

SUBSEQUENT PROCEDURES PDP

Summarised Compilation of Rejected (“Pended”) Recommendations

This table is a highly summarised list of the 38 Recommendations that were “pended” by the Board. Rather than providing completeness, this table is intended to serve as a “memory jogger” for the interviewee and a starting point for discussion. During the interview. We will discuss a subset of these, to be selected by both the interviewee and interviewer.

For a complete tabular description of the Board initial decisions on all the PDP recommendations, see, <https://www.icann.org/en/system/files/files/scorecard-subpro-pdp-board-action-16mar23-en.pdf>

38 Outputs That the Board Identified as “Pending”

Output Synopsis	Issue Synopsis
Topic 3: Applications Assessed in Rounds	
<p>Applications must be assessed in rounds.</p> <ul style="list-style-type: none"> • there must be clarity around the timing and/or criteria for initiating subsequent procedures • application procedures must take place at predictable, regularly occurring intervals • the next CCT review, should take place concurrently with subsequent application rounds. • if any reviews and/or policy development processes has a material impact on application procedures, such changes must only apply to the opening of the next application procedure 	<p>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.”⁴⁴</p>
Topic 6: Registry Service Provider Pre-Evaluation	
<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>ICANN org leads implementation efforts. Therefore, the costs of the program should be established by ICANN org.</p>

Topic 9: Registry Voluntary Commitments / Public Interest Commitments ;30 (GAC Early Warning); 31 (Objections)

Recommendation 9.1, 9.3-15: Mandatory Public Interest Commitments (PICs) currently captured in Specification 11 3(a)-(d) of the Registry Agreement⁴⁵ must continue to be included in Registry Agreements for gTLDs in subsequent procedures.

Establish a process to determine if an applied-for string falls into one of four groups defined by the NGPC framework. The process and subsequent requirements, including mandatory PICs must be included in the Guidebook and contract.

ICANN must allow applicants to submit Registry Voluntary Commitments (RVCs)

Recommendation 30.7: Applicants must be allowed to change their applications, including the addition or modification of Registry Voluntary Commitments (RVCs, formerly voluntary PICs), to address GAC Early Warnings.

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.

Recommendation 31.17: To the extent that RVCs are used to resolve a formal objection, those RVCs must be included in the Registry Agreement(s).

The Board remains concerned over risks of challenges related to ICANN's ability to enter into and enforce PICs/RVCs, i.e., content regulation.

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).

The Board is concerned that a waiver to Specification 11, sections 3(a) and 3(b) could lead to DNS abuse for second-level registrations in a single-registrant TLD going undeterred.

The Board is also concerned that a waiver to Specification 11, sections 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.

Topic 16: Application Submission Period

<p>Recommendation 16.1: The Working Group recommends that for the next 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>The Board is concerned that the time period provided in this recommendation could be too limiting for future rounds.</p>
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Topic 17: Applicant Support

Output Synopsis	Issue Synopsis
<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. This concern does not extend to facilitation of <i>pro bono</i> services.</p>

Topic 18: Terms & Conditions

<p>Recommendation 18.1-3:</p> <ol style="list-style-type: none">1. ICANN can only reject an application if done so in accordance with the provisions of the Applicant Guidebook.2. The covenant not to sue must be eliminated unless ICANN adopts the appeals/challenge mechanisms set forth under Topic 32.3. Applicants must be allowed some type of refund if they decide to withdraw an application because substantive changes are made to the Applicant Guidebook	<p>The Board remains concerned, as previously voiced as part of its comment on the Draft Final Report,</p> <ol style="list-style-type: none">1. 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.2. objectors might argue based on this policy recommendation that the covenant not to sue is not valid because they did not like the way the appeals/challenge mechanism was built or operated c3. ould lead to gaming because of the subjective nature of the terms “substantive” and “material”.
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Topic 19: Application Queuing

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.

The Board is concerned that the precise number of applications per batch could be too limiting for future rounds as the recommendation prescribes a batch size that might not align with future system capabilities.

Topic 22: Registrant Protections

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.

The Board is concerned that an exemption from a Continued Operations Instrument requirement for Specification 9 applications would have a negative financial impact on ICANN since there would be no fund to draw from if such a registry went into EBERO.

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.

Topic 24: String Similarity Evaluations

Recommendation 24.3,5 The Working Group 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 .EXAMPLE and .EXAMPLES may not both be delegated.

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. A mandatory PIC will enforce this requirement.

The Board remains concerned, as previously voiced as part of its [comment on the Draft Final Report](#), over the wording in sections (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.

Topic 26: Security and Stability

Recommendation 26.9: Emoji in domain names, at any level, must not be allowed.

The Board is concerned that this recommendation could be argued to fall outside ICANN’s mission: “... 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”).”

Topic 29: Name Collisions

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.

The Board has concerns around the potential impact of Name Collision Analysis Project on this recommendation and believes it is prudent to wait until after the release of the Name Collision Analysis Project (NCAP) 2⁵⁷ Study before resolving on this recommendation.

Topic 30: GAC Consensus Advice and GAC Early Warning

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.

The Board will consult with GNSO Council and GAC before resolving on this recommendation.

The GAC has publicly expressed its view on the removal of the “presumption” language from the AGB.

Recommendation 30.5: The Working Group recommends that GAC Early Warnings are issued during a period that is concurrent with the Application Comment Period.⁶⁰ 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.

The Board will consult with GNSO Council and GAC before resolving on this recommendation. The GAC has publicly expressed its negative view on Implementation Guidance 30.2⁶¹, which concerns the limitation of “the timing of GAC Consensus Advice on future categories of TLDs and particular applications, oriented to disincentivizing any such Advice being submitted after the finalization and publication of the next Applicant Guidebook”.

Topic 30: GAC Consensus Advice and GAC Early Warning

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..

The Board will consult with GNSO Council and GAC before resolving on this recommendation. The GAC has publicly expressed its view on the need to update the language of the recommendation.

Topic 32: Limited Challenge/Appeal Mechanism

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.

The limited challenge/appeal mechanism applies to the following types of evaluations and formal objections decisions

Evaluation Challenges

- 1. Background Screening
- 2. String Similarity
- 3. DNS Stability
- 4. Geographic Names
- 5. Technical / Operational Evaluation
- 6. Financial Evaluation
- 7. Registry Services Evaluation
- 8. Community Priority Evaluation
- 9. Applicant Support
- 10. RSP Pre-Evaluation

Appeals of Formal Objections Decisions

- 1. String Confusion Objection
- 2. Legal Rights Objection
- 3. Limited Public Interest Objection
- 4. Community Objection
- 4. Conflict of Interest of Panelists

The Board is concerned regarding this recommendation as set out in [Operational Design Assessment](#), at topic 32 (pp. 169-176).

In sum, it is not clear that a challenge/appeal mechanism applicable to Initial/Extended Evaluation decisions made by ICANN or third-party providers or challenges concerning conflict of interest of panelists could be designed in a way that does not cause excessive, unnecessary costs or delays in the application process.

Topic 32: Limited Challenge/Appeal Mechanism

Recommendation 32.2: In support of transparency, clear procedures and rules must be established for challenge/appeal processes.

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.

The Board is concerned regarding this recommendation as set out in [Operational Design Assessment](#), at topic 32 (pp. 169-176).

In sum, it is not clear that a challenge/appeal mechanism applicable to Initial/Extended Evaluation decisions made by ICANN or third-party providers or challenges concerning conflict of interest of panelists could be designed in a way that does not cause excessive, unnecessary costs or delays in the application process.

Topic 34: Community Applications

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 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.

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.

Topic 35: Auctions

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. 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.

Recommendation 35.5: Applicants resolving string contention must adhere to the Contention Resolution Transparency Requirements as detailed below. [Followed by list of disclosures required of applicants in private contention resolution or ICANN auction.]

The Board is concerned that this recommendation contains a reference to private auctions. Since there is no policy on private auctions, this reference may create confusion during implementation and operationalization of the program.