Business Constituency Response to:

New gTLD Subsequent Procedures Draft Final Report - Public Comment Input Form

This Public Comment forum seeks community feedback on the draft Final Report published by the New gTLD Subsequent Procedures Policy Development Process (PDP) Working Group.

The final date of the Public Comment forum is 30 September 2020

This form will be closed by 30 September 2020. Any comments received after that date/time will not be reviewed/discussed by the Working Group.

Section 2: Consent & Authorization

By submitting my personal data, I agree that my personal data will be processed in accordance with the ICANN Privacy Policy (https://www.icann.org/privacy/policy), and agree to abide by the website Terms of Service (https://www.icann.org/privacy/tos).

Submitted by Steven DelBianco, vice chair for policy coordination
The ICANN Business Constituency (BC)

These comments were drafted by Mason Cole, Tim Smith, and Statton Hammock, with edits by Chris Wilson, Steve, Andy Abrams, and Alex Deacon.

These comments were approved in accord with the BC Charter.

Topic 1: Continuing Subsequent Procedures

The below description of difference is intended to serve as a resource for readers to better understand which report topics have evolved significantly from the Initial Report to the draft Final Report. The differences are listed in a descriptive fashion and readers should review the full set of Outputs for the relevant topic as a package, to better understand the full context of the Outputs and changes made.

See page 14 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: No substantive differences, but minor differences include the following:

- Affirmed purposes for introducing gTLDs.

If you choose one of the following responses there is no need to submit comments:

Mark only one oval.

- ◯ Support Output(s) as written SUPPORT
- ◯ Not ideal, but willing to accept Outputs as written
- ◯ Opinion

Topic 2: Predictability

The below description of difference is intended to serve as a resource for readers to better understand which report topics have evolved significantly from the Initial Report to the draft Final Report. The differences are listed in a descriptive fashion and readers should review the full set of Outputs for the relevant topic as a package, to better understand the full context of the Outputs and changes made.

See page 15 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gt ld-subsequent-20aug2 0-en.pdf

Description of Difference: Substantive differences include the following:

- Added details to the Initial Report's conceptual Predictability Framework, including defining different "buckets" of changes, clarifying which parties can raise issues, and explaining in more detail the jurisdiction of the Framework/SPIRT.
- Added specific details to the structure of the SPIRT, governance model and operating procedures.

If you choose the following response, please indicate in the text box below what should change and why:

Do not support certain aspects or all of the Output(s)

Enter your response here:

The BC appreciates the thorough analysis that has been given to creation of the SPIRT as a mechanism to deal with the Predictability Framework. In Annex E we note that the SPIRT does not require broad representation across the ICANN community when it states "The SPIRT should be open to all interested parties, but may not necessarily be representative of the ICANN community, as actual participation may depend on interest and relevance of the new gTLD Process. Membership criteria should identify knowledge, experience, responsibilities to their respective organization, rules of engagement, a Statement of Participation, etc." While we agree with these basic qualifications, we believe that the SPIRT should be representative of the ICANN community and that specific qualifications should be determined before adopting the process.

Topic 3: Applications Assessed in Rounds (Application Submission Periods)

The below description of difference is intended to serve as a resource for readers to better understand which report topics have evolved significantly from the Initial Report to the draft Final Report. The differences are listed in a descriptive fashion and readers should review the full set of Outputs for the relevant topic as a package, to better understand the full context of the Outputs and changes made.

See page 19 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- Simplified recommendation to make it clear that the New gTLD Program would be conducted in rounds.
- Added recommendations on when future rounds can be initiated (even if applications may still be pending from the previous round).
- Added clarity on the circumstances when a new application may be submitted for a string that was not delegated in the previous round.
- Added recommendations on the need for a predictable cadence of future rounds and that future reviews of the program should be conducted concurrently with the program.
- Added recommendation that material changes from reviews/policy development should apply only to the next subsequent round.

If you choose one of the following responses there is no need to submit comments:

- [ ] Support Output(s) as written
- [ ] Not ideal, but willing to accept Outputs as written No
- [ ] Opinion

Topic 4: Different TLD Types

The below description of difference is intended to serve as a resource for readers to better understand which report topics have evolved significantly from the Initial Report to the draft Final Report. The differences are listed in a descriptive fashion and readers should review the full set of Outputs for the relevant topic as a package, to better understand the full context of the Outputs and changes made.

See page 23 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gt ld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- More detail provided on different categories of TLD applications and how those are treated (e.g., how the type of application, string, or applicant will result in differential treatment during the application evaluation process).
- Added Category 1 - GAC Safeguards, IGO and governments, and Applicant Support as different TLD Types.
- Added recommendation that creating types should be exceptional and need-based, but that there should be a predictable process to have potential changes considered by the community.

If you choose one of the following responses there is no need to submit comments:

- ( ) Support Output(s) as written
- ( ) Not ideal, but willing to accept Outputs as written No
- ( ) Opinion

Topic 5: Application Submission Limits

The below description of difference is intended to serve as a resource for readers to better understand which report topics have evolved significantly from the Initial Report to the draft Final Report. The differences are listed in a descriptive fashion and readers should review the full set of Outputs for the relevant topic as a package, to better understand the full context of the Outputs and changes made.

See page 27 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

If you choose one of the following responses there is no need to submit comments:

- ( ) Support Output(s) as written
- ( ) Not ideal, but willing to accept Outputs as written No
- ( ) Opinion

Topic 6: Registry Service Provider Pre-Evaluation

The below description of difference is intended to serve as a resource for readers to better understand which report topics have evolved significantly from the Initial Report to the draft Final Report. The differences are listed in a descriptive fashion and readers should review the full set of Outputs for the relevant topic as a package, to better understand the full context of the Outputs and changes made.

See page 28 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- Renamed the service to better align with its function (RSP Pre-Evaluation). Clarified that substantively, the program is more about timing of the review rather than introducing new evaluation requirements.
- Confirmed that new and existing RSPs are eligible for pre-evaluation (no automatic approval for existing RSPs).
- Provided guidance on timing and applicability of pre-evaluation (only applies to the specific round and that in the future, streamlining the process may be appropriate).
- Confirmed that pre-evaluated RSPs are not "contracted parties" for purposes of the GNSO Structure.
- Recommended that for usability, a list of pre-evaluated RSPs must be made available well enough in advance of the application submission window, so as to be useful for prospective applicants.

If you choose one of the following responses there is no need to submit comments:

- ( ) Support Output(s) as written
- ( ) Not ideal, but willing to accept Outputs as written No
- ( ) Opinion

Topic 7: Metrics and Monitoring

The below description of difference is intended to serve as a resource for readers to better understand which report topics have evolved significantly from the Initial Report to the draft Final Report. The differences are listed in a descriptive fashion and readers should review the full set of Outputs for the relevant topic as a package, to better understand the full context of the Outputs and changes made.

See page 33 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: No substantive differences, but minor differences include the following:

- The section itself is new, but the content is not. This new section simply aggregates the metrics and monitoring recommendations from various sections.

If you choose one of the following responses there is no need to submit comments:

- ( ) Support Output(s) as written
- ( ) Not ideal, but willing to accept Outputs as written No
- ( ) Opinion

Topic 8: Conflicts of Interest

The below description of difference is intended to serve as a resource for readers to better understand which report topics have evolved significantly from the Initial Report to the draft Final Report. The differences are listed in a descriptive fashion and readers should review the full set of Outputs for the relevant topic as a package, to better understand the full context of the Outputs and changes made.

See page 35 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gt ld-subsequent-20aug20-en.pdf

Description of Difference: No substantive differences, but minor differences include the following:

- The section itself is new, but the content is not. This concept was originally captured in Objections, but the WG deemed it to be broadly applicable to all vendors that support the program (e.g., evaluators, objections providers).

If you choose one of the following responses there is no need to submit comments:

- ( ) Support Output(s) as written
- ( ) Not ideal, but willing to accept Outputs as written No
- ( ) Opinion

Topic 9: Registry Voluntary Commitments / Public Interest Commitments

The below description of difference is intended to serve as a resource for readers to better understand which report topics have evolved significantly from the Initial Report to the draft Final Report. The differences are listed in a descriptive fashion and readers should review the full set of Outputs for the relevant topic as a package, to better understand the full context of the Outputs and changes made.

See page 36 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gt ld-subsequent-20aug2 0-en.pdf

Description of Difference: Substantive differences include the following:

- Added specificity to mandatory PICs (i.e., reference to specification 11 3(a)-(d)).
- Added a recommendation to allow for single-registrant TLDs to obtain waivers for 11 3(a) and 3(b)
- Added specificity to voluntary PICs (which were renamed Registry Voluntary Commitments, or RVCs), including when and for what reasons they may be added and that they be treated as application change requests (to allow for public consideration).
- Recommended that the PICDRP be updated to account for name change.
- Added a recommendation to improve access for being able to review RVCs, in line with CCT-RT recommendation 25.
- Added a set of recommendations for Category 1 Safeguards, which affirms the NGPC framework and suggests that strings be evaluated as an evaluation element, to determine if they fall into any of the NGPC framework groupings.
- Added a recommendation that DNS Abuse should be addressed holistically, instead of just in the context of future new gTLDs.

If you choose the following response, please indicate in the text box below what should change and why:

Do not support certain aspects or all of the Output(s)

Enter your response here:

The BC believes that all the same obligations should apply for all applicants with regard to Mandatory Public Interest Commitments (PICs) currently captured in Specification 11 3(a)-(d) of the Registry Agreement without exception.

The BC further believes that steps -- even incremental steps -- to combat domain name system abuse are warranted. Accordingly, the BC diverges with the working group here and advocates for the inclusion of enforceable DNS abuse mitigation measures in contracts governing new gTLDs.

Topic 10: Applicant Freedom of Expression

The below description of difference is intended to serve as a resource for readers to better understand which report topics have evolved significantly from the Initial Report to the draft Final Report. The differences are listed in a descriptive fashion and readers should review the full set of Outputs for the relevant topic as a package, to better understand the full context of the Outputs and changes made.

See page 48 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

If you choose one of the following responses there is no need to submit comments:

- ◯ Support Output(s) as written
- ◯ Not ideal, but willing to accept Outputs as written No
- ◯ Opinion

Topic 11: Universal Acceptance

The below description of difference is intended to serve as a resource for readers to better understand which report topics have evolved significantly from the Initial Report to the draft Final Report. The differences are listed in a descriptive fashion and readers should review the full set of Outputs for the relevant topic as a package, to better understand the full context of the Outputs and changes made.

See page 50 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

If you choose the following response, please indicate in the text box below the new information or interests that the Working Group has not considered:

- ◯ New information or interests that the Working Group has not considered

Enter your response here:

The BC supports The Working Group's recommendation that ICANN should clearly and thoroughly illustrate the possible problems that IDN registrants may face with user and platform acceptance, as well as the work previously initiated to address this challenge. We believe strongly that ICANN must commit resources to address universal acceptance and note that the Final Report includes a recommendation to resource future work to address various technical issues.

Topic 12: Applicant Guidebook

See page 52 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: No substantive differences, but minor differences include the following:

- Emphasis was placed on the need for enhancing language support in the 6 UN languages

If you choose the following response, please indicate in the text box below what should change and why:

- ( ) Do not support certain aspects or all of the Output(s)

Enter your response here:

The BC believes that businesses in all regions of the world should have equal access and opportunity to apply for TLDs in the next round. Accordingly we believe that the AGB should be published simultaneously in English and the 6 UN languages, both 4 months prior to the commencement of the application submission period.

Topic 13: Communications

The below description of difference is intended to serve as a resource for readers to better understand which report topics have evolved significantly from the Initial Report to the draft Final Report. The differences are listed in a descriptive fashion and readers should review the full set of Outputs for the relevant topic as a package, to better understand the full context of the Outputs and changes made.

See page 55 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

If you choose one of the following responses there is no need to submit comments:

- ( ) Support Output(s) as written
- ( ) Not ideal, but willing to accept Outputs as written No
- ( ) Opinion

See page 57 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report- new-gtld-subsequent-20aug20-en.pdf

Topic 14: Systems

If you choose one of the following responses there is no need to submit comments:

- ( ) Support Output(s) as written
- ( ) Not ideal, but willing to accept Outputs as written No
- ( ) Opinion

See page 62 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Topic 15: Application Fees

Description of Difference: Substantive differences include the following:

- Combined the Application Fees and Variable Fees section.
- Clarified that applicants utilizing a pre-evaluated RSP would not incur costs for the technical/operational evaluation element and that applicants qualifying for Applicant Support would necessarily be subject to a different fee structure.

If you choose one of the following responses there is no need to submit comments:

- (●) Support Output(s) as written
- ( ) Not ideal, but willing to accept Outputs as written No
- ( ) Opinion

Topic 16: Applications Submission Period

See page 66 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: No substantive differences.

If you choose one of the following responses there is no need to submit comments:

- (●) Support Output(s) as written
- ( ) Not ideal, but willing to accept Outputs as written No
- ( ) Opinion

Topic 17: Applicant Support

PLEASE NOTE: There is an additional question below for Community Input.

See page 67 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report- new-gtld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- For the recommendation related to support beyond the application fee, financial support for ongoing registry fees were removed.
- Suggested that a dedicated Implementation Review Team (IRT) (ASP) may be warranted for this topic alone and be constituted of experts in this area.
- Added greater detail on outreach and collaboration with local partners to achieve outreach plan.
- Added recommendation that the dedicated IRT establish metrics for success (with a non-exhaustive list of potential metrics included).
- Added Implementation Guidance that the dedicated IRT consider how to allocate support if the number of qualified applicants exceeds funds.
- Added recommendation that ICANN develop a plan for funding the ASP and potentially seek funding partners.

If you choose one of the following responses there is no need to submit comments:

- (●) Support Output(s) as written
- ( ) Not ideal, but willing to accept Outputs as written No
- ( ) Opinion

Question for Community Input

Recommendation 17.2 states: "The Working Group recommends expanding the scope of financial support provided to Applicant Support Program beneficiaries beyond the application fee to also cover costs such as application writing fees and attorney fees related to the application process."

Question: Should the Applicant Support Program also include the reduction or elimination for eligible candidates of ongoing registry fees specified in Article 6 of the Registry Agreement? If so, how should the financial impact to ICANN be accounted for?

If you have a response to the question please enter your response here:

No. Applicants must be financially capable of running a registry. Applicants may qualify for assistance in preparing their application but once they sign the registry agreement they should be financially sound and be able to meet the ongoing fee obligations in Article 6. The BC has expressed previously that it does not support subsidizing registry businesses although it does support the application support measures recommended by the Working Group. Please see https://www.bizconst.org/assets/docs/positions-statements/2017/2017_05May_22%20BC%20reply%20to%20questionnaire%20on%20new%20gTLD%20Subsequent%20Procedures.pdf at Page 3.

See page 79 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Topic 18: Terms and Conditions

Description of Difference: No substantive differences, but minor differences include the following:

- Added recommendation about treatment of confidential elements of applications.

If you choose one of the following responses there is no need to submit comments:

- [x] Support Output(s) as written
- [ ] Not ideal, but willing to accept Outputs as written No
- [ ] Opinion

Topic 19: Application Queuing

See page 81 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- Added recommendation to equitably prioritize IDN applications, including a detailed formula if relatively high volumes of IDN applications are received.

If you choose one of the following responses there is no need to submit comments:

- [ ] Support Output(s) as written
- [x] Not ideal, but willing to accept Outputs as written
- [ ] No Opinion

Topic 20: Application Change Requests

See page 86 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: No substantive differences, but minor differences include the following:

- Recommends allowance of resolving string contention 1) through business combinations and 2) through string change for .Brand TLDs in limited circumstances.

If you choose one of the following responses there is no need to submit comments:

- [x] Support Output(s) as written
- [ ] Not ideal, but willing to accept Outputs as written No
- [ ] Opinion

See page 89 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report- new-gtld-subsequent-20aug20-en.pdf

Topic 21: Reserved Names

Description of Difference: No substantive differences, but minor differences include the following:

- For consistency with other top-level Reserved Names, the WG altered the recommendation related to Public Technical Identifiers to only reserve the PTI acronym, not the full names.

If you choose one of the following responses there is no need to submit comments:

- [x] Support Output(s) as written
- [ ] Not ideal, but willing to accept Outputs as written No
- [ ] Opinion

Topic 21.1: Geographic Names at the Top-Level (Annex I)

Please see Annex I, which contains the Final Report of Work Track 5 on Geographic Names at the Top Level of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20- en.pdf

If you choose one of the following responses there is no need to submit comments:

- [x] Support Output(s) as written
- [ ] Not ideal, but willing to accept Outputs as written No
- [ ] Opinion

Topic 22: Registrant Protections

See page 93 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: No substantive differences, but minor differences include the following:

- The Initial Report provided options to consider as alternatives to the Continuing Operations Instrument. Although the WG did not agree on a specific alternative, the WG did add a recommendation that alternatives be explored during implementation.

If you choose one of the following responses there is no need to submit comments:

- [x] Support Output(s) as written
- [ ] Not ideal, but willing to accept Outputs as written No
- [ ] Opinion

Topic 23: Closed Generics (also known as Exclusive Generics)

PLEASE NOTE: There is an additional question below for Community Input.

See page 96 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report - new-gtld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- For the purposes of the draft Final Report, the WG designated the status as No Agreement and continued to make no recommendations with respect to either allowing or disallowing Closed Generics. However, with widely diverging viewpoints, the WG asked WG members to contribute proposals for consideration, to help identify circumstances when a closed generic may be permitted. These proposals were not thoroughly vetted by the WG and therefore none of the proposals at this point in time have any agreement within the WG to pursue. However, the WG is very interested in community feedback regarding the three proposals received, in regards to both the high level principles and the details (where provided). Thus, any feedback is appreciated.

If you choose the following response, please indicate in the text box below what should change and why:

( ) Do not support certain aspects or all of the Output(s)

79. Enter your response here:

The BC does not support a non-recommendation from the working group on the issue of closed generic TLDs. The working group should conduct a formal assessment of consensus, at least with respect to support for versus opposition against closed generic TLDs in general, as opposed to various restrictions and implementation proposals, which may warrant further consideration once this basic principle has been addressed.

The BC remains opposed to any blanket rule against closed generic TLDs, whereas legal and public policy issues can be addressed on a case-by-case basis. See https://www.bizconst.org/assets/docs/positions-statements/2017/2017_05May_22%20BC%20reply%20to%20questionnaire%20on%20new%20gTLD%20Subsequent%20Procedures.pdf

Question for Community Input:

Please review the following proposals:

A Proposal for Public Interest Closed Generic gTLDs (PICG TLDs), submitted by Alan Greenberg, Kathy Kleiman, George Sadowsky, Greg Shatan):
https://community.icann.org/display/NGSPP/Proposals+Included+in+Draft+Final+Report?preview=/144376220/144376262/ProposalforPICGnTLDs.pdf

The Case for Delegating Closed Generics, submitted by Kurt Pritz, Marc Trachtenberg, Mike Rodenbaugh:
https://community.icann.org/display/NGSPP/Proposals+Included+in+Draft+Final+Report?preview=/144376220/144376263/ClosedGenerics24July2020.pdf

Closed Generics Proposal, submitted by Jeff Neuman in his individual capacity:
https://community.icann.org/display/NGSPP/Proposals+Included+in+Draft+Final+Report?preview=/144376220/144376261/Neuman%20Closed%20Generics%20Proposal.pdf

Which, if any, do you believe warrant further consideration by the WG, and why? Are there elements or high-level principles in any of the proposals that you believe are critical to permitting closed generics even if you may disagree with some of the details? If so, please explain.

80. If you have a response to the questions please enter your response here:

We believe the views expressed in the proposal for public interest closed generics submitted by Greenberg, Kleiman, Shatan warrants further consideration. We believe that reasonable criteria for operating a closed generic in the “public-interest” can be developed and applied objectively, and that operating in the “public interest” could include both non-profit and commercial use cases. It is important for applicants who seek to apply for a closed generic in the second round understand the criteria and policies for this special class of TLDs. The BC affirms its previous comment that a “one-size-fits-all” prohibition on closed generics “unnecessarily stifles opportunity and creativity, and protects a regime designed around a status quo business model.”

In addition, we believe that ICANN needs to create a framework to determine “public interest” in this context. Previously, the BC has said that “public interest” for ICANN purposes was about improving the availability and integrity of domain name registration and resolution.

Topic 24: String Similarity Evaluations

See page 102 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- The WG added detail and precision around its recommendations, especially around singular/plurals.
- The concept of "intended usage" was integrated into the singular/plural standard, meaning that in circumstances where string combinations that could be considered singular/plural, but where the applicants intend to use the strings in connection with different meanings, both can possibly be delegated. In this case, applicants must agree to mandatory PICs to use the string in line with their intended usage as described in the application.

If you choose one of the following responses there is no need to submit comments:

- [x] Support Output(s) as written
- [ ] Not ideal, but willing to accept Outputs as written No
- [ ] Opinion

Topic 25: IDNs

See page 109 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new- gtld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- Added Implementation Guidance to allow applicants to apply for a string in a script that is not yet part of RZ-LGR, though it will not be allowed to proceed to contracting.
- Added additional recommendations/detail around same entity requirements for IDN variants at the top and second levels.
- Added recommendation that second-level IDN variants are not required to behave identically.

If you choose one of the following responses there is no need to submit comments:

- [x] Support Output(s) as written
- [ ] Not ideal, but willing to accept Outputs as written No
- [ ] Opinion

Topic 26:
Security and Stability

See page 113 of the draft Final Report:
https://gnso.icann.org/en/drafts/draft-final-report- new-gtld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- Refined recommendations related to root zone scaling, focusing on the rate of change for the root zone for a shorter period of time (e.g. monthly basis) rather than on a yearly basis.
- Added Implementation Guidance intended to promote the conservative expansion of the DNS.
- While previously discussed, formalized as a recommendation that emojis should not be allowed at any level in gTLDs.

If you choose one of the following responses there is no need to submit comments:

- (●) Support Output(s) as written
- ( ) Not ideal, but willing to accept Outputs as written No
- ( ) Opinion

Topic 27: Applicant Reviews: Technical & Operational, Financial and Registry Services

See page 116 of the draft Final Report:
https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: No substantive differences, but minor differences include the following:

- Structural and grammatical changes made for ease of understanding.

If you choose one of the following responses there is no need to submit comments:

Mark only one oval.

- [x] Support Output(s) as written
- [ ] Not ideal, but willing to accept Outputs as written No
- [ ] Opinion

Topic 28: Role of Application Comment

See page 124 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: No substantive differences, but minor differences include the following:

- Recommendations are better aligned and consistent with what occurred in the 2012 round, resulting in some recommendations being converted to affirmations instead. With more detail and precision overall, several recommendations were broken into discrete elements, expanding the number of overall recommendations in this section.

If you choose one of the following responses there is no need to submit comments:

- [x] Support Output(s) as written
- [ ] Not ideal, but willing to accept Outputs as written No
- [ ] Opinion

Topic 29: Name Collisions

See page 128 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- Affirmed the use of the New gTLD Collision Occurrence Management framework, unless it is replaced by a new Board approved framework (e.g., as a result of the NCAP studies)
- Focused recommendations more on criteria for assessing name collision risk, relying less so on prescribed lists (e.g., High, Aggravated, Low).

If you choose one of the following responses there is no need to submit comments:

- Support Output(s) as written
- Not ideal, but willing to accept Outputs as written No
- Opinion

Topic 30: GAC Consensus Advice and GAC Early Warning

See page 133 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- Created this separate section on GAC Early Warning and GAC Consensus Advice, apart from Objections.
- In recognition of the GAC's role under the ICANN Bylaws, the recommendations were made consistent with the GAC's role. The WG expressed its preference for certain outcomes (e.g., providing GAC Consensus Advice on TLD types ahead of program launch), but acknowledged that it is unable to impose such requirements on the GAC.
- The WG solidified its proposal to remove the language in the AGB that creates a "strong presumption for the ICANN Board that the application should not be approved," which the WG believes is consistent with the GAC's role under the ICANN Bylaws and encourages mutually beneficial outcomes rather than creating a presumption of rejected applications.
- Clarified that GAC Early Warnings must also include rationale for the warning, which should also promote mutually beneficial outcomes.
- Converted potential guidance in the Initial Report to a recommendation: RVCs should be allowed as a mechanism to address or mitigate concerns in GAC Early Warning or GAC Consensus Advice.

If you choose one of the following responses there is no need to submit comments:

- Support Output(s) as written
- Not ideal, but willing to accept Outputs as written No
- Opinion

Topic 31: Objections

See page 139 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- Added Implementation Guidance aimed at improving accessibility to objections (e.g., reducing costs, timing requirements).
- Added recommendation to allow parties to mutually agree to one or three-expert panels.
- Added a recommendation and Implementation Guidance aimed at improving clarity in the process and transparency of outcomes (e.g., criteria and/or processes and fees/refunds should be available ahead of program launch and in the Applicant Guidebook; any additional panel requirements should be available in a central location).

If you choose one of the following responses there is no need to submit comments:

- ◯ Support Output(s) as written
- ◯ Not ideal, but willing to accept Outputs as written No
- ◯ Opinion

Topic 32: Limited Challenge / Appeal Mechanism

See page 148 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- The draft Final Report now includes a substantial amount of additional detail regarding challenges and appeals.
- The recommendations identify which evaluation mechanisms can be challenged and which objection decisions can be appealed. An Annex is included, which provides clarity around standing, the arbiter of the challenge/appeal, who is responsible for costs, standard for appeal ("clearly erroneous" for everything but conflicts of interests), and remedies.
- The recommendations seek to limit the impact that challenges/appeals may have on program timing and costs.

If you choose one of the following responses there is no need to submit comments:

- ◯ Support Output(s) as written
- ◯ Not ideal, but willing to accept Outputs as written No
- ◯ Opinion

Topic 33: Dispute Resolution Procedures After Delegation

See page 156 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: No substantive differences.

If you choose one of the following responses there is no need to submit comments:

- ( ) Support Output(s) as written
- ( ) Not ideal, but willing to accept Outputs as written No
- ( ) Opinion

If you choose the following response, please indicate in the text box below the new information or interests that the Working Group has not considered:

- ( ) New information or interests that the Working Group has not considered

Enter your response here:

The Business Constituency notes that while the Working Group did not conduct an exhaustive review of the PICDRP due to a small number of cases, in at least one instance the timeline and transparency of the process as well as the findings of the Standing Panel were disregarded (see https://www.icann.org/en/system/files/files/pharmacy-picdrp-panel-report-10jul18-en.pdf), and no action was ever taken by ICANN to obtain necessary responses from the registry operator to inform the reporter. This was well documented in a post at CircleID (see http://www.circleid.com/posts/20181020_enough_with_blacklisting_online_pharmacies_time_to_white_list/), and we believe this instance can be useful for improvement by ICANN's Contractual Compliance Department to address the Working Group's recommendation for clearer, more detailed, and better-defined guidance on the scope of the procedure, the role of all parties, and the adjudication process which must be publicly available. This will enable ICANN to demonstrate that not only does it have the power to make registries operate for the common good, it takes that responsibility seriously and fulfills its role of enforcement.

Topic 34: Community Applications

PLEASE NOTE: There is an additional question below for Community Input.

See page 157 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- Added recommendation that letters of opposition should be considered in balance with letters of support.
- Added recommendation intending to clarify the scope of additional research done in performing CPE, and noting that any research impacting the decision should be disclosed to the applicant.

If you choose one of the following responses there is no need to submit comments:

- ( ) Support Output(s) as written
- ( ) Not ideal, but willing to accept Outputs as written No
- ( ) Opinion

If you choose the following response, please indicate in the text box below what should change and why:

- ( ) Do not support certain aspects or all of the Output(s)

Enter your response here:

As documented in our comment on the initial report, the BC requests increased clarity around the definition of community in a community application. Make the outlines of “community” clearer, more transparent and less open to interpretation.

Question for Community Input:

Implementation Guideline 34.3 states: "To support predictability, the CPE guidelines, or as amended, should be considered a part of the policy adopted by the Working Group." In deliberations, the Working Group considered proposals for specific changes to the Community Priority Evaluation (CPE) Guidelines from 2012, but did not ultimately recommend any specific changes to the text of the Guidelines (see proposals at https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf).

Question: Do you support any of the proposed changes? Please explain. Are there other changes to the Guidelines that you believe the Working Group should recommend?

If you have a response to the questions please enter your response here:

The BC supports this guideline.

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

PLEASE NOTE: There is an additional question below for Community Input.

See page 163 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: Substantive differences include the following:

- Selected the second price sealed-bid mechanism for the ICANN Auctions of Last Resort, which was previously one of several options under consideration. The Working Group added procedural details, such as when bids should be submitted, confirmed that program evaluation elements should remain largely unchanged, how the ICANN Auction of Last Resort should be conducted, among other elements.
- The Working Group had previously been trending towards disallowing private resolution where a party is paid to withdraw, but is now focusing instead on seeking to ensure that applications are submitted with a bona fide ("good faith") intentions, while also allowing private resolution (including private auctions). Contentions sets resolved via private resolution have information disclosure requirements (i.e., Contention Resolution Transparency Requirements).

If you choose one of the following responses there is no need to submit comments:

- ( ) Support Output(s) as written
- ( ) Not ideal, but willing to accept Outputs as written No
- ( ) Opinion

If you choose the following response, please indicate in the text box below what should change and why:

- ( ) Do not support certain aspects or all of the Output(s)

Enter your response here:

While applicants should transparently declare whether they intend to operate the registry, or whether they anticipate selling some of their pending applications to others (as the BC previously commented), the BC cautions against the proposed criteria against which "bona fide" intentions may be measured (e.g., the applicant "loses" 50% of private auctions it enters into). Such criteria call for subjective interpretation and could be gamed themselves by others with an interest in the contended-for string or an interest in an auction loss windfall (by attempting to influence those interpreting applicant intentions). It is conceivable that an applicant with a number of auction losses simply doesn't possess the resources necessary to compete financially for the string, and did not anticipate the auction scenario at application time. Subjective interpretations in circumstances such as these tend to detract from, rather than contribute to, predictability.

As the BC commented in 2018, we remain concerned about applicants applying for multiple strings with the intention of selling or auctioning their contention position to other applicants. As we said in 2018, the BC recommends that private auctions be eliminated.

Regarding the last resort auction mechanism, the BC continues to support the Vickrey method where the applicant that submitted the highest Last Resort Sealed Bid amount pays the second-highest bid amount. An exception is for contention sets involving .Brand TLD applications, which should be exempt from any "sealed bid" auction types. Prior to blindly entering an auction, in order to assess legitimate rights to operate certain TLDs,

.Brand TLD applications in contention sets should be made aware of third party applications in contention, the identity of the applicants, their intended uses of the TLDs, and whether or not certain uses are proscribed by voluntary PICs.

Question for Community Input:

Recommendation 35.3 requires that, “Applications must be submitted with a bona fide (“good faith”) intention to operate the gTLD.” The Working Group discussed examples of what would constitute a lack of bona fide intent and included a non-exhaustive list of indicative “Factors,” though it believes analysis of the included examples and identification of additional examples is helpful. What do you believe are appropriate “Factors” to consider when determining if an application was submitted with a bona fide intention, and why?

If you have a response to the question please enter your response here:

Question for Community Input:

Also related to Recommendation 35.3, the Working Group discussed what the punitive measures should be if an application is found to have been submitted lacking a bona fide intention, in respect of the “Factors.” Some of the ideas discussed include the potential loss of the registry, barring participation in any future rounds (both for the individuals as well as the entities (and their affiliates) involved), or financial penalties. In this respect, the Working Group discussed the timing of when such “Factors” may be identified (e.g., likely after private auctions have already taken place) and how that may impact potential punitive measures. What do you believe are appropriate punitive measures for applications that were submitted lacking a bona fide intention, and why?

If you have a response to the question please enter your response here:

See answer above.

Topic 36: Base Registry Agreement

PLEASE NOTE: There is an additional questions below for Community Input.

See page 172 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: No substantive differences, but minor differences include the following:

- The WG is converting questions in the Initial Report to recommendations.

If you choose one of the following responses there is no need to submit comments:

- ◯ Support Output(s) as written
- ◯ Not ideal, but willing to accept Outputs as written No
- ◯ Opinion

Question for Community Input:

Recommendation 36.4 states: “ICANN must add a contractual provision stating that the registry operator will not engage in fraudulent or deceptive practices.” The Working Group discussed two options for implementing the recommendation: the addition of a PIC or a provision in the Registry Agreement. A new PIC would allow third parties to file a complaint regarding fraudulent and deceptive practices. ICANN would then have the discretion to initiate a PICDRP using the third-party complaint. If a provision regarding fraudulent and deceptive practices would be included in the RA, enforcement would take place through ICANN exclusively. Which option is preferable and why?

If you have a response to the question please enter your response here:

The BC prefers leveraging the PICDRP, unless ICANN can substantively demonstrate improvement in its compliance and enforcement capabilities.

Topic 37: Registrar Non- Discrimination & Registry/Registrar Standardization

PLEASE NOTE: There is an additional questions below for Community Input.

See page 175 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Description of Difference: No substantive differences.

If you choose one of the following responses there is no need to submit comments:

- ( ) Support Output(s) as written
- ( ) Not ideal, but willing to accept Outputs as written No
- ( ) Opinion

Question for Community Input:

The Working Group discussed specific circumstances in which it may be appropriate for ICANN to grant Code of Conduct exemptions. In particular the Working Group considered a proposal that if a registry makes a good faith effort to get registrars to carry a TLD, but is unable to do so after a given period of time, the registry should have the opportunity to seek a Code of Conduct exemption so that it can be its own registrar without needing to maintain separate books and records and legally separate entities. What standard should be followed or what evidence should be required of the registry in evaluating if a "good faith effort" has been made? Is a Code of Conduct exemption as it currently exists the right mechanism for a registry that lacks registrar support for its gTLD, considering that the Code of Conduct is primarily focused on registrant protections?

81. If you have a response to the question please enter your response here:

The BC is not opposed to registries having the opportunity to apply for and operate a registrar. However, the BC is generally cautious about subjective evaluations of the intentions of others (e.g., determining whether or not the (sometimes confidential) efforts of others are made in good faith and discourages such interpretations. The BC is not in favor of Code of Conduct exemptions in as much as they are intended to protect registrants.

Topic 38: Registrar Support for New gTLDs

See page 176 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report - new-gtld-subsequent-20aug20-en.pdf

If you choose one of the following responses there is no need to submit comments:

- Support Output(s) as written
- Not ideal, but willing to accept Outputs as written No
- Opinion

Topic 39:
Registry System Testing

See page 177 of the draft Final Report:
https://gnso.icann.org/en/drafts/draft-final-report- new-gtld-subsequent-20aug20-en.pdf

Description of Difference: No substantive differences, but minor differences include the following:
- Structural and grammatical changes made for ease of understanding.

If you choose one of the following responses there is no need to submit comments:

- Support Output(s) as written
- Not ideal, but willing to accept Outputs as written No
- Opinion

Topic 40: TLD Rollout

See page 180 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report- new-gtld-subsequent-20aug20-en.pdf

If you choose one of the following responses there is no need to submit comments:

- Support Output(s) as written
- Not ideal, but willing to accept Outputs as written No
- Opinion

See page 181 of the draft Final Report: https://gnso.icann.org/en/drafts/draft-final-report-new-gtld-subsequent-20aug20-en.pdf

Topic 41: Contractual Compliance

Description of Difference: No substantive differences.

If you choose one of the following responses there is no need to submit comments:

- Support Output(s) as written
- Not ideal, but willing to accept Outputs as written No
- Opinion

Section 3: Other Comments & Submission

Are there any additional recommendations that you believe the Working Group should consider making? If yes, please provide details below.

Are there any other comments or issues you would like to raise pertaining to the draft Final Report? If yes, please enter your comments here. If applicable, please specify the page number in the draft Final Report to which your comments refer.

The BC thanks the working group for its dedication to this process and for the exhaustive amount of work necessary to formulate the recommendations herein.

The BC long has advised ICANN Org, the Board and the ICANN community that a number of issues should be prioritized as a matter of necessity, though not all have been. Consideration of procedures governing a subsequent gTLD round provides an opportunity to productively direct community attention toward these matters.

These include the following:

- Strengthened registry and registrar contracts. The BC believes now -- before a new gTLD round is initiated -- is the opportune time for ICANN to amend its badly out-of-date contracts with registries and registrars. Now nearly eight years since the last update (prior to the last gTLD round), these agreements need to be brought in line with current community needs. For example, contracts must contain provisions -- auditable and enforceable by ICANN -- that outline the specific tools contracted parties must employ to mitigate DNS abuse.
- Substantive enforcement of contract obligations. As often expressed by the BC and others, ICANN has serious deficiencies in the area of enforcement capability with regard to contracts and the interim Whois policy. ICANN Org has an opportunity to earn some community goodwill and demonstrate strength and leadership by putting forth a robust compliance function.
- Voluntary trusted notifier programs. Trusted notifier programs have been productive in bringing to registry and registrar attention problems within the namespaces they govern. ICANN should explore the formal expansion of such programs as a feature of subsequent rounds.