0.icann.org/en/group-activities/active/igo-ingo-crp-access>

- *4.3.10.4 Rationale for Policy Development*

As of this writing, there are two active PDP-WGs addressing the issue of IGO and INGO protections. As the DG did not identify any issues beyond the scope of these two PDP-WGs, the DG did not anticipate that any additional policy development would be needed.

### **4.3.11 Closed Generics**

- *4.3.11.1 Explanation of Subject*

The 2007 Final Report did not provide guidance related to closed generics (e.g., restrictions on registration policies) and consequently, the AGB did not necessarily provide specific specifications or guidelines on the issue. However, the base agreement

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<sup>96</sup> PDP for Protection of IGO and INGO Identifiers in All gTLDs project page:

<http://gns0.icann.org/en/group-activities/active/igo-ingo>

<sup>97</sup> PDP on Curative Rights Protections for IGO/INGOs project page: <http://gns0.icann.org/en/group-activities/active/igo-ingo-crp-access>

<sup>98</sup> Board Resolution Ibid

did include a provision that allowed an exemption to the Registry Operator Code of Conduct in specific instances:

*Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.*

After applications from the 2012 New gTLD Program round were published, concerns were raised in public comments and by the GAC, via Early Warnings and later via GAC Advice, that some registries proposed to use their applied-for generic string in an inappropriately exclusive manner, which some felt created an unfair competitive advantage and was against the public interest. As a result of these concerns, the ICANN Board requested that ICANN staff open a public comment forum on the topic of "closed generic" TLDs<sup>99</sup>. Accordingly, staff opened the public comment period on 5 February 2013 and closing it on 7 March 2013<sup>100</sup>. Coinciding with the closure of the public comment forum on the topic, the GNSO submitted correspondence to the ICANN Board<sup>101</sup>, noting that the GNSO did not have adequate time during the short period to establish formal policy guidance, though GNSO Stakeholder Groups and Constituencies Groups had submitted their views through the public comment forum. ICANN staff compiled and analyzed the public comments, publishing their report of public comments on 8 July 2013<sup>102</sup>.

- *4.3.11.2 Questions and Concerns Related to Subject*

The subject of closed generics is not new, as indicated by the text above. While the DG identified closed generics as a topic of concern, wondering whether they should be allowed, specific concerns were not identified. However, the public comment forum for closed generics received substantial input in identifying a number of key issues, which will be briefly summarized here and can be viewed in their entirety in the staff public comment summary and analysis discussed above.

Some questions, concerns, and suggestions include:

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<sup>99</sup> See ICANN Board Resolution: <https://features.icann.org/closed-generic-top-level-domains>

<sup>100</sup> See <https://www.icann.org/resources/pages/closed-generic-2013-02-05-en>

<sup>101</sup> GNSO Correspondence: <http://gns0.icann.org/en/correspondence/robinson-to-crocker-chalaby-07mar13-en.pdf>

<sup>102</sup> See <https://www.icann.org/en/system/files/files/report-comments-closed-generic-08jul13-en.pdf>

- Allowing a single entity to exclusive use of a generic term may allow them to have an inappropriate level of control over that term at the top-level, in particular for industry terms, where that exclusive control could result in anti-competitive behavior.
- Exclusive access is contrary to competition and consumer choice, and may in fact result in user confusion
- Suggestion for defining generic including using principles of trademark law (i.e., a term that could not be trademarked should not be eligible to be operated in a “closed” fashion).
- Suggestion that it may be more practical to define conditions under which a TLD could be operated in a “closed” manner rather than trying to define generic.

This list is by no means exhaustive and is intended to be merely illustrative of the types of questions and suggestions that have already been raised and should be taken into account if and when a potential PDP-WG on New gTLD Subsequent Procedures deliberates on this subject. The PDP-WG may also want to take into account more recent concerns around closed generics, where a combination of extremely high registration costs and difficult to achieve registrant restrictions could effectively make a generic TLD a single registrant in practice.

- *4.3.11.3 Relevant Guidance*

- Closed generics public comment summary and analysis:  
<https://www.icann.org/en/system/files/files/report-comments-closed-generic-08jul13-en.pdf>
- GAC Advice Safeguards Category 2.2:  
<https://gacweb.icann.org/display/GACADV/2013-04-11-Safeguards-Categories-2>
- Board Resolution: <https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a>
- Steve Crocker ICANN BOARD Chair to Jonathan Robinson GNSO Council chair (27 July 2015) -  
<https://www.icann.org/en/system/files/correspondence/crocker-to-robinson-27jul15-en.pdf>
- Jonathan Robinson to Dr Steve Crocker Chairman ICANN Board (15 September 2015) - <http://gns0.icann.org/en/correspondence/robinson-to-crocker-15sep15-en.pdf>
- Dr Steven Crocker, chairman ICANN Board to Jonathan Robinson, GNSO Council chair (12 October 2015) -  
<http://gns0.icann.org/en/correspondence/crocker-to-robinson-gtld-strings-12oct15-en.pdf>

- [Volker Greimann & David Cake GNSO Council, Interim Co-Chairs to ICANN Board](http://gnso.icann.org/en/correspondence/gnso-council-to-crocker-24nov15-en.pdf) (24 November 2015) - <http://gnso.icann.org/en/correspondence/gnso-council-to-crocker-24nov15-en.pdf>

- **4.3.11.4 Rationale for Policy Development**

The topic of closed generics, and when exclusive registry access may be appropriate, has been a topic for extensive discussion within the community and there remain many open questions. In a resolution<sup>103</sup>, the ICANN Board has specifically requested that the GNSO include this topic in its policy work for new gTLD subsequent procedures, stating:

*NGPC requests that the GNSO specifically include the issue of exclusive registry access for generic strings serving a public interest goal as part of the policy work it is planning to initiate on subsequent rounds of the New gTLD Program, and inform the Board on a regular basis with regards to the progress on the issue.*<sup>104</sup>

With substantial community interest in the topic, and the specific request from the ICANN board, exclusive registry access for generic strings will likely require policy development. As suggested in the NGPC text above, this subject may be applicable to the discussion around global public interest as well.

## 4.4 Group 3: String Contention / Objections & Disputes

**The subjects in this section are in relation to the following elements from the 2007 Final Report, as categorized by the DG:**

- **Principle G;**
- **Recommendations 2, 3, 6, 12 and 20, and;**
- **Implementation Guidance F, H, P and R**<sup>105</sup>

### 4.4.1 New gTLD Applicant Freedom of Expression

- **4.4.1.1 Explanation of the Subject**

The 2007 Final Report attempted to balance the rights of applicants, as noted in Principle G, and others related to the program, as noted in Recommendation 3.

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<sup>103</sup> Board resolution: <https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a>

<sup>104</sup> See section 4.3.11.3 for correspondence between the ICANN Board and the GNSO related to exclusive Registry Access for gTLD strings representing generic terms.

<sup>105</sup> Ibid

**Principle G:**

*The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.*

**Recommendation 3:**

*Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).*

The issue, as identified by the DG, is whether ICANN gives adequate consideration to the protection of human rights, particularly with respect to new gTLDs and right to freedom of expression, freedom of association, freedom of religion, and principle of non-discrimination. This issue received particular attention upon the publication of a report by the Council of Europe, originally presented during the ICANN50 meeting in London that took place from 22 to 26 June 2014, entitled, "ICANN's Procedures and Policies in the Light of Human Rights, Fundamental Freedoms and Democratic Values."<sup>106</sup>

The issue raised by the report, and also by other groups within ICANN, is ICANN's impact on fundamental human rights, such as the right to freedom of expression or the right to privacy. More specifically, the Council of Europe seeks to determine ICANN's global public interest responsibilities from an international human rights perspective. The report references the Universal Declaration of Human Rights (UDHR),<sup>107</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>108</sup> the

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<sup>106</sup> See "ICANN's Procedures and Policies in the Light of Human Rights, Fundamental Freedoms and Democratic Values," Council of Europe, Updated 08 October 2014 at [http://www.coe.int/t/information/society/Source/DGI\\_2014\\_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf](http://www.coe.int/t/information/society/Source/DGI_2014_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf)

<sup>107</sup> See Universal Declaration of Human Rights (UDHR) at <http://www.un.org/en/documents/udhr/>

<sup>108</sup> See International Covenant on Economic, Social and Cultural Rights (ICESCR) at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>

International Covenant on Civil and Political Rights (ICCPR),<sup>109</sup> and the European Convention on Human Rights (ECHR).<sup>110</sup>

While the report notes that “ICANN’s remit does not generally extend to any examination of the content comprised in or to be hosted under TLDs” it further notes that “the approval or rejection of applied-for new gTLD strings may involve an evaluation process where judgments related to content are made.”<sup>111</sup> If such judgments result in the denial of an application for a new gTLD string they may violate the applicant’s right to freedom of expression.

To better understand this issue, it may be useful to briefly review the Initial Evaluation process as described in the Applicant Guidebook (AGB). The AGB notes that one of the two main elements of the Initial Evaluation is the string review (concerning the applied-for gTLD string). This evaluation includes a determination that the applied-for gTLD string is not likely to cause security or stability problems in the DNS, including problems caused by similarity to existing TLDs or reserved names.<sup>112</sup> (A “string” is the string of characters comprising an applied for gTLD.<sup>113</sup>) In addition, as described in Module 3 of the Applicant Guidebook, the Governmental Advisory Committee (GAC) may provide Advice on New gTLDs to the ICANN Board of Directors concerning a specific application, or a dispute resolution procedure may be triggered by a third party’s formal objection to an application.<sup>114</sup>

Objections that trigger the dispute resolution procedure include: 1) “String Confusion Objection”: a string is confusingly similar to an existing top-level domain or another string applied for in the same round of applications; 2) “Existing Legal Rights Objection”: a string comprising the potential new gTLD infringes the existing legal rights of others; 3) “Limited Public Interest Objection”: the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law; or 4) “Community Objection”:

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<sup>109</sup> See International Covenant on Civil and Political Rights (ICCPR) at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>110</sup> See European Convention on Human Rights (ECHR) at [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>111</sup> See “ICANN’s Procedures and Policies in the Light of Human Rights, Fundamental Freedoms and Democratic Values,” Council of Europe, Updated 08 October 2014, Chapter 2, at [http://www.coe.int/t/information/society/Source/DGI\\_2014\\_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf](http://www.coe.int/t/information/society/Source/DGI_2014_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf)

<sup>112</sup> See Applicant Guidebook Module 1, Introduction to the gTLD Application Process at <https://newgtlds.icann.org/en/applicants/agb/intro-04jun12-en.pdf>

<sup>113</sup> See new gTLD glossary at: <http://newgtlds.icann.org/en/applicants/glossary>

<sup>114</sup> See Application Guidebook Module 3, Objection Procedures at <https://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf> and New gTLD Dispute Resolution Procedure at <https://newgtlds.icann.org/en/applicants/agb/evaluation-questions-criteria-04jun12-en.pdf>

substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.<sup>115</sup>

Finally, Module 4 of the Applicant Guidebook, String Contention Procedures, notes that “ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction.”<sup>116</sup>

According to the Council of Europe report, “The use of domain names, including gTLDs, concerns forms of expression that are protected by international human rights law which, in Europe, the 47 member states of the Council of Europe have undertaken to secure as part of the framework of civil and political rights and freedoms provided in the ECHR.”<sup>117</sup> The report further notes that the European Court of Human Rights has emphasized that the Internet has become one of the principal means for individuals to exercise their right to freedom of expression.<sup>118</sup> The report emphasizes that “freedom of expression is one of the classic fundamental rights laid down in the constitutions of many countries and in many international treaties, including Article 29 of the Universal Declaration of Human Rights and, Article 19 of the International Covenant on Civil and Political Rights.”<sup>119</sup>

- *4.4.1.2 Questions and Concerns Related to Subject*

In Section 2.4 Human Rights Analysis of the New gTLD Application Procedures the report notes that there have been “several cases and disputes involving potentially ‘sensitive expressions’ in applied-for gTLDs which exemplify the delicate balance needed to protect the fundamental rights of applicants and other Internet users.”<sup>120</sup> It also notes that in addition to the GAC’s “Early Warning” channel, the Community Objection

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<sup>115</sup> See New gTLD Dispute Resolution Procedure at

<https://newgtlds.icann.org/en/applicants/agb/evaluation-questions-criteria-04jun12-en.pdf>

<sup>116</sup> See Applicant Guidebook Module 4, String Content Procedures at

<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>

<sup>117</sup> See “ICANN’s Procedures and Policies in the Light of Human Rights, Fundamental Freedoms and Democratic Values,” Council of Europe, Updated 08 October 2014, 2.3. Human Rights Framework Applicable to gTLD at

[http://www.coe.int/t/informationsociety/Source/DGI\\_2014\\_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf](http://www.coe.int/t/informationsociety/Source/DGI_2014_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf)

<sup>118</sup> Judgment of the European Court of Human Rights of 18 December 2012, § 54.

<sup>119</sup> Ibid, 2.3.2. Relevant Provisions at

[http://www.coe.int/t/informationsociety/Source/DGI\\_2014\\_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf](http://www.coe.int/t/informationsociety/Source/DGI_2014_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf)

<sup>120</sup> Ibid, 2.4.1 Problematic and Sensitive Applied-for Strings at

[http://www.coe.int/t/informationsociety/Source/DGI\\_2014\\_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf](http://www.coe.int/t/informationsociety/Source/DGI_2014_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf)

procedure might involve human rights considerations and cites the case of the .xxx gTLD application. In addition, the report notes that a trademark protection objection could be used as a means to limit the freedom of expression.<sup>121</sup> The report recommends that when assessing the possible restriction of offensive expression ICANN should “consider legal models outside of trademark law to better address the balance of speech rights.”<sup>122</sup>

The Council of Europe report uses the problems as noted by many in the community in regards to the Community Priority Evaluation (CPE) process. According to the Applicant Guidebook, if there is no self-resolution string contention for community-based applicants of identical strings a CPE may be requested.<sup>123</sup> The Council of Europe report noted, “The scope of ‘community’ could have an impact on human rights. A narrow interpretation could restrict the ability of community organizations to associate, for example, to group them together to achieve goals. The Community Priority Evaluation Guidelines as published by the Economist Intelligence Unit (EIU) use a stringent interpretation of communities, with the result that certain diverse and heterogeneous communities are not protected.” It should be noted that the CPE Guidelines stem directly from the requirements as defined in the AGB. The report recommends that ICANN should use as a basis to prioritize between different applicants the concept of vulnerable groups, which would enable ICANN to take positive measures to proactively serve the public interest<sup>124</sup>.

The Application Guidebook notes that most cases of string contention will be resolved by the CPE or be self-resolved. In those cases that are not resolved, the auction may be used as a tie-breaker method.<sup>125</sup> The Council of Europe report states that “the auction procedure constitutes an inappropriate method to serve the public interest, since it has the potential to disproportionately award gTLDs to financially richer entities.”<sup>126</sup>

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<sup>121</sup> Ibid, 2.4.2 Freedom of Expression and Trademarks at

[http://www.coe.int/t/information/society/Source/DGI\\_2014\\_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf](http://www.coe.int/t/information/society/Source/DGI_2014_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf)

<sup>122</sup> Ibid, 2.4.3. Sensitivities and Varying Levels of Acceptable Criticism at

[http://www.coe.int/t/information/society/Source/DGI\\_2014\\_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf](http://www.coe.int/t/information/society/Source/DGI_2014_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf)

<sup>123</sup> See Applicant Guidebook Module 4, String Content Procedures at

<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>

<sup>124</sup> See “ICANN’s Procedures and Policies in the Light of Human Rights, Fundamental Freedoms and Democratic Values,” Council of Europe, Updated 08 October 2014, 2.4.4. Case Study on String Contention Procedures: Community Applications at

[http://www.coe.int/t/information/society/Source/DGI\\_2014\\_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf](http://www.coe.int/t/information/society/Source/DGI_2014_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf)

<sup>125</sup> See Applicant Guidebook Module 4, String Content Procedures at

<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>

<sup>126</sup> See “ICANN’s Procedures and Policies in the Light of Human Rights, Fundamental Freedoms and Democratic Values,” Council of Europe, Updated 08 October 2014, 2.4.5. Auction Procedures: Equality & Non-Discrimination at

The Council of Europe report recommended that 1) reference to human rights should be included in ICANN's Bylaws; 2) ICANN should define public interest objectives; 3) ICANN should improve the human rights expertise and early engagement in the GAC; 4) develop an early engagement mechanism for the safeguard of human rights; and 5) review ICANN's legal basis and explore innovative solutions for developing an international or quasi-international status of ICANN.

The Council of Europe report generated considerable interest in the ICANN community such that the community is already discussing various approaches to address the issue. In its comments on the report, the ICANN Non-Commercial Stakeholder Group (NCSG) noted that while it disagreed with some of the definitions and recommendations offered in the report, it welcomed the report, "which confirms many of the views submitted by ICANN's noncommercial users over the years" and it fully agreed "with the authors' assessment that several of ICANN's policies fall short of international human rights standards and that those standards must be mainstreamed and more systematically applied within ICANN." In addition, the NCSG noted that it shared "the view that the public interest is a standard that lacks sufficient specificity to appropriately guide policy or constrain ICANN's decisions in several policy areas of relevance to human rights."<sup>127</sup> The NCSG subsequently created a Cross Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights, which held a public session at the ICANN 53 meeting in Buenos Aires, Argentina on 24 June 2015.

In addition, the GAC London Communiqué on 25 June 2015 noted, "the written analysis on ICANN's procedures and policies in the light of human rights, fundamental freedoms and democratic values, prepared by experts of the Council of Europe. The GAC noted that there is a developing interest in the ICANN community to include human rights issues in future discussions."<sup>128</sup> The GAC subsequently created the GAC Human Rights and International Law Working Group, which presented its Terms of Reference at the ICANN 53 meeting in Buenos Aires.<sup>129</sup>

- *4.4.1.3 Relevant Guidance*
  - Principle G
  - Recommendation 3

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[http://www.coe.int/t/information/society/Source/DGI\\_2014\\_12E%20Report%20ICANN%20and%0Human%20Rights%20updated%208%20Oct%202014.pdf](http://www.coe.int/t/information/society/Source/DGI_2014_12E%20Report%20ICANN%20and%0Human%20Rights%20updated%208%20Oct%202014.pdf)

<sup>127</sup> See NCSG Comments Council of Europe Report on ICANN and Human Rights, August 2014 at:

<https://community.icann.org/download/attachments/49356853/NCSGCommentonCOEICANNreport2014.pdf?version=1&modificationDate=1412646434000&api=v2>

<sup>128</sup> See <https://gacweb.icann.org/display/GACADV/2014-06-25+Safeguards+-+Human+Rights>

<sup>129</sup> See <https://buenosaires53.icann.org/en/schedule/mon-human-rights-law>

- **4.4.1.4 Rationale for Policy Development**

Staff notes that the community has only just established groups dedicated to a discussion of the possible impact of new gTLDs on human rights and whether ICANN's policies and procedures should be modified to more systematically take into account international human rights standards. Staff recommends that if a PDP-WG is initiated on New gTLD Subsequent Procedures, it should reach out to the community, and particularly the NCSG and the GAC as they have shown significant interest in the topic, to determine the status of current community discussions on this issue.

It should also be noted that the Cross Community Working Group on Enhancing ICANN Accountability (CCWG) seeks to integrate human rights impact analyses within its mission, which should provide guidance to this PDP-WG in its deliberations.

#### 4.4.2 String Similarity

- **4.4.2.1 Explanation of the Subject**

Recommendation 2 states that:

*Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.*

As implemented in the AGB, in Module 2 it describes string similarity reviews that test "Whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion."

This review involves a preliminary comparison of each applied-for gTLD string against existing TLDs, Reserved Names (see subsection 2.2.1.2), and other applied-for strings. The objective of this review is to prevent user confusion and loss of confidence in the DNS resulting from delegation of similar strings. (In the AGB "similar" means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.) The visual similarity check that occurs during Initial Evaluation is intended to augment the String Confusion objection (Module 3, Dispute Resolution Procedures) that addresses all types of similarity. A String Similarity Panel conducts this review.

The Panel uses the following standard when determining string confusion:

*String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion*

*will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.<sup>130</sup>*

The panel assesses similarities that would lead to user confusion in four sets of circumstances when comparing:

- Applied-for gTLD strings against existing TLDs and reserved names;
- Applied-for gTLD strings against other applied-for gTLD strings;
- Applied-for gTLD strings against strings requested as IDN ccTLDs; and
- Applied-for 2-character IDN gTLD strings against:
  - Every other single character.
  - Any other 2-character ASCII string (to protect possible future ccTLD delegations).

In addition to the above reviews, an applied-for gTLD string that is a 2-character IDN string is reviewed by the String Similarity Panel for visual similarity to:

- a) Any one-character label (in any script), and
- b) Any possible two-character ASCII combination.

An applied-for gTLD string that is found to be too similar to

a) or b) above will not pass this review.

The AGB notes:

*The String Similarity Panel is informed in part by an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied for TLDs and reserved names. The score will provide one objective measure for consideration by the panel, as part of the process of identifying strings likely to result in user confusion. In general, applicants should expect that a higher visual similarity score suggests a higher probability that the application will not pass the String Similarity review.*

*The panel will also take into account variant characters, as defined in any relevant language table, in its determinations. For example, strings that are not visually similar but are determined to be variant TLD strings based on an IDN table would be placed in a contention set. Variant TLD strings that are listed as part of the application will also be subject to the string similarity analysis.*

*The panel will examine all the algorithm data and perform its own review*

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<sup>130</sup> Ibid

*of similarities between strings and whether they rise to the level of string confusion. In cases of strings in scripts not yet supported by the algorithm, the panel's assessment process is entirely manual.*

An application that fails the String Similarity review due to similarity to an existing TLD will not pass the Initial Evaluation, and no further reviews will be available. Where an application does not pass the String Similarity review, the applicant will be notified as soon as the review is completed.

An application for a string that is found too similar to another applied-for gTLD string will be placed in a contention set. An application that passes the String Similarity review is still subject to objection by an existing TLD operator or by another gTLD applicant in the current application round.

In addition, applied-for gTLD strings are reviewed during the String Similarity review to determine whether they are similar to a Reserved Name. An application for a gTLD string that is identified as too similar to a Reserved Name will not pass this review.

String Similarity results for the new gTLD applications were published on 26 February 2013.<sup>131</sup>

For those cases of contention that are not resolved through CPE or voluntary agreement, auction is the tie-breaker method of last resort. An auction of two or more applications within a contention set proceeds as an ascending-clock auction as described in section 4.3.1 of the AGB.

- *4.4.2.2 Questions and Concerns Related to Subject*

The DG noted several issues relating to string similarity and auctions. In particular, the DG wondered whether string contention mechanisms were effective in resolving contention. They noted that in order to determine effectiveness, a definition of success may be required.

In addition, the DG asked whether string similarity resolution methods could be improved or substituted for new mechanisms, such as allowing for string changes or for the substitution of alternate strings. According to the current methodology for reviewing string similarity there is no option for the applicant to alter the applied for string in response to concerns about similarity with existing or other applied for strings. Thus, if a string is rejected due to issues of similarity, an applicant would have to submit a new application for an alternate string, which would have to occur in a subsequent

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<sup>131</sup> ICANN. (26 February 2013) New gTLD Program: String Similarity Contention Sets. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-26feb13-en>

round. The DG also asked whether string contention results were consistent and effective in preventing consumer confusion.

Moreover, the results of the string similarity review were released two weeks before the deadline to file a String Confusion Objection, so parties who wished to file a String Confusion Objection based on the results of the String Similarity Review (i.e., create contention where the String Similarity Review did not) had a very limited amount of time to prepare an objection. The delayed String Similarity results in this round were caused by the high volume of unique strings, but for future rounds, consideration should be given to how to best position the relative timing of these two processes, taking into consideration unknown factors such as the volume of unique strings.

Regarding the results, many members in the community, including the DG, the GAC, and the ALAC, raised concerns regarding the similarity of singulars and plurals. As the guidance provided on what constituted confusing similarity in this application round did not provide this level of detail, the standards for confusion may benefit from further refinement for future application rounds.

With respect to auctions the DG questioned whether additional analysis should be conducted to determine whether auctions are the right mechanism of last resort. They noted that this may require defining the ideal characteristics of a mechanism of last resort.

- *4.4.2.3 Relevant Guidance*
  - Recommendation 2
- *4.4.2.4 Rationale for Policy Development*

With respect to the questions and potential issues raised by the DG, it may be useful for ICANN to collect data concerning the results of the string similarity reviews that were conducted. This could be in the form of a survey to the ICANN community. As the results were perceived to be inconsistent by the DG and others, a potential PDP-WG may want to consider providing clearer definitions around what constitutes string similarity to hopefully reduce the possibility of reaching inconsistent evaluation, or even the perception of inconsistency. Specifically, the topics of plurals and the exploration of different ways to resolve string contention have been identified as likely requiring policy development..

With respect to auctions, a potential PDP-WG on New gTLD Subsequent Procedures could consider whether to define “mechanism of last resort” to help determine whether auctions fit the definition and/or whether there are other mechanisms that could be considered.

### 4.4.3 Objections

- 4.4.3.1 Explanation of the Subject

Guidance in the 2007 Final Report, intended to protect the rights of various parties can be found in the following recommendations.

Recommendation 2:

*Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.*

Recommendation 3:

*Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.*

*Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).*

Recommendation 6:

*Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.*

*Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).*

Recommendation 20:

*An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.*

## Implementation Guidance P:

*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).<sup>132</sup>*

Module 3 of the AGB, Objection Procedures, describes two types of mechanisms that may affect an application: 1) The procedure by which the GAC may provide GAC Advice on New gTLDs to the ICANN Board of Directors concerning a specific application; and 2) the dispute resolution procedure triggered by a formal objection to an application by a third party.<sup>133</sup>

GAC Advice: With respect to GAC advice the AGB states,

*The GAC may provide advice on new gTLDs. The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities. GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors. The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).*

*The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).<sup>134</sup>*

The AGB describes the following forms of GAC Advice:

- I. *The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved;*

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<sup>132</sup> See further details concerning IG P Guidelines at: <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>133</sup> See Module 3, Objection Procedures, at <https://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>

<sup>134</sup> Ibid

- II. *The GAC advises ICANN that there are concerns about a particular application “dot-example.” The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.*
- III. *The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.<sup>135</sup>*

As stated in the AGB, when the Board receives GAC Advice concerning an application, ICANN will publish the advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

According to the AGB:

*ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).<sup>136</sup>*

#### Public Objection and Dispute Resolution Process:

As noted in the AGB:

*The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows a party with standing to have its objection considered before a panel of qualified experts. A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process. Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.*

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<sup>135</sup> Ibid

<sup>136</sup> Ibid

According to the AGB, objections that trigger the dispute resolution procedure include: 1) “String Confusion Objection”: a string is confusingly similar to an existing top-level domain or another string applied for in the same round of applications; 2) “Existing Legal Rights Objection”: a string comprising the potential new gTLD infringes the existing legal rights of others; 3) “Limited Public Interest Objection”: the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law; or 4) “Community Objection”: substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.<sup>137</sup>

The AGB notes that objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, a panel of experts will review all objections designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. The AGB describes the standards for entities to have standing to object for each type of objection.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure.

As noted in the AGB, applicants whose applications are the subject of an objection have the following options:

1. The applicant can work to reach a settlement with the objector, resulting in withdrawal of the objection or the application;
2. The applicant can file a response to the objection and enter the dispute resolution process (refer to Section 3.2); or
3. The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

If for any reason the applicant does not file a response to an objection, the objector will prevail by default.

For a description of the process by which DRSPs administer dispute proceedings that have been initiated see the New gTLD Dispute Resolution Procedure.<sup>138</sup>

#### Dispute Resolution Costs:

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<sup>137</sup> See New gTLD Dispute Resolution Procedure at <https://newgtlds.icann.org/en/applicants/agb/evaluation-questions-criteria-04jun12-en.pdf>

<sup>138</sup> See Module 3, New gTLD Dispute Resolution Procedure, at <https://newgtlds.icann.org/en/applicants/agb/dispute-resolution-procedure-04jun12-en.pdf>

As stated in the AGB:

*Before acceptance of objections, each DRSP will publish a schedule of costs or statement of how costs will be calculated for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.*

*ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while Limited Public Interest and community objection proceedings will involve hourly rates charged by the panelists.<sup>139</sup>*

#### Objection Consolidation:

The AGB describes the process for the consolidation of objections:

*Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice to applicants that the response should be filed and, where appropriate, shall inform the parties of the consolidation in that notice.*

*An example of a circumstance in which consolidation might occur is multiple objections to the same application based on the same ground.*

*In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.*

*New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.*

*ICANN continues to strongly encourage all of the DRSPs to consolidate matters whenever practicable.<sup>140</sup>*

#### Independent Objector:

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<sup>139</sup> Ibid

<sup>140</sup> Ibid, Consolidation of Objections

The AGB notes that a formal objection to a gTLD application may also be filed by the Independent Objector (IO) and provides the following details:

*The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet. In light of this public interest goal, the Independent Objector is limited to filing objections on the grounds of Limited Public Interest and Community.*

*The IO may file objections against “highly objectionable” gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) Limited Public Interest objections and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2).*

*The IO may file a Limited Public Interest objection against an application even if a Community objection has been filed, and vice versa.*

*The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed.*

*Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground.*

- **4.4.3.2 Questions and Concerns Related to Subject**

The DG on New gTLD Subsequent Rounds noted the following potential problems:

- Objections criteria: Were objections criteria sufficiently detailed for DSRPs and Panels?
- High fees: The prohibitively high fees to access (e.g., WIPO charged \$10,000 for Legal Rights Objections and ICC charged more than \$90,000 for Community Objections).
- Objection consolidation: Lack of detailed rules for consolidation.
- Independent Objections: The role, functions, and powers of Independent objection. In particular, ICANN should consider what process should be used to address an independent objector's conflict of interest, without having to pursue objection process to conclusion. Consider a penalization structure for objectors that make multiple frivolous objections.

There were challenges in implementing the dispute resolution standards perhaps because the objection standards were new and untested concepts in this round.

In relation to GAC Early Warnings, they were issued for 187 applications on 20 November 2012.<sup>141</sup> Two of the 187 applications that received GAC Early Warning withdrew their applications within 21 days of receiving GAC Early Warning and received the 80% refund.

The AGB anticipated that GAC Advice would be on single applications as opposed to categories of strings, and thus this type of advice presented challenges in resolving. The unanticipated form of GAC Advice and the issues that were raised were the subject of multiple conversations between ICANN and the community. Ultimately, changes were made to the New gTLD Program and to the Registry Agreement, reducing the level of predictability available to applicants.

Public comment suggested that all objection mechanisms be examined, but in particular, the Legal Rights Objection be studied. A number of specific concerns were provided, such as a lack of definitions around terms like “legal rights,” the nature of expert determinations, and review/appeal mechanisms, which a possible PDP-WG should take into consideration when addressing this subject<sup>142</sup>.

- *4.4.3.3 Relevant Guidance*
  - Recommendation 2
  - Recommendation 3
  - Recommendation 6
  - Recommendation 20
  - Implementation Guideline P
  
- *4.4.3.4 Rationale for Policy Development*

With respect to GAC Advice and Early Warnings, in relation to the New gTLD Program, these mechanisms may warrant community discussion. Discussion may be needed around what types of guidelines might satisfy the intention of the GAC Advice process while supporting greater predictability for applicants.

For the issues the DG raised the following suggestions may be considered by a potential PDP-WG:

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<sup>141</sup> See <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings>

<sup>142</sup> See full comment here: <http://forum.icann.org/lists/comments-new-gtld-subsequent-prelim-31aug15/msg00004.html>

- Objections criteria: Consider expanding the description of objections criteria for DSRPs and panels in the AGB.
- High fees: Consider reviewing the fee schedule in the AGB.
- Objection consolidation: Consider providing more detailed rules for consolidation.
- Appeals: Consider having an oversight body or mechanism to ensure consistency, and fairness in adjudication and mediation. Consider whether to develop an appeals mechanism and what factors would be important to consider for a meaningful and equitable appeals process.
- Independent Objections: Consider what process should be used to address an independent objector's conflict of interest, without having to pursue objection process to conclusion. Consider a penalization structure for objectors that make multiple frivolous objections.
- Consistency: Examine the objection proceedings and resulting outcomes to determine if there is a pattern of inconsistencies, and if so, suggest ways to mitigate.
- Access: How can parties, particularly governments and communities, access the objection mechanisms easier to protect their rights/express their concerns?

With a number of challenges identified, policy development may be warranted.

#### 4.4.4 Accountability Mechanisms

- 4.4.4.1 Explanation of the Subject

ICANN has Accountability Mechanisms that may be invoked by the community. The Accountability Mechanisms were utilized by applicants, in particular the Request for Reconsideration process, invoked for a number Community Priority Evaluations.

On its Accountability Mechanism website ICANN states:<sup>143</sup>

*ICANN has a proven commitment to accountability and transparency in all of its practices. ICANN considers these principles to be fundamental safeguards in ensuring that its bottom-up, multi-stakeholder model remains effective. The mechanisms through which ICANN achieves accountability and transparency are built into every level of its organization and mandate – beginning with its Bylaws, detailed in its Accountability and Transparency Frameworks and Principles<sup>144</sup> (adopted by ICANN's Board in 2008) and annually reinforced in its Strategic and*

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<sup>143</sup> See <https://www.icann.org/resources/pages/mechanisms-2014-03-20-en>

<sup>144</sup> See <http://archive.icann.org/en/accountability/frameworks-principles/contents-overview.htm>

*Operational Plan*<sup>145</sup>. In order to reinforce its transparency and accountability, ICANN has established accountability mechanisms for review of ICANN actions.

These mechanisms are as follows: (See further details on the above-mentioned site)

Reconsideration Process: Reconsideration is a mechanism provided by Article IV, Section 2 of the Bylaws<sup>146</sup> by which any person or entity materially affected by an action (or inaction) of ICANN may request review or reconsideration of that action by the Board.

Independent Review Process (“IRP”): In addition to the Reconsideration Process, ICANN has also established a separate process for independent third-party review of Board actions (or inactions) alleged by an affected party to be inconsistent with ICANN's Articles of Incorporation or Bylaws. See Article IV, Section 3 of the ICANN Bylaws<sup>147</sup>.

Ombudsman: The ICANN Ombudsman is an independent and impartial neutral whose function is to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly for matters which have not otherwise become the subject of the Reconsideration Process or the Independent Review Process.

- *4.4.4.2 Questions and Concerns Related to Subject*

The DG noted several areas where additional, or modified Accountability Mechanisms may need to be developed to ensure fairness, counter abuse, and to facilitate appeals. The DG noted that a high percentage of CPE results triggered Accountability Mechanisms, which the DG suggested meant that applicants felt that the process was not properly conducted, though the frequent usage of an Accountability Mechanism is not necessarily an indication of an accountability issue. Feedback from the DG suggested that for CPE, there appeared to be a lack of transparency, that the Panel misinterpreted the applications and review guidelines, and that the Panel improperly applied the CPE criteria in reaching its determinations.

In addition, the DG noted the lack of a mechanism for appeals to an objection, as well as to the determination of panels in the evaluation and objections processes.

- *4.4.4.3 Relevant Guidance*

- Accountability Mechanisms:

<https://www.icann.org/resources/pages/mechanisms-2014-03-20-en>

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<sup>145</sup> See <https://www.icann.org/en/about/planning>

<sup>146</sup> See <https://www.icann.org/en/about/governance/bylaws#IV>

<sup>147</sup> Ibid

- **4.4.4.4 Rationale for Policy Development**

With respect to accountability mechanisms ICANN should consider what factors would be important for a meaningful and equitable appeals process. In particular, ICANN could consider the following questions:

- Should the process make a distinction between appeals relating to substantive and procedural issues?
- Who is an appropriate final arbiter?
- Should redress be available only for certain issues but not for others?
- Should there be safeguards against abuse and penalties?

It should be noted that the scope of Accountability Mechanisms extends beyond the New gTLD Program. For instance, the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability)<sup>148</sup> is looking at this specific topic, amongst other broader topics related to ICANN's accountability. The discussions and outputs of the CCWG-Accountability may be beneficial in addressing issues identified by the DG and the wider community.

#### 4.4.5 Community Applications

- **4.4.5.1 Explanation of the Subject**

Applicants when applying could designate their application as community-based, one of only two application types available in the 2012 New gTLD Program round, with the other being standard. In the absence of string contention, claims to support a particular company were simply accepted, as recommended in Implementation Guideline H:

*Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions:*

*(i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and*

*(ii) a formal objection process is initiated.*

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<sup>148</sup> Details regarding the work of the CCWG-Accountability can be found here:  
<https://community.icann.org/display/acctcrosscomm/CCWG+on+Enhancing+ICANN+Accountability>

*Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim.*

*Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P.*

However, in the event that there are multiple applicants vying for the same or similar string, the 2007 Final Report provided guidance for resolving that string contention when a community-based applicant was involved, as noted in Implementation Guideline F:

*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.*

According to Module 4, String Contention, of the Applicant Guidebook, in 4.2 Community Priority Evaluation, if there is no self-resolution of string contention for community-based applicants of identical or confusingly similar strings, a Community Priority Evaluation may be requested.<sup>149</sup>

The AGB notes the following details

*Community priority evaluation will only occur if a community-based applicant selects this option. Community priority evaluation can begin once all applications in the contention set have completed all previous stages of the process. The community priority evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the community priority evaluation. Each application participating in the community priority evaluation begins with a score of zero.*

According to the AGB, all applicants must identify whether they are submitting a community-based or standard application. The AGB notes the following:

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<sup>149</sup> See Applicant Guidebook Module 4, String Contention Procedures, 4.2 Community Priority Evaluation at <https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>

*At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority evaluation. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher. Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.*<sup>150</sup>

A community priority panel appointed by ICANN will review community-based applications to determine whether any of them fulfills the community priority criteria. If a single community-based application is found to meet the community priority criteria that applicant will be declared to prevail in the community priority evaluation and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as described in the AGB as follows:

*In the case where the applications are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.*

*In the case where the applications are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding on to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.*

*If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction.*<sup>151</sup>

The Community Priority Panel will review and score the one or more community-based applications against four criteria:

1. Community Establishment (0-4 points);
2. Nexus between Proposed String and Community (0-4 points);

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<sup>150</sup> Ibid

<sup>151</sup> Ibid

3. Registration Policies (0-4 points); and
4. Community Endorsement (0-4 points).

An application must score at least 14 points to prevail in community priority evaluation. There was considerable debate about what the proper threshold should be for a prevailing score. The implications of a prevailing score are that the community-based application receives priority over all other applications in the contention set, so care needed to be taken to ensure that the threshold was set adequately high to prevent illegitimate use of the mechanism, while also allowing communities that met the definitions as established in the AGB to have a legitimate opportunity to pass the evaluation.

- *4.4.5.2 Questions and Concerns Related to Subject*

DG members voiced criticism and concerns regarding CPE results, including feedback that there was a lack of transparency, that the Panel misinterpreted the applications, that the Panel improperly applied the CPE criteria in reaching its determinations, and that the scoring threshold as defined in the AGB was too high. Of the 18 CPE results that have been published, 11 have resulted in an ICANN Accountability Mechanism,<sup>152</sup> filed either by the applicant if it did not prevail in CPE, or by the other members of the contention set if the community applicant prevailed.

CPE was the only area of the program that relied on a comparative evaluation that created “winners” and “losers” and as such, the stakes were understood to be high by all parties. While the usage of accountability mechanisms was high relative to the number of CPEs, it should be noted that to date, there is only a single instance where the CPE results and process were not upheld, which seems to indicate that ICANN and its evaluators carried out the process properly. As such, CPE, and perhaps the broader topic of how communities should be considered within the New gTLD Program, may warrant considerable discussion on the definition of community, the concept of priority for community-based applications, the process for awarding such priority, and the criteria for determining if priority is applicable.

GAC Advice was provided to ICANN in multiple Communiqués regarding community-based applications and CPE. In its Communiqués from Beijing, Durban, and Singapore, the GAC referred to “preferential treatment” that should be given applications with “demonstrable community support” or a “collective and clear opinion.”<sup>153</sup>

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<sup>152</sup> See: <https://www.icann.org/resources/pages/mechanisms-2014-03-20-en>

<sup>153</sup> See here: <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>;  
<http://durban47.icann.org/meetings/durban2013/presentation-gac-communique-18jul13-en.pdf>;  
<http://www.icann.org/en/news/correspondence/gac-to-board-27mar14-en.pdf>

In the 14 May 2014 scorecard<sup>154</sup>, the NGPC responded to the GAC that it “will continue to protect the public interest and improve outcomes for communities, and to work with the applicants in an open and transparent manner in an effort to assist those communities within the existing framework.” By adhering to the AGB and ensuring each CPE is consistent with the AGB criteria, ICANN has sought to meet the GAC’s advice.

- *4.4.5.3 Relevant Guidance*
  - Implementation Guideline F
  - Implementation Guideline H
- *4.5.5.4 Rationale for Policy Development*

Community Priority Evaluation (CPE) was understood to be a challenging aspect of the program and in taking into account the number of reconsideration requests from both community-based applicants that did not prevail and non community-based applicants that were ousted by a prevailing community-based applicant, those challenges were realized. As suggested above, the topic of a community framework within the New gTLD Program, which could seek to refine the definition of community, the concept of priority for community-based applications, the process for awarding such priority, and the criteria and scoring threshold for determining if priority is applicable could be explored.

Given the widespread dissatisfaction of the results of CPE, a potential PDP-WG on New gTLD Subsequent Procedures may wish to review whether the implementation meets the GNSO’s intended goals. As of the writing of this report, not all possible cases of CPE have concluded; a possible PDP-WG may want to take this into consideration, if the situation persists, before reaching any conclusions.

## 4.5 Group 4: Internationalized Domain Names:

**The subjects in this section are in relation to the following elements from the 2007 Final Report, as categorized by the DG:**

- **Principle B, and;**
- **Recommendation 18**

### 4.5.1 Internationalized Domain Names and Universal Acceptance

- *4.5.1.1 Explanation of the Subject*

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<sup>154</sup> Scorecard available here: <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-1-14may14-en.pdf>

As described by ICANN,<sup>155</sup> Internationalized Domain Names (IDNs) permit the global community to use a domain name in their native language or script. This is enabled by allowing domain names to have characters from different scripts, beyond the letters (a to z), digits (0 to 9) and hyphen (-), as encoded by the Unicode standard<sup>156</sup> and as allowed by relevant IDN protocols (RFC 5890<sup>157</sup>, 5891<sup>158</sup>, 5892<sup>159</sup>, 5893<sup>160</sup>, and 5894<sup>161</sup>).

ICANN has instituted the IDN Program to assist and promote the multilingual Internet using IDNs. The program is primarily focused on the planning and implementation of the IDN Top-level Domains (TLDs) that include ccTLDs and gTLDs. The IDN Program also supports and undertakes projects geared towards effective deployment of IDNs at the second-level, as guided by the community.

The IDN Program has been implementing the following projects focused on IDN Top-level Domains.

### **Top-level Domains**

- Root Zone Label Generation Rules (LGR)<sup>162</sup> a community driven project aiming to define conservative mechanism for introducing IDN top-level domains into the Internet's Root Zone in a stable and secure manner.
- LGR Toolset<sup>163</sup> project is being undertaken to make it easier for the community to formally represent, create, use and manage data related to the Label Generation Rules for different languages and scripts. ICANN intends to use the LGR Toolset to assist community in determining the valid Top-Level Domains (TLDs) and their variants (if any) for the different scripts.

### **Country Code Top-level Domains**

- The community has created a special process – the IDN ccTLD Fast Track Process<sup>164</sup> – to evaluate Top-Level Domain labels in different languages and scripts for countries and territories. IDN Program implements various aspects of this process.

### **IDN Program is implementing the following projects focused on IDNs at the Second-level**

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<sup>155</sup> See <https://www.icann.org/resources/pages/idn-2012-02-25-en>

<sup>156</sup> See <http://www.unicode.org/>

<sup>157</sup> See <http://www.rfc-editor.org/rfc/rfc5890.txt>

<sup>158</sup> See <http://www.rfc-editor.org/rfc/rfc5891.txt>

<sup>159</sup> See <http://www.rfc-editor.org/rfc/rfc5892.txt>

<sup>160</sup> See <http://www.rfc-editor.org/rfc/rfc5893.txt>

<sup>161</sup> See <http://www.rfc-editor.org/rfc/rfc5894.txt>

<sup>162</sup> See <https://www.icann.org/resources/pages/root-zone-lgr-2015-06-21-en>

<sup>163</sup> See <https://www.icann.org/resources/pages/lgr-toolset-2015-06-21-en>

<sup>164</sup> See <https://www.icann.org/resources/pages/fast-track-2012-02-25-en>

- IDN Implementation Guidelines<sup>165</sup> document the recommended practice for registries implementing IDNs at the second-level through a community led process. These guidelines are designed to promote consistency and minimize the risk of cybersquatting and consumer confusion.
- Second-level LGR Reference<sup>166</sup> are being developed on the request of the community to improve consistency in testing of the IDN tables during Pre-Delegation Testing and Registry Service Evaluation Process.

On the ICANN Universal Acceptance website, ICANN explains the issue as follows:<sup>167</sup>

*In the earliest days of the Internet, the Domain Name System (DNS) contained a relatively small set of top-level domains (TLDs) such as .com, .net and .org. These were names in the ASCII character set containing three A-Z letters. Those available TLDs were later expanded to include two character Country Code TLDs (ccTLDs). In early 2001 top-level domain space grew to include names with more than three characters. In 2008 top-level domains outside the ASCII character set arrived (Chinese, Cyrillic, Arabic, etc [GC1] .) enabling a multi-lingual Internet. In 2013 the top-level domain name space began growing even more rapidly as new generic top-level domains (gTLDs) were delegated into the root zone.*

*Some internet services and software applications have not sufficiently evolved to properly recognize and consistently handle new gTLDs and Internationalized Domain Names (IDN), thus impeding the added benefits of user choice, user confidence and name space competition to the consumer. Software and service providers have historically been unaware of these problems or had little market or regulatory incentive to invest in solutions that would bring true interoperability to platforms or applications. A coordinated industry effort is underway to ensure a timely, practical, and continuing resolution to these changes.*

ICANN notes: “Universal Acceptance will be considered complete when any person can register and use a domain name in any top-level domain in widely distributed web browsers, email clients, mobile apps, and setting up online accounts for Internet and other services.”

### Universal Acceptance Roadmap

The universal acceptance roadmap was originally published 11 September 2014.<sup>168</sup> The Roadmap states:

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<sup>165</sup> See <https://www.icann.org/resources/pages/implementation-guidelines-2012-02-25-en>

<sup>166</sup> See <https://www.icann.org/resources/pages/second-level-lgr-2015-06-21-en>

<sup>167</sup> See <https://www.icann.org/resources/pages/universal-acceptance-2012-02-25-en#overview>

*The **Universal Acceptance** initiative is an effort to address potential user issues and obstacles observed in the use of new Top Level Domains, issues and obstacles rooted primarily in assumptions based on the TLD. This abridged roadmap, an outcome of the JIG Final Report on Universal Acceptance of IDN TLDs<sup>169</sup> plus other work, presents a proposal, based on community input including public comment<sup>170</sup>, as to how ICANN's energy, resources, and actions should be applied as part of the initiative.*

*The abridged roadmap emphasizes ICANN's multi-stakeholder model by limiting its scope to ICANN's role and possible actions. Identifying and addressing the issues and obstacles require work and collaboration among many stakeholder groups who have documented their activity independently. ICANN views its primary role as one of active coordination and facilitation, acting as a catalyst in connecting relevant stakeholders with each other and with parties who are in a position to remove these obstacles. The vision includes implementing a 'corporate memory' as a central information depository of progress.*

Further, in February 2015, the community created the Universal Acceptance Steering Group (UASG)<sup>171</sup> to lead the effort to promote Universal Acceptance of all valid domain names and email addresses.

#### Relevant Requirements in the AGB

The AGB states in Part II, Requirements for Internationalized Domain Names:

*These requirements apply only to prospective top-level domains that contain non-ASCII characters. Applicants for these internationalized top-level domain labels are expected to be familiar with the Internet Engineering Task Force (IETF) IDNA standards, Unicode standards, and the terminology associated with Internationalized Domain Names.*

*2.1 The label must be an A-label as defined in IDNA, converted from (and convertible to) a U-label that is consistent with the definition in IDNA, and further restricted by the following, non-exhaustive, list of limitations:*

*2.1.1 Must be a valid A-label according to IDNA.*

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<sup>168</sup> See <https://www.icann.org/resources/pages/universal-acceptance-initiative-2014-10-03-en>

<sup>169</sup> See <https://ccnso.icann.org/announcements/announcement-18nov13-en.htm>

<sup>170</sup> See <https://www.icann.org/public-comments/tld-acceptance-initiative-2014-06-18-en>

<sup>171</sup> Universal Acceptance Steering Group (UASG) Wiki:  
<https://community.icann.org/pages/viewpage.action?pageId=47255444>

*2.1.2 The derived property value of all codepoints used in the U-label, as defined by IDNA, must be PVALID or CONTEXT (accompanied by unambiguous contextual rules).*

*2.1.3 The general category of all codepoints, as defined by IDNA, must be one of (Ll, Lo, Lm, Mn, Mc).*

*2.1.4 The U-label must be fully compliant with Normalization Form C, as described in Unicode Standard Annex #15: Unicode Normalization Forms. See also examples in <http://unicode.org/faq/normalization.html>.*

*2.1.5 The U-label must consist entirely of characters with the same directional property, or fulfill the requirements of the Bidi rule per RFC 5893.*

*2.2 The label must meet the relevant criteria of the ICANN Guidelines for the Implementation of Internationalised Domain Names. See <http://www.icann.org/en/topics/idn/implementation-guidelines.ht>.*

This includes the following, non-exhaustive, list of limitations:

*2.2.1 All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property (See <http://www.unicode.org/reports/tr24/>).*

*2.2.2 Exceptions to 2.2.1 are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts.*

*However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table are clearly defined.*

## IDN Variants

The 2007 Final Report did not provide guidance on IDN variants, but the AGB stated in 1.3.3 that:

*A variant TLD string results from the substitution of one or more characters in the applied-for gTLD string with variant characters based on the applicant's top level tables.*

*Each application contains one applied-for gTLD string. The applicant may also declare any variant strings for the TLD in its application. However, no variant gTLD strings will be delegated through the New gTLD Program until variant management solutions are developed and implemented. Declaring variant strings*

*is informative only and will not imply any right or claim to the declared variant strings.*

*When a variant delegation process is established, applicants may be required to submit additional information such as implementation details for the variant TLD management mechanism, and may need to participate in a subsequent evaluation process, which could contain additional fees and review steps.*

*The following scenarios are possible during the gTLD evaluation process:*

- a) *Applicant declares variant strings to the applied-for gTLD string in its application. If the application is successful, the applied-for gTLD string will be delegated to the applicant. The declared variant strings are noted for future reference. These declared variant strings will not be delegated to the applicant along with the applied-for gTLD string, nor will the applicant have any right or claim to the declared variant strings.*

*Variant strings listed in successful gTLD applications will be tagged to the specific application and added to a “Declared Variants List” that will be available on ICANN’s website. A list of pending (i.e., declared) variant strings from the IDN ccTLD Fast Track is available at <http://icann.org/en/topics/idn/fast-track/stringevaluation-completion-en.htm>.*

*ICANN may perform independent analysis on the declared variant strings, and will not necessarily include all strings listed by the applicant on the Declared Variants List.*

- b) *Multiple applicants apply for strings that are identified by ICANN as variants of one another. These applications will be placed in a contention set and will follow the contention resolution procedures in Module 4.*
- c) *Applicant submits an application for a gTLD string and does not indicate variants to the applied-for gTLD string. ICANN will not identify variant strings unless scenario (b) above occurs.*

*Each variant string declared in the application must also conform to the string requirements in section 2.2.1.3.2.*

*Variant strings declared in the application will be reviewed for consistency with the top-level tables submitted in the application. Should any declared variant strings not be based on use of variant characters according to the submitted top-*

*level tables, the applicant will be notified and the declared string will no longer be considered part of the application.*

*Declaration of variant strings in an application does not provide the applicant any right or reservation to a particular string. Variant strings on the Declared Variants List may be subject to subsequent additional review per a process and criteria to be defined.*

*It should be noted that while variants for second and lower-level registrations are defined freely by the local communities without any ICANN validation, there may be specific rules and validation criteria specified for variant strings to be allowed at the top level. It is expected that the variant information provided by applicants in the first application round will contribute to a better understanding of the issues and assist in determining appropriate review steps and fee levels going forward.*

The IDN Variant TLD Program continues to work on the “creation and maintenance of a label generation ruleset process for the root, which is on the critical path to a variant management process for the root zone. A basic assumption is that no variant TLDs can actually be implemented until the necessary community work on the code point repertoire and label generation rules for the root have been finalized.”<sup>172</sup>

- *4.5.1.2 Questions and Concerns Related to Subject*

ICANN states that the goal of "domain names in a TLD must be useable in applications regardless of the written script, and length or newness of the TLD," which roughly captures the observed issues and obstacles driving the discussion of universal acceptance. The use of names in the IDN TLDs combines all of the challenges mentioned in the goal as well as touching areas of concerns of generic and country-code TLDs. ICANN states, “Registration of names must work, protocols must work, and services/applications impacting the user must work; work also in the sense that domain names and the identifiers built on them are useable in administratively permitted ways. Included in this goal is the usability of internationalized email addresses (RFC 6530).”<sup>173</sup>

ICANN notes that based on its research of the challenges, the list of issues and obstacles as documented by stakeholders is highly dynamic, diverse, and sometimes overlapping. ICANN's role as part of the initiative is to foster relationships among stakeholders involved with universal acceptance issues. ICANN will also promote internationalized email as a way to enable full functionality of IDN TLDs. In addition,

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<sup>172</sup> Information about the IDN Variant TLD Program: <https://www.icann.org/resources/pages/variant-tlds-2012-05-08-en#history>

<sup>173</sup> Ibid

ICANN will “develop a means to accept reports of problems, as well as successes, to pass information amongst stakeholders for resolution [and] engage stakeholders in the effort to exchange information on universal acceptance, whether this is seen as informational or a means to gain insight into issues and obstacles.”

Finally, as noted above, there is currently no variant management process for the root zone and as such, IDN gTLDs currently have no mechanism to delegate IDN variants where they may be beneficial.

- *4.5.1.3 Relevant Guidance*
  - Principle B
  - Principle C
  - Recommendation 18
  
- *4.5.1.4 Rationale for Policy Development*

There are currently community-led initiatives related to Universal Acceptance and IDN Variants. It is not anticipated that a potential PDP-WG on New gTLD Subsequent Procedures would need to produce substantive work on Universal Acceptance as the UASG has been designated by the community to lead this effort. However, there may be a need to consider the outcomes of the IDN Variants Program to determine and develop guidelines for integration into the New gTLD space, so policy development may be needed in that regard.

## 4.6 Group 5: Technical and Operations

**The subjects in this section are in relation to the following elements from the 2007 Final Report, as categorized by the DG<sup>174</sup>:**

- Principles D, E and F;
- Recommendations 4, 7, and 8, and;
- New Topic “Name Collisions”

### 4.6.1 Security and Stability

- *4.6.1.1 Explanation of the Subject*

In the AGB there are three aspects of the Initial Evaluation that involve security considerations. The first is part of the string review and determines whether the

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<sup>174</sup> Ibid

applied-for gTLD string might adversely affect DNS security or stability. The second and third relate to the applicant review and determine:

- Whether the applicant has the requisite technical, operational, and financial capability to operate a registry; and
- Whether the registry services offered by the applicant might adversely affect DNS security or stability.

### DNS Stability

According to the AGB:<sup>175</sup>

*The DNS Stability Review determines whether an applied-for gTLD string might cause instability to the DNS. In all cases, this will involve a review for conformance with technical and other requirements for gTLD strings (labels). In some exceptional cases, an extended review may be necessary to investigate possible technical stability problems with the applied-for gTLD string.*

*Note: All applicants should recognize issues surrounding invalid TLD queries at the root level of the DNS.*

*Any new TLD registry operator may experience unanticipated queries, and some TLDs may experience a non-trivial load of unanticipated queries. For more information, see the Security and Stability Advisory Committee (SSAC)'s report on this topic at <http://www.icann.org/en/committees/security/sac045.pdf>. Some publicly available statistics are also available at <http://stats.l.root-servers.org/>.*

*ICANN will take steps to alert applicants of the issues raised in SAC045, and encourage the applicant to prepare to minimize the possibility of operational difficulties that would pose a stability or availability problem for its registrants and users. However, this notice is merely an advisory to applicants and is not part of the evaluation, unless the string raises significant security or stability issues as described in the following section.*

Concerning the String Review Procedure the AGB states:

*New gTLD labels must not adversely affect the security or stability of the DNS. During the Initial Evaluation period, ICANN will conduct a preliminary review on the set of applied-for gTLD strings to:*

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<sup>175</sup> See Module 2, 2.2.1.3 DNS Security Review, at <https://newgtlds.icann.org/en/applicants/agb/evaluation-procedures-04jun12-en.pdf>

- *ensure that applied-for gTLD strings comply with the requirements provided in section 2.2.1.3.2, and*
- *determine whether any strings raise significant security or stability issues that may require further review.*

...

*The panel will determine whether the string fails to comply with relevant standards or creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, and will report on its findings. If the panel determines that the string complies with relevant standards and does not create the conditions described above, the application will pass the DNS Stability review.<sup>176</sup>*

It was noted in the AGB that a string that complies with the technical requirements detailed in Section 2.2.1.3.2 String Requirements, largely enforced by the TLD Application System, would have a very low probability of requiring additional review,

In the event that the evaluation panel determines that the string does not comply, the application will not pass the Initial Evaluation, and no further reviews are available. In the case where a string is determined likely to cause security or stability problems in the DNS, the applicant will be notified as soon as the DNS Stability review is completed.

#### Registry Services Review

According to the AGB:

*...ICANN will review the applicant's proposed registry services for any possible adverse impact on security or stability. The applicant will be required to provide a list of proposed registry services in its application.*

Section 2.2.3.1 in the AGB provides definitions of registry services, security, and stability as they relate to the Registry Services Review. Section 2.2.3.2 defines customary services and states that:

*The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.*

*Any additional registry services that are unique to the proposed gTLD registry should be described in detail.*

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<sup>176</sup> Ibid

The review methodology is as stated in 2.2.3.4 of the AGB:

*Review of the applicant's proposed registry services will include a preliminary determination of whether any of the proposed registry services could raise significant security or stability issues and require additional consideration.*

*If the preliminary determination reveals that there may be significant security or stability issues (as defined in subsection 2.2.3.1) surrounding a proposed service, the application will be flagged for an extended review by the Registry Services Technical Evaluation Panel (RSTEP), see <http://www.icann.org/en/registries/rsep/rstep.html>). This review, if applicable, will occur during the Extended Evaluation period (refer to Section 2.3).*

*In the event that an application is flagged for extended review of one or more registry services, an additional fee to cover the cost of the extended review will be due from the applicant. Applicants will be advised of any additional fees due, which be received before the additional review.*

#### Technical/Operational Review

Again, according to the AGB:

*In its application, the applicant will respond to a set of questions (see questions 24 – 44 in the Application Form) intended to gather information about the applicant's technical capabilities and its plans for operation of the proposed gTLD.*

*Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation.*

*Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.*

#### Pre-Delegation Testing

Once an applicant completes the evaluation portion of the process, there are several final steps remaining, including Pre-Delegation Testing, which is a pre-requisite to being delegated into the root zone. In section 5.2 of the AGB, it states the following

regarding Pre-Delegation Testing:

*The purpose of the pre-delegation technical test is to verify that the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described in Module 2.*

*The test is also intended to indicate that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the requirements that follow.*

*The test elements cover both the DNS server operational infrastructure and registry system operations. In many cases the applicant will perform the test elements as instructed and provide documentation of the results to ICANN to demonstrate satisfactory performance. At ICANN's discretion, aspects of the applicant's self-certification documentation can be audited either on-site at the services delivery point of the registry or elsewhere as determined by ICANN.*

- 4.6.1.2 Questions and Concerns Related to Subject

In regards to the DNS Stability review, the expectation was that strings complying with the string requirements would have a very low probability of presenting a risk to the DNS, and the evaluation results bore out this expectation. However, challenges did exist, and a risk that was identified after program launch by the Security and Stability Advisory Committee (SSAC) via a report titled SAC 057: SSAC Advisory on Internal Name Certificates, noted the possible issue of “name collision” and provided suggestions on how the issue could be mitigated<sup>177</sup>.

In August of 2014, ICANN published the Name Collision Occurrence Management Framework (see further discussion in section 4.6.3.1 below), intended to provide a long-term solution for all registry operators to mitigate the risk of name collision. The study Name Collision in the DNS<sup>178</sup> and the Name Collision Occurrence Management Framework<sup>179</sup> identified three high-risk strings (HOME, CORP, MAIL) that were applied for in this application round. However, before the Framework can be adopted for use in future application rounds, a process for identifying additional high-risk strings (which may not have been applied for in this round) should be developed and agreed upon.

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<sup>177</sup> Report available here: : <https://www.icann.org/en/system/files/files/sac-057-en.pdf>

<sup>178</sup> Interisle Consulting Group, LLC. (2 August 2013). Name Collision in the DNS. Retrieved from <https://www.icann.org/en/system/files/files/name-collision-02aug13-en.pdf>

<sup>179</sup> ICANN. (30 July 2014). Name Collision Occurrence Management Framework. Retrieved from <https://www.icann.org/en/system/files/files/name-collision-framework-30jul14-en.pdf>

Though only three high-risk strings were specifically identified to pose a significant risk to the DNS if delegated, other strings were noted to possibly pose a lesser risk. If policy development on Name Collisions is envisioned, collaboration with the SSAC is advised.

From an operational perspective, the portion of the review that was most intensive related to IDNs was the DNS Stability review. Label Generation Rules for IDNs are in the process of being established and should be leveraged for the DNS Stability review in the future to reduce the amount of review required for IDNs.

Regarding the Registry Services Review, a high percentage of applications received a clarifying question, indicating perhaps that guidance provided to applicants could be improved. However, a vast number of applicants employed the services of a limited few RSPs, which may account for the high number of clarifying questions. The Registry Services Review could possibly be improved with knowledge that most applicants will use a RSP, allowing for efficiency gains, consistency. In addition, the potential creation of RSP accreditation program would also likely simplify this review process without sacrificing the security and stability of DNS.

In regards to the Technical and Operational Capability Evaluation, it was designed to evaluate the applicants' knowledge and understanding of the criteria, as they were not required to have their infrastructure deployed for actual testing. With experience from the 2012 New gTLD Program round, with the majority of applicants engaging a RSP, the evaluation process could be structured differently, since infrastructure would likely be available and could actually be tested during evaluation, as opposed to during pre-delegation testing. Or, if an accreditation program was developed and deployed, the evaluation process could potentially be greatly simplified, again, without sacrificing the security and stability of the DNS.

In regard to Pre-Delegation Testing, the scope of testing may warrant analysis to ensure that applicants are tested for readiness on all requirements in their Registry Agreement, as well as any referenced technical specifications.

Finally, public comments identified the Emergency Back-end Registry Operator (EBERO) as an additional possible subject for consideration, where for instance, criteria for approving EBERO providers and the monitoring the EBERO's long-term ability to continue to meet those requirements could be examined, among other elements<sup>180</sup>.

- *4.6.1.3 Relevant Guidance*

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<sup>180</sup> See full comment here: <http://forum.icann.org/lists/comments-new-gtld-subsequent-prelim-31aug15/msg00000.html>

- Principle D
  - Recommendation 4
  - Recommendation 7
  - Recommendation 18
- *4.6.1.4 Rationale for Policy Development*

The concerns identified regarding the DNS Stability Review, Registry Services Review, and Technical & Operational Capabilities Evaluation tended to be more in regards to operational efficiency as opposed to concerns about security and stability. As such, implementation guidance could be provided to streamline and optimize the evaluation processes, although the DG did not anticipate that policy development would be needed.

However, a PDP-WG could consider looking at security and stability beyond the more operationally focused analysis above and could investigate for instance, the impact on the DNS from delegating additional TLDs at a similar scale and pace as the 2012 round. If this topic is undertaken, collaboration with the SSAC is advisable.

In addition, it should be noted that ICANN staff is performing Security and Stability Reviews in support of the CCT and the findings from these reviews may be useful during possible PDP-WG deliberations<sup>181</sup>.

## 4.6.2 Applicant Reviews: Technical/Operational and Financial

- *4.6.2.1 Explanation of the Subject*

The 2007 Final Report provided general guidance about how to ensure applicants were financially and technically capable to run a registry, but stopped short in providing specific guidance on how an evaluation questionnaire should be comprised. Over the course of the many iterations of the AGB, the Technical/Operational and Financial criteria were refined with a collaborative effort from the community, ICANN, and its selected evaluators.

According to Module 2 of the AGB, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections in the AGB:

2.2.2.1 Technical/Operational Review: Intended to gather information about the applicant's technical capabilities and its plans for operation of the proposed gTLD.

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<sup>181</sup> See: <http://newgtlds.icann.org/en/reviews/ssr>

Note, this review is discussed in a different context above in section 4.6.1 on Security and Stability.

2.2.2.2 Financial Review: Intended to gather information about the applicant's financial capabilities for operation of a gTLD registry and its financial planning in preparation for long-term stability of the new gTLD.

The evaluation questions, 1-50, are found in the Attachment to Module 2.

2.2.2.3 Evaluation Methodology: Dedicated technical and financial evaluation panels will conduct the technical/operational and financial reviews, according to the established criteria and scoring mechanism included as an attachment to this module. These reviews are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the Application Form.

2.2.3 Registry Services Review: Review the applicant's proposed registry services for any possible adverse impact on security or stability. Note, this review is discussed in greater detail above in section 4.6.1 on Security and Stability.

- *4.6.2.2 Questions and Concerns Related to Subject*

While the pass rate for Initial Evaluation was extremely high, the road to achieving that outcome required substantial back and forth between ICANN's evaluators, through ICANN, to the applicants (sometimes to RSPs and/or consultants) to provide responses, which went back to ICANN, and finally back to the evaluators. A great number of DG members noted that a vast majority of applicants received clarification questions, meaning either an adjustment is needed in the composition of the questions and associated guidance, or there is a disconnect between the criteria, the evaluators, and applicants, other issue, or a combination of issues. Analyzing the clarification questions should provide guidance on how the questions, communications, and evaluation process can be improved.

In addition, as noted above, the vast majority of applicants engaged a RSP to provide their registry services and other technical functions, which may have contributed to a communication gap as clarifying questions were directed at applicants who in turn needed to seek answers from their RSPs.

The application submission and evaluation processes may benefit from discussions about how to streamline the process. Acknowledging that most applicants will use a RSP will greatly benefit applicants and ICANN operationally, even in the absence of an accreditation program. As well, facilitating the submission and evaluation of essentially identical applications will also help to streamline the process.

A number of DG members highlighted the Continuing Operations Instrument (COI) as a distinct source of frustration, as it took great effort in many circumstances to get satisfactory language. Many applicants in the previous round found the financial instrument requirements to be onerous and required extensive multilateral negotiations between the applicant, their financial institutions, and ICANN. The DG suggested that at a minimum, the process and guidance needed to be evaluated, but the mechanism itself, and its applicability for all applicants may need to be evaluated (e.g., a .Brand registry may not need extensive registrant protection mechanisms).

Public comment noted that it may be valuable to collect data on applicant background screening checks to determine their effectiveness in identifying bad actors to help determine their applicability for subsequent procedures. In addition, it was suggested that any background screening issues identified be addressed prior to Registry Agreement (RA) negotiations, rather than perhaps being included in the RA.

- *4.6.2.3 Relevant Guidance*
  - Principle D
  - Principle E
  - Recommendation 7
  - Recommendation 8
  
- *4.6.2.4 Rationale for Policy Development*

As noted, the 2007 Final Report did not provide specific guidance on the actual criteria to evaluate applications against. Consequently, the criteria was developed during the implementation phase, leveraging the questionnaires from the “proof of concept” rounds, over the course of several years and with considerable input from the community. A potential PDP-WG on New gTLD Subsequent Procedures may want to consider providing specific guidance on the criteria to be used for the program. Other potential changes to the program that have been discussed, such as application types or an accreditation program, would factor heavily in this discussion. Policy work may be needed to refine the evaluation criteria.

As the COI was highlighted as an acute pain point for many DG members, a PDP-WG may want to consider procedural issues relating to the COI and how they may be resolved, or perhaps an alternative mechanism that achieves defined policy goals.

### 4.6.3 Name Collisions

- *4.6.3.1 Explanation of the Subject*

Name collisions are not a new concept and not exclusive to new gTLDs. The Security and Stability Advisory Committee (SSAC) identified the potential for name collisions in November of 2010 in SAC 045 “Invalid Top Level Domain Queries at the Root Level”<sup>182</sup>:

*In this report, we call attention to the potential problems that may arise should a new TLD applicant use a string that has been seen with measurable (and meaningful) frequency in a query for resolution by the root system and the root system has previously generated a response. We find that any new TLD registry operator may experience unanticipated queries and that some TLDs may experience a non-trivial load of unanticipated queries if the label it chooses corresponds to TLDs that have historically seen queries. We recommend that ICANN inform new TLD applicants of the problems that can arise when a previously seen string is added to the root zone as a TLD label and that ICANN should coordinate with the community to identify principles that can serve as the basis for prohibiting the delegation of strings that may introduce security or stability problems at the root level of the DNS.*

After the application submission window was complete and the population of applied-for TLDs that may be delegated into the root zone was known, it was possible to have a more focused analysis of potential name collisions.

In March 2013, ICANN’s Security and Stability Advisory Committee (SSAC) issued a report SAC 057: SSAC Advisory on Internal Name Certificates, wherein the SSAC referred to the issue of “name collision” and provided ICANN with steps for mitigating the issue.<sup>183</sup> Broad community participation was enlisted to develop a solution and to further study the impact on applied-for strings since the SSAC’s list was not exhaustive.

Although it was considered to be unlikely that domain name collisions would affect significant numbers of corporate network operators or Internet users, ICANN acted conservatively and took numerous steps to minimize the potential impact of name collision.

Final “Phase One Report on Mitigating the Risk of DNS Namespace Collisions”<sup>184 185</sup>

On 04 June 2014 ICANN published the Final “Phase One Report on Mitigating the Risk of DNS Namespace Collisions” This report noted that, “collisions in the global

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<sup>182</sup> See report: <https://www.icann.org/en/system/files/files/sac-045-en.pdf>

<sup>183</sup> See the report here: <https://www.icann.org/en/system/files/files/sac-057-en.pdf>

<sup>184</sup> See “Phase One Report on Mitigating the Risk of DNS Namespace Collisions”<sup>184</sup> at <https://www.icann.org/en/system/files/files/name-collision-mitigation-study-06jun14-en.pdf>

<sup>185</sup> Note, the “Mitigating the Risk of DNS Namespace Collisions Final Report” was published on 30 November 2015: <https://www.icann.org/news/announcement-2-2015-11-30-en>

Domain Name System (DNS) namespace have the potential to expose serious security-related issues for users of the DNS.” The authors stated that they:

*did not find that the addition of new Top Level Domains (TLDs) fundamentally or significantly increases or changes the risks associated with DNS namespace collisions. The modalities, risks, and etiologies of the inevitable DNS namespace collisions in new TLD namespaces will resemble the collisions that already occur routinely in the other parts of the DNS. The addition of multiple new TLDs over the past decade (generic and country code) has not suggested that new failure modalities might exist; rather, the indication is that the failure modalities are similar in all parts of the DNS namespace. Our research has shown that a very few root causes are responsible for nearly all collisions, and these root causes appear in nearly every classification of TLD, albeit in varying proportions.*

The recommendations in the report describe a comprehensive approach to reducing current and future DNS namespace collisions, alerting operators of potential DNS namespace related issues, and providing emergency response capabilities in the event that critical (e.g., life safety) systems are adversely impacted.

Over the course of the study, JAS found no evidence to suggest that the security and stability of the global Internet DNS itself is at risk. This finding confirms the results of the *DNS Stability String Review* performed on each string during Initial Evaluation pursuant to Section 2.2.1.3.1 of the Applicant Guidebook (AGB). The remainder of their research is focused on issues from the perspective of end-systems as consumers of the global DNS. To date, neither JAS nor ICANN has identified any instances where “a newly delegated gTLD creates a clear and present danger to human life as a result of colliding use as a dotless name...”, which is the unlikely case where an emergency response would be needed, per the Name Collision Occurrence Management Framework<sup>186</sup>.

See also SAC066, “SSAC Comment Concerning JAS Phase One Report on Mitigating the Risk of DNS Namespace Collisions.”<sup>187</sup> In its Comment the SSAC noted that it had reviewed the Draft Report prepared for ICANN by JAS Global Advisors entitled “Mitigating the Risk of DNS Namespace Collisions: A Study on Namespace Collisions in the Global Internet DNS Namespace and a Framework for Risk Mitigation, Phase One Report.” The Draft Report was published by ICANN on 24 February 2014 and

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<sup>186</sup> ICANN. (30 July 2014). Name Collision Occurrence Management Framework. Retrieved from <https://www.icann.org/en/system/files/files/name-collision-framework-30jul14-en.pdf>

<sup>187</sup> See SAC066, “SSAC Comment Concerning JAS Phase One Report on Mitigating the Risk of DNS Namespace Collisions.” at <https://www.icann.org/en/system/files/files/sac-066-en.pdf>

put out for public comment.<sup>188</sup> The SSAC Comment identified eight issues with the Draft Report, and made recommendations in relation to each of them.

ICANN, the community, and the SSAC worked together on a mitigation plan, reviewing historical query traffic, identifying mitigation steps, and developing educational materials for IT administrators. On 30 July 2014, the NGPC passed a resolution directing staff to defer delegation of the high-risk strings (i.e., HOME, CORP, MAIL) indefinitely, and outlined procedures for Controlled Interruption for new gTLDs<sup>189</sup>. In addition, the NGPC asked that ICANN “work with the GNSO to consider whether policy work on developing a long-term plan to manage gTLD name collision issues should be undertaken.”

In August 2014, ICANN published the Name Collision Management Framework<sup>190</sup>, which provides a long-term solution for registry operators to mitigate risks of name collision in the future.

- *4.6.3.2 Questions and Concerns Related to Subject*

The DG did not highlight specific concerns as it relates to name collisions, other than noting that it was not mentioned in the AGB and was therefore not something that could have been adequately planned for. However, there is the possibly for additional work related to name collisions, including:

- Developing a process to identify high-risk strings for future procedures.
- As most measures under the framework cease after two years of delegation, are additional measures needed to manage name collision risks that may pose a risk for 2012-round gTLDs beyond that timeframe?
- Are measures needed for gTLDs delegated prior to the 2012 New gTLD Program round?
- Are there suggested data points that should be collected to help determine the effectiveness of current mitigation measures?

- *4.6.3.3 Relevant Guidance*

- Recommendation 4
- Name Collision Occurrence Management Framework:  
<https://www.icann.org/en/system/files/files/name-collision-framework-30jul14-en.pdf>

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<sup>188</sup> See “Mitigating the Risk of DNS Namespace Collisions: A Study on Namespace Collisions in the Global Internet DNS Namespace and a Framework for Risk Mitigation, Phase One Report” at <https://www.icann.org/en/system/files/files/name-collision-mitigation-26feb14-en.pdf>

<sup>189</sup> ICANN Board resolution: <https://features.icann.org/name-collision-occurrence-management-framework>

<sup>190</sup> Ibid.

- **4.6.3.4 Rationale for Policy Development**

In late 2014, the GNSO considered whether policy work was needed to develop a long-term plan to manage gTLD name collisions. The GNSO Council determined:

*...that policy work by the Council on the name collision issue at this time would be premature, particularly as the Name Collision framework has only recently been implemented and as such there is limited data available about whether this has been successful or otherwise.*

*We appreciate that situation could rapidly change as new gTLDs continue to be introduced and if that were the case, then the GNSO would then reconsider this issue. Further, it should be noted that any policy process undertaken would not impact 2012 gTLD registry operators given the time it takes to conduct a formal policy process.*

*Therefore, this issue may be best discussed in the broader context of future rounds of new gTLDs.<sup>191</sup>*

A potential PDP-WG on New gTLD Subsequent Procedures may want to determine what data points should be collected and analyzed to help drive next steps, if any, to develop a long-term plan to mitigate issues that may arise from gTLD name collisions.

## 4.7 Work Processes

### 4.7.1 Overview

As can be seen in sections 4.2 through 4.6, the New gTLD Subsequent Procedures Discussion Group was instrumental in identifying a number of concerns related to the 2012 New gTLD Program round. The subjects described and analyzed in those sections represent a starting point for a potential PDP-WG on New gTLD Subsequent Procedures, meaning additional subjects could be identified in advance of the initiation of the PDP-WG, or during the course of deliberations. As such, the volume of work that the PDP-WG may undertake will be extensive and the project should be managed to reach an effective outcome in a reasonable amount of time. There are many ways to organize the subjects for disposition, but below in the following section are several options that may be worth considering, though the PDP-WG would of course be free to employ alternative methods it deemed more effective.

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<sup>191</sup> GNSO Correspondence to Cyrus Namazi regarding name collisions:  
<http://gns0.icann.org/en/correspondence/robinson-to-namazi-28jan15-en.pdf>

To better understand the scope of work, below is a representation of the identified subjects and the preliminary staff designations of which subjects may require policy development, taking guidance from the DG on how it envisioned the issues to be resolved, which can be viewed in greater detail in the group's final deliverables<sup>192</sup>, particularly an issue matrix that was developed (which sought to assign each identified issue to a particular principle, recommendation, or implementation guideline as applicable, or noting that the issue may be cause for new policy development). These designations are intended to differentiate the nature of the work, as the subjects are currently understood, but this analysis is purely preliminary in nature and is absolutely dependent upon the deliberations and outcomes from the PDP-WG. For instance, while a subject such as accreditation programs (section 4.2.8) may have a "X" under Policy Development, if the PDP-WG were to determine that accreditation programs were not in the best interests of the overall program, the development of policy recommendations may not actually be necessary in that circumstance. Or conversely, if the PDP-WG wanted to dictate that something other than the AGB (section 4.2.5) serve as the implementation vehicle for the New gTLD Policy, then it may in fact require policy development.

In addition, this analysis does not attempt to predict level of effort, as this is entirely dependent upon the deliberations of the PDP-WG.

In considering the best way to organize work, it is useful to examine if the subject can be worked on independently, is dependent on outcomes from work on other subjects, or perhaps better for prioritizing work, what subjects are driving factors for other subjects. For instance, a subject such as Support for Applicants From Developing Countries (section 4.2.14) may be appropriate to work on independently, and could be a candidate for a dedicated sub-group. Or, for instance, Different TLD Types (section 4.2.15) may be a subject that will have profound effects on other subjects, such as Application Fees (section 4.2.10), Variable Fees (section 4.2.17), Base Agreement (section 4.3.2), among perhaps others. While possibly complicated, it may be useful to develop a mind map or similar to try and determine which subjects feed into others.

The preliminary groupings are merely a suggested approach to organize the work. It was noted in a number of public comments that the way the subjects are currently organized in the preliminary groupings, as well as the sequencing of subjects, may not be optimal or entirely logical from all perspectives. For clarification purposes, it should be noted that the preliminary groupings were established by the DG and the sequencing in each respective group is according to the sequencing from the 2007 Final Report, unless the topic is a new one. Comments noted that the organization of subjects can make it challenging to find certain specific topics, may create overlap between subjects, and may not represent a logical progression of work for a PDP-WG. How a PDP-WG chooses to address the subjects in this Issue Report is for the WG to define in developing its work

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<sup>192</sup> Ibid

plan. However, staff has attempted to provide some input on this subject for consideration by a possible PDP-WG.

There are many ways to organize the subjects, which may in fact draw out additional subjects for analysis, such as organizing the subjects in a more chronological fashion to how they occurred in the context of the New gTLD Program. For instance, the subjects could be associated around the procedural steps below, although this approach may rely too heavily on the assumption that these existing steps would carry forward to subsequent procedures:

- Applicant Guidebook Development
- Application Submission Window
- Application Reveal
- Application Processing and Evaluation
- Objection Procedures
- String Contention / CPE / Auctions
- Application Approval/Rejection
- Registry Agreement Processing / Signing
- Pre-Delegation Testing
- Registry Onboarding & Systems
- Delegation
- Start-Up/Launch Information
- Zone file Access
- Sunrise
- Trademark Clearing House
- Pre-Registration
- General Availability
- Registry Compliance

Another method of grouping the subjects could be around progressing through logical questions and addressing the related subjects. For instance:

1. Should there be New gTLD subsequent procedures (e.g., §§4.2.1, 4.2.3, etc.)?
2. If yes, what are the high level principles that should govern the program (e.g., §§4.2.3, 4.2.6, 4.3.11, 4.2.14, etc.)?
3. What requirements and rules should govern:
  - a. Application acceptance mechanisms (e.g., §§4.2.7, 4.2.12, 4.2.13, 4.2.16, etc.)
  - b. Application requirements (e.g., §§4.2.8, 4.2.15, 4.3.11, 4.4.5, etc.)String requirements (e.g., §§4.3.1, 4.4.2, 4.5.1, etc.)
  - c. Objections and Rights Protection Mechanisms (e.g., §§4.3.3, 4.3.7, 4.4.3, etc.)
  - e. Contractual requirements of registries (e.g., §§4.3.10, 4.3.8, 4.3.5, 4.3.6, etc.)

4. What subjects are dependent on the outcomes from other development around other subjects (e.g., §§4.3.2, 4.6.2, etc.)
5. Operational and miscellaneous (e.g., 4.2.4, 4.2.9, 4.2.11, etc.)

The possible PDP-WG would ultimately be responsible for determining which method of organizing the subjects best serve its purposes.

The possible DP-WG should also consider whether all subjects included in this report should be undertaken as there are certain subjects that may either extend beyond the scope of a potential PDP-WG on New gTLD Subsequent Procedures (e.g., accountability mechanisms) or have other efforts dedicated to those subjects (e.g., Competition, Consumer Trust and Consumer Choice in the context of Affirmation of Commitments, potential PDP-WG on RPM reviews, etc.).

Finally, while mentioned in section 4.2.2 Predictability, it should be noted that the outputs from the Policy and Implementation Working Group (i.e., the GNSO Input Process (GIP), GNSO Guidance Process (GGP), and the GNSO Expedited Policy Development Process (EPDP))<sup>193</sup> may be of use in addressing certain subjects, especially when policy development is not necessary (e.g., implementation guidance is more appropriate), or a subject can be demarcated from others to be dealt with alone. Essentially, these processes may be useful in allowing the work on some subjects to possibly conclude earlier, rather than having to wait for a full PDP-WG Final Report and subsequent steps.

Section	Subject	Description	Policy Development
<b>Group 1</b>			
4.2.1	Cancelling Subsequent Procedures	Should there in fact be new gTLD subsequent procedures and if not, what are the justifications for and ramifications of discontinuing the program?	X
4.2.2	Predictability	How can changes to the program introduced after launch (e.g., digital archery/prioritization issues, name collision, registry agreement changes, public interest commitments (PICs), etc.) be avoided?	
4.2.3	Competition, Consumer Trust and Consumer Choice	Did the implementation meet or discourage these goals?	X

<sup>193</sup> See Final Report: <http://gns0.icann.org/en/issues/policy-implementation/pi-wg-final-recommendations-01jun15-en.pdf>

4.2.4	Community Engagement	How can participation from the community be better encouraged and integrated during the policy development process, implementation, and execution?	
4.2.5	Applicant Guidebook	Is the AGB the right implementation of the GNSO recommendations? If so, how can it be improved to ensure that it meets the needs of multiple audiences (e.g., applicants, those monitoring the policy implementation, registry service providers, escrow providers, etc.)	
4.2.6	Clarity of Application Process	How can the application process avoid developing processes on an as-needed basis (e.g., clarifying question process, change request process, customer support, etc.)	
4.2.7	Applications Assessed in Rounds	Has the scale of demand been made clear? Does the concept of rounds affect market behavior and should factors beyond demand affect the type of application acceptance mechanism?	X
4.2.8	Accreditation Programs	As there appears to be a limited set of technical service and Escrow providers, would the program benefit from an accreditation program for third party service providers? If so, would this simplify the application process with a set of pre-qualified providers to choose from? Are there other impacts that an accreditation program may have on the application process?	X
4.2.9	Systems	How can the systems used to support the New gTLD Program, such as TAS, Centralized Zone Data Service, Portal, etc. be made more robust, user friendly, and better integrated?	
4.2.10	Applications Fees	Evaluate accuracy of cost estimates and/or review the methodology to develop the cost model, while still adhering to the principles of cost recovery. Examine how payment processing can be improved.	
4.2.11	Communications	Examine access to and content within knowledge base as well as communication methods between the ICANN and the community.	
4.2.12	Application Queuing	Review whether first come first served guidance remains relevant and if not, whether another mechanism is more appropriate.	X

4.2.13	Application Submission Period	Is three months the proper amount of time? Is the concept of a fixed period of time for accepting applications the right approach?	
4.2.14	Support for Applicants From Developing Countries	Evaluate effectiveness of Applicant Support program to assess if the criteria were properly designed, outreach sufficient, monetary support sufficient, etc. In particular, was there enough outreach in developing economies to 1) contribute to the design and nature of the process and 2) to ensure awareness of the opportunity afforded?	X
4.2.15	Different TLD Types	Does the one-size-fits-all application and review process hamper innovation? Should things such as the application process, requirements, annual fees, contractual requirements, etc. be variable based on the TLD type? For instance, should an existing Registry Operator, that is fulfilling the requirements of its Registry Agreement, be subject to a different, more streamlined, application process?	X
4.2.16	Application Submission Limits	Should there be limits to the number of applications from a single applicant/group? Consider if the round could be restricted to a certain applicant type(s) (e.g., from least developed countries) or other limiting factor.	X
4.2.17	Variable Fees	Should the New gTLD application fee be variable based on such factors as application type (e.g., open or closed registries), multiple identical applications, or other factors?	
<b>Group 2</b>			
4.3.1	Reserved Names List	Review the composition of the reserved names list to determine if additions, modifications, or subtractions are needed (e.g., single letter, two letters, special characters, etc.). Evaluate if the implementation matched expectations (e.g., recommendations of the Reserved Names Working Group). Review whether geographic names requirements are appropriate.	X

4.3.2	Base Registry Agreement	Perform comprehensive review of the base agreement, including investigating how and why it was amended after program launch, whether a single base agreement is appropriate, whether Public Interest Commitments (PICs) are the right mechanism to protect the public interest, etc. Should the Article 7.7 review process be amended to allow for customized reviews by different registry types?	X
4.3.3	Registrant Protections	The original PDP assumed there would always be registrants and they would need protecting from the consequences of Registry failure, although it may not make sense to impose registrant protection obligations such as EBERO and the LOC when there are no registrants to protect, such as in a closed registry. Should more relevant rules be established for certain specific cases?	X
4.3.4	Contractual Compliance	While no specific issues were identified, contractual compliance as it relates to New gTLDs may be considered in scope for discussion, though the role of contractual compliance (i.e., enforcing agreements) would not be considered within scope.	
4.3.5	Registrar Non-Discrimination	Are registrar requirements for registries still appropriate?	X
4.3.6	TLD Rollout	Was adequate time allowed for rollout of TLD? When should recurring fees due to ICANN begin?	X
4.3.7	Second-level Rights Protection Mechanisms	Review effectiveness and implementation of RPMs such as TMCH, URS, etc.	
4.3.8	Registry/Registrar Standardization	Consider whether the registry/registrar relationship should have additional standardization and regulation.	X
4.3.9	Global Public Interest	Existing policy advice does not define the application of "Public Interest" analysis as a guideline for evaluation determinations. Consider issues identified in GAC Advice on safeguards, public interest commitments (PICs), and associated questions of contractual commitment and enforcement. It may be useful to consider the global public interest in the context of ICANN's limited technical	X

		coordination role, mission and core values and how it applies specifically to the New gTLD Program.	
4.3.10	IGO/INGO Protections	The PDP for Protection of IGO and INGO Identifiers in All gTLDs and PDP for IGO-INGO Access to Curative Rights Protection Mechanisms are expected to address a number of issues. While no additional work is envisioned, if there are any remaining or new issues for discussion, they could be deliberated in the context of this PDP.	
4.3.11	Closed Generics	Should there be restrictions around exclusive use of generics TLDs?	X
<b>Group 3</b>			
4.4.1	New gTLD Applicant Freedom of Expression	Examine whether GAC Advice, community processes, and reserved names impacted this goal.	X
4.4.2	String Similarity	Were string contention evaluation results consistent and effective in preventing user confusion? Were the string contention resolution mechanisms fair and efficient?	X
4.4.3	Objections	Review rules around standing, fees, objection consolidation, consistency of proceedings and outcomes. Review functions and role of the independent objector. Consider oversight of process and appeal mechanisms.	X
4.4.4	Accountability Mechanisms	Examine whether dispute resolution and challenge processes provide adequate redress options or if additional redress options specific to the program are needed.	
4.4.5	Community Applications	Was the overall approach to communities consistent with recommendations and implementation guidance? Did the Community Priority Evaluation process achieve its purpose and result in anticipated outcomes? Were the recommendations adequate for community protection?	X
<b>Group 4</b>			
4.5.1	Internationalized Domain Names and Universal Acceptance	Consider how to encourage adoption of gTLDs. Evaluate whether rules around IDNs properly accounted for recommendations from IDN WG. Determine and address policy guidance needed	X

		for the implementation of IDN variant TLDs.	
<b>Group 5</b>			
4.6.1	Security and Stability	Were the proper questions asked to minimize the risk to the DNS and ensure that applicants will be able to meet their obligations in the registry agreement? Should there be non-scored questions and if so, how should they be presented? Were the proper criteria established to avoid causing technical instability? Is the impact to the DNS from new gTLDs fully understood?	X
4.6.2	Applicant Reviews: Technical/Operational and Financial	Were Financial and Technical criteria designed properly to allow applicants to demonstrate their capabilities while allowing evaluators to validate their capabilities? How can the criteria be streamlined and made clearer?	X
4.6.3	Name Collisions	How should name collisions be incorporated into future new gTLD rounds? What measures may be needed to manage risks for 2012-round gTLDs beyond their 2 year anniversary of delegation, or gTLDs delegated prior to the 2012 round?	X

#### 4.7.2 Other Community Program Review-Related Efforts

Beyond the efforts of the GNSO, there are a number of other initiatives in progress or expected to begin, that are related to program reviews of the 2012 New gTLD Program round. The list of known efforts was mentioned previously in this report, but it warrants repeating:

- ICANN New gTLD Program Reviews<sup>194</sup>, which will be looking at several facets of the program, including:
  - Rights Protection Reviews
  - Program Implementation Reviews<sup>195</sup>
  - Security & Stability Reviews
  - Competition, Consumer Trust, and Consumer Choice Data Review

<sup>194</sup> Ibid

<sup>195</sup> Program Implementation Review report available here:  
<http://newgtlds.icann.org/en/reviews/implementation>

- Affirmation of Commitment (AoC) reviews related to Competition, Consumer Trust, and Consumer Choice<sup>196</sup>
- The Security and Stability Advisory Committee (SSAC) will be reviewing previous guidance provided regarding the New gTLD Program and determining if new recommendations are needed.
- The Governmental Advisory Committee (GAC) has formed working groups on the topics of: a) community applications, b) underserved regions, and c) geographic names.
- Cross-Community Working Group on Use of Country/Territory Names as TLDs<sup>197</sup> is analyzing the current status of country and territory names in the ICANN ecosystem and determining the feasibility of creating a framework that could be applied across SOs and ACs.

A common theme mentioned by a number of participants at ICANN53 in Buenos Aires was that more clarity was needed to understand how various efforts are to interact, which serve as dependencies upon either the start or conclusion of other efforts, and ultimately, when the community can reasonably expect the New gTLD subsequent procedures to begin.

While staff has attempted to note where there are parallel efforts related to a certain subject, it has tried to avoid predefining an exact relationship and has tended to suggest that those efforts be taken into consideration during deliberations. Determining the direction of dependencies, to the extent that there are dependencies, is more a function of the community rather than this staff developed Issue Report.

### 4.7.3 Work Process Options

#### 4.7.3.1 Simultaneous

All five preliminary groupings would be worked on simultaneously, likely breaking into sub-groups to take advantage of expertise on certain subjects. While the groups could work simultaneously, this would not prevent prioritization of subjects within each group. It would also be highly beneficial to have regular meetings, which could involve members from each of the groups as a sort of leadership steering committee, or perhaps function as full PDP-WG meetings, or any other mechanism that promotes a holistic viewpoint of development.

Pros:

- Possibly more expeditious to complete work (though there may be external work that could serve as a dependency in completing certain elements of the work).

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<sup>196</sup> Ibid

<sup>197</sup> Ibid

- Takes advantage of expertise and allows those that only want to work on certain aspects of the development to do so more easily.

#### Cons:

- Challenging on ICANN staff and community to consider so many topics at once, from being able to properly consider the subject to having capacity to support so much independent work. Could be particularly challenging for community participants for whom ICANN-related work does not constitute their day job.
- More challenging on ICANN staff and community to ensure a holistic view is taken over all new developments and their impact on program
- More challenging for participants that may want to work on all aspects of the development.
- Assuming there are sub-groups involved, more difficult to ensure dependencies between areas of work are properly taken into account.

#### *4.7.3.2 Sequential*

Work could be performed as a single PDP-WG, with sub-groups as the possible exception rather than the norm, to ensure that all subjects are considered holistically, as many are dependent on other areas of work (e.g., Variable Fees may be influenced heavily based on outcomes related to Application Types, Accreditation Programs, Closed Generics, among others). Certain subjects, that are driving factors for other subjects could be prioritized, and subjects that are possibly most dependent on many other elements, such as the base agreement and the application criteria, could be pushed further towards the end of the process so that it can consume the recommended changes from other aspects of development.

#### Pros:

- Easier to account for all work, allowing a more holistic view of potential program changes.
- Easier to staff and to encourage robust community participation.
- Easier to manage resources and outputs.
- Most PDPs do not extensively utilize sub-groups, so more familiar approach to function largely as a single group

#### Cons:

- Likely results in a more protracted development cycle.
- May make it more difficult to allow for limited participation from members with certain expertise or focused interest.

## 5. Staff Recommendation

### 5.1 General Counsel Recommendation

#### Scope considerations

In determining whether the issue is within the scope of the ICANN policy process and the scope of the GNSO the General Counsel's office have considered the following factors:

#### **Whether the issue is within the scope of ICANN's mission statement**

ICANN's mission statement includes the coordination of the allocation of certain types of unique identifiers, including domain names, and the coordination of policy development reasonably and appropriately related to these technical functions, which includes new gTLDs.

#### **Whether the issue is broadly applicable to multiple situations or organizations**

As new gTLD policy affects applicants, registries, registrars, and registrants, the issue is broadly applicable to multiple situations or organizations. Any changes to the policy, its rules or program mechanisms that may result from a PDP would also be broadly applicable to multiple situations or organizations.

#### **Whether the issue is likely to have lasting value or applicability, albeit with the need for occasional updates**

Updates or refinements to the existing New gTLD Policy would guide the development and management of future New gTLD subsequent procedures, which would presumably remain "designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains."

#### **Whether the issue will establish a guide or framework for future decision-making**

The New gTLD policy is expected to govern future New gTLD subsequent procedures, which again, would presumably remain "designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains."

#### **Whether the issue implicates or affects ICANN policy**

The goal of the PDP would be to develop new policy or modify existing New gTLD policy, which would replace the policy as established in the *The Final Report on the Introduction of New Generic Top-Level Domains*.

## 5.2 Staff Recommendation

ICANN staff has confirmed that the proposed issue is within the scope of the GNSO's Policy Development Process and the GNSO. The final deliverables of the New gTLD Subsequent Procedures Discussion Group provided a recommended minimum set of subjects to be the focus of the PDP-WG. The PDP-WG should be focused on analyzing these recommended subjects from the DG.

In the view of ICANN staff, a successful outcome of the PDP-WG is of utmost importance given the number of issues identified by the DG, as well as by the ICANN Board. With experiences gained from the 2012 New gTLD Program round, the PDP-WG has a critical role in improving the policies that govern the New gTLD Program. ICANN staff therefore recommends that the PDP-WG proceed by considering carefully the recommended subjects of the DG, parallel efforts that are reviewing the New gTLD Program, including those performed by ICANN in the context of the Affirmation of Commitments, or other areas within the community, and work constructively towards new or modified policy recommendations for New gTLD subsequent procedures. This work will better inform the GNSO Council on New gTLD subsequent procedures. To enable broad community input on this proposed process and path forward, Annex A of this report also contains the draft WG charter developed by the DG, with minor revisions.

## 6. Next Steps

Following review of the public comments received regarding information missing from the Preliminary Issue Report, or necessary corrections and updates to information in the Preliminary Issue Report (see Annex B), the Staff Manager has updated the Issue Report accordingly to reflect public comments, which is now submitted as the Final Issue Report to the GNSO Council for its consideration. In the event a PDP is initiated, the GNSO Council may, using its own methods, refine the Issue Report's proposed Working Group Charter before adopting a Charter.

In addition, public comments received regarding the PDP-WG work processes and/or substantive input that may ultimately be considered by the PDP Working Group will be relayed to the GNSO Council and the newly-formed Working Group on New gTLD Subsequent Procedures for consideration at appropriate points throughout this PDP.

## **Annex A – New gTLD Subsequent Procedures Discussion Group Final Deliverables**

# Deliverables of the New gTLD Subsequent Procedures Discussion Group

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## **TABLE OF CONTENTS**

- 1. Executive Summary**
- 2. Annex A – Issues Matrix**
- 3. Annex B – Draft Charter**

# Executive Summary

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## Background

In 2005, the Generic Names Supporting Organization (GNSO) began a policy development process (PDP) to consider the introduction of new gTLDs. The two-year PDP process resulted in a set of 19 GNSO policy recommendations for implementing new gTLDs. In order to implement the policy recommendations of the GNSO, and to take into consideration subsequent additional policies and recommendations from the community (including the GNSO, GAC, ccNSO, ALAC, SSAC and the ICANN Board through the New gTLD Program Committee (NGPC)), a number of draft Applicant Guidebooks (AGBs) were developed by ICANN staff. Numerous comment periods were held to encourage participation of community stakeholders in the finalization of the AGB. The iterative and inclusive nature of efforts to develop the AGB was in part to adhere to Recommendation 1:

*ICANN must implement a process that allows the introduction of new top-level domains.*

*The evaluation and selection procedure 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.*

Although in June 2011, ICANN's Board of Directors approved the final AGB and authorized the launch of the New gTLD Program, subsequent revised versions of the Final Applicant Guidebook were released by ICANN staff, including the ultimate final New gTLD Applicant Guidebook dated June 4, 2012 (a few months after the application window closed)<sup>198</sup>.

The application window opened on 12 January 2012. A total of 1930 complete applications were received and the first set of Initial Evaluation results were released on 22 March 2013, followed by the first set of new gTLD delegations on 21 October 2013. Even after the submissions of applications, completion of initial evaluations, contract signatures and some delegations, changes to parts of the AGB, including the Registry Agreement, procedures involving contention sets, geographic names, objections, name collision, etc. were introduced and approved by the NGPC.

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198 <http://newgtlds.icann.org/en/applicants/agb>

## Current

All applications have completed the evaluation process. As of the start of 2015, there are nearly 500 gTLDs delegated and approximately 1000 applications still proceeding through the remaining steps of the program, which includes contention resolution, contracting, accountability mechanisms including the Independent Review Process (IRP), and other processes<sup>199</sup>. Though the current round is ongoing, efforts to examine the round have already begun, which includes but is not limited to:

- Staff led analysis of the impact of the program on the security and stability of the root zone system;
- Staff led assessment of the effectiveness of rights protection mechanisms;
- Staff led effort to provide an initial assessment of the effectiveness of rights protection safeguards put in place to mitigate potential issues in the New gTLD Program<sup>200</sup>
- GNSO request for an Issue Report on the status of rights protections, to be delivered 18 months after the delegation of the first new gTLD;
- Per Section 9.3 of the Affirmation of Commitments, a community driven review of the program's impact on Competition, Consumer Trust, and Consumer Choice<sup>201</sup>;
- The creation by the GNSO Council of a Discussion Group to review the first round of the new gTLD program to commence the process of considering possible adjustments for subsequent new gTLD application procedures.

The creation of the GNSO Discussion Group was via the following GNSO Council resolution<sup>202</sup>:

“The GNSO Council creates a new Discussion Group to discuss the experiences gained by the first round of new gTLD applications and identify subjects for future issue reports, if any, that might lead to changes or adjustments for subsequent application procedures”

## Deliberations of the Discussion Group

**As the original policy recommendations as adopted by the GNSO Council and ICANN Board has “been designed to produce a systemized and ongoing mechanisms for applicants to propose new top-level domains<sup>203</sup>”, those policy recommendations remain in place for subsequent rounds of the new gTLD Program unless the GNSO**

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<sup>199</sup> Current statistics from the 2012 new gTLD program are available here: <http://newgtlds.icann.org/en/program-status/statistics>

<sup>200</sup> <https://www.icann.org/public-comments/rpm-review-2015-02-02-en>

<sup>201</sup> <https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en>

<sup>202</sup> Full text of the GNSO Council resolution can be found here:

<http://gnso.icann.org/en/council/resolutions#201406>

<sup>203</sup> The GNSO Final Report on the Introduction of New Generic Top-Level Domains is available here: <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>

**Council would decide to modify those policy recommendations via a policy development process.**

The Discussion Group (DG) agreed to pursue its task of reviewing the first round of the New gTLD Program in a series of iterative work plan steps:

1. The DG has reflected upon their experiences from the first round and identified issues that may need to be addressed for subsequent procedures. The issues have been portrayed in a mind map to help organize the issues into logical categories.
2. The DG has created a matrix, available in Annex A, that attempts to map the issues to the original policy principles, recommendations, and implementation guidance. It is envisioned that this exercise will aid in determining if the issue raised is potentially:
  - A clarification, expansion, or other amendment of an existing policy recommendation;
  - A new policy issue (when the issue cannot be mapped to any existing policy principle, recommendation, or implementation guidance);
  - An issue involving the implementation of an existing or new policy to serve as guidance for when subsequent procedures begin.
  - Identification of ‘cross-cutting’ issues that affect multiple aspects of the programme (e.g. notion of community will impact application, contention resolution, evolution, appeals, accountability, etc.)
  - Interplay between the gTLD program – including appeals – and ICANN accountability mechanisms.

It may also help establish what policy recommendations do not require further clarification or modification and are to remain as previously approved by the ICANN Board.

The objective of this analysis is to aid the DG in its development of recommendations to the GNSO Council on which issues should be worked on within one or more policy processes (which may include one or more formal PDPs) and how this work could be best structured (see also 3).

3. Following this initial analysis, the DG was in a position to propose how it envisions the issues can be grouped and worked on. The GNSO Council may want to consider the following factors in determining the path forward:
  - Can the issues be addressed in a single PDP or should separate PDPs be initiated (each with its own Issue Report and charter)?
  - Can certain issues be worked on through processes other than the formal PDP?
  - Can the issues all be worked on simultaneously? If not, what are the factors that affect the order?

- Are there dependencies between issues?
- Are some issues more critical to address immediately? Do all issues need to be resolved prior to launching subsequent procedures?
- Are sufficient community and staff resources available?
- Are there parallel processes that might affect the outcome of the working group deliberations?
- Are external resources, such as independent legal counsel, academic or international expert guidance required?

The DG considered many of these questions and determined that it considers keeping all issues contained to a single Issue Report/single possible PDP as the preferable outcome. The DG feels that the issues identified do not necessarily need to be worked on concurrently, but should be considered in a holistic fashion to ensure that the proper factors are considered in reaching outcomes. In addition, the DG is concerned with bandwidth issues in regards to both ICANN staff and community members, which may arise from having separate Issue Reports/PDPs.

4. The issues as identified in the matrix will be organized and presented in a draft charter, available in Annex B, which is expected to be included in a potential ICANN staff prepared Issue Report. In addition to the draft charter, a motion to request an issue report and an issue report request will also be prepared. Collectively, these documents should provide the elements below:
  - Suggested groupings of the issues.
  - Description of the issues.
  - Description of the impact of such issue on affected.
  - From step two above, the recommended mechanism needed to resolve the issue (e.g., new policy, policy clarification, implementation recommendation, or other).
  - A series of proposed questions or considerations for each issue that may be used for a potential Issue Report/possible PDP effort.
5. This summary document, supporting Appendices, and descriptions of the identified issues, will be presented to the GNSO Council for their deliberation in determining how to proceed in advancing the development of new gTLD Subsequent Procedures, which the DG anticipates will be a request for an Issue Report.

The DG understands that a substantial amount of analysis will be needed if and when the list of issues is considered during the Issue Report drafting by ICANN staff. It is expected that an Issue Report would be driven by the topics described in the draft charter and influenced by the additional detail contained within the matrix, described in 2. The DG also welcomes ICANN staff further considering the set of factors as listed in 3, and hopes to see options for undertaking the work. The DG

looks forward to the opportunity to provide comment and guidance in the future, including in regards to an Issue Report if and when it is published for public comment.

# Annex A – Issues Matrix

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Review matrix here: <http://gns0.icann.org/en/issues/new-gtlds/subsequent-procedures-issues-matrix-01jun15-en.xls>

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# Annex B – Draft Charter

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## Working Group (WG) Charter

<b>WG Name:</b>	TBD	
<b>Section I: Working Group Identification</b>		
<b>Chartering Organization(s):</b>	GNSO Council	
<b>Charter Approval Date:</b>		
<b>Name of WG Chair:</b>		
<b>Name(s) of Appointed Liaison(s):</b>		
<b>WG Workspace URL:</b>		
<b>WG Mailing List:</b>		
<b>GNSO Council Resolution:</b>	<b>Title:</b>	
	<b>Ref # &amp; Link:</b>	
<b>Important Document Links:</b>	•	
<b>Section II: Mission, Purpose, and Deliverables</b>		
<b>Mission &amp; Scope:</b>		
<p>The New gTLD Subsequent Procedures PDP Working Group (WG) is tasked with calling upon the community's collective experiences from the 2012 New gTLD Program round to determine what, if any changes may need to be made to the existing <i>Introduction of New Generic Top-Level Domains</i> policy recommendations from 8 August 2007<sup>204</sup>. As the original policy recommendations as adopted by the GNSO Council and ICANN Board have “been designed to produce a systemized and ongoing mechanisms for applicants to propose new top-level domains”, those policy recommendations remain</p>		

<sup>204</sup> <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

in place for subsequent rounds of the New gTLD Program unless the GNSO Council would decide to modify those policy recommendations via a policy development process. The work of this WG follows the efforts of the New gTLD Subsequent Procedures Discussion Group (DG), which identified a set of issues for a future PDP-WG to consider in their deliberations. The DG saw the issues to address in this Working Group as:

- Clarifying, amending or overriding existing policy principles, recommendations, and implementation guidance;
- Developing new policy recommendations;
- Supplementing or developing new implementation guidance

In addition to the work of the DG, a number of review efforts are underway which may have an impact on the future work of this WG. Therefore, this WG should not be limited to the issues identified by the DG and should take into account the findings from the parallel efforts external to the WG.

As part of the WG deliberations, the WG should consider at a minimum, the elements below, which are found in further detail in the Final Issue Report. These elements have been organized in groupings suggested by the DG that may facilitate establishing teams to undertake the work. However, additional work methods, such as those described in the Final Issue Report, or other methods identified by the WG may be more appropriate to undertake the work. The list below in this charter is a starting point, and a suggested method of organization, but it is not intended to be exhaustive or impose constraints on this WG on how it operates or the issues it discusses, provided that the issues are directly related to new gTLD subsequent procedures. This WG may need to supplement this list, or reorganize it, to meet the needs of the WG as it moves deeper into the substantive policy discussions. If additional materials topics are identified, the WG should inform the GNSO Council, especially if amendment of this Charter is required. The fact that some issues are listed in the Final Issue Report and Appendices to the outputs of the DG, as opposed to inside the text of this Charter, is not intended to elevate some issues over others; the high-level issues below are simply to provide an illustrative guide to the issues that this Working Group will consider.

- **Group 1: Overall Process / Support / Outreach: Principles A and C; Recommendations 1, 9, 10, 12 and 13; Implementation Guidance A, B, C, D, E, M, N, O and Q; New Topics “Different TLD Types”, “Application Submission Limits” and “Variable Fees”**
  - Cancelling Subsequent Procedures: Should there in fact be new gTLD subsequent procedures and if not, what are the justifications for and ramifications of discontinuing the program?
  - Predictability: How can changes to the program introduced after launch (e.g., digital archery/prioritization issues, name collision, registry agreement changes, public interest commitments (PICs), etc.) be avoided?
  - Competition, Consumer Trust, and Consumer Choice: Did the implementation meet or discourage these goals?
    - *Note that per Section 9.3 of the Affirmation of Commitments, there is to be a*

*community driven review of the New gTLD Program's impact on Competition, Consumer Trust, and Consumer Choice, taking into account the recommended metrics as identified by the Implementation Advisory Group for Competition, Consumer Trust, and Consumer Choice (IAG-CCT).*

- Community Engagement: How can participation from the community be better encouraged and integrated during the policy development process, implementation, and execution?
- Applicant Guidebook (AGB): Is the AGB the right implementation of the GNSO recommendations? If so, how can it be improved to ensure that it meets the needs of multiple audiences (e.g., applicants, those monitoring the policy implementation, registry service providers, escrow providers, etc.)
- Clarity of Application Process: How can the application process avoid developing processes on an as-needed basis (e.g., clarifying question process, change request process, customer support, etc.)
- Applications Assessed in Rounds: Has the scale of demand been made clear? Does the concept of rounds affect market behavior and should factors beyond demand affect the type of application acceptance mechanism?
- Accreditation Programs: As there appears to be a limited set of technical service and Escrow providers, would the program benefit from an accreditation program for third party service providers? If so, would this simplify the application process with a set of pre-qualified providers to choose from? Are there other impacts that an accreditation program may have on the application process?
- Systems: How can the systems used to support the New gTLD Program, such as TAS, Centralized Zone Data Service, Portal, etc. be made more robust, user friendly, and better integrated?
- Application Fees: Evaluate accuracy of cost estimates and/or review the methodology to develop the cost model, while still adhering to the principle of cost recovery. Examine how payment processing can be improved.
- Communications: Examine access to and content within knowledge base as well as communication methods between ICANN and the community.
- Application Queuing: Review whether first come first served guidance remains relevant and if not, whether another mechanism is more appropriate.
- Application Submission Period: Is three months the proper amount of time? Is the concept of a fixed period of time for accepting applications the right approach?
- Support for Applicants From Developing Countries: Evaluate effectiveness of Applicant Support program to assess if the criteria were properly designed, outreach sufficient, monetary support sufficient, etc. In particular, was there enough outreach in developing economies to 1) contribute to the design and nature of the process and 2) to ensure awareness of the opportunity afforded?
- Different TLD Types: Does the one-size-fits-all application and review process hamper innovation? Should things such as the application process, requirements, annual fees, contractual requirements, etc. be variable based on the TLD type? For instance, should an existing Registry Operator, that is fulfilling the requirements of its Registry Agreement, be subject to a different, more streamlined, application process?

- Application Submission Limits: Should there be limits to the number of applications from a single applicant/group? Consider if the round could be restricted to a certain applicant type(s) (e.g., from least-developed countries) or other limiting factor.
- Variable Fees: Should the New gTLD application fee be variable based on such factors as application type (e.g., open or closed registries), multiple identical applications, or other factor?
- **Group 2: Legal / Regulatory: Recommendations 5, 10, 14, 15, 16, 17 and 19; Implementation Guidance I, J, K and L; New Topics “Second-level Rights Protection Mechanisms”, “Registry/Registrar Standardization”, “Global Public Interest” and “IGO/INGO Protections”**
  - Reserved Names: Review the composition of the reserved names list to determine if additions, modifications, or subtractions are needed (e.g., single letter, two letters, special characters, etc.). Evaluate if the implementation matched expectations (e.g., recommendations of the Reserved Names Working Group). Review whether geographic names requirements are appropriate.
    - *Note, the GNSO/ccNSO-chartered Cross Community Working Group on the Use of Country and Territory Names as Top-Level Domains is focused on a policy framework for country and territory names and efforts should be made to avoid duplicative work. In addition, capital city names, city names, etc. may also warrant discussion.*
  - Base agreement: Perform comprehensive review of the base agreement, including investigating how and why it was amended after program launch, whether a single base agreement is appropriate, whether Public Interest Commitments (PICs) are the right mechanism to protect the public interest, etc. Should the Article 7.7 review process be amended to allow for customized reviews by different registry types?
  - Registrant Protections. The original PDP assumed there would always be registrants and they would need protecting from the consequences of Registry failure, although it may not make sense to impose registrant protection obligations such as EBERO and the LOC when there are no registrants to protect, such as in a closed registry. Should more relevant rules be established for certain specific cases?
  - Contractual Compliance: While no specific issues were identified, contractual compliance as it relates to New gTLDs may be considered in scope for discussion, though the role of contractual compliance (i.e., enforcing agreements) would not be considered within scope.
  - Registrar Non-Discrimination: Are registrar requirements for registries still appropriate?
    - *Note, the development and implementation of Specification 13 for .brands was agreed to by the GNSO Council but deemed to be inconsistent with the historic Recommendation 19 because brands had not been considered in the original PDP.*
  - TLD Rollout: Was adequate time allowed for rollout of TLD? When should recurring fees due to ICANN begin?
  - Second-Level Rights Protection Mechanisms: Review effectiveness and implementation of RPMs such as TMCH, URS, etc.
    - *Note that there is a Preliminary Issue report on the "current state of all rights*

*protection mechanisms (RPMs) implemented for both existing and new gTLDs, including but not limited to the UDRP and the URS..." which may lead to the initiation of a PDP on the subject.*

- Registry/Registrar Standardization: Consider whether the registry/registrar relationship should have additional standardization and regulation.
- Global Public Interest: Existing policy advice does not define the application of "Public Interest" analysis as a guideline for evaluation determinations. Consider issues identified in GAC Advice on safeguards, public interest commitments (PICs), and associated questions of contractual commitment and enforcement. It may be useful to consider the global public interest in the context of ICANN's limited technical coordination role, mission and core values and how it applies specifically to the New gTLD Program.
- IGO/INGO Protections: The PDP for Protection of IGO and INGO Identifiers in All gTLDs and PDP for IGO-INGO Access to Curative Rights Protection Mechanisms are expected to address a number of issues. While no additional work is envisioned, if there are any remaining or new issues for discussion, they could be deliberated in the context of this PDP.
- Closed Generics: Should there be restrictions around exclusive use of generics TLDs?
- **Group 3: String Contention / Objections & Disputes: Principle G; Recommendations 2, 3, 6, 12 and 20; Implementation Guidance F, H, P and R**
  - Applicant's Freedom of Expression: Examine whether GAC Advice, community processes, and reserved names impacted this goal.
  - String Similarity: Were string contention evaluation results consistent and effective in preventing user confusion? Were the string contention resolution mechanisms fair and efficient?
  - Objections: Review rules around standing, fees, objection consolidation, consistency of proceedings and outcomes. Review functions and role of the independent objector. Consider oversight of process and appeal mechanisms.
  - Accountability Mechanisms: Examine whether dispute resolution and challenge processes provide adequate redress options or if additional redress options specific to the program are needed.
    - *Note that the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) is comprehensively reviewing accountability mechanisms, so a portion of this topic may be beyond the scope of the New gTLD Subsequent Procedures PDP*
  - Community Applications: Was the overall approach to communities consistent with recommendations and implementation guidance? Did the Community Priority Evaluation process achieve its purpose and result in anticipated outcomes? Were the recommendations adequate for community protection?
- **Group 4: Internationalized Domain Names: Principle B; Recommendation 18**
  - Internationalized Domain Names and Universal Acceptance: Consider how to encourage adoption of gTLDs. Evaluate whether rules around IDNs properly accounted for recommendations from IDN WG. Determine and address policy guidance needed for the implementation of IDN variant TLDs.

- *Note that the Universal Acceptance Steering Group has community support to lead the Universal Acceptance efforts and that conflicting effort and outcomes should be avoided.*
- **Group 5: Technical and Operations: Principles D, E and F; Recommendations 4, 7, and 8; New Topic “Name Collisions”**
  - Security and Stability: Were the proper questions asked to minimize the risk to the DNS and ensure that applicants will be able to meet their obligations in the registry agreement? Should there be non-scored questions and if so, how should they be presented? Were the proper criteria established to avoid causing technical instability? Is the impact to the DNS from new gTLDs fully understood?
  - Applicant Reviews: Technical/Operational and Financial: Were Financial and Technical criteria designed properly to allow applicants to demonstrate their capabilities while allowing evaluators to validate their capabilities? How can the criteria be streamlined and made clearer?
  - Name collisions: How should name collisions be incorporated into future new gTLD rounds? What measures may be needed to manage risks for 2012-round gTLDs beyond their 2 year anniversary of delegation, or gTLDs delegated prior to the 2012 round?

The WG, during its deliberations, should keep in mind that making substantive changes to the New gTLD Program may result in significant differences between registries from the 2012 round and future rounds. Where significant differences are identified, the WG should discuss the benefits to be realized from recommended changes against any possible negative impacts, such as creating an uneven playing field. As outlined in the PDP Manual, recommendations may take different forms including, for example, recommendations for consensus policies, best practices and/or implementation guidelines. The PDP WG is required to follow the steps and processes as outlined in Annex A of the ICANN Bylaws and the PDP Manual.

**Objectives & Goals:**

To develop an Initial Report and a Final Report addressing the issue of New gTLD Subsequent Procedures to be delivered to the GNSO Council, following the processes described in Annex A of the ICANN Bylaws and the PDP Manual.

**Deliverables & Timeframes:**

The WG shall respect the timelines and deliverables as outlined in Annex A of the ICANN Bylaws and the PDP Manual. As per the GNSO Working Group Guidelines, the WG shall develop a work plan that outlines the necessary steps and expected timing in order to achieve the milestones of the PDP as set out in Annex A of the ICANN Bylaws and the PDP Manual and submit this to the GNSO Council.

**Section III: Formation, Staffing, and Organization**

**Membership Criteria:**

The Working Group will be open to all interested in participating. New members who join after work has been completed will need to review previous documents and meeting transcripts.

**Group Formation, Dependencies, & Dissolution:**

This WG shall be a standard GNSO PDP Working Group. The GNSO Secretariat should circulate a ‘Call For Volunteers’ as widely as possible in order to ensure broad representation and participation in the

<p>Working Group, including:</p> <ul style="list-style-type: none"> <li>• Publication of announcement on relevant ICANN web sites including but not limited to the GNSO and other Supporting Organizations and Advisory Committee web pages; and</li> <li>• Distribution of the announcement to GNSO Stakeholder Groups, Constituencies and other ICANN Supporting Organizations and Advisory Committees</li> </ul>
<p><b>Working Group Roles, Functions, &amp; Duties:</b></p> <p>The ICANN Staff assigned to the WG will fully support the work of the Working Group as requested by the Chair including meeting support, document drafting, editing and distribution and other substantive contributions when deemed appropriate.</p> <p>Staff assignments to the Working Group:</p> <ul style="list-style-type: none"> <li>• GNSO Secretariat</li> <li>• 2 ICANN policy staff members (Steve Chan, Julie Hedlund)</li> </ul> <p>The standard WG roles, functions &amp; duties shall be applicable as specified in Section 2.2 of the Working Group Guidelines.</p>
<p><b>Statements of Interest (SOI) Guidelines:</b></p> <p>Each member of the Working Group is required to submit an SOI in accordance with Section 5 of the GNSO Operating Procedures.</p>
<p><b>Section IV: Rules of Engagement</b></p>
<p><b>Decision-Making Methodologies:</b></p> <p><i>{Note: The following material was extracted from the Working Group Guidelines, Section 3.6. If a Chartering Organization wishes to deviate from the standard methodology for making decisions or empower the WG to decide its own decision-making methodology, this section should be amended as appropriate}.</i></p> <p>The Chair will be responsible for designating each position as having one of the following designations:</p> <ul style="list-style-type: none"> <li>• <b>Full consensus</b> - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as <b>Unanimous Consensus</b>.</li> <li>• <b>Consensus</b> - a position where only a small minority disagrees, but most agree. <i>[Note: For those that are unfamiliar with ICANN usage, you may associate the definition of ‘Consensus’ with other definitions and terms of art such as rough consensus or near consensus. It should be noted, however, that in the case of a GNSO PDP originated Working Group, all reports, especially Final Reports, must restrict themselves to the term ‘Consensus’ as this may have legal implications.]</i></li> <li>• <b>Strong support but significant opposition</b> - a position where, while most of the group supports a recommendation, there are a significant number of those who do not support it.</li> <li>• <b>Divergence</b> (also referred to as <b>No Consensus</b>) - a position where there isn't strong support for any particular position, but many different points of view. Sometimes this is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is</li> </ul>

worth listing the issue in the report nonetheless.

- **Minority View** - refers to a proposal where a small number of people support the recommendation. This can happen in response to a **Consensus**, **Strong support but significant opposition**, and **No Consensus**; or, it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

In cases of **Consensus**, **Strong support but significant opposition**, and **No Consensus**, an effort should be made to document that variance in viewpoint and to present any **Minority View** recommendations that may have been made. Documentation of **Minority View** recommendations normally depends on text offered by the proponent(s). In all cases of **Divergence**, the WG Chair should encourage the submission of minority viewpoint(s).

The recommended method for discovering the consensus level designation on recommendations should work as follows:

- i. After the group has discussed an issue long enough for all issues to have been raised, understood and discussed, the Chair, or Co-Chairs, make an evaluation of the designation and publish it for the group to review.
- ii. After the group has discussed the Chair's estimation of designation, the Chair, or Co-Chairs, should reevaluate and publish an updated evaluation.
- iii. Steps (i) and (ii) should continue until the Chair/Co-Chairs make an evaluation that is accepted by the group.
- iv. In rare case, a Chair may decide that the use of polls is reasonable. Some of the reasons for this might be:
  - A decision needs to be made within a time frame that does not allow for the natural process of iteration and settling on a designation to occur.
  - It becomes obvious after several iterations that it is impossible to arrive at a designation. This will happen most often when trying to discriminate between **Consensus** and **Strong support but Significant Opposition** or between **Strong support but Significant Opposition** and **Divergence**.

Care should be taken in using polls that they do not become votes. A liability with the use of polls is that, in situations where there is **Divergence** or **Strong Opposition**, there are often disagreements about the meanings of the poll questions or of the poll results.

Based upon the WG's needs, the Chair may direct that WG participants do not have to have their name explicitly associated with any Full Consensus or Consensus view/position. However, in all other cases and in those cases where a group member represents the minority viewpoint, their name must be explicitly linked, especially in those cases where polls were taken.

Consensus calls should always involve the entire Working Group and, for this reason, should take place on the designated mailing list to ensure that all Working Group members have the opportunity to fully participate in the consensus process. It is the role of the Chair to designate which level of consensus is reached and announce this designation to the Working Group. Member(s) of the Working Group should be able to challenge the designation of the Chair as part of the Working Group

discussion. However, if disagreement persists, members of the WG may use the process set forth below to challenge the designation.

If several participants (see Note 1 below) in a WG disagree with the designation given to a position by the Chair or any other consensus call, they may follow these steps sequentially:

1. Send email to the Chair, copying the WG explaining why the decision is believed to be in error.
2. If the Chair still disagrees with the complainants, the Chair will forward the appeal to the CO liaison(s). The Chair must explain his or her reasoning in the response to the complainants and in the submission to the liaison. If the liaison(s) supports the Chair's position, the liaison(s) will provide their response to the complainants. The liaison(s) must explain their reasoning in the response. If the CO liaison disagrees with the Chair, the liaison will forward the appeal to the CO. Should the complainants disagree with the liaison support of the Chair's determination, the complainants may appeal to the Chair of the CO or their designated representative. If the CO agrees with the complainants' position, the CO should recommend remedial action to the Chair.
3. In the event of any appeal, the CO will attach a statement of the appeal to the WG and/or Board report. This statement should include all of the documentation from all steps in the appeals process and should include a statement from the CO (see Note 2 below).

Note 1: Any Working Group member may raise an issue for reconsideration; however, a formal appeal will require that that a single member demonstrates a sufficient amount of support before a formal appeal process can be invoked. In those cases where a single Working Group member is seeking reconsideration, the member will advise the Chair and/or Liaison of their issue and the Chair and/or Liaison will work with the dissenting member to investigate the issue and to determine if there is sufficient support for the reconsideration to initial a formal appeal process.

Note 2: It should be noted that ICANN also has other conflict resolution mechanisms available that could be considered in case any of the parties are dissatisfied with the outcome of this process.

#### **Status Reporting:**

As requested by the GNSO Council, taking into account the recommendation of the Council liaison to this group.

#### **Problem/Issue Escalation & Resolution Processes:**

*{Note: the following material was extracted from Sections 3.4, 3.5, and 3.7 of the Working Group Guidelines and may be modified by the Chartering Organization at its discretion}*

The WG will adhere to [ICANN's Expected Standards of Behavior](#) as documented in Section F of the ICANN Accountability and Transparency Frameworks and Principles, January 2008.

If a WG member feels that these standards are being abused, the affected party should appeal first to the Chair and Liaison and, if unsatisfactorily resolved, to the Chair of the Chartering Organization or their designated representative. It is important to emphasize that expressed disagreement is not, by itself, grounds for abusive behavior. It should also be taken into account that as a result of cultural differences and language barriers, statements may appear disrespectful or inappropriate to some but

are not necessarily intended as such. However, it is expected that WG members make every effort to respect the principles outlined in ICANN’s Expected Standards of Behavior as referenced above.

The Chair, in consultation with the Chartering Organization liaison(s), is empowered to restrict the participation of someone who seriously disrupts the Working Group. Any such restriction will be reviewed by the Chartering Organization. Generally, the participant should first be warned privately, and then warned publicly before such a restriction is put into place. In extreme circumstances, this requirement may be bypassed.

Any WG member that believes that his/her contributions are being systematically ignored or discounted or wants to appeal a decision of the WG or CO should first discuss the circumstances with the WG Chair. In the event that the matter cannot be resolved satisfactorily, the WG member should request an opportunity to discuss the situation with the Chair of the Chartering Organization or their designated representative.

In addition, if any member of the WG is of the opinion that someone is not performing their role according to the criteria outlined in this Charter, the same appeals process may be invoked.

**Closure & Working Group Self-Assessment:**

The WG will close upon the delivery of the Final Report, unless assigned additional tasks or follow-up by the GNSO Council.

**Section V: Charter Document History**

Version	Date	Description
1.0		

<b>Staff Contact:</b>	Steve Chan	<b>Email:</b>	<a href="mailto:Policy-Staff@icann.org">Policy-Staff@icann.org</a>
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<b>Translations: If translations will be provided please indicate the languages below:</b>											

## Annex B – Report of Public Comments

### Report of Public Comments

<b>Title:</b>	<b>Preliminary Issue Report on New gTLD Subsequent Procedures</b>															
<b>Publication Date:</b>	4 December 2015															
<b>Prepared By:</b>	Steve Chan															
<table border="1"> <tr> <td colspan="2"><b>Comment Period:</b></td> </tr> <tr> <td>Comment Open Date:</td> <td>31 August 2015</td> </tr> <tr> <td>Comment Close Date:</td> <td>30 October 2015</td> </tr> </table>		<b>Comment Period:</b>		Comment Open Date:	31 August 2015	Comment Close Date:	30 October 2015	<table border="1"> <tr> <td colspan="2" style="text-align: center;"><b>Important Information Links</b></td> </tr> <tr> <td colspan="2" style="text-align: center;"><a href="#">Announcement</a></td> </tr> <tr> <td colspan="2" style="text-align: center;"><a href="#">Public Comment Box</a></td> </tr> <tr> <td colspan="2" style="text-align: center;"><a href="#">View Comments Submitted</a></td> </tr> </table>	<b>Important Information Links</b>		<a href="#">Announcement</a>		<a href="#">Public Comment Box</a>		<a href="#">View Comments Submitted</a>	
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<a href="#">View Comments Submitted</a>																
<b>Staff Contact:</b>	Steve Chan	<b>Email:</b> Policy-staff@icann.org														
<b>Section I: General Overview and Next Steps</b>																
<p>In accordance with Policy Development Process (PDP) rules, the <a href="#">Preliminary Issue Report on New gTLD Subsequent Procedures</a> [PDF, 1.28 MB] was posted for public comment on 31 August 2015. This Preliminary Issue Report follows the efforts of the Discussion Group on New gTLD Subsequent Procedures, which produced a set of outputs that served as the basis for this report. This Issue Report sought to explore in detail the set of issues/subjects that the Discussion Group identified during its proceedings.</p> <p>Following the close of the public comment period and the publication of this Report of Public Comments, a Final Issue Report will be prepared for the GNSO Council, which will then consider a Charter for a PDP Working Group on this issue. The Final Issue Report will reflect consideration of all feedback received through the public comment forum which identified specific clarifications, corrections, or enhancements to the Preliminary Issue Report.</p>																
<b>Section II: Contributors</b>																
<div style="border: 1px solid black; padding: 5px;"> <p><i>At the time this report was prepared, a total of thirteen (13) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.</i></p> </div>																
<b>Organizations and Groups:</b>																
<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>														
Cyber Invasion, Ltd.	James Gannon	CIL														
At-Large Advisory Committee (ALAC)	At-Large Staff	ALAC														
UNINETT Norid AS	Annebeth B. Lange	NORID														

Governmental Advisory Committee (GAC)	Tom Dale	GAC
International Trademark Association (INTA)	Lori Schulman	INTA
Big Room Inc.	Jacob Malthouse	BR
Registries Stakeholder Group (RySG)	Stephane Van Gelder	RySG
Intellectual Property Constituency (IPC)	Greg Shatan	IPC
Business Constituency (BC)	Steve DelBianco	BC
FairWinds Partners	Samantha Demtriou	FP
Google Registry	Stephanie Duchesneau	GR
DomainMondo.com	John Poole	DM
Governments of Peru, Uruguay, Venezuela, Paraguay and Argentina	Olga Cavalli	GPUVPA
Dotgay LLC	Jamie Baxter	DGL

Individuals:

Name	Affiliation (if provided)	Initials
N/A	N/A	N/A

**Section III: Summary of Comments**

*General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

As noted in Section 1, the Preliminary Issue Report followed and was inspired by the efforts of the Discussion Group (DG) on New gTLD Subsequent Procedures. In the Preliminary Issue Report, the subjects identified by the DG were explored in detail, providing background and analysis of each topic. The Preliminary Issue Report also included a draft PDP-WG Charter for community consideration as developed by the DG.

Comments received on this Preliminary Issue Report fell broadly into two categories:

- Comments suggesting clarifications, corrections, or enhancements to the Preliminary Issue Report. These are further summarized below and will be reflected in the Final Issue Report.
- Comments related to the organization and sequencing of subjects within the Preliminary Issue Report.

**Comments suggesting clarifications, corrections, or enhancements**

Within the 13 sets of comments received, there were approximately 20 specific comments that responded directly to the public comment forum's call for community input on information that might be missing from the Preliminary Issue Report, necessary corrections, or updates to information in the Preliminary Issue Report, or whether there are any questions or subjects that should be explored in this PDP in

addition to those already described in the Preliminary Issue Report.

- There were a few comments suggesting new topics, which led to the integration of new content into existing subjects headings, which would not preclude the PDP-WG from addressing these topics as discrete subjects. For instance:
  - IPC stated “Since the launch of the 2012 round, the IPC has consistently requested that ICANN examine issues concerning new gTLD premium name and pricing practices, particularly in view of abusive practices perpetrated by certain new gTLD registry operators vis-à-vis premium names and pricing. Despite the importance of these issues to the IPC and other stakeholders, the Report provides very little discussion on matters relating to premium names and pricing.”
  - IPC also stated “In addition, the IPC notes that some of the tasks and questions identified as being appropriate for a PDP might themselves be better developed through the use of one or more of the new procedures developed by the Policy & Implementation working group – i.e., the Fast Track PDP Process, the GNSO Guidance Process and the GNSO Input Process.”
- §4.2.3: Competition, Consumer Trust and Consumer Choice – Comments suggested that this subject would be likely to require policy development:
  - ALAC stated “We would wish the community to neither denigrate nor ignore the metrics defined by the evaluation of the last round’s KPIs. A PDP examining the results of this analysis is, in the ALAC’s view, mandatory.”
- §4.3.2: Base Agreement – There were several comments about the base agreement, as well as subjects that may be closely related, as they pertain to possible registry requirements that could be included in a revised base registry agreement.
  - BC states “Pricing of reserved/premium names is a critical issue. Designating brands as premium names should not be designed to create commercial opportunity for registry operators. Applicants should be required to describe their premium name program and include pricing evaluations in their application and then be held to what was proposed by ICANN compliance.”
  - IPC states “The IPC strongly encourages ICANN to provide additional background, context, and guidance regarding premium names, pricing policies and implementation in the Final Report and Charter, to ensure that the PDP Working Group has an adequate basis for considering these issues.”
- §4.3.4: Contractual Compliance – There were several comments concerning contractual compliance.
  - IPC states “INTA is concerned that the DG did not identify any specific issues with respect to contractual compliance in light of the number of troubling operational practices engaged in by registry operators during the first new gTLD round. These practices include arbitrary and abusive pricing for premium domains targeting trademarks, use of reserved names to circumvent Sunrise and operating launch programs that differed materially from what was approved by ICANN. These troubling practices seem to violate the spirit, if not the letter of various contractual obligations in the Registry Agreement.”
  - BC states “Concerns about premium pricing and predatory pricing were identified by the BC, but ICANN did not consider this a compliance issue. We recommend requiring registry

- operators to include a detailed description of their proposed Sunrise and premium pricing programs in their applications.”
- §4.3.7: Second Level Rights Protection Mechanisms – There were several comments related to second-level RPMs, some expressing surprise that the subject may not require policy development within this PDP-WG. Others highlighted issues that may support the effectiveness of RPMs.
    - ALAC states “The ALAC understands the possibility of a PDP dedicated to Rights Protection Mechanisms must be independently initiated. But we wish to ensure that such work is not overlooked or does not fall between the cracks if it is not treated as a policy matter in the PDP-WG on subsequent procedures. In our view these matters are clearly linked and best addressed in tandem.”
    - INTA states “The Report correctly acknowledges that one of the rationales for creating the new RPMs was “to mitigate potential risks and costs to trademark rights holders that could arise in the expansion of the new gTLD name space.” As a general matter, any substantive review of the RPMs must ask the question whether each RPM is actually achieving the underlying goal of mitigating the potential risks and costs to trademark owners.”
    - BC states “The BC has many concerns with all of the issues described in this section, including reservation of premium generic domains, TMCH notices, Name Collisions and the URS. We look forward to participating in the PDP and the in-depth discussion.”
  - §4.4.2: String Similarity – Commenters had concerns around consistency and plural names.
    - ALAC states “...we have experienced the current process of determination and its delivery of completely inconsistent outcomes even to the point of absurdity in some cases, we recommend the process be reviewed so that as far as possible, inconsistent evaluation is removed. We would recommend that the explanation of string similarity cases in the Issues Report be expanded to include the plural of words.”
  - 4.4.3: Objections – Commenters had concerns around consistency and effectiveness of particular objections grounds:
    - ALAC states “We are troubled by inconsistency of proceedings and the definition of “community” embraced by objection examiners.”
    - INTA states “While INTA appreciates ICANN’s efforts to protect existing trademark rights, INTA recommends that any PDP-WG conducts a general review of the objection possibilities, particularly of the following provisions of the LRO:”
  - §4.6.1: Security and Stability – Several comments noted the absence of studies into the effect of of new gTLDs on the DNS and other security related questions.
    - CIL states “We would support the recommendation that the evaluation criteria and other aspects related to SSR issues being examined as part of any policy development efforts prior to the announcement of any potential subsequent rounds.”
    - ALAC states “the way this topic is addressed does not take into account any further assessment about Security and Stability considerations beyond the first round of delegations. For example, there is the question as to whether the DNS can incorporate more new gTLDs to the same scale as the current round without jeopardising Security and Stability?”
    - IPC States “However, the one issue that could be more directly addressed by the Report is whether the rapid expansion of the root zone (from the aggregate issuance of many gTLDs)

could affect the security and stability of the DNS.”

- §4.7: Work Processes – There were several comments advocating for either of the two suggested methods for organizing the work (i.e., simultaneous versus sequential), though the work process will ultimately be decided by the Working Group itself. There were also comments noting that additional mechanisms developed by the Policy & Implementation WG may benefit the disposition of certain subjects.
  - IPC states “In addition, the IPC notes that some of the tasks and questions identified as being appropriate for a PDP might themselves be better developed through the use of one or more of the new procedures developed by the Policy & Implementation working group – i.e., the Fast Track PDP Process, the GNSO Guidance Process and the GNSO Input Process.”

### Comments related to the organization and sequencing of subjects

Within the 13 sets of comments received, there were approximately 3 specific comments that expressed concern regarding the organizations and sequencing of subjects in the Preliminary Issue Report.

- IPC states “However, we have found the present Report very difficult to grapple with due to the manner in which the groupings have been selected, the issues allocated to those Groups, and the order in which issues are discussed within the Groups.”
- INTA states “However, the team of INTA members tasked with preparing this comment have found it difficult at times to identify where a specific issue is dealt with within the Report and whether it is satisfactorily addressed or not. This is due to issues not always being allocated to the most logical Group, or to the most logical section within a Group, and to the substantial overlap between sections.

## Section IV: Analysis of Comments

*General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.*

With a few notable exceptions, commenters either confirmed or did not challenge the substantive research and background information provided in the Preliminary Issue Report. Comments suggesting clarifications, corrections, or enhancements to the Issue Report have all been reviewed by the Staff Manager to ensure that requested additions were either already present or added to the Final Issue Report, and that requested corrections have either been incorporated or addressed through clarifications in the Final Issue Report.

A high number of comments were in regards to registry requirements in Registry Agreements, which currently may not include provisions that might allow for contractual compliance action related to pricing, sunrise programs, and other areas. These comments have been incorporated into §4.3.2 on the Base Agreement and §4.3.7 on Second-level Rights Protections, although this would not preclude a PDP-WG from debating new contractual requirements as a discrete topic.

There were also several comments expressing concern with the organization of the report, noting that it can be difficult to locate specific issues, that there are instances where there may be overlap or duplication, and that the sequencing of subjects does not appear to be ideal. Staff has resisted the temptation to make wholesale changes in the sequencing or organization of subjects, as developing a work plan is a function of the PDP-WG. However, staff has provided additional proposals around the organization of work, which may hopefully assist the development of the work plan.

It is Staff's recommendation that all comments which did not directly address the Issue Report, but rather were intended as substantive inputs, be considered during deliberations by the PDP-WG at the appropriate points during the PDP process. The comments underscore the diverse concerns of various stakeholders and will serve to inform the PDP, along with other available inputs summarized in the Final Issue Report.

The Final Issue Report will include this Report and analysis of public comments received, to enable the GNSO Council to fully consider all the issues and concerns expressed by the community in order to move forward on this PDP, while possibly adopting the included PDP-WG Charter.