

**Summary of ICANN Generic Names Supporting  
Organisation's (GNSO's)  
Final Report on the Introduction of New Generic Top-  
Level Domains (gTLDs)  
and Related Activity**

*Prepared for the GNSO's 29 October 2007 New gTLDs Workshop  
in Los Angeles*

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## Introduction

1. The process for the introduction of new generic top-level domains (gTLDs) is central to fostering choice and competition in domain registration services, and as such is significant to the promotion of ICANN's core values. The evolution of the namespace toward enhanced diversity of services and service providers must be planned and managed effectively to ensure that the security, stability, reliability, and global interoperability of the Internet is maintained.
2. The proposed policy that would guide the introduction of new gTLDs was created by the Generic Names Supporting Organization (GNSO)<sup>1</sup> through its bottom-up, multi-stakeholder policy development process. The questions that have been addressed by the GNSO in the development of new gTLD policy are complex and involve technical, economic, operational, legal, public policy, and other considerations. The intended result is a straightforward process that awards new gTLDs if they satisfy the criteria and no objections are sustained.
3. The GNSO completed its Final Report on the Introduction of New Top-Level Domains<sup>2</sup>, This document summarizes the recommendations contained in the Report and notes other work under way to facilitate the introduction of new gTLDs in an orderly and transparent way. Where particularly applicable, it also attempts to briefly provide information about various issues considered by the Committee and the rationale behind the final wording of principles, recommendations and implementation guidelines. This document is meant to provide a concise and easy to read summary of the key elements of the Report and is not intended to replace the full report that the GNSO Council provided.

## Goal of the New gTLD Process

4. The GNSO formed a Committee on New Top-Level Domains (the Committee) to address the subject of new gTLDs. The Committee identified five main reasons why ICANN should proceed to introduce new gTLDs at this time:
  - (i) It is consistent with the reasons articulated in 1999 when the first proof-of-concept round for new gTLDs was initiated;<sup>3</sup>

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<sup>1</sup> See <<http://gns0.icann.org/>>

<sup>2</sup> See <<http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>> and <<http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-partb-01aug07.htm>>

<sup>3</sup> See <<http://www.icann.org/yokohama/new-tld-topic.htm>>

(ii) There are no technical impediments to the introduction of new gTLDs, as evidenced by the two previous rounds and as confirmed by technical experts;

(iii) Expanding the domain name space to accommodate the introduction of both new ASCII and internationalised domain name (IDN) TLDs will give end-users more choice about the nature of their presence on the Internet. In addition, users may be able to use domain names in their language of choice;

(iv) There is demand for additional top-level domains as a business opportunity, which can stimulate competition at the registry service level; and

(v) No compelling reason has been articulated not to proceed with a new gTLD round.

It should be noted that, as with several elements of the Report, disagreements over these reasons were worked through and rough consensus was reached by the Committee. For example, early in the PDP, the Business and Intellectual Property Constituencies provided reasons for restricting a new gTLD round to sponsored TLDs (sTLDs), but ultimately the Committee reached rough consensus not to limit the introduction of new gTLDs.

## **GNSO Terms of Reference**

5. The Committee divided its work into four broad Terms of Reference (TOR). The first TOR raised the preliminary question of whether to move ahead to establish new gTLDs. The Committee answered this question affirmatively and proceeded to consider which policies would enable the introduction of new gTLDs with respect to selection criteria (TOR 2), allocation methods (TOR 3) and policies for contractual conditions (TOR 4). The Committee developed the principles, recommendations and implementation guidelines that are set forth in its report and were approved by the GNSO Council on 6 September 2007 by a supermajority vote. They are summarized below in the order that they will be discussed at the GNSO's 29 October New gTLDs Workshop scheduled for the ICANN Los Angeles meeting. The principles, recommendations, and implementation guidelines have been grouped thematically, in accordance with the Terms of Reference listed above, so that each set is discussed in the most relevant session.

## Workshop Session 1: Introductory Material and Contractual Conditions for New gTLDs (TOR 1 & TOR 4)

GNSO Principles, Recommendations 1, 4, 9, 10,<sup>4</sup> 16, 17, 19, Related Implementation Guidelines, and Other Details

6. The Report outlines seven principles that have rough consensus from all GNSO constituencies and Nominating Committee representatives:
  - a. **New gTLD Process: Principle A** supports introducing new gTLDs in an orderly, timely and predictable way.
  - b. **Availability of IDNs: Principle B** supports having some new gTLDs be IDNs, subject to the approval of IDNs being available in the root.
  - c. **Rationale for New gTLDs: Principle C** outlines reasons for introducing new gTLDs, which include demand from potential applicants, as well as the potential to add to consumer choice, market differentiation, and geographical and service-provider diversity.
  - d. **Technical Criteria: Principle D** supports having a set of technical criteria to assess applicants to minimise the risk of harming the operational stability, security and global interoperability of the Internet.
  - e. **Capability Criteria: Principle E** supports having a set of capability criteria for applicants to provide assurance that it has the capability to meet its obligations under the terms of a registry agreement. This principle also was the result of extensive discussion and compromise among Committee members. Some supported the need for applicants to provide full business plans, while others argued that business plans were not needed. The final wording of Principle E was intended to reach a compromise that all could support by requiring applicants to provide sufficient capability information to demonstrate that an applicant can fulfill what is proposed and what would then become a part of the registry agreement.
  - f. **Operational Criteria: Principle F** supports having a set of operational criteria in the registry agreement to ensure compliance with ICANN policies.
  - g. **Freedom of Expression: Principle G** specifies that the process of evaluating the proposed gTLD not infringe on an applicant's freedom of expression rights under internationally recognized principles of law. Note that this principle was added after very long and intense discussions about Recommendations 3 and 6 with the

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<sup>4</sup> There is no Recommendation 11, which was replaced by Recommendation 20.

purpose of addressing concerns that were primarily communicated by representatives of the Non-Commercial Users Constituency.

7. **Fairness of Process:** The GNSO recommends that ICANN implement a process that allows the introduction of new top-level domains. In addition, the evaluation and selection process should respect the principles of fairness, transparency and non-discrimination. Further, all applicants should be evaluated against transparent and predictable criteria, fully available before initiation of the process. Normally, no additional selection criteria should be used (**Recommendation 1**).
  - a. Rationale: It is important that all applications are evaluated against clear criteria in a fair, transparent and non-discriminatory manner.
  - b. Issues: There was very strong agreement that selection criteria should be objective and measurable to ensure a predictable and fair process. It was also recognized, however, that some criteria are easier to define in objective and measurable ways than others. Some Committee members suggested excluding any recommendations that could not be absolutely objective. Others felt that there were some cases where concerns of certain members of the community needed to be addressed even if doing so could not achieve the highest standards of objectivity. In all cases, the Committee tried to minimize the need for subjective judgments but it is recognized that there are several areas where this was especially challenging; in those cases, considerable effort was made to make the criteria and process as objectively measurable as possible. (See the discussion of Recommendation 9 that follows).
  - c. Implementation Considerations: ICANN Staff has been working over the past year to prepare the groundwork for an orderly process consistent with this recommendation. It is in the process of retaining a provider to assist with preparation of the RFP, which will set forth the relevant criteria and explain all aspects of the application process in detail. (The Statement of Work for preparation of the RFP was posted on 6 September 2007 and is available at <http://www.icann.org/tlds/new-gtld-sow-06sep07.htm>.)
  - d. Potential Impact: Clear criteria, evaluated in a fair, transparent and non-discriminatory manner will instill confidence in ICANN's ability to introduce new gTLDs in a smooth process.
  - e. Note: The GNSO's Implementation Guideline C suggests that ICANN provide frequent communications with applicants and the public including comment forums, which is consistent with a transparent and orderly process.
8. **Technical Instability:** Strings must not cause any technical instability (Recommendation 4).

- a. Rationale: New gTLDs should not lead to technical instability or unexpected results in the DNS.
- b. Issues: The criteria that will be used to review this element will be stated in the RFP.
- c. Implementation Considerations: The review is expected to be done by ICANN, drawing on technical expertise as needed.
- d. Potential Impact: Applications for strings that are determined to potentially create technical instability or unexpected results in the DNS will not be approved, so as not to jeopardize the continuing stability and security of the Internet's unique identifier systems.

9. **Clear Process & Criteria:** The GNSO recommends that there be a clear and pre-published application process using objective and measurable criteria (**Recommendation 9**).

- a. Rationale: To be fair and credible, the application process must be made clear in advance and use objective, measurable criteria.
- b. Issues: Certain recommendations, such as those relating to public morality and order, or to community opposition, may not lend themselves readily to development of objective, measurable criteria. (See the Issues comments included for Recommendation 1 above.)
- c. Implementation Considerations: Staff and outside counsel are examining how best to address these issues. In most of the areas covered by the Report, it will be possible to develop measurable criteria.
- d. Potential Impact: A fair, credible round of applications for new gTLDs will benefit the ICANN community and others.
- e. Note: The GNSO's Implementation Guideline A suggests that the application process provide a "pre-defined roadmap" for applicants that encourages the submission of applications for new top-level domains. The GNSO's Implementation Guideline I suggests that an applicant granted a new gTLD must use it "within a fixed timeframe" to be specified in the application process. This guideline is intended to prevent gTLD squatting.

10. **Base Contract:** There must be a base contract provided to applicants at the beginning of the application process (Recommendation 10).<sup>5</sup>

- a. Rationale: Applicants should be on notice as to what the ICANN community expects from a registry operator.
- b. Issues: While it is possible to provide a base contract, it should be recognized that contracts with individual registry operators may vary depending on the particulars of the new gTLD they are being awarded.

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<sup>5</sup> The intent is that the base contract will be available before the beginning of the initial, minimum 4-month period that will precede the application period.

- c. Implementation Considerations: A draft base contract will be posted for public comment as soon as it is available. Much of the work done by the RFP provider will inform elements of the draft base contract. An outline of the draft base contract was posted in June 2007 (see <http://gns0.icann.org/drafts/draft-outline-tld-agreement-20070619.pdf>).
- d. Potential Impact: A draft base contract provides applicants with realistic expectations about what their contract with ICANN will contain if their application is successful. This is intended to save applicants time and money.
- e. Note: The GNSO's Implementation Guidelines (IG) suggest that the base contract should "balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place" (IG-J); that ICANN "should take a consistent approach to the establishment of registry fees" (IG-K); and that "the use of personal data must be limited to the purpose for which it is collected" (IG-L).

**11. Consensus Policies:** Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved (**Recommendation 16**).

- a. Rationale: New and existing gTLD operators should be bound by the same consensus policies.
- b. Issues: While concern was discussed in the Committee regarding special situations where a gTLD serves a specific and well-defined community for which they believe a specific consensus policy may not readily apply, ICANN will maintain and enforce the requirements to adhere to Consensus Policies.
- c. Implementation Considerations: The draft base contract contains a requirement that operators comply with new and existing Consensus Policies.
- d. Potential Impact: Compliance with existing and new Consensus Policies benefits the ICANN community in important ways, including helping to ensure the Internet's security and stability.

**12. Sanctions Program:** A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination (**Recommendation 17**).

- a. Rationale: Enhanced compliance with registry contract provisions benefits the ICANN community.
- b. Issues: Recent registry agreements have not included a sanctions program (compare, e.g., the 2006 .COM agreement with the 2001 .NAME agreement).
- c. Implementation Considerations: The draft base contract does not contain a sanctions program and staff work continues on this issue.
- d. Potential Impact: Standard sanctions procedures which may be applied by ICANN to gTLD registries under contract.

**13. Use of Registrars:** Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars (**Recommendation 19**).

- a. Rationale: ICANN-accredited registrars are under contract with ICANN and must fulfill certain obligations.
- b. Issues: There are differing opinions as to whether smaller registries should be able to start a registrar if larger ones are uninterested in servicing their gTLD.
- c. Implementation Considerations: ICANN's current registry agreements require the use of registrars that must be ICANN-accredited and registries are prohibited from being ICANN – accredited registrars even for their own gTLDs.
- d. Potential Impact: Operators of smaller gTLDs may have difficulty locating registrars to certify. Regions where there are no, or few, ICANN-accredited registrars may also be at a disadvantage. ICANN is aware of the situation and is in the process of working with registrars and registries on possible solutions.

**14. Application Fee:** The GNSO's Implementation Guideline B suggests that application fees be designed to ensure that adequate resources exist to cover the total cost of administering the new gTLD process, and that application fees may vary for different applicants. The GNSO's Implementation Guideline N suggests that ICANN may also develop a "fee reduction model for gTLD applicants from economies classified by the UN as least developed."

- a. Rationale: The entire evaluation and review process should be conducted on a cost-recovery basis. At the same time, there could be a situation in which an applicant that comes from a least developed country or similarly challenged economy might have difficulty in obtaining the funds necessary to pay the required fees.
- b. Issues: Questions that should be examined include whether a potential applicant that cannot raise the required fees (directly or through a partnership or joint venture) would have the capital necessary to launch a new gTLD registry that meets ICANN specifications and is consistent with security and stability requirements as defined in this process. Other questions include how to distinguish applicants that can afford the fees even if they are from a least developed economy or similarly challenged economy, and how to avoid situations where potential applicants try to take advantage of any exception.
- c. Implementation Considerations: ICANN has stated that (i) the entire evaluation and review process will be conducted on a cost-recovery basis; (ii) the costs associated with the initial evaluation will be covered by the application fee; and (iii) the costs associated with any objections or contention resolution (or other review beyond

basic evaluation) will be borne by the parties utilizing those processes.

- d. Potential Impact: ICANN Staff and the GNSO will discuss the issues described above, carefully balancing the importance of encouraging applications from all parts of the world with the financial and other resources required to operate a new gTLD registry.

**15. Working Languages:** The GNSO's Implementation Guideline M suggests that ICANN establish a capacity building and support mechanism to help facilitate effective communication on important and technical Internet governance functions in a way that no longer requires all participants know English. The GNSO's Implementation Guideline O suggests that ICANN provide information about the new gTLD process in major languages other than English (e.g., the six working languages of the United Nations).

- a. Rationale: It is important to use different languages in order to reach as many potential applicants as possible, particularly as the goal is to solicit applications for new IDN gTLDs as well as ASCII. ICANN has already begun to conduct consultations and distribute documents in other languages, and is implementing a translation policy that will benefit the new gTLD process.
- b. Issues: ICANN will publicize the new gTLD process in different languages, but it remains to be seen if applications could be accepted in languages other than English.
- c. Implementation Considerations: There could be a trade-off between the duration of the round and the number of languages used during the evaluation period.
- d. Potential Impact: Even with using the 6 languages of the UN, it is possible that some potential applicants will not learn of the gTLD application process. ICANN's communications team is already developing a proactive plan to reach as many potential applicants as possible.

## **Workshop Session 2: Selection Criteria for New gTLDs (TOR 2)**

### **GNSO Recommendations 2, 5, 7, 8, 13, 14, 15, 18 & Related Implementation Guidelines**

**16. Confusingly Similar:** Strings must not be confusingly similar to an existing top-level domain or a Reserved Name (**Recommendation 2**).

- a. Rationale: A confusingly similar string could cause technical or consumer confusion.
- b. Issues: A string that resembles another string is not necessarily confusingly similar. In reviewing the approval of .BIZ in light of the existence of .BZ in 2001, ICANN's Reconsideration Committee

concluded that the two TLDs “do not appear reasonably subject to confusion,” see

<http://www.icann.org/committees/reconsideration/rc01-1.htm>.

Indeed, the following TLDs co-exist today: .CO and .COM; .BZ and .BS; .BS, .BZ and .BIZ; .INT, .IN and .INFO; and .NE and .NET.

Examples of strings that could cause confusion include “.COM” (using a zero) and .COM, or “.1NFO” (using the number one) and .INFO. Staff has begun discussions regarding an algorithm that could provide guidance on which applications require further scrutiny.<sup>6</sup>

- c. Implementation Considerations: Staff is exploring various options for implementation of this recommendation, including the application of an algorithm that provides guidance on which TLD strings are considered to be confusingly similar, and providing a capability for formal objection to be filed to an application by a third party on the grounds that the proposed gTLD is confusingly similar to an existing TLD.
- d. Potential Impact: Internet users throughout the world would benefit from the avoidance of creating new gTLDs that are confusingly similar to existing TLDs or reserved names.

**17. Reserved Names: Strings must not be a Reserved Name (Recommendation 5).**

- a. Rationale: Reserved Names may not be used at the top level.
- b. Issues: Some of the conclusions of the Reserved Names Working Group (RN-WG) were incorporated in the Report’s recommendations and guidelines. The RN-WG’s full set of recommendations may be found in Part B of the Report.<sup>7</sup> The RN-WG recommended (and the GNSO agreed) that the following names be reserved: ICANN and IANA related names; any names that appear in the IDN Evaluation Facility that consist exclusively of translations of ‘example’ and ‘test’; NIC, Whois and www; single characters; symbols; tagged names; digits; and two letter names (for ccTLD use). The group recommended (and the GNSO agreed) that controversial names; geographic and geopolitical indicators, single and two character U-labels and single letter/single-digit combinations not be reserved. It was difficult for the group to define clear reservation requirements for geographical/geopolitical names and controversial names, and members believed those issues could be addressed by the new gTLD dispute resolution and challenge processes. ICANN Staff prepared a document for the GNSO Council providing information on implementation of the RN-WG recommendations, which was released on 4 September 2007

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<sup>6</sup> [http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#\\_Toc35657638](http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#_Toc35657638)

<sup>7</sup> See [http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-partb-01aug07.htm#\\_Toc47680304](http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-partb-01aug07.htm#_Toc47680304).

and is available at <http://www.gnso.icann.org/drafts/icann-implementation-doc-gnso-rswg-04sep07.pdf>.

- c. Implementation Considerations: As part of the administrative review of each application, ICANN Staff will determine whether the proposed string is on the Reserved Names list that will be published by ICANN.
- d. Potential Impact: Applicants that propose strings that are a Reserved Name will not be approved.

**18. Technical Capability:** Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out. (**Recommendation 7**).

- a. Rationale: An applicant must be technically capable of operating a new gTLD registry to ensure that its operation does not negatively affect the stability and integrity of the DNS.
- b. Issues: There will be minimal technical criteria for all applicants to ensure security, stability and interoperability of the Internet. Also, technical requirements may vary depending on the purpose and use of the gTLD. For example, a gTLD designed to serve a specific geographical region or a small community would not need the same DNS constellation requirements that would be needed by a global gTLD.
- c. Implementation Considerations: Staff has asked the provider that will develop the RFP to propose the technical criteria, based on previous rounds.
- d. Potential Impact: Applicants will have to demonstrate that their operation of a new gTLD will not adversely affect the stability or security of the DNS.

**19. Operational Capability:** Applicants must be able to demonstrate their financial and organisational operational capability (Recommendation 8).

- a. Rationale: An applicant must have the financial and organisational operational capability to operate a new gTLD registry without jeopardizing the stability or integrity of the DNS.
- b. Issues: It remains to be seen whether there are ways to improve the operational criteria that have been used in previous rounds<sup>8</sup>. As noted regarding technical criteria, financial and operational requirements can vary depending on the gTLD. Principle E states, "A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN's registry agreement." Obligations may vary depending on what is proposed by an applicant.

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<sup>8</sup> See <http://www.icann.org/tlds/tld-criteria-15aug00.htm> and <http://www.icann.org/tlds/stld-apps-19mar04/PostAppA.pdf>.

- c. Implementation Considerations: Staff has asked the provider that will develop the RFP to propose the relevant business, financial and organisational criteria, based on previous rounds.
- d. Potential Impact: Applicants will be assessed to help ensure that their operation of a new gTLD will not adversely affect the stability or security of the DNS and that they are capable of implementing the gTLD as proposed.

**20. Application Rounds:** Applications must initially be assessed in rounds until the scale of demand is clear (**Recommendation 13**).

- a. Rationale: There is likely to be a need to assess applications in rounds until demand for new gTLDs levels off.
- b. Issues: Staff is factoring unknown application volume and scalability issues into its proposed implementation plans. The Committee suggested that ICANN should attempt to staff itself to accommodate whatever demand occurs while recognizing that it is not possible to accurately predict demand. The intent of this recommendation was that applications would be processed in rounds until such time as an ongoing application process could be put into place. Consistent with that, it is expected that the date for a second round will be communicated in the RFP for the first round.
- c. Implementation Considerations: It remains to be seen if there is a limit to the number of applications that ICANN can process in one round. Within a round, all applicants will be evaluated on the same grounds (i.e., order of receipt within a round will not be an evaluation criterion but will only be considered with regard to processing order).
- d. Potential Impact: The concept of rounds is important in terms of enabling any technical issues to be quickly identified and addressed. At the same time, it is important to clarify for applicants in this round whether there will be sub-rounds if more than “x” number of applications are received. It is also important to provide parties that might wish to apply in the future with appropriate guidance.

Note: The GNSO’s Implementation Guideline D suggests that ICANN use a “first- come, first-served” processing schedule within each round, continuing for other rounds, if necessary. Upon receipt by ICANN, applications would be time and date stamped. The GNSO’s Implementation Guideline E suggests that the application submission date be at least four months after the RFP is issued, and that ICANN take steps to publicize the opening of the round. The rationale behind the minimum 4-month period before the application submission period included 1) to allow entities to adequately prepare their response to the RFP and 2) to allow time for adequate and broad communication of the round within and external to ICANN circles.

- 21. Duration of Registry Agreement:** The initial registry agreement term must be of a commercially reasonable length (**Recommendation 14**).
- a. Rationale: Operating a first-class registry requires substantial resources, which operators may be unlikely to make without an assurance that they will be able to run a registry for at least a specific term and recoup their investment.
  - b. Issues: None – this issue has already been addressed, with existing gTLD operators.
  - c. Implementation Considerations: The draft base contract contains a term of ten years.
  - d. Potential Impact: A contract of a commercially reasonable duration provides incentives for a registry operator to make the investment necessary to operate a new gTLD in a stable and secure manner.
- 22. Renewal Expectancy:** There must be renewal expectancy (**Recommendation 15**).
- a. Rationale: A registry operator is also more likely to invest significant resources if it has the expectation that its contract will be renewed, absent malfeasance or other situations.
  - b. Issues: None – this issue has already been addressed, with respect to existing gTLD operators.
  - c. Implementation Considerations: The draft base contract provides an expectancy of renewal unless an arbitrator or court determines that the operator has breached the agreement and failed to cure it.
  - d. Potential Impact: The expectation of renewal provides a further incentive for a registry operator to invest the necessary resources in operating a new gTLD.
- 23. IDN Guidelines:** If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed (**Recommendation 18**).
- a. Rationale: The IDN Guidelines must be followed to ensure security, stability and interoperability issues are sufficiently addressed, to minimize the risk of cybersquatting and consumer confusion, and to respect the interests of local languages and character sets.
  - b. Issues: ICANN staff will coordinate with other ICANN stakeholders to help ensure that the IDN Guidelines are successfully implemented. Any future IDN policy that relates to or effects gTLDs will be addressed by the GNSO.
  - c. Implementation Considerations: ICANN Staff and others are working to ensure that IDN gTLDs are introduced in a timely manner, and that the activities of the ccNSO<sup>9</sup> related to the introduction of IDN ccTLDs, and activities in organizations such as the IETF with regard to the IDNA standards are coordinated, as needed.

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<sup>9</sup> See <http://ccnso.icann.org/>

- d. Potential Impact: Following the IDN Guidelines will support the diversity, security and stability of the domain name system (DNS).

### **Workshop Session 3: Allocation Methods for New gTLDs (TOR 3)**

#### **GNSO Recommendations 3, 6, 12, 20 & Related Implementation Guidelines**

- 24. Legal Rights of Others:** Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights) (**Recommendation 3**).
- a. Rationale: A party holding rights that believes it would be harmed may file an objection that a proposed gTLD will infringe on legal rights that are recognized or enforceable under generally accepted and internationally recognized principles of law.
  - b. Issues: Efforts should be made to clarify the kinds of legal rights that are derived from internationally recognized principles of law and applicable to the context of new gTLDs.
  - c. Implementation Considerations: Further legal research is being done on the potential applicability of the Paris Convention on the Protection of Industrial Property, the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). Article 6bis of the Paris Convention, for example, prohibits the “reproduction, [an] imitation, or [a] translation, liable to create confusion, of a [trade]mark,” although it does not appear to have ever been applied in the context of a TLD. Provisions of the ICCPR and other human rights treaties prohibit a state party from arbitrary or unlawful interference with an individual’s privacy and family, and protect an individual’s freedom of thought, conscience, religion, opinion and expression. Further legal research can help determine what rights could be at issue in the context of establishing new gTLDs.
  - d. Potential Impact: It is important that the new gTLD process respect the concerns that have been expressed by groups representing both trademark and freedom of expression interests.

- 25. Public Morality & Public Order:** Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law. Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights

(UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) (**Recommendation 6**).

- a. Rationale: Anyone may file an objection to a proposed gTLD on the ground that it is contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.
- b. Issues: Efforts should be made to clarify the meaning of “generally accepted legal norms relating to morality and public order that are recognized under international principles of law” and would be applicable to decisions regarding new gTLDs.
- c. Implementation Considerations: Further legal research is being done on the potential applicability of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organization (WIPO), the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and other potentially useful agreements, as well as how various national legal systems have addressed this question. Under Article 29(2) of the UDHR, for example, limitations on an individual’s rights and freedoms may be permitted “as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.” Article 6quinquies of the Paris Convention contains language relating to the denial of trademark registration in cases “when they are contrary to morality or public order and, in particular, of such a nature as to deceive the public.” Legal research thus far suggests that international law has not addressed concepts of “morality” in connection with gTLDs or, the DNS or the Internet more generally. Other ideas may also be considered, such as having panels of internationally recognized experts review an objection under guidelines drawn from (or informed by) the practice of various ccTLDs with respect to second-level registration of domain names.
- d. Potential Impact: There is subjectivity involved in an expert panel making determinations on objections brought on these grounds. Concern has been expressed that the notion of public morality varies by region, by country, and by individual. As such, it will be

difficult to find any common standard to apply, much less to do so in an objective manner.

- 26. Dispute Resolution:** Dispute resolution and challenge processes must be established prior to the start of the process (**Recommendation 12**).
- a. Rationale: As noted above, it is important that all aspects of the application process be known before applications for new gTLDs are prepared and submitted.
  - b. Issues: Dispute resolution and challenge are intended to address two types of situations: (i) the filing of an objection against an application on certain specific grounds developed from the GNSO's recommendations (relating to confusingly similar (see paragraph 15 in the Report); legal rights of others (see paragraph 23 in the Report); morality & public order (see paragraph 24 in the Report); or community opposition pursuant to an "Objection Resolution Process (see paragraph 26 in the Report);" and (ii) when two or more applicants are vying for the same new gTLD ("contention resolution"). The procedures, standing and criteria for assessment need to be developed, and ICANN Staff has begun this process in consultation with outside counsel and other experts.
  - c. Implementation Considerations: ICANN Staff is taking steps to recruit an expert provider to supervise and help develop the Objection Resolution Process, and also exploring options for resolving cases of contention. (This is consistent with the GNSO's Implementation Guideline H, which suggests that independent external dispute providers render decisions on objections.) A "cooling off period" will be encouraged to enable parties involved in an objection or contention proceeding to try and resolve the issue on their own, as suggested by the GNSO's Implementation Guideline R.
  - d. In addition to setting forth all aspects of the final process in the RFP and announcements about the new gTLD process, ICANN plans – consistent with the GNSO's Implementation Guideline Q – to provide an automatic reply to acknowledge all public comments received and along with that acknowledgement provide links to dispute resolution information and processes.
  - e. Potential Impact: Explaining these processes before the application round is launched will facilitate implementation of the entire process, and periodic reminders during the process, particularly about any deadlines, will also be helpful.
  - f. Note: The GNSO's Implementation Guideline F suggests that applicants may resolve contention between them by mutual agreement within a pre-established timeframe. Otherwise, a "claim to support a community by one party will be a reason to award priority to that application." The GNSO also suggests that "the ICANN Board may be used to make a final decision, using advice

from staff and expert panels.” As noted above, contention resolution can provide for resolving cases where two or more applications, which have been judged qualified and have overcome any formal objections, are competing for the same string, or for strings that have been determined to be "confusingly similar." The Committee discussed methods such as 'comparative evaluation', 'lotteries' or 'auctions' but was unable to reach agreement to include them in the implementation guidelines. There were those who referred derogatorily to 'comparative evaluations' as 'beauty contests' while others supported such an approach. There were those who saw auctions as the ultimate in objectivity while others criticized them for favoring the rich. Some favored lotteries for fairness but there were concerns about the legal issues involved in running lotteries. ICANN Staff is exploring processes that enable contention to be resolved informally by the parties, or through comparative evaluation, auction, mediation, lottery, arbitration or some other objective delegation method. It should be noted that the role of the Board in the process remains to be defined.

- g. The GNSO's Implementation Guideline H suggests that an applicant's claim that the TLD is intended to support a particular community, such as a sponsored TLD or any other TLD intended for a specified community, will be taken on trust unless (i) the claim relates to a string that is also subject to another application and is being used only to gain priority for one of the applications; and (ii) a formal objection process is initiated pursuant to Recommendation 20).

**27. Community Opposition:** An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted (**Recommendation 20**).

- a. Rationale: An established institution representing a specified community may file an objection on the ground that there is substantial opposition to the application by a significant portion of the community to which the string may be explicitly or implicitly targeted.
- b. Issues: The definitions of the terms involved in an objection of this kind are important in terms of trying to limit subjectivity.
- c. Implementation Considerations: The GNSO's Implementation Guideline P suggests the following definitions:
  - i. Defining "substantial opposition" by reference to "significant portion," "community," "explicitly targeting," "implicitly targeting," "established institution," "formal existence" and "detriment;"
  - ii. Defining "significant portion" in terms of the "balance between the level of objection submitted by one or more

- established institutions and the level of support provided in the application from one or more such institutions;”
- iii. Defining “community” broadly, such as “an economic sector, a cultural community, or a linguistic community. It may also be a closely related community which believes it is impacted;”
  - iv. Defining “explicitly targeted” as meaning there is “a description of the intended use of the TLD in the application;”
  - v. Defining “implicitly targeted” as meaning a reasonable person would make “an assumption of targeting” or believe that “there may be confusion by users over its intended use;”
  - vi. Defining an “established institution” as one that “has been in formal existence for at least 5 years” (with fewer than five years “in exceptional circumstances,” such as a “re-organisation, merger, or an inherently younger community”) and including certain ICANN organizations (GAC, ALAC, GNSO, ccNSO and ASO); and
  - vii. Defining “formal existence” as evidenced by appropriate public documentation or validation.

This Guideline also suggests that the “objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely.

- d. Potential Impact: Notwithstanding the GNSO’s effort to provide definitional suggestions, challenges remain in implementing this recommendation. In addition, questions have arisen about the impact on a community if the purpose or business model of the new gTLD changes after approval. This issue might be addressed in a new registry’s agreement with ICANN, or the registry could reach an agreement directly with the affected community, without limiting innovation.

## **Background Material**

### **Policy Development Background**

28. The Generic Names Supporting Organization (GNSO)<sup>10</sup> has completed its Final Report on the Introduction of New Top-Level Domains (the Report).

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<sup>10</sup> <http://gns0.icann.org/>

Part A of the Report contains the substantive discussion of the Principles, Policy Recommendations and Implementation Guidelines

(<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>).

Part B contains a range of supplementary materials that were used by the Committee during the Policy Development Process (PDP), including Constituency Impact Statements (CIS), Working Group Reports on sub-elements of the Committee's deliberations, a collection of external reference materials and procedural documentation (<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-partb-01aug07.htm>). Part B includes the reports of the Internationalised Domain Names Working Group (IDN-WG), the Reserved Names Working Group (RN-WG) and the Protecting the Rights of Others Working Group (PRO-WG). In addition, an ad-hoc group is developing an informational resource on rights protection mechanisms and their implementation; this resource will accompany the RFP.

29. More than 80 comments on the Report were submitted during the GNSO [public comment forum](http://www.icann.org/announcements/announcement-10aug07.htm) that ran from 10 to 30 August 2007 (<http://www.icann.org/announcements/announcement-10aug07.htm>), and a synopsis of the comments is posted at <http://forum.icann.org/lists/gtldfinalreport-2007/msg00082.html>. The comments can be roughly divided into three categories:
- (i) Concern about the subjectivity of language in Recommendations 6 and 20, relating to morality and public order, and to significant community opposition and belief that ICANN should “confine itself to technical and operational matters.”
  - (ii) General comments related to process and urging ICANN to move towards a robust and objective application process available as quickly as possible; and
  - (iii) Other comments relating to specific elements, such as IDN issues, the use of accredited registrars and protection of trademark rights.
30. On 6 September 2007, the GNSO Council voted 19-1-3 to support the recommendations in the Report, which exceeds the minimum required supermajority under the ICANN Bylaws.
31. Over the last year, based on the evolving work of the GNSO, ICANN Staff have been developing the various processes that would be needed to implement the GNSO's recommendations, taking into account the GNSO's work and the lessons learned from two previous rounds of gTLD expansion, as well as the .ORG and .NET rebids. ICANN Staff had numerous discussions with the GNSO members developing the Report and provided the GNSO with two "Discussion Points" documents containing questions regarding how certain draft recommendations might be implemented (<http://gnso.icann.org/drafts/GNSO-PDP-Dec05-StaffMemo-14Nov06.pdf> and <http://gnso.icann.org/drafts/PDP-Dec05-StaffMemo-19-jun-07.pdf>). Upon approval of the Report by the ICANN Board, this work will be completed and a

“proposed implementation plan” will be posted for public comment before being finalized and initiated.

## **GNSO Participation**

32. The GNSO Committee on New Top-Level Domains consisted of GNSO Council members <http://gns0.icann.org/council/members.shtml> or their designees. All meetings were open to a wide range of interested stakeholders and observers. A set of participation data is found in Part B.

## **Constituency Impact Statements**

33. Key points from Constituency Impact Statements have been reflected in the sections above addressing “Impact.” The full texts are available in Part B of the Report. Part B also includes comments submitted by a Councilor appointed to the Council by the Nominating Committee.

## **For More Information**

34. See <<http://www.icann.org/topics/gtld-strategy-area.html>> or contact <[policy@icann.org](mailto:policy@icann.org)>

## Annex: Reserved Names Summary

The following information is provided to give a complete but concise summary of all reserved name requirements for new gTLDs. Please note that reserved name requirements include both those listed in the alphabetical list in the table and the requirements described in the Special Reserved Names Categories section.

### Alphabetical List

ASCII			IDN		
Top Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level	Top Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level***
0	AFRINIC	AFRINIC	All Unicode versions of 'Example' and 'Test'	All Unicode versions of 'Example' ** and names that appear in the IDN Evaluation Facility.	All Unicode versions of 'Example' **
1	APNIC	APNIC			
2	ARIN	ARIN			
3	ASO	ASO			
4	ccNSO	ccNSO			
5	Example	Example			
6	GNSO	GNSO			
7	gtd-servers	gtd-servers			
8	IAB	IAB			
9	IANA	IANA			
a	iana-servers	iana-servers			
AFRINIC	ICANN	ICANN			
APNIC	IESG	IESG			
ARIN	IETF	IETF			
ASO	Internic	Internic			
b	IRTF	IRTF			
c	ISTF	ISTF			
ccNSO	LACNIC	LACNIC			
d	LATNIC	LATNIC			
e	NIC*	NIC*			
Example	rfc-editor	rfc-editor			
f	RIPE	RIPE			
g	root-servers	root-servers			
GNSO	Whois*	Whois*			
gtd-servers	www*	www*			
h					
i					
IAB					
IANA					
iana-servers					
ICANN					
IESG					
IETF					
Internic					
IRTF					
ISTF					
j					

ASCII			IDN		
Top Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level	Top Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level***
k					
l					
LACNIC					
LATNIC					
m					
n					
NIC					
o					
p					
q					
r					
rfc-editor					
RIPE					
root-servers					
s					
t					
test					
u					
v					
w					
Whois					
www					
x					
y					
z					

\* For use by registry operators only.

\*\* The RN-WG recommended that ICANN not try to translate 'example' into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries.

\*\*\* Applicable only in cases where a registry registers names at the third level.

### Special Reserved Names Categories

In addition to the reserved names included in the table above, the following requirements also apply for all new gTLDs:

- Symbols may not be used in any ASCII name at any level except in cases where the hyphen (-) is allowed.
- Tagged names may not be used in any ASCII name at any level except when a registry has approval to offer IDN names and, in such cases, only the currently approved IDNA prefix may be used in tagged names (e.g., xn--).

- Two letter ASCII names at the top level are reserved for the use of ccTLD names only.