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Outputs that the Board Marks as “pending”

Output Overview	Issue Synopsis	Board Action
Topic 3: Applications Assessed in Rounds		
Affirmation with Modification 3.1: The Working Group affirms recommendation 13 from the 2007 policy, which states: “Applications must initially be assessed in rounds until the scale of demand is clear.” However, the Working Group believes that the recommendation should be revised to simply read, “Applications must be assessed in rounds.”	As noted in the ODA, “ICANN org considered that assessing applications in rounds and establishing criteria for starting subsequent rounds requires deliberation of what it means to close a round and possibly, the implications of simultaneous rounds for both applicants and ICANN org.” ¹ The Board is considering to direct ICANN org to establish the exact criteria for considering a round “closed” during the implementation process, doing so in consultation with the Implementation Review Team (IRT).	Proposed action for Cancun resolution: Pending.
Recommendation 3.2: Upon the commencement of the next Application Submission Period, there must be clarity around the timing and/or criteria for initiating subsequent procedures from that point forth. More specifically, prior to the commencement of the next Application Submission Period, ICANN must publish either (a) the date in which	See Affirmation with Modification 3.1	Proposed action for Cancun resolution: Pending.

¹ New gTLD Subsequent Procedures Operational Design Assessment, pp. 142-143.

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<p>the next subsequent round of new gTLDs will take place or (b) the specific set of criteria and/or events that must occur prior to the opening up of the next subsequent round.</p>		
<p>Recommendation 3.5: Absent extraordinary circumstances application procedures must take place at predictable, regularly occurring intervals without indeterminable periods of review unless the GNSO Council recommends pausing the program and such recommendation is approved by the Board. Such extraordinary circumstances must be subject to the Predictability Framework under Topic 2 of this Report. Unless and until other procedures are recommended by the GNSO Council and approved by the ICANN Board, ICANN must only use “rounds” to administer the New gTLD Program.</p>	<p>See Affirmation with Modification 3.1</p>	<p>Proposed action for Cancun resolution: Pending.</p>
<p>Recommendation 3.6: Absent extraordinary circumstances, future reviews and/or policy development processes, including the next Competition, Consumer Choice & Consumer Trust (CCT) Review, should take place concurrently with subsequent application rounds. In other words, future reviews and/or policy</p>	<p>See Affirmation with Modification 3.1</p>	<p>Proposed action for Cancun resolution: Pending.</p>

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development processes must not stop or delay subsequent new gTLD rounds.		
<p>Recommendation 3.7: If the outputs of any reviews and/or policy development processes has, or could reasonably have, a material impact on the manner in which application procedures are conducted, such changes must only apply to the opening of the application procedure subsequent to the adoption of the relevant recommendations by the ICANN Board.</p>	See Affirmation with Modification 3.1	Proposed action for Cancun resolution: Pending.
<p>Topic 6: Registry Service Provider Pre-Evaluation</p>		
<p>Recommendation 6.8: The RSP pre-evaluation program must be funded by those seeking pre-evaluation on a cost-recovery basis. Costs of the program should be established during the implementation phase by the Implementation Review Team in collaboration with ICANN org.</p>	<p>The Board is concerned about the recommended roles and responsibilities during the implementation process. Per Consensus Policy Implementation Framework (CPIF) and the IRT Principles & Guidelines ICANN org leads implementation efforts. Therefore, the costs of the program should be established by ICANN org during implementation in consultation with the IRT.</p>	Proposed action for Cancun: pending.
<p>Topic 9: Registry Voluntary Commitments / Public Interest Commitments</p>		
<p>Recommendation 9.1: Mandatory Public Interest Commitments (PICs) currently captured in Specification 11</p>	<p>The Board remains concerned, as previously voiced as part of its comment on the Draft Final Report, over risks of challenges related to ICANN’s ability to enter</p>	Proposed action for Cancun resolution: Pending.

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<p>3(a)-(d) of the Registry Agreement² must continue to be included in Registry Agreements for gTLDs in subsequent procedures. Noting that mandatory PICs were not included in the 2007 recommendations, this recommendation puts existing practice into policy. One adjustment to the 2012 implementation is included in the following recommendation (Recommendation</p>	<p>into and enforce PICs/RVCs in accordance with its mission, due to limitations in the Bylaws Section 1.1.</p>	
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² The relevant sections are as follows:

3. Registry Operator agrees to perform the following specific public interest commitments, which commitments shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN (posted at <http://www.icann.org/en/resources/registries/picdrp>), which may be revised in immaterial respects by ICANN from time to time (the “PICDRP”). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

- (a) Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.
- (b) Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.
- (c) Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.
- (d) Registry Operator of a “Generic String” TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person’s or entity’s “Affiliates” (as defined in Section 2.9(c) of the Registry Agreement). “Generic String” means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.

For full detail, see the 31 June 2017 Registry Agreement here: <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.pdf>

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9.2). ³		
<p>Recommendation 9.2: Provide single-registrant TLDs with exemptions and/or waivers to mandatory PICs included in Specification 11 3(a) and Specification 11 3(b).⁴</p>	<p>The Board is concerned that a waiver to Spec 11 3 (a) and 3 (b) could lead to DNS abuse for second level registrations in a single registrant TLD going undeterred, unobserved and therefore unmitigated.</p> <p>The Board is also concerned that a waiver to Spec 11 3 (a) and 3 (b) could require a change to the RA's Specification 13, which would introduce significant implementation efforts to harmonize current 2012 agreements with future rounds if ICANN org elected to leverage the current agreement for the future rounds.</p>	See Recommendation 9.1
<p>Recommendation 9.4: The Working Group recommends establishing a process to determine if an applied-for string falls into one of four groups defined by the NGPC framework for new gTLD strings deemed to be applicable to highly sensitive or regulated industries. This process must be included in the Applicant Guidebook along with information about the</p>	See Recommendation 9.1	See Recommendation 9.1

³ In addition to the existing mandatory PICs discussed under this topic, Topic 24: String Similarity Evaluations includes a recommendation to introduce a new mandatory PIC that would be required in cases where two applications are submitted during the same application window for strings that create the probability of a user assuming that they are single and plural versions of the same word, but the applicants intend to use the strings in connection with two different meanings. The applicants would commit to the use stated in the application via a mandatory PIC.

⁴ For the sake of clarity, this recommendation and the exemption does NOT apply to Specification 11 3(c) or 11 3(d).

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ramifications of a string being found to fall into one of the four groups.		
Recommendation 9.8: If an applied-for string is determined to fall into one of the four groups of strings applicable to highly sensitive or regulated industries, the relevant Category 1 Safeguards must be integrated into the Registry Agreement as mandatory Public Interest Commitments.	See Recommendation 9.1	See Recommendation 9.1
Recommendation 9.9: ICANN must allow applicants to submit Registry Voluntary Commitments (RVCs) (previously called voluntary PICs) in subsequent rounds in their applications or to respond to public comments, objections, whether formal or informal, GAC Early Warnings, GAC Consensus Advice, and/or other comments from the GAC. Applicants must be able to submit RVCs at any time prior to the execution of a Registry Agreement; provided, however, that all RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendation set forth under topic 20: Application Changes Requests, including, but not limited to,	See Recommendation 9.1	See Recommendation 9.1

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<p>an operational comment period⁵ in accordance with ICANN’s standard procedures and timeframes.</p>		
<p>Recommendation 9.10: RVCs must continue to be included in the applicant’s Registry Agreement.</p>	<p>See Recommendation 9.1</p>	<p>See Recommendation 9.1</p>
<p>Recommendation 9.12: At the time an RVC is made, the applicant must set forth whether such commitment is limited in time, duration and/or scope. Further, an applicant must include its reasons and purposes for making such RVCs such that the commitments can adequately be considered by any entity or panel (e.g., a party providing a relevant public comment (if applicable), an existing objector (if applicable) and/or the GAC (if the RVC was in response to a GAC Early Warning, GAC Consensus Advice, or other comments from the GAC)) to understand if the RVC addresses the underlying concern(s).</p>	<p>See Recommendation 9.1</p>	<p>See Recommendation 9.1</p>
<p>Recommendation 9.13: In support of the principle of transparency, RVCs must be readily accessible and presented in a manner that is usable, as further</p>	<p>See Recommendation 9.1</p>	<p>See Recommendation 9.1</p>

⁵ a 30-day comment period giving the public the opportunity to comment on any change to a public part of an application.

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described in the implementation guidance below.		
<p>Recommendation 9.15: The Working Group acknowledges ongoing important work in the community on the topic of DNS abuse⁶ and believes that a holistic solution is needed to account for DNS abuse in all gTLDs as opposed to dealing with these recommendations with respect to only the introduction of subsequent new gTLDs. In addition, recommending new requirements that would only apply to the new gTLDs added to the root in subsequent rounds could result in singling out those new gTLDs for disparate treatment in contravention of the ICANN Bylaws. Therefore, this PDP Working Group is not making any recommendations with respect to mitigating domain name abuse other than stating that any such future effort must apply to both existing and new gTLDs (and potentially ccTLDs).</p>	See Recommendation 9.1	See Recommendation 9.1

⁶ The Working Group did not attempt to define the term “DNS abuse” in the course of its discussions and is not endorsing any particular definition of this term. The Working Group notes, however, that the CCT-RT used the following definition to support its work: “Intentionally deceptive, conniving, or unsolicited activities that actively make use of the DNS and/or the procedures used to register domain names.” See p. 3 of the “New gTLD Program Safeguards Against DNS Abuse: Revised Report” (2016) for additional context on this definition: <https://www.icann.org/news/announcement-2016-07-18-en>. The CCT-RT used the term “DNS Security Abuse” in its Final Report to refer to specific, technical forms of abusive behavior: spam, phishing, and malware distribution in the DNS. The CCT-RT also drew on the Registration Abuse Policies Working Group’s Final Report, which provides additional detail about how abuse has been characterized by the ICANN Community: https://gns0.icann.org/sites/default/files/filefield_12530/rap-wg-final-report-29may10-en.pdf

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<p>The Working Group has reached this conclusion after duly considering the DNS abuse related CCT-RT Recommendations, which includes 14,⁷ 15,⁸ and 16⁹. Note, however, that at the time of the drafting of this report, the ICANN Board only approved Recommendation 16. Recommendations 14 and 15 remain in a “Pending” status.¹⁰</p>		
<p>Topic 16: Application Submission Period</p>		
<p>Recommendation 16.1: The Working Group recommends that for the next</p>	<p>The Board is concerned that the time period provided in this recommendation could be too limiting for</p>	<p>Proposed action for Cancun: pending.</p>

⁷ CCT-RT Recommendation 14 states: “Consider directing ICANN org, in its discussions with registries, to negotiate amendments to existing Registry Agreements, or in consideration of new Registry Agreements associated with subsequent rounds of new gTLDs, to include provisions in the agreements to provide incentives, including financial incentives, for registries, especially open registries, to adopt proactive anti-abuse measures.”

⁸ CCT-RT Recommendation 15 states: “ICANN Org should, in its discussions with registrars and registries, negotiate amendments to the Registrar Accreditation Agreement and Registry Agreements to include provisions aimed at preventing systemic use of specific registrars or registries for DNS Security Abuse. With a view to implementing this recommendation as early as possible, and provided this can be done, then this could be brought into effect by a contractual amendment through the bilateral review of the Agreements. In particular, ICANN should establish thresholds of abuse at which compliance inquiries are automatically triggered, with a higher threshold at which registrars and registries are presumed to be in default of their agreements. If the community determines that ICANN org itself is ill-suited or unable to enforce such provisions, a DNS Abuse Dispute Resolution Policy (DADRP) should be considered as an additional means to enforce policies and deter against DNS Security Abuse. Furthermore, defining and identifying DNS Security Abuse is inherently complex and would benefit from analysis by the community, and thus we specifically recommend that the ICANN Board prioritize and support community work in this area to enhance safeguards and trust due to the negative impact of DNS Security Abuse on consumers and other users of the Internet.”

⁹ CCT-RT Recommendation 16 states: “Further study the relationship between specific registry operators, registrars and technical DNS abuse by commissioning ongoing data collection, including but not limited to, ICANN Domain Abuse Activity Reporting (DAAR) initiatives. For transparency purposes, this information should be regularly published, ideally quarterly and no less than annually, in order to be able to identify registries and registrars that need to come under greater scrutiny, investigation, and potential enforcement action by ICANN org. Upon identifying abuse phenomena, ICANN should put in place an action plan to respond to such studies, remediate problems identified, and define future ongoing data collection.”

¹⁰ See relevant Board scorecards here: <https://www.icann.org/en/system/files/files/resolutions-final-cctrecs-scorecard-01mar19-en.pdf> and here: <https://www.icann.org/en/system/files/files/cct-pending-recsboard-action-22oct20-en.pdf>

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<p>application window and subsequent application windows, absent “extenuating or extraordinary” circumstances, the application submission period must be a minimum of 12 and a maximum of 15 weeks in length.</p>	<p>future rounds.</p>	
<p>Topic 17: Applicant Support</p>		
<p>Recommendation 17.2: The Working Group recommends expanding the scope of financial support provided to Applicant Support Program beneficiaries beyond the application fee to also cover costs such as application writing fees and attorney fees related to the application process.</p>	<p>The Board remains concerned, as previously voiced as part of its comment on the Draft Final Report, over the open ended nature of these fees as affirmative payments of costs beyond application fees could raise fiduciary concerns for the Board.</p> <p>Note, this concern does not extend to facilitation of <i>pro bono</i> services.</p>	<p>Proposed action in Cancun: pending.</p>
<p>Topic 18: Terms & Conditions</p>		
<p>Recommendation 18.1: Unless required by specific laws, ICANN Board members’ fiduciary duties, or the ICANN Bylaws, ICANN must only reject an application if done so in accordance with the provisions of the Applicant Guidebook. In the event an application is rejected, ICANN org must cite with specificity the reason in</p>	<p>The Board remains concerned, as previously voiced as part of its comment on the Draft Final Report, over this recommendation unduly restricting ICANN’s discretion to reject an application in circumstances that fall outside the specific grounds set out in the recommendation.</p>	<p>Proposed action in Cancun: pending.</p>

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<p>accordance with the Applicant Guidebook, or if applicable, the specific law and/or ICANN Bylaws for not allowing an application to proceed. This recommendation constitutes a revision to Section 3 of the Terms and Conditions from the 2012 round.</p>		
<p>Recommendation 18.3: In subsequent rounds, the Terms of Use must only contain a covenant not to sue if, and only if, the appeals/challenge mechanisms set forth under Topic 32 of this report are introduced into the program (in addition to the accountability mechanisms set forth in the current ICANN Bylaws). This recommendation is in reference to Section 6 of the Terms and Conditions from the 2012 round.</p>	<p>The Board remains concerned, as previously voiced as part of its comment on the Draft Final Report, over undue legal exposure.</p>	<p>Proposed action in Cancun: pending.</p>
<p>Recommendation 18.4: Applicants must be allowed some type of refund if they decide to withdraw an application because substantive changes are made to the Applicant Guidebook or program processes and such changes have, or are reasonably likely to have, a material impact on applicants.¹¹</p>	<p>The Board is concerned that the way the recommendation is worded could lead to gaming because of the subjective nature of the terms ‘substantive’ and ‘material’.</p>	<p>Proposed action in Cancun: pending.</p>

¹¹ This refund would differ from the normal refund schedule.

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Topic 19: Application Queuing		
<p>Recommendation 19.3: All applications must be processed on a rolling basis, based on assigned priority numbers. While the 2012 AGB prescribed batches of 500 applications, ICANN org noticed during that round that moving through the priority list without splitting the applications into batches was more efficient. The Working Group affirms that approach by not recommending batches. However, if the volume of Internationalized Domain Names (IDN) applications received equals or exceeds 125, applications will be assigned priority numbers consistent with the formula below.</p> <p>The Working Group recommends that the following formula must be used with respect to giving priority to IDN applications:</p> <ul style="list-style-type: none">• <u>First 500 applications</u><ul style="list-style-type: none">○ If there are 125 applications or more for IDN strings that elect to participate in the prioritization draw, the first 25% of applications assigned priority	<p>The Board is concerned that the precise number of batching could be/is too limiting for future rounds as the recommendation prescribes a batch size that might not align with future system capabilities.</p>	<p>Proposed action in Cancun: pending.</p>

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<p>numbers in the first group shall be those applications for IDN strings that elect to participate in the prioritization draw. The remaining 75% of applications in the group shall consist of both IDN and non-IDN applications that elect to participate in the prioritization draw.</p> <ul style="list-style-type: none">○ If there are less than 125 applications for IDN strings that elect to participate in the prioritization draw, then all such applications shall be assigned priority numbers prior to any non-IDN application.● <u>Each subsequent group of those electing to participate in the prioritization draw</u><ul style="list-style-type: none">○ For each subsequent group, the first 10% of each group of applications must consist of IDN applications until there		
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<p>are no more IDN applications.</p> <ul style="list-style-type: none">○ The remaining applications in each group shall be selected at random out of the pool of IDN and non-IDN applications that remain. <ul style="list-style-type: none">● <u>Processing of applications which do not elect to participate in the prioritization draw</u><ul style="list-style-type: none">○ When all of the applications that have elected to participate in the prioritization draw have been assigned priority numbers, ICANN shall assign priority numbers to the remaining applications in groups of 500 applications.○ The first 10% of each group of applications must consist of IDN applications until there are no more IDN applications.○ The remaining applications in each group shall be selected		
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<p>at random out of the pool of IDN and non-IDN applications that remain.</p>		
<p>Topic 22: Registrant Protections</p>		
<p>Recommendation 22.7: TLDs that have exemptions from the Code of Conduct (Specification 9), including .Brand TLDs qualified for Specification 13, must also receive an exemption from Continued Operations Instrument (COI) requirements or requirements for the successor to the COI.</p>	<p>The Board is concerned that an exemption from an COI for Spec 9 applications would have financial impact on ICANN since there would be no fund to draw from if such a registry went into EBERO.</p> <p>Further, not moving a Brand TLD into EBERO might have a security and stability impact, especially if Brands allocate second level TLDs to customers -such as a car manufacturer providing a second level registration for their cars.</p>	<p>Proposed action for Cancun: pending.</p>
<p>Topic 24: String Similarity Evaluations</p>		
<p>Recommendation 24.3: The Working Group recommends updating the standards of both (a) confusing similarity to an existing top-level domain or a Reserved Name, and (b) similarity for purposes of determining string contention, to address singular and plural versions of the same word, noting that this was an area where there was insufficient clarity in the 2012 round. Specifically, the Working Group</p>	<p>The Board remains concerned, as previously voiced as part of its comment on the Draft Final Report, over the wording in section (a) and (c) of this Recommendation as they stipulate ‘intended use’ of a gTLD, which implies that ICANN will have to enforce the ‘intended use’ post delegation, which could be challenged as acting outside its mission. See also Topic 9 above.</p>	<p>Proposed action for Cancun: pending.</p>

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<p>recommends prohibiting plurals and singulars of the same word within the same language/script in order to reduce the risk of consumer confusion. For example, the TLDs .EXAMPLE¹² and .EXAMPLES may not both be delegated because they are considered confusingly similar. This expands the scope of the String Similarity Review to encompass singulars/plurals of TLDs on a per-language/script basis.</p> <ul style="list-style-type: none">• An application for a single/plural variation of an existing TLD or Reserved Name will not be permitted if the intended use of the applied-for string is the single/plural version of the existing TLD or Reserved Name. For example, if there is an existing TLD .SPRINGS that is used in connection with elastic objects and a new application for .SPRING that is also intended to be used in connection with elastic objects, .SPRING will not be permitted.• If there is an application for the singular version of a word and an application for a plural		
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¹² .EXAMPLE is used here for illustrative purposes only. The Working Group is aware that technically .EXAMPLE cannot be delegated at all because it is one of the names already reserved from delegation as a Special Use name.

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<p>version of the same word in the same language/script during the same application window, these applications will be placed in a contention set, because they are confusingly similar.</p> <ul style="list-style-type: none">• Applications will not automatically be placed in the same contention set because they appear visually to be a single and plural of one another but have different intended uses. For example, .SPRING and .SPRINGS could both be allowed if one refers to the season and the other refers to elastic objects, because they are not singular and plural versions of the same word. However, if both are intended to be used in connection with the elastic object, then they will be placed into the same contention set. Similarly, if an existing TLD .SPRING is used in connection with the season and a new application for .SPRINGS is intended to be used in connection with elastic objects, the new application will not be automatically disqualified.		
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<p>The Working Group recommends using a dictionary to determine the singular and plural version of the string for the specific language. The Working Group recognizes that singulars and plurals may not visually resemble each other in multiple languages and scripts globally. Nonetheless, if by using a dictionary, two strings are determined to be the singular or plural of each other, and their intended use is substantially similar, then both should not be eligible for delegation.</p>		
<p>Recommendation 24.5: If two applications are submitted during the same application window for strings that create the probability of a user assuming that they are single and plural versions of the same word, but the applicants intend to use the strings in connection with two different meanings,¹³ the applications will only be able to proceed if each of the applicants agrees to the inclusion of a mandatory Public Interest Commitment (PIC) in its Registry Agreement. The mandatory PIC must include a commitment by the registry to use the TLD in line with the intended use presented in the application, and</p>	<p>See 24.3 above</p>	<p>See 24.3 above</p>

¹³ As an example, if the two applicants applied for .SPRING and .SPRINGS, one might intend to use the TLD .SPRING in connection with the season and the other might intend to use the TLD .SPRINGS in connection with the elastic object.

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<p>must also include a commitment by the registry that it will require registrants to use domains under the TLD in line with the intended use stated in the application.</p>		
Topic 26: Security and Stability		
<p>Recommendation 26.9: In connection to the affirmation of Recommendation 4 from the 2007 policy, Emoji in domain names, at any level, must not be allowed.</p>	<p>The Board is concerned that this recommendation could be argued to fall outside ICANN’s mission which states, per the Bylaws (Section 1.1.(i)): “... Coordinates the allocation and assignment of names in the root zone of the Domain Name System (“DNS”) and coordinates the development and implementation of policies concerning the registration of second-level [emphasis added] domain names in generic top-level domains (“gTLDs”). In this role, ICANN’s scope is to coordinate the development and implementation of policies... [.]”</p>	<p>TBD</p>
Topic 29: Name Collisions		
<p>Recommendation 29.1: ICANN must have ready prior to the opening of the application submission period a mechanism to evaluate the risk of name collisions in the New gTLD evaluation process as well as during the transition to delegation phase.</p>	<p>The Board has concerns around the potential impact of NCAP on this recommendation and believes it is prudent to wait until after the release of the NCAP2 study before resolving on this recommendation.</p>	<p>Proposed action for Cancun: pending.</p>

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Topic 30: GAC Consensus Advice and GAC Early Warning		
<p>Recommendation 30.4: Section 3.1 of the 2012 Applicant Guidebook states that GAC Consensus Advice “will create a strong presumption for the ICANN Board that the application should not be approved.” Noting that this language does not have a basis in the current version of the ICANN Bylaws, the Working Group recommends omitting this language in future versions of the Applicant Guidebook to bring the Applicant Guidebook in line with the Bylaws language.¹⁴ The Working Group further notes that the language may have the unintended consequence of hampering the ability of the Board to facilitate a solution that mitigates concerns and is mutually acceptable to the applicant and the GAC as described in the relevant Bylaws language. Such a solution could allow an application to proceed. In place of the omitted language, the Working Group</p>	<p>The GAC has previously raised concerns around the wording of this recommendation. The Board will consult with GNSO Council and GAC before resolving on this recommendation.</p>	<p>Proposed action for Cancun: pending.</p>

¹⁴ Section 12.2 (a)(x) of the ICANN Bylaws states: “The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee advice, it shall so inform the Governmental Advisory Committee and state the reasons why it decided not to follow that advice. Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection (“GAC Consensus Advice”), may only be rejected by a vote of no less than 60% of the Board, and the Governmental Advisory Committee and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee will state whether any advice it gives to the Board is GAC Consensus Advice.”

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<p>recommends including in the Applicant Guidebook a reference to applicable Bylaws provisions that describe the voting threshold for the ICANN Board to reject GAC Consensus Advice.¹⁵</p>		
<p>Recommendation 30.5: The Working Group recommends that GAC Early Warnings are issued during a period that is concurrent with the Application Comment Period.¹⁶ To the extent that there is a longer period given for the GAC to provide Early Warnings (above and beyond the Application Comment Period), the Applicant Guidebook must define a specific time period during which GAC Early Warnings can be issued.</p>	<p>The GAC has previously raised concerns around the wording of this recommendation. The Board will consult with GNSO Council and GAC before resolving on this recommendation.</p>	<p>Proposed action for Cancun: pending.</p>
<p>Recommendation 30.6: Government(s) issuing Early Warning(s) must include a written explanation describing why the Early Warning was submitted and how the applicant may address the GAC member’s concerns.</p>	<p>The GAC has previously raised concerns around the wording of this recommendation. The Board will consult with GNSO Council and GAC before resolving on this recommendation.</p>	<p>Proposed action for Cancun: pending.</p>
<p>Recommendation 30.7: Applicants must be allowed to change their applications, including the addition or</p>	<p>See Recommendation 9.1.</p>	<p>Proposed action for Cancun: pending.</p>

¹⁵ See section 12.2(a)(x) of the current ICANN Bylaws: <https://www.icann.org/resources/pages/governance/bylaws-en/#article12>

¹⁶ See Topic 28 of this report for discussion of the application comment period.

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<p>modification of Registry Voluntary Commitments (RVCs, formerly voluntary PICs), to address GAC Early Warnings, GAC Consensus Advice, and/or other comments from the GAC.¹⁷ Relevant GAC members are strongly encouraged to make themselves available during a specified period of time for direct dialogue¹⁸ with applicants impacted by GAC Early Warnings, GAC Consensus Advice, or comments to determine if a mutually acceptable solution can be found.</p>		
Topic 31: Objections		
<p>Recommendation 31.16: Applicants must have the opportunity to amend an application or add Registry Voluntary Commitments (RVCs) in response to concerns raised in a formal objection. All these amendments and RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendations set forth under</p>	<p>See Recommendation 9.1</p>	<p>Proposed action for Cancun: pending.</p>

¹⁷ The addition or modification of RVCs submitted after the application submission date shall be considered Application Changes and be subject to the recommendations set forth under Topic 20: Application Change Requests including, but not limited to, an operational comment period in accordance with ICANN’s standard procedures and timeframes.

¹⁸ While face-to-face dialogue is encouraged, the Working Group recognizes that this may not be feasible in all cases. Dialogue through remote channels may also support the productive exchange of ideas.

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<p>Topic 20: Application Change Requests including, but not limited to, an operational comment period in accordance with ICANN’s standard procedures and timeframes.</p>		
<p>Recommendation 31.17: To the extent that RVCs are used to resolve a formal objection either (a) as a settlement between the objector(s) and the applicant(s) or (b) as a remedy ordered by an applicable dispute panelist, those RVCs must be included in the applicable applicant(s) Registry Agreement(s) as binding contractual commitments enforceable by ICANN through the PICDRP.</p>	<p>See Recommendation 9.1</p>	<p>Proposed action for Cancun: pending.</p>
<p>Topic 32: Limited Challenge/Appeal Mechanism</p>		
<p>Recommendation 32.1: The Working Group recommends that ICANN establish a mechanism that allows specific parties to challenge or appeal certain types of actions or inactions that appear to be inconsistent with the Applicant Guidebook.¹⁹</p> <p>The new substantive challenge/appeal</p>	<p>The Board is still assessing the concerns regarding this recommendation, as set out in Operational Design Assessment, at topic 32 (pp. 169-176)</p>	<p>Proposed action for Cancun: pending.</p>

¹⁹ Examples of such actions or inactions include where an evaluator misapplies the Guidebook or omits Guidebook criteria or where a panel relies on incorrect information or standard to decide an objection.

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<p>mechanism is not a substitute or replacement for the accountability mechanisms in the ICANN Bylaws that may be invoked to determine whether ICANN staff or Board violated the Bylaws by making or not making a certain decision. Implementation of this mechanism must not conflict with, be inconsistent with, or impinge access to accountability mechanisms under the ICANN Bylaws.</p> <p>The Working Group recommends that the limited challenge/appeal mechanism applies to the following types of evaluations and formal objections decisions²⁰:</p> <p>Evaluation Challenges</p> <ol style="list-style-type: none">1. Background Screening2. String Similarity3. DNS Stability4. Geographic Names5. Technical / Operational Evaluation6. Financial Evaluation7. Registry Services Evaluation8. Community Priority Evaluation9. Applicant Support		
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²⁰ The list of challenges and appeals herein are based on the current and envisaged processes and procedures for the New gTLD Program. In the event that additional evaluation elements and/or objections are added, modified or removed from the program, the challenges and/or appeals may have to be modified as appropriate.

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<p>10. RSP Pre-Evaluation</p> <p>Appeals of Formal Objections Decisions</p> <ol style="list-style-type: none"> 1. String Confusion Objection 2. Legal Rights Objection 3. Limited Public Interest Objection 4. Community Objection 5. Conflict of Interest of Panelists 		
<p>Recommendation 32.2: In support of transparency, clear procedures and rules must be established for challenge/appeal processes as described in the implementation guidance below.</p>	<p>See recommendation 32.1</p>	<p>Proposed action for Cancun: pending.</p>
<p>Recommendation 32.10: The limited challenge/appeal process must be designed in a manner that does not cause excessive, unnecessary costs or delays in the application process, as described in the implementation guidance below.</p>	<p>See recommendation 32.1</p>	<p>Proposed action for Cancun: pending.</p>
<p>Topic 34: Community Applications</p>		
<p>Recommendation 34.12: The process to develop evaluation and selection criteria that will be used to choose a Community Priority Evaluation Provider (CPE Provider) must include mechanisms to</p>	<p>The Board is concerned that this recommendation may require ICANN to publish for public comment confidential information, such as terms of a contract with a third party, including, e.g., fees and payments.</p>	<p>Proposed action for Cancun: pending.</p>

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<p>ensure appropriate feedback from the ICANN community. In addition, any terms included in the contract between ICANN org and the CPE Provider regarding the CPE process must be subject to public comment.</p>		
Topic 35: Auctions		
<p>Recommendation 35.3: Applications must be submitted with a bona fide (“good faith”) intention to operate the gTLD. Applicants must affirmatively attest to a bona fide intention to operate the gTLD clause for all applications that they submit.</p> <ul style="list-style-type: none">• Evaluators and ICANN must be able to ask clarifying questions to any applicant it believes may not be submitting an application with a bona fide intention. Evaluators and ICANN shall use, but are not limited to, the “Factors” described below in their consideration of whether an application was submitted absent bona fide intention. These “Factors” will be taken into consideration and weighed against all of the other facts and circumstances surrounding the impacted applicants and	<p>The Board is concerned that this recommendation contains a reference to private auctions. Since there is no policy on private auction, this reference may create confusion during implementation and operationalization of the program.</p>	<p>Proposed action for Cancun: pending.auction</p>

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<p>applications. The existence of any one or all of the “Factors” may not themselves be conclusive of an application made lacking a bona fide use intent.</p> <ul style="list-style-type: none">• Applicants may mark portions of any such responses as “confidential” if the responses include proprietary business information. <p>The Working Group discussed the following potential non-exhaustive list of “Factors” that ICANN may consider in determining whether an application was submitted with a bona fide (“good faith”) intention to operate the gTLD. Note that potential alternatives and additional language suggested by some Working Group members are included in brackets:</p> <ul style="list-style-type: none">• If an Applicant applies for [four] [five] or more strings that are within contention sets and participates in private auctions for more than fifty percent (50%) of those strings for which the losing bidder(s) receive the proceeds from the successful bidder, and the applicant loses each of the private auctions, this		
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<p>may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for each of those applications.</p> <ul style="list-style-type: none">● Possible alternatives to the above bullet point:<ul style="list-style-type: none">○ [If an applicant participates in six or more private auctions and fifty percent (50%) or greater of its contention strings produce a financial windfall from losing.]○ [If an applicant receives financial proceeds from losing greater than 49% of its total number of contention set applications that are resolved through private auctions.]○ [If an applicant: a. Has six or more applications in contention sets; and b. 50% or more of the contention sets are resolved in private auctions; and c. 50% or more of the private auctions produce a		
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<p>financial windfall to the applicant.]</p> <ul style="list-style-type: none">○ [If an applicant applies for 5 or more strings that are within contention sets and participated in 3 private auctions for which the applicant is the losing bidder and receives proceeds from the successful bidder it MUST send to the evaluators a detailed reconciliation statement of its auction fund receipts and expenditure immediately on completion of its final contention set resolution. In addition this may be considered a factor by the evaluators and ICANN in determining lack of bona fide intention to operate the gTLD for all of its applications and in doing so might stop all its applications from continuing to delegation.]		
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<ul style="list-style-type: none">• If an applicant's string is not delegated into the root within two (2) years of the Effective Date of the Registry Agreement, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for that applicant.• If an applicant is awarded a top-level domain and [sells or assigns] [attempts to sell] the TLD (separate and apart from a sale of all or substantially all of its non-TLD related assets) within (1) year, this may be a factor considered by ICANN in determining lack of bona fide intention to operate the gTLD for that applicant.• [If an applicant with multiple applications resolves contention sets by means other than private auctions and does not win any TLDs.] <p>Consideration of whether an application was submitted with a bona fide intention to operate the gTLD must be determined by considering all of the facts and circumstances surrounding the impacted application.</p>		
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<p>Recommendation 35.5: Applicants resolving string contention must adhere to the Contention Resolution Transparency Requirements as detailed below. Applicants disclosing relevant information will be subject to the Protections for Disclosing Applicants as detailed below.</p> <p><u>Contention Resolution Transparency Requirements</u></p> <ul style="list-style-type: none">• <u>For Private Auction or Bidding Process / ICANN Auction of Last Resort:</u> In the case of a private auction or an ICANN Auction of Last Resort, all parties in interest²¹ to any agreements relating to participation of the applicant in the private auction or ICANN Auction of Last Resort must be disclosed to ICANN within 72 hours of resolution and ICANN must, in turn, publish the same within 72 hours of receipt. This includes:<ul style="list-style-type: none">○ A list of the real party or parties in interest in each applicant or	<p>The Board is concerned that this recommendation contains a reference to private auctions. Since there is no policy on private auction, this reference may create confusion during implementation and operationalization of the program.</p>	<p>Proposed action for Cancun: pending.</p>
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²¹ A party in interest is a person or entity who will benefit from the transaction even if the one participating in the transaction is someone else. This includes, but is not limited to any person or entity that has more than a de minimus ownership interest in an applicant, or who will be in a position to actually or potentially control the operation of an applicant.

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<p>application, including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant;</p> <ul style="list-style-type: none">○ List the names and contact information²² of any party holding 15% or more direct or indirect ownership of each applicant or application, whether voting or nonvoting, including the specific amount of the interest or percentage held;○ List the names and contact information²³ of all officers, directors, and other controlling interests in the applicant and/or the application;○ The amount paid (or payable) by the winner of the auction;○ The beneficiary(ies) of the proceeds of the		
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²² Contact Information will be subject to the same publication rules as contact information is treated in the application process.

²³ Same as above.

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<p>bidding process and the respective distribution amounts;</p> <ul style="list-style-type: none">○ The beneficiary(ies) of the proceeds of the bidding process; and○ The value of the Applicant Support bidding credits or multiplier used, if applicable.²⁴ <ul style="list-style-type: none">● <u>For Other Forms of Private Resolution</u>: Where contention sets are privately resolved through a mechanism other than a private auction, the following must be disclosed:<ul style="list-style-type: none">○ The fact that the contention set (or part of a contention set), has been resolved privately (and the names of the parties involved);○ Which applications are being withdrawn (if applicable);○ Which applications are being maintained (if applicable);		
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²⁴ We assume that Applicant Support bidding credits or multipliers would only be used in cases where the resolution sets were decided by an ICANN Auction of Last Resort, however, we note that it is theoretically possible that such credits or multipliers could be used during a private auction if all parties in the private auction agreed.

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<ul style="list-style-type: none">○ If there will be a change in ownership of the applicant, or any changes to the officers, directors, key personnel, etc., along with the corresponding information;○ All material information regarding any changes to information contained in the original application(s)(if any). <p>In the event that any arrangements to resolve string contention results in any material changes to the surviving application, such changes must be submitted through the Application Change process set forth under Topic 20: Application Change Requests.</p> <p><u>Protections for Disclosing Applicants</u></p> <ul style="list-style-type: none">● Except as otherwise set forth in the transparency requirements above, no participant in any private resolution process shall be required to disclose any proprietary information such as trade secrets, business plans, financial records, or personal information of officers and		
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<p>directors unless such information is otherwise required as part of a normal TLD application.</p> <ul style="list-style-type: none">• The information obtained from the contention resolution process may not be used by ICANN for any purpose other than as necessary to evaluate the application, evaluate the New gTLD Program, or to otherwise comply with applicable law.		
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