
Public Comment Summary Report

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

Open for Submissions Date:

Friday, 14 February 2025

Closed for Submissions Date:

Wednesday, 02 April 2025

Summary Report Due Date:

Wednesday, 16 April 2025

Category: Policy

Requester: ICANN org

ICANN org Contact(s): jared.erwin@icann.org

Open Proceeding Link: <https://www.icann.org/en/public-comment/proceeding/fourth-proceeding-for-proposed-language-for-draft-sections-of-next-round-agb-14-02-2025>

Outcome:

In total, 11 Public Comments were submitted by stakeholders from across the community on the proposed language for draft sections of the Next Round Applicant Guidebook (AGB).

Commenters considered whether the proposed language was consistent with the Final Report on the new gTLD Subsequent Procedures (SubPro) Policy Development Process (Final Report) outputs and some provided suggestions for amendments and/or clarification of the language on certain topics. All the Public Comments received will be carefully considered by ICANN org. Any changes required to the proposed language will be reviewed with the SubPro Implementation Review Team (IRT).

ICANN org ensures that requirements of the Next Round are made clear for applicants by 1) soliciting input from the ICANN community on the proposed language of the AGB; and, 2) collaborating with the IRT to make sure it is consistent with SubPro Final Report outputs.

Section 1: What We Received Input On

This Public Comment proceeding was the fourth in a series of proceedings to seek input from the ICANN community on proposed language for the Applicant Guidebook (AGB) for the New gTLD Program: Next Round. As this was a structured Public Comment proceeding, commenters were asked a general yes or no question as to whether each proposed AGB section (listed below) was consistent with the outputs in the [Final Report on the new gTLD Subsequent Procedures Policy Development Process](#) (SubPro Final Report). The yes or no response is informational only and is not a vote on the topics or language.

In this fourth proceeding, ICANN org published the following draft sections of the AGB:

- Material Impact (related to Topic 2: Predictability)
- Topic 9: Registry Voluntary Commitments / Public Interest Commitments (RVCs/PICs)
- Applicant Journey (related to Topic 5: Application Submission Limits and Topic 16: Application Submission Period)
- Application Questions
- Topic 15: Application Fees
- Topic 18: Terms and Conditions
- Order of Application Processing and the Prioritization Draw (related to Topic 19: Application Queuing)
- Topic 20: Application Change Requests
- Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Service
 - Financial and Operational Evaluation
 - Registry Service Provider Selection
- Topic 29: Name Collision
- Topic 34: Community Applications (Community Priority Evaluation)
- Contention Set Resolution (related to Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets)
- Code of Conduct Exemption Evaluation (Specification 9)
- Brand Eligibility Evaluation (Specification 13)

Specifically, ICANN org sought input from the community on whether the proposed language is consistent with the relevant SubPro Final Report outputs. It should be noted that the proposed language was developed in collaboration with the [SubPro IRT](#).

Section 2: Submissions

Organizations and Groups:

Name	Submitted by	Initials
Security and Stability Advisory Committee	SSAC Staff	SSAC
Noncommercial Stakeholder Group	Mesumbe Tomslin Samme-Nlar	NCSG
Registries Stakeholder Group	N/A	RySG
At-Large Advisory Committee	Policy staff in support of the At-Large Community	ALAC

Individuals:

Name	Affiliation (if provided)	Initials
Bill Doshier	dotStrategy, Co., The .buzz Registry	BD
Alexander Urbelis	Ethereum Name Service	AU
Susan Payne	Com Laude	SP
Martin Sutton	TLDz	MS
Marianne Georgelin	Afnic	MG
Katrin Ohlmer	Dotzon GmbH	KO

Symon William

NIC do Norte-Nordeste

SW

Section 2a: Appended Submissions

At its discretion, ICANN org accepted 1 submission via email from the RySG to append their submitted comments due to formatting limitations. This submission has been appended to this summary report.

Organizations and Groups:

Name	Submitted by	Initials
Registries Stakeholder Group	N/A	RySG

Section 3: Summary of Submissions

Overall, some submissions noted that the proposed language was consistent with the SubPro Final Report outputs. In other cases, submissions recommended clarifications to the language to ensure understanding, especially as it relates to newcomers. In other cases, submitters found that the proposed language was **not** consistent with the outputs. These responses and any additional comments are summarized in the table below. The table also includes a tally of responses by response type, along with a summary of comments, organized by topic.

Topic	Overview of Responses ¹	Summary of Additional Comments
Material Impact (related to Topic 2: Predictability)	<ul style="list-style-type: none">● Yes: 8● No: 0● No response: 3	No comments were received for this topic.
Registry Voluntary Commitments / Public Interest Commitments (RVCs/PICs) (Topic 9: Registry Voluntary Commitments / Public Interest Commitments)	<ul style="list-style-type: none">● Yes: 5● No: 2● No response: 4	<p>Two submissions sought clarifications on whether applicants can suggest refinement or customization of the standardized contractual language of Safeguard PICs.</p> <p>With respect to RVCs, one submission raised concerns about certain misleading or restrictive language in the draft text, as well as potential unintended consequences of using the Registry Commitments Evaluation (RCE) criteria for evaluating Community Registration Policies. There was a suggestion to implement a sign-up feature to get automatic notification on RCE results.</p>

¹ "Is the proposed language consistent with the relevant SubPro Final Report recommendations?" Note that this is informational only and does not indicate a "vote" as it relates to the topic or language, but rather a general question to facilitate responses from commenters and the analysis of the responses by ICANN.

Topic	Overview of Responses ¹	Summary of Additional Comments
Applicant Journey (Topic 5: Application Submission Limits)	<ul style="list-style-type: none"> ● Yes: 5 ● No: 3 ● No response: 3 	<p>Most submissions found that the proposed language was consistent with the policy recommendations. However, some submissions requested clarification regarding eligibility and fees as well as which evaluations are subject to a challenge/appeal mechanism.</p> <p>Another submission recommended: additional guidance on the process related to the DNS Stability Review; more information regarding a timeline for Application Comments and GAC Member Early Warnings; that all non-confidential comments be public; for ICANN to note that GAC Member Early Warnings and Consensus Advice are subject to scope set out in the ICANN Bylaws; clarity on different terms in the section on Objections; clarity and guidance on the process for name collision assessment, especially for newcomers; and, recommendations for procedures for production of documents as it relates to String Confusion Objections.</p>
Applicant Journey (Topic 16: Application Submission Period)	<ul style="list-style-type: none"> ● Yes: 6 ● No: 2 ● No response: 3 	<p>Most submissions found that the proposed language was consistent with the policy recommendations. However, one submission recommended reducing the application submission period to 90 days.</p> <p>Another submission recommended: to integrate the appeals process into the Applicant Journey timeline; to clarify requirements for an applicant to identify a Registry Services Provider (RSP) and also provide a list of approved RSPs; provide an example of TLDs that have been deemed high-risk; and to add information about a Public Comment period to the section on the Registry Commitments Evaluation (RCE).</p>
Application Questions	<ul style="list-style-type: none"> ● Yes: 4 ● No: 4 ● No response: 3 	<p>One submission suggested revising the format, language, and size of the document to make it more accessible and reader friendly for non-native English speakers.</p> <p>One submission suggested including word limits for narrative statements.</p>

Topic	Overview of Responses ¹	Summary of Additional Comments
		<p>One submission requested additional information be included around the disclosure of ownership structures, the submission process for community-based TLD applicants, and the instructions for submitting Registry Voluntary Commitments (RVCs).</p> <p>One submission requested clarity around the citation of the Applicant Support Program Handbook and suggested an adjustment to the layout around the form section “Variants of Original String” to avoid confusion.</p> <p>One submission noted an error in the questions relating to DNS Abuse.</p>
<p>Application Fees (Topic 15: Application Fees)</p>	<ul style="list-style-type: none"> ● Yes: 2 ● No: 8 ● No response: 1 	<p>With respect to refunds, several submissions expressed concerns about the lack of details on the refund policy, the inadequacy of the refund amount, and the lack of fairness of the refund process. They believe these factors may disadvantage applicants that are not well-funded and in turn undermine the competition, innovation, and diversity goals of the program. There is a suggestion to implement a tiered refund system based on how far an applicant has progressed in the application process.</p> <p>One submission expressed concerns with the increase of the base application and the lack of transparency on the cost breakdown.</p> <p>One submission raised concerns regarding invoice timing and payment burden, and suggested that invoices should be auto-generated upon an applicant registering in the TAMS system.</p> <p>One submission requested ICANN to disclose the conditional evaluation fees that currently remain unspecified in the draft AGB text, or provide estimated ranges to facilitate financial planning.</p> <p>One submission suggested that the fees for Community Priority Evaluation (CPE) should</p>

Topic	Overview of Responses ¹	Summary of Additional Comments
		<p>cover the review of the Community Registration Policies.</p> <p>One submission sought improvements in clarity and readability of the section, particularly for the benefit of new applicants.</p>
<p>Terms and Conditions (Topic 18: Terms & Conditions)</p>	<ul style="list-style-type: none"> ● Yes: 6 ● No: 1 ● No response: 4 	<p>One submission noted the need to define the term “material” to provide additional clarity. They also recommended clarifying text around ICANN’s right to not to proceed with an application to ensure consistency with ICANN’s Bylaws. Additionally, the submission noted that the language around change of control could create uncertainty for applicants and recommended that more clarity be added as to what is not allowed. And lastly, the submission suggested that text regarding ICANN’s ability to amend the AGB should reference the SPIRT process and be limited to advice adopted by the ICANN Board.</p> <p>Another submission requested further clarification around the language on limitations in Paragraph 15.</p>
<p>Order of Application Processing and the Prioritization Draw (related to Topic 19: Application Queuing)</p>	<ul style="list-style-type: none"> ● Yes: 5 ● No: 3 ● No response: 3 	<p>Several submissions recommended that ICANN clearly define the criteria and circumstances under which it may adjust the order of application processing, expressing concerns that the current language lacks transparency and could lead to bias or inconsistency. Additionally, commenters requested clarity on the absence of section 1.1.3, which is referenced in the Prioritization Draw but not included in the document, and urged ICANN to establish an appeal or review mechanism for applicants who believe their prioritization was unfairly impacted.</p> <p>Multiple submissions also raised concerns regarding unresolved legal issues surrounding the prioritization draw, specifically whether it qualifies as an unregulated lottery under California law. They urged ICANN to clarify the legal basis for the draw before finalizing the Applicant Guidebook.</p>

Topic	Overview of Responses ¹	Summary of Additional Comments
		<p>Additionally, commenters requested that ICANN define a maximum timeline (e.g., 30-60 days) for resolving paused applications to prevent indefinite delays, which could disproportionately impact smaller applicants with limited resources. Another submission sought clarification on the term "proxy" in Section 1.2, asking ICANN to specify whether this refers to primary contacts or another authorized representative.</p>
<p>Application Change Requests (Topic 20: Application Change Requests)</p>	<ul style="list-style-type: none"> ● Yes: 6 ● No: 2 ● No response: 3 	<p>This section was found to be generally consistent with policy.</p> <p>One submission requested the inclusion of a mention and link for the applicable re-evaluations and subsequent fees as a result of Application Change Requests.</p> <p>One submission recommended adding information on the Replacement Period for clarity.</p>
<p>Financial & Operational Evaluation (Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services)</p>	<ul style="list-style-type: none"> ● Yes: 2 ● No: 5 ● No response: 4 	<p>Several submissions requested clarification regarding different aspects of the Financial and Operational Evaluation.</p> <p>One submission requested clarification of Q5 2.1 as it relates to the application questions on DNS Abuse.</p> <p>Another submission recommended specifying the wording limits in number of characters and the currency that should be used in providing financial information (e.g., USD only or local currency). The submission also recommended specifying that applicants should include information on financial commitments related to ccTLDs and sponsored gTLDs, not only for gTLDs and to also remove "maximum amounts".</p> <p>Another submission requested clarity on why annual reports are not accepted.</p> <p>Submissions requested clarity as it relates to Applicant Support Program applicants.</p> <p>Submissions also requested that acronyms be spelled out or defined in the first instance.</p>

Topic	Overview of Responses ¹	Summary of Additional Comments
		<p>Finally, another submission also requested information regarding timing for clarifying questions and process and fees for Extended Evaluation.</p>
<p>Registry Service Provider Selection (related to Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services)</p>	<ul style="list-style-type: none"> ● Yes: 5 ● No: 2 ● No response: 4 	<p>Most submissions found that the proposed language was consistent with policy recommendations. However, one submission noted concerns with a potential discrepancy with the language regarding selection of an RSP in the Registry Service Provider Evaluation Program handbook language versus the proposed language here and requested ICANN to clarify.</p>
<p>Name Collision (Topic 29: Name Collision)</p>	<ul style="list-style-type: none"> ● Yes: 4 ● No: 4 ● No response: 3 	<p>Several submissions, regardless of whether they agreed or not that the proposed language was consistent with SubPro recommendations, provided suggestions for further clarification of the language.</p> <p>For example, some submissions requested more information on: the Technical Review Team; who will perform the Initial Assessment; what will be done with input from Public Comment; the Evaluation Challenge Service Provider; and, “personal data” in this context.</p> <p>Another submission recommended requirements for end-user communication and incident reporting in a High-Risk Mitigation Plan.</p> <p>Another submission requested clarity regarding costs as it relates to name collision assessments as well as information on the challenge process. The submission also provided recommendations on the process for submitting High-Risk Mitigation Plans for applicants that are in contention and also recommended ICANN consider more broadly the rise of alternative namespaces and the potential effects on the frequency of name collisions.</p> <p>Another submission requested clarity as it relates to refunds for strings identified as high-risk.</p>

Topic	Overview of Responses ¹	Summary of Additional Comments
		<p>Finally, another submission requested clarity on the use of the DNS Assessment Method and the implementation of the Technical Review Team as well as the clarity on why the Visible Interruption and Notification method was excluded.</p>
<p>Community Priority Evaluation (CPE) (Topic 34: Community Applications)</p>	<ul style="list-style-type: none"> ● Yes: 2 ● No: 4 ● No response: 5 	<p>Several submissions recommended that ICANN provide additional clarity on various aspects of the Community Priority Evaluation (CPE) process. This includes specifying a general range of conditional fees so that applicants can budget accordingly and extending the 21-day payment deadline for community applicants from underserved regions.</p> <p>Commenters also requested greater transparency on the CPE scoring system, particularly regarding engagement and awareness criteria. They asked for clearer definitions of terms such as “relevant minority opposition” and examples of what qualifies as “active and consistent” engagement. Some suggested revising the scoring system to allow for more nuance beyond binary criteria.</p> <p>Concerns were raised about the subjectivity of the CPE framework and the influence of evaluators. Some submissions emphasized that ICANN must ensure consistency in decision-making and provide more guidance on how evaluators apply judgment. Others highlighted the importance of selecting an appropriate evaluation service provider and called for community input in this process.</p> <p>Multiple submissions recommended that the CPE panel consider all comments received during the applicant comment period, including both support and opposition. They also requested that formal objections be factored into evaluations. Additionally, commenters urged ICANN to define “Limited Research” in Section 1.4 and to clarify whether fees apply to Evaluation Challenges.</p>

Topic	Overview of Responses ¹	Summary of Additional Comments
		<p>Finally, one submission suggested that the text in Section 1.5, which explains that the CPE process is designed to prevent false positives and false negatives, should be moved to the beginning of the AGB section on Community Applications and CPE to emphasize its importance.</p>
<p>Contention Set Resolution (related to Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets)</p>	<ul style="list-style-type: none"> ● Yes: 3 ● No: 5 ● No response: 3 	<p>Multiple submissions noted concerns with various aspects of the language. For example, some submissions requested for clearer examples or diagrams to be included in the final AGB language. Other submissions requested more clarification regarding the prohibition on communications between applicants as well as the prohibition on applicants making public statements and how that will be enforced and resources required to investigate a breach of any prohibition.</p> <p>Other submissions requested clarification regarding the Replacement String process as well as the difference between that and a Brand String Change Request.</p> <p>Another submission recommended ICANN clarify language regarding the different types of contention resolution methods versus different types of objections. The submission also requested more information about “independent experts” as it relates to the Community Priority Evaluation (CPE) panel as well as for ICANN to simplify the language regarding different contention situations (e.g., for brands and geographic names).</p>
<p>Code of Conduct Exemption Evaluation (Specification 9)</p>	<ul style="list-style-type: none"> ● Yes: 6 ● No: 1 ● No response: 4 	<p>One Submission noted that "Affiliate" is a defined term in the Registry Agreement. They recommended the defined term be used in Section 1.1. They recommended the definition of the defined term should be provided in Section 1.1 or linked to the definition in the relevant section of the Base Registry Agreement.</p> <p>Additionally, the submission noted that "Affiliate" was not consistently used in Section 1.3.1. They noted “Affiliate” was used in the first subpoint (I) of the evaluation criteria but “affiliate” was used</p>

Topic	Overview of Responses ¹	Summary of Additional Comments
		<p>in the second subpoint (II) of the evaluation criteria. They reiterated that the definition of the defined term, “Affiliate”, should be provided in this section of the Applicant Guidebook or linked to the relevant section of the Base Registry Agreement.</p>
<p>Brand Eligibility Evaluation (Specification 13)</p>	<ul style="list-style-type: none"> ● Yes: 6 ● No: 1 ● No response: 4 	<p>One submission noted that Section 1.3.3 needed to be updated to include alternative criteria for where a Brand String Change may be applicable.</p> <p>The submission further noted the criteria provided in Section 1.3.3 did not exactly match the criteria provided in Specification 13 which may have confused applicants if they were not aware of the actual criteria specified in Specification 13. They recommended that the criteria be updated to exactly match the language found in Specification 13 or clearly linked to the relevant section of Specification 13.</p> <p>Additionally, the submission noted that criteria “e” and “f” were missing from the definition of the trademark in Section 1.3.3 number 3. They recommended the defined term, “Affiliate”, be added to 1.3.3 number 3b with its definition provided in this section or linked to the relevant section of the Base Registry Agreement in. The also recommended “Trademark Licensees” be used in 1.3.3 number 4 as it is a defined term. The Submission further noted that the references to controlling the DNS records, and domains being at any level was missing.</p> <p>One Submission noted that they agreed that the proposed language for Brand Eligibility Evaluation was consistent with the SubPro recommendations. However, they noted that Section 1.3.1 stated an applicant seeking Brand eligibility must provide a “trademark registration.” The submission requested additional clarification on whether the trademark must be a current national trademark registration and whether the applicant must provide a copy of the certificate of registration. The Submission also requested clarification on whether there were any</p>

Topic	Overview of Responses ¹	Summary of Additional Comments
		circumstances under which common law rights to a mark would suffice, and whether applicants must keep the trademark registration in good standing during the new gTLD and Brand Eligibility evaluation processes.

Section 4: Analysis of Submissions

In analyzing the submissions, ICANN org will take into account the items below and discuss any changes to the proposed AGB sections with the IRT.

- Considering clarifications throughout all AGB language to ensure terms and acronyms are defined, section titles and headers are clear, and the language can be understood by newcomers to ICANN and the DNS ecosystem as well as non-native English speakers
- Considering providing more information regarding conditional fees and refunds, as well as timing and process for invoicing
- Considering addition of diagrams and examples to various topics, such as Community Priority Evaluation and Contention Set Resolution
- Considering clarifications regarding the Prioritization Draw, including addressing any legal concerns
- Ensuring language is consistent across different sections and between different documents, such as the Registry Service Provider Evaluation Program handbook
- Considering clarifications regarding the Replacement String and String Change Request for Brands
- Considering providing more information regarding the use of independent or community experts in the context of Community Priority Evaluation
- Considering clarifications to application questions as it relates to the Financial and Operational Evaluation as well as clarifications to terms/acronyms, wording limits, expectations for different types of applicants, requirements for providing financial information
- Considering updates and clarifications to several topics as it relates to process and criteria, such as, for name collision, providing more information on the role of the Technical Review Team, refunds, and requirements and process related to High-Risk Mitigation plans

Section 5: Next Steps

All Public Comments received will be reviewed and considered by ICANN org. Any modifications required to the proposed AGB sections to reflect community input will be reviewed with the IRT.

All proposed language for the AGB, including the sections out for Public Comment in this proceeding, will go through a final Public Comment proceeding prior to the launch of the Next Round. A full and final draft of the AGB is expected to be published for Public Comment by 30

May 2025. ICANN expects that this Public Comment period will be open for 50 days, which would leave enough time for any updates required post Public Comment as well as consideration by the ICANN Board. As recommended in the SubPro Final Report, ICANN org will publish the final version of the AGB at least four months before the opening of the application submission period for the New gTLD Program: Next Round.

Registries Stakeholder Group Statement



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

Date statement submitted: 1 April 2025

(this is a copy of the comment submitted via the ICANN public comment platform)

Reference url:

<https://www.icann.org/en/public-comment/proceeding/fourth-proceeding-for-proposed-language-for-draft-sections-of-next-round-agn-14-02-2025>

Background¹

This is the fourth Public Comment proceeding on proposed language for the Applicant Guidebook (AGB). Specifically, ICANN org is looking for input on whether the proposed language is consistent with the relevant outputs from the [Final Report on the New gTLD Subsequent Procedures Policy Development Process](#) and the [Phase 1 Final Report on the Internationalized Domain Names Expedited Policy Development Process](#).

The proposed language has been developed in collaboration with the [Subsequent Procedures Implementation Review Team](#).

All sections of the AGB are expected to be submitted for a final Public Comment proceeding in May 2025.

Documents

Draft sections AGB published for input:

- [Material Impact \(related to Topic 2: Predictability\)](#)
- [Topic 9: Registry Voluntary Commitments / Public Interest Commitments \(RVCs/PICs\)](#)
- [Applicant Journey \(related to Topic 5: Application Submission Limits and Topic 16: Application Submission Period\)](#)
- [Application Questions](#)
- [Topic 15: Application Fees](#)
- [Topic 18: Terms and Conditions](#)
- [Order of Application Processing and the Prioritization Draw \(related to Topic 19: Application Queuing\)](#)
- [Topic 20: Application Change Requests](#)
- Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services
 - [Financial and Operational Evaluation](#)
 - [Registry Service Provider Selection](#)
- [Topic 29: Name Collision](#)
- [Topic 34: Community Applications \(Community Priority Evaluation\)](#)
- [Contention Set Resolution \(related to Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets\)](#)
- [Code of Conduct Exemption Evaluation \(Specification 9\)](#)
- [Brand Eligibility Evaluation \(Specification 13\)](#)

Related RySG comments

- [CPH comment on the GNSO new gTLD Subsequent Procedures Final Outputs for ICANN Board Consideration](#) (1 June 2021)
- [RySG comment on the GNSO New gTLD Subsequent Procedures Draft Final Report](#) (30 September 2020)
- [RySG comment on the Phase 1 Final Report of the EPDP on Internationalized Domain Names EPDP](#) (12 March 2024)

¹ Background: intended to give a brief context for the comment and to highlight what is most relevant for RO's in the subject document – it is not a summary of the subject document.

- [RySG comment on Proposed Language for Draft Sections of the Applicant Guidebook](#) (19 March 2024)
 - [RySG comment on Second Proceeding for Proposed Language for Draft Sections of the Next Round Applicant Guidebook](#) (21 October 2024)
-

Registries Stakeholder Group (RySG) comment

Questions:

1) Is the proposed Next Round Applicant Guidebook language for Material Impact (related to Topic 2: Predictability) consistent with the relevant SubPro Final Report recommendations?

Yes

2) Is the proposed Next Round Applicant Guidebook language for Registry Voluntary Commitments / Public Interest Commitments (RVCs/PICs) (Topic 9: Registry Voluntary Commitments / Public Interest Commitments) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

Implementation Guidance 9.6 recommends that a panel of experts in regulated industries determine whether applied-for strings should be subject to the Safeguards described in Section 2 of Topic 9 of the AGB. As written, the AGB gives ICANN org the power to determine whether a given string falls into one of the categories warranting additional safeguards. Further, the rationale for 9.6 is to promote predictability for applicants. We would suggest bolstering the language in 2.1 to describe the questions applicants will need to answer.

As an added point, the RySG believes that the text of the PICs, especially Safeguard PICs, should be considered a starting point for applicants to draft contractual terms. Applicants should have the ability to refine the text of the PICs to fit their specific needs and circumstances.

3) Is the proposed Next Round Applicant Guidebook language related to Topic 5: Application Submission Limits, found in the draft AGB section entitled “Applicant Journey” consistent with the relevant SubPro Final Report recommendations?

Yes

4) Is the proposed Next Round Applicant Guidebook language related to Topic 16: Application Submission Period, found in the draft AGB section entitled “Applicant Journey”, consistent with the relevant SubPro Final Report and recommendations?

Yes

5) Is the proposed Next Round Applicant Guidebook language for Application Questions consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

In Question 59, there are two references to a person exerting “Significant Influence”, but no definition as to what that means? As this is referenced as a defined term, can you please provide that definition.

Question 105 refers to the ASP handbook which we believe is a typo.

6) Is the proposed Next Round Applicant Guidebook language for Application Fees (Topic 15: Application Fees) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

Implementation Guidance 18.5 states that applicants who apply for a new gTLD that is later not approved because of a high risk of name collision should be granted a full refund, but this refund is not contemplated in this document.

This comment concerns Topic 15.3 Application Fee Refunds. The SubPro Final Report emphasizes the importance of a predictable, fair and transparent refund process to ensure applicants are not exposed to unnecessary financial risk. Of course, this also needs to be balanced against limiting any potential attempts to game the process.

As a result of the prohibition on private resolution, ICANN’s Auction of Last Resort will now be the only mechanism to settle contention sets and will generate revenue for ICANN. This future source of resources makes the equitability of the application fee refund schedule even more vital. So, while the draft Guidebook language may reflect the original recommendation, the prohibition on private resolution has changed the overall landscape and process for applicants and therefore justifies review and revision. The RySG proposes the following additions to the current proposed schedule of refunds to ensure a predictable process:

1. Applicants that decide to withdraw their applications after string confirmation day should be entitled to a larger refund percentage. In the last round, Applicants were offered a refund of 80% if they withdrew at this point, and the RySG believes that it would be appropriate to do the same in this round. Although admittedly not many applicants in the last round withdrew at this point, that may have been due to the fact that private resolution of contention sets allowed flexibility to form partnerships, joint ventures, or other collaborative arrangements

to settle contention sets. However, by prohibiting private resolution, we believe there may be more applicants that will opt to withdraw shortly after String Confirmation Day.

2. **GAC Early Warnings:** In line with the 2012 Round of gTLD application fee refunds, applications that are withdrawn pursuant to a GAC Early Warning and within 21 days of such an Early Warning should receive a refund of 65%. Such withdrawals currently fall under the second refund tranche, i.e., 35%, the RySG firmly believes that GAC Early Warnings for specific strings can potentially introduce uncertainty for an applicant as they may have significant implications for the operation of the prospective TLD. As a result, this should be an exceptional situation that warrants this higher refund percentage.
3. **Community Priority Evaluations:** Similar to point 1 above, non-community based applications that are withdrawn pursuant to another application for the same string that prevails under a Community Priority Evaluation should also be eligible to receive a refund of 65% (i.e., eligible for the refund percentage for the current first refund window). Considering the advantages of a community application, and the inability to know if your application will be in a community contention set, even at the time of String Confirmation, losing applicants in a Community Priority Evaluation should be eligible for the 65% refund.
4. **Applicant Support Program Applicants:** ASP Applicants that withdraw their application at any stage of the application process should receive a full refund of the portion of the applicable application fee that they paid. Currently, the Applicant Support Program estimates a fee waiver of 75-85% of the application fees. As a result, certain ASP candidates that withdraw during the third refund schedule (20% refund) may still end up forfeiting a certain amount of their application fees. ASP candidates should receive a full refund of the application fee that they contribute regardless of when they may withdraw their application.

7) Is the proposed Next Round Applicant Guidebook language for Terms and Conditions (Topic 18: Terms & Conditions) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

Paragraph 1: The term “material” should be clearly defined in this section.

Paragraph 3: The RySG notes that the sentence “Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, including this Application, and that there is no assurance that any additional gTLDs will be created” could be misconstrued as giving ICANN the power to cancel the New gTLD Program in its entirety, which would constitute overriding a Consensus Policy. We recommend clarifying this text to ensure it is consistent with ICANN’s Bylaws.

Paragraph 9: Assignment Provisions: On April 30, 2023, the ICANN Board resolved to “provide greater clarity to applicants regarding the transparency and notification requirements throughout the application and auction process” with respect to agreements entered into pre-delegation to

assign (or transfer change of control) immediately post delegation. The current Terms and Conditions does not provide that additional clarity. In fact, by removing the words in Topic 18, Section 9, “applicant’s rights or obligations in connection with the application” from Module 6, Section 10 of the 2012 Applicant Guidebook, ICANN seems to be implying that changes of control are allowed without ICANN consent during the application phase creating much more uncertainty in what is and what is not allowed. Change of Control does not require, and is not the same thing as, an assignment of the application - yet both may result in the ability to mask the underlying applicant during the application process thereby allowing that applicant to avoid being evaluated by ICANN and the community.

The RySG recommends, in line with the ICANN Board resolution, that more clarity be added as to what is what is not allowed. Examples include:

1. Can an applicant assign the rights of its application, but not the actual application itself, to a third party? If this is allowed, then (a) would that require ICANN consent; and (b) would that trigger the required Applicant Change process?
2. Can an applicant agree with a third party to a future assignment of the Registry Agreement in exchange for funding in an Auction of Last Resort? If this is allowed, the RySG notes that the third party will have effectively avoided much of the application process, including, Objections, public comment, Government Early Warnings, GAC Consensus Advice, etc.

Paragraph 13: The text regarding ICANN’s ability to amend the AGB should reference the SPIRT process. Similarly, the reference to advice received by ICANN from ICANN Advisory Committees should be limited to advice that is received and adopted by the ICANN Board.

Paragraph 15: This paragraph needs to be updated with citations to the relevant sections of the AGB.

8) Is the proposed Next Round Applicant Guidebook language for Order of Application Processing and the Prioritization Draw (related to Topic 19: Application Queuing) consistent with the relevant SubPro Final Report recommendations?

Yes

9) Is the proposed Next Round Applicant Guidebook language for Application Change Requests (Topic 20: Application Change Requests) consistent with the relevant SubPro Final Report recommendations?

Yes

10) Is the proposed Next Round Applicant Guidebook language for Financial & Operational Evaluation (Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

There seems to be an error in the questions included in this section relating to DNS Abuse. The questions provided require documentation of government support, which does not align with the text of Q5.2-1 in the Application Questions document.

11) Is the proposed Next Round Applicant Guidebook language for Registry Service Provider Selection (related to Topic 27: Applicant Reviews: Technical/Operational, Financial and Registry Services) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

There appears to be an inconsistency between this draft section of the AGB and the information ICANN has published regarding the Registry Service Provider Evaluation Program (see: <https://newgtldprogram.icann.org/en/application-rounds/round2/rsp>). The latter indicates that Registry Service Providers will only be evaluated during two periods: from 19 November 2024 to 20 May 2025 (Pre-Evaluation Period) and during the application submission window. ICANN says explicitly, "ICANN org plans to close the submission period when the Next Round gTLD application submission period closes."

This statement does not seem to align with the draft section of the AGB, which states that applicants may specify their RSP(s) after submitting their applications. The RySG is concerned about this discrepancy and the impact its restriction may have on competition. We believe applicants should have the ability to designate an RSP following application, i.e., during the evaluation process, even if doing so would require opting for Extended Evaluation and/or incurring higher evaluation costs, and requests that ICANN resolve this apparent inconsistency.

12) Is the proposed Next Round Applicant Guidebook language for Name Collision (Topic 29: Name Collision) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

It is not clear from the proposed text whether the reports described in each of the final paragraphs of Section 3 and 4 under this Topic are the same report. We recommend ICANN staff refine the language to add this clarity, by naming the actual report(s).

Additionally, it is not clear from Section 3 under this Topic who will perform the Initial Assessment. Related to this point, it is unclear what will be done with the feedback from the described Public Comment Period. We recommend ICANN staff update this Section to provide additional clarity.

The role of the panel of technical experts in evaluating the High Risk Mitigation Plan is not clear from the text of Section 5 under this Topic. As written, it seems that the panel provides advice to ICANN org, but that the final decision on the approval of the Mitigation Plan is made by ICANN staff. If this is the case, we recommend ICANN provide more guidance on the weight given to the opinion of the panel and under what circumstances ICANN may go against the recommendation of the panel.

Furthermore, the origin, composition, and operation of the Evaluation Challenge Service Provider, mentioned in Section 6 under this topic, are unclear in this context. We recommend ICANN staff update this section to provide additional clarity, either with expository text or a reference to another section of the Next Round Applicant Guidebook. Also, we note that in some portions of Section 6, the Evaluation Challenge Service Provider seems to be referred to as the Evaluation Service Provider.

Finally, Applicants need clarity on what ICANN considers “personal data” under Section 5.1 of this document, such that the information will not be disclosed to the applicant. The ability of an applicant to propose an adequate Mitigation Plan requires access to full name collision data. The community should have an opportunity to weigh in on ICANN’s determination of what it considers “personal data” not subject to disclosure under this Section. Furthermore, the RySG recommends that ICANN consider the development of appropriate data processing agreements to allow ICANN to disclose the personal data to applicants so they can prepare an adequate Mitigate Plan.

13) Is the proposed Next Round Applicant Guidebook language for Community Priority Evaluation (CPE) (Topic 34: Community Applications) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

The last sentence of Section 1.2 under this Topic should also reference all comments received during the applicant comment period. The CPE panel should consider both comments in support and comments in opposition to the application, submitted during the application comment period. Similarly, the CPE panel should observe the Objections process to ensure that formal Objections submitted on an application also factor into the evaluation.

In Section 1.4, the final version of the AGB would benefit from defining what constitutes “Limited Research.” Regarding section 1.4.1, we believe that a new set of panelists should be required, not merely suggested, to review Evaluation Challenges.

Section 1.6.1.1.B.b - Engagement: The definition for Active and Consistent should include evidence of active and consistent engagement. Currently, this section only identifies the types of activities that can be considered as engagement. Applicants must provide evidence of REGULAR interactions with the community, and ACTIVE engagement, not just merely being a passive member.

In fact, scoring elements that rely on binary criteria seem ill-suited to the task of evaluating how communities truly function. We would suggest adjusting the overall scoring system to allow for additional nuance - this could mean increasing the number of total available points and commensurately increasing the threshold by which an applicant would be evaluated successfully.

Finally, we believe that the text in Section 1.5 about the CPE process being designed to weed out both false positives and false negatives should be elevated to the very beginning of the AGB section on Community Applications and CPE.

14) Is the proposed Next Round Applicant Guidebook language for Contention Set Resolution (related to Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets) consistent with the relevant SubPro Final Report recommendations?

No

If no, please explain

The lack of diagrams in Section 1.2.2. regarding indirect contention made review very difficult. The RySG recommends that all diagrams and other images throughout the AGB be included in the final comment proceeding.

The AGB should be clear when the prohibition on communications between applicants begins; it is currently not clear.

The RySG wishes to express strong concerns related to the prohibition on applicants making public statements “that provide direct or indirect information related to their application(s) or application strategies for strings that are in contention.” A number of future applicants have already publicly disclosed strings they intend to apply for when the application window opens, similarly, we are concerned that this could prevent applicants from discussing information related to their fundraising, since this could indicate possible auction strategies. Furthermore, the Guidebook does not provide a time restriction on this prohibition – will future applicants who have already announced their intended strings be found to be in violation of the AGB if those strings end up in contention?

Finally, we would like to express our concerns that the rule prohibiting communications between applicants may be used to unfairly cast doubt on the conduct of an innocent applicant. For example, once an allegation that a prohibited communication occurred, it may be very difficult to prove that such a communication did not occur and such an investigation could use significant resources of both the applicants and ICANN.

15) Is the proposed Next Round Applicant Guidebook language for Code of Conduct Exemption Evaluation (Specification 9) consistent with the relevant SubPro Final Report recommendations?

Yes

16) Is the proposed Next Round Applicant Guidebook language for Brand Eligibility Evaluation (Specification 13) consistent with the relevant SubPro Final Report recommendations?

Yes

Other Comments

-