Report of Public Comments

New gTLD Program Implementation Review Draft Report	
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Prepared By:	ICANN staff

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		View Comment Submitted

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Section I: General Overview and Next Steps

The Program Implementation Review Report (PIRR) contains ICANN's observations from the operational experience of administering the 2012 round of the New gTLD Program. The report is intended to capture ICANN's experiences and lessons learned. ICANN sought public comment to record the community's observations on the implementation of the New gTLD Program.

ICANN received comments on each of the eight chapters of the paper:

1. Application Processing
2. Application Evaluation
3. Objection Procedures
4. Contention Resolution
5. Transition to Delegation
6. Applicant Support
7. Continued Operations Instrument
8. Program Management

Comments have been compiled and summarized for the purpose of this report, which will be provided to the Competition, Consumer Trust, and Consumer Choice (CCT) Review Team for its consideration.

ICANN staff has analyzed the comments relating to the information in the paper. ICANN appreciates all comments that were submitted and will provide the full set of comments to the CCT Review Team.

Broadly, the comments submitted fell into three categories:

1. Comments on specific points presented in the PIRR. - These comments have been summarized. Additional information has been provided in the Analysis section where appropriate.
2. Comments suggesting improvements for this round. - These comments have been summarized. Additional information has been provided in the Analysis section where appropriate.
3. Comments on specific applications – These comments have not been addressed within this report.

In some cases, ICANN staff has also updated the PIRR based on the comments received, particularly where comments identified a lack of clarity in the PIRR.

Section II: Contributors

At the time this report was prepared, a total of 15 community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Brand Registry Group	Philip Sheppard	BRG
Dotgay LLC	Jamie Baxter	DGL
Afnic	Marianne Georgelin	Afnic
European Commission	Maciej Tomaszewki	EC
Neustar	Judy Song-Marshall	NEU
Registry Stakeholder Group	Stéphane Van Gelder	RySG
Universal Postal Union	Paul Donohoe	UPU
Minds + Machines Group Limited	Reg Levy	MMGL
NIC.br; Minds + Machines Group Limited joint comment	Rubels Kuhl	NIC, MMGL
NIC.br	Rubels Kuhl	NIC
United States Postal Service	Nathaniel W. Edwards	USPS
Intellectual Property Constituency	Greg Shatan	IPC
Business Constituency	Steve DelBianco	BC
At-Large Advisory Committee	Heidi Ullrich, Silvia Vivanco, Ariel Liang, Gisella Gruber, Nathalie Peregrine, Terri Agnew, and Yesim Nazlar (ICANN staff)	ALAC

Individuals:

Name	Affiliation (if provided)	Initials
Ron Baione		RB

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

As described in Section I, ICANN received comments on each of the eight chapters of the Draft Program Implementation Review report (PIRR). While several commenters provided comments on each chapter or

section within the report, many focused their comments on specific areas of interest. Staff has provided a summary of the comments submitted; this summary has been organized by chapter.

Comments on Overall Report

Five commenters addressed the overall content of the report:

> "On its face, the scope of this review is limited to 'the experiences of the ICANN staff members charged with executing the New gTLD Program.' The report does not identify which staff members, does not indicate whether former staff members were contacted about their experiences, does not represent that this report is an exhaustive summary (as opposed to illustrative), and does not disclose the methodology used to determine which experiences are included – and which are excluded. Accordingly, the review in its current form warrants correspondingly limited deference by the CCT Review Team." [RySG, BC]

> "AGB and draft RA suffered from many changes during the application process, with some of those changes directly impacting commercial registries' financial projections and bottom-lines. Such changes should be reserved to extremely extraordinary circumstances, and require an approval process similar to the one already in place in 2012-round gTLD agreements (section 7.7)." [RySG]

> "We encourage the Review Team to support the recommendations made by staff, and at the same time give full consideration for more practical support to ensure that the remaining and future batches of applications are expedited as quickly and efficiently as possible." [ALAC]

> "One overarching observation is that ICANN's insistence on treating nearly all applications virtually identically, and its refusal to recognize that "one size does not fit all," inflicted unnecessary burdens and delays on all participants in the process." [IPC]

> "The BC acknowledges the complexity of the new gTLD program, and given this complexity, we feel that ICANN has handled many aspects of implementation well. That said, there have been undeniable, serious missteps along the way by the ICANN Board and staff. We believe this report would have been an excellent opportunity for ICANN to fully address and accept those missteps. Unfortunately, the report all too often provides limited summary information of missteps and security breaches and relies on the passive voice rather than directly accepting fault." [BC]

> "Although the Review provides substantial factual information regarding the evaluation process, the IPC would be curious to receive qualitative feedback from ICANN regarding the ultimate question the evaluation process is ostensibly designed to answer, which is, 'What makes a good steward for a gTLD?' The answer to that question, with input from both ICANN and community stakeholders, should guide efforts to improve evaluation criteria and processes for subsequent new gTLD rounds. The answer should also consider the myriad 'one-size-fits-all' evaluation criteria that were forced upon unique TLD applicants, such as .Brand TLDs, resulting in significant costs, confusion and delays throughout the Program." [IPC]

> "At the same time, we would like to see greater focus on objective data that reflect the challenges encountered in the new gTLD programme." [EC]

Chapter 1: Application Processing

Six commenters specifically mentioned areas addressed in Chapter 1: Application Processing. These commenters echo many of the lessons learned highlighted in the PIRR but also note areas where certain inefficiencies in application processing created unnecessary difficulties for applicants and also led to delays in the Program.

1.1 Application Submission

Six commenters noted that requirements in the application submission process created delays and unnecessary burdens.

Five commenters supported, for example, the idea that ICANN should ensure that the proper investment is made for the right kind of application system and that the system can accommodate different kinds of applications.

> "Of concern to our community was the life-cycle of the application and evaluation process relating to this first batch of applications and that the remaining applications will still not be completed until the end of 2017 which is far beyond originally projected timeframes. Among the reasons for the delays include some effectiveness and efficiency issues relating to the time spent on some requirements of the application process that may not have been completely necessary for all applications as there was no contractual requirement attached. It was noted that some areas of the application may benefit from further community discussion based on staff lessons learned." [ALAC]

> "ICANN should take the steps and make the investment necessary to ensure that the TLD Application System (TAS), or successor system, is secure and that the numerous failings in this version of TAS, including those that disclosed applicant confidential data to third parties, do not occur. In the previous round ICANN had no specific guidelines for single-registrant .BRAND applications, despite BC comments alerting ICANN to special brand applicant considerations in 2010. A better approach will be to take into account different applicants and purposes, and benefit from efficiencies in providing a different process for .BRAND applications." [BC]

> "The IPC recognizes the incredible operational challenges posed by the New gTLD Program, particularly in view of the significant number of applications, which went well beyond expected numbers. That said, the Review makes clear—and the IPC agrees—that the Program was rushed, placing an undue burden on staff and the community to develop and implement operational, yet flawed, systems. The IPC, like other stakeholders, remains concerned by the number of reported security issues involved in relation to several Program resources, such as the TLD Application System (TAS) and Customer Portal. The IPC therefore strongly supports the staff recommendation that in future applications, the timeline should permit appropriate time and resources for system development and testing." [IPC]

> "We found no mention of the issues applicants faced regarding characters that were required to describe technical documentation but were not allowed in TAS, requiring workarounds. Any application submission system needs to allow all ASCII characters no matter if they have meaning in

mark-up languages or database systems, and allow a significant portion of the Unicode charset to allow proper representation of IDNs, names, locations and purposes. ICANN should take the steps and make the investment necessary to ensure that the TAS (or successor system) is secure and that the numerous "glitches" in this version of TAS that disclosed applicant confidential data to third parties do not occur. One of those steps we suggest is a pilot testing phase for TAS and all other portals used in the process prior to the actual application round (in order to avoid multiple glitches and periods of unavailability that plagued the first round)." [RySG]

"A possibility to provide application responses in different format and layouts should be offered. The TAS should be upgraded/improved in order to avoid the technical issues encountered during the first round." [Afnic]

One commenter also indicated its support for the ability to create a single user-account for many applications:

"We support this proposition that will improve the whole process of submitting applications." [Afnic]

Two commenters noted issues with the application fee:

"Asking for division between a USD 5,000 token fee and an USD 180,000 app fee, both caused issues (including extra banking fees) for some applicants, even though it enabled some other applicants to participate depending on jurisdiction. Requiring separate deposits per application was also not ideal to some of the applicants." [RySG]

"In addition, with respect to fees, the IPC strongly supports financial evaluation vis-à-vis the cost recovery model expected for the New gTLD Program. Consideration should be given toward reducing fees in future rounds, in particular for certain categories of applicants, including those whose applications may require a less extensive evaluation process, such as applicants for closed .Brand TLDs." [IPC]

One commenter questioned the enforceability of the information in the application:

"Although not specifically addressed in the Review, the IPC has raised questions regarding the enforceability and utility of the new gTLD application, and potential post-submission changes thereto. The IPC has previously posited that some in the community may come to have a reliance interest on certain commitments made in new gTLD applications, although there is no clear guidance from ICANN as to whether ICANN views these commitments as legally binding, or whether they are subsumed or superseded by the registry agreement and public interest commitments ultimately executed between the applicant (then registry operator) and ICANN." [IPC]

1.2 Prioritization

Issues associated with prioritization were mentioned by three commenters, each of which suggested that ICANN conduct prioritization (and application processing in general) by use of categories, such as dedicated

processes for .BRANDs.

> "The IPC also agrees with the staff experience that applications should be grouped by common characteristics—such as closed .Brand applications—in the prioritization process, to increase processing and evaluation efficiency. The IPC called for the creation of different 'tracks' of applications based on type—such as .Brand, geographic, or community—for purposes of processing, evaluation, contention resolution, and registry agreement terms, among other issues, and looks forward to exploring this possibility further during the New gTLD Subsequent Procedures PDP. In addition, although the Review acknowledges the unsuccessful, and ultimately suspended 'Digital Archery' method of prioritizing application processing, the IPC wishes to highlight the ad hoc nature of the prioritization processes in general, which led to confusion, delay, and unnecessary burden on the Program—particularly where many .Brand applicants preferred to receive much later priority numbers. The IPC recognizes that the unexpectedly high number of applications contributed to this issue, although a more reliable, predetermined prioritization mechanism should be expected for future application rounds, as opposed to the Program's hallmark ad hoc processes and mechanisms." [IPC]

> "We note that the secondary timestamp process originally envisioned had a regional balancing system that was not transitioned to the draw, which was detrimental to underserved regions. For next rounds, we suggest that processing prioritization is guided only by efficiencies. If prioritization is needed, perform evaluation of elements that are common across multiple applications before the prioritization process begins." [RySG]

> "Afnic agrees with the key lesson voiced by ICANN staff to consider grouping applications by common characteristics while establishing priority numbers, in order to increase processing efficiency and as such reducing delays. Applicants can be grouped in three categories: geographic names, brand names and generic names. They each have different issues, different means and different goals. The AGB could not offer one rule that would fit for all of them. This is why Specification 13 and PIC had to be introduced afterwards. An AGB dedicated to each category will improve clarity from the beginning of the process for each applicant." [Afnic]

One commenter also suggested a different methodology for prioritization:

> "Priority numbers could be assigned on a first come first served basis according to the timestamp obtained when submitting an application." [Afnic]

1.3 Application Comments

Four commenters specifically addressed the subject of application comments, who touched on topics such as functionality of the system, ease of use, grouping applications to allow for more efficient commenting, and timeline and timing of comment periods [e.g., for Community Priority Evaluation (CPE)].

> "The BC supports ICANN's exploration of implementing additional functionality that would improve utility of the Application Comments Forum." [BC]

"The IPC agrees with the staff experience that ICANN should explore a more structured way of capturing application responses, as well as associating multiple applications to a single user account. These lessons, if addressed for future rounds of new gTLDs, would significantly streamline the application and application amendment processes, as well as publication and ease of review by interested third parties, including but by no means limited to intellectual property rights holders." [IPC]

"We support defining possible outcomes the comments can achieve, so commenters can have more realistic expectations. The comment process should also be aligned with the timeline, so a comment suggesting an objection is untimely after the objection period has ended. We also suggest comments have a link to a statement of interest of the commenter so the comments can be better assessed regarding conflicts of interest." [RySG]

"Although the report acknowledges that the AGB did not specify more detail on when the comment period should close for community applicants, ICANN acknowledges they made the decision to keep it open until 14 days after the applicants elected to enter CPE. It does not appear that the ICANN community was able to comment on that decision before implementation by ICANN, nor was rationale provided in the report to support this decision." [DGL]

"ICANN must recognize that fairness is only achieved if each applicant in a contention set receives the same length of comment period against their application, regardless of the type of application they have submitted. Because ICANN has chosen to place the CPE at the end of the contention resolution spectrum and ICANN has chosen to allow the comment period to remain open until CPE commenced, it has created a much larger burden on community applicants and made them targets in the process." [DGL]

1.4 Application Change Requests

Two commenters addressed the application change request process, discussing how applicants are notified of changes and echoing recommendations for the processing of certain types of changes.

"We suggest that all applicants in a contention set be notified of a change being (a) proposed; (b) put to public comment; (c) accepted." [RySG]

"We agree with this proposition, more particularly with regard to the processing of contact changes which was complicated to handle during the first round." [Afnic]

1.5 Application Withdrawals and Refunds

One commenter addressed the topic of application withdrawals, particularly the topic of how ICANN might move applications to a final state if not withdrawn:

"Any process considered to move applications with a 'will not proceed' status to a final state 'if the applicant does not initiate an application withdrawal' must not move an application until the applicant has pursued or had an opportunity to pursue (under relevant procedures) applicable

accountability mechanisms." [BC]

Chapter 2: Application Evaluation

Nine commenters discussed the topic of evaluation.

2.1 Initial & Extended Evaluation

Three commenters submitted feedback on Initial and Extended Evaluation. Comments were focused around Clarifying Questions:

> "We support this idea if this training process is transparent for the community i.e. allows to understand how evaluators are trained and if it does not delay the second round. Detailed procedures will indeed help evaluations consistency, specifically regarding clarifying questions." [Afnic]

> "90% of applications receiving CQs is a clear indicator that questions lacked clarity or requirements were unclear or unachievable." [RySG]

> "[. . .] the lack of transparency in issuance of CQs made no information available regarding CQs for questions with public answers or for which questions with non-public answers that received CQs." [NIC]

One commenter submitted a comment on the evaluation panelist selection process:

> "The BC acknowledges the challenge of identifying and engaging knowledgeable, neutral individuals to serve on the Evaluation Panels. ICANN should take additional steps to ensure that employees and contractors of third-party firms retained as Evaluation Panels should not be permitted to participate in those panels if such employee or contractor has been an active member of an ICANN Supporting Organization, Advisory Committee, Stakeholder Group, or Constituency in the preceding year. This prohibition will avoid the appearance of impropriety and conflicts of interest." [BC]

2.2 Background Screening

Four commenters submitted comments on the topic of background screening, specifically on the information requested and the timing of the evaluation:

> "For .brands, it should be sufficient to list the same amount of detail for company directors as appears on corporate websites and company registration offices. A default of the registered office address or that of the Company Secretary could be provided for all directors." [BRG]

> "Background screening should be performed at the contract execution level. This will speed up the evaluation process and avoid useless efforts if the application fails or is withdrawn." [Afnic]

> "Asking for officers and employees home addresses was a bad private data collection decision that had a bad outcome when this data was exposed. Besides moving much of the screening to the contracting process, we suggest restricting any requested personal info to names with the possible

addition of certifications of good standing with law and tax authorities." [RySG]

"With respect to background screening of applicants, the IPC supports the timing used during the 2012 round, namely screening at the time of Initial Evaluation, in order to prevent unqualified applicants from proceeding to contention or objection mechanisms unnecessarily, even though this may have created some inefficiencies for ICANN given later changes in applicant personnel between the application and registry agreement execution milestones." [IPC]

"Nevertheless, the IPC continues to question the overall effectiveness of the background screening employed by ICANN, particularly given the apparent ability for serial cybersquatters to circumvent the process through loopholes for shell corporations.
"IPC was also surprised to learn that applicants whose affiliates had incurred large debts to ICANN were not screened out and were not required to satisfy their previous obligations before their applications passed initial evaluation. This is another loophole that must be closed in any subsequent round." [IPC]

2.3 String Similarity Evaluation

Three commenters submitted comments specific to String Similarity Evaluation, commenting on the topics of singulars and plurals and IDN variants.

"From our standpoint, similar and plural versions of the same string should be considered as identical in order to avoid confusion. We also recommend that applicants be given enough guidance on this matter before deciding on the TLD string to submit (eg, put at their disposal an online tool implementing the SWORD algorithm to have a prior indication on the String Similarity against the updated TLD database)." [Afnic]

"ICANN concluded, with very few exceptions, that singular and plural strings were not confusingly similar, and therefore TLDs consisting of singular and plural variations of the same word were not placed into direct contention as a result of the string similarity review. This conclusion has been widely criticized and IPC continues to believe it was unsupported by common sense." [IPC]

"IDN Variants that could be bundled (like .quebec and .québec) were prevented from applying in this round; we suggest that policy process on this could be developed to allow those variants to be delegated provided community-defined conditions are followed." [RySG]

2.4 DNS Stability Evaluation

Four commenters submitted comments on the DNS Stability Evaluation.

Three of the comments were specific to the topic of name collision, concerning the implementation as a whole and the processing of the "high risk" strings:

"The very low occurrence of collisions in the actually delegated new gTLDs has shown that this concern was an overreach, notably the idea of life threatening name collisions. The wildcard pointing to an internal address process can now be considered effective, so we suggest that ICANN delegate

preemptively the full list of proposed TLDs on the next round, so even more time can pass during evaluation to signal the issue for unwary networks." [NIC, MMGL]

"Therefore, recommendations to be added after 2.4.a and 2.4 b above should include: (1) Consider whether the name collision issue should have been resolved with reference to the SSAC recommendation prior to the opening of the application window, thereby avoiding wasting of resources by numerous parties and (2) Consider whether the ICANN Board should be required to treat SSAC Advice with any special level of deference in connection with the next round of gTLD applications and to seek and implement such advice well prior to launching a next round, and more specifically with respect to the name collision issue." [USPS]

"In connection with the PDP for subsequent rounds of new gTLDs, seek additional input into the possible future delegation of .MAIL from the UPU community as recognized by the ICC." [USPS]

One of the comments was specific to the review of IDNs in the DNS Stability Evaluation.

"IDN DNS Stability review should be replaced with simple automatic checks by the application system implementing the LGR (Label Generation Rules) for the IDN in question. ASCII DNS Stability review is already incorporated in the list of blocked strings (like EXAMPLE) and any additions to the list (both ASCII and IDNs) can be part of a public consultation process made prior to the application process in order for such an evaluation to not be required, and its fees deducted from the application fee." [RySG]

2.5 Geographic Names Evaluation

Three commenters submitted comments specific to the Geographic Names designation and evaluation:

"From our experience, the critical aspect of granting an application any form of Geographic Name designation lies in a clear support of public authorities. This support must also be easily verified by the community." [Afnic]

"ICANN should retain the current definition of and approach to Geographic Names, which was developed after multiple iterations of the AGB (and community comment) as well as a Board-GAC consultation. There should be no purpose to the Geographic Name designation other than the limited evaluative purpose in the AGB." [RySG]

"In regards to the lessons learned on the Geographic Names designation and evaluation: This touches on a sensitive policy area. The BRG would like more information." [BRG]

2.6 Technical and Operational Capability Evaluation

ICANN received five comments on the Technical and Operational Capability Evaluation, specifically supporting the development of an accreditation program for back-end providers of registry services. Several of the comments further encouraged ICANN to begin development of an accreditation program as soon as possible:

"Create a process within ICANN for technical service providers to accredit themselves in a similar process to that which is required for registrars. Applicants would then have a set of pre-certified service providers to choose from." [BRG]

"We suggest that such an accreditation program is developed now, even before a next round, in order to facilitate the subcontractor assignment process." [RySG]

"Given that ICANN staff appear to be suggesting that an accreditation program for registry service providers would be the most efficient manner to proceed for a next round, and that this will also be discussed as part of the PDP WG on New gTLD Subsequent Procedures (anticipating that the GNSO Council will approve the Charter to comments the PDP in the near future), we strongly recommend that the process for developing an Accreditation Program for registry service providers commence immediately, particularly identifying the technical attributes or requirements of such a program. We make this recommendation based on a serious concern that if this work is delayed until the PDP has run its course, unnecessary delays will be incurred in commencing subsequent rounds." [NEU, MMGL]

"We support that ICANN accredits Backend Registry Operator (BERO) to facilitate technical reviews and differentiate steps in application process. [. . .] Moreover, this accreditation process could be separate from a second round of applications. In future rounds, a prospective applicant would select a certified BERO and focus on its administrative and business application. From our standpoint, the application process would benefit from this major proposal and gain in effectiveness." [Afnic]

2.7 Financial Capability Evaluation

Three commenters submitted comments on the Financial Capability Evaluation, supporting the lesson learned that alternative approaches to the method used in this round should be considered for future application rounds:

"A lighter touch evaluation is needed for .brands." [BRG]

"Firstly, we suggest that ICANN takes into account the specificity of brandTLD for which a TLD simply has operational costs and no direct revenue. Secondly, ICANN could focus only on financial resources available to the applicants. Most actual business models are probably below the worst case scenario described in the application. The main objective for ICANN should reside in ensuring that a proper COI is in place. This COI could take the form of an escrow account or a minimum fee that could be included in the application fee." [Afnic]

"The structure of the questions assumed for-profit selling of domain names, which is not the case for brand and exclusive-use TLDs. 2012-round experience is showing that failed business structures are quickly succeeded by new operators with no issues to registrants; it also has shown a great disparity between business plans and reality, which made most of the financial information in applications useless. We suggest that consideration be given to restricting this part to a background screening of financial practices of the parent organization(s), removing the need for financial evaluation (which

also can reduce application fee)." [RySG]

2.8 Registry Services Evaluation

One commenter submitted a comment on the Registry Services Evaluation, supporting the lesson learned that the process for collection of registry services information could be enhanced to better support evaluation and contracting processes:

> "Instead of an open question requiring evaluation, offering the most common examples of what ended up being in Exhibit A of the current agreements provides for an efficient process. Applicants intending to offer only those services would be guaranteed to not go thru RSTEP, making for a predictable application cost. Registries willing to provide additional services would still be able to, and the evaluation of those services would be done by the same team currently processing RSEPs, in order to have non-discriminatory treatment between registries that described services in their application versus registries that filled RSEPs after contract signing. This would also enable a small reduction in application fee." [RySG]

Chapter 3: Objections Procedures

Eight commenters discussed the topics of GAC Advice and Objections and Dispute Resolutions.

3.1 GAC Advice

One commenter expressed general support for Lesson Learned 3.1.a in the PIRR, regarding engagement with the GAC during the review process and the development of procedures for future application rounds:

> "Yes, as early as possible i.e. before application process starts." [Afnic]

Three commenters submitted comments on the GAC Early Warning process:

> "Since GAC was not bound to only issue advice to applications with early warning, we found the EW mechanism to be more trouble than it's worth. We suggest moving the 80% refund threshold to apply to all applicants that decide or are required to withdraw based on effects of GAC Advice on their proposed registries and skip the EW phase altogether. If the EW mechanism is not removed, ICANN should clarify in the AGB that an Early Warning is issued on behalf of individual GAC members, and not the GAC itself (and is not entitled to any presumptions)." [RySG]

> "ICANN should clarify in the AGB that an Early Warning is issued on behalf of individual GAC members, and not the GAC itself (and is not entitled to any presumptions)." [BC]

> "In addition, the IPC remains concerned by some aspects of the GAC Early Warning mechanism, which essentially allowed individual governments to object to specific applications. The warnings could be raised by any GAC member for any reason and did not require the support of other GAC members. Some applicants withdrew their applications as a result of GAC Early Warnings, even where there was no certainty that they would become the subject of consensus GAC Advice. While there are positive elements of the GAC Early Warning mechanism, such as identifying applications that may run afoul of national or international legal principles, the mechanism gave substantial weight to concerns without any determination of their basis in law. It may be worthwhile to consider

narrowing the grounds for GAC Early Warnings and increasing requirements for a legal basis (or decreasing the practical effect of such warnings)." [IPC]

Three commenters addressed the overall process surrounding the issuance of GAC Advice:

"ICANN should revise the GAC Advice criteria to require the GAC to (a) provide a rationale for all GAC advice regarding gTLD applications; and (b) certify that its advice is consistent with national and international law, in order for such advice to benefit from the presumptions set forth in the AGB." [BC]

"The IPC would also highlight the need to further consider the timing of GAC Advice on new gTLD applications, as late advice has had, and could continue to have, an adverse impact on new gTLD applicants. It can also undermine program predictability, and create inefficiencies for both applicants and ICANN." [IPC]

"Some of the issues raised by the GAC were in scope for the IO; the proper solution to those would be an automatic trigger for IO objection if a Community or Limited Public Interest is being raised, Objector but that would also impose on GAC a time limit for this type of advice." [RySG]

Two commenters addressed the ICANN Board's consideration of GAC Advice:

"Moreover, the report seems to contain a presumption that whenever possible, ICANN has implemented GAC advice on new gTLDs. However, the assessment of the implementation of different GAC Communiqués, including the ones on new gTLD safeguards, is currently ongoing. It is not clear at the moment how that GAC advice has been treated and therefore, it would important to make sure that the report on the implementation of new gTLDs remains neutral in this respect. In addition, the report does not mention explicitly that there are still some problems related to the implementation of new gTLDs." [EC]

ICANN should provide applicants whose applications have received GAC Advice that the application should not proceed the opportunity to present to the ICANN Board/NGPC in person. The NGPC's consideration of such GAC advice demonstrates that, in some instances, the NGPC did not have a clear understanding of the issue, and providing an applicant with the opportunity to present to the NGPC in person would have avoided such lack of understanding. [RySG, BC]

One commenter addressed GAC Category 1 Advice:

"The report focuses on the GAC's role in developing advice on Category 1 strings, and the associated safeguards. It should be noted that many others in the ICANN community, including the BC, joined the GAC in calling for safeguards for strings associated with highly-regulated sectors. Any subsequent round should establish a community-developed process for implementation of safeguards by applicants of strings deemed Category 1." [BC]

Two commenters addressed GAC Category 2 Advice:

"Thus, in connection with Implementation of the Application Evaluation process, USPS comments that the recommended implementation procedures going forward include a broader Public Interest Objection process that encompasses policy considerations applicable to Closed Generics as follows: A Public Interest Objection process should be established to challenge an application for a so-called 'closed generic' in the event such application does not meet the standard for operation 'in the public interest'." [USPS]

"The existing definition of 'closed generics' (made by the NGPC with reference to the terms of what constitutes an 'affiliate' under the base Registry Agreement) should be reexamined prior to commencement of any additional new gTLD rounds." [USPS]

Finally, one comment specifically addressed the issue of IGO protections:

"Lastly, we take this opportunity to recall that, based on the ICANN 54 Dublin GAC communiqué (and following on previous communiqués issued by the GAC regarding protection for IGOs), the GAC advises the Board 'to facilitate the timely conclusion of discussions of the 'small group' and the NGPC In an effort to resolve the issue of IGO protections'; in this should be resolved in a timely manner, in the public interest." [UPU]

3.2 Objections Procedures

One commenter discussed the topic of the consolidation of objection cases:

"Our comment and recommendation is that further conditions or standards be presented as criteria for cases worthy of consolidation in future rounds and that there be some form or appeal available for applicants and objectors to legitimately (not strategically) challenge consolidation decisions by the DRSPs that are not in alignment with the AGB." [DGL]

Four commenters discussed the topics of an appeal or review mechanism for objection outcomes and decisions relating to the consolidation of cases:

"We support adding a review mechanism, noting that RfR/IRP proceedings were not tailored to application processes due to limitations on scope, causing delays and disproportionate costs for applicants. We also note that such a review process should also grant standing to any member of the contention set(s) affected by the review." [RySG]

"Our comment and recommendation is that further conditions or standards be presented as criteria for cases worthy of consolidation in future rounds and that there be some form or appeal available for applicants and objectors to legitimately (not strategically) challenge consolidation decisions by the DRSPs that are not in alignment with the AGB." [DGL]

"Indeed, based on our experience as well as the disparity of rulings issued for similar situations, we strongly encourage ICANN to explore the possibility for an affordable appeals/review mechanism for

the next round." [UPU]

"Although it is unclear if ICANN supports an appeals process for applicants who disagree or question third party findings and determinations, it has become very clear that the lack of an appeals process has left applicants misunderstood and paralyzed in the process. [. . .] it is our recommendation that ICANN have the courage to do what is right and tackle this issue immediately." [DGL]

"Although the Review briefly acknowledges inconsistent panel determinations, as well as the lack of an appropriate appeal mechanism for panel determinations, the IPC wishes to further highlight these issues, as they have been flagged as serious concerns within the community, particularly with respect to inconsistent String Confusion Objection decisions. In addition, although the Review suggests whether consideration be given to whether the Final Review Mechanism adopted for reviewing a very limited set of inconsistent String Confusion Objection decisions be utilized in future rounds, the IPC strongly encourages the community to consider creating a different mechanism, given the ad hoc, limited, and top-down ICANN is already well aware of these issues, and the IPC looks forward to seeking to improve the Objection mechanisms and appeal process for future rounds in light of the lessons from the 2012 round." [IPC]

Two commenters discussed the topic of objection grounds and criteria:

"Because Community Objection and Limited Public Interest Objection Panels inconsistently applied the AGB criteria, further clarification of those criteria should be provided for any future rounds." [RySG]

"We suggest considering limiting this type of objection to the IO and establishing clearer criteria of what is and what is not an LPI Objection." [RySG]

"Because Community Objection and Limited Public Interest Objection Panels inconsistently applied the AGB criteria, further clarification of those criteria should be provided for any future rounds." [BC]

Four commenters discussed the topics of objection fees and funding for certain objectors:

"We were also shocked by the expensive fees of these proceedings, and suggest some uniformity with LROs that were similar in difficulty but much less expensive to file or to rebut." [RySG]

Applicants and the community considered the fees for all objections except for String Confusion and Legal Rights Objections to be high. ICANN should require DRSPs for the Community and Limited Public Interest Objections to provide lower fees. [RySG, BC]

"Appropriate clarification on rules, additional rules and fee structure (to be posted by DRSPs on their respective websites) should be provided for the next round; in that regard, transparency and fairness aspects need to be improved." [UPU]

"Similarly to governmental entities that have had the opportunity to request that ICANN fund

objections against new gTLD applications, we suggest that ICANN staff work with the community in order to set up similar mechanisms for the provision of similar funding to IGOs, particularly bearing in mind that they perform important missions in the public interest with public funds." [UPU]

"Although the Review provides some basic statistics and information about the various Objections and Dispute Resolution mechanisms and providers, it glosses over any qualitative analysis of the effectiveness of these processes and participants. The IPC wishes to highlight certain points raised briefly in the Review that provider fees were too high and that Dispute Resolution providers lacked sufficient training on the objection standards. Although the Review notes that 'in regards to the feedback received about high fees, it should be noted that quality and expertise of the expert panelists were major factors in the selection of the DRSPs, which correlated to the amount of fees charged by the DRSPs,' a quick comparison of average anecdotal fees between providers of various Objections shows some fees to be significantly higher (in particular, the ICC, which handled Limited Public Interest Objections averaged € 86,000 EU, while WIPO fees were fixed at $ 10,000 USD and ICDR fees were fixed at $8,750 USD.). In short, the failure to fix fees proved exceedingly problematic, as it incentivized providers and panelists in many instances to unreasonably extend proceedings and generate unnecessary supplemental pleadings." [IPC]

Three commenters discussed the overall Objections process:

"As set forth in the AGB, the objection filing window should be open until 2 weeks after all Initial Evaluation (IE) results are complete and published. The intention of this requirement is to avoid the expenditure of resources in objecting to an application that has failed IE." [BC]

"We suggest making a 3-member panel the only option for SCOs, which might reduce inconsistencies among objections. We also suggest that all equal strings be included in a contention set if a SCO is deemed valid; not only the objector, but also all other applicants should be allowed to provide defenses pro or against that SCO. Further, the IO could be granted standing for SCOs in the case where registrants of a TLD might be affected by confusion and the current TLD operator does not raise the issue." [RySG]

"ICANN should provide training to all DRSPs to ensure that all panelists have a consistent baseline understanding of the objection criteria, should require all DRSPs to publish their panelist selection criteria before the objection window opens, and should require all DRSPs to include in their RFP responses strict timelines that will apply to the processing and resolution of all objections (and that are shorter than the timelines used by the DRSP for Community and Limited Public Interest Objections)." [BC]

"A good number of community objections were in fact attempts to win a contention set; we suggest a quick-look process to assess such behavior and disqualify such objections." [RySG]

"Our recommendation is that ICANN restrict DRSP to making decisions based on the facts, and not assumptions on future actions and outcomes, or that ICANN put in place a process to address any conditions represented in such proceedings. Either way, ICANN cannot continue to ignore the issue

or use the excuse that each determination is independent of others." [DGL]

Three commenters discussed the subject of the Independent Objector:

"The Independent Objector should be contractually required to withdraw his objection if a third party has objected to the same application on the same ground. The fact that the Independent Objector claimed to some applicants that 'the quality of the thirdparty objection' constituted an "extraordinary circumstance" demonstrates that the IO should not have such discretion in the future. Because multiple applicants argued that the IO had a conflict of interest that should have precluding the IO from filing an objection against their respective applications and at least one Community Objection Panel dismissed the IO's objection on this ground, there must be an initial procedure/process through which allegations that the IO has a conflict of interest can be addressed and resolved. It is shocking that applicants were forced to spend tens of thousands of dollars to defend against IO objections in which the IO appeared to (and in one case, found to) have a conflict of interest. Moreover, it is curious that ICANN staff highlighted the fact that the Independent Objector 'has represented governments as Counsel and Advocate in the International Court of Justice in many significant and well-known cases' (173) given that this representation formed the basis of the IO's conflict of interest that led one Community Objection Panel to dismiss the IO's objection." [RySG]

"For instance, in order to improve the administration of Independent Objector processes, it would have been very beneficial to invite the Independent Objector to engage with applicants during the dedicated Webinar ICANN hosted in January 2013 (quoting : 'To address these areas of interest, ICANN hosted a webinar (footnote190) to provide clarification on the DRSPs' processes, procedures, and fees.')." [UPU]

"The BC believes that community should consider whether to retain the Independent Objector function." [BC]

"The Independent Objector (IO) (if the community decides to retain this function for future rounds) must be contractually required to withdraw his/her objection if a third party has objected to the same application on the same ground. The fact that the Independent Objector claimed to some applicants that 'the quality of the third-party objection' constituted an "extraordinary circumstance" demonstrates that the IO should not have such discretion in the future." [BC]

"Because multiple applicants argued that the IO had a conflict of interest that should have precluded the IO from filing an objection against their respective applications and at least one Community Objection Panel dismissed the IO's objection on this ground, there must be an initial procedure/process through which allegations that the IO has a conflict of interest can be addressed and resolved. It is shocking that applicants were forced to spend tens of thousands of dollars to defend against IO objections in which the IO appeared to (and in one case, found to) have a conflict of interest. Moreover, it is ironic that ICANN staff highlight the fact that the Independent Objector 'has represented governments as Counsel and Advocate in the International Court of Justice in many significant and well-known cases' (173) given that this representation formed the basis of the IO's

conflict of interest that led one Community Objection Panel to dismiss the IO's objection." [BC]

Chapter 4: Contention Resolution

Three commenters addressed one of the two contention resolution mechanisms, Community Priority Evaluation (CPE) or Auction.

4.1 Community Priority Evaluation (CPE)

One commenter focused on CPE, noting several different issues with this particular contention resolution mechanism:

> "In general however, our comment is focused on the general notion that during implementation of CPE it appears that ICANN actions or decisions have consistently presented additional burdens or disadvantage to community applicants and have less likely enhanced the experience of community applicants." [DGL]

Specifically, the commenter noted issues with guidelines, timelines, and processes, among other topics of concern:

> "Not requiring the EIU to prepare and publish their CPE Guidelines prior to the closing of the application period, creating an unnecessary and unexplainable disadvantage for community applicants who were unable to make application changes at the point the CPE Guidelines were published. For purposes of fairness and equality, community applicants should have been evaluated using only materials that were publically available prior to application closing." [DGL]

> "Not cutting off the submission period for public comment to all applications at the same time it ended for standard applicants, which provided additional time for gaming and abuse against community applicants while they waited to enter CPE. For purposes of fairness and equality, each applicant should have received the same length of period for commenting." [DGL]

> "Not providing further and clearer representation of what ICANN would consider being 'spurious activity' as it relates actions taken against community applications (noted very clearly in the AGB), including having a plan of action for items brought to their attention at any stage of the new gTLD program." [DGL]

> "Not commencing CPE until every applicant in the contention set was clear of objections, creating unnecessary delays for community applicants." [DGL]

4.2 Auction: Mechanism of Last Resort

One commenter addressed the issue of direct and indirect contention auctions:

> "Although the Review discusses contention resolution mechanisms at some length, the IPC did not find any comments regarding community feedback on direct versus indirect auctions. The IPC holds

the logical view that a contention set should consist of all applications linked by string contention to one another, either directly or indirectly, and that a single contention set should necessitate a single auction. This view was not carried forward by ICANN, which moved ahead with both direct and indirect auctions. The IPC hopes to further address this issue in the Subsequent Procedures PDP." [IPC]

Another commenter addressed the specific issue of fees paid to ICANN's Auction Service Provider:

> "We saw no mention of the issue where ICANN pays the auction provider for contention sets settled just before auction; we suggest tuning the auction procedure and auction provider agreement to avoid such costs." [RySG]

Chapter 5: Transition to Delegation

Five commenters commented on the Contracting, Pre-Delegation Testing (PDT), and IANA hand-off processes. Many of the comments with regard to this section of the report had overarching relevance to other areas of the report, such as with Registry and Technical Operations evaluation (and Registry Service Provider accreditation), and the call for application processing divided by category of application:

5.1 Contracting

Three commenters provided input on the overall contracting process:

> "The BC supports the recommendations in the Report. Specifically, the BC supports exploration into the feasibility of finalizing the base RA before applications are submitted, and a process for updating the RA after execution, in certain circumstances. The BC also supports a separate RA for .BRAND TLDs." [BC]

> "In addition, while the Review cites various "interim deadlines" imposed by ICANN upon applicants who received contracting extensions (including a significant portion of .Brand applicants), the IPC notes that these deadlines were ad hoc, without basis in the Applicant Guidebook or any other ICANN policy, and imposed an undue burden on applicants." [IPC]

> "We believe that the base Registry Agreement should be adapted to each category of applicants (please see comment 1.2b on Prioritization) considering that requirements might change from one to another (specification 13, Community requirements, public authorities specificities etc.). By allowing such distinction between categories of applicants, ICANN will also simplify the Registry Agreement execution process gaining valuable time in the whole process of launching new gTLDs." [Afnic]

> "For predictability purposes we support the idea of exploring the feasibility of finalizing the base Registry Agreement before applications are submitted or establishing a (clear) process for updating the Registry Agreement. Changes in the Registry Agreement during the first round has led to a lot of uncertainty and does not constitute good business practices. From applicant's point of view, knowing precisely what Registry Agreement they will enter into before the submission of their application will increase stability and predictability. This will also have a positive impact on ICANN

image." [Afnic]

Two commenters addressed the topic of Registry Agreement (RA) negotiation:

"The IPC highlights staff's recognition that the anticipated quick execution of registry agreements never materialized. Rather, many applicants did not quickly execute their registry agreements. The Review does not mention, however, that these delays were often the result of applicants seeking to negotiate necessary amendments to their individual agreements with ICANN. The Review also does not capture the level of disappointment by many applicants, and in particular .Brand applicants, who discovered that ICANN was generally unwilling to negotiate good faith changes to individual registry agreements, despite robust legal and policy rationale provided to ICANN. Although the Review recognizes various iterations of the Base Registry Agreement to capture various stakeholder concerns, many individual applicants were not party to those negotiations with ICANN." [IPC]

"The IPC encourages the community and ICANN to consider improvements to the contracting process to enhance the negotiation process, to avoid undue time constraints and other burdens, and to anticipate any potential legal vulnerabilities to the enforceability of such contracts due to procedural flaws in the contracting process." [IPC]

"Article 7.7a of the RA should be amended to allow for groups of registries to negotiate annually on the Registry Agreement, or on the type of customised RA relevant to them. For example, the BRG on behalf of .brands could negotiate on changes to Specification 13 (or a .brand RA) and the Cities Group on changes affecting city-type domain names." [BRG]

"The definition of Applicable Registry Operators in article 7.6 of the RA should be amended to make it clear that this is Registry Operators who would actually be affected by the proposed amendment. In other words an amendment only affecting .brands would only be subject to discussion with .brand registries under this clause." [BRG]

One commenter suggested that certain commitments be made binding with the RA:

"The BC continues to believe that commitments associated with DNS security and stability and RPMs voluntarily offered by a registry applicant should become enforceable aspects of the registry's contract with ICANN. This is essential to protect business registrants and users who relied upon an applicant's commitments in order to create (or move) their registration and marketing materials to a new gTLD." [BC]

One commenter suggested that interpretation of the RA by ICANN's Compliance department be discussed in the PIRR:

"The ICANN Compliance Department seems to continually be unclear about what registries can or cannot do and what their responsibilities are or are not. This should be addressed in the draft report and ICANN should redouble its efforts in this area." [BC]

5.2 Pre-Delegation Testing and Transition to IANA

As discussed in the summary of Section 2.6 Technical and Operational Capability Evaluation, five commenters submitted comments specifically supporting the development of an accreditation program for back-end providers of registry services.

Chapter 6: Applicant Support

6.1 Applicant Support Program

Three commenters addressed the Applicant Support Program:

> "If ICANN retains the Applicant Support program, ICANN should take cost-effective steps to promote global awareness of the program." [BC]

> "The defined program was much more restricted than prescribed by GNSO Policy; it seems that eliminating any possibility of gaming was made a much higher priority than actually supporting needy applicants, to the point the program gamed itself out of actually being useful. We suggest replacing a good part of preemptive criteria with post-delegation monetary penalties like a multiple of the difference saved. If ICANN retains the Applicant Support program, ICANN should take cost-effective steps to promote global awareness of the program." [RySG]

> "We support the idea that ICANN should significantly reduce application and recurring fees for future rounds. ICANN should also consider offering waivers of application fees to developing countries' projects particularly when those projects are community-based and/or non-commercial." [Afnic]

Chapter 7: Continued Operations Instrument (COI)

7.1 Continued Operations Instrument (COI)

Issues related to Continued Operations Instruments (COIs, Emergency Back-End Registry Operators (EBEROs), and fees was written about by four commenters, who mainly echoed similar suggestions. The contributors noted challenges associated with the process and requirements (especially for .BRAND TLDs) and provided recommendations regarding minimum fees:

> "The Continued Operation Instrument (COI) process created significant challenges that required most applicants to expend far more time on obtaining an ICANN-acceptable COI than the dollar value of the COI would otherwise merit. If ICANN retains a COI requirement, it should consult with financial institutions in the countries that accounted for 75% of the applications to ensure that ICANN's requirements are consistent with the actual letter of credit practices in those countries." [BC]

> "We agree that other mechanisms besides unconditional LoCs should be used for funding EBERO. Since most of the applications required only the base level of the COI, we suggest incorporating the whole amount of one event (USD 18,000) as part of the application fee (notably by reducing the uncertainty factor used in the first round, so no actual increase would be necessary), and making both LoC and full amount deposits with ICANN available as options to fund EBERO during the time

they are required. We also note that unconditional LoCs are likely in violation of FATF recommendations, since the beneficiary is an unknown third party to be designated by ICANN. If ICANN retains a COI requirement, it should consult with financial institutions in the countries that accounted for at least 75% of the applications to ensure that ICANN's requirements are consistent with and permitted by the actual letter of credit practices in those countries." [RySG]

"A minimum fee (18,000 USD) could be included in the application fee for any applicant. ICANN may use this fee to cover the cost of transition to the EBERO. Any additional charges may be supported by the new registry Operator of a failed TLD. ICANN may also consider the excess amount paid in application fees during the previous round to secure the continuity of TLDs." [Afnic]

"The COI's objective is third party registrant protection. Dot brands do not have third party registrants. There should be no COI for .brands. Eliminate the requirement to maintain the COI for exclusive-access registries that determine that they would not desire to undergo Emergency Transition." (BRG)

Chapter 8: Program Management
Chapter 8 covers a wide range of subjects, and three commenters similarly noted a broad spectrum of issues.

8.1 Program Processes, Systems, Resources
Three commenters specifically addressed the Program Processes, Systems, Resources section of the PIRR.

"We found no mention of the issues applicants faced regarding characters that were required to describe technical documentation but were not allowed in TAS, requiring workarounds. Any application submission system needs to allow all ASCII characters no matter if they have meaning in mark-up languages or database systems, and allow a significant portion of the Unicode charset to allow proper representation of IDNs, names, locations and purposes. ICANN should take the steps and make the investment necessary to ensure that the TAS (or successor system) is secure and that the numerous 'glitches' in this version of TAS that disclosed applicant confidential data to third parties do not occur. One of those steps we suggest is a pilot testing phase for TAS and all other portals used in the process prior to the actual application round (in order to avoid multiple glitches and periods of unavailability that plagued the first round)." [RySG]

"We suggest that using the same customer service system that is already in place for registries, GDD Portal, instead of an applicant customer service system might be useful for easing up the transition for delegation." [RySG]

"The IPC recognizes the incredible operational challenges posed by the New gTLD Program, particularly in view of the significant number of applications, which went well beyond expected numbers. That said, the Review makes clear—and the IPC agrees—that the Program was rushed, placing an undue burden on staff and the community to develop and implement operational, yet flawed, systems. The IPC, like other stakeholders, remains concerned by the number of reported security issues involved in relation to several Program resources, such as the TLD Application System

(TAS) and Customer Portal. The IPC therefore strongly supports the staff recommendation that in future applications, the timeline should permit appropriate time and resources for system development and testing." [IPC]

"For just one instance, section 8.1.4.2 describes troubling security breaches associated with the Customer Portal, but the conclusion merely states that 'the system development process may have benefited from leveraging industry standard best practices for product development.' We believe ICANN has missed an important opportunity to earn the full trust of the community by accepting full responsibility of all aspects of program implementation, and publishing details of the failings and improvements that will help prevent future missteps. " [BC]

8.2 Service Provider Consideration

Two commenters supported the lesson learned that ICANN should provide transparency and predictability to the procurement process by following ICANN's procurement guidelines (e.g., publishing selection criteria, providers' process documents, and other relevant and non-confidential material in a timely manner). [RySG, BC]

One commenter discussed requirements related to the prevention of conflict of interest in evaluation panels:

"Employees/contractors of third-party firms retained as Evaluation Panels should not be permitted to participate in those panels if such employee/contractor has been an active member of an ICANN Supporting Organization, Advisory Committee, Stakeholder Group, or Constituency in the preceding 2 years. This prohibition will avoid the appearance of impropriety and conflicts of interest. ICANN should provide training to all DRSPs to ensure that all panelists have a consistent baseline understanding of the objection criteria, should require all DRSPs to publish their panelist selection criteria before the objection window opens, and should require all DRSPs to include in their RFP responses strict timelines that will apply to the processing and resolution of all objections (and that are shorter than the timelines used by the DRSP for Community and Limited Public Interest Objections)." [RySG]

8.3 Financial Management

One commenter sought more discussion of lessons learned regarding financial and risk management:

"In addition, with respect to fees, the IPC strongly supports financial evaluation vis-à-vis the cost recovery model expected for the New gTLD Program. Consideration should be given toward reducing fees in future rounds, in particular for certain categories of applicants, including those whose applications may require a less extensive evaluation process, such as applicants for closed .Brand TLDs." [IPC]

"IPC was surprised to see that Section 8.3 of the Review, dealing with financial management, is the only section of the entire Review for which no key 'lessons learned' are provided either in the conclusion of the section or in the executive summary of the Review. At the same time we are surprised that there seems to be no discussion anywhere in the Review of the decision made in 2010 to build into the application fee a $60,000 'contingency reserve' for the purposes of risk

management, and whether this sum proved to be too small, too large, or just right. IPC hopes that this question, with its obvious implications for the purported cost recovery nature of the current new gTLD application fee, will be fully and publicly analyzed at some point before further steps are undertaken toward a subsequent round." [IPC]

8.4 Communications

One commenter discussed communications in terms of outreach:

"We found communications to end users regarding the existence of new gTLDs, after the beginning of delegations, lacking. This still reflects today in people not recognizing some new gTLDs as domain names, which can make for bad decisions regarding security or how to reach that online content or service. The same can be said about communications to the software and online services community, which lead to acceptance issues. We suggest defining an additional offshore zone, for sake of clarity in regional breakdown and more even distribution of applications (some large companies used it to apply for TLD and thus were represented as the company from the EUROPE region, where they do not run major operations). Ocean islands do not belong to Europe in geographical terms." [RySG]

One commenter addressed the topic of awareness and Universal Acceptance:

"We would like to add an observation with relation to Universal Acceptance and how it could be much better anticipated at the next application round. Indeed, one can notice that the Universal Acceptance issue became actually visible only once a substantial number of ngTLDs got operational. ICANN started then raising awareness and asked the TLD community to relay the message for outreach. Some ngTLD applicants disappointedly discovered that their ngTLD wouldn't be fully accepted by all Internet applications, such as in Web forms or email platforms. For the next application round to avoid such a bad surprise, the applicants should be made well aware from the beginning that depending on their choice of TLD string, they might get in trouble later, even if all efforts are made by the Internet community to mitigate the risk of unabailability of some Internet services due to a lack of acceptance." [Afnic]

8.5 Customer Service

One commenter submitted a comment on the topic of customer service:

"Although we agree that customer service is critical and welcome improvements in this regard, we note that careful planning and overall streamlining of the process can have a much larger impact in reducing the need for requesting customer service." [RySG]

Other Comments

ICANN appreciates all comments submitted by the community on the PIRR. However, three commenters submitted comments that are outside the scope of this review:

"Further, the draft report does not adequately address certain registry practices, such as Qualified Launch Programs, Reserved Names, Premium Names, and Sunrise Pricing. The BC requests greater

transparency and detailed data on the effect that such practices have on such RPMs at the second level." [BC]

"With regard to Trademark Claims Notices and the TMCH, greater transparency and metrics, particularly in connection with user awareness and usability, would be helpful to the community in determining points of needed improvement. It is apparent that the TMCH has been generally underutilized, which in turn affects the usefulness of other RPMs. Accordingly, the BC advocates for further outreach to rights owners in underserved areas or areas underutilizing the RPMs to ensure greater global participation." [BC]

"We would like to point out the complexity of the Right Protection Mechanism (RPM) requirements that had to be implemented during the Launch phases. Those requirements have forced TLDs to comply with a very rigid launch policy not always adapted to their purpose (Geographic, Brand and Community). Furthermore, in the case of geographic/community TLDs, specific launch programs allowing for example public authorities to have priority over TMCH during Sunrise phases, have rarely been approved by ICANN within reasonable time frame. As a matter of fact, the delays imposed by ICANN to approve specific launch programs were conflicting with TLDs launch plans and has led to many inconveniences (financial, administrative and commercial). For those reasons, we would like to invite ICANN to reconsider RPM processes for future rounds. So far, those processes never demonstrated their efficiency with regard to the protection of rights and have brought useless expenses. Besides, Afnic strongly recommend that ICANN includes PGI (protected geographical indication) in these processes." [Afnic]

"The most efficient function ICANN performs is to add .domains to the system. It is not difficult to be able to take applications for new domains and then decide whether or not to grant those applications based on a defined set of metrics and requirements, and it is very easy to delete a domain that is not keeping its end of the bargain. I would ask whether or not one person could perform this function, rather than ICANN, with an oversight review board that reports to the public about the efficiency of that office each month? The one person would be one of ten people who randomly would be selected to perform that function on the first of each month, with the other nine non-functioning workers randomly ordered on the first of the month to replace the person in charge of the system if the oversight review board finds inefficiency in the work being performed, reporting to the global public on the 15th of each month?" [RB]

Section IV: Analysis of Comments

General Disclaimer: _This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis._

ICANN thanks commenters for their numerous submissions on topics related to the Draft Program Implementation Review report (PIRR). Many of the comments conveyed their support for the lessons learned discussed in the report, and as summarized above, many comments provided suggestions for improvements to the implementation of the New gTLD Program. ICANN appreciates these suggestions and will make them available for consideration by the Competition, Consumer Trust, and Consumer Choice (CCT) Review Team

via the Summary section of this Report of Public Comments. Within the Analysis section, ICANN has also provided clarification on topics where additional information may be beneficial to the commenters or the CCT Review Team. ICANN notes that many of the suggested improvements would require changes to the Applicant Guidebook (AGB). Accordingly, these suggestions should be taken into consideration during the AGB-development process for future application rounds, in addition to any additional or revised Policy that results from ongoing work in the community.

Overall Report

One comment posed a question regarding which staff members' experiences were included within the PIRR.

> "On its face, the scope of this review is limited to 'the experiences of the ICANN staff members charged with executing the New gTLD Program.' The report does not identify which staff members, does not indicate whether former staff members were contacted about their experiences, does not represent that this report is an exhaustive summary (as opposed to illustrative), and does not disclose the methodology used to determine which experiences are included – and which are excluded. Accordingly, the review in its current form warrants correspondingly limited deference by the CCT Review Team." [RySG]

As described in the Foreword to the PIRR, the report documents the "experiences of ICANN staff members charged with executing the New gTLD Program." While only current staff were involved with the drafting of the PIRR, the team that wrote the PIRR based the report's findings on historical records kept by ICANN staff on various processes, information from internal systems, and publicly available information. To supplement this, current staff provided insight and perspective on relevant aspects of the New gTLD Program. The report includes input from staff who have supported aspects of the New gTLD Program since its inception. That said, ICANN reiterates that the report is a high-level overview of the experiences of ICANN staff charged with implementing the New gTLD Program, and does not represent a full and complete recitation of all facts and events associated with the New gTLD Program. The PIRR has been updated to reflect this point.

Chapter 1 Analysis: Application Processing

Application Comments

One commenter discussed the effects of the time period for which the window for application comments was open:

> "Because ICANN has chosen to place the CPE at the end of the contention resolution spectrum and ICANN has chosen to allow the comment period to remain open until CPE commenced, it has created a much larger burden on community applicants and made them targets in the process." [DGL]

Per Applicant Guidebook (AGB) Section 1.1.2.3,

> "Public comment mechanisms are part of ICANN's policy development, implementation, and operational processes. As a private-public partnership, ICANN is dedicated to: preserving the operational security and stability of the Internet, promoting competition, achieving broad representation of global Internet communities, and developing policy appropriate to its mission

through bottom-up, consensus-based processes."

To support ICANN's commitment to the multi-stakeholder process, the application comment forum has been left open for all applications for the duration of the New gTLD Program, including for community applications. As applications move through the process at varying paces, ICANN considers it useful to allow for comment and new information to be submitted on community applications as they approach Community Priority Evaluation (CPE). Although the application comment forum has been left open for the duration of the New gTLD Program, it is only guaranteed that the CPE Panel will consider materials received within 14 days from a community application's invitation to CPE.

Application Submission

One commenter requested guidance on the extent to which the plans described in a new gTLD application were legally binding on an applicant:

> "The IPC has previously posited that some in the community may come to have a reliance interest on certain commitments made in new gTLD applications, although there is no clear guidance from ICANN as to whether ICANN views these commitments as legally binding, or whether they are subsumed or superseded by the registry agreement and public interest commitments ultimately executed between the applicant (then registry operator) and ICANN." [IPC]

ICANN would like to offer some clarification on this topic. Upon submitting an application, applicants agreed to its terms and conditions including those defined in Module 6 of the Applicant Guidebook which state in Section 1:

> "Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on these statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading."

Upon submitting application materials and agreeing to these statement an applicant warranted to ICANN the truth, accuracy and completeness of the materials. As such, ICANN evaluated these statements during the application process with the expectation that they were true, accurate and complete.

Upon execution of the Registry Agreement (RA) by both parties, it became the legally binding contract between ICANN and a registry operator subject to its provisions including the Entire Agreement provision found in Section 7.10 which states:

> "**Entire Agreement.** This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties

hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, between parties on the subject."[1]

Additionally, it should be noted that there are several components of the application that are incorporated into a TLD's RA in the form of binding commitments, for example:

- Exhibit A of the RA describes all of a registry operator's approved registry services and was composed in part from application materials and statements. The information in Exhibit A of the RA is may also be updated to add new registry services after the RA has been executed subject to the Registry Services Evaluation Policy (RSEP). The information in Exhibit A of the RA is also subject to ICANN's Contractual Compliance Program requirements.

- Some applicants also submitted voluntary Public Interest Commitments (PICs). These voluntary PICs are incorporated into Specification 11 of the RA. These commitments are also subject to the Public Interest Commitment Dispute Resolution Procedure (PIDDRP) and ICANN's Contractual Compliance Program requirements pursuant to the terms of the RA.

- For community-based applicants, the applicant's proposed registration policies (as defined in the application) are incorporated into Specification 12 of the RA. These policies are subject to the Registration Restrictions Dispute Resolution Procedure (RRDRP) and ICANN's Contractual Compliance Program requirements pursuant to the terms of the RA.

Chapter 2 Analysis: Evaluation

Background Screening

One commenter submitted a comment on the topic of background screening, regarding the effectiveness of the process:

> "[. . .] the IPC continues to question the overall effectiveness of the background screening employed by ICANN, particularly given the apparent ability for serial cybersquatters to circumvent the process through loopholes for shell corporations." [IPC]

> "IPC was also surprised to learn that applicants whose affiliates had incurred large debts to ICANN were not screened out and were not required to satisfy their previous obligations before their applications passed initial evaluation. This is another loophole that must be closed in any subsequent round." [IPC]

ICANN would like to offer clarification on the process used to perform background screens. ICANN worked with the background screening provider to develop a robust background screening process that would support the criteria in the AGB, including background screens of the applying entity, officers, directors, and major shareholders for general business diligence, criminal history, and history of cybersquatting behavior. To address cybersquatting behavior specifically, the background screening provider reviewed public records

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[1] ICANN. (9 January 2014) Registry Agreement. Retrieved from
https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.pdf

of Uniform Domain-Name Dispute-Resolution Policy (UDRP) proceedings. If an initial background screen result did not clearly satisfy the AGB criteria for an application, ICANN and the background screening provider performed additional due diligence to ensure a more comprehensive review of the entity or individual. For some applications, ICANN staff performed several rounds of outreach to the applicant in order to acquire additional information that would better inform the background screening provider and to ensure that the appropriate parties were being evaluated.

In addition to the process driven by the background screening provider and ICANN, the application comments forum provided a mechanism for anyone to submit comments on any applicant. As of 31 December 2015, ICANN received 1,492 comments on background screening. For each applicant, the comments were reviewed and considered during the background screen.

DNS Stability

One comment stated that ICANN should,

> "Consider whether the name collision issue should have been resolved with reference to the SSAC recommendation prior to the opening of the application window, thereby avoiding wasting of resources by numerous parties and (2) Consider whether the ICANN Board should be required to treat SSAC Advice with any special level of deference in connection with the next round of gTLD applications and to seek and implement such advice well prior to launching a next round, and more specifically with respect to the name collision issue." [USPS]

The advice that was issued by the SSAC through SAC045 in November 2010 was considered and incorporated into the development of the AGB and the DNS Stability evaluation. Section 2.4: DNS Stability Evaluation of the PIRR has been updated to reflect this.

ICANN recognizes that there may be lessons to be learned from the name collision issue and the implementation of the mitigation plan. ICANN supports the GNSO's discussions on this topic, as well as future discussions among other members of the ICANN or technical community.

Geographic Names

Three commenters submitted comments relating to the Geographic Names evaluation and designation.

> "From our experience, the critical aspect of granting an application any form of Geographic Name designation lies in a clear support of public authorities. This support must also be easily verified by the community." [Afnic]

> "ICANN should retain the current definition of and approach to Geographic Names, which was developed after multiple iterations of the AGB (and community comment) as well as a Board-GAC consultation. There should be no purpose to the Geographic Name designation other than the limited evaluative purpose in the AGB." [RySG]

"In regards to the lessons learned on the Geographic Names designation and evaluation: This touches on a sensitive policy area. The BRG would like more information." [BRG]

ICANN acknowledges these comments and the various areas of consideration that surround this topic. Work is currently being performed within the community on this topic:

- GNSO Final Issue Report on New gTLD Subsequent Procedures[2]
- GAC Working Group to Examine the Protection of Geographic Names in any Future Expansion of gTLDs[3]
- Cross-Community Working Group on Use of Country/Territory Names as TLDs[4]

Recommendations that result from this work will be given appropriate consideration in the development of future application rounds.

Chapter 3 Analysis: Objections & Dispute Resolution

Objections Procedures

Several comments were submitted on the topic of a review or appeal mechanism for objections:

"We support adding a review mechanism, noting that RfR/IRP proceedings were not tailored to application processes due to limitations on scope, causing delays and disproportionate costs for applicants. We also note that such a review process should also grant standing to any member of the contention set(s) affected by the review." [RySG]

"[. . .] the IPC looks forward to seeking to improve the Objection mechanisms and appeal process for future rounds in light of the lessons from the 2012 round." [IPC]

"Indeed, based on our experience as well as the disparity of rulings issued for similar situations, we strongly encourage ICANN to explore the possibility for an affordable appeals/review mechanism for the next round." [UPU]

"[. . .] it has become very clear that the lack of an appeals process has left applicants misunderstood and paralyzed in the process. [. . .] it is our recommendation that ICANN have the courage to do what

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[2] Generic Names Supporting Organization. (4 December 2015) GNSO Final Issue Report on New gTLD Subsequent Procedures. Retrieved from http://gnso.icann.org/en/issues/new-gtlds/subsequent-procedures-final-issue-04dec15-en.pdf

[3] ICANN Governmental Advisory Committee. Webpage: GAC Working Group to Examine the Protection of Geographic Names in any future Expansion of gTLD. Retrieved from https://gacweb.icann.org/display/gacweb/GAC+Working+Group+to+Examine+the+Protection+of+Geographic+Names+in+any+Future+Expansion+of+gTLDs

[4] Country code Names Supporting Organization. Webpage: Cross-Community Working Group on Use of Country/Territory Names as TLDs. Retrieved from http://ccnso.icann.org/workinggroups/ccwg-unct.htm

is right and tackle this issue immediately." [DGL]

The GNSO policy recommendations on the introduction of new gTLDs did not provide specific guidance on the topic of appeals. Although the concept of appeals for various Program processes (including evaluation, Objections, and Community Priority Evaluation) was raised during the AGB development process, it was not included in the final version of the AGB. At a high level, one rationale for not including such a process was that it would reduce efficiency:

> "Therefore, adding an appeal opportunity to the scoring process would add complexities to the process and impose substantial delays for the process and for all applicants involved. This reasoning is in line with the approach taken for most of the sub-processes, with a view to maximizing the overall efficiency of the New gTLD Program."[5]

Although an appeals mechanism did not exist in the 2012 application round, this subject has been identified as a topic for consideration by the GNSO in its Final Issue Report on New gTLD Subsequent Procedures.[6] It may be considered within the formal Policy Development Process on New gTLD Subsequent Procedures or within the AGB-development process for future rounds.

Chapter 4 Analysis: Contention Resolution

Community Priority Evaluation

One commenter highlighted an area of where the information presented about Community Priority Evaluation (CPE) was unclear.

> "On page 123 of the report CQs in CPE are described as being issued in instances where the panel required the applicant to 'address any application comments that may impact the scoring of their application' and 'address any letters of opposition.' Reading of this statement would suggest that any applicant being threatened with point loss in CPE for Criteria #4 would have received a CQ from the EIU." [DGL]

The CPE Panel Process Document states, "[i]f the core team so decides, the EIU may provide a clarifying question (CQ) to be issued via ICANN to the applicant to clarify statements in the application materials and/or to inform the applicant that letter(s) of support could not be verified."[7] Accordingly, CQs may have been issued in instances where application comments may have impacted the score of the application. However, it is not required that the CPE Panel issue CQs. ICANN has updated the section on CPE in the PIRR to clarify the use of Clarifying Questions (CQ) in CPE.

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[5] ICANN. (May 2009) Analysis of Public Comment of the New gTLD Application Guidebook Version 2. Retrieved from https://archive.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf

[6] Generic Names Supporting Organization. (4 December 2015) Final Issue Report on New gTLD Subsequent Procedures. Retrieved from http://gnso.icann.org/en/issues/new-gtlds/subsequent-procedures-final-issue-04dec15-en.pdf

[7] The Economist Intelligence Unit. (6 August 2014) CPE Panel Process Document. Retrieved from http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf

Auction

Additionally, ICANN would like to provide supplemental information in relation to two comments on the Auction process.

One comment addressed the concept of direct and indirect auctions:

> "The IPC holds the logical view that a contention set should consist of all applications linked by string contention to one another, either directly or indirectly, and that a single contention set should necessitate a single auction. This view was not carried forward by ICANN, which moved ahead with both direct and indirect auctions. The IPC hopes to further address this issue in the Subsequent Procedures PDP." [IPC]

The AGB provides for the existence of both direct and indirect contention. ICANN collaborated with Power Auctions LLC and solicited public comment in the development of the direct auction rules.[8] To facilitate the resolution of contention sets with both direct and indirect contention, ICANN again worked in collaboration with Power Auctions LLC to design a set of rules for indirect contention.[9] The indirect auction rules allowed both types of contention to be resolved within a single auction, and were intended to address the more complex nature of an indirect auction, including the different economics behind this type of auction.

The rules call for a direct contention auction in cases where only direct contention exists. If both indirect and direct contention exist (direct contention is inherent to any set where indirect contention exists), the indirect contention auction rules are used.

Another comment addressed the fees paid to ICANN's Auction Service Provider, Power Auctions, LLC:

> "We saw no mention of the issue where ICANN pays the auction provider for contention sets settled just before auction; we suggest tuning the auction procedure and auction provider agreement to avoid such costs." [RySG]

The document "Summary of Auction Development and Management Agreement with Power Auctions" details the costs associated with the agreement between ICANN and Power Auctions LLC, including the $10,000 cancelation fee.[10] In part, this fee covers the work and time required by Power Auctions in preparing the auction. ICANN has minimized these fees by confirming each auction with Power Auctions LLC as close as possible to the time when Power Auctions LLC needs to begin its preparation work (at least 21 days prior to

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[8] Power Auctions LLC. (3 November 2014) Auction Rules for New gTLDs. Retrieved from http://newgtlds.icann.org/en/applicants/auctions/rules-03nov14-en.pdf

[9] Power Auctions LLC. (24 February 2015) Auction Rules for New gTLD: Indirect Contentions Edition. Retrieved from http://newgtlds.icann.org/en/applicants/auctions/rules-indirect-contention-24feb15-en.pdf).

[10] ICANN. (Updated 7 October 2014) Summary of Auction Development and Management Agreement with Power Auctions. Retrieved from http://newgtlds.icann.org/en/applicants/auctions/summary-development-management-agreement-07oct14-en.pdf

the auction). However, because ICANN is not aware of when or if contention sets will self-resolve, it is sometimes necessary to proceed with the process and confirm the auction. ICANN considered whether it should begin the "quiet period" (the period which prevents applications from continuing to work towards self-resolution of the contention set) at the same time that it commits the minimum fees to the Auction provider. However, it was ultimately decided that incurring some cancelation fees would be reasonable if it maximized the amount of time available for applicants to resolve contention without an ICANN-facilitated Auction.

Chapter 5 Analysis: Transition to Delegation

Contracting Process

ICANN received several comments on the topic of negotiation to the RA, both for applicants/registry operators and groups of registry operators. ICANN has provided clarification in response to the comments below.

> "The Review does not mention, however, that these delays were often the result of applicants seeking to negotiate necessary amendments to their individual agreements with ICANN. The Review also does not capture the level of disappointment by many applicants, and in particular .Brand applicants, who discovered that ICANN was generally unwilling to negotiate good faith changes to individual registry agreements, despite robust legal and policy rationale provided to ICANN." [IPC]

To date, approximately 180 applicants have requested to negotiate the terms of the RA with ICANN. ICANN considered all requests, and in the majority of cases, the negotiation process was complete within six months. However, in the interest of preserving the RA in the form presented to the community and approved by the ICANN Board, and to maintain consistency with the RA executed by other members of the registry population, ICANN did not typically incorporate major changes to the RA requested by applicants. This supports AGB Section 5.1, which states,

> "All successful registry operators are expected to enter into the agreement substantially as written. Applicants may request and negotiate terms by exception; however, this extends the time involved in executing the agreement. In the event that material changes to the agreement are requested, these must first be approved by the ICANN Board of Directors before execution of the agreement."

As of 31 December 2015, ICANN had executed over 1,250 Registry Agreements for new gTLDs, which may be viewed on the ICANN website (https://www.icann.org/resources/pages/registries/registries-agreements-en). Each TLD's Registry Agreement is published with a redlined version showing the changes relative to the standard Registry Agreement.

Two commenters made suggestions relating to the negotiation process, amendments, and commitments relating to DNS security and rights protection mechanisms:

> "Article 7.7a of the RA should be amended to allow for groups of registries to negotiate annually on the Registry Agreement, or on the type of customised RA relevant to them." [BRG]

"The definition of Applicable Registry Operators in article 7.6 of the RA should be amended to make it clear that this is Registry Operators who would actually be affected by the proposed amendment. In other words an amendment only affecting .brands would only be subject to discussion with .brand registries under this clause." [BRG]

"The BC continues to believe that commitments associated with DNS security and stability and RPMs voluntarily offered by a registry applicant should become enforceable aspects of the registry's contract with ICANN. This is essential to protect business registrants and users who relied upon an applicant's commitments in order to create (or move) their registration and marketing materials to a new gTLD." [BC]

The three updates suggested above would represent changes to the base RA. The Negotiation Process is defined in detail in Section 7.7 of the Registry Agreement.[11] ICANN suggests that relevant members of the Brand Registry Group, Business Constituency, and other interested registries raise this topic during the annual negotiations between ICANN and gTLD registries.

One commenter made a statement regarding the ICANN Compliance Department's interpretation of the RA:

"The ICANN Compliance Department seems to continually be unclear about what registries can or cannot do and what their responsibilities are or are not. This should be addressed in the draft report and ICANN should redouble its efforts in this area." [BC]

The operation of the Contractual Compliance department is not within the scope of the PIRR. However, ICANN welcomes the ICANN Business Constituency's participation in continuing conversations between ICANN and the community regarding contract interpretation. As relevant, additional elaboration or additions to provisions of the contract may be a topic for the GNSO PDP on New gTLD Subsequent Procedures.

Chapter 6 Analysis: Applicant Support

Three commenters addressed the Applicant Support Program.

One commenter stated,

"If ICANN retains the Applicant Support program, ICANN should take cost-effective steps to promote global awareness of the program." [BC]

ICANN made a substantial effort to promote global awareness of the New gTLD Program in underrepresented regions. These have been described in detail within Section 8.4: Communications of the

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[11] ICANN. (9 January 2014) Registry Agreement. Retrieved from
https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.pdf

PIRR. Additionally, ICANN announced the Applicant Support Program and the search for the Support Applicant Review Panel on its website; 80 individuals from various global regions responded.[12] As highlighted in Lesson Learned 8.4.b of the PIRR, since 2012, ICANN has developed a robust Global Stakeholder Engagement team, which should be leveraged for future rounds to further promote awareness within various regions.

One commenter suggested that the Applicant Support Program was not aligned with GNSO Policy.

> "The defined program was much more restricted than prescribed by GNSO Policy; it seems that eliminating any possibility of gaming was made a much higher priority than actually supporting needy applicants, to the point the program gamed itself out of actually being useful." [RySG]

Implementation Guideline N of the GNSO's Final Report on the Introduction of New gTLD states, "ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed."[13] However, the GNSO policy recommendations and implementation guidelines do not specifically describe an applicant support program. ICANN developed the Applicant Support Program for the 2012 application round in consultation with the community. As described in the PIRR,

> "In line with the GNSO's Implementation Guidance and with consideration to the comments submitted by ICANN stakeholders, on 12 March 2010, the ICANN Board resolved that: '[. . .] the Board recognize[d] the importance of an inclusive New gTLD Program' and 'request[ed] stakeholders to work through their [Supporting Organizations (SOs)] and [Advisory Committees (ACs)], and form a Working Group to develop a sustainable approach to providing support to applicants requiring assistance in applying for and operating new gTLDs.' "[14]

The Joint Applicant Support Working Group (JAS WG), created after the 12 March 2010 ICANN Board resolution,[15] developed a Final Report with recommendations for the criteria and process. The Final Report drove the work that the community, the ICANN Board, and ICANN staff undertook to finalize and implement the Applicant Support Program.

Chapter 7 Analysis: Continued Operations Instrument

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[12] ICANN. (23 May 2013). ICANN Acknowledges Members of the Support Applicant Review Panel. Retrieved from http://newgtlds.icann.org/en/announcements-and-media/announcement-28may13-en

[13] ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

[14] ICANN. (16 September 2015) Draft Program Implementation Review Report. Retrieved from http://newgtlds.icann.org/en/reviews/implementation/draft-program-review-16sep15-en.pdf

[15] ICANN. (12 March 2010) Adopted Board Resolutions | Nairobi, 20. Support for Applicants Requesting New gTLD Applicants. Retrieved from https://www.icann.org/resources/board-material/resolutions-2010-03-12-en#20

ICANN appreciates the various comments submitted on the topic of the Continued Operations Instrument (COI). ICANN recognizes that there have been challenges in the applicant experience with regard to COIs and has consulted with banks to improve the process. For example, in September 2015, ICANN instituted a new process for amending COIs and announced Bank of America as its advising bank.[16] ICANN welcomes suggestions for improvement on this topic and hopes that many of the issues identified by commenters will be considered as the Program moves forward.

ICANN has provided clarification regarding two specific comments on COIs.

One commenter suggested that the AGB's requirement for letters of credit to be able to be unconditionally released to ICANN or its beneficiary might be infeasible for some applicants.

> "We also note that unconditional LoCs are likely in violation of FATF recommendations, since the beneficiary is an unknown third party to be designated by ICANN." [RySG]

In regards to the beneficiary requirement, ICANN acknowledges that the AGB requirement of naming "ICANN or its designee" as the beneficiary of the letter of credit may have presented a challenge for applicants in some jurisdictions. To address this, ICANN published New gTLD Advisory R1-AO2-0050 on 5 February 2013, stating that applicants had the alternative option of naming ICANN as the beneficiary and making the letter of credit fully transferable or assignable by ICANN, in ICANN's sole discretion.[17]

One commenter suggested that that there should be no COI requirement for .BRANDs:

> "The COI's objective is third party registrant protection. Dot brands do not have third party registrants. There should be no COI for .brands. Eliminate the requirement to maintain the COI for exclusive-access registries that determine that they would not desire to undergo Emergency Transition." (BRG)

Per Section 5.4.1 of the AGB "What is expected of a Registry Operator," all registry operators must maintain a COI in order to comply with the Emergency Back-End Registry Operator (EBERO) Program. This requirement applied to all new gTLDs, and a definition for .BRAND gTLDs was not included in the AGB for the 2012 application round. While a suggestion to modify the requirements related to the EBERO Program was submitted and considered by ICANN during the development of Specification 13, changes to the EBERO requirement were not included in the approved version of Specification 13.[18] However, this concern and

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[16] ICANN. (15 September 2015) ICANN Announces New Continued Operations Instrument (COI) Amendment Service. Retrieved from https://www.icann.org/resources/pages/coi-2015-09-28-en

[17] ICANN. (5 February 2013). New gTLD Applicant Advisory: Beneficiary Requirement on Letters of Credit. Retrieved from http://newgtlds.icann.org/en/applicants/advisories/loc-beneficiary-requirement-05feb13-en

[18] ICANN. (14 March 2014) Report of Public Comments: Proposal for a Specification 13 to the ICANN Registry Agreement to Contractually Reflect Certain Limited Aspects of ".Brand" New gTLD. Retrieved from https://www.icann.org/en/system/files/files/report-comments-spec13-14mar14-en.pdf

others suggestions submitted relating to the Continued Operations Instrument should be taken into consideration for the development of future rounds.

Chapter 8 Analysis: Program Management

ICANN would like to address a few different subjects noted by commenters regarding program management.

Program Processes, Systems, Resources

One commenter suggested that ICANN has not accepted responsibility for all aspects of program implementation, including the security issues in applicant facing systems.

> "For just one instance, section 8.1.4.2 describes troubling security breaches associated with the Customer Portal, but the conclusion merely states that 'the system development process may have benefited from leveraging industry standard best practices for product development.' We believe ICANN has missed an important opportunity to earn the full trust of the community by accepting full responsibility of all aspects of program implementation, and publishing details of the failings and improvements that will help prevent future missteps." [BC]

With regard to the TLD Application System (TAS), ICANN experienced a technical issue during the application window and took the system offline from 12 April 2012 to 21 May 2012. ICANN posted 23 announcements on this topic during April and May 2012 and offered full refunds to applicants that chose to withdraw before Reveal Day. ICANN has provided details as to the nature of the issue and the impacted population within Section 8.1: Program Processes, Systems, Resources of the PIRR.

With regard to the Applicant and GDD Portals, ICANN experienced a security issue and took the system offline from 27 February 2015 to 2 March 2015. The findings of ICANN's investigation are detailed within Section 8.1: Program Processes, Systems, Resources of the PIRR. ICANN provided frequent updates to the community on this topic, and provided impacted parties with the name(s) of the user(s) whose credentials were used to view information without authorization.

Financial Management

One commenter noted there were no key lessons learned identified for Section 8.3: Financial Management.

> "IPC was surprised to see that Section 8.3 of the Review, dealing with financial management, is the only section of the entire Review for which no key 'lessons learned' are provided either in the conclusion of the section or in the executive summary of the Review." [IPC]

In the conclusion to Section 8.3: Financial Management, ICANN stated, "Before fees are defined for the next round, a review of Program financials should be undertaken." ICANN has updated the PIRR, including the Executive Summary and Annex 1. Summary of Lessons Learned, to capture this key lesson learned.

The commenter also addressed the application fee more specifically, as well as the "contingency reserve":

> "At the same time we are surprised that there seems to be no discussion anywhere in the Review of

the decision made in 2010 to build into the application fee a $60,000 'contingency reserve' for the purposes of risk management, and whether this sum proved to be too small, too large, or just right. IPC hopes that this question, with its obvious implications for the purported cost recovery nature of the current new gTLD application fee, will be fully and publicly analyzed at some point before further steps are undertaken toward a subsequent round." [IPC]

During the development of the New gTLD Program, ICANN published multiple memoranda on the cost considerations of the New gTLD Program, which discussed the breakdown of the application fee and its various allocations.[19,20,21] It was determined that $60,000 of the application fee would be used for contingency and unforeseen costs. ICANN has acted in accordance with this decision, and these costs are reported publicly in ICANN's annual budget and operating plan.[22] Additionally, a full cost reporting is expected at the close of the Program, as referenced in Section 8.3 of the report.

Other Comments

Two commenters raised the topics of registry practices and rights protection mechanisms as the second level, which were not in the scope of the PIRR.

"Further, the draft report does not adequately address certain registry practices, such as Qualified Launch Programs, Reserved Names, Premium Names, and Sunrise Pricing. The BC requests greater transparency and detailed data on the effect that such practices have on such RPMs at the second level." [BC]

"With regard to Trademark Claims Notices and the TMCH, greater transparency and metrics, particularly in connection with user awareness and usability, would be helpful to the community in determining points of needed improvement." [BC]

"We would like to point out the complexity of the Right Protection Mechanism (RPM) requirements that had to be implemented during the Launch phases. [. . .] For those reasons, we would like to invite ICANN to reconsider RPM processes for future rounds." [Afnic]

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[19] ICANN. (24 October 2008) New gTLD Program Explanatory Memorandum: Cost Considerations of the New gTLD Program. Retrieved from http://archive.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf

[20] ICANN. (4 October 2009) New gTLD Program Explanatory Memorandum: Update to the Cost Considerations of the New gTLD Program. Retrieved from https://archive.icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf

[21] ICANN. (22 October 2010) New gTLD Program Explanatory Memorandum: New gTLD Budget. Retrieved from https://archive.icann.org/en/topics/new-gtlds/explanatory-memo-new-gtld-program-budget-22oct10-en.pdf

[22] ICANN. Webpage: Current Year Financial Information. Retrieved from https://www.icann.org/resources/pages/governance/current-en

ICANN encourages these commenters to review the Rights Protection Mechanisms Review, a review and analysis of the effectiveness of safeguards built into the New gTLD Program.[23] Additionally, some Registry Agreement terms may be subjects of the Policy Development Process on New gTLD Subsequent Procedures.[24]

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[23] ICANN. (11 September 2015) Rights Protection Mechanism Review: Revised Report. Retrieved from http://newgtlds.icann.org/en/reviews/rpm/rpm-review-11sep15-en.pdf

[24] Generic Names Supporting Organization. (5 December 2015) Final Issue Report on New gTLD Subsequent Procedures. Retrieved from https://gnso.icann.org/en/issues/new-gtlds/subsequent-procedures-final-issue-04dec15-en.pdf