30 September 2020

RE: Request for ICANN Org's Input on the GNSO New gTLD Subsequent Procedures PDP Draft Final Report

Cheryl Langdon-Orr, Co-Chair, Subsequent Procedures PDP Working Group
Jeff Neuman, Co-Chair, Subsequent Procedures PDP Working Group

Dear Cheryl and Jeff,

Thank you for your 20 August 2020 letter inviting feedback on the GNSO New gTLD Subsequent Procedures Draft Final Report. ICANN org appreciates the work completed by the GNSO's New gTLD Subsequent Procedures Working Group and congratulates the group on the publication of the draft Final Report.

ICANN org has carefully reviewed the report and is providing the attached input. Our input is being provided from an implementation perspective, including some requests for clarification on the working group's intended outcomes, and posing some questions to inform implementability analysis and planning. Our input spans both the draft recommendations and implementation guidance.

We hope these inputs are helpful to the Working Group in its continued deliberations to achieve a PDP WG Final Report. We appreciate the Working Group's continued support of active engagement with ICANN org, and will continue to raise additional questions or provide feedback as needed. We remain available to answer any questions that the Working Group might have as it works toward its final policy recommendations.

We appreciate the opportunity to provide input on the draft Final Report and will also be submitting this input to the public comment forum so that it is available for review by the wider community.

Sincerely,

Theresa Swinehart
SVP, Global Domains & Strategy

ICANN Org Input

New gTLD Subsequent Procedures PDP WG Draft Final Report, August 2020

30 September 2020

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General Comments:

1. ICANN org appreciates the work completed by the New gTLD Subsequent Procedures Policy Development Process (PDP) Working Group (WG) and congratulates the PDP WG on the publication of the draft Final Report. As requested in the 20 Aug 2020 [letter](#) from the Co-chairs of the PDP WG, the following input is intended to help the PDP WG in its continued deliberations to the formulation of the PDP WG Final Report. Where relevant, ICANN org has provided input on the draft Recommendations, as well as Implementation Guidance and has not limited this exercise to sections that have changed substantially from the Initial Report. ICANN org may have additional questions or feedback due to the substantial scope of the document. ICANN org looks forward to continued engagement with the PDP WG to finalize the policy recommendations.

2. The PDP WG requests ICANN org to be transparent in several recommendations of the draft Final Report. Under the Bylaws it is required that ICANN org be transparent to the maximum extent feasible. It would be helpful in these applicable sections if the PDP WG can provide greater clarity or specificity in regard to expectations of transparency, in order to facilitate actionable recommendations.

3. ICANN org has noted some points in the document where Implementation Guidance appears to be incorporated into policy Recommendations. By our understanding of these terms as defined on page 4 of the draft Final Report, Recommendations refer to binding requirements if adopted by the Board, while Implementation Guidance is a "strong should" as to how a Recommendation should be implemented. Where the Implementation Guidance is phrased in a way that hooks it into the policy Recommendation, this may create unintended requirements or confusion as the implementation work proceeds. ICANN org has flagged this issue in the following recommendations: 15.7, 17.3, 17.12, 18.6, 27.9, 28.3, 31.1, 31.11, 31.18, 32.2, and 32.10. We are also flagging this here as a general principle.

4. The org notes that at times examples are given in lieu of specific criteria. In many cases it will be difficult to determine what aspect of a given example makes it relevant to the topic discussed. For example, in Annex E, the example for a "possible policy level" change is the development of an application ordering mechanism (e.g., digital archery). What aspect of this example makes it a possible policy change? To improve the ability for ICANN org to implement the Recommendations and Implementation Guidance given in line with the group's intention, we ask that the PDP WG consider adding specific and/or detailed criteria instead of using examples.

5. ICANN org notes that the draft Final Report frequently seeks for various "procedures" to be included in the Applicant Guidebook (AGB), published prior to the opening of the application submission window. ICANN org notes that the words "procedure" and "process" can sometimes be intermingled. ICANN org notes that a process is a higher level view that lists a series of activities and decisions that take inputs and produce outputs. A procedure is an operationally focused step-by-step description of actions to be taken to complete a process. ICANN expects process development will be the focus of the AGB, while procedures will be developed after the publication of the AGB once systems are developed and panel vendors are identified.

6. ICANN org notes that there are some Recommendations and Implementation Guidance that either call for a new addition (e.g., Recommendation 36.4) or solicit changes (e.g., Recommendation 20.8) to the Base Registry Agreement. In the interests of process efficiencies, compliance enforcement, and fairness,ICANN org strongly supports the idea of having a common Registry Agreement across all existing and subsequent rounds' new gTLDs, and encourages the PDP WG to take these considerations into account.

7. ICANN org notes and appreciates the articulation of policy principles to guide implementation, and the structure grouping each Recommendation with its relevant Implementation Guidance. However, in some instances we see potential for unintended consequences if such Recommendations become grounds for parties to file challenges against fulfillment of broad principles (e.g., that the process wasn't "transparent" or "efficient" enough, even though ICANN org might have followed each specific item of the Implementation Guidance). If the principles could be stated as principles, while the policy Recommendations focused on requirements for relevant parties (who must do what), this would support general implementability of the Program and avoid confusion and delays in the process.

Topic Specific Comments:

1. Continuing Subsequent Procedures

No org feedback at this time.

2. Predictability

<u>Recommendation 2.1:</u>
The org requests that the PDP WG clarify the scope of the SPIRT and further explain the role and responsibilities of the GNSO. For example, the org

understands that all policy level issues would be routed through the SPIRT to the GNSO. We would like to understand the role of the GNSO in these situations. Will the GNSO limit their input to clarifications of policy or would they recommend new policy? It may be helpful to be explicit about how this Recommendation interacts with Recommendations 3.6 and 3.7.

ICANN org notes that the ICANN Board and org retain the ability to act in emergency situations, including the ability to make business decisions in line with fiduciary responsibilities, which in extreme circumstances could mean halting the Program. This should be explicit within the Predictability Framework.

ICANN org suggests that the Predictability Framework should consider allowing for the use of a multistep process to resolve an issue. For example, in the case of name collision, the process for resolving the issue included requests for studies and multiple Public Comment periods. In such a multistep scenario, the Board and org need to retain flexibility to address the different issues as needed, taking into account Recommendations from SPIRT and/or the GNSO Council where applicable. This includes, for example, the ability for ICANN org to conduct Public Comment even if SPIRT does not recommend such a step.

Implementation Guidance 2.3:
ICANN org appreciates the Recommendation for a change log as an efficient and user-friendly tool to provide transparency and accountability into the operations of the Program. We view this as a mechanism that will aid communications, enhance trust, and create a comprehensive and authoritative record for both internal and external stakeholders. However, ICANN notes that, in some cases, the level of detail ICANN org posts in the change log may be determined by other considerations such as security, confidentiality, privacy, or other considerations. ICANN org understands that entries into the change log are not intended to be specific to individual applications, which will likely limit the likelihood of this occurring.

Implementation Guidance 2.5:
Implementation Guidance 2.5 seems to imply that a refund amount different than that defined in the refund schedule in the AGB might be applicable. Does the PDP WG intend that in situations where significant issues arise that require resolution via the Predictability Framework, applications affected by this particular circumstance are awarded a refund beyond the established refund schedule? Refunding an amount greater than what is defined in the refund schedule would leave a deficit that would be covered by the Program which in turn would be borne by the other applicants. Could Recommendation 2.5 be rephrased to a "refund commensurate with the impact of the change," rather than an open-ended provision?

General Comments:
ICANN org understands that the intent of this section is to address the lack of predictability that the PDP WG described in the 2012 round. ICANN org notes that several new GNSO processes, such as the GNSO Input Process and the

GNSO Guidance Process, have been developed since the 2012 round. Given that the Board is able to raise issues directly to the GNSO Council when required, and that the GNSO now has additional processes available to it, the org notes that there may be ways for these processes to serve the desired objectives of the SPIRT without introducing a new set of processes.

Assuming the PDP WG recommends the establishment of the SPIRT as a mechanism dedicated to the New gTLD Program, ICANN org is providing feedback on several aspects of the Predictability Framework in a separate annex below.

Please also refer to the ICANN Board comment on this topic.

3. Applications Assessed in Rounds

Implementation Guidance 3.3:
In the rationale, the PDP WG "does not believe that all applications from an application round must be processed and delegated before the subsequent round can open." As some applications may involve complexities that require an extended time to resolve, it may additionally be useful to consider that policy changes could occur between rounds that would require changes to application processing. This could result in ICANN org needing to support a multitude of processes across several rounds. Should this happen, there would likely be an impact to cost and processing time of future applications. Has the PDP WG given consideration to what criteria might be used to determine an end to an active application round? The ability to close prior rounds would lessen the burden on ICANN org resources and allow for a more predictable expectation of application processing times.

Implementation Guidance 3.4:
The words "Active," "Applicant Support," "In Contracting," "On-hold," "In PDT," "Will Not Proceed," and "Not Approved" are ICANN operational status terms from the 2012 round. ICANN org would like to confirm its assumption that the particular terms used can change based upon need during implementation and remain consistent with the Implementation Guidance. Alternatively, the PDP WG might identify the criteria associated with each status term that applies in this Implementation Guidance.

There are currently two end states for an application: "Withdrawn" and "Delegated." Has the PDP WG considered the scenario where an application does not meet requirements to sign a Registry Agreement and does not withdraw?

The Implementation Guidance states, "If all applications for a particular string have been Withdrawn, meaning the string has not been delegated, new applications for the string will be allowed in a subsequent round." ICANN org notes that delegation is not a requirement to make a string unavailable. Once a Registry Agreement has been executed, the string is no longer available for

application. Additionally, new policy might result in some strings no longer being eligible for application.

Does the reference to the ICANN Board approving new policies refer to Consensus Policies approved by the Board or to something else?

Recommendation 3.6:
This Recommendation appears to possibly be inconsistent with Section 4.6(d)(iv) of the Bylaws, which states, "For each of its recommendations, the CCT Review Team should indicate whether the recommendation, if accepted by the Board, must be implemented before opening subsequent rounds of new generic top-level domain applications periods." The Bylaws therefore give future Competition, Consumer Trust, and Consumer Choice Review Teams (CCT-RT) the ability to recommend prerequisites for additional rounds, and the PDP WG may want to consider this in the context of subsequent rounds and reviews.

Additionally, ICANN org seeks any guidance on how the PDP WG would define "extraordinary circumstance," and who would make that determination.

Recommendation 3.7:
ICANN org notes that in some situations an application may remain active for several years. ICANN org asks the PDP WG how long an application should remain exempt from a new or updated policy?

Additionally, ICANN org notes that the wording of this Recommendation appears to reference all policies, however we would like the PDP WG to clarify whether the Recommendation is limited to policies that would impact the application process itself and that other generally applicable gTLD policies, such as a newly adopted policy concerning registration data or transfers, would apply to all existing and new gTLDs regardless of the timing of the application round.

4. Different TLD Types

General:
From an operational and practical perspective, ICANN org agrees with the PDP WG's point of view that creating additional categories of different gTLD types will likely impact one or more aspects of the New gTLD Program. The requirement for differential treatment based on gTLD type will likely increase the overall complexity of the systems and processes of the Program, affecting cost and timing. Furthermore, the introduction of different gTLD types and corresponding differential treatment of applications could create inappropriate incentives for applicants to "game" the system and win an unfair advantage over other applicants. In order to minimize this, clear criteria for when and if an application can change its gTLD type will need to be established. Lastly, ICANN org agrees with the PDP WG that additional categories would

potentially lead to a more complicated contractual compliance environment and pose new challenges.

In the table below, ICANN org has listed out the application types and their attributes that were recognized in the 2012 round. We have listed several key aspects of each as well as the process differences which marked each. Given that the PDP WG has relisted these same application types and attributes in this section, albeit in new categories, the org seeks input from the PDP WG as to any concerns or issues with the handling of the applications from the 2012 round.

Table: Application Types and Attributes (TLD Types) from 2012 round

Type or Attribute	In AGB?	Application Question Number	Self Identification Available?	Type Reviewed/ Confirmed by	Confirmation Stage	Special Contract Provisions	2012 Process Notes
Standard	yes	default	no	NA	NA	default	-None
Community-Based	Yes	19, 20	Yes	Not Applicable	Not Applicable	Yes	-Provisions in contract (Specification 12). -Apps in contention could choose to go through CPE for a fee.
Geographic Name	Yes	21, 22	Yes	Panel	During IE/EE	No	-All strings were reviewed to determine if they were Geo Names. -Confirmed Geo Name TLDs went through a special evaluation to verify support.
Brand	No	None	Yes	ICANN	Contracting or after	Yes	-Separate contract amendment process. -Provisions in contract (Spec 13).
IDN (TLDs)	Yes	14, 15	Yes	Not Applicable	Not Applicable	No	-No difference for top level IDNs (Exhibit A provisions added for 2nd level IDN support.)
IDN Variant (TLD)	Yes	15c	Yes	Not Applicable	Not Applicable	Not Applicable	-Not allowed per AGB.
GAC Category 1	No	none	No	GAC	During IE	Yes	-Strings and categories identified by GAC. -Provisions in contract (Specification 11.3) from prewritten list.
GAC Category 2 - Restricted gTLDs	No	18	No	GAC	During IE	Not Applicable	-Strings identified by GAC. -Registry Agreement included Specification 11 sections 3.c and 3.d requiring transparent registration policies and prohibiting exclusive generic strings.
Governmental/ IGO	Yes	8a	Yes	ICANN	Contracting	Yes	-Provisions throughout contract.
Applicant Support (a.k.a. applicant assistance)	Yes	None	Yes	Panel	During IE	No	-Separate Applicant Support process. -Qualified applicants received reduction in fees. -Applicants received a full refund (of the reduced fee) when they withdrew.

Recommendation 4.1:
As a response to ICANN's feedback on the initial Recommendations, it was helpful that the PDP WG distinguished between different application types, different string types, and different applicant types. The PDP WG also identified Category 1 - GAC Safeguards, IGO and governments, and Applicant Support as different TLD types and added a Recommendation that creating new types should be exceptional and should have a predictable process for the community to consider.

ICANN's comments on the Initial Report also sought guidance on (i) whether the applicants must declare the gTLD type when submitting the application, and (ii) whether changes to gTLD types are permitted during the application process or prior to signing the Registry Agreement. Any additional clarification in these areas would be useful. In addition, ICANN org would like to confirm that the PDP WG has provided guidance on criteria and determination (self-identification or other) for each of the types listed and how they may simultaneously apply or interact with one another.

Additionally, ICANN org suggests using the term "variant TLD" instead of "IDN variant" to clarify that it is referencing a variant TLD string (and, for example, not a variant label of a second-level label) and also account for potential cross-script variant labels of an ASCII TLD (e.g., in Cyrillic script).

ICANN org notes that Geographic Names is listed as both an application type and a string type. Can the PDP WG elaborate on the distinction between the two types and provide clarity on whether or not there is an expectation to create two different Geographic Names processes, one for the application type and one for the string type?

Recommendation 4.2:
ICANN org seeks guidance from the PDP WG on what would be considered "exceptional circumstances," or indicate when an additional type would be identified/addressed in the overall process.

5. Application Submission Limits

No org feedback at this time.

6. RSP Pre-Evaluation

Recommendation 6.2:
Our understanding is that this would not replace pre-delegation testing (PDT) which tests the technical and operational infrastructure for each gTLD as a prerequisite for delegation.

Recommendation 6.5:
We understand this Recommendation to suggest that once the registry service provider (RSP) is pre-evaluated, the pre-evaluation status will continue for the duration of the related application round even if substantial issues with the RSP are found during TLD operations. ICANN org seeks guidance on what conditions would allow for a "pre-approval" status to be revoked.

Please also refer to the ICANN Board comment on this topic.

7. Metrics and Monitoring

Recommendation 7.1 and Implementation Guidance 7.2:
ICANN org notes that the term "meaningful" is subjective and could create opportunities for disagreement and dissatisfaction, rather than consensus. The Recommendation appears to suggest that the CCT-RT Recommendations referenced in the Implementation Guidance will fulfill the recommendation.

Alternatively, limiting the development of metrics and measurements to the criteria listed in the CCT-RT Recommendations may restrict ICANN org's ability to develop "meaningful" metrics. Any additional clarification would be helpful.

Recommendation 7.3:
ICANN org confirms that the PDP WG recommends that subsequent procedures phases include metrics, service level agreements (SLA), and monthly reporting. We understand that the phases listed in the Recommendation are examples and not a requirement to be used, as the names of phases may change in subsequent rounds.

Recommendation 7.4:
ICANN org seeks guidance on whether the PDP WG has identified specific improvements or capabilities that they would like to see made to the SLA monitoring system. Would these "more robust" capabilities be expected to apply to gTLDs from prior rounds as well?

8. Conflicts of Interest

Recommendation 8.1:
The rationale for this Recommendation states, "that provisions in the 2012 round were insufficient to effectively guard against conflicts of interest among dispute resolution service provider panelists, the Independent Objector (IO), and application evaluators." To inform ICANN org's work on this topic, could the PDP WG elaborate on the ways that the provisions were considered

insufficient? It will be helpful if the PDP WG can provide a definition of a conflict of interest in relation to the Program, as well as provide any new criteria that the PDP WG proposes, particularly if they are different for each of the three entities listed above.

9. Registry Commitments/Public Interest Commitments

Recommendation 9.1:
Please also refer to the ICANN Board's comment on this topic.

ICANN org also notes that Specification 11 3(d) is about prohibiting the use of a TLD in a closed manner. As the PDP WG continues to discuss the issue of closed generic TLDs into the subsequent rounds, we would note that, absent changes, this Recommendation to retain Specification 11 section 3(d) might conflict with the PDP WG's ultimate Recommendation on the topic of closed generic TLDs.

Additionally, ICANN org notes the expressions of confusion and discussions in the community regarding the meaning, scope, and interpretation of some of the existing obligations, especially Specification 11 sections 3(a), 3(b) and 3(c). Noting Recommendation 9.15, as well as the objective of having a common Registry Agreement across existing and future gTLDs as stated in the General Comment 6, ICANN org understands the PDP WG's recommended approach is to seek a holistic solution on Domain Name System (DNS) abuse for both existing and future gTLDs (and potentially ccTLDs), and expects to engage with the community to clarify the meaning and scope of these obligations outside of this PDP WG's policy recommendation process.

Recommendation 9.2:
ICANN org notes that a single-registrant TLD might still have third-party content, users, and licensees. Services utilizing any domain name can be compromised at any point in time (regardless of who the registrant or TLD is) and can be used for malicious purposes by an attacker. As such, ICANN org has concerns about the risks associated with this Recommendation, and urges the PDP WG to consider this issue.

If the PDP WG's intention is to provide waivers to registry operators whose Registry Agreements contain either Specification 13 or an exemption to Specification 9, neither Specification 13 nor an exemption to Specification 9 limits registry operators to a single registrant.

Affirmation 9.3:
This Affirmation states that the Inherently Governmental Functions will require Category 1 Safeguards 1-10; however, the implementation from the 2012

round was that the Inherently Governmental Functions only required Category 1 Safeguards 1 through 8 and then 10, but not 9. As this is an "Affirmation," and not an "Affirmation with the modification," this may have been a typographical error.

Additionally, ICANN org believes Affirmation 9.3 and Recommendation 9.8 may benefit from additional clarity. While there have been almost no complaints based on the GAC Category 1 Safeguards, there could be an instance of community disagreement over the scope and meaning of these obligations similar to what we have seen with Specification 11(3)(a). ICANN Contractual Compliance enforces the text of the provisions as written, while some stakeholders believe that Compliance should adopt a more expansive interpretation. As stated in the General Comment 6 and ICANN org's feedback to Recommendation 9.1, ICANN org would support a mechanism to engage with the community in an inclusive manner to clarify the meaning and scope of these obligations for existing and future new gTLDs, outside of this PDP.

Recommendation 9.4:
This recommends "establishing a process to determine if an applied-for string falls into one of four groups defined by the New gTLD Program Committee (NGPC) framework for new gTLD strings deemed to be applicable to highly sensitive or regulated industries." Though there is Implementation Guidance to establish a panel to achieve this, there do not appear to be detailed criteria in the Recommendation nor Implementation Guidance to help guide development of such an evaluation. Without clear or detailed criteria, the panel review may be open to subjectivity and dispute. As per ICANN org's comment to the Initial Report, it would be helpful if the PDP WG could clarify the "criteria for applied-for strings to be put into those categories,[…] implication on the evaluation and string contention processes" to help guide the implementation of this Recommendation.

Implementation Guidance 9.5:
This guidance states: "applicants may choose to self-identify if they believe that their string falls into one of the four groups. This designation will be confirmed, or not, using the process outlined below in Implementation Guidance 9.6."

ICANN org requests the PDP WG to provide the underlying rationale for the guidance, "Applicants may choose to self-identify if they believe that their string falls into one of the four groups." If the expert panel will review all applications, what are the intended benefits of self-identification? If none, is the Recommendation necessary given the added operational burden for org in processing these applications?

Implementation Guidance 9.6:
This guidance suggests the establishment of an evaluation panel. ICANN org notes a number of potential implementation challenges, which include identifying qualified experts (industries are subject to varying levels of regulation–ranging from high to none–depending on the jurisdiction), defining

the scope of work, categorization criteria, credibility of the determinations, and the costs of compensating and supporting the panelists. Any further details that could address these potential implementation challenges will be helpful.

Recommendation 9.9:
This Recommendation states that "ICANN must allow applicants to submit Registry Voluntary Commitments (RVCs) (previously called voluntary PICs) in subsequent rounds in their applications or to respond to public comments, objections, whether formal or informal, GAC Early Warnings, and/or GAC Consensus Advice." As stated under Recommendation 9.1, ICANN org asks the PDP WG to refer to the ICANN Board's comment on this topic.

Additionally, is the PDP WG intention only to allow applicants to submit the revised RVC in response to those cases listed in Recommendation 9.9 ("public comments, objections, whether formal or informal, GAC Early Warnings, and/or GAC Consensus Advice")? Or, can the applicants submit the revised RVC for other reasons?

Recommendation 9.9 also states that the "Applicants must be able to submit RVCs at any time prior to the execution of a Registry Agreement." How does the PDP WG envision the potential impact to contention sets or objections if the RVC has been changed after the objection period has closed? As noted in our comment to the Initial Report, it would be helpful for the PDP WG to recommend "whether there should be a cut-off point in the Program process for changes to the voluntary PIC in order to allow for the opportunity for others to file objections based on the changes, or whether a new opportunity for objections to be filed after a change has been made should be allowed." Allowing the change up until the execution of a Registry Agreement could lead to less predictability for stakeholders and added operational complexity for ICANN org, both of which may lead to processing delays. This also provides an opportunity for applicants to resolve a contention set via the introduction or revision of the RVC, then submit another change request to revert back to its original RVC afterwards as a way to "cheat the system."

Additionally, has the PDP WG considered the potential gaming of this Recommendation with regard to execution of the Registry Agreement, for example, if an applicant invokes the RVC change during the contracting phase? During the 2012 round, some applicants were reluctant to sign within the set time frame of nine months from the notification date. Without any mitigations, applicants could continuously submit unlimited RVC changes to exceed the allotted nine-month timeframe to execute the Registry Agreement. The nine-month time frame is affirmed as Affirmation 40.2 within the draft Final Report.

Lastly, ICANN org seeks guidance as to how the PDP WG envisions the evaluation of the RVCs. If the RVCs can be utilized to address GAC Advice, objections, or application comments, who will review the submitted RVC to ensure that it does indeed address the GAC, objector, or commenter's concern all while being inside of ICANN's remit, and how will that review be conducted?

Recommendation 9.10:
This Recommendation states, "RVCs must continue to be included in the applicant's Registry Agreement." Does this imply that 1) the RVCs must continue to be in the Registry Agreement after the contract renewal or assignment, and/or 2) RVCs cannot be modified or removed from the Registry Agreement in the future? It will be helpful if the PDP WG can provide further clarity on this Recommendation.

Implementation Guidance 9.11:
This guidance states that "The Public Interest Commitment Dispute Resolution Process (PICDRP) and associated processes should be updated to equally apply to RVCs." ICANN org seeks clarification that the Implementation Guidance is merely to add the RVCs to be treated equally to PICs in the current procedures, and not to amend any other substantive language of the PICDRP.

Recommendation 9.12:
This Recommendation states, "At the time an RVC is made, the applicant must set forth whether such commitment is limited in time, duration and/or scope." ICANN org suggests the Recommendation require the applicant to provide the grounds on which it could modify or terminate a commitment, and an assessment of whether termination of a commitment would have any substantial impacts to existing registrants or the security and stability of the DNS.

Recommendation 9.12 also states: "that the commitments can adequately be considered by any entity or panel (e.g., a party providing a relevant public comment (if applicable), an existing objector (if applicable) and/or the GAC (if the RVC was in response to a GAC Early Warning or GAC Consensus Advice)) to understand if the RVC addresses the underlying concern(s)." There is no recommendation in this draft Final Report to establish a panel to review the RVCs nor is there a detailed recommendation for any standard by which to evaluate the RVCs. Could the PDP WG clarify which panel is envisioned to review the RVCs?

Lastly, the Voluntary PICs from the 2012 round were not uniform or mandatory across all agreements among the Category 1 strings, thus creating the disparity among Category 1 gTLDs relative to the Voluntary PICs. Does the PDP WG see the RVCs to be mandatory across strings considered to fall into one of four groups defined by the NGPC framework for new gTLD strings deemed to be applicable to highly sensitive or regulated industries?

10. Applicant Freedom of Expression

Implementation Guidance 10.2:
This Implementation Guidance states "as the ICANN organization and community incorporate human rights into ICANN's processes in line with the

recommendations of Cross-Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) Work Stream 2 (WS2), they should consider the application of this work to elements of the New gTLD Program." Additionally, the rationale for this Implementation Guidance states that the PDP WG "encourages ICANN org to give additional consideration to this issue in the implementation phase."

ICANN org relies on the ICANN community to define and provide specific guidance and direction on how to balance between the interests of different stakeholders. This direction is likely to come from the implementation work on the Human Rights Framework of Interpretation (FoI) that the community will undertake as part of the CCWG-Accountability Work Stream 2. ICANN org's responsibilities under the FoI are limited to producing a framework for how the Human Rights Core Value will be taken into account when developing corporate or operational policies and executing its operations. This work does not impact the work of the community on the implementation of the FoI. ICANN org expects to provide the necessary facilitation support to the community in its FoI implementation efforts.

As such, ICANN org would like to recommend that the PDP WG include as part of the recommendations specific identification of the human rights impact, and provide additional guidance to the implementation effort on the types of examples it would like to see investigated. This will help ICANN org provide specific guidance to the evaluation panels, in line with the community's responsibilities under the FoI/WS2 Recommendation.

11. Universal Acceptance

No org feedback at this time.

12. Applicant Guidebook

Affirmation with Modification 12.3 and Recommendation 12.5:
The PDP WG recommends that "the commencement of the application submission period will be at least four (4) months after the issue of the Applicant Guidebook." ICANN org requests the PDP WG consider providing a minimum and maximum time frame instead of the fixed four month period. Additionally, perhaps the PDP WG may want to consider capturing recommendation 12.5 - "the English version of the Applicant Guidebook must be issued at least four (4) months prior to the commencement of the applicant submission period" - with Recommendation 12.3.

Recommendation 12.4:
The PDP WG recommends "focusing on the user when drafting future versions of the Applicant Guidebook (AGB) and prioritizing usability, clarity,

and practicality in developing the AGB for subsequent procedures. The AGB should effectively address the needs of new applicants as well as those already familiar with the application process. It should also effectively serve those who do not speak English as a first language in addition to native English speakers." ICANN org requests further clarity as to how the PDP WG envisions ICANN org "focus on the user." Additionally, it would be helpful if the PDP WG could clarify as to how they see ICANN org "effectively address the needs of new applicants," as well as how ICANN org should "effectively serve those who do not speak English as a first language."

13. Communications

Recommendation 13.2:
This Recommendation states that the "Working Group believes that an effective communications strategy and plan is needed to support the goals of the program." It would be helpful to understand the PDP WG's definition of the goals of the Program and whether this Recommendation is in reference to Affirmation 6.1.[1]

14. Systems

Implementation Guidance 14.7:
The PDP WG suggests allowing "applicants to view historical changes that have been made to the application by any system user, including ICANN org, both during the application and evaluation phases." ICANN org would like to note that org sensitive data that may be appended to the application cannot be shared. Additionally, ICANN org would like to note that implementing end user differentiated access complicates system design and thus would result in greater time and higher costs.

Recommendations 14.8 and 14.9:
Because it is phrased in terms of subjective standards of predictability and transparency, ICANN org is concerned that opponents of the Program might argue the deployment of applicant-facing systems as insufficiently predictable or transparent, therefore potentially challenging org's deployment of a system as a violation of policy. For example, if Implementation Guidance 14.9 were the policy Recommendation, this would be clearer and more implementable and 14.8 could be retained as principles or Implementation Guidance.

Implementation Guidance 14.10:
The PDP WG suggests, "in service of transparency, once the systems are in use, ICANN should communicate any system changes that may impact

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[1] _Affirmation 6.1:_ _The Working Group affirms Principle C of the 2007 policy, which states: "The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition, the introduction of a new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service provider diversity."_

applicants or the application process. Processes described under Topic 2: Predictability should be followed." ICANN org would like to note that for issues related to security and stability, as well as the proper functioning of systems, ICANN org cannot be constrained to the processes outlined under Topic 2. ICANN org will need to respond rapidly to any issue that may fall under these categories.

15. Application Fees

Implementation Guidance 15.2:
As noted by the PDP WG, "fees for the technical and operational evaluation for the core registry services should be charged to an applicant if they are using a registry service provider that is not pre-evaluated." ICANN org would like the PDP WG to consider a uniform fee for each application irrespective of the utilization of a pre-evaluated registry service provider.

Affirmation with Modification 15.3:
For understanding of the Affirmation, could the PDP WG clarify what it categorizes as historical costs and "actual costs directly related to implementation" (e.g., how would overhead, research and other costs be categorized?). Additionally, historical and development costs will only be known once the Program is fully developed (e.g., at the opening of the application window for each subsequent round). Alternatively, ICANN org is able to provide projections of the development cost.

Affirmation with Modification 15.4:
The PDP WG states that "this affirmation is modified by the below implementation guidance." Could the PDP WG clarify which portions of the affirmation and implementation guidance are meant as policy recommendations versus implementation guidance?

Implementation Guidance 15.5:
The PDP WG notes, "in the event that the estimated application fee, based on the revenue neutral principle, falls below a predetermined threshold amount (e.g., the application fee floor), the actual application fee should be set at that higher application fee floor instead." ICANN org notes that the PDP WG did not come to an agreement on a set of criteria for the application fee floor; however, it would be helpful to understand whether the PDP WG foresees ICANN org or some other entity determining the "predetermined threshold amount." Org notes the PDP WG suggestion that an assessment should take place prior to each round.

Rationale for Implementation Guidances 15.5 and 15.6:
The PDP WG notes that "the purpose of an application fee floor is to deter speculation and potential warehousing of TLDs, as well as mitigate against the use of TLDs for abusive or malicious purposes." ICANN org seeks input on whether this provision could be harmonized with the "bona fide" applicant

provision from the Auction section, as the fee schedule could be proactive as opposed to a reactive means of deterring speculative applications.

Recommendation 15.7 and Implementation Guidance 15.8:
The PDP WG states (Recommendation 15.7) that "ICANN must have a plan in place for managing any excess fees collected or budget shortfalls experienced. The plan for the management and disbursement of excess fees, if applicable, must be communicated in advance of accepting applications and collecting fees for subsequent procedures." Additionally, the PDP WG notes (Implementation Guidance 15.8) that "if excess fees are collected in subsequent procedures and the cost recovery model is followed (e.g., the application fee floor is not implemented) any excess fees should be returned to applicants where possible." ICANN org notes that this proposes a fundamentally new approach that departs from the manner in which the 2012 round was handled. Significant questions arise such as: (1) What is considered excess (in total, by application)? (2) When is an excess determined (at what stage of a round)? (3) Presuming that an excess should be determined, when is a round completed? (ICANN org notes that the 2012 round is still not completed and as such, some applicants may no longer be in operation when rounds are completed.)

Additionally, this approach may also create an incentive for applicants to challenge the performance of any procedure carried out by ICANN org or the Board. While ICANN should remain accountable at all times to stakeholders on its use of funds, the incentive for applicants to challenge activities for the purpose of maximizing a potential refund is highly likely. Please also refer to the ICANN Board comment on this topic.

Recommendation 15.9 and Implementation Guidance 15.10:
The PDP WG notes that in the event an application fee floor is used to determine the application fee, "to help alleviate the potential burden of an overall budget shortfall, a separate segregated fund should be set up that can be used to absorb any shortfalls and topped-up in a later round. The amount of the contingency should be a predetermined value that is reviewed periodically to ensure its adequacy." It would also be helpful to understand whether the PDP WG foresees a separate contingency fund for each round or a general contingency fund for the entire program.

Rationale for Recommendations 15.7 and 15.9 and Implementation Guidance 15.8 and 15.10:
The PDP WG notes "that it is important for ICANN to have a contingency fund to support the Program if fees are insufficient to support program activities in the short term. The PDP WG notes that the fund could later be replenished through additional application fees collected in subsequent rounds." ICANN org would like to understand whether costing for future rounds should include historical recoupment costs.

16. Application Submission Period

Recommendation 16.1:
The PDP WG recommends "that for the next application window and subsequent application windows, absent "extenuating or extraordinary" circumstances, the application submission period must be a fixed period of 13 weeks and should not begin or end on a weekend." ICANN org suggests the PDP WG to consider providing a minimum and maximum timeframe for the application submission period (instead of the fixed 13 week period) to allow for greater flexibility.

17. Applicant Support

Recommendation 17.2:
The PDP WG recommends "expanding the scope of financial support provided to Applicant Support Program beneficiaries beyond the application fee to also cover costs such as application writing fees and attorney fees related to the application process." ICANN org suggests that the PDP WG consider a per-applicant limit on the proposed fees and requirements that any such fees covered are both reasonable and based on documented costs incurred. Additionally, it would be helpful for the PDP WG to provide examples of the types of services for which it is recommending attorneys fees be covered, as further information is needed to understand how ICANN payment or support of such fees might be appropriate. ICANN org would also like to seek confirmation whether these fees are to be provided on a reimbursement basis, as eligibility for Applicant Support is determined after submission of an application. The PDP WG may want to consider capturing the proposed fees as part of the pro bono assistance program. Please also refer to the ICANN Board comment on this topic.

Recommendation 17.3:
This Recommendation appears to conflate policy and Implementation Guidance, as the recommendation is to "improve" a number of activities "as proposed in the implementation guidance below." An alternative formulation would be: "The Working Group recommends that ICANN conduct outreach, awareness-raising, application evaluation, and program evaluation elements of the Applicant Support Program, considering usability of the program." The goal of this formulation is to create: (a) A policy requirement which can be clearly assessed as to whether it has been fulfilled and (b) a clearer distinction between the Program requirement and Implementation Guidance.

Implementation Guidance 17.6:
The PDP WG notes that "outreach efforts should not only target the Global South, but also 'middle applicants,' which are located in struggling regions that are further along in their development compared to underserved or underdeveloped regions." ICANN org would like to understand the PDP WG's criteria for an applicant to qualify as a "middle applicant," as well as for

"struggling regions." Additionally, ICANN org notes its understanding that the WG does not recommend limiting outreach to a particular region and intends that the org engage with stakeholders in multiple regions who may not be aware of ICANN and the DNS ecosystem.

Implementation Guidance 17.8:
Furthermore, on the reference to "targeted regions," ICANN org understands this in light of the guidance in 17.6 that outreach is not limited to particular regions.

Implementation Guidance 17.14:
Please refer to the ICANN Board comment on this topic.

Recommendation 17.15:
This Recommendation states that "if an applicant qualifies for Applicant Support and is part of a contention set that is resolved through an auction of last resort, a bid credit, multiplier, or other similar mechanism must apply to the bid submitted by that applicant." ICANN org would like to note that Recommendation 17.15 will need further discussion in order to be implementable. One consideration would be that there is perhaps a dissonance between suggesting that an applicant requires support (including direct financial assistance for application drafting, etc.), while also suggesting the applicant should be holding some amount of funds in reserve in order to succeed in an auction. For example, how would these reserve funds be assessed as it pertains to financial assistance qualification? If there is no contention, should that bid amount be accessed? Additionally, it would be helpful to understand if the Applicant Support recipient is expected to pay a specified amount should it succeed in the bidding (any thresholds or percentages). ICANN org also notes that the possibility of auction bid credits might unintentionally encourage use of the Applicant Support Program by those who might not necessarily need financial assistance, as a means to game the system.

Implementation Guidance 17.17:
Similar to Recommendation 17.15, ICANN org notes that this Implementation Guidance may require further consideration in order to be implementable. The PDP WG notes that "If the Applicant getting Applicant Support prevails in an auction, there should be restrictions placed on the applicant from assigning the Registry Agreement, and/or from any Change of Control for a period of no less than three (3) years." ICANN org seeks to understand what would happen if the Applicant Support Program (ASP) recipient merges or is acquired during this prohibition period. Would they lose the TLD? Additionally, ICANN org would like to clarify that an Emergency Back-end Registry Operator (EBERO) is a technical backstop and will not trigger an assignment.

The PDP WG suggests, "all assignments after such time shall be governed under the then-current Registry Agreement standard provisions; provided that any Assignment or Change of Control after the third year, but prior to the seventh year, shall require the applicant to repay the full amount of financial support received through the ASP plus an additional ten percent (10%)." Org

would like clarity whether this Implementation Guidance is solely with respect to ASP auction scenarios or whether this would apply to any ASP recipient that may undergo an Assignment or Change of Control after the third year, but prior to the seventh year.

Recommendation 17.18:
The PDP WG notes "unless the Support Applicant Review Panel (SARP) reasonably believes there was willful gaming, applicants who are not awarded Applicant Support (whether "Qualified" or "Disqualified") must have the option to pay the balance of the full standard application fee and transfer to the standard application process." The PDP WG notes org's concerns regarding a mechanism or potential penalty to identify and prevent such gaming. ICANN org appreciates the PDP WG's efforts to address these concerns. It is unclear whether applicants that have been determined by the SARP to have engaged in deliberate gaming will have to reimburse any pro bono work, writing fees or attorney fees that they have received during the application process (Recommendation 17.2). Additionally, in the absence of willful gaming, it would be helpful to understand what happens to the above mentioned pro bono work, writing or attorney fees should an applicant choose to transfer to a standard application.

New Issues:
The PDP WG has requested "community input on whether the ASP should include the reduction or elimination of ongoing registry fees specified in Article 6 of the Registry Agreement for eligible candidates." ICANN org would like to note that any Recommendations in this area would require further consideration from an implementation perspective.

18. Terms and Conditions

Recommendation 18.1:
Please refer to the ICANN Board comment on this topic.

Recommendation 18.3:
This Recommendation states that "in subsequent rounds, the Terms of Use must only contain a covenant not to sue if, and only if, the appeals/challenge mechanisms set forth under topic 32 of this report are introduced into the Program (in addition to the accountability mechanisms set forth in the current ICANN Bylaws)." ICANN org urges the PDP WG to reconsider this Recommendation, as any weakening of the proposed covenant not to sue poses associated risks to ICANN org and the respective ability to offer the program. Additionally, ICANN org would like to understand who makes the determination that these conditions are met, in addition to how. Please also refer to the ICANN Board comment on this topic.

Recommendation 18.4:
This Recommendation states that "applicants must be allowed some type of refund if they decide to withdraw an application because substantive changes

are made to the AGB or program processes and such changes have, or are reasonably likely to have, a material impact on applicants." ICANN org notes that this refund schedule would differ from the normal refund schedule, however it would be helpful if the PDP WG can provide clarity on the type of refund schedule (also noted in Recommendation 2.4 and Implementation Guidance 2.5) it envisions, and during which phase of the application process it will occur, as well as who will determine whether or not the changes made are substantive or will have a material impact on the applicants.

19. Application Queuing

Affirmation 19.1:
ICANN org would like to seek additional clarity from the PDP WG about whether the Affirmation of the 2012 approach means the org is expected to use the identical in-person prioritization draw process in subsequent rounds. For example, if an alternative randomization method would be permitted by applicable law, would this conflict with the Recommendation? What if the rules and regulations surrounding the prioritization draw used in 2012 have changed and are no longer viable?

20. Application Change Requests

Recommendation 20.4:
The comment period associated with Application Change Requests is different from the traditional Public Comment period associated with policy development. To avoid confusion with the more commonly understood Public Comment period, ICANN org suggests referring to the Application Change Request comment period as an "operational" comment period, e.g., a 30-day comment period giving the public the opportunity to comment on any change to a public part of an application, including PICs. The PDP WG may wish to note for reference also that changes made to private sections of the application during the 2012 round were noted on the change log but the information was not made public and no comment was collected.

Recommendation 20.6:
Regarding allowing application changes to support resolution of contention sets, has the PDP WG considered allowable scope for these changes (e.g., community status changes), or how applicants may demonstrate that the requested change would support resolution of a contention set? ICANN org notes that in the 2012 round, changes to Community Priority Evaluation questions were prohibited in order to protect the integrity of the evaluation scoring process. Please also refer to the ICANN Board comment on this topic.

Implementation Guidance 20.7:
The PDP WG requests that ICANN org explore "the possibility of allowing applicants to request that the evaluation of their own application is delayed by

60-90 days so that they can submit an applicant change request on the basis of business combination or other form of joint venture. This request would need to be made prior to Initial Evaluation of the application."

ICANN org notes that granting a delay to file a change request for a limited number of applications might delay the processing of other applications (e.g., other members of a contention set not party to the change request).

Recommendation 20.8:
The PDP WG recommends "allowing .BRAND TLDs to change the applied-for string as a result of a contention set where: (a) The change adds a descriptive word to the string, (b) The descriptive word is in the description of goods and services of the Trademark Registration, (c) Such a change does not create a new contention set or expand an existing contention set, (d) The change triggers a new Public Comment period and opportunity for objection and, (e) The new string complies with all New gTLD Program requirements."

ICANN org has identified a set of questions regarding this Recommendation:

1. Would ICANN org need to evaluate an application first to determine if it qualifies as a .BRAND TLD? Currently, applicants for .BRAND TLDs submit an application for Specification 13, which is posted for review and comment by the community for 30 days. Would applicants first obtain status as a .BRAND TLD prior to a potential string change?

2. There are cases in which the Trademark Registration may be in another script or language from which the TLD was applied. Would the addition of "descriptive words" refer to a single additional descriptive word, or could it include multiple descriptive words? Could an added descriptive word or words include translations/transliterations?

3. Criterion (e) states that a change to an applied-for string as a result of a contention set must "[comply] with all New gTLD Program requirements." ICANN org understands this to mean that the new applied-for string would need to pass evaluation and objection phases as did the original applied-for string. Is this a correct understanding?

4. ICANN org notes that the .BRAND applicant must hold a Trademark Registration for the proposed TLD that is identical to the textual elements of the applied-for string, per Specification 13 of the Registry Agreement. Unless the proposed descriptive word was a part of the Trademark Registration, the applicant would not be able to qualify as a .BRAND TLD after changing its applied-for string.

ICANN org also notes that the Application Change Request process is an operational function designed to manage application information and impacts several aspects of the evaluation process. As the types of change requests increase, the overall complexity of the Application Change Request process will also increase. This will impact applicants, ICANN org, and the overall

application processing timeline. Please also refer to the ICANN Board comment on this topic.

21. Reserved Names

ICANN org notes that Affirmation 21.2 supports continuation of reserving as unavailable for delegation the top level strings that were considered Reserved Names in the 2012 round. Has the PDP WG considered the inclusion of a process by which words on the reserved names listed in the 2012 round could be released to the related organization to operate as a registry (for example, the string 'IETF' released to the Internet Engineering Task Force)?

21.1 Geo Names

ICANN org notes that reserved names (including geographic names and their translations) will have variant labels according to the RZ-LGR. Following the Recommendation on Technical Utilization of the RZ-LGR (Recommendation 2.3) by the RZ-LGR Study Group, the PDP WG is requested to clarify if these variant labels will also be reserved. For example, the capital of UAE - Abu Dhabi:

أبوظبي
xn--igbka7dzdo
U+0623 (أ) U+0628 (ب) U+0648 (و) U+0638 (ظ) U+0628 (ب) U+064A (ي)

has 80 variant labels based on RZ-LGR, including three which would be allocatable.

In regard to the Recommendations and Implementation Guidance put forth in Annex I, the PDP WG Work Track 5 recommends, in relevant part:

"Maintain provisions included in the 2012 Application Guidebook section 2.2.1.4.2 Geographic Names Requiring Government Support, with the following update regarding section 2.2.1.4.2.4:

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

"The 2012 Applicant Guidebook provisions contained in section 2.2.1.4.2 are inconsistent with the GNSO policy recommendations contained in the Introduction of New Generic Top Level Domains from 8 August 2007. This Recommendation would make the policy consistent with the 2012 Applicant

Guidebook, and therefore represents a change to the existing policy recommendation."

ICANN org seeks clarity on whether the PDP WG intends for the maintenance of the 2012 AGB provisions contained in section 2.2.1.4.2. as a policy or if this is intended to be a Recommendation to maintain the implementation effort that was done through the AGB. If the later, can the PDP WG provide additional guidance on some issues that arose during the 2012 round, such as understanding the definition of "relevant governments or public authorities" (at city, state, country and continent level) and the impact that geopolitical changes within a region might have on what qualifies as the "relevant governments or public authorities" during the application processing period? Will the applicant be required to provide new documents of support or non-objection from new "relevant governments or public authorities"?

22. Registrant Protections

Recommendation 22.5:
For purposes of this Recommendation, it would be helpful if the PDP WG included more specific policy guidance as to the criteria or principles that would represent a successful solution to meet the defined objectives or address the defined problems. It would also be helpful to clarify the understanding of this Recommendation from a process standpoint. For example, is it the WG's intention that ICANN org explore this area as a stream of implementation work after the policy development process is complete, and would it then be expected to return the results to the GNSO or other policy body?

Implementation Guidance 22.6:
This guidance states "To the extent that it is determined that a Continued Operations Instrument will be required, it should not be part of the financial evaluation. It should only be required at the time of executing the Registry Agreement." ICANN org notes that experience from the previous round has shown that there are often significant lead-time requirements for execution of a Continued Operations Instrument (COI) (letters of credit, specifically), and would expect to account for this in implementation.

ICANN org notes for the PDP WG's consideration that, under the approach in 22.6, applicants and other stakeholders may be at risk for expending resources on evaluation and other processes where the applicant is ultimately unable to meet the COI requirements.

Recommendations 22.7:
This Recommendation states, "TLDs that have exemptions from the Code of Conduct (Specification 9), including .Brand TLDs qualified for Specification 13, must also receive an exemption from COI requirements or requirements for the successor to the COI." This Recommendation is based on the rationale that an EBERO event would not be necessary "in business models where

there are no registrants in need of such protections in the event of a TLD failure." ICANN org notes a concern that the inclusion of Specifications 9 or 13 in a Registry Agreement does not ensure there are no registrants or other end users in need of protection. For example, a car manufacturer with a Specification 13 may allow individual/independent car dealerships and/or their customers to use registrations in that TLD. The PDP WG may wish to further investigate the question of whether EBERO protections would be appropriate in some instances of TLDs with Specification 9 or 13.

In addition, ICANN org notes the potentially significant impact on end users should any gTLD fail. That is to say, a failure may not reflect only on the brand/gTLD; it also potentially undermines confidence in the stability of the DNS and the Internet. Please also refer to the ICANN Board comment on this topic.

23. Closed Generics

ICANN org has reviewed the three proposals that are currently under discussion and identified implementation questions and comments for each. We note that the PDP WG is still discussing these proposals and has not yet developed policy recommendations, therefore ICANN org has not included comments on those proposals. We will readily share these implementation notes should the PDP WG determine to pursue one of these proposals. Please also refer to the ICANN Board comment on this topic.

24. String Similarity Evaluation

Affirmations 24.1 - 24.2:
Use of RZ-LGR creates variant labels of all strings already delegated as TLDs or reserved as well as variant labels for an applied-for TLD string. The string similarity review process needs to take these variant sets into consideration. For example, a variant label of a reserved name would not pass the string similarity evaluation.

Recommendation 24.3:
The PDP WG recommends using a dictionary to determine the singular and plural version of the string for the specific language, however, this implies that singular and plural forms are only applicable to lexical entries in a language and this similarity measure will not be applied to non-words of a language, e.g., .TLD versus .TLDs. Does the PDP WG envision such cases being treated differently? If so, further Implementation Guidance would be helpful.

The PDP WG also "recommends prohibiting plurals and singulars of the same word within the same language/script in order to reduce the risk of consumer confusion." ICANN org seeks clarity on whether singular/plural versions of the same word in different languages are allowed (e.g., .cat and .gatos). Also, clarification is sought regarding how the "visually similar" standard will be

applied for the singular or plural of words that are not clear by sight. This Recommendation appears to be expanding the standards used in the string similarity evaluation, so that it would include: (a) a visual similarity check, (b) a singular/plural check, and (c) an intended use check as relevant for identifying exemptions to (b). Can the PDP WG confirm this understanding? Could the PDP WG also clarify how inflections (e.g., .HOUSE and .HOUSED; .ACTOR and .ACTRESS) across different languages and scripts will be accounted for and assessed? What are the criteria for assessing answers provided via Clarifying Questions (CQs) or dictionary lookups to determine whether an applied for string is a singular or plural of another?

Recommendation 24.3 states that "An application for a single/plural variation of an existing TLD or Reserved Name will not be permitted if the intended use of the applied-for string is the single/plural version of the existing TLD or Reserved Name. For example, if there is an existing TLD .SPRINGS that is used in connection with elastic objects and a new application for .SPRING that is also intended to be used in connection with elastic objects, .SPRING will not be permitted." ICANN org seeks additional guidance regarding "intended use of the applied-for string" and whether it is meant to address the concept of confusability. Additionally, ICANN org notes that the concept of "intended use" has inherent ambiguities. Registrars might market and registrants might use second-level domains in ways not intended by the registry. Please also refer to the ICANN Board comment on Topic 9 as it is relevant to the idea of ICANN enforcing restrictions on use and content in singular and plural TLDs.

Recommendation 24.5:
The PDP WG states that "the mandatory PIC must include a commitment by the registry to use the TLD in line with the intended use presented in the application." ICANN org seeks clarity from the PDP WG on who will determine whether a PIC is in line with the intended use presented in the application. Please also refer to ICANN Board's comment on this topic.

General Comments:
Recommendation 35.4 states:

> *"At the end of the String Similarity Evaluation period, applicants in contention sets will be informed of the number of other applications in their contention set, but no other information regarding the other applications will be shared. All applicants must submit a sealed bid for each relevant application ("Last Resort Sealed Bids"). Any applicant that does not submit a sealed bid at this time will be deemed to submit a bid of zero.*
>
> *Only after the window to submit Last Resort Bids closes, non-confidential information submitted by applicants in their applications will be published (i.e., "Reveal Day"), including the composition of contention sets and the nature of the*

applications, (e.g., Community Based Applications, .Brand Applications, etc.)."

ICANN org notes that this is a major change to the order of the evaluation activities from the 2012 round implementation. The application lifecycle is also impacted by the Recommendation that applicants should be able to change their applied-for strings, and thus change the contention sets, in certain cases. String Similarity Evaluation was part of the Initial Evaluation, but it seems that the PDP WG is recommending that it occur prior to Initial Evaluation in subsequent rounds. ICANN org will review options for accommodating these Recommendations in planning for application processing, but would point out the possibility that this may contribute to a prolonged program timeline.

25. Internationalized Domain Names (IDNs)

ICANN org notes that the PDP WG has taken into account the Variant TLD Recommendations, and has also identified areas which do not appear to be directly addressed. ICANN org understands that, following the work of the IDN Scoping Team, the GNSO is considering initiating another policy development effort focused on IDNs to address these areas. Until discussion on these additional topics is complete, some details may be unclear around how to proceed with IDN TLDs and variant labels in subsequent rounds. Thus, moving forward with the next round of TLD applications may have some dependency on the GNSO PDP on IDNs.

ICANN org notes that regardless of whether it is possible to apply for variant TLDs in the next gTLD round, implementation of the PDP WG Recommendations has a dependency on the forthcoming GNSO IDN PDP for topics not covered by the PDP WG Recommendations. For example, use of the RZ-LGR, as noted in Recommendation 25.2, will create variant labels and even if these are withheld from allocation or delegation. It is not currently clear how string similarity review and contention resolution will work for regular gTLD applications given that variant labels will have been identified.

Recommendation 25.2 and Implementation Guidance 25.3:
Currently, Implementation Guidance 25.3 states that an application for a TLD in a script not yet integrated into the RZ-LGR should be processed but not contracted. It is unclear as to how such an application can be processed if it cannot be validated through RZ-LGR.

ICANN org suggests that applicants should be able to apply for a string in a script not integrated in the RZ-LGR; however, such applications should be recorded and not processed until the script is integrated in RZ-LGR, as per the Recommendation on Technical Utilization of the RZ-LGR by the RZ-LGR Study Group. Until the RZ-LGR is updated, the validity of the string and its variant labels cannot be determined. Therefore, it may not be clear how to undertake application reviews, objections,, and other steps needed for application processing. It should also be clarified that such recorded

applications may not hold back other applications which can proceed based on RZ-LGR, or later influence applications which have proceeded further once the recorded applications are able to move on through the review process. For example, if a string in a recorded application is considered similar to or a variant of a string which has cleared both string similarity and variant analysis checks, then the recorded string cannot drive the latter string into contention after it is processable by RZ-LGR.

Recommendation 25.4:
Instead of "1-Unicode character" the term "single character" should be used and explained in the document to mean a character in a U-label. This would be recognized by a user familiar with the script of the U-label, represented by one or more Unicode code points, as stated in SAC052 report by Security and Stability Advisory Committee (SSAC). It would also be useful to identify the script(s) for which single character TLDs should be allowed, as an Implementation Guidance, to allay any ambiguity in interpreting "ideographic characters" in the implementation. Also, as part of the Implementation Guidance, the relevant script communities (Generation Panels) should be requested to develop a list of characters which should be available for single character gTLDs before such applications could be considered, to address the additional end-user confusion possibility which may be caused by single character gTLDs, as suggested in SAC052.

Recommendation 25.5:
The term "bundling" should be avoided in reference to variant labels as it can imply some specific technical solutions. It should be noted that there is no single agreed upon solution by the technical community in this context. It may be sufficient to state that the labels are allocated to or registered by the "same entity." Also, the PDP WG could suggest how the "same entity" requirement for gTLD variant labels will be defined for purposes of application review, contracting, and IANA delegation records.

The PDP WG may also wish to explicitly mention that the same entity requirement is a persistent requirement, which would have an impact on gTLD registry transition procedures, including EBERO. Any Recommendations or Implementation Guidance on the various related procedures would be welcomed.

Recommendations 25.6 and 26.7:
A consistent definition for "same registrant" should be agreed upon and published by the GNSO, preferably in consultation with the ccNSO for a consistent implementation of these Recommendations, either via the Subsequent Procedures PDP or a separate IDN PDP. It may be added for clarity that this is a persistent requirement for second level variant labels and cannot be violated even after registration, e.g. when a label is transferred, all its variant labels are also transferred or blocked for allocation to the re-assigned registrant.

Recommendation 25.8:

Even though it is stated that second-level variant labels under TLDs and their variant TLDs "are not required to act, behave, or be perceived as identical," it should be noted that these are perceived the "same" by the relevant script community, by definition of variant labels.

General comments on Topic 25: IDNs:
The Variant TLD Recommendations provide nine Recommendations. ICANN org has identified two Recommendations which do not appear to be covered in the draft Final Report. These include:

- Recommendation 5 requires that the second-level IDN tables offered under variant TLDs are harmonized. It also requires that if two second-level labels are variant labels under a gTLD and these same labels are also generated under the variant gTLD, then these labels must also be second-level variant labels under the variant gTLD.
- Recommendation 6 does not require that second-level variant labels under a gTLD and its variant TLDs be allocatable and activated the same way under the gTLD and its variant gTLDs.

If Recommendation 5 is not supported, this can cause registrant and end-user security issues because the strings in a variant label set under a gTLD may get independently registered by different registrants under its variant gTLD. This can cause end-user security issues, similar to those explained in Recommendation 7 of SSAC's SAC060 report. Recommendation 6 provides flexibility of operations to registries which offer variant gTLDs. The WG may also wish to consider these additional Recommendations for inclusion.

Please also refer to the ICANN Board comment on this topic.

26. Security and Stability

Recommendation 26.2:
Recommendation 26.2 states that "ICANN must honor and review the principle of conservatism when adding new gTLDs to the root zone." ICANN org seeks confirmation on whether or not the "principle of conservatism" to which the PDP WG is referring to is the rate limitation applied in the 2012 round or if it refers to something different.

Implementation Guidance 26.4:
Does this Implementation Guidance imply that IANA has the power to suspend delegations with no SLA penalty to meet this requirement? ICANN org suggests that rate control should not just be limited to delegation, but attention should be paid during the preceding steps, during contracting and pre-delegation. Given that the feedback loop (the time a request is with IANA for delegation into the root zone versus the overall time from when the string application is submitted) is shorter than the overall application process,

knowing whether, in any given month, the threshold is met is unlikely to inform or influence earlier phases of the process.

Rationale for Implementation Guidance 26.4:
The PDP WG notes "further work should be done on establishment of an appropriate rate for delegation," but this guidance says not more than five percent per month. Should it be interpreted that five percent per month is the upper-bound but ICANN could implement a lower bound if it is deemed appropriate?

Implementation Guidance 26.6:
ICANN org seeks clarification on Implementation Guidance 26.6, which states that "ICANN should investigate and catalog the long term obligations for root zone operators of maintaining a larger root zone." The root zone gets larger on a routine basis and has been for years. Does the PDP WG mean larger by a specific threshold (e.g. order of magnitude increase in size)? Wouldn't the obligations for root server operators (RSOs) remain the same despite the size of the root zone?

Implementation Guidance 26.7:
Implementation Guidance 26.7 states, "The Office of the Chief Technology Officer (OCTO) should consult with PTI, the Root Zone Manager, the root operators via RSSAC, and the larger DNS technical community on the implementation of these recommendations." ICANN org suggests that the PDP WG rephrase this Implementation Guidance as a general suggestion to ICANN org rather than a specific department. This Implementation Guidance says ICANN should consult with Public Technical Identifiers and the "Root Zone Manager," which would be ICANN. Does the PDP WG mean "Root Zone Maintainer" which is Verisign? Further, all parties mentioned here are represented in the Root Zone Evaluation Review Committee (RZERC) which reviews architectural changes to the root zone. It would seem that RZERC should be considered a forum for how to determine if there is any impact on the root zone due to an increase in the number of TLDs, and if so, what is the rate of change to consider to mitigate such impact?

Implementation Guidance 26.8:
Implementation Guidance 26.8 states "ICANN should continue developing the monitoring and early warning capability with respect to root zone scaling." Based on current research and analysis, ICANN org does not believe an early warning system is feasible, and is publishing a document in the upcoming OCTO document series (within calendar Q4 2020) that will further explain its reasoning.

Recommendation 26.9:
Recommendation 26.9 states, "In connection to the affirmation of Recommendation 4 from the 2007 policy, Emoji in domain names, at any level, must not be allowed." ICANN org sees no issues with this guidance; however, the current wording suggests that this is an arbitrary choice, when, in fact, emojis are not valid IDNs by the technical standard (see RFC 5892). It would be a stronger Recommendation if the PDP WG tied this to the fact that

emojis are already not permitted by the underlying technology, e.g., adherence to the Internationalizing Domain Names in Applications (IDNA) specification makes this moot. The standard would need to be willfully broken in order to support them. Also, clarity is sought on whether the PDP WG is suggesting that ICANN org actively prohibit emoji domains at the third level (and fourth, etc.), which may be out of scope.

Implementation Guidance 26.10:
As noted in Section 25, ICANN org suggests that an applied-for string which cannot be validated from the RZ-LGR (as either valid or invalid, due to the missing script in RZ-LGR) should only be recorded, and not be processed manually.

27. Applicant Reviews

Recommendation 27.2:
Recommendation 27.2 states that "Evaluation scores on all questions should be limited to a pass/fail scale (0-1 points only)." It's not clear why this implementation detail should be the subject of generally applicable policy binding on ICANN, and therefore ICANN org suggests recategorizing this Recommendation as Implementation Guidance.

Recommendation 27.5:
Recommendation 27.5 states, "ICANN org must publish CQs and CQ responses related to public questions. ICANN org may redact certain parts of the CQ and CQ response if there is nonpublic information directly contained in these materials or if publication in full is likely to allow the inference of nonpublic or confidential information." ICANN org would like to confirm that by "public question" the PDP WG means one where that part of the application is published. ICANN org would like to note a significant increase in risk and complexity if determinations as to whether confidential information is present or redacted are to be done on a case by case basis with each clarifying question. CQ responses should not be made public unless the initial question was public. ICANN org also notes that If the anticipated publication of a response makes it more difficult to communicate with an applicant, it should not be made public.

Recommendation 27.14:
ICANN org seeks guidance on how the total number of TLDs (gTLD and potentially others depending on the RSP) is to be considered. A holistic analysis of hardware, software, services, bandwidth, process, and procedures would be required to properly assess this. It is also unclear from this Recommendation whether this aspect of technical evaluation still needs to be completed even if an applicant selects a pre-approved RSP.

Implementation Guidance 27.16:
ICANN org notes that this guidance, referencing "should not evaluate proposed business models" seems to be inconsistent with Implementation

Guidance 27.17, which states, "the evaluation should determine whether an applicant will be able to withstand missing revenue goals, exceeding expenses, funding shortfalls, or the inability to manage multiple TLDs in the case of registries that are dependent upon the sale of registrations."

Implementation Guidance 27.18:
ICANN org notes that the value of self-certification is unclear. If an RO or its affiliate is not currently in default, this does not ensure that it will be "able to withstand missing revenue goals, exceeding expenses, funding shortfalls, or the inability to manage multiple TLDs in the case of registries that are dependent upon the sale of registrations," as specified in 27.17 for a new TLD.

ICANN org notes that a COI is only utilized if a TLD goes into EBERO for failure of one of the five critical registry functions; however, EBERO is not triggered for a financial failure. A definition of "default" would also be helpful in this context.

Affirmation with Modification 27.19:
For a "family" including all currently operated and applied-for TLDs, ICANN org notes that the number of applied-for TLDs that become delegated and operated by the applicant may depend on factors such as contention resolution and applicant decisions. For purposes of the financial evaluation, ICANN org would expect to use the broadest definition to account for the maximum possible number of TLDs to be operated by the applicant. Further, the Recommendation noted in this Affirmation seems to assume that financial statements can be submitted for an entire group of applications which was not previously the case during the 2012 round. ICANN org would like the PDP WG to clarify whether the criteria to pass financial evaluation for applicants sharing financial statements would differ from those of single application applicants.

Implementation Guidance 27.23:
Regarding the possibility of a third-party certification, does the PDP WG have a recommendation on what types of entities would be qualified to perform such certification? Would ICANN org be expected to develop an approved list and criteria?

28. Role of Application Comment

Recommendation 28.3:
ICANN org suggests striking "as described in the implementation guidance below," to differentiate between the policy requirement in Recommendation 28.3 and the Implementation Guidance that follows, in accordance with the use of these terms set forth on page 4 of the report.

ICANN org would face a significant implementation issue as a result of this Recommendation: Publication of the name or other identifying characteristics

of someone providing an applicant comment could be subject to data privacy regulations of that commenter's jurisdiction. ICANN org seeks clarification on what its role would be in providing this information, and suggestions on how ICANN org could verify the identity of commenters without violating data protection law.

ICANN org would like to further point out that verifying the identity of commenters would be difficult, costly, and, in many instances, not feasible. In addition, the identity of commenters may not be probative compared to the content of their comments.

Implementation Guidance 28.4:
The PDP WG recommends that "the system used to collect application comments should continue to require that affirmative confirmation be received for email addresses prior to use in submission of comments. To the extent possible, ICANN org should seek to verify the identity of the person submitting the comment."

As with Recommendation 28.3, this Implementation Guidance raises significant implementation issues as described above; verifying the identity of an individual would be difficult, costly, and in many instances, not feasible. ICANN org would like the PDP WG to clarify what it means by "to the extent possible." For example, it would be "possible" to verify commenter identities through full background checks, DNA tests, and retina scans. ICANN org would appreciate the PDP WG's consideration and feedback on the scope of this verification.

Implementation Guidance 28.5:
The PDP WG recommends that each commenter "be asked whether they are employed by, are under contract with, have a financial interest in, or are submitting the comment on behalf of an applicant. If so, they must reveal that relationship and whether their comment is being filed on behalf of that applicant."

ICANN org asks the PDP WG to consider how such information would be used during the evaluation. Will evaluators be expected to disregard comments from parties that may have stated a financial interest in one or more applications? If so, does the PDP WG have guidance on the criteria and threshold that should be used when reviewing the relationship of the commenter? Would ICANN org be expected to verify the answers to these questions provided by each commenter? Further, ICANN org again reiterates that this Implementation Guidance raises significant implementation issues as described above.

Recommendation 28.6:
The PDP WG recommends that:

> [S]ystems supporting application comment must emphasize usability for those submitting comments and those reviewing the comments submitted. This recommendation is consistent with Program

Implementation Review Report recommendation 1.3.a, which states: 'Explore implementing additional functionality that will improve the usability of the Application Comment Forum.'

ICANN org suggests the policy recommendation to "emphasize usability" appears to be similar to a design principle, and suggests that this recommendation should be formulated as a principle, or implementation guidance.

Implementation Guidance 28.8:
The PDP WG recommends that "the system used to collect application comments should allow those submitting comments to include attachments. ICANN should investigate whether there are any commercially reasonable mechanisms to search attachments."

The inclusion of attachments may raise security issues as attachments may be used to introduce malware and viruses. Note also that many attachments do not contain searchable text. Since it is difficult to filter/sort/search the contents of attachments, this Recommendation may impact Implementation Guidance 28.7.

Recommendation 28.9:
The PDP WG recommends that the New gTLD Program be "clear and transparent about the role of application comment in the evaluation of applications."

ICANN org notes the description applicable to the 2012 round, as provided in AGB 1.1.2.3. ICANN org requests that the PDP WG clarify whether this is an Affirmation of that clause, or if it is proposing changes to it.

Recommendation 28.13:
ICANN org sees some potential difficulties in managing the provision of this information, given it relates to confidential portions of an application. Can the PDP WG clarify: Would ICANN org be obligated to keep these third-party comments confidential, including from the applicant? This may raise issues of fairness if applicants are evaluated based on comments from unknown third parties.

29. Name Collision

Implementation Guidance 29.6:
ICANN org would like to confirm our understanding of this Implementation Guidance. We understand this Recommendation to suggest that if a specific label is found to cause disruption during the period of wildcarded controlled interruption, the controlled interruption can be disabled for the label mentioned above and wildcarded controlled interruption can continue. After the disruption is deemed fixed, the label can be released using the releasing

names in the SLD block list process described in the New gTLD Collision Occurrence Management framework.

From a technical perspective, implementing the understanding of the Implementation Guidance detailed above will require a zone with the wildcard RRs for wildcarded controlled interruption to respond with an NXDOMAIN for a specific domain and its subdomains (e.g., example.tld and *.example.tld). We are not aware of major DNS implementations that support this mechanism. There could be substantial technical challenges with implementing such a solution.

Another option is to suspend the wildcarded controlled interruption while the issue causing disruption by the specific label is resolved.

Please also refer to the ICANN Board comment on this topic.

30. GAC Consensus Advice and GAC Early Warning

Recommendation 30.7:
Recommendation 30.7 states that "Applicants must be allowed to change their applications, including the addition or modification of Registry Voluntary Commitments (RVCs, formerly voluntary PICs), to address GAC Early Warnings and/or GAC Consensus Advice." ICANN org notes that there is a related comment from the ICANN Board with regards to the RVCs. Please refer to the ICANN Board's comment for the Recommendation 9.1.

Furthermore, as the GAC submitted "non-consensus advice" in the previous round, ICANN org also requests clarification as to whether amendments would be permitted in response to "non-consensus advice." To achieve predictability for the gTLD applicants, ICANN org suggests that there should be a clear process with expected deadlines to change an application in response to GAC Early Warnings and/or GAC Consensus Advice.

Overall:
There are mentions of both "GAC Advice" and "GAC Consensus Advice" throughout the draft Final Report. It would be helpful if the PDP WG provides its understanding of the distinction between the two.

31. Objections

Affirmation with Modification 31.3:
Affirmation with Modification 31.3 recommends that "there may be a cooling off period for negotiation or compromise by agreement of both parties if formally submitted to the applicable arbitration forum." ICANN org has identified a set of questions in relation to the reference to the "arbitration forum" which would be helpful in considering ICANN org's implementation effort.

1. Is the "arbitration forum" the same as the dispute resolution provider that will adjudicate the filed objection? If not, is the PDP WG's intention to have parties engage in this part of the process privately between themselves?
2. Was the word "arbitration" used intentionally, meaning that the decision and/or findings in that process will be binding on the parties?
3. What materials would be expected to be "formally submitted" to the applicable arbitration forum?
4. As the cooling off period is available for the objecting party and applicant to potentially self-resolve, it is unclear why or how the "applicable arbitration forum" would be involved.

Implementation Guidance 31.6:
Implementation Guidance 31.6 states that the "Information about fees that were charged by dispute resolution service providers in previously filed formal objections should be accessible for future review." As currently phrased, the guidance is unclear to whom, by whom, for what purpose the information should be accessible for review.

Additionally, does the PDP WG envision the "previously filed formal objections" to include the 2012 round of the objections or other type of objections administered by the dispute resolution provider?

Implementation Guidance 31.7:
Implementation Guidance 31.7 states "Consideration should be given to whether there were barriers to filing a formal objection in the 2012 round, and if so, whether those barriers can and should be reduced in subsequent procedures." Please clarify whom the PDP Working Group envisions should provide this consideration and when.

Implementation Guidance 31.9:
Implementation Guidance 31.9 states "A mechanism should be established (e.g., standing panel of multiple IO panelists) that mitigates the possible conflict of interest issues that may arise from having a single panelist serving as the IO." An IO serves as an individual advocate in the IO role, not as an adjudicator. It will be helpful to understand the rationale behind why the PDP WG considered multiple IOs to serve as "panelists."

It will also be helpful if the PDP WG can provide additional guidance on how such a mechanism of multiple IOs should be constituted and selection criteria to be used.

Recommendation 31.11:
Recommendation 31.11 states that "ICANN must provide transparency and clarity in… including the resources and supplemental guidance used by dispute resolution provider panelists to arrive at a decision, expert panelist selection criteria and processes, and filing deadlines." Though ICANN org will work to provide as much transparency and clarity as possible, some of this

information may be proprietary or confidential to the dispute resolution providers, and ICANN may have difficulty finding a high-quality provider that complies with this request.

Implementation Guidance 31.12:
Implementation Guidance 31.12 states that "All criteria and/or processes to be used by panelists for the filing of, response to, and evaluation of each formal objection should be included in the Applicant Guidebook." This would require ICANN to contract with the dispute resolution vendors prior to finalizing the AGB to collaboratively create and finalize such criteria and/or process, in advance of the commencement of the application submission window, resulting in high costing and resource implications. The information may also be updated as needed, and the provider documentation is the best source for applicants, not the AGB.

Implementation Guidance 31.14:
Implementation Guidance 31.14 states "Prior to the launch of the application submission period, to the extent that dispute resolution panelists draw on other guidance, processes and/or sources of information to assist them with processing and making decisions, such information should be made publicly available and easily found, either on their respective websites or preferably, in a central location." ICANN org reiterates that some of this information may be proprietary or confidential to the dispute resolution providers, and ICANN may have difficulty finding a provider that complies with this request, though we will work with the providers to ensure there is as much transparency and clarity as possible. In addition, the information that panelists draw on to make decisions may not be fully known in advance. ICANN org reads this as an intention to provide general information applicable to all objection proceedings, rather than specific information panelists might review in connection with a specific case.

Recommendation 31.16:
This Recommendation may result in an unintended loop of amendments and objections. ICANN org seeks guidance on the limits to the number of RVCs that can be submitted or the number of objections that can be made against an application, to help address possible gamesmanship.

Additionally, uncertainties may arise in objection determinations if there are no time limits regarding when RVC can be submitted following the filing of an objection and an RVC was not considered as part of a determination.

Lastly, ICANN org notes that there is a related comment from the ICANN Board with regards to the RVCs. Please refer to the ICANN Board's comment on Recommendation 9.1.

Recommendation 31.17:
What is the PDP WG's vision for the duration of the commitment made via the RVC? It is unclear what would happen if the registry operator changes its business model or if the gTLD is assigned to another entity. Registry Agreement amendments to change Voluntary PICs are currently restricted. It

would be helpful if the PDP WG can clarify if its intention is to allow the changes to the RVC, or if the RVCs are intended to be binding contractual commitments forever after the contract is executed.

Additionally, ICANN org would like to note that there is a related comment from the ICANN Board with regards to the RVCs. Please refer to the ICANN Board's comment on Recommendation 9.1.

Implementation Guidance 31.19:
Implementation Guidance 31.19 states that "An objector may file a single objection that extends to all applications for an identical string." While ICANN org recognizes that this is Implementation Guidance, we note that the premise may be faulty. While the applied-for string may be identical across many applications, other aspects can differ (e.g., TLD type, operational intent, applicant entity, trademark, etc.) which would limit the ability of a single objection to address all the variances between the applications, requiring separate objections to be filed and heard. What is the PDP WG's vision to create a consistent outcome among multiple applications for the same string affected by one objection?

32. Limited Challenge/Appeal Mechanism

Recommendation 32.1:
Recommendation 32.1 states, "The new substantive challenge/appeal mechanism is not a substitute or replacement for the accountability mechanisms in the ICANN Bylaws that may be invoked to determine whether ICANN org or Board violated the Bylaws by making or not making a certain decision. Implementation of this mechanism must not conflict with, be inconsistent with, or impinge access to accountability mechanisms under the ICANN Bylaws." ICANN org seeks clarification from the PDP WG on how the challenge/appeal process is intended to work alongside the accountability mechanisms per the Bylaws, in particular where ICANN org (instead of a panel or provider) makes the decision/determination that is the subject of a challenge/appeal.

Additionally, there appears to be a tension between Recommendation 32.10, which states that the challenge/appeal process "must be designed in a manner that does not cause excessive, unnecessary costs or delays in the application process…" and the ability of an applicant to potentially continue to seek redress through the accountability mechanisms in the Bylaws after exhausting the challenge/appeal process. This could add additional time and cost to processing applications. ICANN org notes that the new gTLD Auction Proceeds Cross Community Working Group has included in a draft Recommendation that some aspects of the grant decision-making process would not be subject to ICANN Bylaws-mandated accountability mechanisms. Has the PDP WG considered the possible benefits of such an exemption with respect to one or more of the evaluation processes potentially subject to challenge or appeal?

Additionally, Recommendation 32.1 lists the types of evaluations that are in scope of the challenge, which does not list the evaluation of whether the applied-for string falls into one of four groups defined by the NGPC framework with regard to highly sensitive or regulated industries as mentioned in Recommendation 9.4. Is the PDP WG's intent to exclude this proposed evaluation from the limited challenge/appeal mechanism?

Implementation Guidance 32.5:
As background to the PDP WG, ICANN contracts with vendors to conduct application reviews, and the results are typically presented by the vendor entity itself, not by the vendor's individual employee(s). For example, ICANN org engaged with various consulting firms as evaluation vendors during the 2012 round. The nature of those consulting firms tends to be that the entity itself stands behind the individual's work, and the firms do not deliver the results as the review of "Employee A." The same applies if the evaluation result was delivered by ICANN org (e.g., Background Screening).

In addition to the added operational challenges, the requirement of each panelist vendor to have such a backup team in case of a challenge or appeal will add complexity to the request for proposal (RFP) process and likely drive up the costs, affecting the application submission fee.

Implementation Guidance 32.7:
Implementation Guidance 32.7 states, "All challenges and appeals except for the conflict of interest appeals should be reviewed under the 'clearly erroneous' standard. Conflict of interests should be reviewed under a 'de novo' standard." It is unclear from the draft Final Report whether or not the parties to a challenge/appeal would be able to submit new material or evidence, or whether the challenge/appeal is limited to the existing record that was available to the party/panel making the original determination.

Implementation Guidance 32.7 also states that "Conflict of interests should be reviewed under a 'de novo' standard." Footnote 218 also states that "Under a de novo standard of review, the appeals panel is deciding the issues without reference to any of the conclusions or assumptions made by the evaluator/dispute panel. It can refer to the evaluator/dispute panel to determine the facts, but it need not defer to any of the findings or conclusions. It would be as if the appeals panel is hearing the facts for the first time." It is unclear what must be reviewed under a "de novo" standard in this Guidance. As per Annex F, a Panelist Conflict of Interest appeal must be filed within 15 days from notice of the appointment of the panelist(s), which implies that no objection review process would have been started by that point. ICANN org seeks clarity on whether or not the alleged conflict itself needs to be reviewed under a "de novo" standard by the third-party arbiter.

Recommendation 32.10:
This Recommendation appears to conflate policy and Implementation Guidance, as the Recommendation is that "the limited challenge/appeal process must be designed in a manner that does not cause excessive,

unnecessary costs or delays in the application process, as described in the implementation guidance below." ICANN org suggests the PDP WG consider deleting "as described in the implementation guidance below" and letting the Implementation Guidance stand on its own. In addition, could the policy requirement be stated in the positive, so that it can later be assessed as to how it was implemented?

Implementation Guidance 32.13:
Implementation Guidance 32.13 states that "A party should be limited to a single round of challenge/appeal for an issue." It will be helpful if the PDP WG can clarify what it means by "an issue." For example, if an application fails a Financial Capability Evaluation during the Initial Evaluation, challenges the outcome and loses, this application will proceed to an Extended Evaluation. If, once again, this application fails the Financial Capability Evaluation during the Extended Evaluation, can the applicant file another challenge since it is a different evaluation decision (Initial vs Extended Evaluation) despite the evaluation criteria/failure nature being the same as before?

Further, when it says "a party" should be limited to a single round of challenge/appeal, in circumstances where more than just one applicant can challenge or appeal a decision (e.g. Community Priority Evaluation (CPE) result challenge), will the other party with standing be able to challenge the result of the challenge filed by another applicant? This could create an endless loop of appeal/challenges and cause delays in application processing and reduce predictability.

Annex F:
Annex F states that a finding regarding Conflict of Interest for dispute resolution provider panelists can be appealed by an applicant or objector. Considering that the objection proceeding only allows both parties to agree on one panelist or three panelists but not specific personnel, neither an applicant or objector has control over who gets assigned for their objection proceeding. However, Annex F states that the "non-prevailing party bears the cost of the proceeding fees charged by the third-party arbiter." It is unclear who would be the potential "non-prevailing party" in this case. Further, Annex F says that the arbiter of the appeal to a conflict of interest determination is "To be determined by the IRT." Does the PDP WG have guidance on whether this should be another individual, another dispute resolution provider, or a third party?

Overall:
ICANN org recommends that the PDP WG consider distinguishing between decisions/determinations made by ICANN (e.g., background screening), determinations made by ICANN contractors (e.g., Financial Evaluation), and decisions made by panels administered by independent dispute resolution providers (e.g., String Confusion Objections) to ensure that the proposed new rules and procedures will work for each category of decision/determination. For example, currently, it is not clear who would hear a challenge/appeal of a determination made by ICANN org.

33. Dispute Resolution Procedures After Delegation

Recommendation 33.2:
This Recommendation does not describe the deficiencies with the current published guidance on the PICDRP, which was updated in February 2020. In order to make the requested improvements, ICANN org requests the PDP WG to clarify what should be made "clearer, more detailed, and better-defined" especially with regard to the guidance pertaining to the scope of the PICDRP and RRDRP, the role of all parties, and the adjudication process.

Please also refer to the ICANN Board comment on this topic.

34. Community Applications

Affirmation 34.1:
Affirmation 34.1 affirms the continued prioritization of applications in contention sets that have passed Community Priority Evaluation. In its 2016 [Program Implementation Review Report](#) on the 2012 round, ICANN org noted that it "received complaints from applicants (both community and standard applicants) regarding the outcomes of CPE, through formal correspondence and accountability mechanisms. Such complaints included feedback that there was a lack of transparency, that the panel misinterpreted the applications or the communities they claimed to represent, and that the panel improperly applied the CPE criteria in reaching its determination." ICANN org concluded in that report that:

> The concept of awarding priority to applications based on a set of criteria was new to this round of gTLD applications. Before a next round, the following should be considered:
>
> - Whether to continue the practice of evaluating and awarding priority to community-based applications.
> - Whether the criteria for granting priority should be revised.
>
> Staff recommends considering all dimensions of the feedback received to revisit the CPE scoring and framework before the next application round.

In considering how community priority might be assessed and applied in a future round, it would be especially helpful to understand what the PDP WG viewed as the source of the problems or issues with the CPE process, including relevant examples, and what the PDP WG is recommending to address them.

Affirmation 34.1 further affirms the Implementation Guideline H from the 2007 policy, where it cites "(ii) a formal objection process is initiated. Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate

the claim." ICANN org did not have such "Staff Evaluators" to "devise criteria and procedures to investigate the claim" during the 2012 round. If the PDP WG is not recommending something new, it may wish to change this Affirmation to Affirmation with modification to clarify.

Recommendation 34.2:
Recommendation 34.2 states that "The Community Priority Evaluation (CPE) process must be efficient, transparent and predictable." As it relates to ICANN's General Comment 7, it is still unclear against what standard efficiency, transparency, and predictability could be measured to ensure that this would be implementable. As previously stated in ICANN org's feedback to the Initial Report, it would be helpful if the PDP WG could provide more detailed guidance on the specific areas of the CPE process that "must be efficient, transparent and predictable."

Implementation Guidance 34.4:
Implementation Guidance 34.4 states that "ICANN org should examine ways to make the CPE process more efficient in terms of costs and timing." It would be helpful if the PDP WG can share any suggestions for how the process could improve efficiencies to affect the timing portion of this guideline.

Please also refer to the ICANN Board comment on this topic.

35. Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets

Affirmation with Modification 35.1:
The PDP WG provides a modification of Implementation Guideline F from the 2007 AGB on string contention resolution. In Point 3 of the modified text, the PDP WG states that "the ICANN Board may use expert panels to make Community Priority Evaluation (CPE) determinations." ICANN org notes that the ICANN Board does not make CPE determinations, and suggests the PDP WG review this third point for greater specificity.

Recommendation 35.2:
In regard to application changes that result from private auction resolutions, ICANN org suggests that the term "public comment" be avoided in Point 2. As a general comment, ICANN org suggests distinguishing these "operational" or "operations" comment periods from the more commonly understood Public Comment process employed regularly by ICANN org.

Recommendation 35.3:
ICANN org sees this Recommendation as reflecting the PDP WG's effort to incorporate prior ICANN Board input on private auctions. ICANN org notes that, while applicants' behavior in contention resolution may be a good metric to assess bona fide intent to operate, bona fide intent in itself does not appear

to be a contention resolution issue, but rather a broader issue for applicant evaluation.

In reviewing this Recommendation from an implementation view, ICANN identified the following areas where additional clarification would be helpful:

1. Should a review of the applicant's "bona fide" attestation occur for each application, or only those where a question or complaint is raised?
2. In regard to the clarifying questions that ICANN org and evaluators must have the opportunity to ask applicants:
   a. When in the process should such questions on bona fide intent be asked? Would they be asked during each evaluation performed in the Program?
   b. What criteria should be applied in evaluating applicant responses?
3. As this area is not already covered by an existing evaluation, would ICANN org need to develop criteria and potentially an evaluation panel for this review? Note that many of the factors cited in this Recommendation cannot be discovered until late in the overall process; accordingly, such a review would need to be positioned following contention resolution or afterward.
4. Are there penalties to be imposed on applicants that are found to violate their statement of bona fide intent? Note that some of the factors listed would only come into play after delegation of the TLD and therefore may not be actionable within a particular round of applications.
   a. If an applicant is determined to have submitted an application without bona fide intent, does this preclude the applicant from proceeding with or submitting other applications?
   b. In such a case, how would the refund policy apply?
5. Is the attestation of bona fide intent the same for all applications? For example, can an applicant's statement of bona fide intent be updated? If so, would the change request process be used? Would the updated statement of bona fide intent need to be re-evaluated and open for public comment?

The PDP WG provided a potential list of factors that ICANN org could consider in determining whether an application was submitted with bona fide intention to operate a TLD. In Point 1, the PDP WG states:

> *If an applicant applies for [four] [five] or more strings that are within contention sets and participates in private auctions for more than fifty percent (50%) of those strings for which the losing bidder(s) receive the proceeds from the successful bidder, and the applicant loses each of the private auctions, this may be a factor considered by ICANN in*

determining lack of bona fide intention to operate the gTLD for each of those applications.

ICANN org would like the PDP WG to provide guidance, if possible, on how ICANN org could enforce this requirement considering the auctions are private. Also, if an applicant chooses to apply for more than one string, would the applicant need to commit to each application at the outset? This would imply that an applicant needs to be prepared to concurrently operate every string for which it applies.

Also, in regard to this factor, ICANN org notes that applicants are unaware of the strings that will go into contention until the application window is closed.

Further down the list, the PDP WG states that "If an applicant's string is not delegated into the root within two (2) years of the Effective Date of the Registry Agreement, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for that applicant."

ICANN org notes that the two-year delegation period set out as a potential test for bona fide applications does not align with the current one-year delegation period currently set out in the Base Registry Agreement. This creates an inconsistency with Affirmation 40.2, which supports maintaining the timeframes laid out in the Base RA. Clarification is needed on this point.

The PDP WG states further: "If an applicant is awarded a top-level domain and [sells or assigns] [attempts to sell] the TLD (separate and apart from a sale of all or substantially all of its non-TLD related assets) within (1) year, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for that applicant."

ICANN org notes that this Recommendation implies an added ground for termination of a Registry Agreement should it later be determined that an applicant's intent to operate a TLD was not "bona fide." Is this the PDP WG's intent? ICANN org also sees a significant effort in tracking information related to this factor, as there appear to be no proposed limitations on which applications should be tracked. Experience in the 2012 round showed that some applicants may incorporate as shell companies for each TLD application and ownership of a company could change, without a change to the ultimate operator. Is this conduct that the PDP WG was looking to include in later bona-fide assessments? What guidance does the PDP WG have for ICANN org as to whether or how it can objectively differentiate between different types of corporate transfers?

Later sale or assignment may not be an effective means to determine bona fide intention of the TLD operator. External factors such as changing market conditions may drive such changes, no matter the original intent of the operator. ICANN org asks the PDP WG to consider if intent can be determined effectively according to this Recommendation, as well as how it could be tracked to the ultimate beneficiary of a successful application and/or affiliated entities.

Overall, ICANN org suggests that the PDP WG review this and related Recommendations and Implementation Guidance, and work to identify objective measures to evaluate an applicant's intent as it relates to operating a TLD. ICANN org notes that many of the factors for assessing bona fide intent proposed in this section would require subjective assessments of applicant intent, and assessments based on the proposed criteria might not account for the full range of bona fide intents applicants may have.

Along with the potential for subjective decisions, ICANN org may also be subject to use of accountability mechanisms for ICANN's alleged failures to act against purported "non-bona fide" applicants.

Recommendation 35.4:
ICANN org is concerned that a bidding process that is premised on submission of bids before contention is known is inherently incompatible with a bidding process that allows for future ability to change bids after the identity of the applicants. Having these two types of bidding together within the proposed "last resort" auction process could create opportunities for gaming. For example, if an applicant knows they have a TLD that they (Company A) really want to operate, they cooperate with another entity (Company B) to each apply for it. Then, if a third applicant enters the process, they could form a joint venture with Company B to rebid based on their read of the applicants.

This is one potential scenario that may allow planning for the ability to secure a new bid amount after the contention set members are known. ICANN org requests that the PDP WG consider this and other scenarios that may allow for specific gaming or advantage in this dual-track auction process as proposed.

ICANN org suggests the PDP WG consider consultation with auction experts to review the viability of the proposed mechanism.

Recommendation 35.5:
The PDP WG provides a list of Contention Resolution Transparency Requirements to which applicants resolving string contention must adhere. In Point 1 of those requirements, the PDP WG states, "In the case of a private auction or an ICANN Auction of Last Resort, all parties in interest to any agreements relating to participation of the applicant in the private auction or ICANN Auction of Last Resort must be disclosed to ICANN within 72 hours of resolution and ICANN must, in turn, publish the same within 72 hours of receipt."

Further down the list of Contention Resolution Transparency Requirements, the PDP WG recommends a list be disclosed "of the real party or parties in interest in each applicant or application, including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant."

ICANN org asks for clarification on this point. Would it apply to successful and unsuccessful applicants? This level of disclosure seems incompatible with the 15% threshold set out in the point directly below, which states: "List the names and contact information of any party holding 15% or more direct or indirect ownership of each applicant or application, whether voting or nonvoting, including the specific amount of the interest or percentage held."

Regarding the Recommendation to "list the names and contact information of all officers, directors, and other controlling interests in the applicant and/or the application," ICANN org notes that data privacy laws in many jurisdictions would impact the extent to which ICANN org could implement this Recommendation.

In the section on "Other Forms of Private Resolution," the PDP WG recommends: "Where contention sets are privately resolved through a mechanism other than a private auction, the following must be disclosed: the fact that the contention set (or part of a contention set), has been resolved privately (and the names of the parties involved)." Does the PDP WG envision that "parties" or the applicants would provide this disclosure? ICANN org has concerns that this requirement could create incentives to structure private resolutions in a manner to avoid the publication of information regarding the ultimate beneficiary of a successful application. ICANN org also requests the PDP WG consider how this requirement could interact with the application change rules for resolution through the creation of joint ventures. Much of this information could be available through that process, as well as in the public portions of the application.

In the section "Protections for Disclosing Applicants," the PDP WG states that "the information obtained from the contention resolution process may not be used by ICANN for any purpose other than as necessary to evaluate the application, evaluate the New gTLD Program, or to otherwise comply with applicable law." ICANN org sees a potential inconsistency here. This section states that this information cannot be used for any other purposes, but also implies that the information may potentially be used for evaluation of future applications, as well as of the applicant in future rounds of the Program (Recommendation 35.4). ICANN org would like to seek clarity on whether the PDP WG's intention is for the collected information to be used to evaluate the bona fide intention to operate the specific application under evaluation. ICANN org requests that the PDP WG reevaluate how necessary or useful this information would be in terms of evaluating an application. Are there any relevant criteria ICANN org should be taking into consideration?

Finally, ICANN org would like to request the PDP WG's consideration of the following general questions and concerns:

Does the PDP WG have any recommendations or guidance regarding the distribution of auction proceeds as collected by ICANN through the auctions of last resort? The CCWG-AP report is intended only for proceeds from the 2012 round. Does the PDP WG support the application of that process to future rounds?

Overall, ICANN org is concerned that the Recommendations contained in topic 35 would put ICANN in a position to create rules to facilitate private auctions. ICANN org would like to have a clearer definition of what the PDP WG sees as a "private auction." How would one compare a private "negotiation" to an auction? Furthermore, would the requirements recommended herein apply to all participants, not just the winners? ICANN org would also like to emphasize that these recommendations would raise significant challenges in terms of monitoring and enforcing resolutions occurring outside of ICANN processes.

Please also refer to the ICANN Board comment on this topic.

36. Base Registry Agreement

Recommendation 36.3:
ICANN org is concerned that allowing individual registries to specially negotiate their own Registry Agreements might create disparities and prevent a level playing field. Would all other registries be able to ask for the same custom terms? What special provisions are needed, and could they possibly be addressed in the base agreement?

It would be beneficial to require a clear rationale accompanying any exemption request; however, it should be understood that even if ICANN org adopted an efficient process for exemption requests, it may take more than rationale with a submission to determine whether modifications are in the public interest.

It would be useful to understand what the PDP WG refers to when commenting that the exemption process must be "clearer" and whether it implies that the process must also be "more" structured and efficient. The Recommendation, as it stands, does not seem to clarify in what ways the current process is unclear, unstructured, or inefficient. Additionally, the wording of the Recommendation implies that a new process would somehow equate to accommodating the changing marketplace, although it is unclear why the current process may not. It will be important to understand the specific ways in which the PDP WG believes the process should improve.

It would be helpful if the PDP WG could provide clarity on the specific provisions envisioned and the rough number of certain provisions that could be negotiated. Is the intention that these are the same as the 2012 New gTLD Program?

In assessing the implementation feasibility of Recommendation 36.3, ICANN org notes its concern about initiating negotiations with hundreds to thousands of applicants, and the impact this would have on application processing times, particularly if there are more provisions to negotiate than before. Furthermore,

there could be potential downstream resource impacts to ICANN org maintaining, managing, and enforcing any such modified provisions.

Recommendation 36.4:
ICANN org could have the right to terminate an agreement if a court of competent jurisdiction has found that the registry operator has committed fraudulent or deceptive practices. However, ICANN org should not arbitrate whether or not a registry operator has engaged in such activities. ICANN org does not have authority under its Bylaws and/or expertise in identifying fraudulent or deceptive practices which are not defined and may be outside the scope of ICANN's remit.

An additional concern is that this Recommendation, if adopted, would not apply to the 1,200+ Registry Agreements executed prior to the next round, creating operational complexity and unpredictable enforcement for end users. Why should only new gTLDs be subject to this new termination provision and not existing TLDs? If this requirement were to apply universally, the existing registry operators subject to these agreements would have to agree to an amendment. This is also addressed in the General Comments Section 6.

Recommendation 36.4:
Additionally with respect to Recommendation 36.4, ICANN org seeks clarity from the PDP WG to better understand that if such a provision were to be included in the Registry Agreement, was it the PDP WG's intention that this may lead to the termination of the Registry Agreement?

If this is the desired outcome, the PDP WG may wish to clarify this point with standard criteria for implementation rather than leaving this open for implementation or for Registry Agreement negotiations.

Overview:
From an operational and practical standpoint, ICANN org agrees with the PDP WG's proposal that a "single base Registry Agreement is consistent with principles of predictability, fairness, simplicity, consistency and efficiency."

In the deliberations sections, the PDP WG writes:

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

While ICANN can work to improve processes, the PDP WG does not make clear which types of exemptions should or could be permitted beyond those that are currently available. ICANN is limited by the legal interpretation of the contract and can not negotiate various sections with hundreds/thousands of individual registries. Furthermore, it is subjective to say that "ICANN should make a balanced determination about whether proposed modifications are in the public interest" and this could lead to various interpretations and/or legal disputes.

37. Registrar Non-Discrimination

New Issues:
ICANN org does not recommend including a registrar application in the New gTLD application. The ICANN registrar application is open on a rolling basis. Any entity can apply for registrar accreditation at any time. Thus, if anyone is interested in using its in-house registrar, it can submit a separate registrar application before, during or after it submits its new gTLD application. As the process, evaluation criteria, and qualifications for ICANN-accredited registrars are different from those for a gTLD Operator, mixing/combining these two processes may impose unnecessary complexities during implementation.

38. Registrar Support for New gTLDs

No org feedback at this time.

39. Registry System Testing

Recommendation 39.1:
The PDP WG may wish to consider including "and its supporting/subcontracted Registry Service Providers (RSPs)." That is to say, the registry system tests should demonstrate the technical capabilities of the registry operator or its supporting RSP, as required.

Recommendation 39.4:
The PDP WG may wish to consider providing additional guidance, such as metrics, so ICANN org can maintain RST efficiency according to the PDP WG's guidelines.

Implementation Guidance 39.5:
Implementation Guidance 39.5 recommends removal of "tables that are pre-vetted by the community" from testing. ICANN org understands community-vetted tables as reference Label Generation Rules (LGR) and not IDN tables approved for a specific registry and/or published in the IANA IDN Practices Repository.

The reference LGRs are developed in consultation with the community, reviewed for security and stability concerns, and will be regularly updated and maintained with ongoing feedback from the community and updates to the Unicode standard. Some IDN tables approved earlier and/or published in the IANA IDN Practices Repository may have security and stability issues and therefore may not qualify as "pre-vetted" due to these considerations. If the PDP WG agrees, it could clarify by rephrasing "tables that are pre-vetted by the community" to "reference LGRs."

General Comments:
ICANN org appreciates the PDP WG's aim to increase efficiency in the overall RST portion of the application process. It may also be helpful for the PDP WG to take into account that certain redundancies in testing are intentional, and serve to support overall security and stability. The PDP WG's recommendations for improving RST efficiency rely heavily on the successful implementation of the RSP pre-evaluation program, therefore ensuring effectiveness of that program is critical.

40. TLD Rollout

No org feedback at this time.

41. Contractual Compliance

Recommendation 41.2:
ICANN org notes that ICANN's Contractual Compliance department currently publishes information depicting the number of cases that are closed due to action taken by the registry operator, or due to a finding that the registry operator was never out of compliance. However, it is understood that greater detail into context of the compliance cases is sought. It would be helpful if the PDP WG provides specific examples of the type of data they would like to see published, or examples of what would be considered sufficient context for complaints processed.

Contractual Compliance receives and addresses a wide variety of complaints. Without more specific guidance from the PDP WG (for example, reviewing a recent report and indicating with some specificity the additional information recommended to be published), implementation may not satisfy the objectives of this Recommendation.

In Recommendation 41.2, the PDP WG states "More information must be published on the context of the compliance action and whether it was closed due to action taken by the registry operator, or whether it was closed due to a finding that the registry operator was never out of compliance." ICANN org seeks clarity on why the PDP WG believes this information is relevant only to the next round of new gTLDs.

Please also refer to the ICANN Board comment on this topic.

Annex: Comments on Predictability Framework Annex E

ICANN org suggests that as the SPIRT processes are developed, their overall impact to operational timelines will be given primary consideration, as issues that impact operations cause delay and increased cost and do not achieve the desired effect of increased predictability.

ICANN org recommends that the nature and scope of the SPIRT's remit should be clearly documented and agreed to by all participants in the New gTLD Program at the outset, including definition and acknowledgement of ICANN org's responsibilities to run the New gTLD Program as derived from the policy recommendations.

ICANN org understands that the SPIRT is intended to be a body to provide guidance in the operation of ongoing rounds in relation to GNSO policy processes. It may be helpful for the PDP WG to consider defining the scope and applicability, and potential closure point, of the SPIRT's role. For example, would SPIRT recommendations be expected to apply to applications that have resulted in execution of a Registry Agreement and delegation of a gTLD? For issues that occur after contracting relating to, for example,, Continuing Operations Instrument (COI), Trademark Clearinghouse (TMCH), or other activities that are part of the New gTLD Program, is the SPIRT expected to continue to make recommendations on mechanisms to address issues that arise? ICANN org assumes that the scope of the Predictability Framework exists for the duration of a particular application round and applies to active applications within said round; however, this also underscores the need for specification of round closure conditions as the org noted in its feedback to Recommendation 3.1.

ICANN org notes that the process/mechanism guidance from the SPIRT may result in changes or solutions that impact the Program and as a result may require updates to the gTLD Registry Agreements. It should be noted that the Registry Agreement contains its own change procedures and, as we understand the recommendations, the SPIRT does not have the remit to change these. It may be helpful for the Predictability Framework to state how this would be handled. Such a process should take into consideration what happens if an issue affects Registry Agreements that have already been signed. If the Predictability Framework is defined as bound to pre-contracting processing only, this would not impact the provisions of the Registry Agreement.

a. Operational Considerations

If not carefully considered and correctly implemented, the framework might significantly constrain ICANN org's ability to execute certain aspects of the Program. The potential changes in the global DNS environment, ICANN's mission of security and stability, and ICANN org's responsibility to apply policies fairly, transparently, and without singling out any particular party for discriminatory treatment mean that ICANN org needs the flexibility to respond appropriately to program management issues. For example, during the Prioritization Draw, applicants were required under California law to be

physically present in order to participate. Recognizing that this requirement condition would have limited several applicants from participating in the draw, in order to ensure the opportunity to participate, ICANN arranged for a number of lawyers to act as proxies for those that could not physically attend. Creating the proxy network required ICANN to have the ability to decide and act quickly to avoid potentially delaying the Prioritization Draw. The inclusion of the Predictability Framework in this process would have added additional time and caused the delay of the draw.

b. Accountability Considerations

The SPIRT is proposed to be an open group, for which anyone can volunteer. There is neither a cap on membership numbers nor an appointing mechanism that could ensure that members have a relevant skill set. Though the SPIRT's output is process recommendations, these decisions may have a direct impact on applications in process, including possible delays. The draft Final Report stipulates, "When appropriate, the Member of the SPIRT may recuse himself/herself, but required disclosure of a direct involvement in an application with an issue before the SPIRT does not, in and of itself require recusal." However, no objective criteria is provided as to when recusal would be required. ICANN org encourages the PDP WG to provide additional guidance on this.

Process:
Based on the process detailed on page 223 of the draft Final Report, ICANN org understands that it determines if an issue falls into the 'Operational - Minor' category and, if so determined, notes the change in the log, and implements the change without a need for additional steps.

General Comments
The term "material impact" is used in several places of Annex E in the context of assessing the category of change. However, no specific criteria is given to judge the materiality of a change. ICANN org suggests that objective criteria be defined to avoid contention regarding the categorization of a particular change. For example, organizations often use established criteria to measure the severity of an issue, such as number of users impacted, inability to perform certain functions, or impact on current performance/efficiency.

ICANN org notes that resolution of several issues that occurred in the 2012 round included ICANN Board outreach to the GNSO and other parts of the community. In order to better understand how the SPIRT is intended to operate, ICANN org requests that the PDP WG provide examples of how issues from the 2012 round would be addressed by the SPIRT. We suggest the development and introduction of the Name Collision Management Framework as well as the decision to use a raffle/lottery system in place of 'Digital Archery' as possible case studies.

1. Operational
    a. Operational - Minor

ICANN org notes that there may be a level of internal changes that may be classified as day-to-day operational changes and do not rise to the level of even a minor change. An example might be reshuffling of staff for the New gTLD Program, software upgrades by the vendor, addition of server capacity, updates to the New gTLD Program website, announcements of new vendor contracts, changes to ICANN's data retention policy, etc. Breaking these types of changes out from the change log may minimize the number of transactions that the SPIRT will need to review.

Bullet number 3 in the list of Minor change examples mentions changing of sub-contractors. This is likely not a good example as this is not an accurate description of how ICANN org operates with vendors. As ICANN org does not select subcontractors, did the PDP WG intend to reference vendors/contractors? We would also note that examples are not the most effective way to provide guidance to ICANN org as any one of a number of factors could be seen as decisive criteria. ICANN org asks the PDP WG to consider including specific criteria for each type change to improve the accuracy of categorizing changes and thereby improve predictability to applicants, the community, and ICANN org.

b. <u>Operational - Non-minor</u>

Bullet number 1 in the list of Non-minor change examples mentions changes that impact the timeline. Is there a threshold at which the impact to timeline makes the change Non-minor or Significant?

Please also note that the application change request process referenced in this example is separate from the Predictability Framework. We understand that SPIRT would not have remit on approving or denying individual change requests.

Process:
ICANN org understands that, on changes falling into categories B (Operational - Non-Minor) and C (Operational - New Process or Significant Change to Internal Process), ICANN org submits its Framework analysis and proposed process to develop a solution to SPIRT. ICANN org would then take into consideration any guidance received from SPIRT (as approved by the GNSO Council) when implementing a change.

c. <u>Operational - New Process or Significant Change to Internal Process</u>

ICANN org would like to understand what is meant by "Internal Process" in this section. For example, does the PDP WG envision the inclusion of vendor processes performed in support of the Program?

Process:
The process description notes that the GNSO or ICANN Board may initiate action in categories C, D, and E. The GNSO and ICANN Board are not

mentioned in categories A and B. Are these two entities restricted from initiating action in those categories?

2. Possible Policy Level - Changes that May Have a Policy Implications

    Process:
    The process description states "All recommendations are subject to the review and oversight of the GNSO Council, who maintains the discretion on whether or not to adopt the recommendations." Has the PDP WG considered how the org should respond if the GNSO disagreed with a SPIRT Recommendation upon review? Further, how is the outcome of the GNSO Council consideration of the SPIRT recommendations to be considered in light of the GNSO Guidance Process already in place?

    2. Composition of the SPIRT
        ICANN org notes several aspects about the composition of SPIRT that may be of concern.
        ● The membership of SPIRT is proposed as open to all and not limited in number. First, the intention not to limit the number of members may complicate the prior section statement that "composition of the IRT should be balanced among stakeholder groups." Additionally, we note that should the number of members be very high, this raises significant concerns as to the ability of the SPIRT to efficiently operate, given the consensus-based decision process. The org is concerned that delays within operation of the SPIRT will also lead to delays in the Program.
        ● The membership that is currently proposed could lead to capture and/or gaming by certain interest groups because there are currently no limits to membership. A particularly large representation of one particular group or organization could unduly influence the decision of the SPIRT.
        ● The PDP WG may want to consider building on the proposed improvements regarding PDP WG dynamics detailed in GNSO Policy Development Process 3.0.

3. SPIRT Role
        Who can raise an issue to the SPIRT?
        The Predictability Framework states that all SPIRT guidance is delivered to the entity that submitted the issue. However, it also says all recommendations are subject to the review and oversight of the GNSO Council which maintains the discretion on whether or not to adopt the recommendations. We suggest additional clarification on the roles and responsibilities within the Predictability Framework of the SPIRT, ICANN org, applicants, the Board, the GNSO Council, objectors, and the wider community, e.g., as providers of Advisory Committee advice. Such roles and responsibilities should be clearly referenced, documented, and agreed to by participants in the New gTLD Program. We suggest that use cases be included in the Final

Report, including the example of GAC Advice that, if adopted, would require changes to the Program.

Further explanation of the scope and responsibilities of all organizations in the Predictability Framework (ICANN Board, GNSO, SPIRT, ICANN org) is needed in order to evaluate the impact on the responsibilities and obligations of the ICANN Board and org.

The second bullet point under the Role of the GNSO Council where it was the party raising the issue notes that the GNSO could take up to two GNSO Council meetings to act. From an operational view, a set number of calendar days would be more predictable for the applicants as the timing between GNSO Council meetings may vary.

Bullet three references 60 days plus a possible 30-day extension for the GNSO to take action. Given the additional time required for the referring body to initiate the request and the SPIRT to process and forward to the GNSO, it could be well over 90 days before ICANN org could even begin to implement the requested change. This could lead to lengthy delays in processing applications and lead to increased costs.

4. ICANN Staff Interaction with the SPIRT
ICANN org notes that department names and responsibilities may change over time. The org recommends that ICANN org should be identified within the Annex as responsible for assigning appropriate liaisons to work with the SPIRT. ICANN org also notes that the SPIRT Operating Principles and Decision-Making procedure should explicitly clarify that ICANN org personnel report to the President and CEO and therefore cannot act in any way that conflicts with Board direction to the President and CEO.

5. Operating Principles
As ICANN org is one of the entities eligible to submit issues to the SPIRT for consideration, one approach to help generate timely resolution and informed deliberation would be for ICANN org to develop and provide an impact analysis and proposed solution for any issue that it raises.

We would also flag to the PDP WG that it would need to be determined what happens to applications in process for the duration of the time it takes the SPIRT (and, subject to the SPIRT decision, possibly the GNSO Council) to consider the issue. Will processing of some or all applications be suspended until the SPIRT and/or the GNSO Council issue instructions or even until a new policy is developed, if that is the agreed upon remedy? If so, this could decrease predictability. It should be noted that many issues are interrelated and thus, other parts of the process may also be stalled until an outcome on any given issue is provided by the SPIRT/GNSO.

Similar considerations arise in the case where the SPIRT is not able to reach agreement within itself, or when the GNSO disagrees with the SPIRT Recommendations. It is unclear what is intended to happen to applications if

an issue remains unresolved within the Predictability Framework. We note that, absent clarity on a means to reach resolution in this instance, the SPIRT could be a mechanism for manipulating the process by, for example, holding up one or more applications by stalling an agreement.

The process should include expected timeframes for SPIRT deliberations, including a time frame by which SPIRT is expected to provide a response to an issue submitted to it. The rationale for this is to avoid delays due to lengthy deliberations; established and agreed timeframes will help mitigate this risk.

The draft Final Report stipulated, "SPIRT deliberations should not be used as a tool to reopen a previously explored policy [...] unless the circumstances have changed and/or new information is available." It is unclear what would constitute such a circumstance or new information, and we encourage the PDP WG to provide more objective criteria.