GAC Meeting with the Noncommercial Stakeholder Group (NCSG)

Session 7

Session Agenda

During this session, the GAC and the Noncommercial Stakeholder Group (NCSG) will meet to discuss policy matters of common interest.

At ICANN82, the joint session will focus on the following issues:

1. Human Rights Impact Assessment (HRIA) on Domain Names System (DNS) Abuse
2. gTLD Applicant Support

Background

The NCSG is an umbrella for the Non-Commercial Users (NCUC) and Not-for-Profit Organizations Constituency (NPOC). It represents the interests of non-commercial domain name registrants and end-users in formulating the Domain Name System policy within the Generic Names Supporting Organisation (GNSO). We are proud to have individual and organizational members in over 160 countries, and as a network of academics, Internet end-users, and civil society actors, etc, we represent a broad cross-section of the global Internet community. Since our predecessor's inception in 1999, we have facilitated global academic and civil society engagement in support of ICANN's mission, stimulating an informed citizenry and building their understanding of relevant DNS policy issues.

Key Reference Documents

- NCSG Web Page
- See appended documentation:
  - NCSG Comments on Second Proceeding for Proposed Language for Draft Sections of the Next Round Applicant Guidebook
  - NCSG Comments on Third Proceeding for Proposed Language for Draft Sections of Next Round AGB
  - NCSG Comments on Review of the Draft Applicant Support Program (ASP) Handbook – New gTLD Program
  - Human Rights Impact Assessment and ICANN (NCSG)

Document Administration

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Second Proceeding for Proposed Language for Draft Sections of the Next Round Applicant Guidebook

NCSG Comments

September 21, 2024

About NCSG

NCSG represents the interests of non-commercial domain name registrants and end-users in formulating the Domain Name System policy within the Generic Names Supporting Organisation (GNSO). We are proud to have individual and organizational members in over 160 countries, and as a network of academics, Internet end-users, and civil society actors, etc, we represent a broad cross-section of the global Internet community. Since our predecessor's inception in 1999, we have facilitated global academic and civil society engagement in support of ICANN's mission, stimulating an informed citizenry and building their understanding of relevant DNS policy issues.

About this Public Comment

1) Is the proposed Next Round Applicant Guidebook language for Subsequent Application Rounds (Topic 3: Applications Assessed in Rounds) consistent with the relevant SubPro Final Report recommendations?

(x) Yes

(_) No

If no, please explain

2) Is the proposed Next Round Applicant Guidebook language for Background Screening (Topic 22: Registrant Protections) consistent with the relevant SubPro Final Report recommendations?

(_) Yes

(X) No

If no, please explain

We support the change of title to “Background Screening.” Ensuring that ICANN has clear, published and followed Background Screening Procedures, including Eligibility Criteria and Applicant Onboarding Questions is a protection for ICANN, the current Community, and our DNS users for years to come.

In general, we support the Background Screening Section as it generally reflects the work of the Community. However, we raise questions on two different sections of the language as they raise specific concerns that the rules proposed in the Applicant Guidebook DO NOT meet the requirements of the SubPro Working Group in the following two ways.

PART 1: Intellectual Property Infringement Criteria - An Eligibility Criteria that Seems Unrooted in any request of the SubPro or RPM Working Groups

We note the unusual new addition to the Background Screening Eligibility Criteria, Bullet 2, final sub-bullet:

> <<Involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made against the applicant or any of the individuals named in the Organizational Account Record respectively, within the last 10 years.>>

This Eligibility criterion – that an Applicant “Involved in **any** administrative or other legal proceeding in which **allegations** of intellectual property infringement **relating to** registration or use of a domain name have been made against the applicant or any of the individuals named in the Organizational Account Record respectively, within the last **10 years**” means that, “in the absence of exceptional circumstance”, *“any entity*

(...) not meeting the eligibility criteria listed (...) ***will be*** *disqualified from the program".* Similar text can be found in the section about "Applicant Onboarding Questions".

But this is not fair, or right, or balanced. "Allegations of IP infringement" can be made by anyone at any time. We also find that many allegations of registration of the domain name in bad faith fails to take into account the use of the same dictionary words, generic terms, and first and last names around the world by millions of people. Even a *finding* of bad faith domain name registration is not proof of infringement and has no precedential value. Further, only a court of law can make a finding of trademark infringement (and as above, a UDRP or URS filing is an allegation of registration of a domain name in bad faith, **not an allegation or finding of trademark or IP infringement**).

In the Applicant Guidebook of 2012, we find a similar excerpt in the "Scoring section", **but leading to a different and much more nuanced approach and result**: "(g) Disclose whether the applicant or any of the individuals named above has been involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made. Provide an explanation related to each such instance". In this context, this was an aspect that should be evaluated, and did not appear to pose such a rigid possible barrier to applicants.

The current wording of these proceedings is inaccurate, unbalanced, and unfair, creating something upon which the SubPro WG did not seem to agree, and apparently fails to take into account the real effects of its enforcement. As above, an entity or individual involved in any allegation of intellectual property infringement while using or acquiring domain names in the last ten years (which is not a short time) does not necessarily mean that any real infringement occurred. This text may create a loophole for IP abuse and anti-competitive practices, and inverting the burden of proof to the person being accused of being an infringer seems too onerous to potential applicants. This proposed wording could create a whole new form of gaming.

Overall, in the original SubPro Final Report, Topic 22, the words "trademark", IP, and intellectual are not even mentioned. We don't know how a paragraph this broad, vague and undefined appeared in the Eligibility Criteria, and we respectfully request that it be deleted immediately as inconsistent with the advice of the SubPro and the inclusive goals of the New gTLD Program:

Involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made against the applicant or any of the individuals named in the Organizational Account Record respectively, within the last 10 years

PART 2: WG Recommendation 22.4 not being sufficiently covered - where is our broad and inclusion of many types of entities?

It is also important to note that the SubPro WG Final Recommendation 22.4 mentions that the revision should "consider whether the background screening procedures and criteria could be adjusted to account for a meaningful review in a variety of cases". Specifically:

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

NCSG notes that work was done on this section by the IRT to create an addition of a section related to *publicly traded companies*, which benefits larger enterprises, but **no real work appears to have been done to create the real** and clear flexibility needed in the cases where applicants would need some flexibility, such as **"newly formed entities"** and particularly **"companies in jurisdictions that do not provide readily available information." This is an oversight of the IRT that we respectfully and with great dismay, submit can and will** affect underrepresented countries and communities in substantial ways. The only phrase that gives some flexibility to the process, which is "in the absence of exceptional circumstance", seems deeply insufficient to address the concerns that background screening could exclude applicants because of an exaggerated formalism or not taking into account bureaucratic barriers that underrepresented organizations could find.

The very entities ICANN and the ICANN Community want most to apply in the next round - the diversity we are seeking to achieve, and the gaps we are hoping to fill - lie in two key types of entities that the SubPro Working Group called on the IRT to define and create specific implementation rules to protect, namely:

- **newly formed entities," and those organizations**
- **"in jurisdictions that do not provide readily available information."**

We call on the IRT to create these rules and equivalencies *as soon as possible, and in all events for this next and upcoming rounds of New gTLDs* to achieve the clear language and purpose and goals of SubPro Recommendation 22.4 for all entities named, not only the world's largest. Going forward as currently written will harm the broad and inclusive goals of the section and make the disparities far

worse, not better – counter to the intents of SubPro, the Board and the larger ICANN Community.

On a related note, the IRT, while engaged in this review and revision task, should provide flexibility also for noncommercial organizations and indigenous peoples which, consistent with SubPro Final Recommendation 22, may not look like US non-profit organizations (educational and charitable US non-profits being classified under a section of the US tax codes), but are nevertheless important and legitimate organizations whose applications we are seeking and have committed to fairly reviewing and evaluating. We call on the IRT to write express rules for the Background Screening of the broad and international range of organizations that ICANN hopes will apply for the Applicant Support Program (ASP). It would be utterly unfair and disheartening for these entities to be accepted into the ASP only to be disqualified on technicalities in the Background Screening.

Overall, NCSG urges the IRT to return to draft the details of SubPro Final Recommendation 22.4 for smaller and international entities, peoples, and tribes, just as it did for publicly traded companies.

3) Is the proposed Next Round Applicant Guidebook language for String Similarity Review (Topic 24: String Similarity Evaluations) consistent with the relevant SubPro Final Report recommendations?

(_) Yes

(X) No

If no, please explain

There is a slight variation in the definition of "similar" between the proposed Next Round Applicant Guidebook and the relevant SubPro Final Report recommendation. In the proposed Next Round Application Guidebook section on "Topic 24: String Similarity Evaluations", "'Similar'" is defined as "**strings so visually similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.**" However, the September 2023 Board scorecard (dated 10 September 2023) defines the standard of similarity as meaning ''**visually confusingly similar.**' While it is largely obvious that these mean the same thing, <u>we</u>

would recommend utilizing the same phrasing as that of the Board to ensure clarity and uniformity with the guidebook's application, while also avoiding any extensive interpretation of the concept of "string similarity", something that could negatively affect the diversity and numbers of applications.

Regarding the "exception for .BRAND strings" (section 1.4.9 on p.12), there is a sentence with a verb missing, which makes the section difficult to comprehend. After clarifying with ICANN staff, the sentence should read "...and this applied-for .BRAND gTLD does not clear String Similarity Review and is therefore unable to proceed…." This should be amended in the final text.

We are concerned with this exception as it can be applied in a way that discriminates against non-commercials/any applicants that do not qualify as .BRAND. As written, *only* those who qualify as .BRAND have the opportunity to reapply with another string whereas non-commercials/any applicants that do not quality as .BRAND do not have the same opportunity. As such, we encourage the ICANN board to consider allowing other categories of applied-for gTLD strings - beyond just those applicants that qualify as a .BRAND - that do not clear String Similarity Review to be offered the opportunity to change their string.

4) Is the proposed Next Round Applicant Guidebook language for Internationalized Domain Names (Topic 25: IDNs) consistent with the relevant SubPro Final Report recommendations?

(X) Yes

(_) No *(if the form does not allow for further comments if we mark "yes", then we should mark "no")*

If no, please explain

Yes, but with a comment. The proposed language in the Next Round Applicant Guidebook for Internationalized Domain Names (IDNs) aligns with the SubPro Final Report recommendations, considering it:

- Ensures compliance with the Root Zone Label Generation Rules (RZ-LGR) for validating TLDs and their variants.
- Requires IDN TLDs to adhere to RZ-LGR and IDNA2008 standards, offering a clear process for applying for allocatable variants while excluding blocked ones.

- Provides guidance on how unsupported scripts can be integrated into future RZ-LGR versions, allowing collaboration with script communities for future applications.

NCSG asks for clarification and additional wording to ensure that these details are expressly included so they can be understood by and passed down to the full and broad public reading the Applicant Guidebook.

5) Is the proposed Next Round Applicant Guidebook language for Dispute Resolution Procedures After Delegation (Topic 33: Dispute Resolution Procedures After Delegation) consistent with the relevant SubPro Final Report recommendations?

(_) Yes

(X) No

If no, please explain

As laid out in SubPro Final Recommendation 33.2: For the Public Interest Commitment Dispute Resolution Procedure (PICDRP) and the Registration Restrictions Dispute Resolution Procedure (RRDRP), clearer, more detailed, and better-defined guidance on the scope of the procedure, the role of all parties, and the adjudication process must be publicly available.

NCSG respectfully submits that this section, *Dispute Resolution Procedures After Delegation*, needs more detail, discussion, and clarification. Far too much history, and recent events, are packed into two few words. The conciseness fails to provide readers from around the world - the ones we have promised the world we will engage in marketing and outreach to bring into the New gTLD Program - and thus creates an unfair benefit and knowledge base for those of us who have been with these ICANN policymaking processes for so many years.

NCSG calls for more explanation and details, just as the SubPro in its Final Recommendation 33.2 called for the PICDRP and RRDRP to be “clearer, more detailed, and better-defined guidance on the scope of the procedure, the role of all parties, and the adjudication process must be publicly available.” (We note that this clarity, detail and clear guidance must apply to the “Trademark Post-Delegation Dispute Resolution Procedure, reviewed within the remit of the Review of All Rights Protection Mechanisms in All gTLDs PDP Working Group” and just as relevant to the consideration in this analysis, and clarity in this section of the Applicant Guidebook).

The text that explains the Dispute Resolution Procedures is too summarized, mainly referring to details in other sections. Even if those other sessions provide more details satisfactorily, which we do not know and cannot here approve, they lack a) clarity, b) details, and c) better-defined guidance on the scope of the procedures, the role of all the parties, and the process for making the adjudication process… publicly available."

We note there is not even a reference here for the basic and fundamental change to the Public Internet Commitments/ Registry Voluntary Commitments decision of the ICANN Board in June 2024, building on work throughout the year including community consultation in late 2023 and early 2024, including a panel in March 2024 The June 8, 2024, Board resolution, and its conclusions, *must be referenced here* clearly and with detail a) to achieve the clearly written goals of the SubPro Final Recommendation 33.1 and b) to avoid giving unfair information and advantage to only the ICANN Insiders who participated in the process, and not all of the future Applicants and Community around the world who we hope will benefit from these procedures.

We call for this section of the ICANN Report to specifically reference resolutions of the Board regarding PICs and RVCs (and directly affecting and limiting the scope of the PICDRP), including

- "Resolved (2024.06.08.08), the ICANN Board determines that ICANN should exclude from the Next Round RAs any RVCs and other comparable registry commitments that restrict content in gTLDs."
- "Resolved (2024.06.08.09), the Board directs the ICANN Interim President and CEO, or her designee(s), to commence the implementation of the SubPro recommendations related to RVCs and other comparable RA commitments, including the design and implementation of evaluation criteria and processes to effectuate this exclusion."

Overall, considering the specific recommendation made by the SubPro Working Group, providing some extra relevant information may be useful for Applicants and the Community, it is critical to provide more information here in this section on topics that could or could not be disputed under each procedure, exemplified by the Board resolution excluding content from RVCs.

We call for this section to be pulled back and reissued when additional details, proper guidance, and clarity are provided so we can review it together, and in the proper context.

6) Is the proposed Next Round Applicant Guidebook language for Registrar-Non-Discrimination / Registry Registrar Standardization (Topic 37:

Registrar Non-Discrimination / Registry/Registrar Standardization) consistent with the relevant SubPro Final Report recommendations?

(_) Yes

(X) No

If no, please explain

A key element regarding the process of granting exemptions to the Registry Code of Conduct is missing from the draft section on topic 37 in the guidebook. **Although it is noted in the annex as an update to "Recommendation 37.1," the stipulation that "no exemptions shall be granted without public comment" is such an important element of the process that it is our NCSG recommendation that it be integrated directly into the relevant section of the text rather than as an item in the annex.** <u>**We emphasize to the Board that public comment allows for more transparency and accountability in upholding registrar non-discrimination.**</u>

We also note that increased transparency of ICANN and the Registry/Registrar Code of Conduct further supports the implementation of Work Stream 2 recommendations.

7) Is the proposed Next Round Applicant Guidebook language for Registrar Support for New gTLDs (Topic 38: Registrar Support for New gTLDs) consistent with the relevant SubPro Final Report recommendations?

(x) Yes

(_) No

If no, please explain

8) Is the proposed Next Round Applicant Guidebook language for Root Zone Label Generation Rules (Topic 25: IDNs) consistent with the relevant SubPro Final Report recommendations?

(_) Yes

(X) No

If no, please explain

9) Is the proposed Next Round Applicant Guidebook language for Closed Generics (Topic 23: Closed Generics) consistent with the relevant SubPro Final Report recommendations?

(X) Yes

(   ) No *(if the form does not allow for further comments if we mark "yes", then we should mark "no")*

If no, please explain

Actually yes with a qualification. **NCSG is pleased that consistent with the work of the stakeholders, the IRT has written: "Applicants should be aware that the ICANN Board has resolved that 'closed generic gTLD applications will not be permitted..." in upcoming rounds.**

But NCSG respectfully submits that we should go further. We should stop considering the possibility of "closed generics" in new gTLD rounds altogether. All answers point to a negative answer to whether we in the ICANN Multistakeholder Community can achieve "an approved methodology and criteria to evaluate whether or not a proposed closed domain is in the public interest,"

Too much attention has been spent on too narrow an issue. All points to a negative answer, considering the enormous level of effort, resources, and energy that were already dedicated to the issue, NCSG respectfully submits that ICANN should stop considering the possibility of "closed generics" in new gTLD rounds.

Third Proceeding for Proposed Language for Draft Sections of Next Round AGB

NCSG Comments

February 7, 2025

About NCSG

NCSG represents the interests of non-commercial domain name registrants and end-users in formulating the Domain Name System policy within the Generic Names Supporting Organisation (GNSO). We are proud to have individual and organizational members in over 160 countries. As a network of academics, Internet end-users, civil society actors, etc, we represent a broad cross-section of the global Internet community. Since our predecessor's inception in 1999, we have facilitated global academic and civil society engagement in support of ICANN's mission, stimulating an informed citizenry and building their understanding of relevant DNS policy issues.

We appreciate the special opportunity to submit our comments in this PDF format.

About this Public Comment

https://www.icann.org/en/public-comment/proceeding/third-proceeding-for-proposed-language-for-draft-sections-of-next-round-agb-19-12-2024

Our Comment:

Do you have any additional or general comments? (The Final Question on the Form)

A. Titles

We'll open with this question because we do have an important comment to make. We find the titles of three sections confusing, and with a little rewrite (and later we'll propose a division of the first one), they will be much clearer to a general audience, including those not familiar with the SubPro procedures or ICANN-specific work.

- Community Input and Dispute Resolution
- ICANN Dispute Resolution
- ICANN Objection Appeals Procedure.

In our ICANN world of many different types of dispute resolutions from UDRP, PICDRP, and RDRP, among others, as well as the "dispute resolution" provisions with ICANN within the Registry Agreement. These sections will benefit from reference to **Objections *as the specific type of Dispute Resolution category***. The Four Objections are a very specific class of dispute resolution and using the "Objections" name in the title will provide great clarity to those seeking to use these Objections as part of their form of input to the New gTLD Process.

Accordingly, we suggest adopting the following titles (and below we set out the reasons we recommend for separating the very large *Community Input and DR* section into two parts:

- **Public Comments, GAC Early Warnings, and GAC Advice; and Separately "Objections"**
- **ICANN Objection Procedure**
- ICANN Objection Appeals Procedure (unchanged)

B. Summarizing our order of comments below.

We'll review the documents out for public comment in the following order:

I. Community Input and Dispute Resolution
II. ICANN Dispute Resolution Procedure
III. ICANN Objection Appeals Procedure
IV. DNS Stability *(joined with item V)*
V. Security and Stability *(joined with item IV)*
VI. Legal Compliance Check
VII. Different TLD Types (Topic 4: Different TLD Types)
VIII. New gTLD Program: Next Round Privacy Policy (pdf, 196.01 KB
IX. Post-Contracting (pdf, 70.91 KB)

I. Community Input and Dispute Resolution (Hopefully to be changed to (i) Public Comments, GAC Early Warnings and GAC Advice and (ii) Objections: Community, Legal Rights, String Confusion and Limited Public Interest)

General Comment on this document(s)

Too big and unwieldy for the public to manage - two shorter sections would be easier to navigate and understand.

Weighing in at a massive 42 pages, this important section about public input - aimed at those who participate least in ICANN - is very long and combines too many concepts to be in one place. We recommend dividing this section/chapter into *two separate sections/chapters for the AGB* to allow better navigation and help readers understand their various comment and objection options. It will help us separate matters adequately.

We suggest the following titles:

1. **(Section 1) Public Comments, GAC Early Warnings and GAC Advice, Singular and Plural String Notification**
2. **(Section 2) Objections: Principles, Grounds for Objection, Standing, and other Overview Information.**

Grouping the sections in this manner makes sense as Public Comments, GAC Warnings and Advice, and Singular/Plural Notification are processes filed with and coming before ICANN directly. While Objections are filed with and handled by independent arbitration tribunals pursuant to special rules and processes developed by the ICANN community– they involve outside Panelists and considerable fees.

Overall, it will be very important for people and entities to have easy access to these various forms of participation in the New gTLD process, and share their thoughts, concerns, comments, and formal objections. Having different comment & objection sections will (a) help the public find their mechanism for input, and (b) easily access the description and rules for using it (and we note the Objection section alone is almost 30 pages).

Additional Comment on Specific Sections of this Document:

A. An Overarching Comment about the SubPro Recommendations and the IRT implementation. Regarding "Application Comments", Recommendation 28.9 of the final Subsequent Procedures ("SubPro") report calls for "the New gTLD Program [to] be clear and transparent about the role of application comment in the evaluation of applications." This does not seem to have been sufficiently covered in this section.

Similarly, per implementation guidance 28.10, the AGB "should also be clear to what extent different types of comments will or will not impact scoring." *Per this guidance, the Implementation Review Team should also develop guidelines about how public comments are to be utilized or taken into account by the relevant evaluators and panels, and these guidelines should be included in the Applicant Guidebook.* People need to know if their contributions will make a difference.

We ask that the IRT, using the Applicant Guidebook , adopt a more straightforward approach and add clarifying language here in addition to a set of guidelines, as recommended in the SubPro final report, to help people understand how their contributions will impact the Application and its processing.

B. In the Objections section, we recommend moving "**Dispute Resolution Principles**", (hopefully to be changed to **Objection Principles**), from its current place at the very end of the materials to a location much earlier in the Objections section. These are important principles for everyone - from parties to panelists - to know. They can be stated much earlier in the document to help newcomers and potential parties, and referenced later for panelists.

C. Redundancies should also be removed. We see a lot of redundancy between the (1) Initial Objections document (currently part of *Community Input and Dispute Resolution)* and the two procedural documents, namely: the *ICANN Dispute Resolution Procedure* and *ICANN Objection Appeals Procedure* docs.

We ask the IRT to leave the introductory and high level information and orientation sections in the introductory document - and move the procedural details to the two Procedural Documents: ICANN Objection Procedure (DR Procedure) and ICANN Objection Appeals Procedure.

The result will be a high-level introductory document and two detailed procedural documents (and eliminate the current problem of details that may be duplicated and/or inconsistent). The distinction will provide great clarity to newcomers and community

members seeking to understand the four Objection Procedures, and then route them to the details of the filing procedures, and appeal procedures. We note that this is consistent with how the original AGB introduced Objections, while highlighting that appeals did not exist in the first round).

D. In the Application Comments, Section 1.2, we see a section that appears to allow "secret comments" and ask that it be changed to make much of the comment open and the submission of the comment public (although some of the data/writing may be redacted).

Section 1.2 of the *Community Input* document states:

> *"Should a commenter believe that they possess information related to confidential portions of the application, which may not be appropriate to submit publicly, they will have the option to submit a confidential comment, which will only be visible to ICANN, the applicant, and evaluators.* ***To ensure transparency, this option should only be used for comments related to confidential portions of the application, and ICANN will review the comment before making it visible to the applicant and the relevant evaluator(s)****; should ICANN determine that the comment refers to public portions of the application, the comment will not be accepted and the commenter informed. It should be noted that ICANN will not process confidential comments received outside of official comment periods." [bold added]*

NCSG seeks clarification in this document that **there are no confidential comments and that every part of the comment that is not related to the *limited confidential portion of the submission* will be made public, including the commenter, new gTLD, date submitted, and all other header information. Thus, it should be clearly visible to the public that a comment has been submitted, who has submitted it, and that certain sensitive portions of the comment have been redacted, and further, that the commenter has requested confidentiality for some wording.**

In the event that some level of confidentiality for some comments, it should be done under clear and objective criteria. It must be extended particularly to protect the data of those seeking to comment on the application who could be harmed by the process, including human rights organizations, who believe that their comments may create some physical danger to the comment writer, their families, the organization, or its members and community.

Otherwise, comments are part of a discussion for the world, ICANN, and the applicant and it is important that all comments must be seen and known to the public and across the world.

E. Comment count and deadline, 1.3.1 Application Comments Timeline after Application Publication

This section states:

> "ICANN will open an application comment period on String Confirmation Day. Only application comments received during the following 90 days will be considered by the evaluation panels. ICANN reserves the right to extend the comment period for one, more, or all applications."

We seek clarification that the 90 days will begin <u>the day after the public notice is sent</u> and <u>clearly state the final date and time for filing responses on the notice</u>. This is necessary because, while ICANN in California may circulate a notice on day X, for many parts of the world, that notice will be received on Day X+1. It will never occur to these groups that the first day of the count *is the day before they* receive the notice.

We note that starting a deadline count *on the day after a notice or other triggering event* **is also a common practice for courts, agencies, and other organizations.**

As an examples, we ask for express confirmation in the AGB that for String Confirmation Day and the big "reveal" – perhaps a Tuesday in California but with Asia and the Pacific are already well into their Wednesday,, in the interest of fairness and traditional counts, the 90 day period for application comments **should start officially the day after Reveal Day**. Ditto for the counts of all comments relating to their application." The world will thank you!

F. Application Comments, Section 1, is missing an important notification tool recommended by the SubPro Working Group:

In the SubPro Final Report, the Working Group called on ICANN to create a list for each application - one in which those interested in that application could sign up and receive notices about it - including notices about later changes that, in turn, open a public notice.

The expectation is that those who are interested in this Initial Comment Period may also be interested in later comments, revisions, and changes. Since the period for those changes will be sporadic and could be months later (for example, Settlements in response to Objections that must be put out for public notice and comment), the list is designed to ensure that all with an interest in comments and changes to an application are notified of proposed changes and revisions to it.

We note that such changes may come from Evaluation Panels, Objection Proceedings, Early Warnings, GAC Advice and other avenues and include changes to the Application and its public portions and/or changes to Public Interest Commitments and proposed Registry Voluntary Commitments. Those on the listserve will be able to track these changes, some coming months or even years later.

Overall, to be fair to all who want to follow the path of a New gTLD Application that is relevant to their community, SubPro called for ICANN to set up a list and notify people and groups of all proposed changes to these applications.

We ask that: a) ICANN expressly shows that such a list and notification system will be established; and b) that this resource be referenced here in this AGB section (and other relevant sections), e.g.:

> "Changes that result in material changes to public portions of the application will be subject to a 30-day comment period, during which the community will have the opportunity to raise any concerns they might have on the change(s). **The community that had previously commented on this application or otherwise expressed interest in following the progress of this application through *all public comment processes* will be notified by ICANN at the start of any public notice period for material changes to public portions of the application. [bold text added]**

Noting the SubPro Final Report Implementation Guidance (page 91) for Topic 20 on Application Changes:

> **"Implementation Guidance 20.5: Community members should have the option of being notified if an applicant submits an application change request that requires an operational comment period to be opened at the commencement of that operational comment period.")**

G. GAC Early Warnings

As an overall comment regarding GAC Member Early Warnings and GAC Advice, to help the public understand (**3.1 GAC Advice Overview**), *what is the time limit for when these can be issued?*

As a reminder, as stated in the ICANN Bylaws, GAC Early Warnings and GAC Consensus Advice must include a clearly articulated rationale. We therefore recommend that the drafters include in the AGB that GAC Early Warnings and Consensus Advice must be limited to the scope set out in the applicable ICANN Bylaws provisions and elaborate on any “interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.”[1]

This is laid out in the March 2023 scorecard and should be reiterated in the AGB. For the sake of transparency and understandability of potential applicants, it is important that this be clarified so that applicants can know at what stage of the process they could expect a GAC Consensus Advice or Early Warning. The application process should define a specific time period during which GAC Early Warnings can be issued and require that the government(s) issuing such warning(s) include both a written rationale with a legal basis and specific reasonable action requested of the applicant. The applicant should also have an opportunity to engage in direct dialogue in response to such warnings and amend the application during a specified time period. The public and ICANN Community should be given notice of these proposed modifications-- and the opportunity to comment to agree, disagree, or modify such proposals. Nothing should be bilateral or done in secret; all modifications to the gTLD applications must be done openly and publicly with the opportunity to review, comment, and contest.[2]

Additionally, special care must be taken to ensure that ICANN’s decision to follow GAC Advice would not infringe an applicant’s freedom of expression rights, which are explicitly protected in ICANN’s New gTLD Policy, its legal bylaws, and international legal treaties. ICANN should refrain from taking sides in political disputes and should ensure that the policy prevents governments from using the gTLD objection process as a handy means to control or eliminate certain speech in the Internet’s domain name system.[3] The limited scope of GAC Advice should be reiterated in the AGB.

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[1] Scorecard: Subsequent Procedures (16 March 2023) <https://www.icann.org/en/system/files/files/scorecard-subpro-pdp-board-action-16mar23-en.pdf>

[2] Statement of the Non-Commercial Stakeholders Group on the Initial Report on the New gTLD Subsequent Procedures Policy Development Process (Overarching Issues & Work Tracks 1-4) <https://www.ncuc.org/wp-content/uploads/2017/05/NCSGproposedCommentonCC2.pdf>

[3] Statement of the Non-Commercial Stakeholders Group on the Initial Report on the New gTLD Subsequent Procedures Policy Development Process (Overarching Issues & Work Tracks 1-4) <https://www.ncuc.org/wp-content/uploads/2017/05/NCSGproposedCommentonCC2.pdf>

Further, under **3.2 Notice to Applicants**, we would recommend allowing all applicants to have a period of **30 days** from the day after being notified that their application is subject to GAC advice to submit a statement to ICANN in response, **as 21 days may not be sufficient time for smaller applicants with fewer resources to respond**. Alternatively, we would propose a system that provides additional time for those categorized as under-resourced (such as those eligible for the Applicant Support Program 'ASP') while keeping a 21-day response time window for all other applicants.

Lastly, it is important to remind ourselves of the reasoning behind creating the AGB: to encourage as diverse a set of applicants to enter the DNS ecosystem. As such, the drafters should consider ensuring that all technical terminology and subject matter-related concepts are clearly defined. ***As such, we highly recommend editing section 3.4 GAC Advice and Registry Voluntary Commitments for clarity, paying special attention to defining new terms (such as "remedial RVCs" and how the concept differs from normal 'RVCs').***

H. Singular/Plural Notification

The section about Singular/Plural Notifications could benefit from further clarification. For those reading the AGB, it should be clear what a "notification" means for them: from a procedural standpoint, what happens to their application(s) if a singular/plural notification is filed? What are the possible outcomes, and how would that impact their application(s), if at all? As it stands, these questions are not answered in this section, which risks causing confusion and at worst, discouraging potential applicants from entering or remaining in the application process. **We urge ICANN Staff and the IRT to revise this section and help it become as accessible as possible for marketing the program for New gTLDs**.

Additionally, under **4.2 Singular/Plural Notification Requirements,** *how are 'legitimate' notifications defined? Who decides what is a legitimate notification?* **Further clarity is needed on the process ICANN uses to decide what notifications are made publicly available and why.**

Finally, in **4.6 Challenges to Singular/Plural Notification**, we note that, as above, 21 days is unlikely to be sufficient time for a smaller applicant with fewer resources to prepare and submit all facts necessary to demonstrate the rationale for their challenge. We would suggest allowing for 30 days to challenge the results, in line with the time provided for the notifications filing window (**4.4**). Alternatively, in line with our recommendation under **3.2**, we propose a system that provides additional time for those categorized as under-resourced (such as those eligible for the Applicant Support

Program ‘ASP’) while keeping a 21-day window for all other applicants to challenge the results of a Singular/Plural Notification.

F. Section 5.1, Objections Dispute Resolution Overview

1. In keeping with the suggestions above, we recommend changing the title of **5.1 to Objections Dispute Resolution Overview.**
2. We request that the following section be highlighted in bold to draw the attention of all applicants to it: **“Applicants are therefore encouraged to identify possible regional, cultural, property interests, or other sensitivities regarding gTLD strings and their uses before applying and, where possible, consult with interested parties to mitigate any concerns in advance.”**
3. We request an abridged version of the 5.4 Objection Principles (from DR Principles) be moved up to this introductory section. This addition will help many people and entities to see a clear overview of the four Objections and their relevant criteria and standing. This is key information to determining whether they want to dig further into the procedures. Grounds for Objection can follow.
4. Pursuant to changes we are strongly recommending to the ICANN Objection Procedures, in 5.2.5 **Consolidation of Objections,** the Dispute Resolution Service Provider *should not have unqualified discretion to consolidate certain objections – but only with the approval of the parties (or at least consideration of their input and concerns), whether the consolidation is requested by the parties or initiated by the Provider.*
5. We will note under Procedural comments that the phrase “based on the same ground” in 5.2.5 Consolidation of Objections is ambiguous and could be interpreted to refer broadly to the type of objection – string confusion, community, etc. We will argue that “the same ground” is much narrower and actually means similar substantive arguments within a given Objection. Any changes made to the Objections Procedures(s) should be reflected here.
6. **5.2.6 Appointment of the Objections Panel (DR Panel).** We request that the title be updated to reflect the Objections Panels being involved, and question and request changes to the Experts of the Panel (noting that if there is *only one Panelist,* then the requirement becomes mandatory - and a few of these requirements *do not make sense.*
    - Specifically, NCSG objects to “legal rights” experts (“experience in legal rights disputes” being mandated for String Confusion Objections. Why? This is a study of aural and visual string comparison, not legal rights. We need linguists and comparative language specialists, and definitely (and as recommended) panelists (and perhaps scholars) with knowledge of the

relevant script(s). Many of these stings may have nothing to do with trademarks or other legal rights - but that's a different objection.

- Legal Rights Objections - this seems to be the place to require a Panelist with "legal rights" expertise.
- Community Objections - ***we do not understand how a panelist with "experience in the relevant academic field of study" is useful here, as an academic research for cell phone spectrum technology may have no idea how the mobile wireless business operates – and further many "communities" are not academic at all in their orientation, e.g., the many sporting communities of the world.*** What we need here are panelists who are excellent lawyers, fair and impartial jurists, and have a strong knowledge of related communities. Thus, a jurist coming from the skiing community will probably have a conflict of interest presiding over a .SKI Community Objection, but a jurist with deep expertise in the organization of another sport and its international communities could bring that understanding into this decision.
- We need a modification to the unlimited waiver of liability. If the experts, DRSP and others intentionally violate their agreements, they should be liable. Thus, if a Panelist misrepresents their independence (and there is a real, genuine and known conflict of interest that they do not disclose) and/or if there are other acts and omissions that are intentional and blatant and harmful, there should be appropriate level of accountability and redress.
- **5.23.7 Quick Look Review.** We do not know why the details of the Quick Look Review, and we will address our issues and concerns regarding them in the ICANN Objections Procedure (ICANN DR Procedure) section below. We request this section be greatly reduced and streamlined to review the existence of a Quick Look Review process (with details to be found in the separate procedures AGB section).
- Ditto for Payment of Dispute Fees, Responding to Objections, and all other Objections Procedures that follow. This is the overview section and should route the reader to the procedures for all of the details. This is only the introduction.
- Ditto for the **5.3 Appeals, which we think should be titled more fully 5.3 Appeals of Objection Decisions. As with the Objection Procedures, we recommend that the overview be provided here with reference to the *ICANN Objection Appeals Procedure* where details will follow.**
- **As above, we like 5.4 Objection Principles (DR Principles) and strongly request that a summary be moved up early in the materials**

– with this full section being moved to ICANN Objections Procedure (ICANN DR Procedure).

II. ICANN Dispute Resolution Procedure, which we recommend (above) be clarified to be ICANN Objection Procedure

We offer the following comments consistent with and continuing on comments offered in the prior section:

A. **Article 6. Communications and Time Limits - because of the global nature of the ICANN Community and the common practice of many judicial and regulatory systems to count <u>the first day of public notice *as the day after it is sent*, we strongly urge the following change:</u>**

   "e. For the purpose of calculating a period of time under this Procedure, such period shall begin to run *on the day after the notice or other communication was sent."*

B. **NCSG strongly, strongly, strongly requests some additional words of clarification and explanation of Article 7, section e(ii), which is currently rather cryptic:**

   "e. Objections may be filed when ICANN announces the opening of an Objection window during the following time periods;
   ***

   ii. For 30 days following ICANN's acceptance of a .brand application's string change request, for String Confusion Objections only: should no String Confusion Objections against the proposed .brand gTLD (as revised) be filed, then [adding: ICANN will announce somewhere (to be filled in a space that the public can monitor, and also placed on the listserve for those interested in change to this application as discussed above)] that **a new 30-day window has opened for the filing of other Objection proceedings, including Community Objections and Legal Rights Objections.**

C. **Article 11. Consolidation of Objections.**

   We are deeply concerned that the rush to consolidation of objections can result in combining substantive concerns that are very different. Just because the strings are the same or very similar does not mean that the Applicants are similarly situated. In the first round, very different Community Objections

proceeded by CTIA against Dish DBS and Amazon for .MOBILE. It would not have made sense to combine them as the facts, issues, and substance were different - and ultimately the resolutions were very different, with Amazon withdrawing its application and Dish DBS significantly changing its application to allow in members of CTIA and GSMA.

a. **We strongly request that ICANN Staff and the IRT modify the language of (a) to include the language of (c) so everything is visible in the same place and at the same time, otherwise readers are left with the impression of "consolidation at all costs."**
b. **Further, we ask that no party be thrown into a consolidated proceeding without the opportunity to defend why equity and fairness would be better served by keeping the Objections separate.**
c. **Accordingly, we request the language of (a) be updated to:**

   => The DRSP is encouraged, where possible and practicable, to consolidate Objections. In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. Further, the DRSP, if it seeks to consolidate the objections on its own evaluation, shall provide reasonable input to all parties (Objectors and Applicants) as to whether they agree that the consolidation will serve the best interest of the proceeding. Similarly, if parties request a consolidation, e.g., the Applicants of the same/significantly similar strings, then the Objector(s) written opinion shall be solicited and evaluated by the DRSP in determining the outcome.

D. Article 12. Appointment of the Panel

We repeat our deep concern about the unusual expertise being required of the Panelists and urge that our changes recommended above be moved here for consistency and fairness. We are happy to engage in a further discussion with the IRT about how unusual we think these requirements are, how inconsistent with any recommendations of the SubPro WG, and how much inequity and unfairness, and utter confusion, we think the current wording will introduce into these Objections.

However, since this wording and the expertise of the Panelists can be easily aligned with the nature of the Objection, and this wording may be an error, we copy our comments from above and look forward to significant changes.

- Specifically, NCSG objects to “legal rights” experts (“experience in legal rights disputes”) being mandated for String Confusion Objections. String Confusion is a study of aural and visual string comparison, not legal rights. We need linguists and comparative language specialists, and definitely (and as recommended) panelists (and perhaps scholars) with knowledge of the relevant script(s). Many of these stings may have nothing to do with trademarks or other legal rights - and requiring panelist with this type of expertise *will inevitably introduce unnecessary bias and unfairness– there is a separate legal rights objection (below) where this expertise is needed*
- Legal Rights Objections - this seems to be the place to require a Panelist with “legal rights” expertise. Not having these specific expertise expressly named needs an odd thing to leave out in this section - making us wonder what is the difference between “experience in intellectual property rights” and “experience in Legal Rights disputes.” We recommend the latter to be used to be consistent and avoid these questions by others.
- Community Objections - we do not understand how a panelist with “experience in the relevant academic field of study” is useful here, as an academic research for cell phone spectrum technology may have no idea how the mobile wireless business operates – and further many “communities” are not academic at all in their orientation, e.g., the many sporting communities of the world. What we need here are panelists who are excellent lawyers, fair and impartial jurists, and have a strong knowledge of related communities. Thus, a jurist coming from the skiing community will probably have a conflict of interest presiding over a .SKI Community Objection, but a jurist with deep expertise in the organization of another sport and its international communities could bring that understanding into this decision.

E. Article 13. Quick Look Review

a. First, we want to make sure that this Quick Look Review (QLR) is not done as an administrative matter, but only once a Panelist is assigned, and done by that Panel. One of the reasons for this important request is that the evaluation of “standing” is a core plank of what the Objector must prove and the decision on this issue *must be made by a Panelist.* Accordingly, we ask that special language be added indicating that these evaluations will be made by the Panel after it is assigned and seated.

b. We do not understand section vii and ask that it be removed, at least for Community Objections and Public Interest Objections. For Community and Public Interest Objections, but their very nature, are looking beyond the string to the Applicant– and evaluating the nature of their relationship with the string, its meaning, and the community and/or users associated

with it. (Alternatively, there may be a reason to keep this section, but only, only for String Confusion Objections.)

F. **Article 18. Evidence**

Objections are very important procedures and are not fast or inexpensive. Accordingly, the Panelist(s) should be able to get access to the evidence they need, and that would be appropriate for their resolution of the Objection, and the standard must not be so outrageously high as to cause an appeal whenever they do so.

Accordingly, we request the following revision of the paragraph:

=> In order to achieve the goal of resolving disputes over new gTLDs rapidly and at a reasonable cost, procedures for the production of documents shall be limited. However, should the Panelist(s) feel it is necessary and appropriate for their resolution of the Objection, they may request a Party or Parties to provide additional evidence. The standard here shall be a “reasonableness” one.

G. **Article 19. Hearings**

Ditto for hearings.

=> Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing, but the Panel may decide, on its own initiative or at the request of the Party that a hearing is necessary, appropriate and helpful for the resolution of the Objection [continuing with b. In that event [details of the online, one-day hearing]

III. ICANN Objection Appeals Procedure

Consistent with the changes above, the NCSG calls on SubPro to make the following changes to this section in the interest of consistency and fairness:

A. Article 6. Communications and Time Limits.

See the changes mentioned above in relation to ICANN Objection Procedures.

B. Filing of an Appeal

It is standard practice in many forums to allow at least 30 days for the filing of an appeal. We feel any less will be unfair to communities, NGOs, indigenous people and tribes, and the microbusinesses from the Global South that we are working so hard to bring into the New gTLD Program.

It is hard for all but the largest players to evaluate the decision, find counsel and raise the funds for an appeal - and it is both reasonable and fair to allow them time and opportunity (of 30 days) to do so.

C. Where is the Quick Look Review? What's good for the goose is good for the gander. We are surprised not to find a Quick Look Review here, as it is in the Objections Procedure and seems even more appropriate here. Accordingly, we ask the Quick Look be added here (with the changes requested to it above).
D. Article 12. Consolidation of Appeals.

We think the *only consolidation of appeals, by right, can take place when the Objections were consolidated in the underlying Objection.*

Otherwise, we think this rush to consolidation is misplaced and could result in manifest unfairness. Accordingly, we call for the same changes above and ask that joinder be allowed - on request of some parties or by the DRSP - *only after the other parties have received notice and a reasonable opportunity to share their concerns and reasons for not consolidating the Appeals,* and these filings are duly considered.

IV. DNS Stability & V. Security and Stability

We respond to these two sections together.

Ensuring the stability, security, and resilience of the Domain Name System (DNS) is crucial to maintaining trust in the internet infrastructure. **However, we believe that the current suggestions from the SSAC could mean *significant challenges for smaller gTLD applicants and marginalized communities, who may have difficulties with fundamental aspects of DNS operations. There is a need for flexibility and guidance for those applicants, or else the mentioned criteria could* inadvertently *harm the aim of achieving more diversity in the DNS.***

Rather than mandating for strict and detailed criteria to be met without any* differentiation *among different applicants, the Guidebook should consider this diversity and work with, for example, variations in timeframes and deadlines, determining the availability of templates and examples (and other resources, such as best practices documents), tiered approaches, etc.

VI. **Legal Compliance Check**

The current text focuses on ICANN’s compliance with U.S. sanctions without fully addressing the international nature of ICANN's mandate. A brief clarification of ICANN’s global role in the broader context of Internet governance would be helpful. The current language seems biased or too focused on the limitations imposed by U.S. law. A more neutral tone could be adopted to avoid presenting the U.S. sanctions as a central constraint. A sentence emphasizing ICANN’s commitment to fairness, neutrality, and equal access to Internet governance can be added to alleviate concerns about its adherence to geopolitical pressures.

VII. Different TLD Types (Topic 4: Different TLD Types)

We have a few comments and questions for this section. First, the table on pages 3 and 4 is very helpful, but we propose the following change for clarity and accuracy:

- An asterisk after the column title “Additional Contract Schedules*” with the asterisk stating that it is an available option for applicants in all categories to adopt RVCs as part of their Spec 11s.
- For CAT 1 Safeguard gTLD Type, Additional PICs and RVCS, as applicable, in Spec 11” [as broad set of applications may generate a new PIC from the GAC, but only a few applications may result in RVCs arising from GAC Early Warnings or Advice - or public comments or objections]
- **Exclusive Use TLDs are baffling to us.** We note that *the only time the term “exclusive use”* is used in the SubPro Final Report is in reference to Closed Generics: “Closed Generics: Should there be restrictions around exclusive use of generics TLDs?” These Exclusive Use TLDs appear to be extensions of .BRANDs and in the footnotes even reference the .BRAND Code of Conduct and Code of Conduct exemptions. ***NCSG strongly objects to this category of gTLDs as unsupported by the SubPro WG’s recommendations and outside of the policy recommendations made by SubPro and asks that it be deleted in the AGB.***

VIII. New gTLD Program: Next Round Privacy Policy

A. Article 5, Sharing of Personal Information

We urge ICANN Staff to revisit Article 5. Sharing of Personal Information to ensure that it more closely complies with the GDPR sections that it cites and provides the protection that the GDPR requires for data subjects, which appear to have been stripped out of the

section. We provide some examples below, but urge that the data sharing section be reviewed with European experts on the GDPR, as they are in the best position to know their laws and the current interpretations of the National Data Protection Authorities.

The section on "Consultants and Advisors, Government Authorities and Agencies" is too broad and seems to allow ICANN to do anything that it wants in response to any type of law enforcement request - whether formal or informal, legal or illegal – and protect ICANN's legal rights, or strangely "a third party's legal rights,' ***without the balancing protection for the data subjection, in this case the applicant, that Article 6(1)(f) of the GDPR requires. It's not a carte blanche, but a proportionality test that ICANN must comment to honoring, specifically:***

> **"GDPR Article 6 – Lawfulness of processing:**
>
> **"Processing shall be lawful only if and to the extent that at least one of the following applies: *****
>
> **(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child."**

This AGB section appears to be a carte blanche to allow ICANN to reveal sensitive and personal data of Applicants to nearly anyone who asks for it for nearly any purpose, including informal requests from law enforcement, informal allegations of impropriety or infringement by third parties, or any indication of error and much more.

All cite to GDPR Article 6(1)(f) yet none of these disclosures (except 1) are allowed in the open and unfettered form that the six bullet points allow and seem to encourage.

For the sake of compliance with the GDPR, notice to the public, law enforcement, consultants and others hoping to go fishing in ICANN's New gTLD personal and sensitive data, we ask that next version of this AGB section **expressly cite the language of Article 6(1)(f) and note that for all disclosures, large and small, except court orders, the "interests or fundamental rights and freedoms of the data subject which require protection of personal data" will be weighed and included prior to disclosure. No disclosure of personal data will be rote or automatic.**

B. **7. Security**

Under **7. Security**, while we applaud the drafters' inclusion of ICANN's to "use reasonable industry safeguards….to protect against the unauthorized disclosure of Personal Information it collects and holds," the NCSG is concerned that neither this

section - nor any other section of this policy for that matter - explicitly commits ICANN to uphold user privacy and security considerations. Service providers (in this case, ICANN) should only be required to disclose personal information about their users subject to a court order, which must be in line with the requirements of legality, legitimate aim, necessity, and proportionality under international human rights law (IHRL). We urge the drafters to reiterate ICANN's commitment to upholding IHRL when it comes to protecting applicants' right to privacy and anonymity online, such as by including language ensuring that storage and usage of applicants' data is governed by rigorous privacy standards and is equipped with safeguards to prevent data exploitation.[4]

XI. Post-Contracting

We have no comment on this section.

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Conclusion: Thank you for these important sections of the Applicant Guidebook and the Opportunity to Comment. We appreciate your careful consideration of NCSG's comments and would be happy to meet with ICANN Staff and the IRT to discuss any issues that need additional clarification.

Best regards,

The Noncommercial Stakeholder Group

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1) Is the proposed Next Round Applicant Guidebook language for Application Comments (Topic 28: Role of Application Comment) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

The Noncommercial Stakeholder Group (NCSG) submitted its comment in PDF format to ICANN Staff. We understand they will be printed in full in the upcoming summary

[4] ARTICLE 19 The Global Principles on Protection of Freedom of Expression and Privacy (Policy Brief) <https://www.article19.org/data/files/medialibrary/38657/Expression-and-Privacy-Principles-1.pdf>

report. If you would like a copy, please write to Pedro de Perdigão Lana at pedrodeperdigaolana@gmail.com

Re: Topic 28: Our comments are submitted in the pdf file.

2) Is the proposed Next Round Applicant Guidebook language for GAC Member Early Warnings (Topic 30: GAC Consensus Advice and GAC Early Warning) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

Re: Topic 30: Our comments are submitted in the pdf file.

3) Is the proposed Next Round Applicant Guidebook language for GAC Advice (Topic 30: GAC Consensus Advice and GAC Early Warning) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

Re: Topic 30: Our comments are submitted in the pdf file.

4) Is the proposed Next Round Applicant Guidebook language for Singular/Plural Notification (Topic 24: String Similarity Evaluations) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

Re: Topic 24: Our comments are submitted in the pdf file.

5) Is the proposed Next Round Applicant Guidebook language for Objections (Topic 31: Objections and Topic 32: Limited Challenge/Appeal Mechanism) consistent with the relevant SubPro Final Report and IDN EPDP Phase 1 Final Report recommendations?

No

If no, please explain

Re: Topic 31 and 32: Our comments are submitted in the pdf file.

6) Is the proposed Next Round Applicant Guidebook language for ICANN Dispute Resolution Procedure (Topic 31: Objections and Topic 32: Limited Challenge/Appeal Mechanism) consistent with the relevant SubPro Final Report and IDN EPDP Phase 1 Final Report recommendations?

No
If no, please explain
Re: Topic 31 and 32: Our comments are submitted in the pdf file.

7) Is the proposed Next Round Applicant Guidebook language for ICANN Objection Appeals Procedure (Topic 31: Objections and Topic 32: Limited Challenge/Appeal Mechanism) consistent with the relevant SubPro Final Report and IDN EPDP Phase 1 Final Report recommendations?
No
If no, please explain
Re: Topic 31 and 32: Our comments are submitted in the pdf file.

8) Is the proposed Next Round Applicant Guidebook language for New gTLD Program: Next Round Privacy Policy consistent with the relevant SubPro Final Report recommendations?
No
If no, please explain
Re: Next Round Privacy Policy: Our comments are submitted in the pdf file.

9) Is the proposed Next Round Applicant Guidebook language for Post-Contracting consistent with the relevant SubPro Final Report recommendations
Yes
No
If no, please explain
0/8000

10) Is the proposed Next Round Applicant Guidebook language for DNS Stability consistent with the relevant SubPro Final Report recommendations?
No
If no, please explain
0/8000
Re: DNS Stability: Our comments are submitted in the pdf file, joined with topic 26.

11) Is the proposed Next Round Applicant Guidebook language for Security and Stability (Topic 26: Security and Stability) consistent with the relevant SubPro Final Report recommendations?
No
If no, please explain
Re: Topic 26: Our comments are submitted in the pdf file, joined with DNS Stability.

12) Is the proposed Next Round Applicant Guidebook language for Different TLD Types (Topic 4: Different TLD Types) consistent with the relevant SubPro Final Report recommendations and IDN EPDP Phase 1 Final Report recommendations?

No

If no, please explain

Re: Topic 4: Our comments are submitted in the pdf file.

13) Is the proposed Next Round Applicant Guidebook language for Legal Compliance Check consistent with the relevant SubPro Final Report recommendations and IDN EPDP Phase 1 Final Report recommendations?

No

If no, please explain

Re: Legal Compliance Check: Our comments are submitted in the pdf file.

Do you have any additional or general comments?

Yes

See our comments submitted in the pdf file, as detailed in question n.1 of this form.

Review of the Draft Applicant Support Program (ASP) Handbook – New gTLD Program:

NCSG Comments

April 2nd, 2024

About NCSG

NCSG represents the interests of non-commercial domain name registrants and end-users in formulating the Domain Name System policy within the Generic Names Supporting Organisation (GNSO). We are proud to have individual and organizational members in over 160 countries, and as a network of academics, Internet end-users, and civil society actors, etc, we represent a broad cross-section of the global Internet community. Since our predecessor's inception in 1999, we have facilitated global academic and civil society engagement in support of ICANN's mission, stimulating an informed citizenry and building their understanding of relevant DNS policy issues.

About this Public Comment Proceeding

https://www.icann.org/en/announcements/details/icann-seeks-input-on-next-round-draft-applicant-support-program-handbook-12-02-2024-en

The Applicant Support Program (ASP) is an initiative developed as part of ICANN's New Generic Top-Level Domain (gTLD) Program. The program is intended to provide financial and non-financial support for eligible entities that demonstrate financial need and work in the public interest.

The ASP Handbook offers a step-by-step guide to applying for support and includes information on application deadlines, criteria, processes, and evaluation. The handbook is part of ICANN's effort to implement the policy recommendations on Topic 17: Applicant Support of the Final Report on the New gTLD Subsequent Procedures Policy

Development Process while taking into account the Board's pending consideration of guidance provided by the GNSO Guidance Process (GGP) for Applicant Support.

Before this Public Comment proceeding, ICANN org worked with the Subsequent Procedures (SubPro) ASP Implementation Review Team Sub-Track to refine the draft ASP Handbook in line with Applicant Support policy recommendations and pending GGP ASP guidance. This Public Comment period is an opportunity for the broader ICANN community to contribute to strengthening and refining the draft ASP Handbook in line with policy outputs.

I. Summary of Submission

The NCSG suggests that the current draft of the ASP Handbook, while comprehensive, could benefit significantly from simplification and enhanced accessibility to ensure it reaches and is understood by a broad audience. The handbook currently utilizes language and terminology that might be too complex for applicants not already versed in ICANN's specific language or the technical jargon of the domain name system. **To rectify this, we recommend the handbook adopt a more straightforward approach, using plain language to explain complex concepts and define technical terms, ensuring that all potential applicants, irrespective of their background or expertise, can easily comprehend the application process.** If it is argued that the language used is necessary for technical reasons, to avoid ambiguity, it is also possible to produce a further simplified document, published alongside the handbook, in more accessible terms.

Additionally, **a step-by-step guide** outlining the application stages, necessary documentation, and crucial deadlines would streamline the process for applicants, guiding them more effectively through their application journey. Incorporating tools such as checklists for required documents and timelines for application milestones could further demystify the process, providing applicants with clear expectations at each step.

To aid in understanding and transparency, it's vital to include **detailed information** about the availability of funds, how they are allocated, and any restrictions or requirements tied to receiving support. **An FAQ section** addressing common questions, alongside examples or case studies, would illuminate the practical application of these guidelines and help applicants visualize how they might navigate the process.

A primary concern identified is the handbook's accessibility for non-English speakers (*bearing in mind that 81% of the world's population does not speak English*). Given the

global nature of ICANN's work and the diversity of its stakeholders, the current English-only draft may inadvertently exclude a significant portion of the global community. **To ensure inclusivity, we urge the addition of translation support for the handbook into multiple UN languages, such as French, Spanish, Arabic, Chinese, and Russian, and suggest the provision of assistance for application submissions in these languages.**

Furthermore, **hosting webinars, outreaches, or training sessions in various languages** would facilitate a deeper understanding of the handbook's contents and foster a more inclusive and engaged global community, ensuring that all potential applicants have the resources and support needed to participate fully in the ASP process.

We provide additional details of our concerns and suggestions below.

II. Difficulty of the Handbook:

We have run sections of the Next Round Applicant Support Handbook through Readability Scoring Systems and found its text to be on par with the New York Times, namely, "Extremely Difficult."[1] That does not help the audience we hope will use the Handbook, and it does not bode well for the success of our future Applicant Support Program program.

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[1] See e.g., page 9, Applicant Support Program Timeline, "Entities seeking support through the ASP will have an opportunity to submit an application [from Q4 2024 to Q4 2025]. ASP applications will be evaluated on an ongoing basis. Applicants should expect to receive results of their evaluation within [12-16 weeks] of submitting a complete application. This estimate of the time frame for evaluation assumes a complete application is submitted and no additional information from the applicant is required to evaluate the application. Additional, unplanned interactions with the applicant will extend this timeframe estimate. Also, please note that evaluating applicant documentation in languages other than English may take longer. 4

"Once ASP applicants receive evaluation results, applicants that qualify for support will be required to submit a [$2500 USD] deposit on their gTLD application. The deposit needs to be submitted to ICANN within 90 days of receiving ASP evaluation results in order to confirm the applicant's ability to receive the gTLD application and evaluation fee reductions. Also see Section 7.4 Evaluation Results.

"The ASP application submission period is [12 months]. The deadline for submitting ASP applications is [6 months] prior to the start of the New gTLD Program application submission period. Though, ICANN org retains the option to extend the ASP application submission period and will communicate the extension accordingly so that applicants and potential applicants are aware. The intent is for all ASP applicants seeking support to receive evaluation results before applying to the New gTLD Program. Though, depending on the volume of ASP applications received in the final weeks of the ASP application submission period, applicants may not know whether they have qualified for support in advance of the gTLD application submission period." ***Ranked as "Very Difficult" by Readability Formulas, see e.g., https://readabilityformulas.com/readability-scoring-system.php***

While ICANN Org and the ICANN Community will spend exceptional effort, energy, and funding to “market” the New gTLD program - as we seek to expand those applying for the Applicant Support Program - this New Round Applicant Handbook will be the next document our potential ASP applicants encounter, and NCSG predicts that they will turn away.

For this Handbook is virtually impossible for anyone to understand who is:

- Not an American lawyer
- Not a native English speaker
- Not very familiar with ICANN’s processes already, and
- Not knowledgeable about the New gTLD process.

What the Handbook stated in long and complicated sentences could be restated in 2 or 3 clearer and more straightforward sentences. The requirements it lists in long and complicated text could be more clearly listed in bullets.

We provide an example from the Handbook at the top of page 10:

⇒ ***Current:*** “[ICANN org and the evaluators (SARP) will make every effort to complete ASP application evaluations in advance of the gTLD application submission period beginning so that ASP applicants receive ASP evaluation results in advance of their gTLD application submission. In the case that an ASP applicant waiting for ASP evaluation results submits a gTLD application and pays the base gTLD application fee, the ASP applicant may be eligible for a refund should the applicant qualify for support.]

⇒ ***Questions:*** What is a SARP and how can we make this language clearer and more accessible?

⇒***Revised text:*** [We will work hard to review your Application Support Program application quickly. But if the New gTLD program opens and you have not received an answer, you may pay the estimated $240,000 fee and apply for a New gTLD on your own. If you qualify for the Applicant Support Program later, you may receive a partial refund of your New gTLD application fee.]

We urge ICANN Org and the ICANN Board to consider this document as an important next step in the marketing and outreach of the Applicant Support Program. To that end, let’s make this document clear, understandable, easily readable and accessible to the indigenous peoples, Global South commercial and noncommercial entities, associations, INGOs and NGOS, and others we hope will come forward.

We, as the NCSG and ICANN Community, want these groups to seek the support and guidance of the Applicant Support Program for their New gTLD Applications. We have worked very hard to provide in SubPro, the GNSO Council, the GAC, the Community and the ICANN Board to seek and provide successful ASP applicants with both financial support and expertise and guidance in preparing their New gTLD applications.

Let's not turn them away with a Handbook that is inaccessible. We urge ICANN Staff to rewrite this Handbook and help it become as accessible as our marketing program for New gTLDs.

III. Questions

1. **Do you believe that Section 1 ("Introduction") of the ASP Handbook accurately reflects the relevant policy recommendations on Applicant Support?**

2. **Do you believe that Section 2 ("Overview") of the ASP Handbook accurately reflects the relevant policy recommendations on Applicant Support?**

   In the section titled "Financial and Non-Financial Support Clarity" (specifically on pages 6 and 7), the handbook provides information about different types of support. However, there is still uncertainty regarding the eligibility criteria and the process for accessing specific forms of support, such as bid credits, multipliers, and reduced Registry Operator fees. This lack of clarity could potentially put non-profit organizations at a disadvantage when planning their applications. To address this, it is essential to clearly **define all forms of support and establish transparent criteria early in the process**, facilitating better planning and preparation for applicants.

3. **Do you believe that Section 3 ("Applicant Support Program Timeline") of the ASP Handbook accurately reflects the relevant policy recommendations on Applicant Support?**

4. **Do you believe that Section 4 ("Reduction of New gTLD Program Application and Evaluation Fees") of the ASP Handbook accurately reflects the relevant policy recommendations on Applicant Support?**

5. **Do you believe that Section 5 ("Applicant Eligibility and Evaluation Criteria") of the ASP Handbook accurately reflects the relevant policy recommendations on Applicant Support?**

   It does to some extent, however there are some observed insufficiencies.

   First is with regards to the **eligibility criteria for non-profits and social impact organizations (Sections 5.5.1, 5.5.4, Pages 19-23):** While the criteria for eligible entities are thorough, the insistence on extensive documentation and the

need to prove direct social impact or public benefit may pose difficulties for smaller non-profits or newly formed social enterprises, especially those with limited resources. Meeting the documentation and proof requirements could be challenging for such organizations. To address this, the NCSG suggests introducing more flexibility in the documentation requirements and considering alternative ways of demonstrating impact and benefit that are easier for recently established indigenous groups and smaller entities, particularly those from the Global South.

While the handbook proposes "*If the applicant cannot demonstrate (via its submitted audited and current financial statements) its ability to pay the remaining gTLD application evaluation fees without causing financial hardship, the applicant must submit a funding plan for acquiring resources within the indicated timeframe to pay the remaining gTLD application evaluation fees.*", however, it is not indicated to what extent providing a funding plan would affect the applicant's chances in comparison with those who are able to provide audited account statements.

The necessity for legal compliance checks and background screenings is vital in upholding the credibility of applicants. Yet, the thoroughness of these procedures may unintentionally exclude organizations from countries where obtaining legal documents is challenging due to intricate regulatory systems. (*Drawing on years of experience in the nonprofit sector across Africa, It is observable that the standard criteria set by international organizations often sideline businesses and organizations in the Global South when verifying documents. It's imperative for ICANN to collaborate with local agencies that can authenticate documentation while respecting the regional context and intricacies. For instance, Google employs* ***TechSoup*** *in Africa to validate documents for non-profit beneficiaries. A similar approach by ICANN, embracing alternative verification methods which is local and recognizable in the country of the applicant, would be beneficial*). Strict adherence to these criteria without consideration for local contexts might exclude worthy applicants from challenging environments.

The NCSG recommends **a consideration clause for entities facing systemic barriers** in obtaining the required legal compliance documentation, allowing for contextual evaluations through local/regional third parties.

6. **Do you believe that Section 6 ("Applicant Support Program Application Process") of the ASP Handbook accurately reflects the relevant policy recommendations on Applicant Support?**

The extent and nature of permissible modifications and their respective deadlines have not been clearly outlined in Section 6 ("Applicant Support Program Application Process") of the ASP Handbook. It is essential to clarify what changes are allowed and the process for implementing them, including specific timelines. This clarity is vital for maintaining transparency, fairness, and consistency throughout the application process.

7. **Do you believe that Section 7 (“ASP Application Evaluation”) of the ASP Handbook accurately reflects the relevant policy recommendations on Applicant Support?**

Clarifying questions and communication timelines (Section 7.3, Page 32): The process for clarification of questions allows for interaction between applicants and the Support Applicant Review Panels. However, the timeline for responses and the potential for additional questions could extend the evaluation period. Non-commercial stakeholders (applicants) with limited resources may find it challenging to respond promptly, especially if clarifications require additional documentation or specialized input.

The NCSG recommends establishing clear guidelines for the clarifying questions process, including a fixed timeline for responses and a limitation on the number of follow-up questions. Provide examples of common queries to help applicants prepare in advance.

In conclusion, the NCSG expresses its sincere gratitude for the chance to provide feedback and guidance on important ICANN policy matters as such. We therefore extend our thanks to the ICANN Staff for their diligent consideration of our remarks and look forward to our concerns being addressed.

A Human Rights Impact Assessment (HRIA) is a framework used to evaluate the potential effects of a project, policy, or activity on human rights. It is relevant to ICANN and the Domain Name System (DNS) because it provides a way to measure the qualitative success of DNS abuse mitigation efforts, with a focus on the human rights dimension. HRIAs can help governments to rethink their policy stances and reform them in light of human rights impact of those policies.

NCSG has co-organized and organized sessions at ICANN about Human Rights Impact Assessment especially in light of DNS abuse mitigation. But a host of decisions at ICANN could potentially have human rights implications.

Relevance to ICANN and DNS

- **Qualitative Measures of Success** HRIA helps in establishing qualitative measures that registries and registrars should consider when addressing DNS Abuse. This is in addition to quantitative measures like the reduction of DNS abuse. GAC also mentioned the importance of Due Process during mitigating abuse.
- **Identifying Human Rights Impacts** HRIAs help identify potential human rights impacts related to DNS abuse mitigation. This includes assessing whose rights are affected, what rights are implicated, and the severity of the impact.
- **Ensuring Due Process** HRIAs ensure that mitigation mechanisms afford domain name holders due process. This includes allowing registrants to understand why their registration might be rejected, suspended, or taken down, and providing them an opportunity to challenge the decision.
- **Proactive Prevention** HRIAs allow companies to identify potential points of vulnerability and derive potential solutions, enabling proactive prevention of human rights impacts.
- **Defined Scope of Action** HRIAs help companies focus on specific risk areas using a limited scope, such as human rights, which can prevent disproportionate reactions and collateral damage.
- **Compliance with Contractual Amendments** HRIAs can assist registrars in taking steps to comply with contractual amendments while minimizing the impact on human rights.
- **Upholding Fundamental Principles** HRIAs ensure transparency and accountability. They help to evaluate whether mitigation actions are proportional.

Human Rights Considerations in DNS Abuse Mitigation

- **Right to Privacy**: Mitigation mechanisms for DNS abuse should not lead to unnecessary disclosure of domain name holders' sensitive data.
- **Freedom of Expression**: Registrars should avoid unfair suspension or take-down of domain names, which could infringe on the domain name holder’s freedom of expression.
- **Equal Treatment/Non-Discrimination**: Mitigation mechanisms and remedies should be available across all registrar service regions.

- **Freedom of Association**: DNS abuse mitigation should not disable services that facilitate online meetings and connections, which could impact the right to assembly.
- **Access to Remedy**: There should be mechanisms for dispute resolution if mitigation efforts go wrong, such as in the case of wrongful take-downs or suspensions.

Issues that need HRIA attention:
Accuracy of Registration Data: If it leads to “identification of the registrant” will create a host of problems and human rights risks

RDRS: The registration data request system- should be monitored for potential human rights impact

DNS Abuse mitigation: ongoing human rights analysis